

AMENDED IN SENATE JUNE 17, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2491

Introduced by Assembly Member Boland

February 21, 1996

An act to amend Sections 1305 and 1308 of the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

AB 2491, as amended, Boland. Bail.

Existing law requires a court to declare forfeited the undertaking of bail or the money or property deposited as bail if a defendant fails to appear for certain proceedings without sufficient excuse.

This bill would ~~require the court to make this declaration in open court~~ define "arrest" for the purposes of this provision. The bill would also make clarifying changes.

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
2 amended to read:

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

1 (1) Arraignment.

2 (2) Trial.

3 (3) Judgment.

4 (4) Any other occasion prior to the pronouncement of
5 judgment if the defendant’s presence in court is lawfully
6 required.

7 (5) To surrender himself or herself in execution of the
8 judgment after appeal.

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

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

27 If the surety is an authorized corporate surety, and if
28 the bond plainly displays the mailing address of the
29 corporate surety and the bail agent, then notice of the
30 forfeiture shall be mailed to the surety at that address and
31 to the bail agent, and mailing alone to the surety or the
32 bail agent shall not constitute compliance with this
33 section.

34 The surety or depositor shall be released of all
35 obligations under the bond if any of the following
36 conditions apply:

37 (1) The clerk fails to mail the notice of forfeiture in
38 accordance with this section within 30 days after the entry
39 of the forfeiture.



1 (2) The clerk fails to mail the notice of forfeiture to the
2 surety at the address printed on the bond.

3 (3) The clerk fails to mail a copy of the notice of
4 forfeiture to the bail agent at the address shown on the
5 bond.

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

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

34 (3) If, outside the county where the case is located, the
35 defendant is surrendered to custody by the bail or is
36 arrested in the underlying case within the 180-day period,
37 the court shall vacate the forfeiture and exonerate the
38 bail.

39 (4) Except as provided in paragraphs (1) and (2), the
40 court, in its discretion, may require that the bail provide



1 10 days' prior notice to the applicable prosecuting
 2 agency, as a condition precedent to vacating the
 3 forfeiture. The notice may be given by the surety insurer,
 4 the bail agent, the surety, or the depositor of money or
 5 property, any of whom may appear in person or through
 6 an attorney. A motion filed in a timely manner within the
 7 180-day period may be heard within 30 days of the
 8 expiration of the 180-day period. The court may extend
 9 the 30-day period upon a showing of good cause.

10 In lieu of exonerating the bond, the court may order the
 11 bail reinstated and the defendant released on the same
 12 bond if both of the following conditions are met:

- 13 (A) The bail is given prior notice of the reinstatement.
- 14 (B) The bail has not surrendered the defendant.

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

- 23 (1) The defendant is deceased or otherwise
 24 permanently unable to appear in the court due to illness,
 25 insanity, or detention by military or civil authorities.
- 26 (2) The absence of the defendant is without the
 27 connivance of the bail.

28 (e) In the case of a temporary disability, the court shall
 29 order the tolling of the 180-day period provided in this
 30 section during the period of temporary disability,
 31 provided that it appears to the satisfaction of the court
 32 that the following conditions are met:

- 33 (1) The defendant is temporarily disabled by reason of
 34 illness, insanity, or detention by military or civil
 35 authorities.
- 36 (2) Based upon the temporary disability, the
 37 defendant is unable to appear in court during the
 38 remainder of the 180-day period.
- 39 (3) The absence of the defendant is without the
 40 connivance of the bail.



1 The period of the tolling shall be extended for a
2 reasonable period of time, at the discretion of the court,
3 after the cessation of the disability to allow for the return
4 of the defendant to the jurisdiction of the court.

5 (f) In all cases where a defendant is in custody beyond
6 the jurisdiction of the court that ordered the bail
7 forfeited, and the prosecuting agency elects not to seek
8 extradition after being informed of the location of the
9 defendant, the court shall vacate the forfeiture and
10 exonerate the bond on terms that are just and do not
11 exceed the terms imposed in similar situations with
12 respect to other forms of pretrial release.

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

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

29 SEC. 2. Section 1308 of the Penal Code is amended to
30 read:

31 1308. No court or magistrate shall accept any person
32 or corporation as surety on bail if any summary judgment
33 against ~~any~~ that person or corporation entered pursuant
34 to Section 1306 remains unpaid after the expiration of 20
35 days after service of notice of the entry of the summary
36 judgment, provided that, if during the 20 days an action
37 or proceeding available at law is initiated to determine
38 the validity of the order of forfeiture or summary
39 judgment rendered on it, this section shall be rendered
40 inoperative until that action or proceeding has finally



1 been determined, provided that, if an appeal is taken, an
2 appeal bond is posted in compliance with Section 917.1 of
3 the Code of Civil Procedure. The clerk of the court in
4 which the judgment is rendered shall serve notice of the
5 entry of judgment upon the judgment debtor within five
6 days after the date of the entry of the summary judgment.

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