

---

# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

---

**Bill No:** SB 987                      **Hearing Date:** March 12, 2024  
**Author:** Menjivar  
**Version:** January 30, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Pretrial release: pretrial assessment agencies*

## HISTORY

**Source:** County of Los Angeles

**Prior Legislation:** AB 2354 (Kalra), held in Assem. Public Safety, 2022  
SB 36 (Hertzberg), Ch. 589, Stats. 2019

**Support:** Amity Foundation; California Public Defenders Association; Los Angeles Regional Reentry Partnership; Oakland Privacy; Somos Familia Valle; Tarzana Treatment Centers

**Opposition:** Los Angeles County Deputy Probation Officers' Union, AFSCME Local 685

## PURPOSE

*The purpose of this bill is to authorize a court, with the concurrence of the county board of supervisors, to use county pretrial agency staff independent from probation, to provide pretrial services and to prohibit a defendant from being charged any fees for pretrial supervision.*

*Existing law* provides that the defendant shall not be released from custody under an own recognizance (OR) until the defendant files with the clerk of the court or other person authorized to accept bail a signed release agreement which includes:

- The defendant's promise to appear at all times and places, as ordered by the court or magistrate;
- The defendant's promise to obey all reasonable conditions imposed by the court or magistrate;
- The defendant's promise not to depart this state without leave of the court;
- Agreement by the defendant to waive extradition if the defendant fails to appear as required and is apprehended outside of the State of California; and,
- The acknowledgment of the defendant that the defendant has been informed of the consequences and penalties applicable to violation of the conditions of release. (Pen. Code, § 1318, subd. (a).)

*This bill* states that if the court orders pretrial supervision as a condition of the defendant's release from custody, the defendant shall not be charged any fees for pretrial supervision.

*This bill* requires that information obtained in the course of performing pretrial supervision services shall be maintained apart from other law enforcement and criminal justice records and shall be confidential, subject to the following exceptions:

- A written report filed with the court regarding the defendant's compliance with the conditions of release shall be provided to the prosecuting attorney and the attorney for the defendant. The report shall not be further disclosed or disseminated to any other person or agency by the prosecuting attorney or the attorney for the defendant; and,
- The court may order the disclosure of information if there is a substantial likelihood that the information is all of the following:
  - Material;
  - Exonerating on the issue of guilt in a judicial proceeding involving the individual charged or a third party; and,
  - Would not otherwise be available in such a proceeding.

*This bill* provides that, without waiving the privilege for official information acquired in confidence by a public employee in the course of their duty, information may be disclosed to the following individuals and entities to the extent necessary to carry out the purpose of disclosure:

- The court to determine bail, release, and any conditions of release, detention, compliance with release conditions, or sentencing.
- If the defendant poses an imminent risk of physical harm, information necessary to permit the party at risk to take appropriate protective action.
- An agency or program to which the defendant has been referred as a condition of release.
- A law enforcement agency upon a reasonable belief that such information is necessary to assist in apprehending an individual for whom a warrant has been issued for failure to appear or for the commission of a crime.
- A probation department for use in communicating the defendant's compliance with the conditions of release in a presentence investigation report, or for locating the defendant if the probation department is supervising the defendant concurrently.
- An individual or agency designated by the defendant upon specific written authorization of the defendant.
- A public agency or bona fide research institution for purposes of conducting research related to the administration of justice. Information identifying individuals shall be provided only for research and statistical activities and shall not be transferred, revealed, or used for purposes other than research or statistical activities. Reports or publications derived from this information shall not identify specific individuals.

*This bill* prohibits individuals and entities that receive this information from disclosing or disseminating that information to others, except that the individuals and entities identified above may disclose or disseminate that information to others if necessary to carry out the purpose of the disclosure.

*This bill* provides that the information obtained in the course of performing pretrial supervision services shall not be admissible on the issue of guilt in a criminal proceeding, except for the following:

- Prosecution of a crime committed while on pretrial supervision or for failure to appear in a criminal proceeding while the defendant was on pretrial supervision, or,
- If that information is relevant evidence that is admissible under the standards described in the California Constitution's right to truth-in-evidence.

