

Introduced by Senator Wright

February 27, 2009

An act to amend Sections 1270, 1270.1, 1272.1, 1275, and 1319 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 625, as introduced, Wright. Crimes: bail: release on own recognizance.

Existing law requires a defendant who is in custody and is arraigned on a complaint alleging a misdemeanor, including a defendant arrested pursuant to an out-of-county warrant involving only misdemeanors, to be released on his or her own recognizance, unless the court makes a finding on the record that the release will compromise public safety or will not reasonably assure the appearance of the defendant as required.

This bill would require a court, in deciding consistent with specified constitutional provisions whether to make one of these findings, to also consider the defendant's record of appearance at past court hearings or of flight to avoid prosecution, the maximum potential sentence that could be imposed, the ties of the defendant to the community, and if there is a federal immigration hold in place on the defendant.

Existing law provides that before any person who has been arrested for a violent felony or certain other crimes is released on bail in an amount other than that specified in the schedule of bail for the offense, or is released on his or her own recognizance, a hearing shall be held at which the court shall consider certain enumerated factors including any evidence offered by the detained person regarding his or her ties to the community and his or her ability to post bond.

This bill would also require the court, in determining consistent with specified constitutional provisions whether to change the bail or release

the detained person, to consider what will reasonably assure the appearance of the detained person as required and if there is a federal immigration hold in place on the detained person.

Existing law requires a court to order release of a defendant on bail pending appeal if the defendant demonstrates certain matters, including, by clear and convincing evidence, that the defendant is not likely to flee. For purposes of determining whether the defendant is not likely to flee, existing law requires the court to consider specified criteria.

This bill would also require the court to consider, consistent with specified constitutional provisions, whether bail would provide reasonable assurance of the appearance of the defendant as required and if there is a federal immigration hold in place on the defendant.

Existing law requires a judge or magistrate to take specified information, including the seriousness of the offense charged, into consideration when setting, reducing, or denying bail.

This bill would require the court, consistent with specified constitutional provisions, to also consider the maximum potential sentence that could be imposed, the ties of the defendant to the community, and if there is a federal immigration hold in place on the defendant.

Existing law provides that a defendant charged with a violent felony shall not be released on his or her own recognizance where it appears, by clear and convincing evidence, that he or she previously has been charged with a felony offense and has willfully and without excuse from the court failed to appear in court as required while that charge was pending. In all other cases, in making a determination as to whether or not to grant release under these provisions, the court is required to consider specified information.

This bill would also require the court to consider, consistent with specified constitutional provisions, whether the release would provide reasonable assurance of the appearance of the defendant as required, the defendant's record of appearance at past court hearings or of flight to avoid prosecution, the maximum potential sentence that could be imposed, the ties of the defendant to the community, and if there is a federal immigration hold in place on the defendant.

Because these provisions could result in more jail time for those awaiting trial or appeal, this bill would impose 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, 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.

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 1270 of the Penal Code is amended to
2 read:

3 1270. (a) Any person who has been arrested for, or charged
4 with, an offense other than a capital offense may be released on
5 his or her own recognizance by a court or magistrate who could
6 release a defendant from custody upon the defendant giving bail,
7 including a defendant arrested upon an out-of-county warrant. A
8 defendant who is in custody and is arraigned on a complaint
9 alleging an offense which is a misdemeanor, and a defendant who
10 appears before a court or magistrate upon an out-of-county warrant
11 arising out of a case involving only misdemeanors, shall be entitled
12 to an own recognizance release unless the court makes a finding
13 on the record, in accordance with Section 1275, that an own
14 recognizance release will compromise public safety or will not
15 reasonably assure the appearance of the defendant as required.
16 ~~Public~~ *In deciding whether to make one of these findings, the court*
17 *shall consider, consistent with Section 12 of Article I of the*
18 *California Constitution, the defendant's record of appearance at*
19 *past court hearings or of flight to avoid prosecution, the maximum*
20 *potential sentence that could be imposed, the ties of the defendant*
21 *to the community, and if there is a federal immigration hold in*
22 *place on the defendant, but public safety shall be the primary*
23 *consideration. If the court makes one of those findings, the court*
24 *shall then set bail and specify the conditions, if any, whereunder*
25 *the defendant shall be released.*

26 (b) Article 9 (commencing with Section 1318) shall apply to
27 any person who is released pursuant to this section.

