

The background features a large, faint, circular seal of the Judicial Council of California. The seal contains the text "JUDICIAL COUNCIL OF CALIFORNIA" around the perimeter, "EUREKA" at the top, and "1926" at the bottom. The central image depicts a figure in a Roman-style helmet holding a spear, with a bear at the bottom and various symbols of justice and industry around it.

Bail in California

Legal Framework

Legal Framework

Main sources of law governing pretrial release and bail:

- U.S. Constitution: 8th Amendment, 4th Amendment
- California Constitution: Article I, §§12, 28(f)(3)
- Penal Code
- Case law (court decisions)



Pretrial Release

- Penal Code provides four options for pretrial release:
 - Release on bail
 - Release on own recognizance (OR release)
 - Release under supervision
 - Pretrial diversion



Purpose of Bail

- Presumption of innocence
- Least restrictive approach to:
 - Assure defendant's appearance in court
 - Public safety



Probable Cause for Arrest

- U.S. Constitution, 4th Amendment: arrests must be based on “probable cause.”
- Judicial determination.
- Made within 48 hours of arrest. Pen C §825(a)
- On-call magistrate or at arraignment
- Release of defendant



Definition of Bail

- Basic definition (Pen C §§1269c, 1275, 1279):
 - Allows someone who has been arrested
 - To be released from physical custody (jail)
 - Based on providing a cash deposit, a bond, or other type of security
 - To guarantee that defendant will appear in court



Bail Terms

- “Cash bail” or “money bail”
- “Surety bond” or “bail bond”
- “Admission to bail” or “bailing out”



Right to Bail

- Constitutional right to bail for all defendants except:
 - Defendant charged with capital offense. Pen C §1271
 - Other exceptions:
 - Felony offense with “acts of violence”
 - Felony sexual assault
 - Felony with threat of great bodily harm
- Judicial findings at hearing held in open court



Right to Bail

- Others not entitled to release on bail:
 - Parole hold
 - Immigration hold
 - Extradition warrant



Bail Before First Appearance

- Pen. Code §1269b provides jailer with authority to:
 - Accept bail in amount set by arrest warrant or bail schedule (unless changed by judge)
 - Release arrested person who posts bail or bond
 - Set time and place for the person to appear before the appropriate court



Bail Schedule

- Set by each Superior Court. Pen C §1269b
- Lists a presumptive bail amount for each offense.
- Additional amount for each enhancing or aggravating factor.



Alameda County Bail Schedule

2015 FELONY BAIL SCHEDULE

Note: For any offense not listed, bail = sentence (midterm) x 5K (minimum 10K)

Penal Code 664: Attempts Not Listed = One-half the scheduled bail of the completed offense subject to the 10K minimum

OFFENSE	DESCRIPTION	TYPE #	BAIL	SENTENCE
PENAL CODE				
32	Accessory – After the fact to a felony	F	20K	16-2-3
37 *	Treason	F	No bail	Death/life without parole
67	Bribery	F	25K	2-3-4
67.5	Bribery of Public Officer or Employee (If theft of thing given or offered would be grand theft)	1203	20K	16-2-3
68	Taking Bribe	F	25K	2-3-4
69	Resisting Arrest/Threatening Officer	F	25K	16-2-3
76	Threats to the Life of an Official or Judge	F	100K	16-2-3
92	Bribing Judge or Juror	F	100K	2-3-4
93	Accepting Bribe by Judge or Juror	F	100K	2-3-4
115	Offering Forged/False Documents for Filing	F	35K	16-2-3
118(126)	Perjury	F	25K	2-3-4
127	Subornation of Perjury	F	25K	2-3-4
128 *	Perjury-Capital Case	F	No bail	Death/life without parole
136.1(c) *	Preventing or dissuading a victim or witness from testifying	F	100K	2-3-4
137(b)	Inducing false testimony	F	100K	2-3-4
139	Threats of force or violence against witness or victim	#M-F	50K	2-3-4
148.10(a)	Resisting officer & causing death or serious BI	#M-F	100K	2-3-4
149	Assault by Officer Under Color of Authority	F	35K	16-2-3
165	Bribery of Councilman, Supervisor, etc.	F	25K	2-3-4
182	Conspiracy	F	Same as underlying felony	Same as underlying felony

#M-F = Felony Wobbler

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Effective: 05/19/15



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Setting Bail

- Bail set by judge prior to or at first appearance.
- Cannot be set with intent of punishing defendant.
- California Constitution prohibits “excessive” bail. (Cal. Const. art I, §§12, 28(f)(3).
- Not considered excessive merely because defendant cannot post it. *In re Burnette* (1939) 35 CA2d 358, 360.