*Existing law* authorizes a court, with the concurrence of the board of supervisors, to employ an investigative staff for the purpose of recommending whether a defendant should be released on OR. (Pen. Code, § 1318.1.)

*This bill* additionally authorizes a court, with the concurrence of the board of supervisors, to use a county pretrial agency staff for the purpose of recommending whether a defendant should be released on OR.

*Existing law* requires that whenever a court has employed an investigative staff, an investigative report shall be prepared in all cases involving a violent felony, as described in subdivision (c) of Section 667.5, or a felony in violation of subdivision (a) of Section 23153 of the Vehicle Code, recommending whether the defendant should be released on OR. The report shall include all of the following:

- Written verification of any outstanding warrants against the defendant;
- Written verification of any prior incidents where the defendant has failed to make a court appearance;
- Written verification of the criminal record of the defendant;
- Written verification of the residence of the defendant during the past year. (Pen. Code, § 1318.1, subd. (b).)

*The bill* authorizes an investigative report for every investigation by a court-employed investigative staff or a county pretrial agency staff.

*This bill* states that if a report is issued, the investigative staff may only include information relevant to the release of the defendant in the report. The investigative staff or county pretrial agency staff shall not solicit from the defendant any information regarding the circumstances of the alleged offense.

*Existing law* states that after the report is certified, it shall be submitted to the court for review prior to a hearing held in open court and until the prosecuting attorney is given notice and a

reasonable opportunity to be heard on the matter of whether the defendant may be released on OR. (Pen. Code, § 1318.1.)

This bill removes certification of the report prior to submitting to the court for review.

*This bill* requires a copy of the report to be provided to the prosecuting attorney and the attorney for the defendant and states that the report shall not be further disclosed or disseminated to any other person or agency by the prosecuting attorney or the attorney for the defendant, unless the report is relevant evidence that is admissible as provided.

*Existing law* defines “state summary criminal history information” to mean the master record of information compiled by the Attorney General pertaining to the identification and criminal history of a person, such as name, date of birth, physical description, fingerprints, photographs, dates of arrests, arresting agencies and booking numbers, charges, dispositions, sentencing information, and similar data about the person. (Pen. Code, § 11105, subd. (a)(2)(A).)

*Existing law* requires the Department of Justice (DOJ) to maintain state summary criminal history information and requires such information to be furnished to specified entities in fulfilling employment, certification, or licensing duties as provided. (Pen. Code, § 11105, subd. (a) and (b).)

*This bill* authorizes DOJ to furnish state summary criminal history information to:

- County staff performing pretrial investigation and release services; and,
- A treatment provider, if disclosure is requested by county staff performing pretrial investigation and release services, with the consent of the subject of the state summary criminal history, and for purposes of furthering the subject’s compliance with court-ordered conditions of pretrial release or diversion.

*Existing law* defines “local summary criminal history information” to mean the master record of information compiled by any local criminal justice agency pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person. (Pen. Code, § 13300, subd. (a)(1).)

*Existing law* defines a “local agency” to mean a local criminal justice agency. (Pen. Code, § 13300, subd. (a)(3).)

*Existing law* defines “criminal justice agencies” as those agencies at all levels of government which perform as their principal functions, activities which either:

- Relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders; or,
- Relate to the collection, storage, dissemination or usage of criminal offender record information. (Pen. Code, § 13101.)

*This bill* adds pretrial investigation and release activities to the definition of “criminal justice agencies.”

*Existing law* requires a local agency to furnish local summary criminal history information to specified entities when needed in the course of their duties and when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties as provided.

*This bill* authorizes a local agency to furnish local summary criminal history information to:

- County staff performing pretrial investigation and release services; and,
- A treatment provider if disclosure is requested by county staff performing pretrial investigation and release services, with the consent of the subject of the state summary criminal history, and for purposes of furthering the subject's compliance with court-ordered conditions of pretrial release or diversion.

