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Reforming Pretrial Justice in California



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Technical appendices to this report are available on the PPIC website.

California's pretrial system is poised for reform. In 2018, the governor signed Senate Bill 10 (SB 10) to eliminate money bail and require the use of risk assessment tools when making pretrial release decisions. The law was put on hold after a challenge by the bail industry. Voters will decide its fate in a hotly debated November 2020 referendum on Proposition 25. Proponents argue SB 10 would reduce jail populations while promoting public safety and court appearances, but critics express concern about the bill's potential impact on crime and racial inequities.

The referendum will come amid widespread upheaval in the criminal justice system, from recent large-scale protests against racial injustice and police violence to concerns about the rapid spread of COVID-19 in jails and prisons. To address the latter, in April 2020 the Judicial Council issued a temporary zero-bail order for lower-level offenses, which may have served as a partial test case for SB 10's reforms. However, data availability precludes us from determining the extent to which it affected pretrial release. In this report, we instead use the most recent data available to estimate the impact of SB 10's shift to pretrial risk assessments on some release decisions.

- **Thirty-eight percent of arrestees would likely undergo risk assessment each year.** We estimate that at least 311,000 people would undergo risk assessment annually, ranging from fewer than 110 people in Mono County to more than 78,000 people in Los Angeles County. Local differences in population size, the prevalence of arrest, the share of felonies, and the share of bookings all contribute to this variation. The decline in tax revenue following the pandemic is projected to strain the state budget, raising questions about how the state will cover additional costs that may be associated with conducting these assessments.
- **One-quarter of booked arrestees would likely see changes in when they are released.** About 142,500 misdemeanants (39.6% of booked misdemeanants) who are currently detained or released after about two days would instead likely be released within 12 hours. Research suggests people who are released within a day may be less likely to be rearrested and more likely to meet their court dates, compared with those held for two to three days. By contrast, about 3,000 felons (1.3% of booked felons) who are currently released in a few hours would likely be held up to 36 hours for risk assessment. Depending on the outcome of their assessment, they may be detained during the pretrial period.
- **Existing inequities in arrest, booking, and criminal history would likely lead African Americans to be held more often for risk assessment than other racial groups.** For example, SB 10 requires counties to conduct a risk assessment after a felony booking, and African Americans are disproportionately booked after a felony arrest, rather than cited and released. Altogether, risk assessment rates for African Americans would far exceed those of other Californians: 49 percent of

booked African Americans would be held for risk assessment, compared to 37 percent of whites and Latinos, and 36 percent of Asian Americans.

- **Greater consistency in booking practices could mitigate some racial inequity.** If counties booked all arrestees who meet the risk assessment criteria, racial inequity in pretrial detention could be reduced. But such a policy would lead to more jail bookings, which would carry costs for counties and the state and could lead to poorer criminal-justice and employment outcomes for detainees.

Our analysis suggests that SB 10 would likely achieve the goal of releasing more people sooner, but it would not address longstanding inequities in bookings and arrests. As the state continues its efforts to improve pretrial processes, it will be vital to thoroughly evaluate the existing system and the impacts of any future reforms. Currently, many counties and the state are not collecting and reporting comprehensive data on the number of people released and detained—with or without paying bail—and how long they are detained. Tracking this information is a necessary first step that would help guide counties and the state toward a more effective and equitable criminal justice system.

Introduction

In November 2020, voters will decide the fate of Senate Bill 10 (SB 10) by referendum on Proposition 25. The bill, which was signed into law in 2018 and then stayed shortly thereafter, would radically alter California's pretrial justice system by eliminating money bail, establishing pretrial services in every county, and instituting a risk-based release system (Bonta 2018; PDRW 2017). If voters approve Proposition 25, California would be the first state in the nation to abolish money bail, which currently allows people to secure pretrial release by paying a fee after booking.¹ If voters reject Proposition 25, the current money bail system will remain in place.

The motivation behind SB 10 stems from concerns over the high levels of pretrial detention and long-standing inequities in detention rates.² Pretrial detention—which refers to holding people accused of crimes in jail instead of releasing them back into the community—is widespread in California. Previous PPIC research has found that the majority of California's jail inmates are pretrial detainees; only about half of misdemeanants and one-third of felons are released within a few days of arrest. PPIC research also shows that California's bail amounts—the highest in the nation—have contributed to the state's high rates of pretrial detention (Tafoya 2013, 2015; Tafoya et al. 2017).

There are also substantial racial disparities in who secures pretrial release. For example, among people booked into jail in 12 representative California counties between October 2011 and October 2015, 55 percent of Asian Americans and 49 percent of whites were eventually released, but only 38 percent of Latinos and 34 percent of African Americans were (Tafoya et al. 2017). These disparities can have far-ranging consequences: research finds that pretrial detention can negatively affect detainees' long-term outcomes, including employment and social safety net access (Dobbie, Goldin, and Yang 2018; Heaton 2020; Leslie and Pope 2017; Stevenson 2018).³ Even just two or three days in pretrial detention may have a negative effect on criminal justice outcomes such as getting rearrested or failing to appear in court.⁴

The current pretrial decision-making process also lacks transparency and consistency. Research into how release decisions are made indicates that those who make release decisions—law enforcement officers, pretrial services officers, and judges—prioritize different information and are not required to indicate how they arrive at their decisions, which results in inconsistent and inequitable outcomes, particularly for racial minorities and people with lower incomes (Arnold, Dobbie, and Hull 2020; DeMichele et al. 2018b; McIntyre and Baradaran 2013). Empirical evidence also suggests that release decisions are often inaccurate. Some people who are safe to release are incarcerated and some people who may compromise public safety go free (Berk et al. 2014; Kleinberg et al. 2017; Baradaran and McIntyre 2011). The use of money bail may exacerbate these inaccuracies and inequities if, for example, higher-risk people who can afford to pay bail are released, whereas lower-risk people who cannot pay bail are detained (PDRW 2017).

¹ This is typically done through a bail bondsman (Tafoya 2013).

² This bill codified recommendations from a 2017 report by the Pretrial Detention Reform Workgroup (PDRW), which was established by the Supreme Court of California to study pretrial policies and potential reforms.

³ Each of these studies compared the outcomes of people who were released within a few days to those of people held longer by leveraging the random assignment of judges at arraignment. Dobbie, Goldin, and Yang (2018) compared the outcomes of those who were released within three days to those of people who were detained longer. Leslie and Pope (2017) compared the outcomes of those who posted bail with the outcomes of those who were remanded or for whom bail was set but not posted. Stevenson (2018) compared the outcomes of those who posted bail within three days to those who did not.

⁴ Christopher Lowenkamp and his colleagues (2013) found that people released within two to three days were 1.09 times more likely to fail to appear in court and 1.26 times more likely to be rearrested for any crime than people released within a day. These relationships vary in magnitude for different subpopulations but are positive and statistically significant across race, gender, and offense type (felony versus misdemeanor), and for individuals assessed as low and medium, but not high, risk. Similarly, Alexander Holsinger (2016) found that those held for two to three days were 60 percent more likely to fail to appear in court than those held for one day. Together, these studies suggest that, if people are released within one day, rather than two or more, some negative consequences of detention might be mitigated.

To address these issues, SB 10 would mandate pretrial risk assessments as an alternative to money bail.⁵ These assessments rely on research-based statistical models to make predictions about an arrestee’s likelihood of getting rearrested and/or failing to appear in court.⁶ Judges and pretrial services officers will consider people’s assessed risk levels (e.g., high, medium, or low) when making decisions to release or detain. These tools hold promise but also have potential pitfalls (Harris, Goss, and Gumbs 2019). They can address some inconsistencies, inaccuracies, and inequities because they can transparently predict risk in the same way using the same information for all people. However, they do not address other issues that can lead to inequitable outcomes, such as the use of biased historical data and misinterpretation of risk predictions.

The debate over SB 10 has been intense. Proponents of bail reform have argued that the bill would reduce pretrial detention rates with little impact on public safety (Bonta 2018; Grant 2019). Additionally, supporters maintain that money bail unfairly privileges those who can pay for their release over those who cannot. However, some opponents have argued that pretrial detention rates will skyrocket under SB 10 (Tyler 2018; Adler 2018). And others contend that even if pretrial detention rates fall, public safety will suffer (Westervelt 2018).

Perhaps the most persistent argument against SB 10—and pretrial risk assessment more generally—is that it will exacerbate existing racial inequity in pretrial release rates (HRW 2018). Prior research indicates that risk-based systems of determining pretrial release could exacerbate inequity—but that tendency can be mitigated if those systems are implemented cautiously (Angwin et al. 2016; Kleinberg et al. 2019; Mayson 2019; PJI 2017; Picard et al. 2019; Starr 2014; Tonry 2014). To help address this criticism, in 2019 the legislature passed SB 36, which requires regular testing of risk assessment tools, including evaluations of whether they propagate “bias or disparate effect based on gender, income level, race, or ethnicity.”⁷

Despite heated arguments on both sides, there is a lack of research-based evidence to inform this debate—even though eliminating money bail has a recent, temporary precedent in California. Amid government shutdowns at the onset of the COVID-19 pandemic in spring 2020 and concerns about the rapid spread of the virus through jails and prisons, the Judicial Council issued a statewide order that set bail at \$0 for misdemeanors and some nonviolent felonies.⁸ This zero-bail order, which remained in effect from April 13 through June 20, aimed to assist counties in further reducing jail populations by curtailing pretrial detention.⁹ Unfortunately, any impact the order may have had on pretrial release, jail populations, or pretrial misconduct remains unknown. Although the Board of State and Community Corrections (BSCC) made real-time jail booking and release information publicly available beginning in April, the state lacks comprehensive data on money bail amounts, pretrial release rates, and the prevalence of pretrial misconduct.

Instead, this report aims to shed light on how SB 10 would affect some pretrial release decisions using the most comprehensive data available: the California Department of Justice’s Monthly Citation and Arrest Register and prior PPIC research based on a collaborative data effort between the BSCC, PPIC, and 12 representative California counties (Tafoya et al. 2017). However, due to data limitations, there are critical parts of the debate that

⁵ Prior to SB 10, advocacy groups promoted pretrial risk assessment as an alternative to money bail (Amatya et al. 2017; Rabuy and Kopf 2016; HRW 2017; Mamalian 2011; PJI 2013). Individual counties then implemented pretrial risk assessments, often with the help of research and advocacy organizations (Harris, Goss, and Gumbs 2019; Levin 2012; Lovins and Lovins 2015; Robertson and Jones 2013). The state legislature entertained, but did not pass, several bills aimed at pretrial reform (Bonta 2018).

⁶ For more information on these tools, see Harris, Goss, and Gumbs (2019).

