
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2655 **Hearing Date:** June 14, 2016
Author: Weber
Version: May 5, 2016
Urgency: No **Fiscal:** No
Consultant: JM

Subject: *Bail: Jurisdiction*

HISTORY

Source: California Attorneys for Criminal Justice

Prior Legislation: SB 1649 (Johannessen) Ch. 170, Stats. 1994
AB 989 (Vargas) Ch. Stats. 2012
AB 2854 (Dymally) 2006, Vetoed
SB 1245 (Polanco) Ch. 434, Stats. 1995
AB 734 (Johnson) Ch. 524, Stats. 1993

Support: American Civil Liberties Union of California; California Department of Insurance; California Public Defenders Association; Ella Baker Center for Human Rights; Judicial Council; Legal Services for Prisoners with Children

Opposition: None known

Assembly Floor Vote: 78 - 0

PURPOSE

The purpose of this bill is to allow a court to extend the statutorily required forfeiture or exoneration (return) of bail for 90 days to allow the prosecutor to file a complaint in the matter for which the defendant was arrested and granted release on bail, if either the defendant or the prosecutor requests the extension.

Current law requires a court 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: arraignment, trial, judgment, any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required, and to surrender himself or herself in execution of the judgment after appeal. (Pen. Code, § 1305, subd. (a).)

Current law states that 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. (Pen. Code, § 1305, subd. (a).)

Current law specifies that 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. (Pen. Code, § 1305, subd. (b).)

Current law provides that the surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:

- a) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture. (Pen. Code, § 1305, subd. (b)(1).)
- b) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond. (Pen. Code, § 1305, subd. (b)(2).)
- c) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on the bond. (Pen. Code, § 1305, subd. (b)(3).)

Current law states that 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, 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. (Pen. Code, § 1305, subd. (c)(1).)

Current law provides that 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. (Pen. Code, § 1305, subd. (c)(3).)

Current law states that instead 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 agent is given prior notice of the reinstatement; and (Pen. Code, § 1305, subd. (c)(4)(A).)
- b) The bail agent has not surrendered the defendant. (Pen. Code, § 1305, subd. (c)(4)(B).)

Current law specifies that 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, it is made apparent to the satisfaction of the court that specified conditions are met. (Pen. Code, § 1305, subd. (d).)

Current law states that bail permits a defendant to be released from custody by posting bond, which is a promise to pay the bond amount unless the defendant meets the conditions, which is generally to make all of their court appearances. (Pen. Code, § 1269.)

Current law states that defendants forfeit their bail when they abscond, i.e. when the defendant fails to appear for their court hearing without a valid excuse. (Pen. Code, § 1275, 1305.)

Current law allows the bail surety agents may contest bail forfeiture by filing a motion to vacate the forfeiture of bail. (Pen. Code, § 1305.)

Current law provides that if an action against a defendant who has been admitted to bail is dismissed, the bail shall not be exonerated until a period of 15 days has elapsed since the entry of the order of dismissal. (Pen. Code, § 1303.)

Current law states that if, within 15 days from dismissal, the defendant is arrested and charged with a public offense arising out of the same act or omission upon which the action or proceeding was based, the bail shall be applied to the public offense. (Pen. Code, § 1303.)

This bill authorizes an extension of the court's jurisdiction to declare a forfeiture and authority to release bail for not more than 90 days if the arraignment is properly continued to allow the prosecutor time to file the complaint.

This bill provides that the extension may if either the defendant or the prosecutor requests the extension in writing or in open court.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;

- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need For This Bill

According to the author:

This legislation addresses an appeal by a California court to change an undesirable outcome based on strict statutory language. This bill will extend the amount of time a prosecuting agency has to file a criminal complaint, from 15 days to 90 days, to ensure that a defendant is not required to post multiple bonds at no fault of their own.

AB 2655 will provide flexibility to courts and district attorneys in accommodating any delays in filing a criminal complaint. Before the People vs. Indiana Lumbermen's Insurance case, the common practice of the court was to continue the arraignment, retain jurisdiction of the defendant's bond, and provide more time for the district attorney to file a criminal complaint. By making this clarification, state resources will be saved by not having a court re-issue a warrant, law enforcement re-arrest a defendant, and a jail re-booking a defendant following the strict 15 day period in the statute.

2. Bail Background, Bail Amounts, Premiums Forfeiture and Exoneration

Bail is a security given to the court to guarantee a defendant's future attendance at court proceedings. The amount of bail required is typically set according to the local bail schedule that lists common offenses and a suggested amount. These bail schedules are set by county judges. At arraignment, the magistrate will review the case and set bail in an amount he or she deems sufficient to ensure the defendant's appearance. While the usual practice is to adhere to scheduled bail, either the prosecution or the defense may argue for a departure from the bail schedule based on aggravating and mitigating factors, danger to the public, and ties to the community.

