

AMENDED IN SENATE MAY 20, 2021

AMENDED IN SENATE MARCH 10, 2021

**SENATE BILL**

**No. 262**

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**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 amended, 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.~~ *statewide bail schedule. The bill would require bail to be set according to the statewide schedule for any subsequent*

*seperate offense while the defendant is released on bail that was set at \$0. The bill would require the court, prior to setting bail, to consider whether nonfinancial conditions will reasonably protect the public and the victim and reasonably assure the arrestee's presence at trial. The bill would, if the court concludes that money bail is necessary, require the court to consider the arrestee's ability to pay and to set bail at a level the arrestee can reasonably afford. 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 a 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. *The Legislature finds and declares all of the*  
2 *following:*  
3     (a) *The pretrial justice system in California is fundamentally*  
4 *broken. Not only has it failed to achieve its stated objectives of*  
5 *preventing recidivism and assuring court appearance, but it has*  
6 *significantly eroded a sacred principle in our criminal justice*  
7 *system: the presumption of innocence.*  
8     (b) *California's high incarceration rate is a direct consequence*  
9 *of our heavy reliance on pretrial detention. In 2015, the Public*  
10 *Policy Institute of California reported that roughly 50,000, or 62*  
11 *percent, of jail beds in California were filled with inmates awaiting*  
12 *trial or sentencing. According to a more recent report, 44,241*  
13 *county jail inmates across California in 2020, approximately*

1 *three-quarters of the state's total jail population, had not been*  
2 *convicted of or sentenced for a crime.*

3 *(c) As the California Supreme Court has observed, the*  
4 *consequences of pretrial detention on the accused and their*  
5 *families are immense and profound. Research suggests that pretrial*  
6 *detention heightens the risk of losing a job, a home, and custody*  
7 *of a child. Time in jail awaiting trial may even be associated with*  
8 *a higher likelihood of reoffending, beginning anew a vicious cycle.*

9 *(d) These consequences are intensified by California's money*  
10 *bail system, which often keeps people incarcerated before trial*  
11 *simply because they cannot afford to pay bail. Indeed, as the*  
12 *California Supreme Court has adduced, the median bail amount*  
13 *in California, roughly \$50,000, is more than five times the median*  
14 *for the rest of the nation on average.*

15 *(e) A recent report published by the University of California,*  
16 *Los Angeles, Bunche Center estimated that approximately 97*  
17 *percent of people who make bail in California use a bail agent*  
18 *and pay a nonrefundable fee to a private company in order to*  
19 *secure their freedom. This is not a simple transaction because*  
20 *people often have to borrow from friends and family, enter into*  
21 *exploitative financing schemes, or put up their property, even their*  
22 *homes, as collateral. Arrestees unable to gather the funds are often*  
23 *pressured into taking a plea without having a full and fair*  
24 *opportunity to defend their case, or worse, when they are actually*  
25 *innocent.*

26 *(f) The money bail industry in California has evolved into a*  
27 *predatory scheme that puts profits over people and does not*  
28 *enhance public safety or improve court appearance rates.*  
29 *According to the Public Policy Institute of California, despite*  
30 *higher rates of pretrial detention compared to other states,*  
31 *California, under the current system, still has lower court*  
32 *appearance rates and higher rearrest rates.*

33 *(g) The California Supreme Court has noted that the excessive*  
34 *pretrial detention that results from California's money bail system*  
35 *forces the state to bear the cost of housing and feeding arrestees*  
36 *that could be properly released. For instance, just six California*  
37 *counties spent \$37,500,000 over a two-year period jailing people*  
38 *who were never charged or who had charges dropped or dismissed.*

39 *(h) By shifting from a system focused on pretrial detention to*  
40 *one focused on pretrial release, outcomes could be vastly improved.*

1 *Studies show that the cost of supervising a person in the community*  
2 *pending trial is generally about 10 percent the cost of keeping*  
3 *them in jail. Several jurisdictions across the country have*  
4 *transitioned to release-based models that save taxpayers millions*  
5 *of dollars without sacrificing public safety.*

6 *(i) Modern technology provides an array of valuable tools that*  
7 *have already proven effective in the pretrial context, rendering*  
8 *many current practices obsolete. For instance, recent research*  
9 *suggests that simple text message reminders can significantly*  
10 *improve court appearance. The pretrial system in the County of*  
11 *Santa Clara, which relies on text message reminders, has*  
12 *maintained a 95-percent court appearance rate for defendants*  
13 *released before trial.*

14 *(j) In March 2021, the California Supreme Court ruled that*  
15 *conditioning freedom solely on whether an arrestee can afford*  
16 *bail is unconstitutional, and that in setting bail, judges must*  
17 *consider an arrestee's ability to pay.*

18 *(k) California should be a leader in enacting meaningful bail*  
19 *reform that upholds the values of equal protection and due process*  
20 *without compromising the safety of victims and the general public.*

21 **SECTION 1.**

22 *SEC. 2.* Section 1269b of the Penal Code is amended to read:

23 1269b. (a) The officer in charge of a jail in which an arrested  
24 person is held in custody, an officer of a sheriff's department or  
25 police department of a city who is in charge of a jail or is employed  
26 at a fixed police or sheriff's facility and is acting under an  
27 agreement with the agency that keeps the jail in which an arrested  
28 person is held in custody, an employee of a sheriff's department  
29 or police department of a city who is assigned by the department  
30 to collect bail, the clerk of the superior court of the county in which  
31 the offense was alleged to have been committed, and the clerk of  
32 the superior court in which the case against the defendant is  
33 pending shall approve and accept bail in the amount fixed pursuant  
34 to this section in cash or surety bond executed by a certified,  
35 admitted surety insurer as provided in the Insurance Code, to issue  
36 and sign an order for the release of the arrested person, and to set  
37 a time and place for the appearance of the arrested person before  
38 the appropriate court and give notice thereof.

