

Introduced by Senator HancockFebruary 11, 2013

An act to amend Sections 1270, 1275, and 1318.1 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 210, as introduced, Hancock. Criminal procedure: release on defendant's own recognizance.

(1) Existing law provides that a defendant who is in custody and arraigned for a misdemeanor offense, or who has been arrested upon an out-of-county warrant arising from a case involving only misdemeanors, is entitled to be released on his or her own recognizance unless the court finds that the release will compromise public safety or will not reasonably ensure the appearance of the defendant, in which case the court is required to set bail and specify conditions, if any, for release.

This bill would authorize a court to determine, at the time of arraignment in any case that is before a court concerning the commission of a felony punishable by imprisonment in a county jail, whether a defendant who is still in custody may be released on his or her own recognizance. In making this decision, the bill would require the court to determine whether the release will compromise public safety. The bill would authorize the court to consider, in its discretion, imposing on the defendant any reasonable conditions it deems appropriate, and would authorize the court to require supervision by any designated local agency, to ensure public safety and to ensure the defendant's appearance. The bill would require the court to set bail if release will compromise public safety or will not reasonably ensure the appearance of the defendant.

(2) Existing law requires a judge or magistrate, in setting, reducing, or denying bail, to take into consideration the protection of the public, the seriousness of the offense, the defendant's previous criminal record, and the probability of the defendant appearing at trial or a hearing.

This bill would revise the factors that the judge or magistrate would be required to consider to, among other things, require the judge or magistrate to consider the history and characteristics of the defendant, and to consider the nature and circumstances of the offense. The bill would require a judge or magistrate to also consider those factors when determining conditions for pretrial release.

(3) Existing law authorizes a court, with the concurrence of the county board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance. In cases involving certain crimes, including violent felonies, an investigative report is required to be prepared that includes specified information, including outstanding warrants against the defendant and prior incidents where the defendant has failed to make a court appearance.

This bill would also authorize a sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ an investigative staff for those purposes, and would require a pretrial investigative report to be prepared before a court may order a defendant released on his or her own recognizance in any case involving specified crimes, including a violent felony. The bill would authorize the preparation of a pretrial investigation report in all other cases in which a court, sheriff, county probation department, or other local governmental agency has employed an investigative staff to recommend whether the defendant should be released on his or her own recognizance. The bill would require any pretrial investigative report to include the results of an evidence-based pretrial risk assessment, as defined, evaluating the defendant's probability of appearing at trial and potential risk to public safety. The bill would prohibit, for purposes of preparing the report, a defendant from being interviewed about the facts and circumstances of the defendant's current offense. The bill would authorize a court, sheriff, county probation department, or other local governmental agency, with the concurrence of the board of supervisors, to employ supervision staff to monitor a defendant's compliance with release conditions ordered by the court, as specified.

(4) Existing constitutional provisions require that a statute that limits the right of access to meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by that limitation and the need for protecting that interest.

This bill would make legislative findings and declarations relating to, among other things, the necessity of treating pretrial investigation reports as confidential in order for pretrial programs to function properly.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Pretrial custody reform is urgently needed in California,
4 where the pretrial population far exceeds the national average of
5 61 percent. More than 71 percent of the 71,000 Californians held
6 in county jails statewide on any given day are awaiting trial.

7 (b) Pretrial custody reform will support the implementation of
8 public safety realignment by providing counties greater flexibility
9 in managing their pretrial populations using best practices
10 developed over many years across many jurisdictions.

11 (c) Pretrial services programs have been successfully
12 implemented in many jurisdictions, and have helped to reduce the
13 pretrial jail populations, save money, reduce recidivism, and protect
14 the public.

15 (d) Increasing the use of evidence-based practices in pretrial
16 population management programs will allow better empirical
17 analysis in pretrial decisions, and will help to ensure that the court's
18 decision to order release, conditions of release, and bail is based
19 on a credible assessment of the defendant's risk to public safety
20 and the likelihood of appearance as required.

21 (e) In order for pretrial programs to function properly and to
22 protect the rights of persons submitting sensitive information, it
23 is essential to treat pretrial investigation reports as confidential so
24 the reports are used only for release, bail, and monitoring
25 considerations.

