

## Chapter 12

# California Penal Codes

Extracted Sections §133-135, §160, 821-1463.12, 11105.6

# California Business & Professions Code

Extracted Sections §7583.7

# California Government Code

Extracted Sections §68150-68153

# California Vehicle Code

Extracted Sections §405.12 and 40512.5

# 18 United States Code

Sections §1033, 1034, 1983



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(Note: Headings For Identification Purposes Only)

**§133. Fraud or Deceit**

Every person who practices any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any witness or person about to be called as a witness upon any trial, proceeding, inquiry, or investigation whatever, authorized by law, with intent to affect the testimony of such witness, is guilty of a misdemeanor.

**§134. False instruments**

Every person guilty of preparing any false or ante-dated book, paper, record, instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced for any fraudulent or deceitful purpose, as genuine or true, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony.

**§135. Willfully destroys or conceals instruments**

Every person who, knowing that any book, paper, record, instrument in writing, or other matter or thing, is about to be produced in evidence upon any trial, inquiry, or investigation whatever, authorized by law, willfully destroys or conceals the same, with intent thereby to prevent it from being produced, is guilty of a misdemeanor.

**§135.5. Knowingly Alters Public Safety Officer**

Any person who knowingly alters, tampers with, conceals, or destroys relevant evidence in any disciplinary proceeding against a public safety officer, for the purpose of harming that public safety officer, is guilty of a misdemeanor.

**§160. Bail Services: Solicitation**

(a) No bail licensee may employ, engage, solicit, pay, or promise any payment, compensation, consideration or thing of value to any person incarcerated in any prison, jail, or other place of detention for the purpose of that person soliciting bail on behalf of the licensee. A violation of this section is a misdemeanor.

(b) Nothing in this section shall prohibit prosecution under Section 1800 or 1814 of the Insurance Code, or any other applicable provision of law.

**§791.03. Pretext Interviews**

No insurance institution, agent or insurance-support organization shall use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction; provided, however, that a pretext interview may be undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person to whom the information relates for the purpose of investigating a claim where there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation or material nondisclosure in connection with a claim.

**§821. Felony arrest; County**

If the offense charged is a felony, and the arrest occurs in the county in which the warrant was issued, the officer making the arrest must take the defendant before the magistrate who issued the warrant or some other magistrate of the same county.

If the defendant is arrested in another county, the officer must, without unnecessary delay, inform the defendant in writing of his right to be taken before a magistrate in that county, note on the warrant that he has so informed defendant, and upon being required by defendant, take him before a magistrate in that county, who must admit him to bail in the amount specified in the endorsement referred to in Section 815a, and direct the defendant to appear before the court or magistrate by whom the warrant was issued on or before a day certain which shall in no case be more than 25 days after such admittance to bail. If bail be forthwith given, the magistrate shall take the same and endorse it thereon a memorandum of the aforesaid order the appearance of the defendant, or, if the defendant so requires, he may be released on bail set on the warrant by the issuing court, as provided in Section 1269b of this code, without an appearance before a magistrate.

If the warrant on which the defendant is arrested in another county does not have bail set thereon, or if the defendant arrested in another county does not require the arresting officer to take him before a

magistrate in that county for the purpose of being admitted to bail, or if such defendant, after being admitted to bail, does not forthwith give bail, the arresting officer shall immediately notify the law enforcement agency requesting the arrest in the county in which the warrant was issued that such defendant is in custody, and thereafter such law enforcement agency shall take custody of the defendant within five days, or five court days if the law enforcement agency requesting the arrest is more than 400 miles from the county in which the defendant is held in custody, in the county in which he was arrested and shall take such defendant before the magistrate who issued the warrant, or before some other magistrate of the same county.

### **§822. Misdemeanor Arrest; Another County.**

If the offense charged is a misdemeanor, and the defendant is arrested in another county, the officer must, without unnecessary delay, inform the defendant in writing of his right to be taken before a magistrate in that county, note on the warrant that he is so informed defendant, and, upon being required by defendant, take him before a magistrate in that county, who must admit him to bail in the amount specified in the endorsement referred to in Section 815a, or if no bail is specified, the magistrate may set bail; if the defendant is admitted to bail the magistrate shall direct the defendant to appear before the court or magistrate by whom the warrant was issued on or before a day certain which shall in no case be more than 25 days after such admittance to bail. If bail be forthwith given, the magistrate shall take the same and indorse therein a memorandum of the aforesaid order for the appearance of the defendant.

If the defendant arrested in another county on a misdemeanor charge does not require the arresting officer to take him before a magistrate in that county for the purpose of being admitted to bail, or if such defendant, after being admitted to bail, does not forthwith give bail, the arresting officer shall immediately notify the law enforcement agency requesting the arrest in the county in which the warrant was issued that such defendant is in custody, and thereafter such law enforcement agency shall take custody of such defendant within five days in the county in which he was arrested and shall take such defendant before the magistrate who issued the warrant, or before some other magistrate of the same county.

If a defendant is arrested in another county on a warrant charging the commission of misdemeanor, upon which warrant the amount of bail is indorsed as provided in Section 815a, and defendant is held in jail in the county of arrest pending appearance before a magistrate, the officer in charge of the jail shall, to the same extent as provided by Section 126b, have authority to approve and accept bail from defendant in the amount indorsed on the warrant, to issue and sign an order for the release of the defendant, and, on posting of such bail, shall discharge defendant from custody.

