

# UNDERSTANDING SB10: WHAT THE NEW LAW MAY MEAN FOR CALIFORNIANS

By eliminating money bail in the nation’s most populous state, California’s historic SB10 legislation has sent a clear message that this practice is unfair, ineffective, and a waste of public resources. This did not come without controversy, nor are the challenges over simply because a bill was passed. As we speak, a movement to put this issue before voters in 2020 and delay implementation is being fronted by the commercial bail bond industry.

Meanwhile, as the state moves forward with preparations for the law to take effect in October 2019, decisions are being made that will determine the impact of SB10 on long-standing economic and racial disparities at the pretrial stage. As a first step toward understanding the facts of SB10 and thinking through an optimal implementation process, the Pretrial Justice Institute offers this overview to interested stakeholders across the country.

## BEFORE AND AFTER

Before SB10	After Implementation
Under prior law, county courts were required to establish a bond schedule.	Monetary bonds will no longer be set on individuals awaiting trial, and California counties will no longer be required or permitted to maintain a bond schedule.
Prior to SB10, financial terms of release were predominant.	Pretrial release must be on the least restrictive conditions necessary to reasonably assure public safety and court appearance.
Though many counties in California had an assessment in place prior to SB10, assessments were not addressed in statute and were often secondary to the bond schedule.	Each county is required to adopt a pretrial assessment instrument.
Prior to SB10, only a small number of charges were eligible for preventive detention, though detention due to inability to pay a financial bond was quite common.	Judges can preventively detain individuals subsequent to a preventive detention hearing if the person is accused of a violent crime, is on post-conviction supervision, is charged with a new offense while pending trial or sentencing for a felony conviction, has allegedly intimidated a witness, or if the judge believes that no conditions or combination of conditions will allow the person to remain safely in the community.



## HIGHLIGHTS FROM THE NEW LAW

### Prior to arraignment:

- Individuals charged with misdemeanor offenses, with certain exceptions, are booked and released within 12 hours without conditions.<sup>1</sup>
- Individuals in custody (those charged with felonies and certain misdemeanors) are assessed by a new entity, Pretrial Assessment Services, using a validated pretrial assessment tool. Pretrial Assessment Services can be operated by the court, or the court can contract with another county government agency to provide this service.
- Victims have a right to comment on an individual’s custody status.
- Individuals assessed as “low risk” are released by Pretrial Assessment Services pre-arraignment on their own recognizance with or without conditions of release, with certain exceptions.
- Individuals assessed as “medium risk” can be released by Pretrial Assessment Services or a judicial officer, or if those entities do not authorize release, the individual is held until by the Sheriff’s Department until arraignment, depending on local court rules established by each county.
- Individuals assessed as “high risk” are held by the Sheriff’s Department until arraignment.

### In court:

- At arraignment, the court makes a non-monetary bail determination. The law includes a presumption of release for most individuals.
- An individual must be released unless the prosecutor makes a motion for a preventive detention hearing, citing any of the circumstances described above. Hearings must be held within three court days for individuals in custody.
- Pretrial Assessment Services reports assessment results and recommendations for release conditions to the court and counsel.
- In addition to assessment results (which theoretically would already take these things into consideration), release decisions are informed by current charge, criminal history, court appearance history, and input from the individual being charged, victims, law enforcement, the prosecutor, and the defense attorney.
- Individuals who are charged with violent felonies, score “high risk,” and have certain criminal history factors have a presumption of detention but still have the right to a full hearing.



1. Exceptions to eligibility for pre-arraignment release include individuals charged with certain serious or violent offenses, those who have violated orders of protection or conditions of pretrial or post-conviction release, and those with certain criminal histories. For more information, see <http://www.courts.ca.gov/pretrial.htm>.

- Individuals have the right to counsel at a preventive detention hearing (but not at first appearance).
- If the court orders preventive detention, the reason must be stated on the record.

**To manage implementation:**

- The California Judicial Council is charged with maintaining a list of approved assessment instruments and will develop court rules to guide assessment, administration, preventive detention hearings, and pretrial supervision. The Judicial Council must also address the identification and mitigation of bias in the instruments.

- The Judicial Council must convene a panel of experts to guide rule development, including an expert on implicit bias.
- County courts are charged with operating or contracting with Pretrial Assessment Services.
- County probation departments are charged with administering pretrial supervision.
- The Judicial Council, Board of State and Community Corrections, and county courts and probation departments all play a role in collecting data and evaluating the effectiveness of the law, including evaluating the impact of the law on race, ethnicity, gender, and economic status.

**Design Challenges for a Decarceral Outcome**

A growing body of literature is available to guide effective implementation of SB10, and the law creates opportunities to align with pretrial best practice. There are also opportunities for Californians to go beyond the letter of the law to improve pretrial systems. Below are some questions to consider in that process.

- The expert body that will be convened by the Judicial Council is charged with setting standards for risk levels within and across assessment tools. How will those levels be set to address the variation across tools, and how will predictive validity be measured across counties?
- Critics of the law are concerned about the potential for bias in the use of assessment tools. Though the Judicial Council will be working with an implicit bias expert when establishing standards, how will community members be involved in this process, and how can transparency be assured throughout the selection and implementation of the assessment?
- Limited legal precedent or research is available to define “least restrictive conditions.” How will supervision standards be defined by the Judicial Council, and how will the correlation between those standards and pretrial outcomes be measured at the state and county level? And will measures of bias in the setting of conditions be included?
- The law includes a presumption of release for most individuals juxtaposed with broad discretion for preventive detention. What shifts are needed in court culture to favor the presumption of release? What transparent and accountable processes will be put in place locally for regular review of administrative and judicial decisions, and of their impact on individuals awaiting trial?
- Under the law, pretrial assessment and supervision are functions of county government. How will the courts and probation departments collaborate with community based resources, such as behavioral health services and grassroots supports for impacted individuals?
- How will violations of pretrial release conditions be managed to limit the use of preventive detention for individuals who are initially released to the community?