



Proposition 25's Predicted Impact in San Francisco and Sonoma Counties: Technical Appendix

ALISSA SKOG, ELSA AUGUSTINE, JOHANNA LACOE, AND MIA BIRD

A. BACKGROUND ON SB 10

In 2018, California passed Senate Bill 10 (SB 10), which would eliminate cash bail and dramatically transform pretrial release and supervision in the state. The primary aim of SB 10 is to eliminate cash bail on the grounds that it perpetuates disparities between defendants who can afford to post bail and those who cannot. Proponents argue that bail keeps many low-income defendants from being released pretrial, and that risk — rather than wealth — is the best indicator of who should be released. SB 10 would require counties to put in place a validated,¹ evidence-based risk assessment to classify defendants into different risk levels and make recommendations to judges about the least restrictive nonmonetary conditions of release. The bill's goal was to ensure public safety and defendants' appearance in court while also releasing them as early as possible and with as few restrictions as appropriate.

After SB 10's passage, the bill's opponents sponsored a ballot referendum, scheduled for November 2020, which will allow voters to decide whether to uphold or overturn the law. Because of the ballot referendum, implementation of SB 10 is on hold. Several cases currently in front of the California Supreme Court also call into question the constitutionality of cash bail, so it is possible that bail may be eliminated through the courts if the referendum fails.

There are several potential effects of SB 10. First, the law replaces discretionary cite and release (the process by which defendants with minor offenses are released immediately after fingerprinting) with a mandatory policy for misdemeanor bookings that do not meet certain exclusion criteria, which may increase the number of individuals released at this early stage of the process. Second, SB 10 would require the adoption of evidence-based risk assessments to guide release recommendations to the courts. In many counties, including those that currently employ risk assessment tools, SB 10 will require the tools be used with a wider set of individuals. This is expected to increase the number of individuals recommended for release, particularly prior to arraignment, as more defendants will now be assessed. Third, the default action under SB 10 is release. The law requires prosecutors to file motions to preventatively detain a defendant and such motions are permissible only if specific criteria are met and persons can only be presumptively detained if there is a substantial likelihood that no conditions of supervised release would reasonably assure public safety or the defendant's appearance in court. The judge must agree that the prosecutor has met that burden. For all these reasons, it is likely that SB 10 will result in decreased detention statewide given that many counties do not have more comprehensive pretrial release policies than those set forth in SB 10. However, the preventive detention criteria provide prosecutors with fairly wide latitude and if used extensively, that discretion could result in delays to release while people await their hearing or even increase overall detention.

If upheld, the impact of SB 10 will undoubtedly differ by county. Some counties have already undertaken (or are planning to undertake) extensive efforts to maximize pretrial release, such as the 16 counties awarded funding through the Pretrial Pilot Program, while others have not.² Some already use validated risk assessments that provide judges with information about which defendants are more likely to appear in court and/or less likely to be arrested and charged with a new offense during the pretrial period, while others do not. Some prosecutors may aggressively pursue motions for pretrial detention, and some judges may be more likely to grant them, while other prosecutors and judges may not. Thus, while proponents expect that most counties will experience decreases in pretrial incarceration, some counties could experience more muted effects, and others that already undertook more extensive efforts to decrease pretrial detention might experience increases in detention.

Even within each county, SB 10's effects could vary over different stages in the justice process or over time as personnel change. It is a complex law that affects many stages in the pretrial process. There are two release points before arraignment, including the stage when defendants are booked and released immediately and a later stage when defendants are reviewed for release by a Duty Judge. If SB 10 is implemented there will be a third point of release: Pretrial Assessment Services will have the authority to release low-risk defendants prior to arraignment. It is helpful to keep in mind that SB 10 might, in some counties, decrease releases before arraignment (e.g., by limiting eligibility) while also increasing releases overall (e.g., by increasing numbers released at arraignment).

B. DATA SOURCES

In San Francisco, we use data provided by the San Francisco Sheriff's Office on all bookings and releases from January 2010 through December 2019 and pretrial risk assessment and release information for all persons assessed by San Francisco Pretrial Diversion Project (SFPDP) from May 2014 to December 2019. The analysis includes data from the San Francisco District Attorney's Office on the arrest, filing, and disposition information on all cases presented to that office since January 1, 2008. SB 10 release eligibility relies on many factors, including details of the current charge, as well as history of contacts with the criminal justice system (see Appendix E). To estimate release eligibility, we rely on prior sentence information and detailed court records on technical violations to estimate probation terms. We restrict our analysis to new bookings that were: a) released via cite and release; b) released at pre-arraignment; or c) had a new charge filed AND were released via bail, at arraignment, after arraignment, or detained for the full pretrial period. Our final sample is 14,947 bookings.