### **§823. Magistrate Must Certify**

On taking the bail, the magistrate must certify that fact on the warrant, and deliver the warrant to the officer having charge of the defendant. The magistrate shall issue to defendant a receipt for the undertaking of bail. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant to the clerk of the court at which the defendant is required to appear. If the undertaking of bail is in the form of a bond, the magistrate shall forward the bond to the court at which defendant is

required to appear. If the undertaking is in the form of cash, the magistrate shall deposit the cash in the county treasury, notifying the county auditor thereof, and the county auditor shall, by warrant, transmit the amount of the undertaking to the court at which the defendant is required to appear. If authorized by the county auditor, the magistrate may deposit the money in a bank account pursuant to Section 68084 of the Government Code, and by check drawn on such bank account transmit the amount of the undertaking to the court at which the defendant is required to appear.

### **§825. Defendant Delivery**

(a) (1) Except as provided in paragraph (2), the defendant shall in all cases be taken before the magistrate without unnecessary delay, and, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays.

(2) When the 48 hours prescribed by paragraph (1) expire at a time when the court in which the magistrate is sitting is not in session, that time shall be extended to include the duration of the next court session on the judicial day immediately following. If the 48-hour period expires at a time when the court in which the magistrate is sitting is in session, the arraignment may take place at any time during that session. However, when the defendant's arrest occurs on a Wednesday after the conclusion of the day's

court session, and if the Wednesday is not a court holiday, the defendant shall be taken before the magistrate not later than the following Friday, if the Friday is not a court holiday.

(b) After the arrest, any attorney at law entitled to practice in the courts of record of California, may, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay to the party aggrieved the sum of five hundred dollars (\$500), to be recovered by action in any court of competent jurisdiction.

### **§826. Warrant / Magistrate**

If on a warrant issued under Section 813 or 817 the defendant is brought before a magistrate other than the one who issued the warrant, the complaint on which the warrant was issued must be sent to that magistrate, or if it cannot be procured, a new complaint may be filed before that magistrate.

### **§827. Complaint / Magistrate**

When a complaint is filed with a magistrate of the commission of a felony originally triable in the superior court of another county of the state than that in which the magistrate sits, but showing that the defendant is in the county where the complaint is filed, the same proceedings must be had as prescribed in this chapter, except that the warrant must require the defendant to be taken before the nearest or most accessible magistrate of the county in which the offense is triable, and the complaint must be delivered by the magistrate to the officer to whom the warrant is delivered.

#### **§827.1. Citation In Lieu of Physical Arrest**

A person who is specified or designated in a warrant of arrest for a misdemeanor offense may be released upon the issuance of a citation, in lieu of physical arrest, unless one of the following conditions exists:

- (a) The misdemeanor cited in the warrant involves violence.
- (b) The misdemeanor cited in the warrant involves a firearm.
- (c) The misdemeanor cited in the warrant involves resisting arrest.
- (d) The misdemeanor cited in the warrant involves giving false information to a peace officer.
- (e) The person arrested is a danger to himself or herself or others due to intoxication or being under the influence of drugs or narcotics.
- (f) The person requires medical examination or medical care or was otherwise unable to care for his or her own safety.
- (g) The person has other ineligible charges pending against him or her.
- (h) There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be immediately endangered by the release of the person.
- (i) The person refuses to sign the notice to appear.
- (j) The person cannot provide satisfactory evidence of personal identification.
- (k) The warrant of arrest indicates that the person is not eligible to be released on a citation.

The issuance of a citation under this section shall be undertaken in the manner set forth in Sections 853.6 to 853.8, inclusive.

### **§828. Executes Warrant**

The officer who executes the warrant must take the defendant before the nearest or most accessible magistrate of the county in which the offense is triable, and must deliver to him the complaint and the warrant, with his return endorsed thereon, and the magistrate must proceed in the same manner as upon a warrant issued by himself.

### **§832. Magistrate: Deposit Cash**

On the taking of bail, the magistrate must certify that fact on the warrant, and deliver the warrant to the officer having charge of the defendant. The magistrate shall issue to defendant a receipt for the undertaking of bail. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant to the clerk of the court at which the defendant is required to appear. If the undertaking is in the form of cash, the magistrate shall deposit the cash in the county treasury, notifying the county auditor thereof, and the county auditor shall, by warrant, transmit the amount of the

undertaking to the court at which the defendant is required to appear. If authorized by the county auditor, the magistrate may deposit the money in a bank account pursuant to Section 68084 of the Government Code, and by check drawn on such bank account transmit the amount of the undertaking to the court at which the defendant is required to appear.

#### **§834. Arrest Defined**

An arrest is taking a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

#### **§837. Private Person: May Arrest**

A private person may arrest another:

1. For a public offense committed or attempted in his presence.
2. When the person arrested has committed a felony, although not in his presence.
3. When a felony has been in fact committed, and he has reasonable cause for believing the person arrested to have committed it.

#### **§838. Arrest at Request of Magistrate**

A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate.

#### **§839. Arrest: Summon Assistance**

Any person making an arrest may orally summon as many persons as he deems necessary to aid him therein.

#### **§840. Arrest: Hours**

An arrest for the commission of a **felony** may be made on any day and at any time of the day or night. An arrest for the commission of a **misdemeanor or an infraction** cannot be made between the hours of 10 o'clock p.m. of any day and 6 o'clock a.m. of the succeeding day, unless:

- (1) The arrest is made without a warrant pursuant to Section 836 or 837.
- (2) The arrest is made in a public place.
- (3) The arrest is made when the person is in custody pursuant to another lawful arrest.
- (4) The arrest is made pursuant to a warrant which, for good cause shown, directs that it may be served at any time of the day or night.

