

AMENDED IN ASSEMBLY JANUARY 28, 2008

AMENDED IN ASSEMBLY JANUARY 7, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1133**

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**Introduced by Assembly Member Dymally**

February 23, 2007

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An act to amend, repeal, and add Section 1305 of the Penal Code, relating to bail bonds.

LEGISLATIVE COUNSEL'S DIGEST

AB 1133, as amended, Dymally. Bail bonds: forfeiture.

*Existing law provides that if, outside the county where the case is located, the defendant is surrendered to custody by the bail or is arrested in the underlying case within the 180-day period, the court shall vacate the forfeiture and exonerate the bail.*

*This bill would require payment by the bail or surety of government costs to extradite the defendant as a condition of vacating the forfeiture and exonerating the bail.*

*Existing law provides that in all cases of forfeiture where a defendant is not in custody and is beyond the jurisdiction of the state, is temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the*

*terms imposed in similar situations with respect to other forms of pretrial release.*

*This bill would provide that the prosecuting agency shall have 60 days after receiving the law enforcement officer’s affidavit to elect to seek extradition. This bill would provide that the 60-day period may be extended by the court for 60 days for good cause. Other applicable time periods would be tolled during the 60-day period and any extension.*

Existing law requires that a bail bond be forfeited if the defendant does not appear in court, as specified. If the defendant appears in court, as provided, within 180 days of the forfeiture, the court shall order the forfeiture vacated and bail exonerated.

This bill would provide that the bail or surety may move the court to toll the 180-day period, subject to renewal. The motion would be noticed to the prosecuting attorney and county counsel upon a finding that the extradition process is in effect. The bill would repeal ~~this tolling procedure~~ *its provisions* on January 1, 2018.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1305 of the Penal Code is amended to
- 2 read:
- 3 1305. (a) A court shall in open court declare forfeited the
- 4 undertaking of bail or the money or property deposited as bail if,
- 5 without sufficient excuse, a defendant fails to appear for any of
- 6 the following:
- 7 (1) Arraignment.
- 8 (2) Trial.
- 9 (3) Judgment.
- 10 (4) Any other occasion prior to the pronouncement of judgment
- 11 if the defendant’s presence in court is lawfully required.
- 12 (5) To surrender himself or herself in execution of the judgment
- 13 after appeal.
- 14 However, the court shall not have jurisdiction to declare a
- 15 forfeiture and the bail shall be released of all obligations under the
- 16 bond if the case is dismissed or if no complaint is filed within 15
- 17 days from the date of arraignment.
- 18 (b) If the amount of the bond or money or property deposited
- 19 exceeds four hundred dollars (\$400), the clerk of the court shall,

1 within 30 days of the forfeiture, mail notice of the forfeiture to the  
2 surety or the depositor of money posted instead of bail. At the  
3 same time, the court shall mail a copy of the forfeiture notice to  
4 the bail agent whose name appears on the bond. The clerk shall  
5 also execute a certificate of mailing of the forfeiture notice and  
6 shall place the certificate in the court's file. If the notice of  
7 forfeiture is required to be mailed pursuant to this section, the  
8 180-day period provided for in this section shall be extended by  
9 a period of five days to allow for the mailing.

10 If the surety is an authorized corporate surety, and if the bond  
11 plainly displays the mailing address of the corporate surety and  
12 the bail agent, then notice of the forfeiture shall be mailed to the  
13 surety at that address and to the bail agent, and mailing alone to  
14 the surety or the bail agent shall not constitute compliance with  
15 this section.

16 The surety or depositor shall be released of all obligations under  
17 the bond if any of the following conditions apply:

18 (1) The clerk fails to mail the notice of forfeiture in accordance  
19 with this section within 30 days after the entry of the forfeiture.

20 (2) The clerk fails to mail the notice of forfeiture to the surety  
21 at the address printed on the bond.

22 (3) The clerk fails to mail a copy of the notice of forfeiture to  
23 the bail agent at the address shown on the bond.

