

RESOLUTION 06-09-2018 – AS AMENDED

DIGEST

Bail: Notice of Release on Bail and Scheduled Appearances

Amends Penal Code section 1269b to require the jail to notify relevant law enforcement agencies when the jail releases a defendant on bail.

STATEMENT OF REASONS

The Problem: A person who is arrested or picked up on an outstanding warrant must be brought before a magistrate within two court days. (Pen. Code, § 825.) But if bail is posted before then, the jail will instead release the person on bail for an appearance that is usually one to three months away. Existing law requires the jail to provide notice of the time and place for the appearance, but does not specify to whom. In practice, the jail will notify the court but neglect to inform either the arresting agency or prosecuting agency, and may even refuse to respond to requests by the latter to disclose this information. This can result in a victim showing up to court on the wrong date, or a case being delayed or trailed due to a missing file or the unavailability of a specially-assigned prosecutor who is familiar with the facts of the case.

The Solution: This resolution would require a jail to provide notice to relevant law enforcement agencies when they release a defendant or arrestee on bail. Providing such notice allows victim notification in accordance with Marsy's Law (see Cal. Const. Art. I, §28(b)), prevents scheduling conflicts in specially-assigned cases, and conserves judicial resources. Requiring the notice to include documentation helps mitigate any mistakes, such as an appearance set on a holiday or in the wrong courtroom, which can sometimes lead to bench warrants being issued in error.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Association recommends that legislation be sponsored to amend California Penal Code section 1269b and to add section 1320.12 to read as follows:

- 1 § 1269
2 (a) The officer in charge of a jail in which an arrested person is held in custody, an
3 officer of a sheriff's department or police department of a city who is in charge of a jail or is
4 employed at a fixed police or sheriff's facility and is acting under an agreement with the agency
5 that keeps the jail in which an arrested person is held in custody, an employee of a sheriff's
6 department or police department of a city who is assigned by the department to collect bail, the
7 clerk of the superior court of the county in which the offense was alleged to have been
8 committed, and the clerk of the superior court in which the case against the defendant is pending
9 may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or
10 order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as
11 provided in the Insurance Code, to issue and sign an order for the release of the arrested person,
12 and to set a time and place for the appearance of the arrested person before the appropriate court
13 and give notice thereof to the court, the arresting agency, any attorney representing the arrested
14 person, and any prosecuting agency that obtained a warrant on which the person was held. The
15 notification shall include all documents relating to the acceptance of bail and the time and place

16 set for the appearance.

17 (b) If a defendant has appeared before a judge of the court on the charge contained in the
18 complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the
19 time of the appearance. If that appearance has not been made, the bail shall be in the amount
20 fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall
21 be pursuant to the uniform countywide schedule of bail for the county in which the defendant is
22 required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

23 (c) It is the duty of the superior court judges in each county to prepare, adopt, and
24 annually revise a uniform countywide schedule of bail for all bailable felony offenses and for all
25 misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for
26 infraction violations of the Vehicle Code shall be established by the Judicial Council in
27 accordance with Section 40310 of the Vehicle Code.

28 (d) A court may, by local rule, prescribe the procedure by which the uniform countywide
29 schedule of bail is prepared, adopted, and annually revised by the judges. If a court does not
30 adopt a local rule, the uniform countywide schedule of bail shall be prepared, adopted, and
31 annually revised by a majority of the judges.

32 (e) In adopting a uniform countywide schedule of bail for all bailable felony offenses the
33 judges shall consider the seriousness of the offense charged. In considering the seriousness of the
34 offense charged the judges shall assign an additional amount of required bail for each
35 aggravating or enhancing factor chargeable in the complaint, including, but not limited to,
36 additional bail for charges alleging facts that would bring a person within any of the following
37 sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2,
38 12022.3, 12022.4, 12022.5, 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9 of this code, or
39 Section 11356.5, 11370.2, or 11370.4 of the Health and Safety Code. In considering offenses in
40 which a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health
41 and Safety Code is alleged, the judge shall assign an additional amount of required bail for
42 offenses involving large quantities of controlled substances.

43 (f) The countywide bail schedule shall contain a list of the offenses and the amounts of
44 bail applicable for each as the judges determine to be appropriate. If the schedule does not list all
45 offenses specifically, it shall contain a general clause for designated amounts of bail as the
46 judges of the county determine to be appropriate for all the offenses not specifically listed in the
47 schedule. A copy of the countywide bail schedule shall be sent to the officer in charge of the
48 county jail, to the officer in charge of each city jail within the county, to each superior court
49 judge and commissioner in the county, and to the Judicial Council.

50 (g) Upon posting bail, the defendant or arrested person shall be discharged from custody
51 as to the offense on which the bail is posted. All money and surety bonds so deposited with an
52 officer authorized to receive bail shall be transmitted immediately to the judge or clerk of the
53 court by which the order was made or warrant issued or bail schedule fixed. If, in the case of
54 felonies, an indictment is filed, the judge or clerk of the court shall transmit all of the money and
55 surety bonds to the clerk of the court.

56 (h) If a defendant or arrested person so released fails to appear at the time and in the
57 court so ordered upon his or her release from custody, Sections 1305 and 1306 apply.

58

59 § 1320.12

60 (a) Upon releasing an arrested person on his or her own recognizance without review by
61 the court, Pretrial Assessment Services shall provide notice to the court, the arresting agency,

62 any attorney representing the arrested person, and any prosecuting agency that obtained a
63 warrant on which the person was arrested.

64 (b) The notification by Pretrial Assessment Services shall include a copy of all
65 documents relating to the risk assessment, the determination for release, and the time and place
66 set for the appearance.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Los Angeles County Bar Association

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1269b to require the jail to notify relevant law enforcement agencies when the jail releases a defendant on bail. This resolution should be approved in principle because it will clarify who must receive notice when a person is released on bail from a jail.

Current law requires that a person who is arrested must be brought before a magistrate within two court days of the person's arrest. (Pen. Code, § 825.) Alternatively, if bail is posted before the arrested person appears before a magistrate, a jail can release the person and schedule a court appearance. The current statute provides that the jail must give notice of an arrested person's release on bail, but it does not specify to whom notice must be given. The proposed amendment would require that a jail give notice to relevant law enforcement entities including the court, the arresting agency and the prosecuting agency, and documents that contain details of the person's release on bail along with notification of the scheduled court date. This is a good idea because it would clarify who is entitled to notice of release, and allow for those who receive notice to take action, if necessary.

