

**Introduced by Senators Hertzberg and Skinner**

(Principal coauthor: Assembly Member Bonta)

**(Coauthors: Senators Bradford and Wiener)**January 27, 2021

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An act to amend Section 1269b of, and to add Sections 1269d and 1302.5 to, the Penal Code, relating to bail.

## LEGISLATIVE COUNSEL'S DIGEST

SB 262, as introduced, Hertzberg. Bail.

Existing law provides for the procedure of approving and accepting bail, and issuing an order for the appearance and release of an arrested person. Existing law authorizes specified sheriff, police, and court employees to approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail. Existing law requires the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail, as specified.

This bill would require bail to be set at \$0 for all offenses except, among others, serious or violent felonies, violations of specified protective orders, battery against a spouse, sex offenses, and driving under the influence. The bill would require the Judicial Council to prepare, adopt, and annually revise a bail schedule for the exempt offenses. The bill would state the intent of the Legislature to enact further changes to current law to ensure that a defendant is not detained pending trial simply due to an inability to pay for the amount of bail in the statewide schedule. The bill would prohibit costs relating to conditions of release on bail from being imposed on persons released on bail or on their own recognizance. The bill would require the sheriff, police, and court employees above to approve and accept bail in the amount fixed by the bail schedule.

This bill would require the court to order a return of money or property paid to a bail bond licensee by or on behalf of the arrestee to obtain bail if the action or proceeding against the arrestee who has been admitted to bail is dismissed, no charges are filed against the arrestee within 60 days of arrest, or the arrestee has made all court appearances during the pendency of the action or proceeding against the arrestee, as specified. The bill would authorize the bail bond licensee to retain surcharge not to exceed 5% of the amount paid by the arrestee or on behalf of the arrestee. The bill would require the court to order this return of money or property only for a bail contract entered into on or after January 1, 2022.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 1269b of the Penal Code is amended to  
2 read:

3 1269b. (a) The officer in charge of a jail in which an arrested  
4 person is held in custody, an officer of a sheriff's department or  
5 police department of a city who is in charge of a jail or is employed  
6 at a fixed police or sheriff's facility and is acting under an  
7 agreement with the agency that keeps the jail in which an arrested  
8 person is held in custody, an employee of a sheriff's department  
9 or police department of a city who is assigned by the department  
10 to collect bail, the clerk of the superior court of the county in which  
11 the offense was alleged to have been committed, and the clerk of  
12 the superior court in which the case against the defendant is  
13 pending ~~may~~ *shall* approve and accept bail in the amount fixed by  
14 ~~the warrant of arrest, schedule of bail, or order admitting to bail~~  
15 *pursuant to this section* in cash or surety bond executed by a  
16 certified, admitted surety insurer as provided in the Insurance  
17 Code, to issue and sign an order for the release of the arrested  
18 person, and to set a time and place for the appearance of the  
19 arrested person before the appropriate court and give notice thereof.

20 (b) If a defendant has appeared before a judge of the court on  
21 the charge contained in the complaint, indictment, or information,  
22 the bail shall be in the amount fixed by the judge at the time of the  
23 ~~appearance.~~ *appearance, in accordance with subdivisions (c) and*  
24 *(d).* If that appearance has not been made, ~~the bail shall be in the~~

1 amount fixed in the warrant of arrest or, if no warrant of arrest has  
2 been issued, the amount of bail shall be *fixed* pursuant to the  
3 uniform countywide schedule of bail for the county in which the  
4 defendant is required to appear, previously fixed and approved as  
5 provided in subdivisions (c) and (d).

6 ~~(e) It is the duty of the superior court judges in each county to~~  
7 ~~prepare, adopt, and annually revise a uniform countywide schedule~~  
8 ~~of bail for all bailable felony offenses and for all misdemeanor~~  
9 ~~and infraction offenses except Vehicle Code infractions. The~~  
10 ~~penalty schedule for infraction violations of the Vehicle Code shall~~  
11 ~~be established by the Judicial Council in accordance with Section~~  
12 ~~40310 of the Vehicle Code.~~

13 ~~(d) A court may, by local rule, prescribe the procedure by which~~  
14 ~~the uniform countywide schedule of bail is prepared, adopted, and~~  
15 ~~annually revised by the judges. If a court does not adopt a local~~  
16 ~~rule, the uniform countywide schedule of bail shall be prepared,~~  
17 ~~adopted, and annually revised by a majority of the judges.~~

18 *(c) Bail shall be set at zero dollars (\$0) for all misdemeanor*  
19 *and felony offenses except the following:*

20 *(1) A serious felony, as defined in subdivision (c) of Section*  
21 *1192.7, or a violent felony, as defined in subdivision (c) of Section*  
22 *667.5.*

23 *(2) A felony violation of Section 69.*

24 *(3) A violation of paragraph (1) of subdivision (c) of Section*  
25 *166.*

26 *(4) A violation of Section 136.1 when punishment is imposed*  
27 *under subdivision (c) of Section 136.1.*

28 *(5) A violation of Section 262.*

29 *(6) A violation of paragraph (1) of subdivision (e) of Section*  
30 *243 or Section 273.5.*

31 *(7) A violation of Section 273.6 if the detained person made*  
32 *threats to kill or harm, has engaged in violence against, or has*  
33 *gone to the residence or workplace of, the protected party.*

34 *(8) A violation of Section 422 where the offense is charged as*  
35 *a felony.*

36 *(9) A violation of Section 646.9.*

37 *(10) A violation of an offense listed in subdivision (c) of Section*  
38 *290.*

39 *(11) A violation of Section 23152 or 23153 of the Vehicle Code.*

40 *(12) A felony violation of Section 463.*

1 (13) A violation of Section 29800.

