



# Pretrial Detention Reform

RECOMMENDATIONS TO THE  
CHIEF JUSTICE

PRETRIAL DETENTION REFORM  
WORKGROUP

OCTOBER 2017



## **Pretrial Detention Reform Workgroup**

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## Executive Summary

The Chief Justice established the Pretrial Detention Reform Workgroup on October 28, 2016, to provide recommendations on how courts may better identify ways to make release decisions that will treat people fairly, protect the public, and ensure court appearances. In establishing the Workgroup, the Chief Justice recognized the central role of the courts.

The Chief Justice provided the following guiding principles for the Pretrial Detention Reform Workgroup:

- Pretrial custody should not occur solely because a defendant cannot afford bail.
- Public safety is a fundamental consideration in pretrial detention decisions.
- Defendants should be released from pretrial custody as early as possible based on an assessment of the risk to public safety and the risk for failing to appear in court.
- Mitigating the impacts of implicit bias on pretrial release decision-making should be considered.
- Reform recommendations should consider court and justice system partner resources.
- Nonfinancial release alternatives should be available.
- Consistent and feasible practices for making pretrial release, detention, and supervision decisions should be established.

During the course of its yearlong study, the Workgroup examined the complex issues involved in the current pretrial release and detention system. Members reviewed a wide variety of research and policy materials and heard presentations from state and national experts, justice system partner representatives, the commercial bail industry, state and local regulators, victim and civil rights advocacy organizations, California counties that have experience with pretrial services programs, and jurisdictions outside California that have undertaken pretrial reform efforts.

At the conclusion of this process, the Workgroup determined that California's current pretrial release and detention system unnecessarily compromises victim and public safety because it bases a person's liberty on financial resources rather than the likelihood of future criminal behavior and exacerbates socioeconomic disparities and racial bias.



With the Chief Justice’s guiding principles as the framework, the Workgroup developed a set of 10 recommendations. These recommendations seek to achieve a just and fair pretrial release and detention system that balances the protection of public safety with the presumption of innocence and due process. The Workgroup recognizes that the release of any person before trial involves risk—as does every pretrial detention. The challenge is to minimize these risks while achieving the goals of maximizing public safety, court appearance, and release of individuals. With those goals in mind, the Workgroup submits the following recommendations to be considered and implemented as a whole:

**1. IMPLEMENT A ROBUST RISK-BASED PRETRIAL ASSESSMENT AND SUPERVISION SYSTEM TO REPLACE THE CURRENT MONETARY BAIL SYSTEM.**

Implement a risk-based pretrial assessment and supervision system that (1) gathers individualized information so that courts can make release determinations based on whether a defendant poses a threat to public safety and is likely to return to court—without regard for the defendant’s financial situation; and (2) provides judges with release options that are effective, varied, and fair alternatives to monetary bail.

**2. EXPAND THE USE OF RISK-BASED PREVENTIVE DETENTION.**

Expand the use of preventive detention to ensure that defendants will be detained pending trial in appropriate cases when public safety cannot be addressed through release conditions.

**3. ESTABLISH PRETRIAL SERVICES IN EVERY COUNTY.**

Pretrial services maximize the safety of the community and minimize the risk of nonappearance at court proceedings. Pretrial services must be established in every county and must include the comprehensive use of a validated risk assessment instrument, as well as monitoring and supervision.

**4. USE A VALIDATED PRETRIAL RISK ASSESSMENT TOOL.**

Use of validated risk assessment tools will provide valuable information to judges to help inform pretrial determinations regarding the defendant’s likelihood of reoffending and returning to court, and assist the court in fashioning conditions or terms of pretrial release. Judicial officers must remain the final authority in making release or detention decisions and can override the assessment’s recommendation when necessary to protect the public or in the interest of justice.

**5. MAKE EARLY RELEASE AND DETENTION DECISIONS.**

Release and detention decisions should be made early in the pretrial process. A pretrial system that gathers information about a defendant before arraignment will allow for prompt release and detention decision-making, facilitating the early release



of low-risk defendants and detaining, until arraignment, defendants who are unlikely to return to court or who pose a risk to public safety.

**6. INTEGRATE VICTIM RIGHTS INTO THE SYSTEM.**

The perspective of victims must be fully integrated into the pretrial process and the risks to their well-being addressed in pretrial decision-making. All crime victims have constitutional rights in California, including the right to be heard regarding any pretrial release decision, and their input is essential to a well-functioning system.

**7. APPLY PRETRIAL PROCEDURES TO VIOLATIONS OF COMMUNITY SUPERVISION.**

A significant portion of the jail population includes individuals accused of violating the terms and conditions of probation, mandatory supervision, postrelease community supervision, or parole. Legislation and rules of court must be adopted that consider the pretrial release and detention screening procedures for those defendants charged with a violation of supervision conditions.

**8. PROVIDE ADEQUATE FUNDING AND RESOURCES.**

California's courts and local justice system partners must be fully funded to effectively implement a system of pretrial release and detention decision-making and supervision, with resources for new judges and court staff, local justice partner infrastructure, assessment tools, and training. Both significant initial investment of resources and ongoing funding are essential.

**9. DELIVER CONSISTENT AND COMPREHENSIVE EDUCATION.**

To achieve the goals of public safety and return to court, judges, court staff, local justice system partners, and the community must be educated on the development and implementation of a pretrial release and supervision system and provided with continuing education regarding both implicit and explicit bias to ensure that neither the pretrial system nor any type of assessment perpetuates bias. This education requires time, funding, and most importantly investment in and collaboration among all justice system partners.

**10. ADOPT A NEW FRAMEWORK OF LEGISLATION AND RULES OF COURT TO IMPLEMENT THESE RECOMMENDATIONS.**

A structure will be sustainable only if it is built on a solid foundation. To undertake such comprehensive reform, this system must not be grafted onto the current complex statutory framework of monetary bail. Provisions currently in the California Constitution that presume release, permit preventive detention, and protect victims' rights will serve as the bedrock of a reformed pretrial system that balances public safety, release, and return to court. Comprehensive legislation and rules of court



should be adopted to create a system of release and detention that is efficient and does not impose excessive layers of procedural requirements.

If adopted, the reforms envisioned in these recommendations will make major and dramatic changes to California's criminal justice system and will affect the superior courts in every county and all of their justice system partners.

As with any comprehensive reform, it will be successful only if all three branches of California's government join together in its development, implementation, and maintenance. A foundation built on legislation, clear and directive court rules, and adequate and sustained resources with new funding streams is essential to the reform envisioned in these recommendations. These changes will help make California a safer place and the justice system more fair and effective.