

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT SP18-23

Title

Criminal Procedure: Proper Use of Pretrial Risk Assessment Information; Review and Release Standards for Pretrial Assessment Services for Persons Assessed as Medium Risk

Action Requested

Review and submit comments by December 14, 2018

Proposed Effective Date

March 15, 2019

Proposed Rules, Forms, Standards, or Statutes

Adopt Cal. Rules of Court, rules 4.10 and 4.40

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Proposed by

Criminal Law Advisory Committee
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Executive Summary and Origin

The Criminal Law Advisory Committee proposes adoption of two new California Rules of Court: rule 4.10, which sets forth the proper use of pretrial risk assessment information, and rule 4.40, which addresses review and release standards for Pretrial Assessment Services for persons assessed as medium risk. These proposed rules are intended to fulfill the Judicial Council's obligation under Penal Code section 1320.24(a) to adopt rules and forms, as needed, to implement specific elements of Senate Bill 10.

Background

Senate Bill 10

On August 28, 2018, the Governor signed Senate Bill 10 (Hertzberg; Stats. 2018, ch. 244), (Pen. Code, § 1320.7, et seq.¹), legislation that, effective October 1, 2019, eliminates the use of cash bail and bail bonds. The legislation requires each court to establish Pretrial Assessment Services² to conduct pretrial risk assessments³ of most arrested persons using a validated risk assessment

¹ All statutory references are to the Penal Code except as otherwise noted.

² See § 1320.7(g).

³ See § 1320.7(f).

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

tool,⁴ make prearrest release decisions where authorized, report the risk assessment scores⁵ and supplemental information to the court, and make recommendations for conditions of release. Courts may also choose to have judicial officers or subordinate judicial officers conduct prearrest reviews using information in the pretrial risk assessment reports prepared by Pretrial Assessment Services. (Pen. Code, §§ 1320.7(a); 1320.13.)

Under the new legislation, most persons arrested and detained for misdemeanors—except for those who fall within the exclusions listed in section 1320.10(e)—must be booked and released within 12 hours of arrest by a booking agency without a risk assessment by Pretrial Assessment Services. (Pen. Code, § 1320.8.) Persons arrested for misdemeanors who meet one of the exclusions listed in section 1320.10(e) and all persons arrested for felonies must have a prearrest risk assessment by Pretrial Assessment Services within 24 hours of arrest. (Pen. Code, § 1320.9.)

Screening by Pretrial Assessment Services will include administering a validated risk assessment tool. The score from this tool will designate whether a person is “low risk,” “medium risk,” or “high risk.” Prearrest release of arrested persons will depend on their assessed risk level, determined by their score from the risk assessment tool and other information gathered from an investigation done by Pretrial Assessment Services, as follows:

- Low risk⁶: Pretrial Assessment Services must release persons assessed as low risk prior to arraignment, on their own recognizance⁷ except for those persons arrested for misdemeanors or felonies who fall within the exclusions listed in section 1320.10(e). (Pen. Code, § 1320.10(b).)
- Medium risk⁸: Pretrial Assessment Services has authority to release on own recognizance or supervised own recognizance,⁹ or detain prearrest, except for those persons subject to one of the exclusions listed in section 1320.10(e) or additional exclusions that may be included by a local court rule.¹⁰ (Pen. Code, § 1320.10(c).)
- High risk¹¹: Pretrial Assessment Services—and the court, if the court provides prearrest review—is not authorized to release persons assessed as “high risk.” Under sections 1320.10(e) and 1320.13(b), these persons must be held until arraignment when the court will make a release determination and set conditions of release, if applicable.

⁴ See § 1320.7(k).

⁵ See § 1320.7(i).

⁶ See § 1320.7(c).

⁷ See § 1320.7(e).

⁸ See § 1320.7(d).

⁹ See § 1320.7(j).

¹⁰ The local rule of court must be consistent with the California Rules of Court adopted by the Judicial Council pursuant to section 1320.24(a).

