

AMENDED IN SENATE JUNE 26, 2012

AMENDED IN ASSEMBLY MAY 2, 2012

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 1305 of~~ *add Section 1305.6 to* the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

AB 1824, as amended, Hagman. 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. ~~Under existing law, 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 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 the penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the defendant's location, the court is required to vacate the forfeiture and exonerate the bond. Existing law requires a court to vacate the forfeiture and exonerate the bond if the defendant is arrested on the underlying case or surrendered by the bail outside the county where the case is located.~~

~~This bill would require exoneration of the bond if the prosecuting agency elects not to seek extradition when the defendant is temporarily detained by the bail agent in a location beyond the jurisdiction of the state but in the United States or a foreign state that has a treaty of extradition with the United States. The bill would require specified proof to be presented when the court is vacating a bond in these instances, including the local law enforcement officer's information and other information showing proof of positive identification of the defendant. The bill would also allow for an extension of the 180-day period described above, for an additional period up to 180 days, if the prosecuting agency does not make a decision within the original 180-day period and would authorize the court to require that the bail agent or surety pay the reasonable costs of extradition, in an amount not to exceed the bond, as a condition of granting the extension. The bill would require the moving party to give the prosecuting agency written notice at least 10 court days before a hearing on specified motions related to a bond, including motions to exonerate the bond based on a decision by the prosecuting agency not to extradite.~~

This bill would authorize a court, in its discretion, to vacate the forfeiture and exonerate the bond if a person appears in court after the 180-day period ends if the person was arrested on the same case during the 180-day period and has been in continuous custody from the time of arrest until his or her appearance in court. The bill would authorize, upon showing of good cause and within 20 days from the mailing of notice of entry of judgment, the filing of a motion to vacate the forfeiture and exonerate the bond where the defendant is secured outside the county where the case is filed, as provided above. The bill would require written notice to the prosecuting agency at least 10 court days before a hearing regarding either of these motions.

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 1305.6 is added to the Penal Code, to
- 2 read:
- 3 1305.6. (a) If a person appears in court after arrest after the
- 4 end of the 180-day period specified in Section 1305, the court may,
- 5 in its discretion, vacate the forfeiture and exonerate the bond if
- 6 both of the following conditions are met:

1 (1) *The person was arrested on the same case within the 180-day*
2 *period.*

3 (2) *The person has been in continuous custody from the time of*
4 *his or her arrest until the court appearance on that case.*

5 (b) *Upon a showing of good cause, a motion brought pursuant*
6 *to paragraph (3) of subdivision (c) of Section 1305 may be filed*
7 *within 20 days from the mailing of the notice of entry of judgment*
8 *under Section 1306.*

9 (c) *In addition to any other notice required by law, the moving*
10 *party shall give the applicable prosecuting agency written notice*
11 *of the motion to vacate the forfeiture and exonerate the bond under*
12 *this section at least 10 court days before the hearing.*

13 ~~SECTION 1. Section 1305 of the Penal Code is amended to~~
14 ~~read:~~

15 ~~1305. (a) A court shall in open court declare forfeited the~~
16 ~~undertaking of bail or the money or property deposited as bail if,~~
17 ~~without sufficient excuse, a defendant fails to appear for any of~~
18 ~~the following:~~

19 ~~(1) Arraignment.~~

20 ~~(2) Trial.~~

21 ~~(3) Judgment.~~

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

24 ~~(5) To surrender himself or herself in execution of the judgment~~
25 ~~after appeal.~~

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

30 ~~(b) (1) If the amount of the bond or money or property deposited~~
31 ~~exceeds four hundred dollars (\$400), the clerk of the court shall,~~
32 ~~within 30 days of the forfeiture, mail notice of the forfeiture to the~~
33 ~~surety or the depositor of money posted instead of bail. At the~~
34 ~~same time, the court shall mail a copy of the forfeiture notice to~~
35 ~~the bail agent whose name appears on the bond. The clerk shall~~
36 ~~also execute a certificate of mailing of the forfeiture notice and~~
37 ~~shall place the certificate in the court's file. If the notice of~~
38 ~~forfeiture is required to be mailed pursuant to this section, the~~
39 ~~180-day period provided for in this section shall be extended by~~
40 ~~a period of five days to allow for the mailing.~~

1 ~~(2) If the surety is an authorized corporate surety, and if the~~
2 ~~bond plainly displays the mailing address of the corporate surety~~
3 ~~and the bail agent, then notice of the forfeiture shall be mailed to~~
4 ~~the surety at that address and to the bail agent, and mailing alone~~
5 ~~to the surety or the bail agent shall not constitute compliance with~~
6 ~~this section.~~

7 ~~(3) The surety or depositor shall be released of all obligations~~
8 ~~under the bond if any of the following conditions apply:~~

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

11 ~~(B) The clerk fails to mail the notice of forfeiture to the surety~~
12 ~~at the address printed on the bond.~~

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

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

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

38 ~~(3) If, outside the county where the case is located, the defendant~~
39 ~~is surrendered to custody by the bail or is arrested in the underlying~~

1 case within the 180-day period, the court shall vacate the forfeiture
2 and exonerate the bail.