26 SEC. 2. Section 1270 of the Penal Code is amended to read:

1 1270. (a) Any person who has been arrested for, or charged
2 with, an offense other than a capital offense may be released on
3 his or her own recognizance by a court or magistrate who could
4 release a defendant from custody upon the defendant giving bail,
5 including a defendant arrested upon an out-of-county warrant. A
6 defendant who is in custody and is arraigned on a complaint
7 alleging an offense which is a misdemeanor, and a defendant who
8 appears before a court or magistrate upon an out-of-county warrant
9 arising out of a case involving only misdemeanors, ~~shall be~~ *is*
10 entitled to an own recognizance release unless the court makes a
11 finding on the record, in accordance with Section 1275, that an
12 own recognizance release will compromise public safety or will
13 not reasonably assure the appearance of the defendant as required.
14 Public safety shall be the primary consideration. If the court makes
15 one of those findings, the court shall ~~then~~ set bail and specify the
16 conditions, if any, whereunder the defendant shall be released.

17 *(b) The court shall determine, at the time of arraignment,*
18 *whether a defendant who is still in custody, and is charged with*
19 *a felony, the sentence for which may be served in a county jail*
20 *pursuant to subdivision (h) of Section 1170, is eligible for release*
21 *on his or her own recognizance and to be ordered to appear, as*
22 *required. Public safety shall be the primary consideration in this*
23 *determination. In granting an own recognizance release, a court*
24 *may consider, in its discretion, imposing on the defendant any*
25 *reasonable conditions it deems appropriate, and may require*
26 *supervision by any designated local agency, to ensure public safety*
27 *and to ensure the defendant's appearance.*

28 *(c) If the judge or magistrate finds that release pursuant to*
29 *subdivision (b) will compromise public safety or will not*
30 *reasonably ensure the appearance of the defendant, as required,*
31 *the court shall then set bail as is reasonably necessary to ensure*
32 *the appearance of the defendant. A judge or magistrate may set*
33 *bail in an amount less than what is specified in the county bail*
34 *schedule, where he or she determines that the amount specified in*
35 *the county bail schedule is higher than necessary to reasonably*
36 *ensure the appearance of the defendant. In making this*
37 *determination, the court may consider information included in a*
38 *pretrial services report, prepared in accordance with Section*
39 *1318.1, if one is available.*

40 (b)

1 (d) Article 9 (commencing with Section 1318) shall apply to
2 any person who is released pursuant to this section.

3 SEC. 3. Section 1275 of the Penal Code is amended to read:

4 1275. (a) In *determining conditions for pretrial release, and*
5 *in setting, reducing, or denying bail, the judge or magistrate shall,*
6 *on the available information, take into consideration the protection*
7 *of the public, the ~~seriousness~~ nature and circumstances of the*
8 *offense charged, the history and characteristics of the defendant,*
9 *the previous criminal record of the defendant, including whether*
10 *the defendant was, at the time of arrest for the charged offense,*
11 *on probation, parole, or other form of release pending trial,*
12 *sentencing, or appeal, and the probability of his or her appearing*
13 *at trial or hearing of the case, including the defendant's record of*
14 *appearance at past court hearings or of flight to avoid arrest or*
15 *prosecution. ~~The public~~ Public safety shall be the primary*
16 *consideration.*

17 (b) *In considering the history and characteristics of the*
18 *defendant, the judge or magistrate may consider any of the*
19 *following:*

20 (1) *The ties of the defendant to the community, including his or*
21 *her employment, the duration of his or her residence, and the*
22 *defendant's family attachments.*

23 (2) *The defendant's current educational or vocational program*
24 *enrollment and participation.*

25 (3) *The physical and mental condition of the defendant and the*
26 *defendant's history related to dependence on alcohol or controlled*
27 *substances, including past and current participation in substance*
28 *abuse programs and counseling.*

29 (c) In considering the ~~seriousness~~ *nature and circumstances of*
30 *the offense charged, the judge or magistrate shall include*
31 *consideration of the alleged injury to the victim, and alleged threats*
32 *to the victim or a witness to the crime charged, the alleged use of*
33 *a firearm or other deadly weapon in the commission of the crime*
34 *charged, and the alleged use or possession of controlled substances*
35 *by the defendant.*

36 ~~(b)~~

37 (d) In considering offenses wherein a violation of Chapter 6
38 (commencing with Section 11350) of Division 10 of the Health
39 and Safety Code is alleged, the judge or magistrate shall consider
40 the following: (1) the alleged amounts of controlled substances

1 involved in the commission of the offense, and (2) whether the
2 defendant is currently released on bail for an alleged violation of
3 Chapter 6 (commencing with Section 11350) of Division 10 of the
4 Health and Safety Code.

