

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1824

Introduced by Assembly Member Hagman

February 21, 2012

An act to amend ~~Section 3455~~ of Sections 1166, 1196, 1305, and 1306 of the Penal Code, relating to ~~postrelease community supervision bail~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 1824, as amended, Hagman. ~~Postrelease community supervision. Bail.~~

Existing law specifies the procedures for the forfeiture and exoneration of a bail bond, including requiring a court to direct the order of forfeiture to be vacated and the bond exonerated if the defendant appears in court within 180 days of the date of forfeiture or within 180 days of the date of mailing of a specified notice, if required.

This bill would require the bond to be exonerated if the defendant appears in court, is surrendered to custody by the bail, or is arrested in the underlying case within 180 days after forfeiture and would allow 30 days from the mailing of the notice of entry of judgment to file a motion for exoneration if the defendant is surrendered by the bail outside the county where the court is located.

Under existing law, where a defendant is detained beyond the jurisdiction of the court and the prosecuting agency elects not to seek extradition, the court is required to vacate the forfeiture and exonerate the bond.

This bill would require exoneration of the bond if the prosecution elects not to seek extradition or transfer from a jurisdiction outside the

county. The bill would also require the court, if the prosecuting agency elects to extradite the defendant, to toll the 180-day period for the time required by the prosecuting agency to obtain an extradition warrant for the defendant plus a reasonable time for the service of the warrant.

Under existing law, if a general verdict is rendered against the defendant or a special verdict is given, the defendant is required to be remanded or, if on bail, committed to the county to await judgment.

The bill would require remand or commitment to the county after a defendant enters a plea of guilty or is found guilty after entering a plea of *nolo contendere*.

Existing law requires county agencies to enter each bench warrant issued on a private surety-bonded felony case into the national warrant system. If the county agency fails to do this and that failure prevents the surety or bond agent from surrendering the fugitive into custody, prevents the fugitive from being arrested or taken into custody, or results in the fugitive's subsequent release from custody, then the bail is exonerated.

This bill would require the warrants in the national warrant system to be entered as fully extraditable warrants. By increasing the duties of county agencies, this bill would impose a state-mandated local program.

Existing law requires the district attorney or county counsel, when a bond is forfeited after the 180-day period, to take specified actions, including demanding immediate payment of the judgment within 30 days after summary judgment becomes final.

This bill would also make these requirements applicable to other applicable prosecuting agencies and would authorize the named agencies to enter into a court-approved resolution of the judgment of forfeiture if the motion to vacate for forfeiture or judgment is made.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law, the Postrelease Community Supervision Act of 2011, requires certain inmates released from state prison to be subject to 3 years supervision by a county agency. The act provides that if the~~

~~supervising county agency has determined, following application of its assessment processes, that authorized intermediate sanctions are not appropriate, the supervising county agency is required to petition the revocation hearing officer to revoke and terminate postrelease supervision of the inmate.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

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

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

1 SECTION 1. Section 1166 of the Penal Code is amended to
2 read:

3 1166. If a general verdict is rendered against the defendant, ~~or~~
4 a special verdict is given, *the defendant enters a plea of guilty, or*
5 *the defendant is found guilty after entering a plea of nolo contendere*
6 ~~he or she must~~ *shall* be remanded, if in custody, or, if on bail, he
7 or she shall be committed to the proper officer of the county to
8 await the judgment of the court upon the verdict, unless, upon
9 considering the protection of the public, the seriousness of the
10 offense charged and proven, the previous criminal record of the
11 defendant, the probability of the defendant failing to appear for
12 the judgment of the court upon the verdict, and public safety, the
13 court concludes the evidence supports its decision to allow the
14 defendant to remain out on bail. When committed, his or her bail
15 ~~is~~ *shall be* exonerated; or, if money is deposited instead of bail, it
16 ~~must~~ *shall* be refunded to the defendant or to the person or persons
17 found by the court to have deposited ~~said~~ *the* money on behalf of
18 ~~said~~ *the* defendant.

19 SEC. 2. Section 1196 of the Penal Code is amended to read:

20 1196. (a) The clerk ~~must~~ *shall*, at any time after the order,
21 issue a bench warrant into one or more counties.