¹¹ See § 1320.7(b).

At arraignment, the court must release all persons with the least restrictive nonmonetary conditions that will reasonably assure public safety and the defendant's return to court unless the prosecutor files a motion for preventive detention in accordance with section 1320.18. (Pen. Code, § 1320.17.) The preventive detention hearing must be held within three court days of the motion if the defendant is in custody. The court must order the defendant released unless the court finds that detention is permitted under the United States and California Constitutions, and determines by clear and convincing evidence that no nonmonetary conditions of pretrial supervision will reasonably assure public safety or the appearance of the defendant in court as required. (Pen. Code, § 1320.20(d)(1).)

Judicial Council responsibilities

Senate Bill 10 places numerous responsibilities on the Judicial Council including the adoption of California Rules of Court and Judicial Council forms, as needed, to aid in implementing the legislation. (Pen. Code, § 1320.24(a).) The Judicial Council's Criminal Law Advisory Committee is responsible for making recommendations to the Judicial Council for improving the administration of justice in criminal proceedings by proposing rules and forms related to criminal law and procedure. (Cal. Rules of Court, rule 10.42.) The Criminal Law Advisory Committee identified two areas of required rulemaking as particularly time-sensitive: prescribing the proper use of risk assessment information when making pretrial release and detention decisions pursuant to section 1320.24(a)(1); and prescribing local rule standards for Pretrial Assessment Services' prearraignment review and release of persons assessed as medium risk, and providing guidance for courts on additional local rule exclusions pursuant to sections 1320.11 and 1320.24(a)(4).

Because the legislation requires courts to use pretrial risk assessment information when making release decisions and selecting release conditions, courts need clear advance guidance regarding the proper use of this information. Similarly, the legislation mandates each court to develop its own "medium risk" rule that is consistent with the California Rules of Court. It is therefore critical to develop and adopt the state rule regarding release of persons assessed as medium risk as quickly as possible so that courts can complete the local rule adoption process before the legislation's effective date of October 1, 2019.

The Proposal

To help courts implement the new legislation, the committee recommends that the Judicial Council adopt two California Rules of Court: rule 4.10, the proper use of pretrial risk assessment information, and rule 4.40, review and release standards for Pretrial Assessment Services for persons assessed as medium risk.

Proper use of risk assessment information by the court (rule 4.10)

Section 1320.24(a)(1) requires the Judicial Council to adopt rules and forms, as needed, to:

[p]rescribe the proper use of pretrial risk assessment information by the court when making pretrial release and detention decisions that take into consideration the safety of the public and victims, the due process rights of the defendant, specific characteristics or

needs of the defendant, and availability of local resources to effectively supervise individuals while maximizing efficiency.

In developing proposed rule 4.10 to fulfill this obligation, the committee drew on Standards of Judicial Administration, [standard 4.35](#): “Court use of risk/needs assessments at sentencing,” adopted by the Judicial Council effective January 1, 2018. Although pretrial risk assessment serves a different purpose than a risk/needs assessment at sentencing, the committee recognized that they share certain commonalities. The committee structured proposed rule 4.10 to include “Application and purpose,” “Proper use of pretrial risk assessment information,” and “Improper uses of pretrial risk assessment information.”

- Subdivision (a) confirms that pretrial risk assessment information is intended to assist Pretrial Assessment Services and the court to make appropriate release and detention decisions, to identify the least restrictive nonmonetary conditions of release, and to address any biases in pretrial release and detention decisions.
- Subsections (b)(1) and (b)(2) require Pretrial Assessment Services and the court to give significant weight to the risk assessment score while also considering additional information from the pretrial investigation.
- Subsection (b)(3) clarifies that the risk score, while not determinative, is a relevant factor in assessing for pretrial release, appropriate conditions of release, and responses to violations of release conditions.
- Subsection (b)(4) prohibits the court from relying on a risk score or other information that is no longer accurate or relevant.
- Subsection (b)(5) requires the court to consider the limitations of risk assessment tools and to be aware that risk assessment tools are designed to identify the likelihood of risk for groups of individuals with certain shared characteristics, such as criminal history, but cannot predict the future behavior of a particular individual. That subsection also instructs the court to consider whether any scientific research has raised questions that the particular instrument used by Pretrial Assessment Services unfairly classifies offenders based on race, ethnicity, gender, or income level, and whether the tool has been validated on a relevant population.
- Subsection (b)(6) requires the court to retain pretrial risk assessment information in the confidential portion of the court’s file or by filing it under seal, with access to the information solely by authorized persons, or by order of the court.
- Subdivision (c), which addresses improper uses of pretrial risk assessment information, instructs courts to consider the results of the risk assessment without imposing standardized or predetermined conditions based on risk level.

