

Introduced by Senator HarmanFebruary 16, 2010

An act to amend Section 1270.1 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1049, as introduced, Harman. Bail.

Existing law authorizes a magistrate or commissioner, with respect to a defendant who has been arrested for a bailable felony offense or for the misdemeanor offense of violating a domestic violence order, to set bail in an amount that he or she deems sufficient to assure the defendant's appearance or to assure the protection of a victim, or family member of a victim, of domestic violence. Existing law also provides that before any person who has been arrested for commission of certain specified crimes is released on bail in an amount other than that specified in the schedule of bail for the offense or is released on his or her own recognizance, a hearing shall be held at which the court shall consider certain enumerated factors, including the potential danger the detained person poses to other persons.

This bill would provide that, notwithstanding the latter provision, a judge or magistrate may, with respect to an offense specified in the former provision, increase bail to an amount exceeding that set forth in the bail schedule without a hearing, provided an oral or written declaration of facts justifying the increase is presented under oath by a sworn peace officer. By expanding the application of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 1270.1 of the Penal Code is amended to
2 read:

3 1270.1. (a) ~~Before~~ *Except as provided in subdivision (e), before*
4 any person who is arrested for any of the following crimes may
5 be released on bail in an amount that is either more or less than
6 the amount contained in the schedule of bail for the offense, or
7 may be released on his or her own recognizance, a hearing shall
8 be held in open court before the magistrate or judge:

9 (1) A serious felony, as defined in subdivision (c) of Section
10 1192.7, or a violent felony, as defined in subdivision (c) of Section
11 667.5, but not including a violation of subdivision (a) of Section
12 460 (residential burglary).

13 (2) A violation of Section 136.1 where punishment is imposed
14 pursuant to subdivision (c) of Section 136.1, 262, 273.5, 422 where
15 the offense is punished as a felony, or 646.9.

16 (3) A violation of paragraph (1) of subdivision (e) of Section
17 243.

18 (4) A violation of Section 273.6 if the detained person made
19 threats to kill or harm, has engaged in violence against, or has gone
20 to the residence or workplace of, the protected party.

21 (b) The prosecuting attorney and defense attorney shall be given
22 a two court-day written notice and an opportunity to be heard on
23 the matter. If the detained person does not have counsel, the court
24 shall appoint counsel for purposes of this section only. The hearing
25 required by this section shall be held within the time period
26 prescribed in Section 825.

27 (c) At the hearing, the court shall consider evidence of past court
28 appearances of the detained person, the maximum potential
29 sentence that could be imposed, and the danger that may be posed
30 to other persons if the detained person is released. In making the
31 determination whether to release the detained person on his or her
32 own recognizance, the court shall consider the potential danger to
33 other persons, including threats that have been made by the

1 detained person and any past acts of violence. The court shall also
2 consider any evidence offered by the detained person regarding
3 his or her ties to the community and his or her ability to post bond.

4 (d) If the judge or magistrate sets the bail in an amount that is
5 either more or less than the amount contained in the schedule of
6 bail for the offense, the judge or magistrate shall state the reasons
7 for that decision and shall address the issue of threats made against
8 the victim or witness, if they were made, in the record. This
9 statement shall be included in the record.

10 (e) *Notwithstanding subdivision (a), a judge or magistrate,*
11 *pursuant to Section 1269c, may, with respect to a bailable felony*
12 *offense or a misdemeanor offense of violating a domestic violence*
13 *order, increase bail to an amount exceeding that set forth in the*
14 *bail schedule without a hearing, provided an oral or written*
15 *declaration of facts justifying the increase is presented under*
16 *penalty of perjury by a sworn peace officer.*

17 SEC. 2. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.