22 (b) The clerk shall require the appropriate agency to enter each
23 bench warrant issued on a private surety-bonded felony case into
24 the national warrant system (National Crime Information Center
25 (NCIC)). If the appropriate agency fails to enter the bench warrant
26 into the national warrant system (NCIC) *as a fully extraditable*
27 *warrant*, and the court finds that this failure prevented the surety
28 or bond agent from surrendering the fugitive into custody,

1 prevented the fugitive from being arrested or taken into custody,
 2 or resulted in the fugitive’s subsequent release from custody, the
 3 court having jurisdiction over the bail shall, upon petition, set aside
 4 the forfeiture of the bond and declare all liability on the bail bond
 5 to be exonerated.

6 *SEC. 3. Section 1305 of the Penal Code is amended to read:*

7 1305. (a) A court shall in open court declare forfeited the
 8 undertaking of bail or the money or property deposited as bail if,
 9 without sufficient excuse, a defendant fails to appear for any of
 10 the following:

- 11 (1) Arraignment.
- 12 (2) Trial.
- 13 (3) Judgment.
- 14 (4) Any other occasion prior to the pronouncement of judgment
 15 if the defendant’s presence in court is lawfully required.
- 16 (5) To surrender himself or herself in execution of the judgment
 17 after appeal.

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

22 (b) (1) If the amount of the bond or money or property
 23 deposited exceeds four hundred dollars (\$400), the clerk of the
 24 court shall, within 30 days of the forfeiture, mail notice of the
 25 forfeiture to the surety or the depositor of money posted instead
 26 of bail. At the same time, the court shall mail a copy of the
 27 forfeiture notice to the bail agent whose name appears on the bond.
 28 The clerk shall also execute a certificate of mailing of the forfeiture
 29 notice and shall place the certificate in the court’s file. If the notice
 30 of forfeiture is required to be mailed pursuant to this section, the
 31 180-day period provided for in this section shall be extended by
 32 a period of five days to allow for the mailing.

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

40 The

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

3 (1)

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

6 (2)

7 (B) The clerk fails to mail the notice of forfeiture to the surety
8 at the address printed on the bond.

9 (3)

10 (C) The clerk fails to mail a copy of the notice of forfeiture to
11 the bail agent at the address shown on the bond.

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

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

39 (3) If, outside the county where the case is located, *either foreign*
40 *or domestic*, the defendant is surrendered to custody by the bail

1 or is arrested in the underlying case within the 180-day period, the
 2 court shall vacate the forfeiture and exonerate the bail.
 3 *Notwithstanding subdivision (i), a motion for exoneration brought*
 4 *under this paragraph may be filed within 30 days of the mailing*
 5 *of the notice of entry of judgment pursuant to Section 1306.*

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

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

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

11 (d) In the case of a permanent disability, the court shall direct
 12 the order of forfeiture to be vacated and the bail or money or
 13 property deposited as bail exonerated if, within 180 days of the
 14 date of forfeiture or within 180 days of the date of mailing of the
 15 notice if notice is required under subdivision (b), it is made
 16 apparent to the satisfaction of the court that both of the following
 17 conditions are met:

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

21 (2) The absence of the defendant is without the connivance of
 22 the bail.

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

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

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

31 (3) The absence of the defendant is without the connivance of
 32 the bail.

33 The period of the tolling shall be extended for a reasonable period
 34 of time, at the discretion of the court, after the cessation of the
 35 disability to allow for the return of the defendant to the jurisdiction
 36 of the court.

37 (f) In all cases where a defendant is in custody ~~beyond the~~
 38 ~~jurisdiction of the court that ordered the bail forfeited~~ *outside the*
 39 *county where the case is located*, and the prosecuting agency elects
 40 not to seek extradition *or transfer* after being informed of the

1 location of the defendant, the court shall vacate the forfeiture and
2 exonerate the bond on terms that are just and do not exceed the
3 terms imposed in similar situations with respect to other forms of
4 pretrial release. *If the prosecuting agency elects to extradite the*
5 *defendant, the court shall toll the 180-day time period for the time*
6 *required by the prosecuting agency to obtain an extradition*
7 *warrant for the defendant plus a reasonable time for the service*
8 *of the warrant.*