28 SEC. 2. Section 1270.1 of the Penal Code is amended to read:

1 1270.1. (a) Before any person who is arrested for any of the
2 following crimes may be released on bail in an amount that is
3 either more or less than the amount contained in the schedule of
4 bail for the offense, or may be released on his or her own
5 recognizance, a hearing shall be held in open court before the
6 magistrate or judge:

7 (1) A serious felony, as defined in subdivision (c) of Section
8 1192.7, or a violent felony, as defined in subdivision (c) of Section
9 667.5, but not including a violation of subdivision (a) of Section
10 460 (residential burglary).

11 (2) A violation of Section 136.1 where punishment is imposed
12 pursuant to subdivision (c) of Section 136.1, 262, 273.5, 422 where
13 the offense is punished as a felony, or 646.9.

14 (3) A violation of paragraph (1) of subdivision (e) of Section
15 243.

16 (4) A violation of Section 273.6 if the detained person made
17 threats to kill or harm, has engaged in violence against, or has gone
18 to the residence or workplace of, the protected party.

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

25 (c) At the hearing, the court shall consider evidence of past court
26 appearances of the detained person, the maximum potential
27 sentence that could be imposed, and the danger that may be posed
28 to other persons if the detained person is released. In making the
29 determination whether to release the detained person on his or her
30 own recognizance, the court shall consider the potential danger to
31 other persons, including threats that have been made by the
32 detained person and any past acts of violence. The court shall also
33 consider, *consistent with Section 12 of Article I of the California*
34 *Constitution, what will reasonably assure the appearance of the*
35 *detained person as required, and if there is a federal immigration*
36 *hold in place on the detained person, and any evidence offered by*
37 the detained person regarding his or her ties to the community and
38 his or her ability to post bond.

39 (d) If the judge or magistrate sets the bail in an amount that is
40 either more or less than the amount contained in the schedule of

1 bail for the offense, the judge or magistrate shall state the reasons
2 for that decision and shall address the issue of threats made against
3 the victim or witness, if they were made, in the record. This
4 statement shall be included in the record.

5 SEC. 3. Section 1272.1 of the Penal Code is amended to read:

6 1272.1. Release on bail pending appeal under subdivision (3)
7 of Section 1272 shall be ordered by the court if the defendant
8 demonstrates all the following:

9 (a) By clear and convincing evidence, the defendant is not likely
10 to flee. Under this subdivision the court shall, *consistent with*
11 *Section 12 of Article I of the California Constitution*, consider the
12 following criteria:

13 (1) The ties of the defendant to the community, including his
14 or her employment, the duration of his or her residence, the
15 defendant's family attachments and his or her property holdings.

16 (2) The defendant's record of appearance at past court hearings
17 or of flight to avoid prosecution.

18 (3) The severity of the sentence the defendant faces.

19 (4) *If there is a federal immigration hold in place on the*
20 *defendant.*

21 (5) *Whether bail would provide reasonable assurance of the*
22 *appearance of the defendant as required.*

23 (b) By clear and convincing evidence, the defendant does not
24 pose a danger to the safety of any other person or to the community.

25 Under this subdivision the court shall consider, among other
26 factors, whether the crime for which the defendant was convicted
27 is a violent felony, as defined in subdivision (c) of Section 667.5.

28 (c) The appeal is not for the purpose of delay and, based upon
29 the record in the case, raises a substantial legal question which, if
30 decided in favor of the defendant, is likely to result in reversal.

31 For purposes of this subdivision, a "substantial legal question"
32 means a close question, one of more substance than would be
33 necessary to a finding that it was not frivolous. In assessing whether
34 a substantial legal question has been raised on appeal by the
35 defendant, the court shall not be required to determine whether it
36 committed error.