In Sonoma County, we use charge-level data provided by the Integrated Justice Systems (IJS) on all bookings, filings, and dispositions between July 2013 and July 2019, case-level data on sentences to incarceration, and supervision grant-level data from the Probation Department (including supervision while on pretrial release) for the same period. We have separate individual-level data on race and ethnicity. We rely on prior work completed with the county to link together administrative county datasets for the ACCESS Sonoma County project. We restrict our analysis to bookings on new charges that we estimate to have been cited and released, released pre-disposition, or resulted in at least one filed charge. Our final sample size is 12,413 new bookings.

C. DESCRIPTION OF EXISTING PROGRAMS

Book and release (also referred to as cite and release). Section 853.6 of the California Penal Code authorizes individuals arrested on most misdemeanor offenses to be booked and released without going before a judge for a release decision. These releases are discretionary, and jurisdictions vary in their current application of the statute. SB 10 would alter many local policies by requiring release unless the exclusionary criteria are met, and the law also sets clear timelines for release that were not required before.

The San Francisco Sheriff's Office and Sonoma County Sheriff book and release many individuals charged with misdemeanors, provided they are not considered a danger to themselves, on probation or parole, nor have warrants in other jurisdictions for

their arrest. People who are booked and released (referred to as cite and release throughout this report) are typically released within 6 hours in San Francisco and 18 hours in Sonoma, according to our analysis, meaning they can return to their families, jobs, and the community much sooner than those who may be held for up to 48 hours (and on weekends, up to 72 hours) until arraignment. Individuals booked and released are booked into jail, but do not undergo the more detailed assessment to determine housing assignment and are released after fingerprinting.

Duty Judge. California law allows persons who are not arrested for a serious or violent offense to have their case files presented to a Duty Judge who can make a release determination prior to arraignment. Individuals granted release by the Duty Judge in San Francisco spend a median of 23 hours compared to 69 hours for individuals released at first arraignment. During the study period, 3,112 cases were presented to the Duty Judge, with a release rate of 61%. Those denied release by the Duty Judge appeared in arraignment court. Sonoma County did not use Duty Judge release while relying on the SPRAT for pretrial assessments. Under the Judicial Council's Pretrial Pilot Program incorporating use of the PSA, which began in 2020, Judicial Commissioners can release eligible individuals pre-arraignment; similar to the role Duty Judges play in San Francisco.

D. ASSUMPTIONS

We interpret the implementation of SB 10 on pre-arraignment release policies conservatively, because the exact implementing details will be determined by the Judicial Council and the justice system stakeholders in individual jurisdictions, such as the District Attorney and Sheriff's Office. Our analysis relies on the following assumptions:

- **High-Risk:** The assessed risk level of a person has a significant influence over the point of release under SB 10. In San Francisco, we have risk scores for 61% of cases that were assessed by SFPDP and estimated the risk category for the 39% that were released prior to assessment. Sonoma County began implementing the PSA in July 2020 and therefore we are estimating the risk category for the entire sample. For each case, we calculate a risk category by applying the PSA methodology to the observed data. These categories are not meant to replicate individual-level risk scores, but to provide information about the distribution of risk scores across release categories before and after the SB 10 criteria are applied. These estimates are based on local data on previous failures to appear and criminal history and as a result, underestimate risk levels. In Sonoma, we have reason to believe that we are failing to identify approximately 20% of all cases that should be considered high-risk based on the share of new bookings identified to be high-risk under the first three months of PSA implementation in 2020. We correct for this under-identification by assuming that 20% of all cases that we did not identify to be high-risk actually are high-risk, and treating them as such. Furthermore, the risk categories are based on county practice, therefore a defendant identified as high-risk in San Francisco may not be identified as high-risk in Sonoma. However, "high-risk" is a relevant distinction for determining how a case would be handled under SB 10 given the legislation's reliance on the high-risk designation in determining release outcomes.
- **Events occurring in San Francisco or Sonoma counties only.** We use event data only from San Francisco or Sonoma, not the entire state, when measuring pending cases, prior criminal history, probation status, and prior pretrial misconduct. As a result, we likely underestimate events that would disqualify someone from pre-arraignment release as well as those that may be eligible for a motion to request preventive detention.³
- **Pretrial misconduct.** We limit the definition of "pretrial misconduct" to actions resulting in the issuing of a bench warrant for failing to appear, the termination of pretrial supervision, or a new booking while on pretrial supervision. It is possible that this clause could be interpreted to encapsulate a wide range of violations, such as failing a drug test, which would decrease the number eligible for pre-arraignment release. It is also possible that this clause could be more narrowly defined in the Judicial Council's implementing guidelines or by the local court rules developed in each county. In Sonoma County, we only observe failures to appear if an individual is booked on the bench warrant, and do not observe bench warrants that do not result in a booking. We therefore are under-counting prior failures to appear.
- **Period of probation.** In Sonoma, we have data on probation terms since 2013. In San Francisco, we do not have

