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SB-36 Pretrial release: risk assessment tools. (2019-2020)

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Senate Bill No. 36

CHAPTER 589

An act to add Chapter 1.7 (commencing with Section 1320.35) to Title 10 of Part 2 of the Penal Code, relating to pretrial release.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 36, Hertzberg. Pretrial release: risk assessment tools.

Existing law, beginning October 1, 2019, and stayed pending voter approval under the powers of referendum pursuant to the California Constitution, requires Pretrial Assessment Services, as defined, to assess a person arrested or detained, as specified, according to a risk assessment instrument, as defined. Existing law requires Pretrial Assessment Services to release from confinement specified individuals based on that risk assessment, and, if the person is not released, to submit that assessment to the court for use in its pretrial release or detention decision.

This bill would require each pretrial services agency that uses a pretrial risk assessment tool to validate the tool by January 1, 2021, and on a regular basis thereafter, but no less frequently than once every 3 years, and to make specified information regarding the tool, including validation studies, publicly available. The bill would require the Judicial Council to maintain a list of pretrial services agencies that have satisfied those validation requirements and complied with those transparency requirements. The bill would require the Judicial Council, beginning on December 31, 2020, and on or before December 31 of each year thereafter, to publish a report on its internet website with data related to outcomes and potential biases in pretrial release. The bill would require specified pretrial services agencies, the Department of Justice, courts, and local governments that elect to use risk assessment tools to work with the Judicial Council to provide the data necessary for this report. The bill would also require the Judicial Council, on or before July 1, 2022, to provide a report to the courts and the Legislature containing recommendations to mitigate bias and disparate effect in pretrial decisionmaking.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

- (1) Under California's wealth-based bail and pretrial release system, thousands of individuals from lower economic backgrounds are held in county jails not because they have been convicted of a crime, but simply because they cannot afford to post money bail or pay a commercial bail bond company.
- (2) The wealth-based bail system does not protect public safety because it is not based on public safety risk or flight risk.

(3) Many counties have begun to supplement the wealth-based system with a pretrial release system that focuses on public safety and ensuring court appearances.

(4) If used correctly, risk assessment tools that are validated by scientific research can be employed to screen individuals for their flight risk and risk to public safety. This affords individuals awaiting trial an opportunity to be released while providing conditions and supervision that will ensure court appearances and protection of public safety.

(b) It is the intent of the Legislature that California independently evaluate any risk assessment tool employed in a pretrial setting to measure its effectiveness in predicting flight and public safety risk and to measure the extent to which the results demonstrate bias or disparate effect based on gender, income level, race, or ethnicity.

(c) It is further the intent of the Legislature that policies and practices be adopted to reduce any disparate effect or bias that may result from the use of pretrial risk assessment tools.

SEC. 2. Chapter 1.7 (commencing with Section 1320.35) is added to Title 10 of Part 2 of the Penal Code, to read:

CHAPTER 1.7. Pretrial Risk Assessment Tool Validation

1320.35. (a) It is the intent of the Legislature in enacting this section to understand and reduce biases based on gender, income level, race, or ethnicity in pretrial release decisionmaking.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Pretrial risk assessment tool" means an instrument used to determine the risks associated with individuals in the pretrial context.

(2) "Pretrial services agency" means a local public agency that elects to perform pretrial risk assessments on individuals and provides the assessment information to a court.

(3) "Release conditions framework" means the guidelines used by the pretrial services agency and the court to categorize varying degrees of risk for purposes of recommending whether to release or detain a person, whether to impose pretrial release conditions on a person, and guidance regarding those conditions.

(4) "Validate" means using scientifically accepted methods to measure both of the following:

(A) The accuracy and reliability of the risk assessment tool in assessing (i) the risk that an assessed person will fail to appear in court as required and (ii) the risk to public safety due to the commission of a new criminal offense if the person is released before the adjudication of the current criminal offense for which they have been charged.

(B) Any disparate effect or bias in the risk assessment tool based on gender, race, or ethnicity.

(c) (1) Any pretrial risk assessment tool used by a pretrial services agency shall be validated by January 1, 2021, and on a regular basis thereafter, but no less frequently than once every three years. A pretrial services agency may coordinate with the Judicial Council to validate a pretrial risk assessment tool.

