

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 740**

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**Introduced by Assembly Member Hagman**

February 26, 2009

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An act to amend Section ~~1275~~ *1269b* of the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

AB 740, as amended, Hagman. Bail.

*Existing law requires the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail for allailable offenses, as specified.*

*This bill would allow the superior court judges of any county in which the inmate population reaches 80% of the county correctional system's mandated capacity to temporarily reduce or modify the bail schedule approved for the county in order to prevent the early release of prisoners who have not posted bail.*

~~Existing law generally regulates the circumstances a judge or magistrate must take into consideration in setting, reducing, or denying bail.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

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 1269b of the Penal Code is amended to  
2 read:

3     1269b. (a) The officer in charge of a jail in which an arrested  
4 person is held in custody, an officer of a sheriff’s department or  
5 police department of a city who is in charge of a jail or is employed  
6 at a fixed police or sheriff’s facility and is acting under an  
7 agreement with the agency that keeps the jail in which an arrested  
8 person is held in custody, an employee of a sheriff’s department  
9 or police department of a city who is assigned by the department  
10 to collect bail, the clerk of the superior court of the county in which  
11 the offense was alleged to have been committed, and the clerk of  
12 the superior court in which the case against the defendant is  
13 pending may approve and accept bail in the amount fixed by the  
14 warrant of arrest, schedule of bail, or order admitting to bail in  
15 cash or surety bond executed by a certified, admitted surety insurer  
16 as provided in the Insurance Code, to issue and sign an order for  
17 the release of the arrested person, and to set a time and place for  
18 the appearance of the arrested person before the appropriate court  
19 and give notice thereof.

20     (b) If a defendant has appeared before a judge of the court on  
21 the charge contained in the complaint, indictment, or information,  
22 the bail shall be in the amount fixed by the judge at the time of the  
23 appearance. If that appearance has not been made, the bail shall  
24 be in the amount fixed in the warrant of arrest or, if no warrant of  
25 arrest has been issued, the amount of bail shall be pursuant to the  
26 uniform countywide schedule of bail for the county in which the  
27 defendant is required to appear, previously fixed and approved as  
28 provided in subdivisions (c) and (d).

29     (c) (1) It is the duty of the superior court judges in each county  
30 to prepare, adopt, and annually revise a uniform countywide  
31 schedule of bail for all bailable felony offenses and for all  
32 misdemeanor and infraction offenses except Vehicle Code  
33 infractions. The penalty schedule for infraction violations of the  
34 Vehicle Code shall be established by the Judicial Council in  
35 accordance with Section 40310 of the Vehicle Code.

36     (2) *The superior court judges of any county in which the inmate*  
37 *population reaches 80 percent of the county correctional system’s*  
38 *mandated capacity may, for a temporary period, reduce or modify*

1 *the bail schedule approved for the county in order to prevent the*  
2 *early release of prisoners who have not posted bail.*

3 (d) A court may, by local rule, prescribe the procedure by which  
4 the uniform countywide schedule of bail is prepared, adopted, and  
5 annually revised by the judges. If a court does not adopt a local  
6 rule, the uniform countywide schedule of bail shall be prepared,  
7 adopted, and annually revised by a majority of the judges.

8 (e) In adopting a uniform countywide schedule of bail for all  
9 bailable felony offenses the judges shall consider the seriousness  
10 of the offense charged. In considering the seriousness of the offense  
11 charged the judges shall assign an additional amount of required  
12 bail for each aggravating or enhancing factor chargeable in the  
13 complaint, including, but not limited to, additional bail for charges  
14 alleging facts that would bring a person within any of the following  
15 sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9,  
16 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5,  
17 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9 of this code, or  
18 Section 11356.5, 11370.2, or 11370.4 of the Health and Safety  
19 Code.

20 In considering offenses in which a violation of Chapter 6  
21 (commencing with Section 11350) of Division 10 of the Health  
22 and Safety Code is alleged, the judge shall assign an additional  
23 amount of required bail for offenses involving large quantities of  
24 controlled substances.

25 (f) The countywide bail schedule shall contain a list of the  
26 offenses and the amounts of bail applicable for each as the judges  
27 determine to be appropriate. If the schedule does not list all  
28 offenses specifically, it shall contain a general clause for designated  
29 amounts of bail as the judges of the county determine to be  
30 appropriate for all the offenses not specifically listed in the  
31 schedule. A copy of the countywide bail schedule shall be sent to  
32 the officer in charge of the county jail, to the officer in charge of  
33 each city jail within the county, to each superior court judge and  
34 commissioner in the county, and to the Judicial Council.

35 (g) Upon posting bail, the defendant or arrested person shall be  
36 discharged from custody as to the offense on which the bail is  
37 posted.

38 All money and surety bonds so deposited with an officer  
39 authorized to receive bail shall be transmitted immediately to the  
40 judge or clerk of the court by which the order was made or warrant

1 issued or bail schedule fixed. If, in the case of felonies, an  
2 indictment is filed, the judge or clerk of the court shall transmit  
3 all of the money and surety bonds to the clerk of the court.

4 (h) If a defendant or arrested person so released fails to appear  
5 at the time and in the court so ordered upon his or her release from  
6 custody, Sections 1305 and 1306 apply.

7 SECTION 1. ~~Section 1275 of the Penal Code is amended to~~  
8 ~~read:~~

9 ~~1275. (a) In setting, reducing, or denying bail, the judge or~~  
10 ~~magistrate shall take into consideration the protection of the public,~~  
11 ~~the seriousness of the offense charged, the previous criminal record~~  
12 ~~of the defendant, and the probability of his or her appearing at trial~~  
13 ~~or hearing of the case. The public safety shall be the primary~~  
14 ~~consideration.~~

15 ~~In considering the seriousness of the offense charged, the judge~~  
16 ~~or magistrate shall include consideration of the alleged injury to~~  
17 ~~the victim, the alleged threats to the victim or a witness to the~~  
18 ~~crime charged, the alleged use of a firearm or other deadly weapon~~  
19 ~~in the commission of the crime charged, and the alleged use or~~  
20 ~~possession of controlled substances by the defendant.~~

21 ~~(b) In considering offenses wherein a violation of Chapter 6~~  
22 ~~(commencing with Section 11350) of Division 10 of the Health~~  
23 ~~and Safety Code is alleged, the judge or magistrate shall consider~~  
24 ~~the following: (1) the alleged amounts of controlled substances~~  
25 ~~involved in the commission of the offense, and (2) whether the~~  
26 ~~defendant is currently released on bail for an alleged violation of~~  
27 ~~Chapter 6 (commencing with Section 11350) of Division 10 of the~~  
28 ~~Health and Safety Code.~~

29 ~~(c) Before a court reduces bail below the amount established~~  
30 ~~by the bail schedule approved for the county, in accordance with~~  
31 ~~subdivisions (b) and (c) of Section 1269b, for a person charged~~  
32 ~~with a serious felony, as defined in subdivision (c) of Section~~  
33 ~~1192.7, or a violent felony, as defined in subdivision (c) of Section~~  
34 ~~667.5, the court shall make a finding of unusual circumstances and~~  
35 ~~shall set forth those facts on the record. For purposes of this~~  
36 ~~subdivision, "unusual circumstances" does not include the fact~~  
37 ~~that the defendant has made all prior court appearances or has not~~  
38 ~~committed any new offenses.~~

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