Factors in Setting Bail

Pre-2008 - CA Constitution :

- Seriousness of charged offenses
- Prior criminal record
- Probability of defendant appearing in court

2008 - The Victims' Bill of Rights Act (Marsy's Law),
Cal. Const., art I, §28(b)(3), (f)(3); Pen C §1275(a)

- Protection of the public
- Safety of the victim
- Safety of victim's family



Factors in Setting Bail

Factors court considers for ensuring appearances:

- Ties to the community
- Record of appearance at past court hearings
- Potential severity of the sentence



Factors in Setting Bail

Other factors court may consider:

- Defendant's wealth
- Amount defendant gained from the crime
- Number of separate offenses charged
- Fugitive status



Change in Bail Amount

Before arraignment

- Pen. C. §1269c
- Higher bail request by law enforcement (declaration)
 - Scheduled amount insufficient to ensure defendant's appearance in court
 - Necessary to protect victim or family in DV case
- Lower bail or "own recognizance" request by defendant, attorney, friend or family



Change in Bail Amount

Restrictions:

- Serious or violent felonies, crimes against spouse, protective order violations w/active threat, stalking
- Noticed hearing in open court
- If defendant charged with serious felony, victim must be given notice and opportunity to be heard.



Changes to Bail

- Court to consider:
 - Record of past appearances
 - Potential punishment
 - Danger posed to others
- Court may increase bail at arraignment.
- After arraignment, can change only if good cause.
- Automatic review within 5 days of order setting bail. Pen C §1270.2



Conditions on Bail Release

- Judges may set appropriate bail conditions. Pen C §1269c.
- Reasonable and related to public safety.
- Specific conditions for stalking cases. Pen C §§646.9, 646.93.



Bail for Violent/Serious Felony

- Special rules. Pen C §1270.1(b), (c).
- Noticed hearing in open court.
- Victim given notice and opportunity to be heard. Cal. Const. art I, §28(f)(3).
- Court must consider:
 - Record of past court appearances
 - Potential sentence
 - Danger posed to others if defendant is released.



Bail for Violent/Serious Felony

- If change granted:
 - Reasons stated on the record
 - Address threats made against victim or witness. Pen C §1270.1(d).
- Lower bail: finding of unusual circumstances. Pen C §1275(c).
- Increase without a hearing based on declaration by police. Pen C. §1270.1(e).



Bail and Bail Agents

- Contract with agent to post bond for full bail amount.
- Agents charge non-refundable fee (10%).
- Agents secure bonds with collateral from defendant, family, and friends.
- CA Insurance Code, §§1800-1823, regulates bail agents.



Forfeiture of Bail

- Defendant fails to appear.
- Does not have a sufficient excuse for absence.
- Court declares forfeiture of bail. Pen C §§ 1305(a), 1269b(h), 1195, 1043(e)(2).
- Agent liable for forfeited bail.



Bail Exoneration

- Termination of bail obligation.
- Criminal proceedings are terminated or defendant is returned to custody.
- Bail depositor entitled to return of bail; surety is relieved of liability.



Own Recognizance Release

- Discretionary power of courts. Cal Const., art I, §§12, 28(f)(3).
- Defendant promises to:
 - appear at all required court hearings
 - obey all reasonable conditions imposed by court
 - not leave state without permission
 - waive extradition if fails to appear as required.



Own Recognizance Release

- Prohibited: granting OR release for capital offenses, some violent felonies. Pen C §§1270(a), 1319(b).
- Misdemeanor: required unless
 - Will compromise public safety
 - Not reasonably ensure defendant's appearance in court.



Own Recognizance Release

- Considerations:
 - Safety of victim and victim's family. Cal. Const. art I, §§28(b)(3),(f)(3); Pen C §1270(a).
 - Flight risk.
 - Possible sentence. Pen C §1270.1(c).
 - Threats made by defendant.
 - Record of violent acts. Pen C §1270.1(c).
- Noticed OR hearing in open court.



Conditions/Supervised Release

- Courts may impose “reasonable conditions” on OR release. Pen C §1318(a)(2).
- Other options for supervision:
 - release on electronic monitoring;
 - release with alcohol monitoring;
 - release to home detention.



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