probation data and instead estimate the period of probation to two years after the person’s last sentence to probation or county jail as that is the standard term in the county. If the person has a probation violation on a given case more than two years after the conviction, we use that date as the probation end date. This will fail to identify probationers who are given a longer probation term or who have their term extended for failures to comply that do not result in a revocation, thus possibly underestimating cases that are not eligible for pre-arraignment release.

- **Parole terms.** We do not estimate parole terms, even for persons convicted to state prison, because we do not know their date of release from state prison.
- **Unobserved events.** There are several criteria that cannot be precisely estimated without looking at the police report, such as whether a person intimidated, dissuaded, or threatened retaliation against a witness or victim of the current crime.⁴

Due to these assumptions, our findings should be considered an upper bound of the effect that SB 10, as currently written, could have on pre-arraignment release rates.

E. INTERPRETATIONS AND APPLICATIONS OF SB10 CRITERIA

This appendix provides additional detail about the specific interpretations we use to derive the estimates in this analysis.

Book and Release

Who is eligible: Most misdemeanor arrestees (unless they have a “disqualifying” condition outlined in subsection (e) of 1320.10). A risk assessment is not completed for this population and they are cited and released within 12 hours. Disqualifying conditions and CPL’s interpretation summarized in the table below.

CPL’S INTERPRETATION OF DISQUALIFYING CONDITIONS PER 1320.10(e) AND SB 1054

| SB 10 SECTION | SB 10 CRITERIA | SF INTERPRETATION | SONOMA INTERPRETATION |
|----------------|---|--|--|
| 1320.10 (e)(1) | Individuals who are assessed as high-risk are not eligible for pre-arraignment review. | N/A – individuals not assessed at cite and release | N/A – individuals not assessed at cite and release |
| 1320.10 (e)(2) | Current offense is listed in PC 290(d)(2) or (3). | Misdemeanors that trigger registration under 290(c). Felonies already excluded | Misdemeanors that trigger registration under 290(c). Felonies already excluded |
| 1320.10(e)(3) | Arrest offense(s) included PC 273.5, 243(e)(1), 273.6, or 646.9. | Current offense includes any of these. | Current offense includes any of these |
| 1320.10(e)(4) | Arrest for a felony that includes physical violence, threat of physical violence, likelihood of great bodily injury, using a deadly weapon or firearm, or infliction of great bodily injury in the commission of the crime. | N/A – felonies already excluded | N/A – felonies already excluded |
| 13201.10(e)(5) | Arrested on third offense within past 10 years of driving under the influence, or for an offense of driving under the influence w/ injury to another or BAC above .20. | Count if two or more prior misdemeanor or felony DUI convictions in SF within past 10 years AND current booked offense is misdemeanor DUI. Assume DUI w/ injury and DUI w/ BAC above .20 are both felonies & thus excluded under current policy. | Count if two or more prior misdemeanor or felony DUI convictions in Sonoma AND current booked offense is misdemeanor DUI. We do not have 10 years of historic data so are under-counting this. |

(Table continued)