*This bill* contains the Legislative finding that preserving the confidentiality of pretrial records is critical to the success of pretrial services agencies because it ensures that clients are more likely to be candid with pretrial services staff, as has been recognized by the U.S. Congress and federal courts.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

Traditionally, courts have used the county probation departments to provide pretrial services such as assessment of individual, background investigation, and reporting back to the courts. In a few counties, such as Los Angeles, their Board of Supervisors have created independent pretrial services departments to handle this work. Current law does not include the independent pretrial services departments, thus not allowing full access to information needed to analyze and report back to the courts. SB 987 fixes this problem by adding independent pretrial services departments into the definition of "criminal justice agency" authorizing them the same access to background criminal history from federal, state, and local agencies, thus allowing them to perform the same activities for the court that probation does.

### 2. Background: Pretrial Services

When a person has been arrested for a crime and booked into jail custody, the person may be released from custody prior to trial proceedings either on bail, own recognizance, or supervised release with conditions. Persons who are not released pursuant to one of these avenues will remain in custody until the resolution of their case. Pretrial services is responsible for conducting pretrial risk assessments, making recommendations for pretrial release or detention, supervising and providing services to released individuals, and locating those who do not show up for court appearances. Existing law requires pretrial service agencies to validate their pretrial risk assessment tools no less than every three years and to specified information regarding the tool, including validation studies, publicly available. (Pen. Code, §1320.35.)

Although pretrial services have been around since the 1960s, bail has been the primary avenue for pretrial release. (*Pretrial Risk Assessment in California*, Public Policy Institute of California (Dec. 2019), p. 4.) Critics of the bail system argue that this system fails to protect public safety and gives wealthy people an advantage over people who cannot afford bail. In 2018, the First District Court of Appeals in San Francisco ruled that pretrial detention of a defendant solely due to inability to post bail is unconstitutional. (*In re Humphrey* (2018) 19 Cal.App.5th 1006.) The California Supreme Court upheld this ruling: “The common practice of conditioning freedom solely on whether an arrestee can afford bail is unconstitutional. Other conditions of release — such as electronic monitoring, regular check-ins with a pretrial case manager, community housing or shelter, and drug and alcohol treatment — can in many cases protect public and victim safety as well as assure the arrestee’s appearance at trial. What we hold is that where a financial condition is nonetheless necessary, the court must consider the arrestee’s ability to pay the stated amount of bail — and may not effectively detain the arrestee ‘solely because’ the arrestee ‘lacked the resources’ to post bail.” (*In re Humphrey* (2021) 11 Cal. 5<sup>th</sup> 135, 143.)

The Budget Act of 2019 (AB 74 (Ting), Ch. 23, Stats. 2019) earmarked \$75 million to the Judicial Council to launch and evaluate two-year pretrial projects in local trial courts. The projects aimed to increase the safe and efficient release of arrestees before trial, use the least restrictive monitoring practices possible while protecting public safety and ensuring court appearances, validate and expand the use of risk assessment tools, and assess any bias. In August 2019, the Judicial Council approved and distributed funding to the 16 pilot projects selected for participation in the Pretrial Pilot Program. By the conclusion of the pilot program, 14 of 16 pilot projects had implemented a court date reminder system which provides text message and phone call notifications to all individuals as pretrial release. Initial data showed that court appearances after the implementation of a court date reminder system increased significantly. The final report on the Pretrial Pilot Program suggested an overall positive impact of the program including increased pretrial release and decreased booking/rearrest for misdemeanors and felonies. See [https://www.courts.ca.gov/documents/Pretrial-Pilot-Program\\_Final-Report.pdf](https://www.courts.ca.gov/documents/Pretrial-Pilot-Program_Final-Report.pdf) [as of Mar. 1, 2024].)

Following the pilot program, the Budget Act of 2021 (SB 129 (Skinner), Ch. 69, Stats. 2021) allocated ongoing funding to the Judicial Council for the implementation or expansion of pretrial programs in all California courts.

### **3. Effect of This Legislation**

This bill would provide that the court, with the concurrence of the county board of supervisors, may use a county pretrial agency, independent of the probation department, to provide pretrial services. In most counties, probation departments provide pretrial services however some counties use an independent pretrial services department to provide this service. Currently, San Francisco and Santa Clara are allowed to contract with the Office of Pretrial services to provide this service in their counties.