⁷ This bill would remain in effect even if SB 10 is repealed and the counties that currently use risk assessment tools will need to adhere to its tenets. Several court challenges to money bail will also remain ongoing. For instance, the Supreme Court of California has yet to rule in *In re Humphrey* and could still declare money bail unconstitutional independent of the outcome of the referendum. See [Technical Appendix A](#) for more information.

⁸ This was one of dozens of shifts in state and local pretrial policies. Within the judicial branch, the Judicial Council issued numerous other orders modifying court operation and all county courts followed suit, issuing orders of their own (California Courts 2020a).

⁹ Even prior to the zero-bail order, each county had independently reduced its jail population—some by more than 50 percent—by releasing some inmates early and booking fewer arrested people into jail (Hayes and Harris 2020; Lofstrom and Martin 2020).

our analysis cannot inform. First, we cannot determine how SB 10 might affect release decisions at or after arraignment, when formal charges are presented and defendants enter a plea. Instead, we examine how our estimates of current pre-arraignment release rates compared to those likely under SB 10. Second, we cannot examine whether or how eliminating money bail might affect pretrial detention because we cannot determine current rates of release or detention on bail.

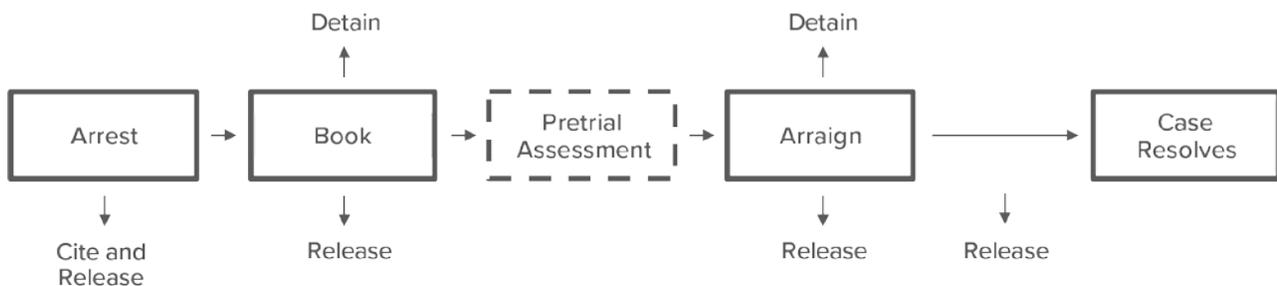
This report begins with an overview of the current system governing pretrial release and describes how pretrial decisions would be made under SB 10. We then describe the data used in our analysis. Next, we explore how SB 10 would affect pretrial release decisions. We then investigate racial disparities currently and under SB 10, including disparities in holds for risk assessment and what could be done to mitigate that inequity. We also examine how the use of pretrial risk assessments could affect counties. We conclude with a discussion of the policy implications of our work.

How Pretrial Release Works Now

Pretrial refers to the time between arrest and when charges are resolved through dismissal, plea, or trial. Early in this period, law enforcement officers, pretrial services officers, and judges make decisions about whether to release or detain arrestees. Arresting officers can choose to cite and release people or take them into custody to be booked. Booking officers can choose to release people after they are booked or admit them to jail, pretrial services officers may make pretrial risk assessments and a release recommendation (this step is currently optional but would be mandatory under SB 10), and judges can release or detain people prior to and at arraignment (Tafoya et al. 2017). Figure 1 illustrates this process. According to current California law, pretrial release decisions should be based primarily on whether arrested individuals pose a threat to public safety and secondarily on whether they will appear in court.

FIGURE 1

Release and detention decisions occur at many different points in the pretrial period



SOURCE: Author illustration.

NOTE: Dotted lines indicate an optional step in the current system. Defendants can be released between arraignment and case resolution by, for example, paying bail or further petitioning the court.

Practices governing pretrial release differ across the state. Counties' pretrial investigation processes vary considerably, as do their policies governing pretrial risk assessment and bail.¹⁰ Some counties may not perform pretrial investigations at all (CSJ 2015; PDRW 2017). As of 2019, pretrial services investigations in 49 of California's 58 counties may have included risk assessment. Counties that have implemented pretrial risk assessment use different tools, each of which requires different data (criminal history, demographic, and/or socioeconomic) to predict the risk of different kinds of pretrial misconduct (rearrest, failure to appear in court, or both) (Harris, Goss, and Gumbs 2019).¹¹ In counties that use pretrial risk assessment tools, pretrial services officers may release arrestees prior to arraignment based on assessment results. Since California lacks a statewide bail schedule, judges create bail schedules in each county, which has led to substantial variation in standard bail amounts for the same crimes. For example, bail for first-degree robbery is \$25,000 in Fresno and \$200,000 in San Bernardino County (Amatya et al. 2017; Tafoya 2013).¹²

Pretrial Release under SB 10

If the November 2020 referendum passes, SB 10 will become law statewide. The goals of pretrial justice—promoting court appearances and public safety—will remain the same. How they might be achieved will differ.¹³ In particular, pre-arraignment release processes that currently vary across counties will be governed by a standard, statewide process that begins at booking; the process for arrestees who are cited and released will remain the same.¹⁴

As shown in Figure 2, under SB 10, all counties would conduct pretrial investigations for people arrested for felonies after they are booked into jail and before they are arraigned. Counties would also conduct investigations for people booked for misdemeanors who meet certain criteria (see textbox on page 10 for the ten primary exclusion criteria).¹⁵ The pretrial investigation for felony arrests and misdemeanor arrests meeting the exclusion criteria must include risk assessment using a validated pretrial risk assessment tool.¹⁶ The investigation should generally be completed within 24 hours but can be extended up to an additional 12 hours. Thus, people arrested for felonies or who meet at least one of the exclusion criteria may be held for up to 36 hours for assessment.

¹⁰ American Bar Association (ABA) pretrial services standards specify that the information gathered during a pretrial services investigation "should include factors shown to be related to risk of flight or threat of safety of any person or the community and to selection of appropriate release conditions." Factors the ABA deemed potentially worthy of consideration include a vast swath of legal and extralegal factors that individual counties may or may not consider, such as "the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings" (ABA 2007, 12).

¹¹ As of last year, 18 counties used the Virginia Pretrial Risk Assessment Instrument (VPRAI); 17 counties chose the Ohio Risk Assessment System (ORAS); four counties used the Public Safety Assessment (PSA); two used the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS); and four counties used their own instruments. Since that time, a few counties, including Los Angeles and Santa Clara, have either adopted or are considering adopting the PSA.

¹² As another example, bail for petty theft with priors is \$5,000 in San Francisco County and \$50,000 in San Bernardino County.

¹³ See [Technical Appendix A](#) for a discussion of the history of pretrial reform nationally and in California. See Harris, Goss, and Gumbs (2019) for a discussion of the goals of pretrial justice and the tradeoffs inherent in them.

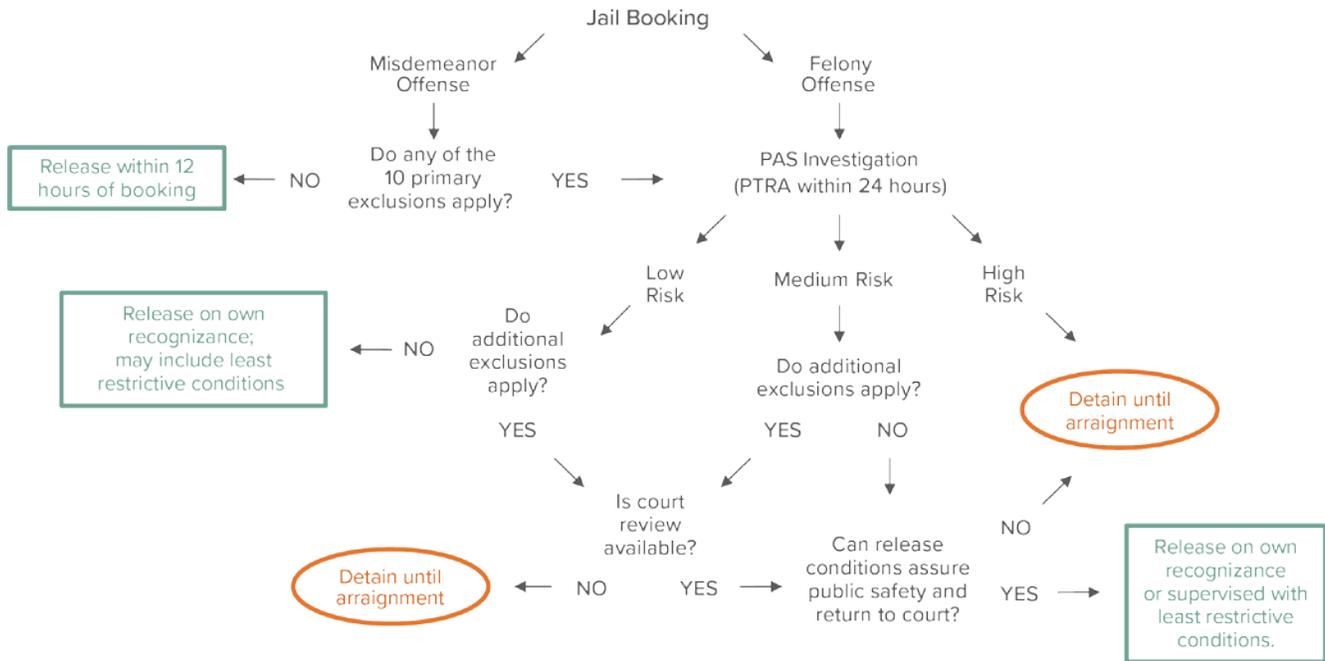
¹⁴ The Judicial Council will also establish statewide rules of court. Counties will then be able to augment those rules within the Judicial Council's framework.

¹⁵ Deciding which crimes meet exclusion criteria was and remains a political choice. However, preventative detention is currently allowed for many of these criteria, such as prior threats to witnesses. See [Technical Appendix A](#) for more information on the situations in which preventative detention is allowed.

¹⁶ In addition to a pretrial risk assessment using a validated pretrial risk assessment tool, a pretrial assessment services (PAS) investigator must gather information on the current charge, criminal history, and three-year failure to appear (FTA) history of each arrested individual. Supplemental information that may affect court appearance or public safety may also be collected.

FIGURE 2

SB 10 would standardize the decision-making process for pre-arraignment release and detention



SOURCE: Author illustration adapted from "SB 10: Prearraignment" (California Courts).

NOTES: "PAS" refers to pretrial assessment services; "PTRA" refers to pretrial risk assessment.