CPL'S INTERPRETATION OF DISQUALIFYING CONDITIONS PER 1320.10(e) AND SB 1054

| SB 10 SECTION | SB 10 CRITERIA | SF INTERPRETATION | SONOMA INTERPRETATION |
|-----------------|--|---|--|
| 1320.10(e) (6) | Arrested for a violation of any type of restraining order within the past 5 yrs. | Any arrest with PC 273.6 or 166(a) (4) in San Francisco five years prior to the date of booking. Includes stay-away-orders and other failures to comply with court orders. | Any booking with PC 273.6 or 166(a)(4) in Sonoma County five years prior to the date of booking. Includes stay-away-orders and other failures to comply with court orders. |
| 1320.10(e)(7) | 3 or more warrants for failure to appear within the prior 12-months. | Capture failures to appear (if a bench warrant was issued) in San Francisco only. | Capture failures to appear (if booked on a bench warrant) in Sonoma County only. |
| 1320.10(e)(8) | At the time of arrest, pending trial or sentencing for a misdemeanor or felony. | Restricted to pending cases in San Francisco. Defined as a new booking before the disposition of an active misdemeanor or felony. Exclude cases that result in a revocation of probation and diversions (domestic violence diversion, 1203.4 PC expungements), etc. | Restricted to pending cases in Sonoma County. Defined as a new booking before the disposition of an active case or a case pre-sentencing or a booking that involves pending filed charges. |
| 1320.10(e)(9) | At the time of arrest, on any form of post-conviction supervision, other than informal probation or court supervision. | This analysis does not include data from the San Francisco Probation Department or CDCR Parole. We are not able to estimate parole status. And we provide an estimate for probation as follows: a) assume an individual is on probation for two years after conviction; and b) assume still on probation if a technical violation is filed outside that two-year window. Anyone who meets one or both of these criteria is considered on probation. | At the time of booking, under Probation supervision for another case (not including supervision for Pretrial Services or Conditional Sentences). |
| 1320.10(e)(10) | Intimidated, dissuaded, or threatened retaliation against a witness or victim of the current crime. | PCs 136, 69, 71, and 422. Already excluded under current policy. | PCs 136, 69, 71, and 422 |
| 1320.10(e)(11) | Violated a condition of pretrial release within the past 5 years. | Provide a lower bound estimate, using failures to appear and terminations from San Francisco Pretrial Diversion Project's caseload in prior five years. ⁵ | Provide a lower bound estimate, using failures to appear and bookings while on pretrial supervision. |
| 1320.10(e) (12) | Convicted of a serious or violent felony within past five years. | Restrict to prior conviction of a serious or violent felony under PC 1192.7(c), 1192.8(c) or 667.5(c) in San Francisco. | Restrict to prior conviction of a serious or violent felony under PC 1192.7(c), 1192.8(c) or 667.5(c) in Sonoma County. |
| 1320.10(e) (13) | Arrested for a serious or violent felony | N/A -felonies not eligible | N/A -felonies not eligible |

Pre-Arrestment

SB 10 allows for two options of pre-arrestment release: 1320.10 allows for release by the Pretrial Assessment Services and 1320.13 by the courts. We assume all pre-arrestment releases will be done by the courts in San Francisco and Sonoma and are not estimating releases by pretrial assessment services as outlined in Section 1320.10. Section 1320.13 covers pre-arrestment release by the court. The release criteria are less strict as jurisdictions that choose to provide pre-arrestment review by judges or subordinate judicial officers may order the release of additional low- and medium-risk defendants prior to arrestment after receiving the risk assessment information from SFPDP. For the purposes of this analysis, we do not assume San Francisco or Sonoma will adopt a local rule to include the presumptive exclusionary criteria outlined in 1320.13(i).

CPL'S INTERPRETATION OF THE EFFECT OF SB 10 ON PRE-ARRESTMENT RELEASE 1320.10

| SB 10 SECTION | SB 10 CRITERIA | SF INTERPRETATION | SONOMA INTERPRETATION |
|----------------|--|--|--|
| 1320.13 (b)(1) | Individuals who are assessed as high-risk are not eligible for pre-arrestment review. | Flag individuals as high-risk if the PSA Decision Making Framework (DMF) does not recommend release — i.e. the highest risk scores. | Estimate PSA score for all bookings. Per Sonoma County policy, individuals are high-risk if they have an FTA score of 6 or an NCA score of 5 or higher. |
| 1320.13 (b)(2) | Persons charged with a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5. | Current arrest offense includes an offense from Section 1192.7(c) or 667.5(c). Burglaries are excluded because we cannot decipher whether it is first degree (and thus precludes release) or second degree. | Current booking includes an offense from Section 1192.7(c) or 667.5(c). Burglaries are excluded because we cannot decipher whether it is first degree (and thus precludes release) or second degree. |
| 1320.13 (b)(3) | At the time of arrest, the defendant was subject to a pending trial or sentencing on a felony matter. | Restricted to pending cases in San Francisco. Defined as a new booking before the disposition of an active felony. Exclude cases that result in a motion to revoke (probation, mandatory supervision, and post-release community supervision) and diversions (domestic violence diversion, PC 1203.4 expungements), etc. | Restricted to pending felony cases in Sonoma County. Defined as a new booking before the disposition of an active felony case, a case pre-sentencing, or a booking that involves pending filed felony charges. |

Preventive Detention

SB 10 allows for prosecutors to make a motion for preventive detention at arraignment under Article 7 Section 1320.18(a). There will be a rebuttable presumption that no condition or combination of conditions of pretrial supervision will reasonably assure public safety if the court finds probable cause that any of the criteria in Section 1320.20(a) apply. In our analysis, we only estimate the numbers that could be eligible for preventive detention to provide an estimate of detentions if detention was requested in every case. Section 1320.18(a) outlines criteria to request a preventive detention hearing and 1320.20(a) outlines the criteria that could indicate no level of supervision or conditions could guarantee public safety or the person’s return to trial and, therefore, detention is allowable. Section 1320.20(a) is a subset of those flagged in 1320.18(a).

