

Senate Bill No. 641

CHAPTER 557

An act to amend Section 1270.1 of the Penal Code, relating to bail.

[Approved by Governor September 28, 1997. Filed
with Secretary of State September 29, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 641, Polanco. Pretrial release: failure to appear.

Existing law requires that a hearing be held before any person who is arrested for a violent felony or certain other offenses involving spousal rape, domestic violence, or harassing and threatening another person is released on bail in an amount that is more or less than the amount contained in the schedule of bail for the offense, or on his or her own recognizance.

This bill would extend the application of this provision to persons who are arrested for serious felonies other than residential burglaries. The bill would require that the court consider evidence regarding release of the person detained, as specified, and would require the court to appoint defense counsel for the hearing. By imposing increased duties on local criminal justice systems that are equivalent to those imposed by the establishment of a new crime, the bill would create a state-mandated local program.

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 1270.1 of the Penal Code is amended to read:

1270.1. (a) Before any person who is arrested for any of the following crimes may be released on bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, or may be released on his or her own recognizance, a hearing shall be held in open court before the magistrate or judge:

(1) 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, but not including a violation of subdivision (a) of Section 460 (residential burglary).

(2) A violation of Section 262, 273.5, or 646.9.

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

(b) The prosecuting attorney and defense attorney shall be given a two court-day written notice and an opportunity to be heard on the matter. If the detained person does not have counsel, the court shall appoint counsel for purposes of this section only. The hearing required by this section shall be held within the time period prescribed in Section 825.

(c) At the hearing, the court shall consider evidence of past court appearances of the detained person, the maximum potential sentence that could be imposed, and the danger that may be posed to other persons if the detained person is released. In making the determination whether to release the detained person on his or her own recognizance, the court shall consider the potential danger to other persons, including threats that have been made by the detained person and any past acts of violence. The court shall also consider any evidence offered by the detained person regarding his or her ties to the community and his or her ability to post bond.

(d) If the judge or magistrate sets the bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, the judge or magistrate shall state the reasons for that decision and shall address the issue of threats made against the victim or witness, if they were made, in the record. This statement shall be included in the record.

SEC. 2. 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.

