SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	AB 789	**Hearing Date:**	June 20, 2017
Author:	Rubio		
Version:	June 13, 2017		
Urgency:	No	**Fiscal:**	No
Consultant:	SC		

Subject: ***Criminal Procedure: Release on Own Recognizance***

HISTORY

Source: Judicial Council

Prior Legislation: SB 163 (Hertzberg), 2015, held without further action
SB 210 (Hancock), 2013, placed on Assembly Inactive File
SB 105 (Steinberg), Chapter 310, Statutes of 2014
SB 210 (Hancock), 2011, held without further action
SB 1180 (Hancock), 2012, placed on Senate Inactive File

Support: California Attorneys for Criminal Justice; California Judges Association; California Probation, Parole and Correctional Association; California Public Defenders Association; California State Association of Counties; California State Sheriffs' Association; Reentry Council of the City and County of San Francisco

Opposition: None known

Assembly Floor Vote: 46 - 30

PURPOSE

The purpose of this bill is to allow a court to approve, without a hearing, own recognizance (OR) release under a pretrial release program for certain arrestees with three or more prior failures to appear (FTAs).

Existing law generally provides that a person who is arrested for a misdemeanor or charged with a misdemeanor is entitled to OR release, unless the court makes a finding on the record that OR release (1) will compromise public safety, or (2) will not reasonably assure the appearance of the defendant as required. (Pen. Code, §§ 1270, 1275.)

Existing law generally provides that a person who is arrested for or charged with a felony may be released on OR in the court's discretion. (Cal. Const., art. I, § 12.)

Existing law requires that if an OR release is denied, a court or magistrate must make a finding on the record that an OR release will compromise public safety or will not reasonably assure the appearance of the defendant as required. (Pen. Code, § 1270.)

Existing law requires a hearing and notice, as specified, before a court may release on OR, any person arrested for a serious or violent felony (other than residential burglary), specified crimes of domestic violence, or specified violations of a protective order. In making the determination whether to release the detained person on his or her own recognizance, the court must 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 must 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. (Pen. Code, § 1270.1.)

Existing law provides for an investigative staff, if approved by the board of supervisors, that would recommend to the court "whether a defendant should be released on his or her own recognizance." (Pen. Code, § 1318.1, subd. (a).) After an investigation, the recommending report shall verify the defendant's outstanding warrants, prior FTAs, criminal record, and the defendant's residence during the past year. (Pen. Code, § 1318.1, subd. (b).)

Existing law specifies that to be released on OR a defendant must first file a signed release agreement, which includes a promise to appear and a promise to obey all reasonable conditions that the "court or magistrate" imposes with respect to the OR. By the agreement the defendant also promises not to leave California without permission and waives extradition if there is a failure to appear. (Pen. Code, § 1318.)

Existing law requires a hearing, as specified, before any person arrested for a violent felony be released on OR. (Pen. Code, § 1319, subd. (a).)

Existing law states that in making the determination as to whether or not to grant release, the court must consider: the existence of any outstanding felony warrants on the defendant; any other information presented in the report prepared by a county investigator's staff as specified; and any other information presented by the prosecuting attorney. The magistrate or court must state the reasons for granting OR relief. (Pen. Code, § 1319, subds. (b) & (c).)

Existing law prohibits the court from releasing an arrested person on OR, if he or she is currently on felony probation or parole, until a hearing is held. (Pen. Code, § 1319.5, subds. (a), (b)(1).)

Existing law prohibits the release of any person on OR who is arrested for a new offense and who is currently on felony probation or felony parole or who has failed to appear in court as ordered, resulting in a warrant being issued, 3 or more times over the 3 years preceding the current arrest, and who is arrested for any felony offense or other specified crimes, until a hearing is held in open court before the magistrate or judge. (Pen. Code, § 1319.5, subs. (a) & (b)(2).)

This bill narrows the application of the above provision to the currently specified felonies, and adds the offenses involving domestic violence or when the defendant caused great bodily injury to another person.

This bill states that for all other felonies, the court is authorized to grant OR release under a court-operated or other pretrial release program even if a person has failed to appear in court as ordered resulting in a warrant being issued, 3 or more times over the 3 years preceding the current arrest.

This bill clarifies that its provisions do not change the current requirement under Penal Code section 1270.1 that individuals arrested for specified offenses shall not be released on OR until a hearing is held in open court before the magistrate or judge.

This bill clarifies that its provisions do not alter or diminish any rights conferred under Section 28 of Article 1 of the California Constitution, also known as Marsy's Law.

This bill makes other conforming changes.

COMMENTS

1. Need for This Bill

According to the author:

> Currently, the law requires a hearing in open court before an offender arrested for a felony offense, who has previously failed to appear (FTA) in court three or more times over the preceding three years, may be granted OR release. If a defendant with three or more FTAs is arrested the defendant must be arraigned with 48 hours, and if a defendant is arrested on the weekend or a holiday, the actual time is longer because weekend dates and holidays are excluded from that time. In contrast, if a defendant has less than three FTAs, a court may order that the defendant be placed into a court-approved pretrial release program without a hearing, allowing the defendant to return more quickly to the community.
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> As a result of the open-hearing requirement a defendant who is an appropriate candidate for placement into a court-approved pretrial release program is either: (1) held in jail while awaiting the mandatory hearing or (2) in counties with overcrowded jails, especially those subject to a court order capping the jail population, the sheriff releases the defendants without supervision. Unfortunately, courts are hindered by the requirements of section 1319.5 because if a defendant having three or more FTAs is released prior to a hearing in open court, a court will not be able to place the individual in a pretrial release program that would require supervision.
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> Also, when defendants are released without supervision, they often fail to appear at their court dates and since they are unsupervised, this raises public safety concerns. Other defendants who are appropriate candidates for release into a court-approved pretrial program remain in jail until the hearing, which can, among other things, create hardships for their employment and families.