24 (c) (1) If the defendant appears either voluntarily or in custody  
25 after surrender or arrest in court within 180 days of the date of  
26 forfeiture or within 180 days of the date of mailing of the notice  
27 if the notice is required under subdivision (b), the court shall, on  
28 its own motion at the time the defendant first appears in court on  
29 the case in which the forfeiture was entered, direct the order of  
30 forfeiture to be vacated and the bond exonerated. If the court fails  
31 to so act on its own motion, then the surety's or depositor's  
32 obligations under the bond shall be immediately vacated and the  
33 bond exonerated. An order vacating the forfeiture and exonerating  
34 the bond may be made on terms that are just and do not exceed  
35 the terms imposed in similar situations with respect to other forms  
36 of pretrial release.

37 (2) If, within the county where the case is located, the defendant  
38 is surrendered to custody by the bail or is arrested in the underlying  
39 case within the 180-day period, and is subsequently released from  
40 custody prior to an appearance in court, the court shall, on its own

1 motion, direct the order of forfeiture to be vacated and the bond  
2 exonerated. If the court fails to so act on its own motion, then the  
3 surety's or depositor's obligations under the bond shall be  
4 immediately vacated and the bond exonerated. An order vacating  
5 the forfeiture and exonerating the bond may be made on terms that  
6 are just and do not exceed the terms imposed in similar situations  
7 with respect to other forms of pretrial release.

8 (3) If, outside the county where the case is located, the defendant  
9 is surrendered to custody by the bail or is arrested in the underlying  
10 case within the 180-day period, the court shall vacate the forfeiture  
11 and exonerate the bail, *provided that the bail or surety pays the*  
12 *government costs to extradite the defendant.*

13 (4) In lieu of exonerating the bond, the court may order the bail  
14 reinstated and the defendant released on the same bond if both of  
15 the following conditions are met:

16 (A) The bail is given prior notice of the reinstatement.

17 (B) The bail has not surrendered the defendant.

18 (d) In the case of a permanent disability, the court shall direct  
19 the order of forfeiture to be vacated and the bail or money or  
20 property deposited as bail exonerated if, within 180 days of the  
21 date of forfeiture or within 180 days of the date of mailing of the  
22 notice if notice is required under subdivision (b), it is made  
23 apparent to the satisfaction of the court that both of the following  
24 conditions are met:

25 (1) The defendant is deceased or otherwise permanently unable  
26 to appear in the court due to illness, insanity, or detention by  
27 military or civil authorities.

28 (2) The absence of the defendant is without the connivance of  
29 the bail.

30 (e) In the case of a temporary disability, the court shall order  
31 the tolling of the 180-day period provided in this section during  
32 the period of temporary disability, provided that it appears to the  
33 satisfaction of the court that the following conditions are met:

34 (1) The defendant is temporarily disabled by reason of illness,  
35 insanity, or detention by military or civil authorities.

36 (2) Based upon the temporary disability, the defendant is unable  
37 to appear in court during the remainder of the 180-day period.

38 (3) The absence of the defendant is without the connivance of  
39 the bail.

1 The period of the tolling shall be extended for a reasonable period  
2 of time, at the discretion of the court, after the cessation of the  
3 disability to allow for the return of the defendant to the jurisdiction  
4 of the court.

5 (f) In all cases where a defendant is in custody beyond the  
6 jurisdiction of the court that ordered the bail forfeited, and the  
7 prosecuting agency elects not to seek extradition after being  
8 informed of the location of the defendant, the court shall vacate  
9 the forfeiture and exonerate the bond on terms that are just and do  
10 not exceed the terms imposed in similar situations with respect to  
11 other forms of pretrial release.

12 (g) In all cases of forfeiture where a defendant is not in custody  
13 and is beyond the jurisdiction of the state, is temporarily detained,  
14 by the bail agent, in the presence of a local law enforcement officer  
15 of the jurisdiction in which the defendant is located, and is  
16 positively identified by that law enforcement officer as the wanted  
17 defendant in an affidavit signed under penalty of perjury, and the  
18 prosecuting agency elects not to seek extradition after being  
19 informed of the location of the defendant, the court shall vacate  
20 the forfeiture and exonerate the bond on terms that are just and do  
21 not exceed the terms imposed in similar situations with respect to  
22 other forms of pretrial release. *The prosecuting agency shall have*  
23 *60 days after receiving the law enforcement officer's affidavit to*  
24 *elect to seek extradition. This 60-day period may be extended by*  
25 *the court for 60 days for good cause. Other applicable time periods*  
26 *shall be tolled during the 60-day period and any extension.*

27 (h) The bail or surety may move to toll the 180-day period  
28 during the time the prosecuting attorney is seeking extradition.  
29 The bail or surety shall provide timely notice of the motion to the  
30 prosecuting attorney and the county counsel upon a finding that  
31 the extradition process is in effect. The order may be renewed on  
32 the same basis as the original order.