#### **§841. Arrest: Inform Person Being Arrested**

The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape.

The person making the arrest must, on request of the person he is arresting, inform the latter of the offense for which he is being arrested.

#### **§844. Arrest: Forcible Entry**

To make an arrest, a private person, if the offense is a felony, and in all cases a peace officer, may break open the door or window of the house in which the person to be arrested is, or in which they have reasonable grounds for believing the person to be, after having demanded admittance and explained the purpose for which admittance is desired.

#### **§845. Arrest: Entry**

Any person who has lawfully entered a house for the purpose of making an arrest, may break open the door or window thereof if detained therein, when necessary for the purpose of liberating himself, and an officer may do the same, when necessary for the purpose of liberating a person who, acting in his aid, lawfully entered for the purpose of making an arrest, and is detained therein.

**§846. Arrest: Weapons to Magistrate**

Any person making an arrest may take from the person arrested all offensive weapons which he may have about his person, and must deliver them to the magistrate before whom he is taken.

**§847. Arrest: Delivery; Civil Liability**

a) A private person who has arrested another for the commission of a public offense must, without unnecessary delay, take the person arrested before a magistrate, or deliver him or her to a peace officer.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any peace officer or federal criminal investigator or law enforcement officer described in subdivision (a) or (d) of Section 830.8, acting within the scope of his or her authority, for false arrest or false imprisonment arising out of any arrest under any of the following circumstances:

(1) The arrest was lawful, or the peace officer, at the time of the arrest, had reasonable cause to believe the arrest was lawful.

(2) The arrest was made pursuant to a charge made, upon reasonable cause, of the commission of a felony by the person to be arrested.

(3) The arrest was made pursuant to the requirements of Section 142, 837, 838, or 839.

**§847.5. Bail, Another State Fugitive**

If a person has been admitted to bail in another state, escapes bail, and is present in this State, the bail bondsman or other person who is bail for such fugitive, may file with a magistrate in the county where the fugitive is present an affidavit stating the name and whereabouts of the fugitive, the offense with which the alleged fugitive was charged or of which he was convicted, the time and place of same, and the particulars in which the fugitive has violated the terms of his bail, and may request the issuance of a warrant for arrest of the fugitive, and the issuance, after hearing, of an order authorizing the affiant to return the fugitive to the jurisdiction from which he escaped bail. The magistrate may require such additional evidence under oath as he deems necessary to decide the issue. If he concludes that there is probable cause for believing that the person alleged to be a fugitive is such, he may issue a warrant for his arrest. The magistrate shall notify the district attorney of such action and shall direct him to investigate the case and determine the facts of the matter. When the fugitive is brought before him pursuant to the warrant, the magistrate shall set a time and place for hearing, and shall advise the fugitive of his right to counsel and to produce evidence at the hearing. He may admit the fugitive to bail pending the hearing. The district attorney shall appear at the hearing. If, after hearing, the magistrate is satisfied from the evidence that the person is a fugitive he may issue an order authorizing affiant to return the fugitive to the jurisdiction from which he escaped bail.

A bondsman or other person who is bail for a fugitive admitted to bail in another state who takes the fugitive into custody, except pursuant to an order issued under this section, is guilty of a misdemeanor.

**§849. Arrest Made Without Warrant**

(a) When an arrest is made without a warrant by a peace officer or private person, the person arrested, if not otherwise released, shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the offense is triable, and a complaint stating the charge against the

arrested person shall be laid before such magistrate.

(b) Any peace officer may release from custody, instead of taking such person before a magistrate, any person arrested without a warrant whenever:

(1) He or she is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.

(2) The person arrested was arrested for intoxication only, and no further proceedings are desirable.

(3) The person was arrested only for being under the influence of a controlled substance or drug and such person is delivered to a facility or hospital for treatment and no further proceedings are desirable.

(c) Any record of arrest of a person released pursuant to paragraphs (1) and (3) of subdivision (b) shall include a record of release. Thereafter, such arrest shall not be deemed an arrest, but a detention only.

**§978.5. Bench Warrant; Failure To Appear.**

(a) A bench warrant of arrest may be issued whenever a defendant fails to appear in court as required by law including, but not limited to, the following situations:

(1) If the defendant is ordered by the judge or magistrate to personally appear in court at a specific time and place.

(2) If the defendant is released from custody on bail is ordered by a judge or magistrate, or other person authorized to accept bail, to personally appear in court at a specific time and place.

(3) If a defendant is released from custody on his own recognizance and promises to personally appear in court at a specific time and place.

(4) If the defendant is released from custody or arrest upon citation by a peace officer or other person authorized to issue citations and the defendant has signed a promise to personally appear in court at a specific time and place.

(5) If defendant is authorized to appear by counsel and the court or magistrate orders that the defendant personally appear in court at a specific time and place.

(6) If an information or indictment has been filed in the superior court and the court has fixed the date and place for the defendant personally to appear for arraignment.

(b) The bench warrant may be served in any county in the same manner as a warrant of arrest.

### **§979. Bench Warrant; Failure To Appear.**

If the defendant has been discharged on bail or has deposited money or other property instead thereof, and does not appear to be arraigned when his personal presence is necessary, the court, in addition to the forfeiture of the undertaking of bail or of the money or other property deposited, may order the issuance of a bench warrant for his arrest.