- Subsection (c)(2) limits consideration of the risk of reoffense to the pretrial stage and prohibits consideration of long-term risk of reoffense.
- Subsection (c)(3) prohibits courts from placing undue emphasis on factors that the risk assessment tool already incorporates and weighs.

Review and release standards for Pretrial Assessment Services for persons assessed as medium risk (rule 4.40)

Under section 1320.10(c), Pretrial Assessment Services has authority to release persons assessed as medium risk—except for those who fall within the exclusions listed in 1320.10(e)—with the least restrictive nonmonetary conditions that will reasonably assure public safety and return to court, or to detain those persons prearrest. However, Pretrial Assessment Services may only release in accordance with the review and release standards set forth in a local rule of court, as required under section 1320.11. This local rule may expand the list of exclusions for persons assessed as medium risk that Pretrial Assessment Services is not permitted to release, but the court is prohibited from excluding all persons assessed as medium risk from prearrest release by Pretrial Assessment Services.

Proposed rule 4.40 also provides guidance on the review and release standards for Pretrial Assessment Services for persons assessed as medium risk and the parameters for the local rule of court. In developing proposed rule 4.40, the committee structured the rule into five subdivisions: “Purpose and application,” “Review requirements,” “Setting of release conditions,” “Considerations for expanding the list of exclusions,” and “Local rule development and annual review.”

- Subdivision (a) sets forth the statutory basis for the rule and emphasizes the legislative intent to encourage pretrial release when appropriate.
- Subdivision (b) directs courts to include specific review requirements for Pretrial Assessment Services, including the mandate to give significant weight to the risk assessment score but also to consider relevant supplementary information, and to include the reasons for the decision to release or to detain in its risk assessment report, pursuant to section 1320.9.
- Subdivision (c) requires Pretrial Assessment Services to exercise independent judgment and to tailor release conditions to the individual person. This subdivision provides a nonexhaustive list of release conditions that Pretrial Assessment Services must consider, and reiterates that those conditions must be limited to the least restrictive ones necessary to reasonably assure public safety and the person’s return to court.

- Subsection (c)(7) requires Pretrial Assessment Services to access every reasonably available resource to encourage successful pretrial release and to avoid unnecessary conditions of supervision.
- Subsection (c)(8) prohibits Pretrial Assessment Services from denying release based on the unavailability of any particular resource, unless there is no condition or combination of conditions that will reasonably protect the public and assure the defendant’s future appearance in court, and from imposing conditions that have rehabilitative objectives related to postconviction supervision.
- Subdivision (d) clarifies that a court may, but is not required to, expand the list of exclusions for prearrest release of medium-risk persons. This subdivision also requires that any added exclusion must uphold the goals of public safety and appearance in court. It prohibits factors weighed by the risk assessment tool or based on a status condition such as homelessness or mental illness. This subdivision emphasizes the statutory prohibition against an exclusion that would prevent all or nearly all persons assessed as medium risk from being released prior to arraignment and requires courts to consider whether an added exclusion would increase disparity in detention rates of ethnic or racial minorities or other inappropriate demographic within the local population.
- Subdivision (e) addresses procedures for adopting the local rule.
- Subsection (e)(1), pursuant to section 1320.11, requires courts to consult with Pretrial Assessment Services and other justice system partners when developing the local rule, and to consult with local resource providers, as appropriate, including the county behavioral health agency and community-based organizations that provide support for defendants and for victims, and to seek guidance on evidence-based practices from relevant agencies and organizations.
- Subsection (e)(2) requires courts to annually review their local rule and to examine whether the local rule has disproportionately impacted certain groups that are overrepresented in the criminal justice system. This subdivision requires courts to submit an annual report to the Judicial Council that describes the process for consulting with stakeholders, and documents the data and findings generated by the review.

