

## Assembly Bill No. 476

### CHAPTER 570

An act to amend Sections 1166, 1305, 1305.4, and 1308 of the Penal Code, relating to bail.

[Approved by Governor September 28, 1999. Filed  
with Secretary of State September 29, 1999.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 476, Ackerman. Bail: procedure.

(1) Existing law requires that if a verdict is rendered against a defendant who is out on bail, he or she may be remanded to the proper officer to await the judgment of the court.

This bill would require that if a verdict is rendered against a defendant who is free on bail, the defendant be remanded to the proper officer to await the judgment of the court unless the court, upon consideration of specified criteria, concludes that the evidence supports the court's decision to allow the defendant to remain out on bail. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(2) Under existing law, the court is authorized to grant a motion to vacate a forfeiture of bail only if the motion is made within a 180-day period and is heard within 30 days of the expiration of that 180-day period. Existing law also authorizes a surety or depositor of bail to file a motion, based upon good cause, to extend the 180-day period of time, not exceeding 180 days from its order.

This bill would provide instead, that a motion to vacate a forfeiture of bail that is filed within the 180-day period, may be heard within 30 days of the expiration of that 180-day period. The court would be authorized to extend the 30-day period upon a showing of good cause and to require that the moving party provide 10 days prior notice to the applicable prosecuting agency as a condition to granting the motion.

(3) Existing law bars a court or magistrate from accepting any person or corporation as a surety on bail if any summary judgment against that person or corporation remains unpaid after the expiration of 20 days following service of notice of the entry of the summary judgment, unless an action or proceeding is initiated to determine the validity of the order of forfeiture or summary judgment.

This bill would increase the time period in the provision summarized above to 30 days.

(4) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 1166 of the Penal Code is amended to read:

1166. If a general verdict is rendered against the defendant, or a special verdict is given, he or she must be remanded, if in custody, or if on bail he or she shall be committed to the proper officer of the county to await the judgment of the court upon the verdict, unless, upon considering the protection of the public, the seriousness of the offense charged and proven, the previous criminal record of the defendant, the probability of the defendant failing to appear for the judgment of the court upon the verdict, and public safety, the court concludes the evidence supports its decision to allow the defendant to remain out on bail. When committed, his or her bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant or to the person or persons found by the court to have deposited said money on behalf of said defendant.

SEC. 2. Section 1305 of the Penal Code is amended to read:

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

- (1) Arraignment.
- (2) Trial.
- (3) Judgment.
- (4) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.
- (5) To surrender himself or herself in execution of the judgment after appeal.

However, the court shall not have jurisdiction to declare a forfeiture and the bail shall 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.

(b) If the amount of the bond or money or property deposited exceeds four hundred dollars (\$400), the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail



agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.

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

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

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

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

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

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

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

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



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

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

(B) The bail has not surrendered the defendant.

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

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

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

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

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

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

(3) The absence of the defendant is without the connivance of the bail.

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

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

(g) In all cases of forfeiture where a defendant is not in custody and is beyond the jurisdiction of the state, is temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms



imposed in similar situations with respect to other forms of pretrial release.

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

(i) A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The court may extend the 30-day period upon a showing of good cause. The motion may be made by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney. The court, in its discretion, may require that the moving party provide 10 days prior notice to the applicable prosecuting agency, as a condition precedent to granting the motion.

SEC. 3. Section 1305.4 of the Penal Code is amended to read:

1305.4. Notwithstanding Section 1305, the surety insurer, the bail agent, the surety, or the depositor may file a motion, based upon good cause, for an order extending the 180-day period provided in that section. The motion shall include a declaration or affidavit that states the reasons showing good cause to extend that period. The court, upon a hearing and a showing of good cause, may order the period extended to a time not exceeding 180 days from its order. A motion may be filed and calendared as provided in subdivision (i) of Section 1305.

SEC. 4. Section 1308 of the Penal Code is amended to read:

1308. (a) No court or magistrate shall accept any person or corporation as surety on bail if any summary judgment against that person or corporation entered pursuant to Section 1306 remains unpaid after the expiration of 30 days after service of the notice of the entry of the summary judgment, provided that, if during the 30 days an action or proceeding available at law is initiated to determine the validity of the order of forfeiture or summary judgment rendered on it, this section shall be rendered inoperative until that action or proceeding has finally been determined, provided that, if an appeal is taken, an appeal bond is posted in compliance with Section 917.1 of the Code of Civil Procedure.

(b) The clerk of the court in which the judgment is rendered shall serve notice of the entry of judgment upon the judgment debtor within five days after the date of the entry of the summary judgment.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for



reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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