### **§980. Bench Warrant Issued To One Or More Counties.**

(a) At any time after the order for a bench warrant is made, whether the court is sitting or not, the clerk may issue a bench warrant to one or more counties.

(b) The clerk shall require the appropriate agency to enter each bench warrant issued on a private surety-bonded felony case into the national warrant system (National Crime Information Center (NCIC)). If the appropriate agency fails to enter the bench warrant into the national warrant system (NCIC), and the court finds that this failure prevented the surety or bond agent from surrendering the fugitive into custody, prevented the fugitive from being arrested or taken into custody, the court having jurisdiction over the bail shall, upon petition, set aside the forfeiture of the bond and declare all liability on the bail bond to be exonerated.

### **§982. Bail Statement on Warrant**

The defendant, when arrested under a warrant for an offense not bailable, must be held in custody by the Sheriff or the county in which the indictment is found or information filed, unless admitted to bail after the examination upon a writ of habeas corpus; but if the offense is bailable, there must be added to the body of the bench warrant a direction to the following effect: "or, if he requires it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer to the indictment (or information);" and the Court, upon directing it to issue, must fix the amount of bail, and an endorsement must be made thereon and signed by the Clerk, to the following effect: "The defendant is to be admitted to bail in the sum of \_\_\_\_\_ dollars."

### **§983. Bench Warrant Served**

The bench warrant may be served in any county in the same manner as a warrant for arrest.

### **§984. Magistrate: Other County**

If a defendant is brought before a magistrate of another county for the purpose of giving bail, the magistrate must proceed in respect thereto in the same manner as if the defendant had been brought before him upon a warrant of arrest, and the same proceedings must be had thereon.

### **§985. Felony Charge; Increased Bail**

When the information or indictment is for a felony, and the defendant, before the filing thereof, has given bail for his appearance to answer the charge, the Court to which the indictment or information is presented, or in which it is pending, may order the defendant to be committed to actual custody, unless he gives bail in an increased amount, to be specified in the order.

**§1000.2. Hearing By Court; Diversion; Exoneration Of Bail; Progress Reports.**

The court shall hold a hearing and, after consideration of any information relevant to its decision, shall determine if the defendant consents to further proceedings under this chapter and if the defendant should be granted deferred entry of judgment. If the court does not deem the defendant a person who would be benefited by deferred entry of judgment, or if the defendant does not consent to participate, the proceedings shall continue as in any other case.

At the time that deferred entry of judgment is granted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

The period during which deferred entry of judgment is granted shall be for no less than 18 months nor longer than three years. Progress reports shall be filed by the probation department with the court as directed by the court.

**§1001.60. Resolution for and adoption of program; Writing bad check defined.**

Upon the adoption of the resolution by the board of supervisors declaring that there are sufficient funds available to fund the program, the district attorney may create within his office a diversion program pursuant to this chapter for persons who write bad checks. For purposes of this chapter, "writing a bad check" means making, drawing, uttering, or delivering any check or draft upon any bank or depository for the payment of money where there is probable cause to believe there has been a violation of Section 476a. The program may be conducted by the district attorney or by a private entity under contract with the district attorney.

**§1001.61. Power to refer to program or prosecute.**

The district attorney may refer a bad check case to the diversion program. Except as provided by Section 1001.64, this chapter does not limit the power of the district attorney to prosecute bad check complaints.

**§1001.62. Reference to diversion program; Conditions.**

On receipt of a bad check case, the district attorney shall determine if the case is one which is appropriate to be referred to the bad check diversion program. In determining whether to refer a case to the bad check diversion program, the district attorney shall consider, but is not limited to, all of the following:

- a) The amount of the bad check.
- b) If the person has a prior criminal record or has previously been diverted.
- c) The number of bad check grievances against the person previously received by the district attorney.
- d) Whether there are other bad check grievances currently pending against the person.
- e) The strength of the evidence, if any, of intent to defraud the victim.

**§1001.63. Notice of bad check writer.**

On referral of a bad check case to the diversion program, a notice shall be forwarded by mail to the person alleged to have written the bad check which contains all of the following;

- a) The date and amount of the bad check.
- b) The name of the payee.
- c) The date before which the person must contact the person designated by the district attorney concerning the bad check.
- d) A statement of the penalty of issuance of a bad check.

**§1001.64. Agreement not to prosecute; Conditions.**

The district attorney may enter into a written agreement with the person to forego prosecution on the bad check for a period to be determined by the district attorney, not to exceed six months, pending all of the following;



- a) Completion of a class or classes conducted by the district attorney or private entity under contract with the district attorney.
- b) Full restitution being made to the victim of the bad check.
- c) Full payment of the collection fee, if any, specified in Section 1001.65.

**§1001.65. Bad check procession and collection fees; Check writing education class; Payment of expense.**

- a) A district attorney may collect a fee if his or her office collects and processes a bad check. The amount of the fee shall not exceed thirty-five (\$50) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense.
- b) Notwithstanding subdivision (a), when a criminal complaint is filed in a bad check case after the maker of the check fails to comply with the terms of the bad check diversion program, the court, after conviction, may impose a bad check collection fee for the collection and processing efforts by the district attorney of not more than thirty-five (\$50) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense, not to exceed one thousand dollars (\$1200) in the aggregate. The court also may, as a condition of probation, require a defendant to participate in and successfully complete a check writing education class. If so required, the court shall make inquiry into the financial condition of the defendant and, upon a finding that the defendant is able in whole or part to pay the expense of the education class; the court may order him or her to pay for all or part of that expense.
- c) If the district attorney elects to collect any fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees that the victim may have been assessed. In no event shall reimbursement of the bank charge to the victim pursuant to subdivision (a) or (b) exceed ten dollars (\$15) per check.

