

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2655

Introduced by Assembly Member Weber

February 19, 2016

An act to amend Section ~~18.5~~ 1305 of the Penal Code, relating to ~~misdemeanors~~: *bail*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2655, as amended, Weber. ~~Misdemeanors: maximum sentence.~~
Bail: jurisdiction.

Existing law generally regulates the provision of bail or bond, including forfeiture, vacation of forfeiture, and exoneration of bail or bond. Existing law requires the court to declare bail to be forfeited if, without sufficient excuse, a defendant fails to appear as specified. Existing law denies the court jurisdiction to declare a forfeiture and requires the bail to be released of all obligations under the bond if the case is dismissed or if no complaint is filed within 15 days from the date of arraignment.

This bill would authorize an extension of the court's jurisdiction to declare a forfeiture and authority to release bail for not more than 90 days if the arraignment is properly continued to allow the prosecutor time to file the complaint and the defendant requests the extension in writing or in open court.

~~Existing law defines a crime or public offense as an act committed or omitted in violation of a law forbidding or commanding it. Under existing law, a crime that is punishable by imprisonment in a county jail for a period not to exceed a year is a misdemeanor. Existing law provides that every offense punishable by imprisonment in a county~~

jail up to or not exceeding one year is punishable by imprisonment not to exceed 364 days.

~~This bill would make technical, nonsubstantive changes 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 1305 of the Penal Code is amended to
2 read:

3 1305. (a) (1) A court shall in open court declare forfeited the
4 undertaking of bail or the money or property deposited as bail if,
5 without sufficient excuse, a defendant fails to appear for any of
6 the following:

7 ~~(1)~~
8 (A) Arraignment.

9 ~~(2)~~
10 (B) Trial.

11 ~~(3)~~
12 (C) Judgment.

13 ~~(4)~~
14 (D) Any other occasion prior to the pronouncement of judgment
15 if the defendant’s presence in court is lawfully required.

16 ~~(5)~~
17 (E) To surrender himself or herself in execution of the judgment
18 after appeal.

19 However, the
20 (2) (A) *Notwithstanding paragraph (1), except as provided in*
21 *subparagraph (B), the court shall not have jurisdiction to declare*
22 *a forfeiture and the bail shall be released of all obligations under*
23 *the bond if the case is dismissed or if no complaint is filed within*
24 *15 days from the date of arraignment.*

25 (B) *The court’s jurisdiction to declare a forfeiture and authority*
26 *to release bail may be extended for not more than 90 days if both*
27 *of the following occur:*

28 (i) *The arraignment is continued to allow the prosecutor time*
29 *to file the complaint.*

30 (ii) *The defendant requests the extension in writing or in open*
31 *court.*

1 (b) (1) If the amount of the bond or money or property
2 deposited exceeds four hundred dollars (\$400), the clerk of the
3 court shall, within 30 days of the forfeiture, mail notice of the
4 forfeiture to the surety or the depositor of money posted instead
5 of bail. At the same time, the court shall mail a copy of the
6 forfeiture notice to the bail agent whose name appears on the bond.
7 The clerk shall also execute a certificate of mailing of the forfeiture
8 notice and shall place the certificate in the court's file. If the notice
9 of forfeiture is required to be mailed pursuant to this section, the
10 180-day period provided for in this section shall be extended by
11 a period of five days to allow for the mailing.

12 ~~¶~~

13 (2) *If* the surety is an authorized corporate surety, and if the
14 bond plainly displays the mailing address of the corporate surety
15 and the bail agent, then notice of the forfeiture shall be mailed to
16 the surety at that address and to the bail agent, and mailing alone
17 to the surety or the bail agent shall not constitute compliance with
18 this section.

19 ~~The~~

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

22 ~~(1)~~

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

25 ~~(2)~~

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

28 ~~(3)~~

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

31 (c) (1) If the defendant appears either voluntarily or in custody
32 after surrender or arrest in court within 180 days of the date of
33 forfeiture or within 180 days of the date of mailing of the notice
34 if the notice is required under subdivision (b), the court shall, on
35 its own motion at the time the defendant first appears in court on
36 the case in which the forfeiture was entered, direct the order of
37 forfeiture to be vacated and the bond exonerated. If the court fails
38 to so act on its own motion, then the surety's or depositor's
39 obligations under the bond shall be immediately vacated and the
40 bond exonerated. An order vacating the forfeiture and exonerating

1 the bond may be made on terms that are just and do not exceed
2 the terms imposed in similar situations with respect to other forms
3 of pretrial release.

