

SUMMARY OF RELEASE AND DETENTION PROCESS UNDER SB 10 (BAIL REFORM LEGISLATION) Effective October 1, 2019

BOOK AND RELEASE—MISDEMEANORS - § 1320.8	
Release	Persons arrested for misdemeanors, with or without a warrant, either won't be booked or if booked, will be released within 12 hours – Exceptions per § 1320.10(e)
Exceptions to release or booking and release § 1320.10(e)	Persons arrested for following misdemeanors or crimes with any of following factors are not eligible for release or booking and release: <ul style="list-style-type: none"> • A person arrested for a registerable sex offense [See SB 1054] • Domestic violence (§§ 273.5, 243(e)(1); violation of DV protective order with threats, violence, or gone to residence or workplace (§ 273.6), and stalking (§ 646.9) • 3d DUI within 10 years, DUI with injury, or DUI of .20 or above • Restraining order violation within last 5 yrs • 3 or more warrants for FTA within past 12 mo • Pending trial or sentencing on misdemeanor or felony • On any type of postconviction supervision when arrested, other than informal • Intimidated, dissuaded, threatened retaliation against a witness/victim • Violated a condition of pretrial release within past 5 yrs • Convicted of a serious/violent felony within past 5 yrs
INVESTIGATION BY PRETRIAL ASSESSMENT SERVICES (PAS) - § 1320.9	
Timing	Prior to prearrestment review for eligible arrestees (within 24 hrs); prior to arraignment for all others; not required for arrestees who are booked and released
Information PAS is required to obtain	<ul style="list-style-type: none"> • Results of risk assessment using a validated risk assessment instrument, including risk level of “low,” “medium” or “high” risk • Criminal charge for arrest, criminal history, including history of failure to appear in court as required within past 3 years • Any supplemental information reasonably available that directly addresses risk to public safety or risk of failure to appear
Report	<ul style="list-style-type: none"> • Contents: information PAS is required to obtain and information from district attorney’s reasonable effort to contact the victim • Must include any recommendations for conditions of release (based on options in Rule of Court) • Copy of report must be served on the court and counsel • Report, including the results of risk assessment, cannot be used for any purpose other than as information to inform pretrial release/detention determination
PREARRAIGNMENT REVIEW - §§ 1320.10, 1320.13	
Decisionmaker	<ul style="list-style-type: none"> • PAS must conduct review of eligible arrestees assessed as low and medium risk (exceptions noted below) • At court’s option, court may conduct prearrestment review of low and medium risk arrestees who are ineligible for review by PAS • Court may authorize subordinate judicial officer to conduct prearrestment reviews
Timing § 12320.10(f)	Eligible arrestees must receive prearrestment review without unnecessary delay and <i>within 24 hrs of booking</i> ; time for review may be extended for good cause but must not exceed an additional 12 hrs.
Mandatory local rule	<ul style="list-style-type: none"> • Court, in consultation with stakeholders and consistent with Rule of Court, must adopt rule setting standards for review and release of medium risk arrestees by PAS

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§ 1320.11	<ul style="list-style-type: none"> Local rule may expand list of factors for which prearrestment release by PAS is not permitted, but must not exclude all medium risk arrestees from release by PAS Courts must annually consider impact of rule on public safety, due process rights of defendant, and preceding year's implementation of the rule
Conditions of release	<ul style="list-style-type: none"> Signed OR release agreement must include minimum conditions Conditions of release must be the least restrictive to reasonably assure public safety and return to court Persons released on OR or supervised OR shall not be required to pay for any conditions imposed by PAS or court
Prearrestment Review by PAS - § 1320.10	
NOT ELIGIBLE for prearrestment review or release by PAS § 1320.10(e)	<p>The following persons arrested for a felony or misdemeanor are not eligible for prearrestment review by PAS:</p> <ul style="list-style-type: none"> Persons excluded by local rule from PAS prearrestment review Persons arrested for any crimes or crimes with factors listed in § 1320.10(e): <ul style="list-style-type: none"> A person arrested for a registerable sex offense [See SB 1054] Domestic violence (§§ 273.5, 243(e)(1); violation of DV protective order with threats, violence, or gone to residence or workplace (§ 273.6), and stalking (§ 646.9) 3d DUI within 10 years, DUI with injury, or DUI of .20 or above Restraining order violation within last 5 yrs 3 or more warrants for FTA within past 12 mo Pending trial or sentencing on misdemeanor or felony On any type of postconviction supervision when arrested, other than informal Intimidated, dissuaded, threatened retaliation against a witness/victim Violated a condition of pretrial release within past 5 yrs Convicted of a serious/violent felony within past 5 yrs Persons assessed as high risk Persons arrested for a felony that includes physical violence to a person or threat of such violence, likelihood of great bodily injury, or where personally armed with or used a deadly weapon or personally inflicted great bodily injury in committing the crime People arrested for a serious or violent felony
PAS release of LOW RISK arrestees § 1320.10(b)	PAS must release persons assessed as low risk on OWN RECOGNIZANCE, prior to arraignment, without review by the court, and with the least restrictive nonmonetary condition or combination of conditions that will reasonably assure public safety and return to court (LRNMC).
PAS release of MEDIUM RISK arrestees § 1320.10(c)	<ul style="list-style-type: none"> PAS must release arrestees assessed as medium risk consistent with standards set in local rule PAS must release eligible arrestees on OR or SUPERVISED OR, prior to arraignment, without review by the court, and with LRNMC
§ 1320.10(h)	<ul style="list-style-type: none"> Persons not released are detained pending arraignment unless the court conducts a prearrestment review
Prearrestment Review by Court - § 1320.13	