**§1166. Proceedings Upon General Verdict Of Conviction Of Special Verdict; Remand Or Commitment; Bail.**

If a general verdict is rendered against the defendant, or a special verdict is given, he must be remanded, if in custody, or if on bail he may be committed to the proper officer of the county to await the judgment of the court upon the verdict. When committed his bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant or to the person or persons found by the court to have deposited said money on behalf of said defendant.

**§1195. Failure Of Defendant To Appear After Release On Bail Or Deposit; Forfeiture; Issuance Of Bench Warrant; Exoneration Of Bail Or Return Of Deposit Where Defendant Appears.**

If the defendant has been released on bail, or has deposited money or property instead thereof, and does not appear for judgment when his personal appearance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or of the money or property deposited, must, on application of the prosecuting attorney, direct the issuance of a bench warrant for the arrest of the defendant.

If the defendant, who is on bail, does appear for judgment and judgment is pronounced upon him or probation is granted to him, then the bail shall be exonerated or, if money or property has been deposited instead of bail, it must be returned to the defendant or to the person or persons found by the court to have deposited said money or property on behalf of said defendant.

**§1196. Clerk Responsibility - Bench Warrant / NCIC**

- (a) The clerk must, at any time after the order, issue a bench warrant into one or more counties.
- (b) The clerk shall require the appropriate agency to enter each bench warrant issued on a private surety-bonded felony case into the national warrant system (National Crime Information Center (NCIC)). If the appropriate agency fails to enter the bench warrant into the national warrant system (NCIC), and the court finds that this failure prevented the surety or bond agent from surrendering the fugitive into custody, prevented the fugitive from being arrested or taken into custody, or resulted in the fugitive's subsequent release from custody, the court having jurisdiction over the bail shall, upon petition, set aside the forfeiture of the bond and declare all liability on the bail bond to be exonerated.

**§1199. Bench Warrant / Defendant Delivery**

Whether the bench warrant is served in the county in which it was issued or in another county, the officer must arrest the defendant and bring him before the court, or deliver him to any peace officer of the county from which the warrant issued, who must bring him before said court according to the command thereof.

**§1268. Admission To Bail Defined.**

Admission to bail is the order of a competent Court or magistrate that the defendant be discharged from actual custody upon bail.

**§1269. Taking of Bail Defined.**

The taking of bail consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant, according to the terms of the undertaking, or that the bail will pay to the people of this state a specified sum. Upon filing, the clerk shall enter in the register of actions the date and amounts of such bond and the name or names of the surety or sureties thereon. In the event of the loss or destruction of such bond, such entries so made shall be prima facie evidence of the due execution of such bond as required by law.

Whenever any bail bond has been deposited in any criminal action or proceeding in a municipal, or superior court or in any proceeding in habeas corpus in a superior court, and it is made to appear to the satisfaction of the court by affidavit or by testimony in open court that more than three years have elapsed since the exoneration or release of said bail, the court must direct that such bond be destroyed.

**§1269a. Orders Admitting Defendant to Bail and Approving Undertaking.**

Except as otherwise provided by law, no defendant charged in a warrant of arrest with any public offense shall be discharged from custody upon bail except upon a written order of a competent court or magistrate admitting the defendant to bail in the amount specified in the indorsement referred to in Section 815a, and where an undertaking is furnished, upon a written order of such court or magistrate approving the undertaking. All such orders must be signed by such court or magistrate and delivered to the officer having custody of the defendant before the defendant is released. Any officer releasing any defendant upon bail otherwise than as herein provided shall be guilty of a misdemeanor.

**§1269b. Persons Authorized To Approve and Accept Bail; Adoption of Countywide Schedule of Bail.**

- (a) The officer in charge of a jail where an arrested person is held in custody, an officer of a sheriff's department or police department of a city who "is in charge of a jailor employed at a fixed police or sheriff's facility and is acting under an agreement with the agency which keeps the jail wherein an arrested person IS held In custody, an employee of a sheriffs department or police department of a city who is assigned by such department to collect bail, the clerk of the municipal court of the judicial district in which the offense was alleged to have been committed, and the clerk of the superior court in which the case against the defendant is pending may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.
- (b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance; if that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).
- (c) It is the duty of the superior and municipal court judges in each county to prepare, adopt, and annually revise, by a majority vote, at a meeting called by the presiding judge of the superior court of the county, a uniform countywide schedule of bail for allailable felony offenses.

