

Senate Bill No. 55

Passed the Senate August 27, 1998

Secretary of the Senate

Passed the Assembly August 24, 1998

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor



CHAPTER ____

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, 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.

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

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

1275. (a) In setting, reducing, or denying bail, the judge or magistrate shall 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. The public safety shall be the primary consideration.

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

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

(c) Before a court reduces bail below the amount established by the bail schedule approved for the county, in accordance with subdivisions (b) and (c) of Section 1269b, for a person charged with a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. For purposes of this subdivision, “unusual circumstances” does not include the fact that the defendant has made all prior



court appearances or has not committed any new offenses.

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

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

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

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

(2) A prosecutor files a declaration executed under penalty of perjury setting forth probable cause to believe that the source of any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained. A prosecutor shall have absolute civil immunity for executing a declaration pursuant to this paragraph.

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

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



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

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

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

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

(h) Nothing in this code shall deny the right of the defendant, either personally or through his or her attorney, bail agent licensed by the Department of Insurance, admitted surety insurer licensed by the Department of Insurance, friend, or member of his or her family from making an application to the magistrate or judge for the release of the defendant on bail.

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

(j) If a defendant has met the burden under subdivision (c), and a defendant will be released from custody upon the issuance of a bail bond issued pursuant to authority of Section 1269 or 1269b by any admitted surety insurer or any bail agent, approved by the Insurance Commissioner, the magistrate or judge shall vacate the holding order imposed under subdivision (b) upon the condition that the consideration for the bail bond is approved by the court.



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

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

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



Approved _____, 1998

Governor