33 (i) As used in this section, "arrest" includes a hold placed on  
34 the defendant in the underlying case while he or she is in custody  
35 on other charges.

36 (j) A motion filed in a timely manner within the 180-day period  
37 may be heard within 30 days of the expiration of the 180-day  
38 period. The court may extend the 30-day period upon a showing  
39 of good cause. The motion may be made by the surety insurer, the  
40 bail agent, the surety, or the depositor of money or property, any

1 of whom may appear in person or through an attorney. The court,  
2 in its discretion, may require that the moving party provide 10  
3 days prior notice to the applicable prosecuting agency, as a  
4 condition precedent to granting the motion.

5 (k) This section shall remain in effect only until January 1, 2018,  
6 and as of that date is repealed, unless a later enacted statute, that  
7 is enacted before January 1, 2018, deletes or extends that date.

8 SEC. 2. Section 1305 is added to the Penal Code, to read:

9 1305. (a) A court shall in open court declare forfeited the  
10 undertaking of bail or the money or property deposited as bail if,  
11 without sufficient excuse, a defendant fails to appear for any of  
12 the following:

13 (1) Arraignment.

14 (2) Trial.

15 (3) Judgment.

16 (4) Any other occasion prior to the pronouncement of judgment  
17 if the defendant's presence in court is lawfully required.

18 (5) To surrender himself or herself in execution of the judgment  
19 after appeal.

20 However, the court shall not have jurisdiction to declare a  
21 forfeiture and the bail shall be released of all obligations under the  
22 bond if the case is dismissed or if no complaint is filed within 15  
23 days from the date of arraignment.

24 (b) If the amount of the bond or money or property deposited  
25 exceeds four hundred dollars (\$400), the clerk of the court shall,  
26 within 30 days of the forfeiture, mail notice of the forfeiture to the  
27 surety or the depositor of money posted instead of bail. At the  
28 same time, the court shall mail a copy of the forfeiture notice to  
29 the bail agent whose name appears on the bond. The clerk shall  
30 also execute a certificate of mailing of the forfeiture notice and  
31 shall place the certificate in the court's file. If the notice of  
32 forfeiture is required to be mailed pursuant to this section, the  
33 180-day period provided for in this section shall be extended by  
34 a period of five days to allow for the mailing.

35 If the surety is an authorized corporate surety, and if the bond  
36 plainly displays the mailing address of the corporate surety and  
37 the bail agent, then notice of the forfeiture shall be mailed to the  
38 surety at that address and to the bail agent, and mailing alone to  
39 the surety or the bail agent shall not constitute compliance with  
40 this section.

1 The surety or depositor shall be released of all obligations under  
2 the bond if any of the following conditions apply:

3 (1) The clerk fails to mail the notice of forfeiture in accordance  
4 with this section within 30 days after the entry of the forfeiture.

5 (2) The clerk fails to mail the notice of forfeiture to the surety  
6 at the address printed on the bond.

7 (3) The clerk fails to mail a copy of the notice of forfeiture to  
8 the bail agent at the address shown on the bond.

9 (c) (1) If the defendant appears either voluntarily or in custody  
10 after surrender or arrest in court within 180 days of the date of  
11 forfeiture or within 180 days of the date of mailing of the notice  
12 if the notice is required under subdivision (b), the court shall, on  
13 its own motion at the time the defendant first appears in court on  
14 the case in which the forfeiture was entered, direct the order of  
15 forfeiture to be vacated and the bond exonerated. If the court fails  
16 to so act on its own motion, then the surety's or depositor's  
17 obligations under the bond shall be immediately vacated and the  
18 bond exonerated. An order vacating the forfeiture and exonerating  
19 the bond may be made on terms that are just and do not exceed  
20 the terms imposed in similar situations with respect to other forms  
21 of pretrial release.

