

ASSEMBLY BILL

No. 2388

Introduced by Assembly Member Hagman

February 21, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2388, as introduced, Hagman. Bail.

Except as provided, existing law requires that a hearing be held before a person who has been arrested for the commission of certain 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, at which the court is required to consider specified factors, including, among others, the potential danger that person poses to others.

This bill would make a technical, nonsubstantive change to that provision.

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

- 1 (1) A serious felony, as defined in subdivision (c) of Section
2 1192.7, or a violent felony, as defined in subdivision (c) of Section
3 667.5, but not including a violation of subdivision (a) of Section
4 460 (residential burglary).
- 5 (2) A violation of Section 136.1 where punishment is imposed
6 pursuant to subdivision (c) of Section 136.1, Section 262, 273.5,
7 or 422 where the offense is punished as a felony, or Section 646.9.
- 8 (3) A violation of paragraph (1) of subdivision (e) of Section
9 243.
- 10 (4) A violation of Section 273.6 if the detained person made
11 threats to kill or harm, has engaged in violence against, or has gone
12 to the residence or workplace of, the protected party.
- 13 (b) The prosecuting attorney and defense attorney shall be given
14 a two-court-day written notice and an opportunity to be heard on
15 the matter. If the detained person does not have counsel, the court
16 shall appoint counsel for purposes of this section only. The hearing
17 required by this section shall be held within the time period
18 prescribed in Section 825.
- 19 (c) At the hearing, the court shall consider evidence of past court
20 appearances of the detained person, the maximum potential
21 sentence that could be imposed, and the danger that may be posed
22 to other persons if the detained person is released. In making the
23 determination whether to release the detained person on his or her
24 own recognizance, the court shall consider the potential danger to
25 other persons, including threats that have been made by the
26 detained person and any past acts of violence. The court shall also
27 consider any evidence offered by the detained person regarding
28 his or her ties to the community and his or her ability to post bond.
- 29 (d) If the judge or magistrate sets the bail in an amount that is
30 either more or less than the amount contained in the schedule of
31 bail for the offense, the judge or magistrate shall state the reasons
32 for that decision and shall address the issue of threats made against
33 the victim or witness, if they were made, in the record. This
34 statement shall be included in the record.
- 35 (e) Notwithstanding subdivision (a), a judge or magistrate,
36 pursuant to Section 1269c, may, with respect to a bailable felony
37 offense or a misdemeanor offense of violating a domestic violence
38 order, increase bail to an amount exceeding that set forth in the
39 bail schedule without a hearing, provided an oral or written

- 1 declaration of facts justifying the increase is presented under
- 2 penalty of perjury by a sworn peace officer.

O