Alternatives Considered

Section 1320.24(a) mandates the Judicial Council to adopt California Rules of Court and forms, “as needed” to accomplish all of the purposes set forth in that subdivision. The committee considered whether rules of court are necessary to accomplish the requirements set forth in subdivisions (a)(1) and (a)(4) and determined that they were, and so has developed proposed rules 4.10 and 4.40.

The committee considered whether to include a provision in rule 4.10 that addressed subsequent use of the risk assessment information. Specifically, the committee considered restricting the use of the risk assessment information “for any purpose other than a determination of pretrial release or release or detention in the current proceeding, or conditions of release, unless both parties otherwise stipulate.” Alternatively, the committee considered including an exception to this restriction for impeachment purposes. The committee decided not to include a directive on this point, reasoning that the case law interpreting constitutional and statutory mandates will determine whether and how information included in a pretrial risk assessment report can be used in a subsequent proceeding. The committee would, however, appreciate comments on this question.

The committee also considered whether to define “criminal history,” as used in rule 4.40(b)(3)(B), to exclude arrests that did not result in the filing of charges. The committee decided not to include a definition but would appreciate comments on this issue.

Fiscal and Operational Impacts

Senate Bill 10 requires courts to establish Pretrial Assessment Services and implement procedures for prearrest review and pretrial determinations of release or detention. These requirements will likely have substantial operational impacts and implementation requirements for courts and justice system partners. It is anticipated that the two rules proposed here, however, will provide useful guidance to courts regarding implementation of certain essential elements of pretrial release and will not, in and of themselves, have substantial costs or operational impact. Each of the proposed rules will require implementation by the courts. Proposed rule 4.40 will require the courts to develop a local rule and to provide an annual report to the Judicial Council on the impact of the local rule.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Does the proposal appropriately consider the criteria articulated by SB 10 regarding the rules required by section 1320.24(a)(1) and 1320.24(a)(4)?
- Should proposed rule 4.10 provide more specificity regarding considerations for:
 - The safety of the public and victims;
 - The due process rights of the defendant;
 - The specific characteristics or needs of the defendant; and
 - The availability of local resources to effectively supervise individuals while maximizing efficiency?
- Should rule 4.10 include guidance regarding use of pretrial assessment information in subsequent proceedings? If so, what should the guidance provide?
- Should proposed rule 4.40 provide more specificity regarding review and release standards for Pretrial Assessment Services for persons assessed as medium risk and eligible for prearrestment release? If so, what specific standards should be added?
- Does rule 4.40 support an effective and efficient pretrial release or detention system that:
 - Protects public safety; and
 - Respects the due process rights of defendants?
- Should proposed rule 4.40 provide more specificity regarding considerations for:
 - The safety of the public and victims;
 - The due process rights of the defendant; and
 - The availability of local resources to effectively supervise individuals while maximizing efficiency?
- Should criminal history, as used in rule 4.40(b)(3)(B), exclude arrests that did not result in the filing of charges?
- Does rule 4.40 appropriately provide for the local rule to further expand the list of offenses and factors for which prearrestment release of persons assessed as medium risk is not permitted?
- Does rule 4.40 appropriately constrain the local rule from excluding the release of all or nearly all persons assessed as medium risk?
- Does rule 4.40 appropriately provide for courts to consider, on an annual basis, the impact of the court's local rule on:
 - Public safety;
 - The due process rights of defendants; and
 - The preceding year's implementation of the rule?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the two proposed rules provide cost savings or significant additional expense? If so, please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing codes in case management systems, or modifying case management systems.
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 4.10 and 4.40, at pages 10–16
2. Sen. Bill 10 (Stats. 2018, ch. 244),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB10