4 (2) If, within the county where the case is located, the defendant
5 is surrendered to custody by the bail or is arrested in the underlying
6 case within the 180-day period, and is subsequently released from
7 custody prior to an appearance in court, the court shall, on its own
8 motion, direct the order of forfeiture to be vacated and the bond
9 exonerated. If the court fails to so act on its own motion, then the
10 surety's or depositor's obligations under the bond shall be
11 immediately vacated and the bond exonerated. An order vacating
12 the forfeiture and exonerating the bond may be made on terms that
13 are just and do not exceed the terms imposed in similar situations
14 with respect to other forms of pretrial release.

15 (3) If, outside the county where the case is located, the defendant
16 is surrendered to custody by the bail or is arrested in the underlying
17 case within the 180-day period, the court shall vacate the forfeiture
18 and exonerate the bail.

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

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

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

24 (d) In the case of a permanent disability, the court shall direct
25 the order of forfeiture to be vacated and the bail or money or
26 property deposited as bail exonerated if, within 180 days of the
27 date of forfeiture or within 180 days of the date of mailing of the
28 notice, if notice is required under subdivision (b), it is made
29 apparent to the satisfaction of the court that both of the following
30 conditions are met:

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

34 (2) The absence of the defendant is without the connivance of
35 the bail.

36 (e) (1) In the case of a temporary disability, the court shall
37 order the tolling of the 180-day period provided in this section
38 during the period of temporary disability, provided that it appears
39 to the satisfaction of the court that the following conditions are
40 met:

1 ~~(1)~~

2 (A) The defendant is temporarily disabled by reason of illness,
3 insanity, or detention by military or civil authorities.

4 ~~(2)~~

5 (B) Based upon the temporary disability, the defendant is unable
6 to appear in court during the remainder of the 180-day period.

7 ~~(3)~~

8 (C) The absence of the defendant is without the connivance of
9 the bail.

10 ~~The~~

11 (2) *The* period of the tolling shall be extended for a reasonable
12 period of time, at the discretion of the court, after the cessation of
13 the disability to allow for the return of the defendant to the
14 jurisdiction of the court.

15 (f) In all cases where a defendant is in custody beyond the
16 jurisdiction of the court that ordered the bail forfeited, and the
17 prosecuting agency elects not to seek extradition after being
18 informed of the location of the defendant, the court shall vacate
19 the forfeiture and exonerate the bond on terms that are just and do
20 not exceed the terms imposed in similar situations with respect to
21 other forms of pretrial release.

22 (g) In all cases of forfeiture where a defendant is not in custody
23 and is beyond the jurisdiction of the state, is temporarily detained,
24 by the bail agent, in the presence of a local law enforcement officer
25 of the jurisdiction in which the defendant is located, and is
26 positively identified by that law enforcement officer as the wanted
27 defendant in an affidavit signed under penalty of perjury, and the
28 prosecuting agency elects not to seek extradition after being
29 informed of the location of the defendant, the court shall vacate
30 the forfeiture and exonerate the bond on terms that are just and do
31 not exceed the terms imposed in similar situations with respect to
32 other forms of pretrial release.

33 (h) In cases arising under subdivision (g), if the bail agent and
34 the prosecuting agency agree that additional time is needed to
35 return the defendant to the jurisdiction of the court, and the
36 prosecuting agency agrees to the tolling of the 180-day period, the
37 court may, on the basis of the agreement, toll the 180-day period
38 within which to vacate the forfeiture. The court may order tolling
39 for up to the length of time agreed upon by the parties.

1 (i) As used in this section, “arrest” includes a hold placed on
2 the defendant in the underlying case while he or she is in custody
3 on other charges.

4 (j) A motion filed in a timely manner within the 180-day period
5 may be heard within 30 days of the expiration of the 180-day
6 period. The court may extend the 30-day period upon a showing
7 of good cause. The motion may be made by the surety insurer, the
8 bail agent, the surety, or the depositor of money or property, any
9 of whom may appear in person or through an attorney.

10 (k) In addition to any other notice required by law, the moving
11 party shall give the prosecuting agency a written notice at least 10
12 court days before a hearing held pursuant to subdivision (f), (g),
13 or (j), as a condition precedent to granting the motion.

14 ~~SECTION 1. Section 18.5 of the Penal Code is amended to~~
15 ~~read:~~

16 ~~18.5. Every offense that is prescribed by a law of the state to~~
17 ~~be punishable by imprisonment in a county jail up to or not~~
18 ~~exceeding one year shall be punishable by imprisonment in a~~
19 ~~county jail for a period not exceeding 364 days.~~