According to the sponsor of this bill, Los Angeles County has created a pretrial services department within their county that is independent of their probation department. While existing law does not prohibit using a county agency other than probation to provide these services, statutes that authorize access to criminal history records needed to conduct risk assessments do not authorize disclosure to this additional type of entity. This bill specifies that state and local summary criminal history information shall be disseminated to county staff performing pretrial investigation and release services and a treatment provider, if disclosure is requested by county

staff performing pretrial investigation and release services, with the consent of the subject of the state summary criminal history, and for purposes of furthering the subject's compliance with court-ordered conditions of pretrial release or diversion.

This bill also provides that if the court orders pretrial supervision as a condition of the defendant's release from custody, the defendant shall not be charged any fees for pretrial supervision and require that information obtained in pretrial supervision services be maintained apart from law enforcement and criminal justice records. This bill also makes confidential, subject to specified exceptions, information that is obtained in the course of performing pretrial supervision. Notwithstanding any privilege afforded this information, this bill specifies that the information may be disclosed to specified entities such as the court, law enforcement and probation department to the extent necessary to carry out the stated purpose of disclosure. This bill specifies that if a report is made recommending whether a defendant should be released prior to trial proceedings, the report may only include information relevant to the release of the defendant and staff shall not solicit from the defendant any information regarding the circumstances of the alleged offense. A copy of the report shall be provided to the prosecuting attorney and attorney for the defendant but shall not be further disclosed or disseminated unless the report is relevant evidence and admissible as provided.

#### **4. Argument in Support**

According to Los Angeles Regional Reentry Partnership (LARRP):

Existing law only allows pretrial work to be completed by Probation, the Courts, or other existing 'criminal justice agencies' and does not allow for an independent pretrial agency. The law defines "criminal justice agencies" as agencies that perform activities that relate to the apprehension, prosecution, adjudication, incarceration, or correction of criminal offenders. Thus, independent pretrial agencies do not currently qualify as a "criminal justice agency," which precludes these agencies from accessing criminal history information and implementing a single all-inclusive independent pretrial operation.

Additionally, current law does not protect information provided by defendants in pretrial services evaluations. SB 987 would make information provided by defendants in pretrial services investigations confidential, which will allow pretrial services interviewers to have more candid conversations with arrested individuals. This may help service providers identify and link clients to needed services and supports.

#### **5. Argument in Opposition**

According to Los Angeles County Deputy Probation Officers' Union, AFSCME Local 685:

The process for evaluating and recommending appropriate programs for those who have been arrested and awaiting trial is thorough and comprehensive. When a person is arrested, they may be held in custody or released while they wait for their case to be resolved (i.e. during the pretrial period). Whether a release occurs and at what step in the pretrial process it happens are determined by a series of decisions made by pretrial administrative professionals and the Courts.

Their decisions are influenced by statute and other factors, including a determination whether they are at low-, medium-, or high-risk of hurting someone else if they are released, or missing future court appearances if they are released on their own recognizance. Further, with the recent and ongoing developments in bail reform in the County of Los Angeles, individuals who are arrested for misdemeanors and most non-violent felonies are generally released with an order to appear in court later. Probation department professionals within the pre-trial program in Los Angeles are granted access to Department of Justice criminal records background information for individuals who are arrested and under consideration for pretrial release. Criminal records and access to the DOJ databases are historically among the State's most protected and restricted resources. Given the potential for abuse, allowing an outside entity access is a slippery slope and dangerous.

The recommendations provided by the pretrial assessment process do not replace judicial discretion and decision-making. They are additional pieces of information provided to the judge to use in his or her release decision. Judges can, and do, decide to release persons assessed as high risk and, conversely, opt to detain those assessed as low-to-medium risk.

As experts in assessing and mitigating risk, probation is a natural choice for pretrial assessment and monitoring functions. Our Pre-Trial officers are familiar with the role of assessments in the criminal justice system as well as providing recommendations and reports to the court. Probation has the expertise needed for successful pretrial services that protect public safety while also mitigating disruptions to positive social engagement for low-risk offenders.

-- END --