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AB-2655 Bail: jurisdiction. (2015-2016)

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Assembly Bill No. 2655

CHAPTER 79

An act to amend Section 1305 of the Penal Code, relating to bail.

[Approved by Governor July 22, 2016. Filed with Secretary of State July 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2655, Weber. Bail: jurisdiction.

Existing law generally regulates the provision of bail or bond, including forfeiture, vacation of forfeiture, and exoneration of bail or bond. Existing law requires the court to declare bail to be forfeited if, without sufficient excuse, a defendant fails to appear as specified. Existing law denies the court jurisdiction to declare a forfeiture and requires the bail to 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.

This bill would authorize an extension of the court's jurisdiction to declare a forfeiture and authority to release bail for not more than 90 days from the date of the arraignment if the arraignment is properly continued to allow the prosecutor time to file the complaint or if the defendant requests the extension in writing or in open court.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1305 of the Penal Code is amended to read:

1305. (a) (1) A court shall 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:

- (A) Arraignment.
- (B) Trial.
- (C) Judgment.
- (D) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.
- (E) To surrender himself or herself in execution of the judgment after appeal.

(2) (A) Notwithstanding paragraph (1), except as provided in subparagraph (B), 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.

(B) The court's jurisdiction to declare a forfeiture and authority to release bail may be extended for not more than 90 days from the arraignment date originally set by the jailer pursuant to subdivision (a) of Section 1269b if either of the following occur:

(i) The prosecutor requests in writing or in open court that the arraignment be continued to allow the prosecutor time to file the complaint.

(ii) The defendant requests the extension in writing or in open court.

(b) (1) 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. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court's file. If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section shall be extended by a period of five days to allow for the mailing.

(2) If the surety is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then notice of the forfeiture shall be mailed to the surety at that address and to the bail agent, and mailing alone to the surety or the bail agent shall not constitute compliance with this section.

(3) 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.

(B) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond.

(C) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on the bond.

(c) (1) 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 under subdivision (b), 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. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(2) If, within 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, and is subsequently released from custody prior to an appearance in court, the court shall, on its own motion, direct the order of forfeiture to be vacated and the bond exonerated. If the court fails to so act on its own motion, then the surety's or depositor's obligations under the bond shall be immediately vacated and the bond exonerated. An order vacating the forfeiture and exonerating the bond may be made on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(3) 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.

(4) In lieu 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 is given prior notice of the reinstatement.

(B) The bail has not surrendered the defendant.

(d) 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 under subdivision (b), it is made apparent to the satisfaction of the court that both of the following conditions are met:

(1) The defendant is deceased or otherwise permanently unable to appear in the court due to illness, insanity, or detention by military or civil authorities.

(2) The absence of the defendant is without the connivance of the bail.

(e) (1) In the case of a temporary disability, the court shall order the tolling of the 180-day period provided in this section during the period of temporary disability, provided that it appears to the satisfaction of the court that the following conditions are met:

(A) The defendant is temporarily disabled by reason of illness, insanity, or detention by military or civil authorities.

(B) Based upon the temporary disability, the defendant is unable to appear in court during the remainder of the 180-day period.

(C) The absence of the defendant is without the connivance of the bail.

(2) The period of the tolling shall be extended for a reasonable period of time, at the discretion of the court, after the cessation of the disability to allow for the return of the defendant to the jurisdiction of the court.

(f) In all cases where a defendant is in custody beyond the jurisdiction of the court that ordered the bail forfeited, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(g) In all cases of forfeiture where a defendant is not in custody and is beyond the jurisdiction of the state, is temporarily detained, by the bail agent, in the presence of a local law enforcement officer of the jurisdiction in which the defendant is located, and is positively identified by that law enforcement officer as the wanted defendant in an affidavit signed under penalty of perjury, and the prosecuting agency elects not to seek extradition after being informed of the location of the defendant, the court shall vacate the forfeiture and exonerate the bond on terms that are just and do not exceed the terms imposed in similar situations with respect to other forms of pretrial release.

(h) In cases arising under subdivision (g), if the bail agent and the prosecuting agency agree that additional time is needed to return the defendant to the jurisdiction of the court, and the prosecuting agency agrees to the tolling of the 180-day period, the court may, on the basis of the agreement, toll the 180-day period within which to vacate the forfeiture. The court may order tolling for up to the length of time agreed upon by the parties.

(i) As used in this section, "arrest" includes a hold placed on the defendant in the underlying case while he or she is in custody on other charges.

(j) A motion filed in a timely manner within the 180-day period may be heard within 30 days of the expiration of the 180-day period. The court may extend the 30-day period upon a showing of good cause. The motion may be made by the surety insurer, the bail agent, the surety, or the depositor of money or property, any of whom may appear in person or through an attorney.

(k) In addition to any other notice required by law, the moving party shall give the prosecuting agency a written notice at least 10 court days before a hearing held pursuant to subdivision (f), (g), or (j), as a condition precedent to granting the motion.