Following the pretrial investigation, individuals assessed as high risk are to be detained until arraignment, which by statute should take place within two days of arrest, but in practice can take far longer.¹⁷ By contrast, individuals assessed as low risk who do not meet additional exclusion criteria are to be released on their own recognizance.¹⁸ Although additional conditions of release (e.g., drug testing) may be applied, statutorily they should be the least restrictive nonmonetary conditions that promote public safety and court appearances.¹⁹ Only if no such conditions exist should a person be detained.

Individuals assessed as low risk who meet the additional exclusion criteria would follow the same path as those assessed as medium risk. Release decisions for these individuals hinge on whether and under what conditions they can be released without threatening public safety or missing court dates. If law enforcement officers, pretrial services officers, or judges do not think these goals can be met, these individuals will be detained until arraignment. Others should be released under the least restrictive conditions possible.

¹⁷ Statutorily, people must be arraigned within 48 hours of arrest (Cal. Penal Code § 825). However, weekends and court holidays mean that people are often detained longer (California Courts 2019, 2020b). According to a UCLA report, it is not uncommon for arrested people to wait six days to be arraigned (Amatya et al. 2017).

¹⁸ Additional felony arrest exclusion criteria are a "crime for which the person arrested was committed with violence against a person, threatened violence or the likelihood of serious bodily injury, or one in which the person committing the offense was personally armed with or personally used a deadly weapon or firearm in the commission of the crime, or personally inflicted great bodily injury in the commission of the crime" (Chapter 244 2019, 91).

¹⁹ These conditions are known as graduated sanctions, restrictions and requirements that allow pretrial services officers to keep closer watch on people released during the pretrial period. They might include regular reporting to a pretrial services officer, regular drug testing, or electronic monitoring (Tafoya 2015). Under SB 10, individuals "shall not be required to pay for any nonmonetary condition or combination of conditions imposed" (Chapter 244 2019, 91).

Primary SB 10 Exclusion Criteria

People who are booked for misdemeanors and who meet one or more of the following criteria would be subject to risk assessment under SB 10.

1. The arrest includes misdemeanor domestic violence or stalking.*
2. The arrest includes a misdemeanor sex offense.*
3. The arrest includes misdemeanor driving under the influence (DUI) in which injuries result, the driver has a blood alcohol content greater than 0.20, or the arrest is the third DUI arrest in 10 years.
4. The arrested individual is on probation or parole.
5. The arrested individual is pending trial or conviction.
6. The arrested individual was convicted of a serious or violent felony within five years.*
7. Three or more warrants for failure to appear in court were issued for the arrested individual in the past 12 months.*
8. The arrested individual committed a restraining order violation in the past five years.
9. The arrested individual violated conditions of pretrial release in the past five years.
10. The arrested individual was previously convicted of threatening a witness.

Note: * indicates that we can approximate the criterion in our analysis.

Data Sources and Limitations

Our analysis draws on two main sources of data. Prior PPIC research provides some information about whether people who are booked into jail are likely to be released within a few hours after booking, released on bail within the few days between booking and arraignment, or detained longer (Tafoya et al. 2017). We apply this information to data from the California Department of Justice’s Monthly Citation and Arrest Register (MACR). The MACR data provide offense-level information for all recorded arrests in the state between 2010 and 2015, as well as information on demographics, law enforcement agency and jurisdiction, arrest offense, arrest date, and whether the arrest led to a booking or cite and release. We rely primarily on data from 2015 because it is the most recent data available after the passage of Proposition 47, which changed the level of many nonviolent offenses from felony to misdemeanor.²⁰ We construct five-year arrest histories to determine the number of people arrested and approximate some of the exclusion criteria (see textbox above).²¹

²⁰ The pre-Proposition 47 period is not comparable to the post-Proposition 47 period in this context—fewer people were charged with drug and property felonies after Proposition 47 (Bird et al. 2018). Our exclusion measure for having been convicted of a serious or violent felony in the past five years is not affected because Proposition 47 did not affect charging for violent and serious crimes. In addition, the unsentenced population in California jails has remained relatively stable since Proposition 47. About two-thirds of California jail inmates are unsentenced.

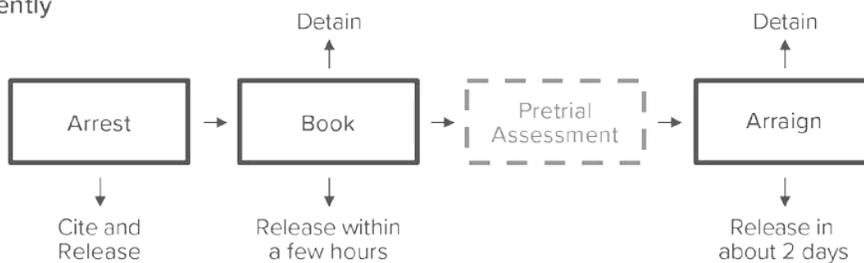
²¹ The 2015 arrest numbers reflect arrests of non-incarcerated adults who were not disposed through release to another agency (i.e., the arrestee was released without complaint or a complaint was sought). We assume those who are released to another agency are unlikely to undergo risk assessment until they reach their destination—if at all (e.g., in the case of those released to federal custody or escapees returned to jail, prison, or alternative programs). Similarly, those who were incarcerated (e.g., prison assault or escape) at the time of their offense would not be eligible for pretrial release. The 2015 arrest numbers we report exclude 51,225 arrests that lack the

Figure 3 shows the decision points in the pretrial period, with dark gray indicating the points for which we can create estimates, and light gray indicating the points for which we do not have data. We know which arrestees are cited and released in the field versus booked into jail. We can determine pretrial release rates for those currently likely to be released within hours of booking or after about two days (i.e., at or immediately after arraignment). We can also estimate rates of holds for risk assessment and release within 12 hours without assessment under SB 10. We do not have information about current risk assessment rates or the release decisions that would occur after risk assessment under SB 10.

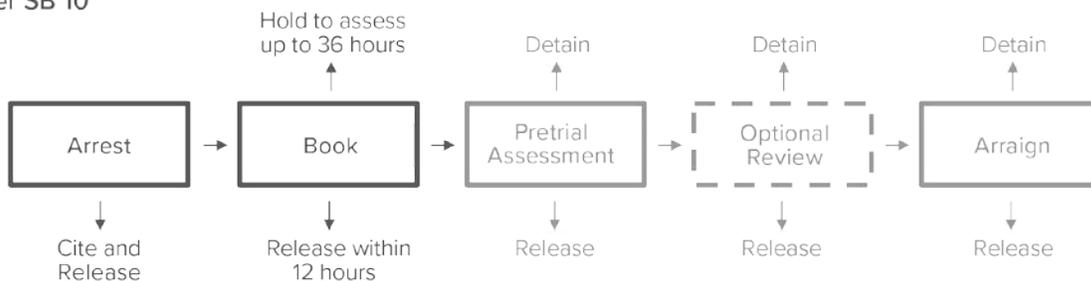
FIGURE 3

Due to data limitations, we can only examine some pre-arraignment decisions

Currently



Under SB 10



SOURCE: Author illustration

NOTE: Lighter gray decision points are those about which we have no information. Dotted lines indicate optional decision points: pretrial assessment is optional under the current system, while the “optional review” under SB 10 is a pre-arraignment judicial review process that counties are not required to implement.

There is no statewide source of information about the specific data elements—such as the current crime, criminal history, employment, and substance use—that might be collected during pretrial investigations or how they might inform release and detention decisions.²² In addition, very little is publicly known about the number of risk assessments conducted in counties and how risk assessments factor into pretrial decision-making. To our knowledge, information about pretrial risk assessment in California since 2016 is limited mainly to two counties: Sonoma and Santa Cruz.²³ Yet even in these two counties with long-established pretrial risk assessment systems,

name of the arrestee because those arrests could not be used to create arrest histories. To create arrest histories that best comport with the SB 10 exclusion criteria, we included only those 2010–2015 arrests in which a complaint was sought because only those arrests can lead to conviction. In 2015, a conviction was registered in 83 percent of felony cases in which a disposition had been filed; for misdemeanors the conviction rate dropped to just under two-thirds (Judicial Council 2016, 75-6). We created arrest histories using name and birthdate matching (supported with additional demographic and contextual information), as detailed in [Technical Appendix B](#). That process was imperfect and likely resulted in errors in both directions: making incorrect matches and missing potential matches. The extent of these errors is difficult to characterize. However, we tried to err on the side of using only those match criteria we felt reasonably confident would not result in excessive mismatches.

²² See footnote 10 for additional potential data elements that could be collected during a pretrial services investigation.

²³ Sonoma County has published an annual report exclusively related to the evaluation of pretrial services (Feld and Halverson 2019). In addition, the Santa Cruz County Probation Department included some information about pretrial services in its 2018 annual report (Fletcher 2019). In 2016, Santa Clara County released the

we do not know why some people undergo risk assessments and others do not. Without this information, we cannot evaluate whether risk assessments are being applied consistently or equitably to people arrested for similar crimes or who have similar criminal histories.²⁴ Nor can we determine whether the people who are being assessed now are the same people who are likely to be assessed under SB 10.

Our estimates assume the same numbers of arrests, felonies and misdemeanors, and decisions to cite and release or book an arrestee into jail currently and under SB 10. It is important to note that for our estimates of current practice, we are not able to determine how many people are risk assessed, why they are assessed, or exactly how long arrestees are detained. For our SB 10 estimates, we are not able to project release or detention decisions for those held for risk assessment because we do not have all of the data required to calculate whether arrestees would likely be considered high, medium, or low risk. For example, we do not have data on employment or housing, which some assessment tools used by counties require (Harris, Goss, and Gumbs 2019). We approximate five of the ten primary criteria that lead to risk assessment (see text box on page 10), so we are likely underestimating the number of risk assessments.²⁵ For the first part of our analysis, we assume that people will undergo risk assessment only once per year.²⁶

findings of its Bail Reform Workgroup. However, we exclude Santa Clara County from the following discussion because our conversations with the county indicate that the pretrial landscape has shifted considerably since this report. The Los Angeles County Probation Department included some information on pretrial services in its 2018 annual report, but little information about pretrial risk assessment (County of Los Angeles Probation Department 2019). In 2018, Sonoma County conducted risk assessments (5,031 total assessments) after 31.4 percent of adult arrests, whereas Santa Cruz County conducted risk assessments (2,726 total assessments) after 26.0 percent of adult arrests. According to California Department of Justice’s Open Justice, there were 16,003 adult arrests in Sonoma County and 10,495 in Santa Cruz County in 2018. Santa Cruz reported the following about those assessed and monitored pretrial, “Given the money bail options, law enforcement’s ability to cite and release for low level offenses, as well as the “Sheriff’s O.R.” book and release with court date procedures, the remaining population assessed and eventually monitored by Pretrial staff tend to be more serious crimes, or individuals with more complex criminal histories” (Fletcher 2019, 7).