9 (g) In all cases of forfeiture where a defendant is not in custody
10 and is beyond the jurisdiction of the state, is temporarily detained,
11 by the bail agent, in the presence of a local law enforcement officer
12 of the jurisdiction in which the defendant is located, and is
13 positively identified by that law enforcement officer as the wanted
14 defendant in an affidavit signed under penalty of perjury, and the
15 prosecuting agency elects not to seek extradition after being
16 informed of the location of the defendant, the court shall vacate
17 the forfeiture and exonerate the bond on terms that are just and do
18 not exceed the terms imposed in similar situations with respect to
19 other forms of pretrial release. *If the prosecuting agency elects to*
20 *extradite the defendant, the court shall toll the 180-day time period*
21 *for the time required by the prosecuting agency to obtain an*
22 *extradition warrant for the defendant plus a reasonable time for*
23 *the service of the warrant.*

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

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

36 *SEC. 4. Section 1306 of the Penal Code is amended to read:*

37 1306. (a) When ~~any~~ a bond is forfeited and the period of time
38 specified in Section 1305 has elapsed without the forfeiture having
39 been set aside, the court ~~which~~ *that* has declared the forfeiture,
40 regardless of the amount of the bail, shall enter a summary

1 judgment against each bondsman named in the bond in the amount
2 for which the bondsman is bound. The judgment shall be the
3 amount of the bond plus costs, and notwithstanding any other law,
4 no penalty assessments shall be levied or added to the judgment.

5 (b) If a court grants relief from bail forfeiture, it shall impose a
6 monetary payment as a condition of relief to compensate the people
7 for the costs of returning a defendant to custody pursuant to Section
8 1305, except for cases where the court determines that in the best
9 interest of justice no costs should be imposed. The amount imposed
10 shall reflect the actual costs of returning the defendant to custody.
11 Failure to act within the required time to make the payment
12 imposed pursuant to this subdivision shall not be the basis for a
13 summary judgment against any or all of the underlying amount of
14 the bail. A summary judgment entered for failure to make the
15 payment imposed under this subdivision is subject to the provisions
16 of Section 1308, and shall apply only to the amount of the costs
17 owing at the time the summary judgment is entered, plus
18 administrative costs and interests.

19 (c) If, because of the failure of ~~any~~ a court to promptly perform
20 the duties enjoined upon it pursuant to this section, summary
21 judgment is not entered within 90 days after the date upon which
22 it may first be entered, the right to do so expires and the bail is
23 exonerated.

24 (d) A dismissal of the complaint, indictment, or information
25 after the default of the defendant shall not release or affect the
26 obligation of the bail bond or undertaking.

27 (e) The district attorney~~or~~, county counsel, *or applicable*
28 *prosecuting agency* shall:

29 (1) Demand immediate payment of the judgment within 30 days
30 after the summary judgment becomes final.

31 (2) If the judgment remains unpaid for a period of 20 days after
32 demand has been made, shall forthwith enforce the judgment in
33 the manner provided for enforcement of money judgments
34 generally. If the judgment is appealed by the surety or bondsman,
35 the undertaking required to be given in these cases shall be
36 provided by a surety other than the one filing the appeal. The
37 undertaking shall comply with the enforcement requirements of
38 Section 917.1 of the Code of Civil Procedure.

1 (3) *If a motion to vacate forfeiture or judgment is made, be*
2 *authorized to enter into a court-approved resolution of the*
3 *judgment or forfeiture.*

4 (f) The right to enforce a summary judgment entered against a
5 bondsman pursuant to this section shall expire two years after the
6 entry of the judgment.