CPL’S INTERPRETATION OF THE CRITERIA TO MAKE A MOTION FOR PREVENTIVE DETENTION HEARING SECTION 1320.18(a)

| SB 10 SECTION | SB 10 CRITERIA | SF INTERPRETATION | SONOMA INTERPRETATION |
|---------------|---|---|--|
| 1320.18(a)(1) | At the time of arrest, the defendant was subject to a pending trial or sentencing on a felony matter. | Restrict to offenses that are covered under 667.5(c), flagged as violent by Arnold Ventures for the purposed of the PSA or include: 242, 243, 245, 246, 12034(C)(D), 12022. | Restrict to offenses that are covered under 667.5(c), flagged as violent by Arnold Ventures for the purposed of the PSA, or include: 242, 243, 245, 246, 12034(C)(D), 12022. |
| 1320.18(a)(2) | At the time of arrest, on any form of post-conviction supervision, other than informal probation or court supervision | This analysis does not include data from the San Francisco Probation Department or CDCR Parole. We are not able to estimate parole status. And we provide an estimate for probation as follows: a) assume an individual is on probation for two years after conviction; and b) assume still on probation if a technical violation is filed outside that two-year window. Anyone who meets one or both of these criteria is considered on probation. | At the time of booking, under Probation supervision for another case (not including supervision for Pretrial Services or Conditional Sentences). |
| 1320.18(a)(3) | At the time of arrest, the defendant was subject to a pending trial or sentencing on a felony matter | Restricted to pending cases in San Francisco. Defined as a new booking before the disposition of an active felony. Exclude cases that result in a motion to revoke (probation, mandatory supervision, and post-release community supervision) and diversions (domestic violence diversion, PC 1203.4 expungements), etc. | Restricted to pending felony cases in Sonoma County. Defined as a new booking before the disposition of an active felony case, a case pre-sentencing, or a booking that involves pending filed felony charges. |

(Table continued)

**CPL'S INTERPRETATION OF THE CRITERIA TO MAKE A MOTION FOR PREVENTIVE DETENTION HEARING
SECTION 1320.18(a)**

| SB 10 SECTION | SB 10 CRITERIA | SF INTERPRETATION | SONOMA INTERPRETATION |
|---------------|---|--------------------------|--------------------------|
| 1320.18(a)(4) | Intimidated, dissuaded, or threatened retaliation against a witness or victim of the current crime. | PCs 136, 69, 71, and 422 | PCs 136, 69, 71, and 422 |
| 1320.18(a)(5) | There is substantial reason to believe that no nonmonetary condition or combination of conditions of pretrial supervision will reasonably assure protection of the public or a victim, or the appearance of the defendant in court as required. | See section 1320.20(a) | See section 1320.20(a) |