2 (d) (1) For all offenses listed in paragraphs (1) to (13),  
3 inclusive, of subdivision (c), the Judicial Council shall prepare,  
4 adopt, and annually revise a schedule of bail amounts, which shall  
5 apply statewide.

6 (2) It is the intent of the Legislature to enact further changes to  
7 current law to ensure that a defendant is not detained pending  
8 trial simply due to an inability to pay for the amount of bail in the  
9 statewide schedule set pursuant to paragraph (1).

10 (e) The penalty schedule for infraction violations of the Vehicle  
11 Code shall be established by the Judicial Council in accordance  
12 with Section 40310 of the Vehicle Code.

13 (e)

14 (f) In adopting a uniform ~~countywide~~ statewide schedule of bail  
15 for all ~~bailable felony~~ offenses ~~the judges~~ offenses listed in  
16 paragraphs (1) to (13), inclusive, of subdivision (c), the Judicial  
17 Council shall consider the seriousness of the offense charged. In  
18 considering the seriousness of the offense charged the judges shall  
19 assign an additional amount of required bail for each aggravating  
20 or enhancing factor chargeable in the complaint, including, but  
21 not limited to, additional bail for charges alleging facts that would  
22 bring a person within any of the following sections: Section 667.5,  
23 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1,  
24 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, ~~12022.6~~, 12022.7,  
25 12022.8, or 12022.9 of this code, or Section 11356.5, 11370.2, or  
26 11370.4 of the Health and Safety Code.

27 ~~In considering offenses in which a violation of Chapter 6~~  
28 ~~(commencing with Section 11350) of Division 10 of the Health~~  
29 ~~and Safety Code is alleged, the judge shall assign an additional~~  
30 ~~amount of required bail for offenses involving large quantities of~~  
31 ~~controlled substances.~~

32 (f)

33 (g) The ~~countywide~~ statewide bail schedule shall contain a list  
34 of the offenses and the amounts of bail applicable for each as the  
35 judges determine to be appropriate. If the schedule does not list  
36 all offenses specifically, it shall contain a general clause for  
37 designated amounts of bail as the judges of the county determine  
38 to be appropriate for all the offenses not specifically listed in the  
39 schedule. ~~A each offense. The Judicial Council shall send a copy~~  
40 ~~of the countywide statewide bail schedule shall be sent to the~~

1 *presiding judge of each superior court, and the presiding judge*  
2 *shall provide a copy of the statewide bail schedule to the officer*  
3 *in charge of the county jail, to the officer in charge of each city*  
4 *jail within the county, and to each superior court judge and*  
5 *commissioner in the county, and to the Judicial Council. county.*

6 ~~(g)~~

7 *(h) (1) Upon posting bail, the defendant or arrested person*  
8 *shall be discharged from custody as to the offense on which the*  
9 *bail is posted.*

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11 *(2) All money and surety bonds so deposited with an officer*  
12 *authorized to receive bail shall be transmitted immediately to the*  
13 *judge or clerk of the court by which the order was made or warrant*  
14 *issued or bail schedule fixed. If, in the case of felonies, an*  
15 *indictment is filed, the judge or clerk of the court shall transmit*  
16 *all of the money and surety bonds to the clerk of the court.*

17 ~~(h)~~

18 *(i) If a defendant or arrested person so released fails to appear*  
19 *at the time and in the court so ordered upon his or her their release*  
20 *from custody, Sections 1305 and 1306 apply.*

21 SEC. 2. Section 1269d is added to the Penal Code, to read:

22 1269d. Costs relating to conditions of release from custody  
23 shall not be imposed on a person released on bail or own  
24 recognizance pursuant to this chapter.

25 SEC. 3. Section 1302.5 is added to the Penal Code, to read:

26 1302.5. (a) The court shall order a return of money or property  
27 paid to a bail bond licensee by or on behalf of the arrestee to obtain  
28 bail under any of the following circumstances:

29 (1) An action or proceeding against an arrestee who has been  
30 admitted to bail is dismissed.

31 (2) No charges are filed against the arrestee within 60 days of  
32 arrest.

33 (3) The arrestee has made all court appearances during the  
34 pendency of the action or proceeding against the arrestee.

35 (b) The bail bond licensee shall be entitled to retain a surcharge  
36 not to exceed 5 percent of the amount paid by the arrestee or on  
37 behalf of the arrestee.

38 (c) Money or property shall be returned pursuant to subdivision  
39 (a) within 30 days and shall be to the entity or person who paid  
40 the money or property to the bail bond licensee to obtain bail.

1 (d) A court shall order a return of money or property pursuant  
2 to this section only for a bail contract entered into on or after  
3 January 1, 2022.

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