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<p>Court release of LOW and MEDIUM RISK arrestees</p> <p>§ 1320.13(c) § 1320.13(h) § 1320.13(i)</p>	<ul style="list-style-type: none"> • Court has the option to authorize a judge/SJO to conduct prearrestment reviews • Except for the persons ineligible for prearrestment review (see below), the court may conduct reviews of: <ul style="list-style-type: none"> • Persons ineligible for review by PAS per § 1320.10(e) • Medium risk persons excluded by local rule • Court must give “significant weight” to PAS information and options for release, and either release on OR, on SUPERVISED OR with LRNMC, or detain until arraignment • Court may detain arrestee until arraignment if there is a <i>substantial likelihood</i> that no condition of supervision will reasonably assure public safety or return to court • There is a presumption of detention if: <ul style="list-style-type: none"> • The crime was committed with violence to a person or threat of such violence, likelihood of great bodily injury, or where personally armed with or used a deadly weapon, or personally inflicted great bodily injury • At the time of arrest the person was on any form of postconviction supervision, except informal probation • The person threatened, dissuaded a witness or victim • The person is currently on pretrial release and has violated a condition of release
<p>NOT ELIGIBLE for prearrestment review or release by court</p> <p>§ 1320.13(b)</p>	<ul style="list-style-type: none"> • Persons assessed as high risk • Persons arrested for a serious or violent felony • Persons who were pending trial or sentencing in a felony matter when arrested
<p>Modification of conditions</p> <p>§ 1320.14</p>	<ul style="list-style-type: none"> • For good cause, the court may at any time on its own motion or upon request of any party, modify the conditions of release
ARRAIGNMENT - §§ 1320.15 – 1320.17	
<p>Release by court</p> <p>§ 1320.17 § 1320.16</p>	<ul style="list-style-type: none"> • The court must order release on OR or SUPERVISED OR with the LRNMC unless the prosecutor files a motion to detain (“Request for Preventive Detention”) • Victims must be given notice of the arraignment by the prosecution and have an opportunity to be heard
REQUEST FOR PREVENTIVE DETENTION PENDING TRIAL - § 1320.18	
<p>Motion for detention</p> <p>1320.18(a)</p>	<ul style="list-style-type: none"> • Prosecution may file a motion for preventive detention at arraignment or at any time • The court is not authorized to initiate a preventive detention hearing on its own motion
<p>The request for detention must be based on specified factors</p> <p>§ 1320.18(a)</p>	<ul style="list-style-type: none"> • The request for detention must be based on at least one of the following circumstances: <ul style="list-style-type: none"> • Crime was committed with violence against a person, threatened violence or the likelihood of serious injury, involved the personal arming or use of a deadly weapon, or personal infliction of great bodily injury • Person was on postconviction supervision other than informal probation • Person was pending trial or sentencing on a felony matter • Person intimidated or threatened retaliation against a witness or victim of the current crime