**CPL'S INTERPRETATION OF THE (REBUTTABLE) PRESUMPTIVE DETENTION CRITERIA
SECTION 1320.20(a)**

| SB 10 SECTION | SB 10 CRITERIA | SF INTERPRETATION | SONOMA INTERPRETATION |
|------------------|---|---|--|
| 1320.20(a)(1) | Booked on an offense under 667.5(c) or that includes physical violence, threat of physical violence, likelihood of great bodily injury, using a deadly weapon or firearm, or infliction of great bodily injury in the commission of the crime. | Restrict to offenses that are covered under 667.5(c), flagged as violent by Arnold Ventures for the purposed of the PSA, or include: 242, 243, 245, 246, 12034(C)(D), 12022. | Restrict to offenses that are covered under 667.5(c), flagged as violent by Arnold Ventures for the purposed of the PSA, or include: 242, 243, 245, 246, 12034(C)(D), 12022. |
| 1320.20(a)(2) | Individuals who are assessed as high-risk to the safety of the public or a victim AND any of 1320(a)(2)(A)-(D) | Flag individuals as high-risk if the PSA Decision Making Framework (DMF) does not recommend release – i.e. the highest risk scores. | Estimate PSA score for all bookings. Per Sonoma County policy, individuals are high-risk if they have an FTA score of 6 or an NCA score of 5 or higher. |
| 1320.20(a)(2)(A) | The defendant was convicted of a serious felony as defined in subdivision (c) of Section 1192.7 or a violent felony as defined in subdivision (c) of Section 667.5, within the past 5 years. | Restrict to prior conviction of a serious or violent felony in San Francisco. | Restrict to prior conviction of a serious or violent felony in Sonoma. |
| 1320.20(a)(2)(B) | The defendant committed the crime while awaiting sentencing for an offense under 667.5(c) or that includes physical violence, threat of physical violence, likelihood of great bodily injury, using a deadly weapon or firearm, or infliction of great bodily injury. | At the time of booking, individual had a case pending disposition (with a subsequent conviction) or sentencing on a serious or violent felony in San Francisco. | At the time of booking, individual had a case pending disposition (with a subsequent conviction) or sentencing on a serious or violent felony in Sonoma. |
| 1320.20(a)(2)(C) | Intimidated, dissuaded, or threatened retaliation against a witness or victim of the current crime. | PCs 136, 69, 71, and 422 | PCs 136, 69, 71, and 422 |
| 1320.20(a)(2)(D) | At the time of arrest, on any form of post-conviction supervision, other than informal probation or court supervision | This analysis does not include data from the San Francisco Probation Department or CDCR Parole. We are not able to estimate parole status. And we provide an estimate for probation as follows: a) assume an individual is on probation for two years after conviction; and b) assume still on probation if a technical violation is filed outside that two-year window. Anyone who meets one or both of these criteria is considered on probation. | At the time of booking, under Probation supervision for another case (not including supervision for Pretrial Services or Conditional Sentences). |

F. SCORING THE PSA

In 2017 and 2018, Sonoma County was using the SPRAT to determine pretrial release risk scores. We estimate a PSA score for each new booking during this period to provide a lower bound estimate of the bookings that would be flagged as “high-risk” under SB 10 and therefore ineligible for pre-arraignment release under SB10 legislation. We also estimate the PSA score for the cases in San Francisco that were released via cite and release or bail prior to scoring of the PSA.

I. Failure to Appear Risk Score

| RISK FACTOR | POINTS | SF INTERPRETATION | SONOMA INTERPRETATION | TOTAL POINTS TO WEIGHTED SCORE: | |
|----------------------------------|---------|--|---|---------------------------------|--------------------|
| | | | | FTA total points | FTA weighted score |
| Pending charge at time of arrest | Yes = 1 | Any case not disposed or closed at time of arrest | Any pending filed charges at booking, any open cases in IJS case data at booking | 0 | 1 |
| | No = 0 | | | | |
| Prior Conviction | Yes = 1 | Any conviction recorded in disposition data prior to arrest. | Any conviction recorded in IJS case data prior to booking or any presence in sentence data prior to booking | 1 | 2 |
| | No = 0 | | | | |
| Prior FTAs in past 2 years | 0 = 0 | Bench warrants issued and not recalled in past 2 years | Number of bookings on FTAs in past 2 years | 3 | 4 |
| | 1 = 2 | | | | |
| | 2+ = 4 | | | | |
| Prior FTA more than 2 years ago | Yes = 1 | Bench warrants issued and not recalled 2 or more years ago | Any bookings on FTAs 2 years or more before booking | 6 | 7 |
| | No = 0 | | | | |