²⁴ Sonoma County does an excellent job of tracing how initial risk predictions are “enhanced” based on charge and criminal history and how pretrial services officers and judges override those risk predictions, mainly to deny pretrial release or to intensify supervision conditions for those released. But Sonoma is just one of 58 counties.

²⁵ We think we are likely underestimating by about 24 percent. See page 25 for more information.

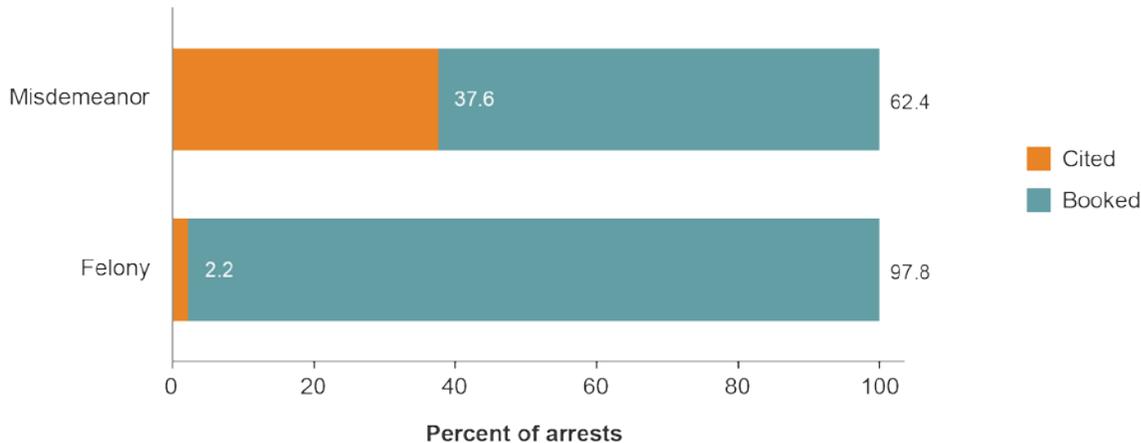
²⁶ We cannot examine exclusions 3, 5, 8, and 9. In the MACR, misdemeanor DUI arrests are reported under one code, which is overly inclusive. In addition, we do not have 10-year MACR arrest histories. Threats to witnesses are encompassed in our felony and violent felony exclusions, but they only extend back five years. Additionally, it is unclear how often people will be assessed (and reassessed). Counties may want to reassess more or less often to determine whether a low-risk person has become riskier over time or whether a high-risk person has become less risky over time (although the latter is harder to assess with most risk assessment tools). Counties could choose to assess individuals at other intervals (e.g., every six months), if they meet specific criteria (e.g., have a pending charge—which is a scored factor in many pretrial risk assessments), or each time they are arrested for an offense that meets the risk assessment criteria.

Pre-Arraignment Release and Risk Assessment

In this section, we examine pre-arraignment release decisions from 2015 and compare them with those that are likely under SB 10. Our analysis includes 810,266 non-incarcerated adults who were arrested in 2015, 71.2 percent for misdemeanors and 28.8 percent for felonies. As shown in Figure 4, 62.4 percent of those arrested for misdemeanors were booked, whereas 97.8 percent of those arrested for felonies were.

FIGURE 4

Cite and release is much more common after a misdemeanor arrest



SOURCE: Author illustration based on 2015 MACR, Tafoya et al. (2017), and SB 10.

NOTES: Excludes arrests of prisoners and escapees, who would not be eligible for pretrial release. Based on the advice of the architects of the bill, we assume that cite and release versus booking decisions made by law enforcement will not change under SB 10.

Under SB 10, about four in ten booked arrestees would be held for risk assessment

We find that about 311,800 people, or 38.5 percent of those arrested, would be held for risk assessment at least once per year under SB 10.²⁷ All people booked for felonies and 23.4 percent of those booked for misdemeanors are likely to be held for risk assessment—a process that should finish within 24 hours but could take up to 36 hours, if prosecutors petition for more time.

Felony charges would be the most common reason for risk assessment

Under SB 10, whether a person is held for risk assessment should be determined by the offense for which they are booked and their criminal history. Figure 5 shows the number of people booked in 2015 by violent and nonviolent felony bookings and indicators for the five misdemeanor exclusion criteria we can measure.²⁸ We estimate the majority of arrestees (about 498,000) would not be held for assessment. Among those who would likely have been held for risk assessment at least once, most of them (73.1%, or nearly 228,000 arrestees) would be held because they were booked on felony charges. Together, the exclusion criteria increase the number of risk assessments to

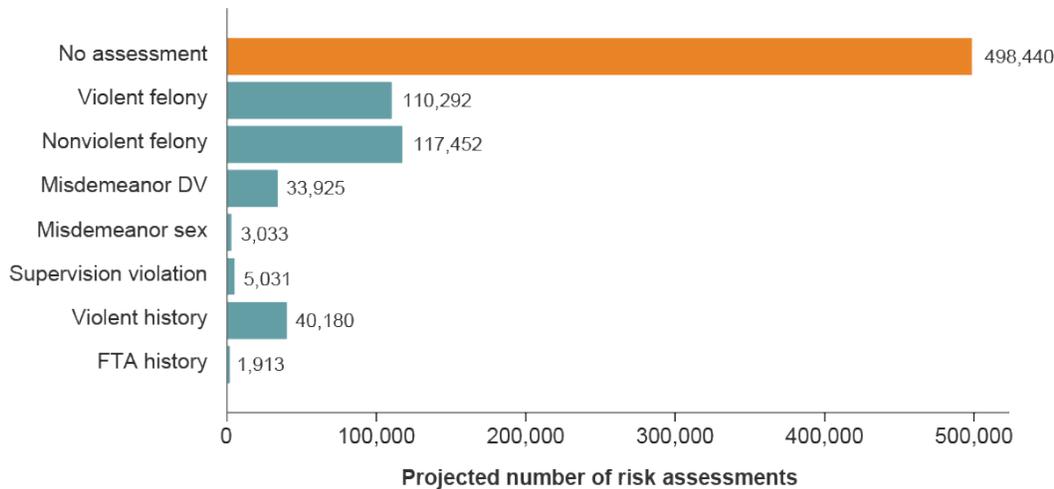
²⁷ When we present statistics related to arrests of people in 2015, we use the first 2015 arrest that would meet at least one hold criterion or the first 2015 arrest. Sometimes they are the same; sometimes they are not.

²⁸ The legislature could have limited risk assessment to violent felonies, which may help reduce racial disparity in pretrial detention. We are aware of one study that directly compared different policy options regarding who to detain after risk assessment. That study found that racial equity could be achieved by detaining only the highest-risk people charged with violent felonies or domestic violence (Picard et al. 2019).

be made by 36.9 percent.²⁹ If only those booked for violent felonies were assessed, fewer than 20 percent of those booked—about 110,000 people—would be assessed statewide.³⁰

FIGURE 5

Felony charges would be the most common reason for assessment under SB 10



SOURCE: Author illustration from the 2010–2015 MACR (n=587,761 adults booked in 2015).

NOTES: These estimates reference the first 2015 arrest that met a hold criterion or the first arrest. Each criterion is mutually exclusive. See [Technical Appendix B](#) for the definitions used to approximate each criterion. Our approximation of serious or violent criminal history is an arrest that was referred for conviction—not a conviction—in the past five years. We address this limitation further in footnote 31 on page 14.

Twenty-seven percent of those likely to be held meet one of the five exclusion criteria we can measure. People booked for misdemeanor domestic violence are 10.9 percent of those likely to be held for risk assessment. An additional 12.9 percent would be held because they were arrested for a serious or violent offense within five years. However, not all people arrested for a serious or violent crimes are convicted—the actual exclusion criterion.³¹

SB 10 would affect the release timing for about a quarter of booked arrestees

As shown in Table 1, we estimate about 145,600 people—or 24.8 percent of people booked—would have their release status changed under SB 10. The vast majority (about 142,500) are misdemeanants who would be released earlier. However, we also estimate about 3,000 felons would be held longer for risk assessment under SB 10.

Many people booked for misdemeanors would be released sooner under SB 10

Using information reported by Tafoya et al., we estimate that currently 37.1 percent of booked misdemeanants (about 133,400 in 2015) are freed “within hours” (p. 13), 12.9 percent are released after about two days, and half

²⁹ In [Technical Appendix D](#), we present this figure for each county.

³⁰ The reasons booked people are likely to be held for risk assessment are based on the first arrest that meets the hold criteria. MACR data only include information on the most serious charge, as determined by the DOJ’s offense hierarchy. For example, a person arrested for felony robbery and repeat misdemeanor DUI would register only for the robbery. With respect to the volume of risk assessments, this distinction is immaterial: both charges meet risk assessment criteria. Similarly, charges that meet risk assessment criteria are generally higher on the hierarchy, so it is unlikely that we omitted potential risk assessments due to this data limitation.

³¹ We can examine how our measure might shift if we were able to measure convictions by looking at the statewide felony conviction rate reported by the Judicial Council. The conviction rate for all felonies in 2015 was 83 percent—and it similarly hovered around 80 percent between 2010 and 2014 (Judicial Council 2016). Fifty-six percent of the people who met the serious or violent criminal history criterion had only one prior arrest in the previous five years. Those who have multiple prior arrests are near certain to be convicted at least once. After two arrests, they have only a 2.9 percent chance of not being convicted: $(1-0.83)^2=0.029$. Among those arrested only once, there might be about 3,825 fewer convictions = $40180 - ((40180 * 0.83 * 0.56) + (40180 * 0.44))$ and therefore that many fewer risk assessments statewide.

are detained.³² Under SB 10, 76.6 percent of those booked into jail for misdemeanors—nearly 276,000 people—would be released within 12 hours rather than held for risk assessment. This would constitute a significant reduction in detention for those booked for misdemeanors—about 142,500 people who currently would be detained or released in about two days are likely to be released within hours—provided that they do not meet one of the five exclusion criteria we cannot approximate. Prior research suggests that people who are released within one day, rather than being held for two to three days, may be less likely to be rearrested and more likely to meet their court dates (Holsinger 2016; Lowenkamp, VanNostrand, and Holsinger 2013).

More people booked for felonies would be held longer under SB 10

We can draw a similar comparison with an opposite effect for those who are arrested for felonies. According to our calculations based on the statistics reported by Tafoya et al. (2017), 4.5 percent of those released after being booked for felonies are currently released within a few hours.³³ Under SB 10, these individuals (about 3,000 in 2015) would spend up to 36 hours in jail for assessment, rather than being released within a few hours. Depending on the results of the risk assessment, some of these individuals may not be released while their charges remain pending.

