

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2388

Introduced by Assembly Member Hagman

February 21, 2014

An act to ~~amend Section 1270.1 of~~ *add Section 1269d* to the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

AB 2388, as amended, Hagman. ~~Bail.~~ *Bail: statewide bail schedule.*

Existing law provides that it is the duty of the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide bail schedule for all bailable felony offenses and for all misdemeanor and infraction offenses, except Vehicle Code infractions. Under existing law, a court may adopt a local rule prescribing the procedure by which the uniform countywide schedule is prepared, adopted, and annually revised by the judges. Existing law requires that, if the court does not adopt a local rule, the uniform countywide bail schedule be prepared, adopted, and annually revised by a majority of the judges.

This bill would require the Judicial Council to prepare, adopt, and annually revise a statewide bail schedule for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions.

~~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~~-yes. State-mandated local program: no.

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

1 SECTION 1. Section 1269d is added to the Penal Code, to
2 read:

3 1269d. (a) In addition to preparing the penalty schedule for
4 infraction violations of the Vehicle Code pursuant to Section 40310,
5 it is the duty of the Judicial Council, on or before January 1, 2016,
6 to prepare, adopt, and annually revise a statewide bail schedule
7 for all bailable felony offenses and for all misdemeanor and
8 infraction offenses except Vehicle Code infractions.

9 (1) The Judicial Council shall appoint a group of judges, deemed
10 by the council sufficient to adequately represent counties varying
11 in size from throughout the state, to develop and approve the
12 statewide bail schedule.

13 (2) In preparing, adopting, and annually revising the statewide
14 bail schedule, the Judicial Council shall consult with the following
15 representatives:

16 (A) A representative appointed by the California District
17 Attorneys Association.

18 (B) A representative appointed by the California Public
19 Defenders Association.

20 (C) A representative appointed by the California Attorneys for
21 Criminal Justice.

22 (D) A representative appointed by the California State Sheriffs’
23 Association.

24 (3) In preparing, adopting, and annually revising the statewide
25 bail schedule, the Judicial Council shall receive and consider input
26 regarding the statewide bail schedule from interested parties other
27 than those specified in paragraph (2).

28 (b) (1) In adopting the statewide bail schedule for all bailable
29 felony offenses the Judicial Council shall consider the seriousness
30 of the offense charged. In considering the seriousness of the offense
31 charged the Judicial Council shall assign an additional amount

1 of required bail for each aggravating or enhancing factor
2 chargeable in the complaint, including, but not limited to,
3 additional bail for charges alleging facts that would bring a person
4 within any of the following sections: Section 667.5, 667.51, 667.6,
5 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2, 12022.3,
6 12022.4, 12022.5, 12022.53, 12022.6, 12022.7, 12022.8, or
7 12022.9 of this code, or Section 11356.5, 11370.2, or 11370.4 of
8 the Health and Safety Code.

9 (2) In considering offenses in which a violation of Chapter 6
10 (commencing with Section 11350) of Division 10 of the Health
11 and Safety Code is alleged, the Judicial Council shall assign an
12 additional amount of required bail for offenses involving large
13 quantities of controlled substances.

14 (c) The statewide bail schedule shall contain a list of the offenses
15 and the amounts of bail applicable for each as the Judicial Council
16 determines to be appropriate. If the schedule does not list all
17 offenses specifically, it shall contain a general clause for
18 designated amounts of bail as the Judicial Council determines to
19 be appropriate for all the offenses not specifically listed in the
20 schedule.

21 (d) The Judicial Council shall adopt California Rules of Court
22 consistent with this section.

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

25 1270.1. (a) Except as provided in subdivision (e), before a
26 person who is arrested for any of the following crimes may be
27 released on bail in an amount that is either more or less than the
28 amount contained in the schedule of bail for the offense, or may
29 be released on his or her own recognizance, a hearing shall be held
30 in open court before the magistrate or judge:

31 (1) A serious felony, as defined in subdivision (e) of Section
32 1192.7, or a violent felony, as defined in subdivision (e) of Section
33 667.5, but not including a violation of subdivision (a) of Section
34 460 (residential burglary):

35 (2) A violation of Section 136.1 where punishment is imposed
36 pursuant to subdivision (e) of Section 136.1, Section 262, 273.5,
37 or 422 where the offense is punished as a felony, or Section 646.9.

38 (3) A violation of paragraph (1) of subdivision (e) of Section
39 243.

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

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