II. New Criminal Activity Risk Score

| RISK FACTOR | POINTS | SF INTERPRETATION | SONOMA INTERPRETATION | TOTAL POINTS TO WEIGHTED SCORE: | |
|----------------------------------|-------------------|---|--|---------------------------------|--------------------|
| | | | | NCA total points | NCA weighted score |
| Age at Current Arrest | 23 or older = 0 | Age calculated from Sheriff and DA demographic data | Age from IJS demographics file | 0 | 1 |
| | 22 or younger = 2 | | | | |
| Pending charge at time of arrest | No = 0 | Any cases not disposed or closed at time of arrest | Any pending filed charges at booking, any open cases in IJS case data at booking | 1 | 2 |
| | Yes = 3 | | | | |
| Prior misdemeanor conviction | No = 0 | Prior conviction for a misdemeanor in disposition data | IJS case data with dispositions prior to current booking | 3 | 3 |
| | Yes = 1 | | | | |
| | 4 | | | | |
| Prior felony conviction | Yes = 1 | Prior conviction for a felony in disposition data | IJS case data with dispositions prior to current booking | 5 | 4 |
| | No = 0 | | | | |
| | 6 | | | | |
| Prior Violent Conviction | 0 = 0 | Prior conviction for a serious or violent charge in disposition data | IJS case data with dispositions prior to current booking | 7 | 5 |
| | 1-2 = 1 | | | | |
| | 3+ = 2 | | | | |
| | 8 | | | | |
| Prior FTA in past 2 years | 0 = 0 | Bench warrants issued and not recalled in past 2 years | Any booking for an FTA in the 2 years before booking | 9 | 6 |
| | 1 = 1 | | | | |
| | 2+ = 2 | | | | |
| Prior sentence to incarceration | No = 0 | Prior disposition that includes a sentence to incarceration prison or a conviction with more than 14 days in county jail (pre- or post-disposition to capture credit for time served) | Any record of a sentence to incarceration prior to booking | 10 | 11 |
| | Yes = 2 | | | | |
| | | | | 12 | |
| | | | | 13 | |

III. New Violent Criminal Activity Flag

| RISK FACTOR | POINTS | SF INTERPRETATION | SONOMA INTERPRETATION | TOTAL POINTS TO FLAG: | |
|---|---------|---|---|-----------------------|------------|
| Current violent offense | Yes = 2 | Current arrest includes a charge that is flagged as a serious & violent felony | Current booking includes a charge that is flagged as a serious & violent felony | NCVA total points | NCVA flag? |
| | No = 0 | | | | |
| Current violent offense & 20 years old or younger | Yes = 1 | Person is under 20 in the demographic data and at least one booked charge is a serious & violent felony | Person is under 20 per IJS demographic data and at least one booked charge is a serious & violent felony | 0 | No |
| | No = 0 | | | | |
| Pending charge at time of offense | Yes = 1 | Any filed charges that have not disposed at the time of arrest | Any pending filed charges at booking, any open cases in IJS case data at booking | 1 | |
| | No = 0 | | | | |
| Prior conviction | Yes = 1 | Any prior conviction dispositions prior to arrest | Any convictions in IJS case data prior to booking date, any sentences to incarceration prior to booking date | 2 | |
| | No = 0 | | | | |
| Prior violent conviction | 0 = 0 | Any prior conviction dispositions prior to arrest that include a serious & violent charge | Any convictions in IJS case data prior to conviction where one of the convicted charges is a serious & violent felony | 3 | |
| | 1-2 = 1 | | | | |
| | 3+ = 2 | | | | |
| | | | | 4 | Yes |
| | | | | 5 | |
| | | | | 6 | |
| | | | | 7 | |

G. FULL RESULTS

Sonoma and San Francisco counties had different options for releasing an individual pretrial in 2017 and 2018, as illustrated in the rows of Table 5 and Table 6. The bolded rows in the two tables indicate the release points prior to arraignment. In Sonoma County in 2017 and 2018, the only way an individual was released prior to arraignment was via a citation or on bail (Table 5). In San Francisco, individuals could also be released prior to arraignment by a Duty Judge (Table 6).

TABLE 5. Full estimates for Sonoma County (2017–2018)

| | | PROJECTED SB10 OUTCOME | | | | | TOTAL | MEDIAN PRE-ARRAIGNMENT HOURS IN CUSTODY [†] |
|--------------------------------------|--|------------------------|---|---|--------------------------------|------------------------------------|---------------|---|
| | | CITE & RELEASE | PRE-ARRAIGNMENT- DISCRETIONARY CRITERIA** | PRE-ARRAIGNMENT- MANDATORY CRITERIA** | PRESENTED AT ARRAIGNMENT*** | MOTION TO DETAIN ELIGIBLE*** | | |
| CITE & RELEASE | | 870 | 1,037 | 32 | 205 | 565 | 2,708 | 17.8 |
| BAIL PRIOR TO ARRAIGNMENT | | 2,354 | 990 | 419 | 119 | 1212 | 5,095 | 16.1 |
| ACTUAL PRETRIAL OUTCOME | RELEASE ON BAIL AT OR AFTER ARRAIGNMENT | - | 86 | 30 | 17 | 128 | 264 | 92.4 |
| | RELEASE PRIOR TO DISPOSITION | 99 | 890 | 290 | 129 | 739 | 2,148 | 92.4 |
| | DETAINED PRIOR TO DISPOSITION | 0 | 685 | 374 | 188 | 951 | 2,198 | 92.4 |
| | TOTAL | 3,326 | 3,689 | 1,146 | 658 | 3,594 | 12,413 | |
| | <i>ESTIMATED MEDIAN PRE-ARRAIGNMENT HOURS IN CUSTODY</i> | 12 | 24 | 24 | 92.4 | 92.4 | | |

Notes:

** Combined for cases released pre-arraignment under least restrictive conditions. Use “Pre-arraignment discretionary criteria” only for releases under restrictive, discretionary conditions.