In adopting a uniform countywide schedule of bail for allailable offenses the judges shall consider the seriousness of the offense charged, In considering the seriousness of the offense charged the judges shall assign an additional amount required bail for each aggravating or enhancing factor

chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts which would bring a person within any of the following sections: Section 667.5, 667.51,667.6,667.8, 667.85,667.9,667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9 of the Penal Code, or Section 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

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

- (d) The municipal court judges in each county, at a meeting called by the presiding judge of the municipal court at each county seat, or the superior court judges in each county in which there is no municipal court, at a meeting called by the presiding judge of the superior court, shall prepare, adopt, and annually revise, by a majority vote, a uniform, countywide schedule of bail for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.
- (e) Each countywide bail schedule shall contain a list of the offenses and the amounts of bail applicable thereto as the judges determine to be appropriate: If the schedules do not list all offenses specifically, they shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedules. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior and municipal court judge and commissioner in the county, and to the Judicial Council.
- (f) Upon posting bail the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

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

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

#### **§1269c. Orders Setting Bail In Amount Other Than Bail Schedule.**

If a defendant is arrested without a warrant for a bailable felony offense or for the misdemeanor offense of violating a domestic violence restraining order, and a peace officer has reasonable cause to believe that the amount of bail set forth in the schedule of bail for that offense is insufficient to assure defendant's appearance or to assure the protection of a victim, or family member of a victim, of domestic violence, the peace officer shall prepare a declaration under penalty of perjury setting forth the facts and circumstances in support of his or her belief and file it with a magistrate, as defined in Section 808, or his or her commissioner, in the county in which the offense is alleged to have been committed or having personal jurisdiction over the defendant, requesting an order setting a higher bail. The defendant, either personally or through his or her attorney, friend, or family member, also may make application to the magistrate for release on bail lower than that provided in the schedule of bail or on his own recognizance. The magistrate or commissioner to whom such application is made is authorized to set bail in an amount that he or she deems sufficient to assure the defendant's appearance or to assure the protection of a victim, or family member of a victim, of domestic violence, and to set such bail on the terms and conditions that he or she may authorize the defendant's release on his or her own recognizance. If, after the an application is made, no order changing the amount of bail is issued within eight hours after booking, the defendant shall be entitled to be released on posting the amount of bail set forth in the applicable bail schedule.

#### **§1270. Entitlement To Release On Own Recognizance (O.R.).**

- (a) Any person who has been arrested for, or charged with, an offense other than a capital offense may be released on his or her own recognizance by a court or magistrate who could release a defendant from custody upon the defendant giving bail, including a defendant arrested upon an out-of-county warrant. A defendant who is in custody and is arraigned on a complaint alleging an offense which is a misdemeanor, and a defendant who appears before a court or magistrate upon an out-of-county warrant arising out of a case involving only misdemeanors, shall be

entitled to an own recognizance release unless the court makes a finding on the record, in accordant with Section 1275, that an own recognizance release will compromise public safety or will not reasonably assure the appearance of the defendant as required. Public safety shall be the primary consideration. If the court makes one of those findings, the court shall then set bail and specify the conditions, if any, whereunder the defendant shall be released.

- (b) Article 9 (commencing with Section 1318) shall apply to any person who is released pursuant to this section.

### **§1270.1. Open Court Hearing Before Release On Bail Of Person Arrested For Violent Felony.**

- (a) Before any person who is arrested for any of the following crimes may be released on bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, or may be released on his or her own recognizance, a hearing shall be held in open court before the magistrate or judge:
- (1) A serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, but no including a violation of subdivision (a) of Section 460 (residential burglary).
  - (2) A violation of Section 262, 273.5, or 646.9.
  - (3) A violation of paragraph (1) of subdivision (e) of Section 243.
- (b) The prosecuting attorney and defense attorney shall be given a two court-day written notice and an opportunity to be heard on the matter. If the detained person does not have counsel, the court shall appoint counsel for purposes of this section only. The hearing required by this section shall be held within the time period prescribed in Section 825.
- (c) At the hearing, the court shall consider evidence of past court appearances of the detained person, the maximum potential sentence that could be imposed, the danger that may be posed to other persons if the detained person is released. In making the determination whether to release the detained person on his or her own recognizance, the court shall consider the potential danger to other persons, including threats that have been made by the detained person and any past acts of violence. The court shall also consider any evidence offered by the detained person regarding his or her ties to the community and his or her ability to post bond.
- (d) If the judge or magistrate sets the bail in an amount that is either more or less than the amount contained in the schedule of bail for the offense, the judge or magistrate shall state the reasons for the decision and shall address the issue of threats made against the victim or witness, if they were made, in the record. This statement shall be included in the record.

### **§1270.2. Detention And Review Of Order Fixing.**

When a person is detained in custody on a criminal charge prior to conviction for want of bail, that person is entitled to an automatic review of the order fixing the amount of the bail by the judge or magistrate having jurisdiction of the offense. That review shall be held not later than five days from the time of the original order fixing the amount of bail on the original accusatory pleading. The defendant may waive this review.

### **§1270.5. Offenses Not Bailable.**

A defendant charged with an offense punishable with death cannot be admitted to bail, when the proof of his or her guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumptions to be drawn therefrom.

### **§1271. Cases When Defendant May Be Admitted To Bail Before Conviction.**

If the charge is for any other offense, he may be admitted to bail before conviction, as a matter of right.

### **§1272. Admission To Bail Application For Probation Or On Appeal.**

After conviction of an offense not punishable with death, a defendant who has made application for probation or who has appealed may be admitted to bail:

1. As a matter of right, before judgment is pronounced pending application for probation in cases of misdemeanors, or when the appeal is from a judgment imposing a fine only.

2. As a matter of right, before judgment is pronounced pending application for probation in cases of misdemeanors, or when the appeal is from a judgment imposing imprisonment in cases of misdemeanors.
3. As a matter of discretion in all other cases, except that a person convicted of an offense subject to this subdivision, who makes a motion for release on bail subsequent to sentencing hearing I shall provide notice of the hearing on the bail motion to the prosecuting attorney at least five court days prior to the hearing.