37 In making its decision on whether to grant defendants' motions
38 for bail under subdivision (3) of Section 1272, the court shall
39 include a brief statement of reasons in support of an order granting
40 or denying a motion for bail on appeal. The statement need only

1 include the basis for the order with sufficient specificity to permit
2 meaningful review.

3 SEC. 4. Section 1275 of the Penal Code is amended to read:

4 1275. (a) In setting, reducing, or denying bail, the judge or
5 magistrate shall take into consideration, *consistent with Section*
6 *12 of Article I of the California Constitution*, the protection of the
7 public, the seriousness of the offense charged, *including the*
8 *maximum potential sentence that could be imposed*, the previous
9 criminal record of the defendant, *the ties of the defendant to the*
10 *community, if there is a federal immigration hold in place on the*
11 *defendant*, and the probability of his or her appearing at trial or
12 hearing of the case. The public safety shall be the primary
13 consideration.

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

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

28 (c) Before a court reduces bail below the amount established
29 by the bail schedule approved for the county, in accordance with
30 subdivisions (b) and (c) of Section 1269b, for a person charged
31 with a serious felony, as defined in subdivision (c) of Section
32 1192.7, or a violent felony, as defined in subdivision (c) of Section
33 667.5, the court shall make a finding of unusual circumstances and
34 shall set forth those facts on the record. For purposes of this
35 subdivision, “unusual circumstances” does not include the fact
36 that the defendant has made all prior court appearances or has not
37 committed any new offenses.

38 SEC. 5. Section 1319 of the Penal Code is amended to read:

39 1319. (a) No person arrested for a violent felony, as described
40 in subdivision (c) of Section 667.5, may be released on his or her

1 own recognizance until a hearing is held in open court before the
2 magistrate or judge, and until the prosecuting attorney is given
3 notice and a reasonable opportunity to be heard on the matter. In
4 all cases, these provisions shall be implemented in a manner
5 consistent with the defendant's right to be taken before a magistrate
6 or judge without unreasonable delay pursuant to Section 825.

7 (b) A defendant charged with a violent felony, as described in
8 subdivision (c) of Section 667.5, shall not be released on his or
9 her own recognizance where it appears, by clear and convincing
10 evidence, that he or she previously has been charged with a felony
11 offense and has willfully and without excuse from the court failed
12 to appear in court as required while that charge was pending. In
13 all other cases, in making the determination as to whether or not
14 to grant release under this section, the court shall, *consistent with*
15 *Section 12 of Article I of the California Constitution*, consider all
16 of the following:

17 (1) The existence of any outstanding felony warrants on the
18 defendant.

19 (2) Any other information presented in the report prepared
20 pursuant to Section 1318.1. The fact that the court has not received
21 the report required by Section 1318.1, at the time of the hearing
22 to decide whether to release the defendant on his or her own
23 recognizance, shall not preclude that release.

24 (3) *The defendant's record of appearance at past court hearings*
25 *or of flight to avoid prosecution.*

26 (4) *The maximum potential sentence that could be imposed.*

27 (5) *The ties of the defendant to the community.*

28 (6) *If there is a federal immigration hold in place on the*
29 *defendant.*

30 (7) *Whether the release would provide reasonable assurance*
31 *of the appearance of the defendant as required.*

32 ~~(3)~~

33 (8) Any other information presented by the prosecuting attorney.

34 (c) The judge or magistrate who, pursuant to this section, grants
35 or denies release on a person's own recognizance, within the time
36 period prescribed in Section 825, shall state the reasons for that
37 decision in the record. This statement shall be included in the
38 court's minutes. The report prepared by the investigative staff
39 pursuant to subdivision (b) of Section 1318.1 shall be placed in
40 the court file for that particular matter.

1 SEC. 6. If the Commission on State Mandates determines that
2 this act contains costs mandated by the state, reimbursement to
3 local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.