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	<ul style="list-style-type: none"> • 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 appearance of the defendant in court
Detention pending preventive detention hearing § 1320.18(c) § 1320.18(d) § 1320.18(e)	<ul style="list-style-type: none"> • Court must determine whether to release or detain the person pending hearing based on information provided by PAS, including recommendations for conditions of release • The court shall give “significant weight to the recommendations and assessment” by PAS • Court may detain pending hearing only if it determines that no nonmonetary condition or combination of conditions of pretrial supervision will reasonably assure public safety or appearance in court as required • Court must state reasons for detention pending hearing on the record • If there is insufficient basis for detention, the court must release on the LRNMC
PREVENTIVE DETENTION HEARING - §§ 1320.19 – 1320.21	
Timing § 1320.19(a) § 1320.19(b) § 1320.19(c) § 1320.19(e)	<ul style="list-style-type: none"> • Hearing must be held within 3 court days of arraignment if the defendant is in custody, or within 5 court days if not in custody • Continuances for up to 3 court days are permitted for good cause, unless both sides stipulate to a longer continuance • The hearing must be conducted in a single session, unless a personal waiver by the defendant • If requested, the victim must be given notice of the hearing by the DA and an opportunity to be heard re custody status
Probable cause requirement for charged crime § 1320.20(b)	<p>If there is no information, indictment, holding order, or preliminary hearing waiver, and defendant challenges sufficiency of the evidence of the crime, the prosecution must establish probable cause that the defendant committed the charged crime</p>
Type of evidence permitted § 1320.20(c)	<p>Evidence regarding detention status or probable cause the defendant committed the charged crime may be presented via reliable hearsay, written or oral statements of the victim, statements of the defendant, offers of proof, and argument of counsel</p>
Rebuttable presumption of detention § 1320.20(a)	<p>There is a rebuttable presumption of detention pending trial if the court finds by probable cause that:</p> <ul style="list-style-type: none"> • The current crime is a violent felony or felony committed with violence, threatened violence or likelihood of serious bodily injury, or defendant was personally armed with or used a weapon, or personally inflicted great bodily injury; or • Defendant was assessed as “high risk” to the safety of the public or victim AND one of the following: <ul style="list-style-type: none"> ○ Was convicted of a serious or violent felony within the past 5 years ○ Committed the current crime while pending sentencing for a violent crime ○ Intimidated or threatened retaliation against a witness or victim of current crime ○ When arrested, was on formal postconviction supervision
Standard for determination of preventive	<p>Court may order preventive detention of defendant pending trial only if:</p> <ul style="list-style-type: none"> • Detention is permitted under the United States and California Constitutions

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<p>detention pending trial § 1320.20(d)(1) § 1320.20(d)(2) § 1320.20(d)(3)</p>	<ul style="list-style-type: none"> • Court determines by clear and convincing evidence that no nonmonetary condition or combination of conditions of pretrial supervision will reasonably assure the public safety or the appearance of the defendant in court as required • Court must state the reasons for ordering preventive detention on the record • If requested a transcript must be prepared within two days of the request • If the decision is challenged by writ, “the court of appeal shall expeditiously consider that writ.”
<p>Release pending trial § 1320.20(e)</p>	<ul style="list-style-type: none"> • If court determines there is not a sufficient basis for detaining the defendant, the court shall release the defendant on OR or on SUPERVISED OR with LRNMC • Defendants released on supervised OR shall not be required to pay for any conditions imposed by the court
<p>Factors for determining whether supervision conditions can reasonably assure public safety and appearance § 1320.20(f)</p>	<p>Court may consider:</p> <ul style="list-style-type: none"> • Nature and circumstances of the crime charged • Weight of the evidence against the defendant • Defendant’s past conduct, family and community ties, and record of appearances • Whether defendant is on supervised release, probation or parole • Nature and seriousness of the risk to public safety • Recommendation of PAS • Impact of detention on the defendant’s family • Any proposed plan of supervision.
<p>Reopening preventive detention hearing § 1320.21</p>	<ul style="list-style-type: none"> • The parties or the court on its own motion, may reopen a detention hearing or request a new hearing upon a showing of newly discovered evidence, facts, or a material change in circumstances • The motion must state evidence or circumstances not known at time of hearing or circumstances warranting new hearing, and address whether there are conditions of release that will protect the public and assure appearance • Upon request, victim must be given notice of reopened hearing and opportunity to be heard • Court may grant motion on good cause and redetermine custody status • All of the procedures applicable to an original detention hearing are applicable to the reopened or new hearing
<p>ARREST OR BENCH WARRANT</p>	
<p>Application for arrest warrant § 1320.22</p>	<p>Court may issue arrest warrant upon ex parte application showing that the defendant has violated a condition of release imposed by the court; the custody status of the defendant will be determined in accordance with this chapter</p>
<p>Court indication of custody status on warrant § 1320.23</p>	<ul style="list-style-type: none"> • If court issues an arrest warrant, or a bench warrant based upon defendant’s failure to appear or allegation that the defendant violated a condition of pretrial or postconviction supervision, the court may indicate on the warrant whether defendant should be: <ul style="list-style-type: none"> ○ booked and released ○ detained for prearrest review ○ detained pending arraignment ○ detained pending hearing on the violation of supervision

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	<ul style="list-style-type: none">• Court's indication on warrant is binding on the arresting/booking agency and custody facility but not on any subsequent decision by PAS or the court• If the prosecution or law enforcement requests a warrant with a custody status other than book and release, that agency must provide the court with factors justifying a higher level of supervision or detention• If the court issues a misdemeanor warrant, determination of release must begin with book and release procedures (§ 1320.08); determination of release on felony warrants must start with prearrest review (§ 1320.9)
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