22 (2) If, within the county where the case is located, the defendant  
23 is surrendered to custody by the bail or is arrested in the underlying  
24 case within the 180-day period, and is subsequently released from  
25 custody prior to an appearance in court, the court shall, on its own  
26 motion, direct the order of forfeiture to be vacated and the bond  
27 exonerated. If the court fails to so act on its own motion, then the  
28 surety's or depositor's obligations under the bond shall be  
29 immediately vacated and the bond exonerated. An order vacating  
30 the forfeiture and exonerating the bond may be made on terms that  
31 are just and do not exceed the terms imposed in similar situations  
32 with respect to other forms of pretrial release.

33 (3) If, outside the county where the case is located, the defendant  
34 is surrendered to custody by the bail or is arrested in the underlying  
35 case within the 180-day period, the court shall vacate the forfeiture  
36 and exonerate the bail.

37 (4) In lieu of exonerating the bond, the court may order the bail  
38 reinstated and the defendant released on the same bond if both of  
39 the following conditions are met:

40 (A) The bail is given prior notice of the reinstatement.

1 (B) The bail has not surrendered the defendant.

2 (d) In the case of a permanent disability, the court shall direct  
3 the order of forfeiture to be vacated and the bail or money or  
4 property deposited as bail exonerated if, within 180 days of the  
5 date of forfeiture or within 180 days of the date of mailing of the  
6 notice if notice is required under subdivision (b), it is made  
7 apparent to the satisfaction of the court that both of the following  
8 conditions are met:

9 (1) The defendant is deceased or otherwise permanently unable  
10 to appear in the court due to illness, insanity, or detention by  
11 military or civil authorities.

12 (2) The absence of the defendant is without the connivance of  
13 the bail.

14 (e) In the case of a temporary disability, the court shall order  
15 the tolling of the 180-day period provided in this section during  
16 the period of temporary disability, provided that it appears to the  
17 satisfaction of the court that the following conditions are met:

18 (1) The defendant is temporarily disabled by reason of illness,  
19 insanity, or detention by military or civil authority.

20 (2) Based upon the temporary disability, the defendant is unable  
21 to appear in court during the remainder of the 180-day period.

22 (3) The absence of the defendant is without the connivance of  
23 the bail.

24 The period of the tolling shall be extended for a reasonable period  
25 of time, at the discretion of the court, after the cessation of the  
26 disability to allow for the return of the defendant to the jurisdiction  
27 of the court.

28 (f) In all cases where a defendant is in custody beyond the  
29 jurisdiction of the court that ordered the bail forfeited, and the  
30 prosecuting agency elects not to seek extradition after being  
31 informed of the location of the defendant, the court shall vacate  
32 the forfeiture and exonerate the bond on terms that are just and do  
33 not exceed the terms imposed in similar situations with respect to  
34 other forms of pretrial release.

35 (g) In all cases of forfeiture where a defendant is not in custody  
36 and is beyond the jurisdiction of the state, is temporarily detained,  
37 by the bail agent, in the presence of a local law enforcement officer  
38 of the jurisdiction in which the defendant is located, and is  
39 positively identified by that law enforcement officer as the wanted  
40 defendant in an affidavit signed under penalty of perjury, and the

1 prosecuting agency elects not to seek extradition after being  
2 informed of the location of the defendant, the court shall vacate  
3 the forfeiture and exonerate the bond on terms that are just and do  
4 not exceed the terms imposed in similar situations with respect to  
5 other forms of pretrial release.

6 (h) As used in this section, “arrest” includes a hold placed on  
7 the defendant in the underlying case while he or she is in custody  
8 on other charges.

9 (i) A motion filed in a timely manner within the 180-day period  
10 may be heard within 30 days of the expiration of the 180-day  
11 period. The court may extend the 30-day period upon a showing  
12 of good cause. The motion may be made by the surety insurer, the  
13 bail agent, the surety, or the depositor of money or property, any  
14 of whom may appear in person or through an attorney. The court,  
15 in its discretion, may require that the moving party provide 10  
16 days prior notice to the applicable prosecuting agency, as a  
17 condition precedent to granting the motion.

18 (j) This section shall become operative on January 1, 2018.

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