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May 14, 2019

Karen L. Smith, MD, MPH  
Director and State Public Health Officer  
California Department of Public Health  
1615 Capitol Avenue  
PO Box 997377, MS 0500  
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#### **Re: SB 36 (Hertzberg): Pretrial release: risk assessment tools**

Dear Dr. Smith:

The California Conference of Local Health Officers (CCLHO) voted at the CCLHO Board meeting on April 4, 2019 to take a Support recommendation on SB 36 (Hertzberg), a bill that would require each pretrial services agency that uses a pretrial risk assessment tool to validate the tool on a regular basis, but no less frequently than once every 6 months, and to make specified information regarding the tool, including validation studies, publicly available. The bill would require the Judicial Council to maintain a list of pretrial services agencies that have satisfied those validation requirements and complied with those transparency requirements. The bill would also require each pretrial services agency to maintain specified data regarding any pretrial risk assessment tool that it uses, including input data, performance measures, and outcome data.

In October 2017, the California Chief Justice's Pretrial Detention Reform Workgroup concluded that the state's pretrial release and detention system fails to protect public safety, does not ensure court appearances, and often contravenes the due process rights of the accused. It has also become increasingly clear that the wealth-based commercial bail framework undergirding this system discriminates against poorer Californians and communities of color.

In an effort to remedy these shortcomings, many jurisdictions have begun using pretrial risk assessment instruments as an aid in determining the likelihood that an arrestee will commit a new offense prior to trial, or miss his or her next court date. Generally, these tools use large data sets regarding past trends to predict future outcomes, and assist judges in making release or detention decisions prior to a defendant's trial. As of late 2017, 49 of 58 counties in California used one of eight different risk assessment instruments in their pretrial processes.

However, despite their widespread use across the state, these risk assessment tools lack the openness and transparency necessary for honest evaluation and elimination of disparate outcomes. Counties are under no obligation to maintain individualized data on their tool's inputs and outputs – data that is necessary to put the tools through a process of 'validation,' a regular calibration of the instrument's accuracy. Consequently, counties and the State are ill equipped to evaluate the overall effectiveness of these instruments and reduce the potential impact of discriminatory biases.

SB 36 requires each court or county that uses a pretrial risk assessment tool to maintain individualized data regarding the tool's inputs and outcomes, as well as any associated recommendations to the court. The measure will ensure that risk assessment tools are thoroughly evaluated to ensure effectiveness in mitigating risk while minimizing biases and disparate results based on race, ethnicity, gender, economic circumstances, and behavioral or developmental disability. For these reasons, CCLHO recommends Support for SB 36.



CCLHO was established in statute in 1947 to advise the California Department of Health Services (now California Department of Public Health), other departments, boards, commissions, and officials of federal, state and local agencies, the Legislature and other organizations on all matters affecting health. CCLHO membership consists of all legally appointed physician health officers in California's 61 city and county jurisdictions.

Should you have any questions, please contact me by email at [roldham@placer.ca.gov](mailto:roldham@placer.ca.gov) or by phone at (530) 745-3121. Thank you.

Sincerely,

A handwritten signature in blue ink that reads 'Robert L. Oldham' with a stylized flourish at the end.

Robert L. Oldham, MD, MSHA  
President, California Conference of Local Health Officers