

AMENDED IN ASSEMBLY JULY 8, 1998

AMENDED IN ASSEMBLY MAY 18, 1998

AMENDED IN ASSEMBLY SEPTEMBER 9, 1997

AMENDED IN SENATE FEBRUARY 14, 1997

**SENATE BILL**

**No. 55**

---

---

**Introduced by Senator Kopp**

December 6, 1996

---

---

An act to amend Section 1275 of, and to add Section 1275.1 to, the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

SB 55, as amended, Kopp. Bail.

Under existing law, in setting, reducing, or denying bail, the judge or magistrate is required to take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. Also under existing law, no bail may be accepted unless the judge or magistrate is convinced that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained. Additionally, under existing law, before reducing the bail of a person charged with a serious felony below the amount established by the bail schedule approved for the county, the court is required to make a finding of unusual circumstances and set forth those facts on the record.

This bill would authorize a judge or magistrate to place a hold on the release of a defendant from custody on the basis that the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained only if a peace officer or a prosecutor files a declaration executed under penalty of perjury setting forth probable cause *or the magistrate or judge has probable cause*, and would set forth a procedure for making the determination. By expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill also would make technical, conforming changes to existing provisions of law.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 1275 of the Penal Code is  
2 amended to read:

3 1275. (a) In setting, reducing, or denying bail, the  
4 judge or magistrate shall take into consideration the  
5 protection of the public, the seriousness of the offense  
6 charged, the previous criminal record of the defendant,  
7 and the probability of his or her appearing at trial or  
8 hearing of the case. The public safety shall be the primary  
9 consideration.

10 In considering the seriousness of the offense charged,  
11 the judge or magistrate shall include consideration of the  
12 alleged injury to the victim, and alleged threats to the  
13 victim or a witness to the crime charged, the alleged use  
14 of a firearm or other deadly weapon in the commission of  
15 the crime charged, and the alleged use or possession of  
16 controlled substances by the defendant.



1 (b) In considering offenses wherein a violation of  
2 Chapter 6 (commencing with Section 11350) of Division  
3 10 of the Health and Safety Code is alleged, the judge or  
4 magistrate shall consider the following: (1) the alleged  
5 amounts of controlled substances involved in the  
6 commission of the offense, and (2) whether the  
7 defendant is currently released on bail for an alleged  
8 violation of Chapter 6 (commencing with Section 11350)  
9 of Division 10 of the Health and Safety Code.

10 (c) Before a court reduces bail below the amount  
11 established by the bail schedule approved for the county,  
12 in accordance with subdivisions (b) and (c) of Section  
13 1269b, for a person charged with a serious felony, as  
14 defined in subdivision (c) of Section 1192.7, or a violent  
15 felony, as defined in subdivision (c) of Section 667.5, the  
16 court shall make a finding of unusual circumstances and  
17 shall set forth those facts on the record. For purposes of  
18 this subdivision, “unusual circumstances” does not  
19 include the fact that the defendant has made all prior  
20 court appearances or has not committed any new  
21 offenses.

22 SEC. 2. Section 1275.1 is added to the Penal Code, to  
23 read:

24 1275.1. (a) Bail, pursuant to this chapter, shall not be  
25 accepted unless a judge or magistrate finds that no  
26 portion of the consideration, pledge, security, deposit, or  
27 indemnification paid, given, made, or promised for its  
28 execution was feloniously obtained.

29 (b) A hold on the release of a defendant from custody  
30 shall only be ordered by a magistrate or judge if ~~either~~ any  
31 of the following occurs:

32 (1) A peace officer, as defined in Section 830, files a  
33 declaration executed under penalty of perjury setting  
34 forth probable cause to believe that the source of any  
35 consideration, pledge, security, deposit, or  
36 indemnification paid, given, made, or promised for its  
37 execution was feloniously obtained.