Rules 4.10 and 4.40 of the California Rules of Court would be adopted, effective March 15, 2019, to read:

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Title 4. Criminal Rules

Division 2. Pretrial

Chapter 1. Pretrial Proceedings

Rule 4.10. Proper use of pretrial risk assessment information

(a) Application and purpose

- (1) This rule governs the proper use of risk assessment information by Pretrial Assessment Services and by the court when making pretrial release and detention decisions, and when selecting appropriate release conditions.
- (2) The use of pretrial risk assessment information is intended to:
- (A) Increase public safety and the likelihood of a defendant's return to court by assisting Pretrial Assessment Services and the court to make release and detention decisions;
 - (B) Identify the least restrictive nonmonetary conditions of release through the use of evidence-based pretrial release and supervision practices; and
 - (C) Address any biases in pretrial release and detention decisions.

(b) Proper use of pretrial risk assessment information

- (1) Consistent with the provisions of Penal Code section 1320.07 et seq. prescribing release with appropriate conditions, Pretrial Assessment Services and the court must give significant weight to the risk assessment score and consider information from the pretrial investigation. Pretrial Assessment Services and the court must also consider:
- (A) The safety of the public;
 - (B) The safety and rights of the victim;
 - (C) The rights of the defendant;
 - (D) The specific characteristics, interests, or needs of the defendant; and

- 1 (E) The particular conditions of release and the availability of local
2 resources that will maximize the efficiency and effectiveness of pretrial
3 release.
4
- 5 (2) Pretrial Assessment Services and the court must consider the risk score in
6 context with all other available information, including comments, if any, by
7 law enforcement, counsel, the defendant, or a victim. The absence of
8 comment by the victim must not be a basis for denying release.
9
- 10 (3) The risk score is not determinative but is a relevant factor in assessing:
11
- 12 (A) Whether a defendant can be released in the community during the
13 pretrial period;
14
- 15 (B) The appropriate conditions of release and the appropriate responses to
16 violations of release conditions; and
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- 18 (C) Whether a person who is presumptively ineligible for prearrestment or
19 pretrial release has overcome the presumption in Penal Code sections
20 1320.13(i) or 1320.20(a).
21
- 22 (4) Pretrial Assessment Services must provide the court with the date(s) of the
23 investigation and, to the extent possible, must confirm the accuracy of the
24 information in the pretrial investigation report. When making a release
25 determination or when considering a request to modify release conditions, the
26 court must not rely upon a risk score or other information in the pretrial
27 investigation report that is no longer accurate or relevant.
28
- 29 (5) The court must consider any limitations of risk assessment tools in general,
30 and any limitations of the particular risk assessment tool used by Pretrial
31 Assessment Services, including:
32
- 33 (A) That the instrument's risk scores are based on group data, and that the
34 instrument is designed to identify the likelihood of risk for groups of
35 individuals with certain characteristics, but cannot predict the future
36 behavior of a particular individual;
37
- 38 (B) Whether the instrument's proprietary nature has been invoked to
39 prevent the disclosure of information relating to how it weighs risk
40 factors and how it determines risk scores;
41

1 (C) Whether any scientific research has raised questions that the particular
2 instrument unfairly classifies offenders based on race, ethnicity, gender,
3 or income level; and

4
5 (D) Whether the particular instrument has been validated on a relevant
6 population.

7
8 (6) The court must place pretrial risk assessment information provided to the
9 court in the confidential portion of the court's file or filed under seal. The
10 information must be retained in a secure manner that prevents access to the
11 information except by the parties, counsel for the parties, by Pretrial
12 Assessment Services and the court, or by order of the court.