*** All cases presented at arraignment, detention category is eligible for a prosecutor to file a motion to detain.

† Hours are capped at 92.4 (median time in custody for releases to Pretrial Services, which happens at arraignment) as we are not estimating time in custody after arraignment.

TABLE 6. Full estimates for San Francisco County (2017–2018)

| | | PROJECTED SB10 OUTCOME | | | | | |
|----------------------------------|--|------------------------|------------------|----------------------------|------------------------------|---------------|--|
| | | CITE & RELEASE | PRE-ARRAIGNMENT* | PRESENTED AT ARRAIGNMENT** | MOTION TO DETAIN ELIGIBLE*** | TOTAL | MEDIAN PRE-ARRAIGNMENT HOURS IN CUSTODY† |
| CITE & RELEASE | | 2,271 | 941 | 38 | 200 | 3,450 | 5.8 |
| DUTY JUDGE | | 24 | 1,687 | 72 | 100 | 1,883 | 23.2 |
| BAIL PRIOR TO ARRAIGNMENT | | 43 | 566 | 135 | 445 | 1,189 | 9.4 |
| ACTUAL PRETRIAL OUTCOME | RELEASE ON BAIL AT OR AFTER ARRAIGNMENT | 8 | 130 | 79 | 420 | 637 | 69.1 |
| | RELEASE AT ARRAIGNMENT | 270 | 1,989 | 308 | 1,562 | 4,129 | 69.1 |
| | RELEASE PRIOR TO DISPOSITION | 19 | 601 | 205 | 1,521 | 2,346 | 69.1 |
| | DETAINED PRIOR TO DISPOSITION | - | 329 | 81 | 900 | 1,313 | 69.1 |
| | TOTAL | 2,635 | 6,243 | 918 | 5,148 | 14,947 | |
| | <i>ESTIMATED MEDIAN PRE-ARRAIGNMENT HOURS IN CUSTODY</i> | <i>12</i> | <i>24</i> | <i>69.1</i> | <i>69.1</i> | | |

Notes:

* Assume only the mandatory restrictions will be followed. If a local rule is adopted to include the discretionary criteria outlined in 1320.13(i), pre-arraignment releases will decrease to 4,597.

** All cases presented at arraignment, detention category is eligible for a prosecutor to file a motion to detain.

^ Indicates the case meets one or more criteria for the prosecution to request preventive detention hearing. Most common reason for ineligibility is a booking for a serious or violent felony (with felony assault and felony robbery being the most common). Pending sentencing in a felony matter is the second most common, followed by probation as the third.

† Hours in custody are capped at 69.1 (median time in custody for arraignment releases) as we are not estimating time in custody after arraignment.

The California Policy Lab builds better lives through data-driven policy. We are a project of the University of California, with sites at the Berkeley and Los Angeles campuses.

This research publication reflects the views of the authors and not necessarily the views of our funders, our staff, our advisory board, or the Regents of the University of California, the San Francisco Sheriff's Office, San Francisco District Attorney's Office, San Francisco Pretrial Diversion Project, Sonoma County Probation Department, or the Sonoma County Sheriff's Office.

Endnotes

- 1 Per Section 1320.8(k) of SB 10: To be validated, a risk assessment tool must be “demonstrated by scientific research to be accurate and reliable in assessing the risk of a person failing to appear in court as required or the risk to public safety due to the commission of a new criminal offense if the person is released before adjudication of his or her current criminal offense and minimize bias.”
- 2 California Courts | The Judicial Branch of California | Pretrial Pilot Program, <https://www.courts.ca.gov/pretrialpilotprogram.htm>
- 3 In other analyses by CPL, including statewide criminal history data caused an approximately 10-percentage point increase in the rate of prior convictions over a three-year period.
- 4 In practice, a pretrial services agency would manually review the police report for each case. This analysis relied solely on administrative data in the District Attorney's and Sheriff's Office's case management systems, which do not have this level of detail.
- 5 There are significant data limitations that inhibit our ability to capture all the violations of pretrial conditions that could be used in a jurisdiction. For example, a jurisdiction could decide that failing a drug test is a violation of pretrial conditions.