38 (2) A prosecutor files a declaration executed under  
39 penalty of perjury setting forth probable cause to believe  
40 that the source of any consideration, pledge, security,



1 deposit, or indemnification paid, given, made, or  
2 promised for its execution was feloniously obtained. A  
3 *prosecutor shall have absolute civil immunity for*  
4 *executing a declaration pursuant to this paragraph.*

5 (3) *The magistrate or judge has probable cause to*  
6 *believe that the source of any consideration, pledge,*  
7 *security, deposit, or indemnification paid, given, made, or*  
8 *promised for its execution was feloniously obtained.*

9 (c) Once a magistrate or judge has determined that  
10 probable cause exists, as provided in subdivision (b), a  
11 defendant bears the burden by a preponderance of the  
12 evidence to show that no part of any consideration,  
13 pledge, security, deposit, or indemnification paid, given,  
14 made, or promised for its execution was obtained by  
15 felonious means. Once a defendant has met such burden,  
16 the magistrate or judge shall release the hold previously  
17 ordered and the defendant shall be released under the  
18 authorized amount of bail.

19 (d) The defendant and his or her attorney shall be  
20 provided with a copy of the declaration of probable cause  
21 filed ~~as required~~ under subdivision (b) no later than the  
22 date set forth in Section 825.

23 (e) Nothing in this section shall prohibit a defendant  
24 from obtaining a loan of money so long as the loan will be  
25 funded and repaid with funds not feloniously obtained.

26 (f) At the request of any person providing any portion  
27 of the consideration, pledge, security, deposit, or  
28 indemnification paid, given, made, or promised for its  
29 execution, the magistrate or judge, at an evidentiary  
30 hearing to determine the source of the funds, may close  
31 it to the general public to protect the person's right to  
32 privacy in his or her financial affairs.

33 (g) If the declaration, having been filed with a  
34 magistrate or judge, is not acted on within 24 hours, the  
35 defendant shall be released from custody upon posting of  
36 the amount of bail set.

37 (h) Nothing in this code shall deny the right of the  
38 defendant, either personally or through his or her  
39 attorney, bail agent licensed by the Department of  
40 Insurance, admitted surety insurer licensed by the



1 Department of Insurance, friend, or member of his or her  
2 family from making an application to the magistrate or  
3 judge for the release of the defendant on bail.

4 (i) The bail of any defendant found to have willfully  
5 misled the court regarding the source of bail may be  
6 increased as a result of the willful misrepresentation. The  
7 misrepresentation may be a factor considered in any  
8 subsequent bail hearing.

9 (j) If a defendant has met the burden under  
10 subdivision (c), and a defendant will be released from  
11 custody upon the issuance of a bail bond issued pursuant  
12 to authority of Section 1269 or 1269b by any admitted  
13 surety insurer or any bail agent, approved by the  
14 Insurance Commissioner, the magistrate or judge shall  
15 vacate the holding order imposed under subdivision (b)  
16 upon the condition that the bail bond must be posted only  
17 by the surety or licensed bail agent of the surety who  
18 presented the financial information to the court.

19 (k) As used in this section, “feloniously obtained”  
20 means any consideration, pledge, security, deposit, or  
21 indemnification paid, given, made, or promised for its  
22 execution which is possessed, received, or obtained  
23 through an unlawful act, transaction, or occurrence.

24 SEC. 3. No reimbursement is required by this act  
25 pursuant to Section 6 of Article XIII B of the California  
26 Constitution because the only costs that may be incurred  
27 by a local agency or school district will be incurred  
28 because this act creates a new crime or infraction,  
29 eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section  
31 17556 of the Government Code, or changes the definition  
32 of a crime within the meaning of Section 6 of Article  
33 XIII B of the California Constitution.

34 Notwithstanding Section 17580 of the Government  
35 Code, unless otherwise specified, the provisions of this act  
36 shall become operative on the same date that the act  
37 takes effect pursuant to the California Constitution.

O