13
14 (c) **Improper uses of pretrial risk assessment information**

15
16 (1) Pretrial Assessment Services and the court must not use the risk score as the
17 sole basis to detain or release a person other than as required by Penal Code
18 section 1320.10(b) and 1320.13(b)(1), nor subject a person to any particular
19 or predetermined conditions of release other than those included in Penal
20 Code section 1320.10(g) for release by Pretrial Assessment Services and
21 section 1320.13(f) for release by the court respectively. The court and Pretrial
22 Assessment Services must determine whether to release a person and set
23 conditions of release based on an individualized evaluation of the person and
24 the particular circumstances of the case.

25
26 (2) Pretrial Assessment Services and the court must consider the risk score and
27 any additional risk assessment information to facilitate release decisions, but
28 the risk score must not be used as a substitute for sound independent
29 judgment. In evaluating the risk to public safety, Pretrial Assessment
30 Services and the court must consider only the risk of reoffense during the
31 pretrial stage of the case, and not the long-term risk of reoffense.

32
33 (3) The validated risk assessment tool used by Pretrial Assessment Services is
34 scientifically designed to weigh certain factors as they relate to risk. The
35 court must be familiar with the factors included in the particular risk
36 assessment tool used by Pretrial Assessment Services and must not give
37 additional undue weight to these factors when making release and detention
38 decisions.

39
40 **Rule 4.40 Review and release standards for Pretrial Assessment Services for**
41 **persons assessed as medium risk**

1 **(a) Purpose and application**
2

3 (1) Penal Code section 1320.24(a)(4) requires the Judicial Council to adopt a rule
4 of court that prescribes the parameters of local rules that superior courts must
5 adopt under Penal Code section 1320.11(a) to set review and release
6 standards for Pretrial Assessment Services for persons assessed as medium
7 risk. This rule is intended to fulfill this requirement.
8

9 (2) Each local rule must authorize release for as many arrested persons as
10 possible, while reasonably assuring public safety and appearance in court as
11 required.
12

13 **(b) Review requirements**
14

15 Each local rule must include the following review requirements:
16

17 (1) Pretrial Assessment Services must use the risk assessment information in
18 accordance with the proper use of such information as specified in rule 4.10.
19

20 (2) Pretrial Assessment Services must give significant weight to the risk
21 assessment score from a validated risk assessment tool, as defined in Penal
22 Code section 1320.7(k), but must also consider any supplemental information
23 that directly addresses whether the arrested person may be safely released,
24 and whether the arrested person is likely to appear in court as required.
25 Pretrial Assessment Services must include reasons for the decision to release
26 or to detain in the report, pursuant to Penal Code section 1320.9.
27

28 (3) Pretrial Assessment Services must consider the following additional factors
29 when determining whether to release or to detain pending arraignment:
30

31 (A) The nature and circumstances of the crime charged;
32

33 (B) The arrested person's past conduct, family and community ties,
34 criminal history, and record concerning appearance at court
35 proceedings;
36

37 (C) The nature and seriousness of the risk to the safety of the victim or any
38 other person or the community posed by the arrested person's release,
39 with particular consideration of the safety of victims of domestic
40 violence, if applicable;
41

1 (D) The impact of detention on the arrested person’s family responsibilities
2 and community ties, employment, and participation in education or
3 rehabilitation services; and

4
5 (E) The rights of a victim under article I, section 28 of the California
6 Constitution (Marsy’s Law).

7
8 (4) Pretrial Assessment Services may retain an arrested person in custody only if
9 there is a substantial likelihood that no condition or combination of
10 conditions of pretrial supervision will reasonably assure public safety or the
11 appearance of the person as required.

12
13 (c) **Setting of release conditions**

14
15 Each local rule must include the following requirements related to release
16 conditions:

17
18 (1) Pretrial Assessment Services must exercise independent judgment in the
19 setting of release conditions only after consideration of all information
20 obtained as a result of the investigation under Penal Code section 1320.9.

21
22 (2) Pretrial Assessment Services must tailor release conditions to the individual
23 arrested person, and not impose standardized conditions for types of offenses
24 or circumstances not relevant.