7 *SEC. 5. If the Commission on State Mandates determines that*
8 *this act contains costs mandated by the state, reimbursement to*
9 *local agencies and school districts for those costs shall be made*
10 *pursuant to Part 7 (commencing with Section 17500) of Division*
11 *4 of Title 2 of the Government Code.*

12 ~~SECTION 1. Section 3455 of the Penal Code is amended to~~
13 ~~read:~~

14 ~~3455. (a) If the supervising county agency has determined,~~
15 ~~following application of its assessment processes, that intermediate~~
16 ~~sanctions as authorized in subdivision (b) of Section 3454 are not~~
17 ~~appropriate, the supervising county agency shall petition the~~
18 ~~revocation hearing officer appointed pursuant to Section 71622.5~~
19 ~~of the Government Code to revoke and terminate postrelease~~
20 ~~supervision. At any point during the process initiated pursuant to~~
21 ~~this section, a person may waive, in writing, his or her right to~~
22 ~~counsel, admit the violation of his or her postrelease supervision,~~
23 ~~waive a court hearing, and accept the proposed modification of~~
24 ~~his or her postrelease supervision. The petition shall include a~~
25 ~~written report that contains additional information regarding the~~
26 ~~petition, including the relevant terms and conditions of postrelease~~
27 ~~supervision, the circumstances of the alleged underlying violation,~~
28 ~~the history and background of the violator, and any~~
29 ~~recommendations. The Judicial Council shall adopt forms and~~
30 ~~rules of court to establish uniform statewide procedures to~~
31 ~~implement this subdivision, including the minimum contents of~~
32 ~~supervision agency reports. Upon a finding that the person has~~
33 ~~violated the conditions of postrelease supervision, the revocation~~
34 ~~hearing officer shall have authority to do all of the following:~~

35 ~~(1) Return the person to postrelease supervision with~~
36 ~~modifications of conditions, if appropriate, including a period of~~
37 ~~incarceration in county jail.~~

38 ~~(2) Revoke postrelease supervision and order the person to~~
39 ~~confinement in the county jail.~~

1 ~~(3) Refer the person to a reentry court pursuant to Section 3015~~
2 ~~or other evidence-based program in the court’s discretion.~~
3 ~~(4) At any time during the period of postrelease supervision, if~~
4 ~~a peace officer has probable cause to believe a person subject to~~
5 ~~postrelease community supervision is violating any term or~~
6 ~~condition of his or her release, the officer may, without a warrant~~
7 ~~or other process, arrest the person and bring him or her before the~~
8 ~~supervising county agency established by the county board of~~
9 ~~supervisors pursuant to subdivision (a) of Section 3451.~~
10 ~~Additionally, an officer employed by the supervising county agency~~
11 ~~may seek a warrant and a court or its designated hearing officer~~
12 ~~appointed pursuant to Section 71622.5 of the Government Code~~
13 ~~shall have the authority to issue a warrant for that person’s arrest.~~
14 ~~(5) The court or its designated hearing officer shall have the~~
15 ~~authority to issue a warrant for a person who is the subject of a~~
16 ~~petition filed under this section who has failed to appear for a~~
17 ~~hearing on the petition or for any reason in the interests of justice,~~
18 ~~or to remand to custody a person who does appear at a hearing on~~
19 ~~the petition for any reason in the interests of justice.~~
20 ~~(b) The revocation hearing shall be held within a reasonable~~
21 ~~time after the filing of the revocation petition. Based upon a~~
22 ~~showing of a preponderance of the evidence that a person under~~
23 ~~supervision poses an unreasonable risk to public safety, or that the~~
24 ~~person may not appear if released from custody, or for any reason~~
25 ~~in the interests of justice, the supervising county agency shall have~~
26 ~~the authority to make a determination whether the person should~~
27 ~~remain in custody pending a revocation hearing, and upon that~~
28 ~~determination, may order the person confined pending a revocation~~
29 ~~hearing.~~
30 ~~(c) Confinement pursuant to paragraphs (1) and (2) of~~
31 ~~subdivision (a) shall not exceed a period of 180 days in a county~~
32 ~~jail.~~
33 ~~(d) A person shall not remain under supervision or in custody~~
34 ~~pursuant to this title on or after three years from the date of the~~
35 ~~person’s initial entry onto postrelease supervision, except when a~~
36 ~~bench or arrest warrant has been issued by a court or its designated~~
37 ~~hearing officer and the person has not appeared. During the time~~
38 ~~the warrant is outstanding the supervision period shall be tolled~~
39 ~~and when the person appears before the court or its designated~~

- 1 ~~hearing officer the supervision period may be extended for a period~~
- 2 ~~equivalent to the time tolled.~~

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