### **§1272.1. Criteria For Release On Bail Pending Appeal.**

Release on bail pending appeal under subdivision (3) of Section 1272 shall be ordered by the court if the defendant demonstrates all of the following:

- (a) By clear and convincing evidence, the defendant is not likely to flee. Under this subdivision the court shall consider the following criteria:
  - (1) The ties of the defendant to the community, including his or her employment, the duration of his or her residence, the defendant's family attachments and his or her property holdings.
  - (2) The defendant's record of appearance at past court hearings or of flight to avoid prosecution.
  - (3) The severity of the sentence the defendant faces.
- (b) By dear and convincing evidence, the defendant does not pose a danger to the safety of any other person or to the community.  
Under this subdivision the court shall consider, among other factors, whether the crime for which the defendant was convicted is a violent felony, as defined in subdivision (c) of Section 667.5.
- (c) The appeal is not for the purpose of delay and, based upon the record in the case, raises a substantial legal question which, if decided in favor of the defendant, is likely to result in reversal.

For purposes of this subdivision, a "substantial legal question" means a close question, one of more substance than would be necessary to a finding that it was not frivolous. In assessing whether a substantial legal question has been raised on appeal by the defendant the court shall not be required to determine whether it committed error.

In making its decision on whether to grant defendants' motion for bail under subdivision (3) of Section 1272, the court shall include a brief statement of reason in support of an order granting or denying a motion for bail to appeal. The statement need only include the basis for the order with sufficient specificity to permit meaningful review.

### **§1273. Nature Of Bail.**

If the offense is bailable, the defendant may be admitted to bail before conviction:

First--For his appearance before the magistrate, on the examination of charge, before being held to answer.

Second--To appear at the Court to which the magistrate is required to return the depositions and statement upon the defendant being held to answer after examination.

Third--After indictment, either before the bench warrant is issued for his arrest, or upon any order of the Court committing him, or enlarging the amount of bail, or upon his being surrendered by his bail to answer the indictment in the court in which it is found, or to which it may be transferred for trial.

And after conviction, and upon an appeal:

First--If the appeal is from a judgment imposing a fine only, on the undertaking of bail that he will pay the same, or sum part of it as the appellate Court may direct, if the judgment is affirmed or modified, or the appeal is dismissed.

Second--If judgment of Imprisonment has been given, that he will surrender himself for execution of judgment, upon its being affirmed or modified, or upon the appeal being dismissed, or that in case the judgment be reversed, and that the cause be remanded for a new trial, that he will appear in the Court to which said cause may be remanded, and submit himself to the orders and process thereof.

### **§1274. Notice To District Attorney**

When the admission to bail is a matter of discretion, the Court or officer to whom the application is made must require reasonable notice thereof to be given to the District Attorney of the county.

**§1275. Matters Considered In Fixing Bail Amount; Peace Officer Declaration Where Money For Prior Bail Feloniously Obtained.**

- (a) In setting, reducing, or denying bail, the judge or magistrate shall take into consideration the protection of the public, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or hearing of the case. The public safety shall be the primary consideration.  
In considering the seriousness of the offense charged, the judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant.
- (b) In considering offenses wherein a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge or magistrate shall consider the following: (1) the alleged amounts of controlled substances involved in the commission of the offense, and (2) whether the defendant is currently released on bail for an alleged violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.
- (c) Before a court reduces bail below the amount established by the bail schedule approved for the county, in accordance with subdivisions (b) and (c) of Section 1269b, for a person charged with a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. For purposes of this subdivision, "unusual circumstances" does not include the fact that the defendant has made all prior court appearances or has not committed any new offenses.

**§1275.1 Matters Relating to Declaration of Probable Cause;**

- (a) Bail, pursuant to this chapter, shall not be accepted unless a judge or magistrate finds that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained.
- (b) A hold on the release of a defendant from custody shall only be ordered by a magistrate or judge if any of the following occurs:
  - (1) A peace officer, as defined in Section 830, files a declaration executed under penalty of perjury setting forth probable cause to believe that the source of any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained.
  - (2) A prosecutor files a declaration executed under penalty of perjury setting forth probable cause to believe that the source of any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained. A prosecutor shall have absolute civil immunity for executing a declaration pursuant to his paragraph.
  - (3) The magistrate or judge has probable cause to believe that the source of any consideration, pledge, security, deposit, or indemnification paid, given, made or promised for its execution was feloniously obtained.
- (c) Once a magistrate or judge has determined that probable cause exists, as provided in subdivision (b), a defendant bears the burden by a preponderance of the evidence to show that no part of any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was obtained by felonious means. Once a defendant has met such burden, the magistrate or judge shall release the hold previously ordered and the defendant shall be released under the authorized amount of bail.
- (d) The defendant and his or her attorney shall be provided with a copy of the declaration of probable cause filed under subdivision (b) no later than the date set forth in Section 825.
- (e) Nothing in this section shall prohibit a defendant from obtaining a loan of money so long as the loan will be funded and repaid with funds not felonious obtained.
- (f) At the request of any person providing any portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution, the magistrate or judge, at an evidentiary hearing to determine the source of the funds, may close it to the general public to protect the person's right to privacy in his or her financial affairs.

