



## Legislation Text

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**File #:** 18-1638, **Version:** 1

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Probation Department recommending the Board consider the following:

- 1) Receive an update on the local effect of Senate Bill 10 - Pretrial Services; and
- 2) Authorize the Chief Probation Officer to complete a non-binding letter of the County's intent, as required by the State Judicial Council of California, to contract with the Superior Court of El Dorado County to provide Pre-Trial services on behalf of the Court. (Est. Time: 30 Min.)

**FUNDING:** Revenue.

### **DISCUSSION / BACKGROUND**

Senate Bill 10, signed by Governor Brown on August 28, 2018, would repeal and replace existing law regarding pretrial release or detention and eliminate the use of money bail effective October 1, 2019. Under this statute Pretrial assessment services would be conducted by Court employees or Probation Departments through a contract in order to assess the risk level of any individual charged with committing a crime.

The Judicial Court of California (JCC) is requesting the letter of intent to be completed and returned by February 1, 2019 for any agency intending to enter into contract discussions for pretrial assessment services. The letter of intent does not bind a County or agency to commit to a future contract for services, instead it serves to advise the Judicial Council of California and the Chief Probation Officers of California (CPOC), how the courts are proceeding with implementation; and are important for statewide planning purposes.

Regardless of the potential change in legislation, the Probation Department is scheduled to receive funding from JCC in the amount of \$100,000.00 to cover the costs of implementation and planning for pretrial assessment services. The funding is expected to be received in late October 2018 and can roll over to the next year if not expended.

Provided in detail below is the Legislative Counsel's Digest regarding Senate Bill No. 10.

SB 10, Hertzberg. Pretrial release or detention: pretrial services.

This bill would, as of October 1, 2019, repeal existing laws regarding bail and require that any remaining references to bail refer to the procedures specified in the bill.

This bill would require, commencing October 1, 2019, persons arrested and detained to be subject to a pretrial risk assessment conducted by Pretrial Assessment Services, which the bill would define as an entity, division, or program that is assigned the responsibility to assess the risk level of persons charged with the commission of a crime, report the results of the risk determination to the court, and make recommendations for conditions of release of individuals pending adjudication of their criminal case. The bill would require the courts to establish pretrial assessment services, and would authorize the services to be performed by court employees or through a contract with a local public agency, as specified. The bill would require, if no local agency will agree to perform the pretrial assessments, and if the court elects not to perform the assessments, that the court may contract with a new local

pretrial assessment services agency established specifically to perform the role.

The bill would require a person arrested or detained for a misdemeanor, except as specified, to be booked and released without being required to submit to a risk assessment by Pretrial Assessment Services. The bill would authorize Pretrial Assessment Services to release a person assessed as being a low risk, as defined, on his or her own recognizance, as specified. The bill would additionally require a superior court to adopt a rule authorizing Pretrial Assessment Services to release persons assessed as being a medium risk, as defined, on his or her own recognizance. The bill would prohibit Pretrial Assessment Services from releasing persons who meet specified conditions. If a person is not released, the bill would authorize the court to conduct a pre-arraignment review and release the person. The bill would allow the court to detain the person pending arraignment if there is a substantial likelihood that no condition or combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the person in court.

The bill would require the victim of the crime to be given notice of the arraignment by the prosecution and a chance to be heard on the matter of the defendant's custody status. By imposing additional duties on local prosecutors, this bill would impose a state-mandated local program. The bill would create a presumption that the court will release the defendant on his or her own recognizance at arraignment with the least restrictive nonmonetary conditions that will reasonably assure public safety and the defendant's return to court.

The bill would allow the prosecutor to file a motion seeking detention of the defendant pending trial under specified circumstances. If the court determines that there is a substantial likelihood that no conditions of pretrial supervision will reasonably assure the appearance of the defendant in court or reasonably assure public safety, the bill would authorize the court to detain the defendant pending a preventive detention hearing and require the court to state the reasons for the detention on the record. The bill would prohibit the court from imposing a financial condition.

In cases in which the defendant is detained in custody, the bill would require a preventive detention hearing to be held no later than 3 court days after the motion for preventive detention is filed. The bill would grant the defendant the right to be represented by counsel at the preventive detention hearing and would require the court to appoint counsel if the defendant is financially unable to obtain representation. By imposing additional duties on county public defenders, this bill would impose a state-mandated local program. The bill would require the prosecutor to give the victim notice of the preventive detention hearing. By imposing new duties on local prosecutors, this bill would impose a state-mandated local program. The bill would create a rebuttable presumption that no condition of pretrial supervision will reasonably assure public safety if, among other things, the crime was a violent felony or the defendant was convicted of a violent felony within the past 5 years. The bill would allow the court to order preventive detention of the defendant pending trial if the court determines by clear and convincing evidence that no condition or combination of conditions of pretrial supervision will reasonably assure public safety or the appearance of the defendant in court. If the court determines there is not a sufficient basis for detaining the defendant, the bill would require the court to release the defendant on his or her own recognizance or supervised own recognizance and impose the least restrictive nonmonetary conditions of pretrial release to reasonably assure public safety and the appearance of the defendant.

The bill would require the Judicial Council to adopt Rules of Court and forms to implement these provisions as specified, and to identify specified data to be reported by each court. The bill would require the Judicial Council to, on or before January 1, 2021, and every other year thereafter, to

submit a report to the Governor and the Legislature. The bill would provide that upon appropriation by the Legislature, the Judicial Council would allocate funds to local courts for pretrial assessment services and the Department of Finance would allocate funds to local probation departments for pretrial supervision services, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

## **ALTERNATIVES**

N/A

## **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

Judicial Council of California and Superior Court of California, County of El Dorado

## **CAO RECOMMENDATION / COMMENTS**

Approve as recommended.

## **FINANCIAL IMPACT**

There is no fiscal impact to Net County Cost associated with this matter as these funds must be held in trust and utilized only for the purposes of Pretrial services.

## **CLERK OF THE BOARD FOLLOW UP ACTIONS**

N/A

## **STRATEGIC PLAN COMPONENT**

## **CONTACT**

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