

**Introduced by Senator Harman**

February 16, 2010

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An act to amend ~~Section~~ *Sections 1269c and 1270.1* of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1049, as amended, 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 *higher than that provided in the schedule of bail* in an amount that he or she deems sufficient to ~~assure~~ *ensure* the defendant's appearance or to ~~assure~~ *ensure* the protection of a victim, or family member of a victim, of domestic violence. Existing law *also provides that the defendant may make application to the magistrate for release on bail lower than that provided in the schedule of bail or on his or her own recognizance.*

*This bill would prohibit defendants who have been arrested for specified serious, violent, or other felonies from making an application to the magistrate for release on bail lower than that provided in the schedule of bail or on his or her own recognizance.*

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 1269c of the Penal Code is amended to  
 2     read:  
 3     1269c. If a defendant is arrested without a warrant for a bailable  
 4     felony offense or for the misdemeanor offense of violating a  
 5     domestic violence restraining order, and a peace officer has  
 6     reasonable cause to believe that the amount of bail set forth in the  
 7     schedule of bail for that offense is insufficient to ~~assure~~ *ensure the*  
 8     defendant’s appearance or to ~~assure~~ *ensure* the protection of a  
 9     victim, or family member of a victim, of domestic violence, the  
 10    peace officer shall prepare a declaration under penalty of perjury  
 11    setting forth the facts and circumstances in support of his or her  
 12    belief and file it with a magistrate, as defined in Section 808, or  
 13    his or her commissioner, in the county in which the offense is  
 14    alleged to have been committed or having personal jurisdiction  
 15    over the defendant, requesting an order setting a higher bail. ~~The~~  
 16    *Except where the defendant is charged with an offense listed in*  
 17    *subdivision (a) of Section 1270.1, the* defendant, either personally  
 18    or through his or her attorney, friend, or family member, also may  
 19    make application to the magistrate for release on bail lower than  
 20    that provided in the schedule of bail or on his or her own  
 21    recognizance. The magistrate or commissioner to whom the  
 22    application is made is authorized to set bail in an amount that he  
 23    or she deems sufficient to ~~assure~~ *ensure* the defendant’s appearance

1 or to ~~assure~~ *ensure* the protection of a victim, or family member  
2 of a victim, of domestic violence, and to set bail on the terms and  
3 conditions that he or she, in his or her discretion, deems  
4 appropriate, or he or she may authorize the defendant's release on  
5 his or her own recognizance. If, after the application is made, no  
6 order changing the amount of bail is issued within eight hours after  
7 booking, the defendant shall be entitled to be released on posting  
8 the amount of bail set forth in the applicable bail schedule.

9 ~~SECTION 1.~~

10 *SEC. 2.* Section 1270.1 of the Penal Code is amended to read:

11 1270.1. (a) Except as provided in subdivision (e), before any  
12 person who is arrested for any of the following crimes may be  
13 released on bail in an amount that is either more or less than the  
14 amount contained in the schedule of bail for the offense, or may  
15 be released on his or her own recognizance, a hearing shall be held  
16 in open court before the magistrate or judge:

17 (1) A serious felony, as defined in subdivision (c) of Section  
18 1192.7, or a violent felony, as defined in subdivision (c) of Section  
19 667.5, but not including a violation of subdivision (a) of Section  
20 460 (residential burglary).

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

24 (3) A violation of paragraph (1) of subdivision (e) of Section  
25 243.

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

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

35 (c) At the hearing, the court shall consider evidence of past court  
36 appearances of the detained person, the maximum potential  
37 sentence that could be imposed, and the danger that may be posed  
38 to other persons if the detained person is released. In making the  
39 determination whether to release the detained person on his or her  
40 own recognizance, the court shall consider the potential danger to

1 other persons, including threats that have been made by the  
2 detained person and any past acts of violence. The court shall also  
3 consider any evidence offered by the detained person regarding  
4 his or her ties to the community and his or her ability to post bond.

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

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

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