Bail permits an individual to be released from actual custody into the constructive custody of a surety on a bond given to procure the defendant's release. Bail, once posted, stands until forfeited (taken by the court) or exonerated (released) to ensure the defendant's appearance at all stages of the proceedings on the original charge. If bail was posted through a bail bond agency, the agent and the defendant sign a bail agreement that will usually fix the term of the bail bond as one year. The defendant must pay a renewal premium for any additional period.

Most individuals that post bail go through a bail bondsman. The individual pays the bail bondsman a premium and the bail bondsman posts the full amount of the bail. The premium is generally 10% of the bond. The premium is the payment from the individual to the bail bondsman for posting the full amount of the bail. The premium is non-refundable. When the court exonerates the bail, the bail money is returned to the bail bondsman whom posted the bail. If a criminal complaint is filed, the bail is exonerated when the case is over, or the defendant is taken into custody. In either of those cases, the bail is no longer needed to secure the defendant's appearance. The bail is also exonerated if no criminal complaint is filed within 15 days from the date of the arraignment. The arraignment is the initial court appearance. A defendant that is arrested and bails out immediately is normally given an arraignment date of the next business day to appear in court.

3. Requiring Exoneration of Bail Bond After 15 Days if No Complaint is Filed Results In Individuals Paying Premiums For Two Bail Bonds

A prosecutor is not required to file criminal charges immediately, or even within a time frame of 30 or 60 days. Criminal charges must be filed before the applicable statute of limitations period.

There are a variety of reasons a district attorney's office might not file a charge immediately. Sometimes there is a need for additional investigation to determine if there is sufficient evidence to file charges. In cases involving drugs, there might be a delay to wait on lab results. Sometimes charges are not filed immediately because there has not been an opportunity for a district attorney responsible for charging crimes to review the police report or other evidence.

When bail has been posted on behalf of an individual, a delay in the filing of criminal charges can result in the bail being released (exonerated) by the court. Current law requires the court to exonerate bail if no complaint has been filed within 15 days of the arraignment. If the district attorney's office files charges after the bail has been exonerated, the individual can be required to post bail a second time. This is particularly problematic when an individual has posted bail through a bail bondsman. In those situations, even though bail has been exonerated, the individual does not get back the premium he or she paid to the bail bondsman. If the individual is required to post a second bail, it results in substantial expense. If the individual does not have the money to pay a second premium to a bail bondsman, the defendant will be taken into custody, even though they had already posted bail once before.

This bill allows an extension of 90 days before being required to exonerate bail if no complaint is filed. Such an extension would require the arraignment to be continued and a request to be made the defendant in writing or in open court. That extension allows for situations where the district attorney's office has not completed their investigation, or there has been some other delay in making a decision about whether to file criminal charges.

4. Argument in Support

According to the California Attorneys for Criminal Justice:

Under Penal Code section 1305, the defendant's bail must be released if no criminal complaint is filed within 15 days of the first scheduled arraignment. Unfortunately, the statute contains no provision to extend the 15-day period. As a result, whenever the District Attorney is delayed in filing a criminal complaint, a defendant may be forced to pay for a second bail.

In the *People v. Indiana Lumbermens Insurance Co.* (2010) 190 Cal.App. 4th 823, the insurance company argued that the trial court had no jurisdiction to forfeit the bond because a complaint was not filed within 15 days of the original date set for a criminal defendant's arraignment, as provided for in §1305(a). The court agreed with the insurer and concluded that the trial court lost jurisdiction to order forfeiture of the bond. Previously, courts regularly continued arraignment without forfeiting the bond until the prosecutor determined whether or not to file charges. After the *Indiana Lumbermens* decision our clients have been forced to post bond twice through no fault of their own, once when initially arrested, and after the prosecutor files formal charges.

This rigid statute costs taxpayers money for law enforcement, jail and court hours to re-arrest and re-book the defendant. The court in *Lumbermens* stated: “We do not consider this to be a satisfying outcome. ...[I]t makes more sense... to permit a court to continue the arraignment to give the prosecuting agency more time to decide whether to file charges while still retaining jurisdiction to order forfeiture of the bond if the defendant fails to appear at the subsequent arraignment. However, if that was the Legislature's intent, it has failed to say so. ...The Legislature may amend the statute if it finds that the current language does not comport with its intentions.” (*Id.*, at 830) This bill follows the recommendation of the court in *Indiana Lumbermens Insurance* to amend the statute to avoid this dissatisfying and unjust result.

5. Related Legislation – Attorney’s Fees for Prosecutors in Bail Litigation

AB 1854 (Bloom), requires the district attorney, county counsel, or applicable prosecuting agency to recover attorney’s fees out of the forfeited bail moneys. AB 1854 is also set for hearing in this Committee on June 14, 2016.

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