5 (e)

6 (e) Before a court reduces bail below the amount established
7 by the bail schedule approved for the county, in accordance with
8 subdivisions (b) and (c) of Section 1269b, for a person charged
9 with a serious felony, as defined in subdivision (c) of Section
10 1192.7, or a violent felony, as defined in subdivision (c) of Section
11 667.5, the court shall make a finding of unusual circumstances and
12 shall set forth those facts on the record. For purposes of this
13 subdivision, “unusual circumstances” does not include the fact
14 that the defendant has made all prior court appearances or has not
15 committed any new offenses.

16 SEC. 4. Section 1318.1 of the Penal Code is amended to read:

17 1318.1. (a) A court, *sheriff, county probation department, or*
18 *other local governmental agency*, with the concurrence of the
19 board of supervisors, may employ an investigative staff for the
20 purpose of recommending whether a defendant should be released
21 on his or her own recognizance.

22 (b) Whenever a court, *sheriff, county probation department, or*
23 *other local governmental agency* has employed an investigative
24 staff pursuant to subdivision (a), ~~an investigative report shall be~~
25 ~~prepared in all cases before a court may order a defendant released~~
26 *on his or her own recognizance in any case involving a violent*
27 *felony, as described in subdivision (c) of Section 667.5, or a felony*
28 *in violation of subdivision (a) of Section 23153 of the Vehicle*
29 *Code, a pretrial investigative report shall be prepared*
30 recommending whether the defendant should be released on his
31 or her own recognizance. The report shall include all of the
32 following:

33 (1) Written verification of any outstanding warrants against the
34 defendant.

35 (2) Written verification of any prior incidents where the
36 defendant has failed to make a court appearance.

37 (3) Written verification of the criminal record of the defendant.

38 (4) Written verification of the residence of the defendant during
39 the past year.

1 After the report is certified pursuant to this subdivision, it shall
2 be submitted to the court for review, prior to a hearing held
3 pursuant to Section 1319.

4 *(c) Whenever a court, sheriff, county probation department, or*
5 *other local governmental agency has employed an investigative*
6 *staff pursuant to subdivision (a), a pretrial investigation report*
7 *may be prepared in any case not involving a violent felony, as*
8 *described in subdivision (c) of Section 667.5, or a felony in*
9 *violation of subdivision (a) of Section 23153 of the Vehicle Code,*
10 *recommending whether the defendant should be released on his*
11 *or her own recognizance. Only one agency authorized pursuant*
12 *to subdivision (a) shall issue a pretrial investigation report.*

13 *(d) Any report prepared pursuant to subdivision (b) or (c) shall*
14 *include all of the results of an evidence-based pretrial risk*
15 *assessment evaluating the defendant's probability of appearing*
16 *at trial and potential risk to public safety. "Evidence-based pretrial*
17 *risk assessment" is the objective, standardized analysis of*
18 *information about a pretrial defendant in a way that is consistent*
19 *with and guided by the best available scientific evidence and*
20 *professional knowledge that measures the risk of the defendant's*
21 *probability of appearing at trial and the potential risk to public*
22 *safety while pending case disposition.*

23 *(e) In preparing the report pursuant to subdivision (b) or (c),*
24 *the defendant shall not be interviewed about the facts and*
25 *circumstances of the current offense, and any information that a*
26 *defendant may provide shall not be included in the report. Any*
27 *information provided by the defendant shall be used solely for the*
28 *purposes of determining whether the defendant should be released*
29 *on his or her own recognizance or in setting the conditions of the*
30 *defendant's release or modifying a prior release order. The reports*
31 *may be filed as part of the case record.*

32 *(f) A court, sheriff, county probation department, or other local*
33 *governmental agency may, with the concurrence of the board of*
34 *supervisors, employ supervision staff to monitor the defendant's*
35 *compliance with the release conditions ordered by the court.*
36 *Supervision staff may do any of the following:*

37 *(1) Notify the defendant of court appearance obligations.*

38 *(2) Require the defendant to report periodically by mail,*
39 *telephone, or personal appearance to verify compliance with*
40 *release conditions.*

1 (3) Monitor and assist the defendant with complying with
2 release conditions.

3 (4) Supervise a defendant placed on home detention, with or
4 without electronic monitoring, as a condition of release.

5 (5) Promptly report violations of release conditions to the court.

6 (6) Provide information to assist any law enforcement officer
7 with detaining a defendant supervised pursuant to this section and
8 for whom a bench warrant has been issued.

9 (e)

10 (g) The salaries of the staff are a proper charge against the
11 county.

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