TABLE 1

One-quarter of those who are booked would experience a change in their release status under SB 10

Bookings		Current release and detention			Release and risk assessment under SB 10		Change in release status under SB 10	
Type	Number	Released within hours	Released in about 2 days	Detained	Released within 12 hours	Held up to 36 hours for assessment	Number	%
Misdemeanor	360,017	133,387	46,622	180,008	275,935	84,082	142,548	39.6
Felony	227,744	3,075	65,248	159,421	0	227,744	3,075	1.3
All	587,761	96,037	111,870	339,429	275,935	311,826	145,623	24.8

SOURCE: Author calculation. Statistics reported by Tafoya et al. (2017) are applied to the 2015 MACR.

NOTES: Table shows that 142,548 booked misdemeanants would be released sooner under SB 10, while 3,075 booked felons would be held longer. Some individuals who are held for risk assessment may be released after assessment.

We cannot assess how SB 10 would affect people currently released on bail

We cannot make similar comparisons for the people most likely to be affected by SB 10: those who are currently released on bail and those who are unable to pay their bail and therefore detained. SB 10 abolishes bail, so we know that people who are currently released or detained on bail will experience some change in how decisions about their pretrial release are made. However, we cannot determine how SB 10 might impact their pretrial release and its timing.

According to Tafoya et al. (2017), 53.0 percent of people released after a felony booking are released on bail in about two days (about 36,100 in 2015) and 11.0 percent of people released after a misdemeanor booking are released on bail in about two days (about 20,300 in 2015). The percentage is greater for felons because felons are more likely to have bail applied and misdemeanants are more likely to be released without it.³⁴

³² According to our calculations based on Tafoya et al. (2017), 74.1 percent of those released after a misdemeanor booking are released “within hours” of booking. See [Technical Appendix Table C2](#) for more details.

³³ We use the following calculation: (booked and released after felonies = total booked and released-booked and released after misdemeanors)/(total booked for felonies) = (301,991-(204,562+85,949))/(244,669+11,495)

³⁴ See [Technical Appendix Table C3](#).

Although we know all people booked for felonies would be held no more than 36 hours for risk assessment, we do not know whether they might be released or when. They could be released within a day, within two days (i.e., at arraignment), or not until their charges resolve. Similarly, we cannot determine which misdemeanants who were released on bail might be held for risk assessment, or whether misdemeanants held for risk assessment might be detained thereafter.

Racial Inequity before and after SB 10

The causes of racial disparities in criminal justice outcomes are wide-ranging. Social and economic inequity can motivate differences in criminal offending patterns, especially for violent offenses (e.g., Hindelang 1978; Sampson and Lauritsen 1997, Tonry and Melewski 2008; O’Flaherty 2015). For example, African Americans are more likely to be arrested for violent crimes, and this seems partly attributable to deepening socioeconomic inequality.³⁵ In examining neighborhood crime rates, Lauren Krivo and her colleagues (2018) found that most had lower levels of violent crime in 2013 than in 1999, but very poor neighborhoods with high concentrations of African Americans saw increases.

Laws are also enforced differently across racial groups: the processes by which people are arrested, detained, and charged, and how their cases are resolved, are not race-neutral (Crutchfield et al. 2010; Kurlychek and Johnson 2019; Petersilia 1985). Racial disparities in formal criminal justice processing begin at arrest (Harris et al. 2009). Research on pretrial justice, in particular, has found that African Americans and Latinos are disadvantaged relative to whites in the amount of bail they are offered and their ability to secure pretrial release (Arnold, Dobbie, and Yang 2018; Demuth 2003; Kutateladze et al. 2014; Schlesinger 2005).

Prior PPIC research indicates substantial racial disparities in who is arrested in California, with African Americans and Latinos overrepresented and whites and Asian Americans underrepresented (Lofstrom et al. 2018).³⁶ We depict these inequities for people arrested in 2015 in Figure 6. Latinos make up 39.0 percent of California’s population but are 44.4 percent of those arrested, whereas whites are 38.0 percent of the population but only 33.3 percent of those arrested. African Americans are the most overrepresented in arrests relative to their share of the population (15.6% of arrests; 6.0% of population) and Asian Americans are the most underrepresented (3.3% of arrests; 14.0% of population).

African Americans are the only racial group more overrepresented in arrests for felonies than in arrests overall. Whereas African Americans are 15.6 percent of those arrested, they are 19.9 percent of those arrested for felonies.³⁷

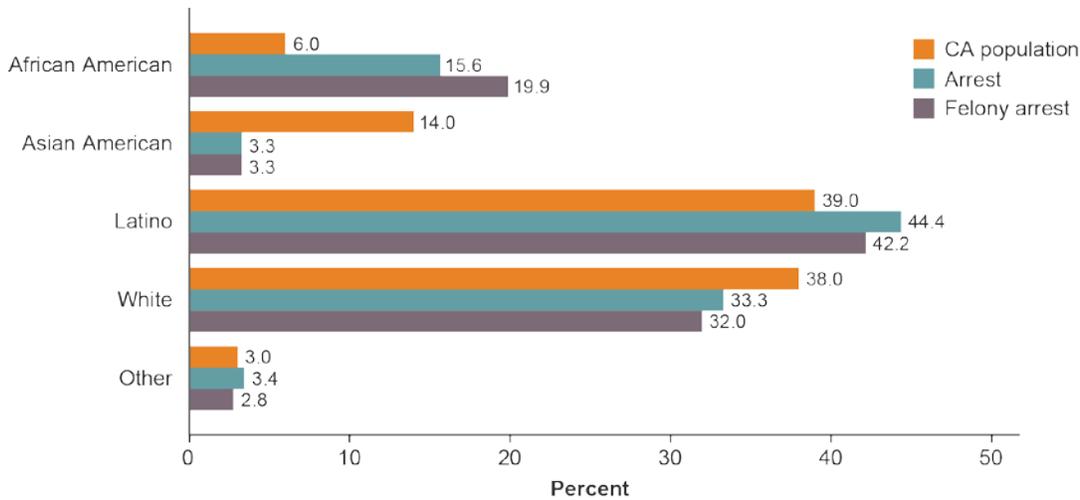
³⁵ Notably, Gary LaFree and his colleagues (2010) found substantial convergence in nationwide homicide arrest rates for whites and African Americans between 1960 and 2000.

³⁶ The arresting officer at the scene typically records race. How officers made race determinations is unknown, but there are several potential avenues by which race can be determined. If official identification is available, that will be used. Otherwise, the officer may assume race, ask the arrested individual to self-report race, or rely on the criminal record, if one is available. After we created arrest histories we examined the consistency of the race variable within individuals. Of people who were arrested two or more times (n=441,851), 89.3 percent were consistently characterized as the same race and an additional 10.6 percent were classified as one race most frequently. The most common dual classification is Hispanic-white. See [Technical Appendix B](#) for more on how we resolved inconsistent race and gender.

³⁷ We also see disparities in cite and release. Among those arrested for felonies, whites are more likely to be cited and released compared to people of all other races. Whites are 32.0 percent of those arrested for felonies, but 43.5 percent of those cited and released after a felony arrest. By contrast, African Americans are only 12.9 percent of those cited and released after a felony arrest. Please see [Technical Appendix Table C4](#) for more information.

FIGURE 6

African Americans and Latinos are both overrepresented in arrests in California

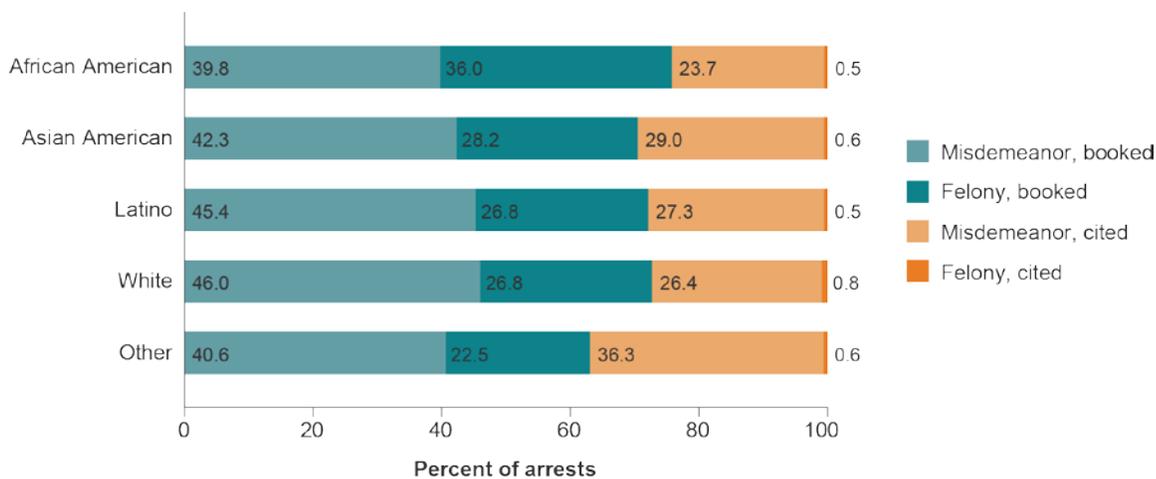


SOURCE: Author calculation from the 2015 MACR and Johnson (2017).

Similar racial inequities exist in how arrests are handled. In Figure 7 we show that, among those arrested, African Americans are far more likely to be booked for felonies than people of all other races. Thirty six percent of arrested African Americans are booked for felonies, compared with only 26.8 percent of arrested whites and Latinos and 28.2 percent of Asian Americans. African Americans are also less likely than people of other races to be cited and released—less than one-quarter of arrested African Americans are cited and released. By contrast, about three in ten arrested Asian Americans are cited and released.

FIGURE 7

African Americans are more likely than people of all other races to be booked, particularly for felonies

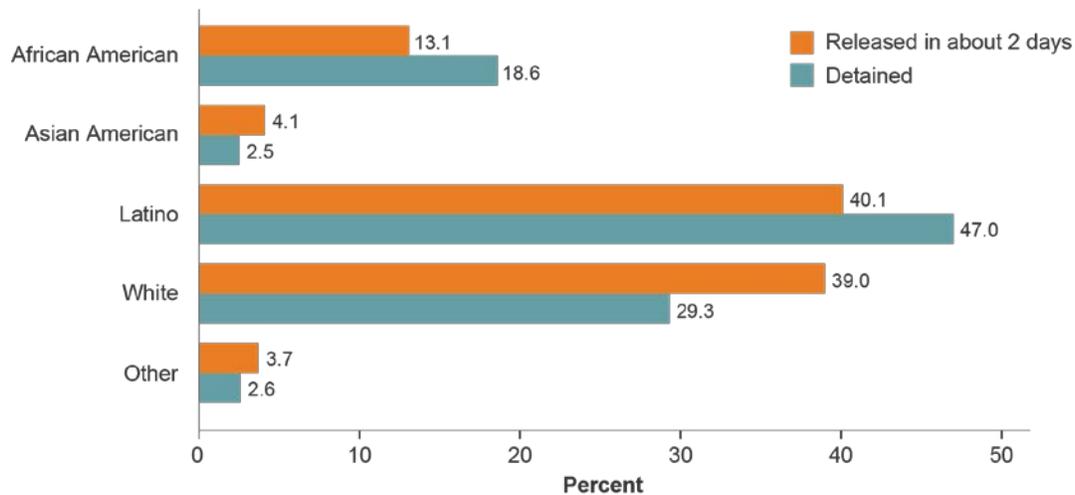


SOURCE: Author calculation from the 2015 MACR (n=810,266 people arrested).