(2) A pretrial risk assessment tool shall be validated using the most recent data collected by the pretrial services agency within its jurisdiction, or, if that data is unavailable, using the most recent data collected by a pretrial services agency in a similar jurisdiction within California.

(d) (1) In order to increase transparency, a pretrial services agency shall, with regard to a pretrial risk assessment tool that it utilizes, make the following information publicly available:

(A) Line items, scoring, and weighting, as well as details on how each line item is scored, for each pretrial risk assessment tool that the agency uses.

(B) Validation studies for each pretrial risk assessment tool that the agency uses.

(2) A pretrial services agency shall, when selecting which pretrial risk assessment tool to utilize, ensure that the agency would be able to comply with paragraph (1) if that tool was selected.

(e) The Judicial Council shall maintain a list of pretrial services agencies that have satisfied the validation requirement described in subdivision (c) and complied with the transparency requirements described in subdivision (d).

(f) Beginning on or before December 31, 2020, and on or before December 31 of each year thereafter, the Judicial Council shall publish on its internet website a report with data related to outcomes and potential biases in pretrial release. The report shall, at a minimum, include:

(1) The following information on each county pretrial release program:

- (A) The name of the pretrial risk assessment tool that is used to inform release decisions by the court.
- (B) The release conditions framework used in the county.
- (C) Whether a pretrial services agency is conducting interviews as part of the risk assessment.

(2) The following information by superior court in large and medium courts and otherwise aggregated by superior court size:

- (A) Rates of release granted prearrest and rates of release granted pretrial, aggregated by gender, race or ethnicity, ZIP Code of residency and offense type.
- (B) The percent of released individuals who make their required court appearances, aggregated by offense type and whether they were released on bail or pursuant to a risk assessment. For those released pursuant to a risk assessment, this information shall be aggregated by risk level.
- (C) The percent of released individuals who are not charged with a new offense during the pretrial stage, aggregated by offense type and whether they were released on bail or pursuant to a risk assessment. For those released pursuant to a risk assessment, this information shall be aggregated by risk level.
- (D) The number of assessed individuals by age, ZIP Code of residency, gender, and race or ethnicity.
- (E) The number of assessed individuals by risk level, ZIP Code of residency, booking charge level, and release decision.
- (F) The number and percentage of assessed individuals who receive pretrial supervision by level of supervision.
- (G) The number and percentage of assessed individuals, by supervision level, who fail to appear in court as required, are arrested for a new offense during the pretrial period, or have pretrial release revoked.

(3) The following information on each risk assessment tool:

- (A) The percent of released individuals who attend all of their required court appearances and are not charged with a new offense during the pretrial stage, aggregated by risk level.
- (B) Risk levels aggregated by race or ethnicity, gender, offense type, ZIP Code of residency, and release or detention decision.
- (C) The predictive accuracy of the tool by gender, race or ethnicity, and offense type.
- (D) The proportion of cases in which the release or detention recommendation derived from the risk assessment is different than the release or detention decision imposed by the judicial officer.

(4) If feasible, the Judicial Council shall provide information on any disparate effect in the tools based on income level.

(g) (1) Pretrial services agencies and courts shall provide the Judicial Council the requisite data, as determined by the Judicial Council, to meet the requirements of this section.

(2) The Department of Justice shall work with the Judicial Council to provide the data necessary to fulfill the requirements of this section.

(3) The Judicial Council shall not share any individual-level data with any outside entity unless it has entered into a contract for research purposes with the entity and privacy protections are established to anonymize the data.

(h) The requirements of subdivisions (f) and (g) shall apply to pretrial services agencies that perform risk assessments pursuant to a contractual agreement with the courts, including all of the following:

(1) Agencies funded pursuant to the Budget Act of 2019 as pretrial pilot projects.

(2) Agencies otherwise funded by the state to perform risk assessments.

(3) Other agencies that perform risk assessments as long as sufficient funding is provided to the Judicial Council, the superior courts, and pretrial services agencies to ensure their ability to meet the data reporting requirements and standards set by the Judicial Council.

(i) (1) By July 1, 2022, the Judicial Council shall provide a report to the courts and the Legislature containing recommendations to mitigate bias and disparate effect in pretrial decisionmaking.

(2) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.