

# Strategies for Reducing Pretrial Detention: Models of Reform

## California Pretrial Reform and Problem-Solving Courts

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Francine Byrne, Judicial Council of California

# Today's Presentation

- Background on bail/pretrial in California
  - Issues with detention and bail
  - Reform efforts & case law
- Current legislation and pretrial pilot program
  - SB 10 legislation and referendum
  - Pretrial pilot program
- Intersection of pretrial and problem-solving courts: Pretrial Diversion  $\neq$  Bail Reform



# Constitutional Pretrial Detention

- California Constitution, Article I, Sec. 28(f)(3):
- Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.



# Current Pretrial System

- How does California's current system accomplish the purposes of:
  - Providing due process?
  - Protecting public safety?
  - Protecting victim safety?
  - Ensuring return to court?



# Pretrial Detention and Bail

- Wide variation in pretrial detention rates among California counties
  - Unsentenced jail population that is “bail eligible”, yet remains in detention (10%-59%)
- An estimated 4,600-27,000 people in CA detained pretrial due to inability to pay bail
- Releases often not based on risk to public





# California's current pretrial system

- Book and release for most misdemeanors
- Monetary bail – Bail bonds
  - Set by schedule (by county)
  - Average amount in CA= \$50,000
- Own recognizance release; supervised OR (maybe)
- Preventive detention
  - Constitutional
  - Alternative - high bail



# Pretrial Reform in California

- Initially programs developed at local level without state resources or legislation
- Recidivism Reduction Fund: \$16 million to address recidivism through the use of pretrial or problem-solving courts
- SB 10: Passed by legislature in 2018
  - Eliminates monetary bail and implements risk-based decision making
  - Referendum to repeal on Nov. 2020 ballot
- Case law (Humphrey, etc.)



# Pretrial Pilot Program

- \$75 million for implementation, operation or evaluation pretrial programs in pilot courts
- Various size courts, locations, CMS
- Collaboration is key





# Pretrial Diversion not just bail reform

- Increasing number of pretrial diversion programs in CA
  - Drug diversion
  - Veterans diversion (felony and misdemeanor)
  - Mental Health diversion (AB 1810)
  - Possible diversion for primary caregivers of small children



# What works for problem-solving courts that might work for all pretrial diversion?

- Assessment, assessment, assessment
- Collaboration: drug court is system approach
- Education and training
- Research based behavioral modification
- Emphasis on data collection and self assessment



# What are the challenges at intersection of pretrial detention reform and problem solving courts?

- Behavioral health related issues impact on main assessment tools- potential tool bias
- New partnerships (jails and services)
- Data sparse particularly in PTS



# What works for pretrial diversion that might work for problem-solving courts

- Very early intervention and assessment (but challenges with unrepresented defendants)
- Real triage- not your grandmother phase- churning
- Brings some problem-solving values to scale



# Moving forward

- Bail/Pretrial detention reform is here to stay
- Judges/teams need to be good consumer of information from assessment tools
- Service referral opportunities- but they are unrepresented individual
- 58– Final answer