We relied on information reported by Tafoya et al. (2017) to estimate rates of pretrial release within two days and pretrial detention after two days by race.³⁸ Figure 8 shows that Latinos and African Americans are far more likely than whites and Asian Americans to be detained under the current system. African Americans are 18.6 percent of those detained and only 13.1 percent of those released—a 5.5 percentage point discrepancy. By contrast, whites are 39.0 percent of those released and only 29.3 percent of those detained—a 9.7 percentage point discrepancy in the opposite and more favorable direction.

FIGURE 8

Latinos and African Americans are currently more likely than whites and Asian Americans to be detained



SOURCE: Author calculation from the 2010–2015 MACR and Tafoya et al. (2017).

Racial inequity in arrest and booking rates would lead to inequity in holds for risk assessment

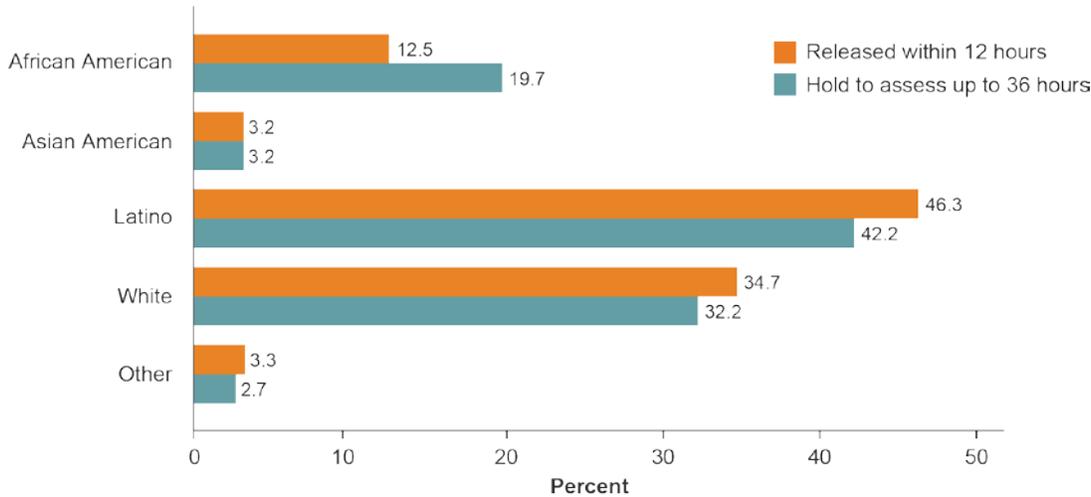
Existing racial inequity in arrest and jail booking would determine whether there is racial inequity in holds for risk assessment. As shown in Figures 6 and 7 above, existing racial inequity in felony arrest and booking rates disfavors African Americans, particularly relative to whites (Lofstrom et al. 2020). Under SB 10, all people booked for felonies will undergo risk assessments, whereas those who are cited and released will not. Unless additional policies are put in place to mitigate existing inequities in whether people are cited and released or booked into jail, these inequities will be reproduced in the rates for which people are held for risk assessment.

The picture is more complicated among those arrested for misdemeanors because some people arrested for misdemeanors will not be held for risk assessment. As shown in Figure 9, among those arrested for misdemeanors, only African Americans are less likely to be released within 12 hours than they are to be held for 24 to 36 hours. African Americans make up 19.7 percent of those likely to be held for risk assessment but only 12.5 percent of those likely to be released—a 7.2 percentage point discrepancy. By contrast, whites make up 32.2 percent of those held for risk assessment and 34.7 of those released—a difference of 2.5 percentage points and in the opposite direction. Similarly, Latinos are 42.2 percent of those held for risk assessment and 46.3 percent of those released—an even larger discrepancy of 4.1 percentage points in the opposite and more favorable direction.

³⁸ See [Technical Appendix Figure C1](#). Unfortunately, we cannot break down these rates by offense level.

FIGURE 9

Under SB 10, African American misdemeanants would be more likely to be held for assessment than released quickly



SOURCE: Author calculation from the 2010–2015 MACR.

Some African American and Latino misdemeanants would be released sooner under SB 10, but racial inequity in how long people are held would increase

SB 10 is likely to increase the number of African American and Latino misdemeanants who are released within 12 hours rather than held for up to two days. But it is also likely to increase inequity in how African American misdemeanants are treated relative to misdemeanants of other races. Far more Latinos are likely to be released sooner. Few whites and Asian Americans, if any, are likely to be detained longer. As shown in Table 2, 38.0 percent of Latinos are currently released in about two days. Under SB 10, 49.2 percent of Latinos would be released within 12 hours—a difference of 11.2 percentage points. By comparison, the share of African Americans who would be released sooner under SB 10 will grow by only 2.2 percentage points, from 33.7 percent to 35.9 percent. In contrast, about 200 whites and 1,300 Asian Americans who currently are likely to be released in about two days may be held for risk assessment rather than released within 12 hours. Whether they will spend more or less time in jail will depend on whether they are released or detained after risk assessment, which we cannot determine.

TABLE 2

More Latinos and African Americans are likely to be released sooner under SB 10

	2015 jail bookings		Currently released in about two days		Likely released within 12 hours under SB 10		Difference (Released sooner under SB 10)	
	Number		Number	%	Number	%	Number	% pt
African American	96,037		32,364	33.7	34,492	35.9	2,128	2.2
Asian American	18,626		10,170	54.6	8,830	47.4	-1,340	-7.2
Latino	259,310		98,538	38.0	127,758	49.2	29,220	11.2
White	196,272		95,977	48.9	95,749	48.8	-228	-0.1
Other	17,516		9,091	51.9	9,106	52.0	15	0.1
Total	587,761		246,140		275,935			

SOURCE: Author calculation from the 2015 MACR and statistics reported by Tafoya et al. (2017).

NOTE: Comparisons reflect racial differences in how misdemeanor arrests are handled now relative to how they would be under SB 10.

Racial Inequity in Risk Assessments

Under SB 10, people booked for felonies or who have violent criminal histories are among the likeliest to be held for risk assessment. Prior PPIC research found that African Americans are more likely to be arrested for felonies, especially violent felonies, and that this inequity has persisted over many years (Lofstrom et al. 2018; 2020). Our own analysis indicates that African Americans are about twice as likely as people of other races to be booked after felony arrests. We therefore expect that African Americans would be more likely than people of other races to be held for risk assessment.

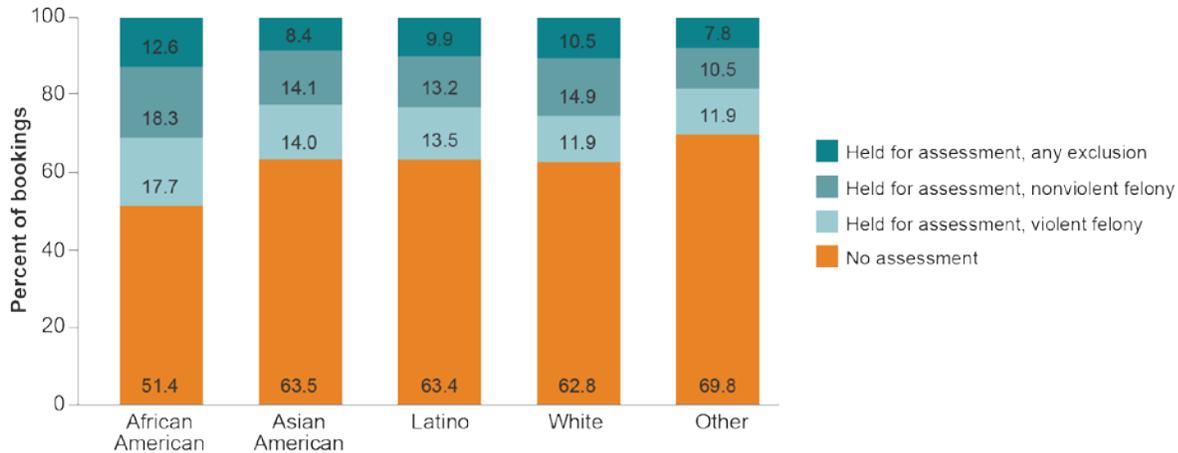
Indeed, we estimate that African Americans are about 12 percentage points more likely than people of other races to be held for risk assessment (Figure 10).³⁹ Two factors drive this striking inequity: inequity in felony booking rates and inequity in the likelihood of meeting one of the exclusion criteria. African Americans are at least 4 percentage points more likely than people of other races to be held for risk assessment after a violent felony booking and at least 3 percentage points more likely to be held for risk assessment after a felony booking. African Americans are also at least 2 percentage points more likely than people of other races to be held for risk assessment because they have a serious or violent criminal history.⁴⁰

³⁹ We present this figure for each county in [Technical Appendix D](#).

⁴⁰ See [Technical Appendix Table C4](#).

FIGURE 10

African Americans would be far more likely than people of other races to be held for risk assessment



SOURCE: Author calculation from the 2010–2015 MACR (n=587,761 adults booked in 2015).

NOTE: Racial differences are statistically significant at $p < 0.001$.