25
26 (3) Pretrial Assessment Services must only impose release conditions that are
27 reasonably related to assuring public safety and the arrested person’s return to
28 court in the particular case.

29
30 (4) Pretrial Assessment Services must not select release conditions that impose
31 an undue burden on the arrested person’s ability to comply.

32
33 (5) Pretrial Assessment Services must consider any release conditions that will
34 increase the likelihood of success of pretrial release. The local rule must
35 identify the following, nonexclusive list of conditions:

36
37 (A) Court appearance reminders;

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39 (B) Transportation assistance for court appearances;

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41 (C) Weekly or monthly telephone check-ins;

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43 (D) Weekly or monthly in-person reporting;

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- (E) Field visits by a pretrial supervision officer;
- (F) Curfew;
- (G) Case management services, including referrals for services;
- (H) Compliance with prescribed medication and/or counseling;
- (I) Random drug testing;
- (J) Transdermal monitoring; and
- (K) Passive or active global positioning system (GPS) monitoring, without home detention.

(6) Pretrial Assessment Services must limit release conditions to the least restrictive necessary to reasonably assure the arrested person’s return to court and to reduce the risk of reoffense pending adjudication of the charged offense. Pretrial Assessment Services must not impose conditions that have rehabilitative objectives related to postconviction supervision.

(7) When selecting release conditions, Pretrial Assessment Services must use every reasonably available state, local, and community resource that will encourage successful prearrestment release and avoid unnecessary conditions of supervision.

(8) When selecting release conditions, Pretrial Assessment Services must consider the availability of local resources. However, Pretrial Assessment Services must not deny release based on the unavailability of any particular resource unless there is no other condition or combination of conditions that will reasonably protect the public or a victim, or reasonably assure the arrested person’s return to court in the current proceeding.

(d) Considerations for expanding the list of exclusions

(1) Penal Code section 1320.10(e) contains a comprehensive list of offenses and factors that make persons assessed as medium risk ineligible for release by Pretrial Assessment Services; a court is not required to expand this list. If a court chooses to add to the list of exclusionary offenses or factors, the court must not adopt a rule that includes exclusions that effectively exclude all or nearly all persons assessed as medium risk from prearrestment release.

- 1 (2) Any added exclusion must directly uphold the goals of public safety and
2 appearance in court as required.
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4 (3) Factors weighed by the risk assessment tool must not be added as an
5 exclusion.
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7 (4) An added exclusion must not solely be based on a status condition, such as
8 homelessness or mental illness, that would amount to an impermissible
9 categorical exclusion.
10
11 (5) Any added exclusion must be sufficiently specific and identifiable so that,
12 within the time authorized by statute, Pretrial Assessment Services is able to
13 determine whether the exclusion applies.
14
15 (6) When adding an exclusion, the court must consider the extent to which the
16 additional exclusion may increase disparity in detention rates of ethnic or
17 racial minorities, or other inappropriate demographic such as income level or
18 gender, within the local population.
19

20 **(e) Local rule development and annual review**
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- 22 (1) In developing the local rule, the court must consult with Pretrial Assessment
23 Services and with other justice system partners. The court must consult with
24 other justice system resources, as appropriate, including the county
25 behavioral health agency and community-based organizations that provide
26 support for defendants and for victims. The court may also seek guidance on
27 evidence-based practices in pretrial release and detention from state and local
28 organizations with relevant expertise.
29
30 (2) Courts must undertake an annual review of their local rule to consider the
31 impact of the rule on public safety, on the due process rights of arrested
32 persons, and the preceding year's implementation of the rule. As part of the
33 review, the court must describe the consultation process used in developing
34 the rule, and explicitly examine whether the rule has had a disproportionate
35 impact based on race or ethnicity, gender, or other demographics that are
36 overrepresented in the criminal justice system. Courts must submit an annual
37 report to the Judicial Council that documents the data and findings generated
38 by the review.