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

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

7 ~~(B) The bail has not surrendered the defendant.~~

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

15 ~~(1) The defendant is deceased or otherwise permanently unable~~
16 ~~to appear in the court due to illness, insanity, or detention by~~
17 ~~military or civil authorities.~~

18 ~~(2) The absence of the defendant is without the connivance of~~
19 ~~the bail.~~

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

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

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

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

30 ~~The period of the tolling shall be extended for a reasonable period~~
31 ~~of time, at the discretion of the court, after the cessation of the~~
32 ~~disability to allow for the return of the defendant to the jurisdiction~~
33 ~~of the court.~~

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

1 ~~(g) (1) In all cases of forfeiture where a defendant is not in~~
2 ~~custody and is beyond the jurisdiction of the state, but in the United~~
3 ~~States or in a foreign state that has a treaty of extradition with the~~
4 ~~United States, is temporarily detained, by the bail agent, in the~~
5 ~~presence of a local law enforcement officer of the jurisdiction in~~
6 ~~which the defendant is located, and is positively identified by that~~
7 ~~law enforcement officer as the wanted defendant in an affidavit~~
8 ~~signed under penalty of perjury, and the prosecuting agency elects~~
9 ~~not to seek extradition after being informed of the location of the~~
10 ~~defendant, the court shall vacate the forfeiture and exonerate the~~
11 ~~bond on terms that are just and do not exceed the terms imposed~~
12 ~~in similar situations with respect to other forms of pretrial release.~~
13 ~~If the defendant is in a foreign state, the affidavit of the local law~~
14 ~~enforcement officer shall comply with Section 1454 of the~~
15 ~~Evidence Code, or, if the affidavit is a copy, Section 1530 of the~~
16 ~~Evidence Code.~~

17 ~~(2) In any motion filed under this subdivision, proof shall be~~
18 ~~presented showing the local law enforcement officer's full name,~~
19 ~~title, agency name, contact telephone number, and contact address.~~

20 ~~(3) In any motion filed under this subdivision, proof of positive~~
21 ~~identification shall include proof of the defendant's permanent~~
22 ~~residency in the state or country in which the defendant is detained~~
23 ~~by the bail agent, a legible copy of a government identification,~~
24 ~~including, but not limited to, a driver's license or passport issued~~
25 ~~by an authorized public agency of the state or government of the~~
26 ~~country in which the defendant is detained by the bail agent, with~~
27 ~~the number of the identification written on the affidavit, a current~~
28 ~~photograph, and a complete and clear set of fingerprints.~~

29 ~~(4) If the prosecuting agency does not make an extradition~~
30 ~~decision within the 180-day period provided in this section, the~~
31 ~~bail agency or surety may make a motion to extend the 180-day~~
32 ~~period for an additional period, not to exceed an additional 180~~
33 ~~days. The 180-day extension may be renewed on the same basis~~
34 ~~as the original order. The court may require that the bail agent or~~
35 ~~surety pay the reasonable costs of extradition, in an amount not to~~
36 ~~exceed the value of the bond, as a condition of granting the~~
37 ~~extension.~~

38 ~~(h) As used in this section, "arrest" includes a hold placed on~~
39 ~~the defendant in the underlying case while he or she is in custody~~
40 ~~on other charges.~~

1 (i) ~~A motion filed in a timely manner within the 180-day period~~
2 ~~may be heard within 30 days of the expiration of the 180-day~~
3 ~~period. The court may extend the 30-day period upon a showing~~
4 ~~of good cause. The motion may be made by the surety insurer, the~~
5 ~~bail agent, the surety, or the depositor of money or property, any~~
6 ~~of whom may appear in person or through an attorney.~~
7 (j) ~~In addition to any other notice required by law, the moving~~
8 ~~party shall give the applicable prosecuting agency a written notice~~
9 ~~at least 10 court days before a hearing pursuant to subdivisions~~
10 ~~(f), (g), and (i), and Section 1305.4 as a condition precedent to~~
11 ~~granting the motion.~~

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