Reducing Racial Inequity

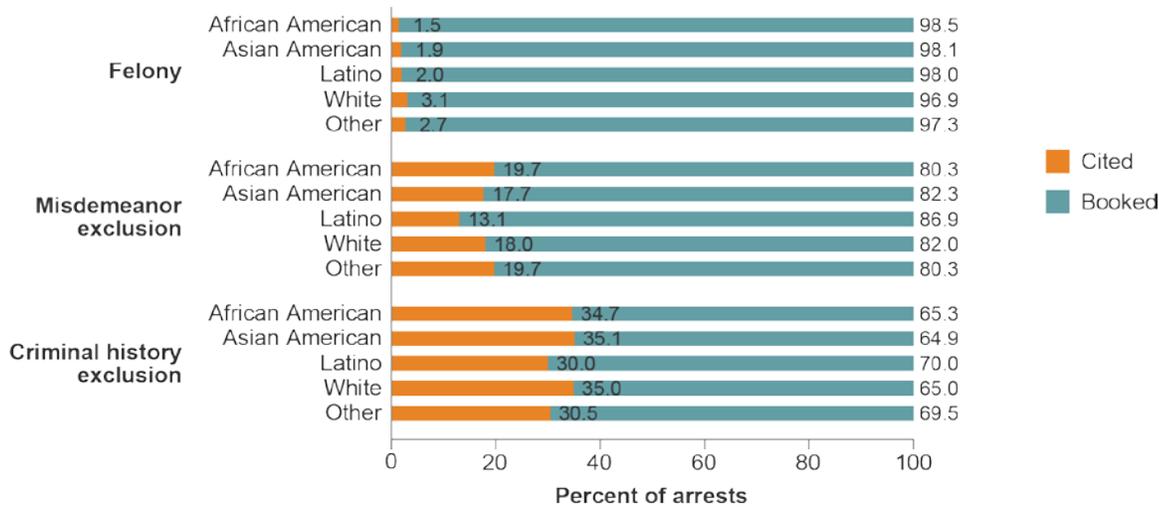
Our projections of racial inequities in the rates at which people are held for risk assessments follow from a combination of existing inequity in criminal justice outcomes and disparate offending. SB 10 alone is unlikely to mitigate existing racial inequities, but the way the law is implemented could have an impact. For example, law enforcement could reduce racial inequities by booking every arrestee who meets the criteria for risk assessment. Although a consistent booking policy would result in a greater number of bookings and holds—which would carry administrative costs and could lead to poorer criminal-justice outcomes for detainees—it would also reduce officer discretion and racial disparities in booking decisions.

Figure 11 shows evidence of racial inequity in most booking decisions, though these inequities do not uniformly advantage or disadvantage people of one race.⁴¹ Among those who would meet the hold criteria because they were arrested for felonies, whites are twice as likely as African Americans to be cited and released (3.1% versus 1.5% of those arrested for felonies). Under SB 10 as it is written, those who are cited and released would not be assessed. If all people arrested for felonies were booked and then assessed, there would likely be roughly 5,200 more bookings and risk assessments, but the racial inequity associated with the booking decision would be reduced.

⁴¹ We present this figure for each county in [Technical Appendix D](#).

FIGURE 11

Racial inequity in booking decisions can be eliminated by booking all those who meet the risk assessment criteria



SOURCE: Author calculation from the 2010–2015 MACR.

NOTE: Racial differences are statistically significant at $p < 0.001$.

Similar logic can be applied to those likely to meet the misdemeanor exclusion criteria associated with domestic violence and sex crimes. In these booking decisions, nearly one in five (19.7%) African Americans are cited rather than booked, which means they would not be held for risk assessment. Latinos are the most disadvantaged in this category: only 13.1 percent are cited rather than booked—a difference of 6.6 percentage points relative to African Americans. If all people arrested on misdemeanor domestic violence or sex crimes charges that meet one of SB 10’s exclusion criteria were booked rather than cited, there would likely be nearly 7,300 more bookings and risk assessments made statewide—and this substantial inequity would be reduced.

When we examine criminal-history factors (supervision violation, serious or violent crime, or failure to appear) that would lead to being held for risk assessment, Latinos are disadvantaged relative to those of other races. Only 30 percent of Latinos with a relevant criminal history are cited and released, whereas about 35 percent of those of other races are—a 5 percentage point difference. If those whose criminal histories would meet the criteria for risk assessment could be identified at the point of arrest, about 23,000 more people would be booked and then assessed, thereby reducing this steep inequity.

However, achieving these equity gains would require booking and assessing tens of thousands more people. While booking individuals who would meet risk assessment criteria would reduce officer discretion and improve consistency and equity, this process would also run counter to SB 10’s goal of safely releasing more people into the community. In addition, as we discuss below, these processes carry costs. The administrative costs include booking officers’ time, pretrial services officers’ time, and associated jailing costs. Relative to cite and release, these costs may be quite substantial (Allen 1972; Hirschel and Dean 1995). For pretrial detainees, the costs include poorer criminal justice outcomes, job loss, and loss of safety net access.

Additionally, these modest equity gains would not address the deep inequities in felony arrest and overall pretrial detention rates that African American currently face. Nor would they address the disproportionate holds for risk assessment African Americans would face under SB 10. Other policy solutions will be required to correct these inequities. For example, Sarah Picard and her colleagues (2019) explored potential solutions to inequitable pretrial detention rates in New York City. They found that they could minimize pretrial detention and eliminate

most racial inequity in detention rates by detaining only those people arrested for violent crimes who also fell into the highest-risk categories.⁴² Under such a policy, African Americans would remain more likely to undergo risk assessment, but more people would be released and the steep racial inequity in pretrial release could be substantially reduced. Moreover, the principle of targeting violent arrestees at high risk of reoffending for detention could be applied in SB 10's pre-arraignment context (Mayson 2018). For example, SB 10 could be refined to allow those charged with nonviolent felonies to be released without assessment. Our analysis suggests that releasing nonviolent felons without assessment could eliminate some of the inequity in holds for risk assessment that African Americans will face.

Pretrial Risk Assessment and Counties

In this section, we examine how SB 10's requirements for pretrial risk assessments could affect counties. Above, we estimate that at least 311,000 people would be held for risk assessment each year. However, counties may conduct risk assessments multiple times in a year for those who are rearrested and meet criteria for risk assessment. In 2015, more than one-third of arrests (37.7%) were rearrests of a person who had been arrested earlier in the year. About half of these rearrests resulted in a booking and met at least one of SB 10's risk assessment criteria. If counties choose to conduct risk assessments for every booked arrest meeting one of the assessment criteria, we estimate counties would conduct more than 450,000 risk assessments annually.⁴³

California's counties vary dramatically in the number of arrests, the type of arrests (e.g., felony or misdemeanor) and how the arrests are processed (e.g., cite and release or booking) (Lofstrom et al. 2018).⁴⁴ These differences will determine how many risk assessments are likely in each county under SB 10. In 2015, the median county processed about 8,000 arrests. However, Los Angeles County processed nearly 275,000 arrests. Fifteen counties processed 2,000 or fewer arrests. Eighteen counties processed more than 20,000 arrests.⁴⁵

Statewide, about 70 percent of arrests are for misdemeanors and 30 percent are for felonies, yet there is considerable variation across counties. In Marin, San Mateo, and Santa Barbara Counties, less than 18 percent of arrests in 2015 involved felonies. In contrast, in Modoc, San Francisco, and Sierra Counties more than one-third of arrests involved felonies.⁴⁶ As described above, all felony arrests would require risk assessments under SB 10.

Counties also process these arrests differently, which would again influence the volume of risk assessments since arrestees who are cited and released would not undergo risk assessment. Statewide, about three-quarters of arrests lead to bookings. However, in Fresno, San Mateo, Santa Barbara, and Shasta Counties, fewer than half of 2015 arrests led to booking. By contrast, in Del Norte, Mariposa, Sutter, and Trinity Counties, 90 percent or more of arrests did.⁴⁷

These variations contribute to the wide range in the number of risk assessments each county is likely to perform in a given year (Figure 12). We estimate Mono County, the smallest county with its own jail, is likely to make only

⁴² For a summary of the Picard et al. (2019) study, see the case study in the technical appendices associated with Harris, Goss, and Gumbs (2019).

⁴³ This estimate is also likely an underestimate, in part because we cannot measure all hold criteria. For example, some of those who are rearrested for "non-risk assessment eligible" crimes may in fact be eligible because those crimes occurred while other charges were pending.

⁴⁴ The arrest statistics reviewed in this section reference all arrests (n=1.2M), not first arrests (n=800K). Risk assessment statistics are relative to the first arrest that meets the hold for risk assessment criteria.

⁴⁵ See [Technical Appendix Figures C7 to C9](#) for related maps.

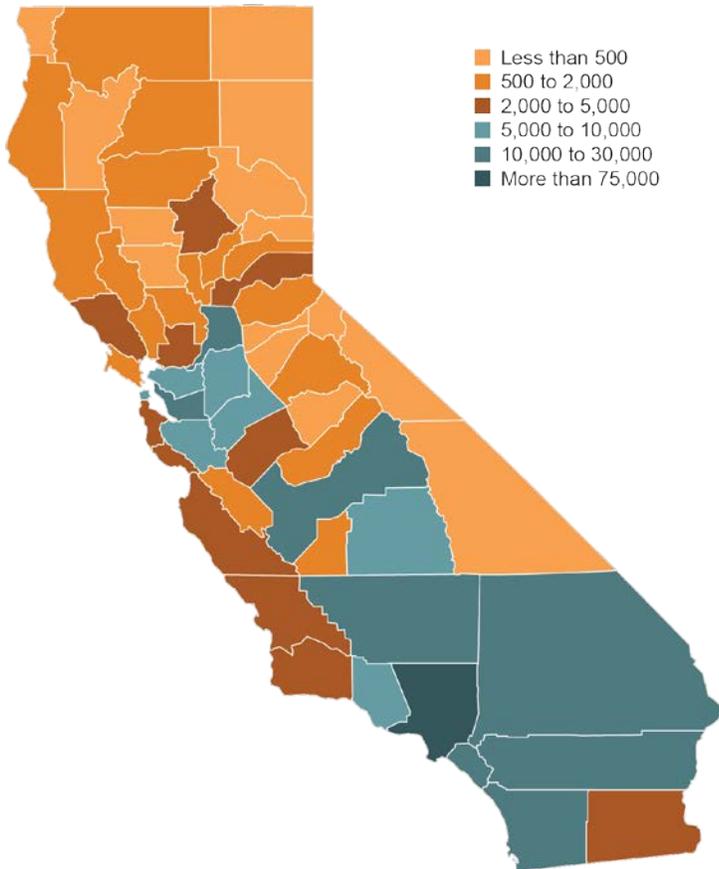
⁴⁶ In Nevada, Colusa, and San Luis Obispo Counties, less than 7 percent of arrests involved violent felonies, whereas violent felony arrest rates exceeded 15 percent in Sacramento and Inyo Counties.

⁴⁷ See [Technical Appendix Figures C5 and C6](#) for related maps.

110 risk assessments, whereas Los Angeles County is likely to make more than 78,000. Nineteen counties would conduct fewer than 1,000 assessments, whereas nine counties would conduct more than 10,000.⁴⁸

FIGURE 12

The number of risk assessments would likely vary dramatically across counties



SOURCE: Author calculation from the 2015 MACR.