2. OR Release Generally

In cases where the defendant is likely to return to court and where the safety of the public or specific persons will not be put at risk, a court can release someone on his or her own recognizance (OR). This includes both felonies and misdemeanors. An OR release is essentially release without payment of bail pending trial or other resolution of a criminal case.

In order to be released on OR:

> [T]he defendant signs a release agreement promising to appear at all required court hearings in lieu of posting bail. Before granting an OR release, the judge must evaluate the defendants flight risk by considering the defendants ties to the community, whether the defendant has a past record of failures to appear in court, and the possible sentence the defendant faces if convicted. The judge must also evaluate risk to public safety by considering any threats that have been made by the defendant, as well as any record of violent acts.
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> In counties with active pretrial programs, the judge may consider pretrial reports and recommendations based on interviews and evaluations that assess the defendant's public safety and flight risk. For example, in Marin County, the county probation department contracts with an independent agency that provides pretrial services. Using an evidence-based pretrial risk-assessment tool, agency staff evaluates eligible defendants along three dimensions: criminal history, employment and residential stability, and drug use. Following a verification process and an evaluation of danger to self or others, the agency prepares a recommendation along with a report. After approval by the probation department, the report is submitted to the court. In addition to supplying the court with recommendations and reports, these programs may also offer a range of conditional release options. These release options may include release on electronic monitoring, release with alcohol monitoring, or release to home detention. If pretrial release is not granted and bail is fixed by the court, realignment legislation also permits the sheriff to authorize the pretrial release of inmates. Under the legislation, a county board of supervisors must first designate the sheriff as the county's correctional administrator and may then authorize the correctional administrator to place pretrial jail inmates who do not pose a significant threat to public safety in an electronic monitoring program when specified conditions are met. (Tafoya, *Assessing the Impact of Bail on California's Jail Population*, Public Policy Institute of California (June 2013), p. 8 (citations omitted).)

3. Ongoing Concerns over County Jail Populations

The most recently available data from the BSCC shows that the majority of jail inmates are unsentenced, roughly 62 percent of the population. Data shows that California relies more heavily on pretrial detention than the rest of the United States. (Sonya Tafoya, *Pretrial Detention and Jail Capacity in California*, Public Policy Institute of California (July 2015) <http://www.ppic.org/main/publication_quick.asp?i=1154> [as of March 15, 2017].) This dynamic strains the capacity of county jails making it necessary to release sentenced inmates, while people who have not been found guilty of any crimes wait in jail because they have not been released on OR and cannot afford to post bail.

This bill would help relieve jail overcrowding by authorizing courts to grant OR release to defendants with three or more prior FTAs who under the current statute are required to have a hearing prior to being released. The bill adds to the current list of offenses that requires a hearing, specifically offenses involving domestic violence or great bodily injury to another person, but for all other felonies not specified in the statute, the court would be authorized to release a person on OR without a hearing.

It is important to note that there are other existing statutes that require a hearing and notice, as specified, before a court may release a person on OR, any person arrested for a serious or violent felony, specified crimes of domestic violence, and specified violations of a protective order. (Pen. Code, §§ 1270.1, 1319.) This bill specifies that those other statutes are not repealed, so those crimes specified in other statutes would still require a hearing prior to release on OR. Additionally, this bill clarifies its provisions do not change or diminish any rights conferred under Section 28 of Article 1 of the California Constitution, also known as Marsy's Law.

4. Argument in Support

The California State Association of Counties, writes in support:

> Existing law requires a hearing in open court before an offender arrested for certain offenses who has previously failed to appear in court three or more times over the preceding three years, may be granted OR release. In counties where a sizeable portion of those arrested already have multiple FTAs due to jail overcrowding and other factors, the restriction within the law limits judicial discretion and courts' efficient use of court-operated or court-approved pretrial release programs to process releases for eligible defendants during non-court hours.
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> Some courts include an OR release component that operates during non-court hours. On-call magistrates approve OR releases that allow arrested to return to their jobs and families, while imposing statutory conditions and appropriate levels of supervision. However, these innovative programs have been hindered by the inflexible requirements of the current law. During non-court hours, including weekends and holidays, jail officials may have no option but to release offenders without supervision or court date reminders. Many of those offenders will fail to appear for subsequent court dates, and the dysfunction cycle of arrest and unsupervised jail release repeats.
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> Specifically, AB 789 would allow judges the option to grant OR release to arrestees with three or more FTAs without a hearing in open court if they are released under a court-operated or court-approved pretrial release program. This measure will encourage more efficient processing of criminal cases, more appropriate levels of offender supervision, and a reduction in jail overcrowding.

5. Argument in Opposition

The Riverside Sheriffs' Association is in opposition to this bill, and states:

> The Riverside Sheriffs' Association regrets that it must oppose AB 789 (Rubio) which would allow defendants with repeated, proven failures to appear in court to be granted release on own recognizance.
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> Such releases are traditionally reserved for those most likely to appear in court and few counties have the excess resources needed to track down those who habitually fail to appear in court. This bill would exacerbate this problem.

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