39 (b) If a defendant has appeared before a judge of the court on  
40 the charge contained in the complaint, indictment, or information,

1 the bail shall be in the amount fixed by the judge at the time of the  
2 appearance, in accordance with subdivisions (c) and (d). If that  
3 appearance has not been made, the amount of bail shall be fixed  
4 pursuant to subdivisions (c) and (d).

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

7 (1) A serious felony, as defined in subdivision (c) of Section  
8 1192.7, or a violent felony, as defined in subdivision (c) of Section  
9 667.5.

10 (2) A felony violation of Section 69.

11 (3) A violation of paragraph (1) of subdivision (c) of Section  
12 166.

13 (4) A violation of Section 136.1 when punishment is imposed  
14 under subdivision (c) of Section 136.1.

15 (5) A violation of Section 262.

16 (6) A violation of paragraph (1) of subdivision (e) of Section  
17 243 or Section 273.5.

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

21 (8) A violation of Section 422 where the offense is charged as  
22 a felony.

23 (9) A violation of Section 646.9.

24 (10) A violation of an offense listed in subdivision (c) of Section  
25 290.

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

27 (12) A felony violation of Section 463.

28 (13) A violation of Section 29800.

29 (14) *A violation of Section 422.6 or Section 422.7.*

30 (15) *A violation of Section 236.1.*

31 (16) *A violation of Section 273a or Section 273d.*

32 (17) *A violation of Section 368.*

33 (18) *A violation of paragraph (4) of subdivision (a) of Section*  
34 *245.*

35 (d) ~~(1)~~ For all offenses listed in paragraphs (1) to ~~(13)~~, (18),  
36 inclusive, of subdivision (c), *and for the purposes of subdivision*  
37 *(e)*, the Judicial Council shall prepare, adopt, and annually revise  
38 a schedule of bail amounts, which shall apply statewide.

39 ~~(2) It is the intent of the Legislature to enact further changes to~~  
40 ~~current law to ensure that a defendant is not detained pending trial~~

1 simply due to an inability to pay for the amount of bail in the  
2 statewide schedule set pursuant to paragraph (1).

3 (e) While released on bail for zero dollars (\$0), bail for  
4 subsequent separate offenses shall be set pursuant to the statewide  
5 bail schedule established by Judicial Council pursuant to  
6 subdivision (d), and subject to the provisions in subdivision (f).  
7 This subdivision does not apply to those subsequent and separate  
8 offenses that occur after the original offense is resolved.

9 (f) (1) Prior to setting bail for an offense listed in paragraphs  
10 (1) to (18), inclusive, of subdivision (c), or for an offense pursuant  
11 to subdivision (e), the court shall first consider whether  
12 nonfinancial conditions will reasonably protect the public and the  
13 victim and reasonably assure the arrestee's presence at trial.

14 (2) If the court concludes that money bail is reasonably  
15 necessary to protect the public and the victim or reasonably assure  
16 the arrestee's presence at trial, the court shall consider the  
17 arrestee's ability to pay, and set bail at a level the arrestee can  
18 reasonably afford.

19 (e)

20 (g) The penalty schedule for infraction violations of the Vehicle  
21 Code shall be established by the Judicial Council in accordance  
22 with Section 40310 of the Vehicle Code.

23 (f)

24 (h) In adopting a uniform statewide schedule of bail for all  
25 offenses listed in paragraphs (1) to ~~(13)~~, (18), inclusive, of  
26 subdivision (c), the Judicial Council shall consider the seriousness  
27 of the offense charged. In considering the seriousness of the offense  
28 charged the judges shall assign an additional amount of required  
29 bail for each aggravating or enhancing factor chargeable in the  
30 complaint, including, but not limited to, additional bail for charges  
31 alleging facts that would bring a person within any of the following  
32 sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9,  
33 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5,  
34 12022.53, 12022.7, 12022.8, or 12022.9 of this code, or Section  
35 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

36 (g)

37 (i) The statewide bail schedule shall contain a list of the offenses  
38 and the amounts of bail applicable for each offense. The Judicial  
39 Council shall send a copy of the statewide bail schedule to the  
40 presiding judge of each superior court, and the presiding judge

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

5 ~~(h)~~

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

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

15 ~~(i)~~

16 (k) If a defendant or arrested person so released fails to appear  
17 at the time and in the court so ordered upon their release from  
18 custody, Sections 1305 and 1306 apply.

19 ~~SEC. 2.~~

20 *SEC. 3.* Section 1269d is added to the Penal Code, to read:

21 1269d. Costs relating to conditions of release from custody  
22 shall not be imposed on a person released on bail or *their* own  
23 recognizance pursuant to this chapter.

24 ~~SEC. 3.~~

25 *SEC. 4.* 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 of the court order issued pursuant to subdivision

- 1 (a) and shall be to the entity or person who paid the money or
- 2 property to the bail bond licensee to obtain bail.
- 3 (d) A court shall order a return of money or property pursuant
- 4 to this section only for a bail contract entered into on or after
- 5 January 1, 2022.