Staffing Pretrial Risk Assessment

The above analysis suggests the burden associated with SB 10 will be unevenly distributed across counties. At a minimum, counties will need to employ enough pretrial services officers to conduct pretrial risk assessments. In addition, if counties choose to supervise some people during the pretrial period (e.g., those assessed as high risk), they will also need to employ enough officers to handle the necessary pretrial supervision caseloads.⁴⁹

California's constitution requires the state to reimburse counties for the costs associated with implementing SB 10, but not to supplant the current investments each county already makes in pretrial services.

⁴⁸ Twenty-one counties would conduct between 1,000 and 4,000 risk assessments, whereas nine counties will likely conduct between 4,000 and 10,000 risk assessments. See [Technical Appendix Table C1](#) for county risk assessment rates. Risk assessment rates are related to the number of arrests and the number of arrests is related to the county population and resources. In [Technical Appendix Figures C3 and C4](#), we map risk assessment rates by 2015 arrests and 2015 county populations.

⁴⁹ The pretrial pilot studies currently underway in many counties indicate a near-universal interest in exploring different levels of pretrial supervision for those who are released. Pretrial supervision levels and the number of people to be supervised at each level are therefore likely to play roles in staffing levels. According to the American Probation and Parole Association, officers supervising adults at a low level can carry caseloads of about 200 people; those supervising adults at a moderate level can carry caseloads of 50, and those monitoring at a high level should carry caseloads of 20. People released with no conditions require no direct oversight by a pretrial services officer and therefore can be tracked administratively (Burrell 2006).

The number of officers that may need to be hired to make risk assessments will depend on the number of additional risk assessments that will be made, how long it will take to make them, and whether they will substitute or complement current pretrial investigations. The best evidence available indicates that pretrial risk assessments take about an hour to complete, whether or not they include an interview (BRWG 2016; DeMichele et al. 2018a). In the future, it may be possible to automate risk assessments, and some counties may choose to rely solely on such estimates, rather than collect supplemental information as part of their pretrial investigations.⁵⁰ To our knowledge, no county has yet automated risk assessments due to systemic data and computing infrastructure limitations (Harris, Goss, and Gumbs 2019). However, as part of a pilot program Los Angeles County is testing an automated system to assess at least some arrestees (County of Los Angeles Probation Department 2020).

Counties would need to budget enough staff time to complete the expected number of risk assessments. In Los Angeles County, this would mean ensuring at least 78,000 hours for risk assessment—the equivalent of about 52 full-time pretrial services officers.⁵¹ By contrast, making risk assessments in Mono County might require less than three full weeks of work over the entire year. Other counties would run the gamut between Mono and Los Angeles, both in terms of the number of risk assessments made and whether people would need to be hired to make them.

Counties with established pretrial risk assessment systems, such as Sonoma and Santa Cruz, may already have the capacity to perform the number of risk assessments needed under SB 10. Sonoma County already assesses about 5,000 people per year—about 1,200 more than our estimate. Similarly, Santa Cruz County currently assesses about 2,700 people per year—about 650 more than our estimate. Our projections underestimate current practice equally in both counties—by 24.1 percent. This discrepancy most likely stems from our inability to approximate all of SB 10’s exclusion criteria.⁵²

In contrast, as of 2019, neither San Luis Obispo County nor San Bernardino County used pretrial risk assessment tools. Under SB 10, we estimate San Luis Obispo County would need to plan for 2,200 to 2,800 risk assessments in a year, which may require two to three full-time equivalent pretrial services officers. Similarly, San Bernardino County would need to plan for 25,000 to 32,000 risk assessments, which translates to 17 to 21 full-time equivalent pretrial services officers. If these counties are already performing pretrial investigations, risk assessment may simply replace some or all of that investigation time. If they are not, the state is bound by SB 10 to absorb the cost of hiring additional officers.

Other counties may need to hire more pretrial services officers, but perhaps not as many as our risk assessment estimates would suggest. Many counties already employ pretrial services officers who may be able to conduct risk assessments in lieu of or as part of ongoing pretrial investigations. According to a 2015 survey, 47 counties employ people in pretrial services. At the time, Los Angeles County employed 178 full-time equivalent staff. Nine counties employed the equivalent of less than one full-time staff member.⁵³ Altogether, the survey results suggest that between 379 and 564 people were working in pretrial services statewide in 2015, whereas the

⁵⁰ SB 10 stipulates that counties can collect “[a]ny supplemental information reasonably available that directly addresses the arrested person’s risk to public safety or risk of failure to appear in court as required.” Supplemental information is any information not required by the risk assessment. It could include more detailed information about the circumstances of the current crime, a person’s criminal history, and his or her life circumstances. See footnote 10 for more information.

⁵¹ We assume pretrial services officers work five 8-hour shifts per week for 50 weeks each year. We further assume that they are likely to complete an average of six risk assessments per shift, allowing for breaks and inevitable delays (e.g., in accessing arrested people and their data); $78,000 / (6 * 5 * 50) = 52$.

⁵² If these undercounts apply statewide, an additional 75,000 assessments would need to be made annually. We provide adjusted estimates in [Technical Appendix Table C1](#). We do not include them in the main report because we have no way of determining which arrests we may not have flagged for risk assessment.

⁵³ Of the remaining counties, one employed 41 people; eight employed 10 to 21 people; fifteen employed between 4 and 9 people; and eleven employed between 1 to 3 people (CSJ 2015). Pretrial services are also administered through diverse means across California. In most counties that had pretrial services and participated in the 2015 survey, pretrial services were administered through probation departments (43%), which also supervise county probationers and state parolees. In 34 percent of counties, multiple agencies oversaw pretrial services. The remaining counties administered pretrial services through the sheriff (13%), courts (4%), independent nonprofits (4%), and independent county departments (2%) (CSJ 2015).

equivalent of between 208 and 258 full-time officers would likely have been needed to conduct risk assessments that year. Ultimately, whether currently employed pretrial services officers can absorb the impact of SB 10 will depend on counties' current risk assessment and investigative practices. The state will then make up any shortfall.

Policy Discussion

If voters approve Proposition 25 and uphold SB 10, money bail will be eliminated and counties will be required to use risk-based assessments when making release decisions. Amid the COVID-19 pandemic, the Judicial Council temporarily set bail at \$0 for misdemeanors and some nonviolent felonies. Although the zero-bail order might have served as a partial test case for SB 10's reforms, data availability precludes us from determining the extent to which it affected pretrial release. Instead, we use the most recent data available to examine how some release decisions would change under SB 10.

Approximately 60 percent of people who are booked into jail in California—500,000 people—would be released without undergoing risk assessment. Roughly 142,500 people arrested for misdemeanors would likely be released sooner under SB 10 than they would be under the current system, and about 3,000 people arrested for felonies would likely be held longer.⁵⁴ Altogether, about 311,000 arrestees would likely meet the criteria for risk assessment at least once annually. The number of arrestees who undergo risk assessments could be as high as 387,000.⁵⁵ Counties may also assess people more than once per year, which would increase the number of assessments. How many risk assessments are likely—and their distribution across the state—matters because risk assessments may be costly to administer. In addition, holding people in jails for risk assessments could lead to negative criminal-justice and employment outcomes for detainees, though more people are likely to be released sooner under SB 10 than they would be under the current system.

The total costs associated with conducting pretrial risk assessments will depend on factors that vary by county, such as whether counties currently use risk assessment tools or conduct pretrial investigations. In counties that do not currently conduct pretrial risk assessments, such as San Luis Obispo and San Bernardino, more risk assessments are certain, but those assessments may supplant other pretrial investigations, which would offset the greater costs associated with assessment. Others counties, such as Sonoma and Santa Cruz, have already integrated pretrial risk assessments into their pretrial processes and may need to make fewer adjustments, with lesser costs for the state, under SB 10.⁵⁶

Some opponents of SB 10 worry that it will propagate existing racial inequity in the pretrial justice system. Specifically, they express concern that African Americans may be disproportionately assessed as high risk and more likely to be detained than people of other races, particularly whites (Angwin et al. 2016; Mayson 2019). Although we cannot address this particular concern with the available data, we estimate that African Americans would be more likely than people of other races to be held for risk assessment by at least 12 percentage points (49% African Americans, 37% whites and Latinos, 36% Asian Americans). This steep inequity stems primarily from higher arrest and booking rates for felonies among African Americans. However, criminal history also plays

⁵⁴ Based on prior research, those who are likely to be released within 12 hours, rather than held for two days, are likelier to experience fewer negative consequences of pretrial detention (Holsinger 2016; Lowenkamp, VanNostrand, and Holsinger 2013).

⁵⁵ Since we cannot measure all the assessment criteria, the initial number is likely an underestimate. Based on comparisons between our estimates and the number of risk assessments reported by Sonoma and Santa Cruz Counties in 2018, we likely underestimate the number of risk assessments by about 24 percent in those counties. If our statewide estimates are similarly low, there would be 387,000 risk assessments.

⁵⁶ The adjustments needed in those counties may therefore reflect differences in who is likely to be held under SB 10 relative to current practice.

a role. Among those booked in jail, African Americans are more likely to have a serious or violent offense in their criminal history, a factor that would lead to risk assessment.

Greater consistency in booking could help mitigate some of these racial inequities, since African Americans and Latinos are currently less likely to be cited and released than whites and Asian Americans. For example, if all people likely to meet the criteria for risk assessment were booked into jail, this would reduce existing inequities in booking decisions. Such a policy would also help ensure that the processes governing pretrial decisions are consistently applied to all arrested people. However, this approach would come with greater costs to arrestees, counties, and the state, as it would require 35,000 more bookings and risk assessments. Moreover, it would not alleviate the lion's share of the deep inequity African Americans face. Other policy solutions and approaches will be required to eliminate the steep inequity between African Americans and other racial groups in the rates of arrests, bookings, and holds for risk assessment.

Regardless of whether SB 10 is upheld or repealed, the state and county governments should develop and implement pretrial justice policies and systems that enable evaluation of where and why inequities arise (Feld and Halverson 2019; Harris, Goss, and Gumbs 2019; Picard et al. 2019). A comprehensive understanding of the possible political, economic, and criminal-justice impacts of SB 10 for various stages of criminal justice processing and across a broad range of regional contexts would require a statewide integrated data system that contains county arrest, jail, and court data, including how release and detention decisions are made.⁵⁷ Only with this information can counties and the state determine the effectiveness of potential reforms and assess whether they are improving the accuracy, transparency, and equity of the pretrial system.⁵⁸

⁵⁷ Assessing the impacts of replacing money bail with pretrial risk assessment would require additional information, including why people are and are not assessed, assessment results, release recommendations, other data informing release decisions, final release decisions, and reasons release recommendations are overridden, if they are.

⁵⁸ Other states, such as Idaho, are working to develop integrated criminal justice data systems (Brown 2020). Federal funding may be available to assist with this undertaking (BJS 2020).

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