- (g) If the declaration, having been filed with the magistrate or judge, is not acted on within 24 hours, the defendant shall be released from custody upon posting the amount of bail set.
- (h) Nothing in this code shall deny the right of the defendant, either personally or through his or her attorney, bail agent licensed by the Department of Insurance, admitted surety insurer licensed by the Department of Insurance, friend, or member of his or her family from making an application to the magistrate or judge for the release of the defendant on bail.
- (i) The bail of any defendant found to have willfully misled the court regarding the source of bail may be increased as a result of the willful misrepresentation. The misrepresentation may be a factor considered in any subsequent bail hearing.
- (j) If a defendant has met the burden under subdivision (c), and a defendant will be released from custody upon the issuance of a bail bond issued pursuant to authority of Section 1269 or 1269b by any admitted surety insurer or any bail agent, approved by the Insurance Commissioner, the magistrate or judge shall vacate the holding order imposed under subdivision (b) upon the condition that the consideration for the bail bond is approved by the court.
- (k) As used in this section, "feloniously obtained" means any consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution which is possessed, received, or obtained through an unlawful act, transaction, or occurrence constituting a felony.

**§1276. Execution Of Bond Or Undertaking.**

(a) A bail bond or undertaking of bail of an admitted surety insurer shall be accepted or approved by a court or magistrate without further acknowledgment if executed by a licensed bail agent of the insurer under penalty of perjury and issued in the name of the insurer by a person authorized to do so by an unrevoked power of attorney on file in the office of the clerk of the county in which the court or magistrate is located.

(b) One person or both may execute and issue the bail bond or undertaking of bail if qualified as provided in this section.

**§1276.5. Disclosure For Bail Bond Secured By Real Property Lien.**

(a) At the time of an initial application to a bail bond licensee for a bail bond which is to be secured by a lien against real property, the bail bond licensee shall provide the property owner with a written disclosure statement in the following form:

**“DISCLOSURE OF LIEN AGAINST REAL PROPERTY. DO NOT SIGN THIS DOCUMENT UNTIL YOU READ AND UNDERSTAND IT! THIS BAIL BOND WILL BE SECURED BY REAL PROPERTY YOU OWN OR IN WHICH YOU HAVE AN INTEREST. THE FAILURE TO PAY THE BAIL BOND PREMIUMS WHEN DUE OR THE FAILURE OF THE DEFENDANT TO COMPLY WITH THE CONDITIONS OF BAIL COULD RESULT IN THE LOSS OF YOUR PROPERTY!”**

(b) The disclosure required in subdivision (a) shall be made in **14-point bold** type by either of the following means:

- (1) A separate and specific document attached to or accompanying the application.
- (2) A clear and conspicuous statement on the face of the application.

(c) The property owner shall be given a completed copy of the disclosure statement and of the note and deed of trust or other instrument creating a lien against real property prior to the execution of any instrument creating a lien against real property. The failure to fully comply with subdivision (a) or (b), or this subdivision, shall render the deed of trust or other instrument creating the lien against real property voidable.

(d) Within 30 days after notice is given by any individual, agency, or entity to the surety or bail bond licensee of the expiration of the time for appeal of the order exonerating the bail bond, or within 30 days after the payment in full of all moneys owed on the bail bond obligation secured by any lien against real property, whichever is later in time, the bail bond licensee shall deliver to the property owner a fully executed and notarized reconveyance of title, a certificate of discharge, or a full release of any lien against real property to secure performance of the conditions of the bail bond. If a timely notice of appeal of the order exonerating the bail bond is filed with the court, that 30-day period shall begin on the date the determination of the appellate court affirming the order exonerating the bail bond becomes final. Upon the reconveyance, the licensee shall deliver to the property owner the original note and deed of trust, security agreement, or other instrument which secures the bail bond obligation. If the licensee fails to comply with this subdivision, the property owner may petition the superior court to issue an order directing the clerk of the superior court to execute a full reconveyance of title, a certificate of discharge, or a full release of any lien against real property created to secure performance of the conditions of the bail bond. The petition shall be verified and shall allege facts showing that the licensee has failed to comply with this subdivision.

(e) The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation plus statutory damages in the sum of three hundred dollars (\$300.). The property owner shall be entitled, if he or she prevails, to recover court costs and reasonable attorney's fees as determined by the court in any action brought to enforce this section.

**§1277. Admission Of Bail By Magistrate.**

When the defendant has been held to answer upon an examination for a public offense the admission to bail may be by the magistrate by whom he is so held, or by any magistrate who has power to issue the writ of habeas corpus.

**§1278. Undertaking For Bail; Number Of Sureties; Form.**

(a) Bail is put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An order having been made on the \_\_\_\_ day of \_\_\_\_, 20\_\_, by \_\_\_\_, a judge of the \_\_\_\_ Court of \_\_\_\_ County, that \_\_\_\_ be held to answer upon a charge of (stating briefly the nature of the offense), upon which he or she has been admitted to bail in the sum of \_\_\_\_ dollars (\$\_\_\_\_); we, \_\_\_\_ and \_\_\_\_, of \_\_\_\_ (stating their place of residence and occupation), hereby undertake that the above-named \_\_\_\_ will appear and answer any charge in any accusatory pleading based upon the acts supporting the charge above mentioned, in whatever court it may be prosecuted, and will at all times hold himself or herself amenable to the orders and process of the court, and if convicted, will appear for pronouncement of judgment or grant of probation, or if he or she fails to perform either of these conditions, that we will pay to the people of the State of California the sum of \_\_\_\_ dollars (\$\_\_\_\_) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said (naming the sureties), and the defendant if he or she be a party to the bond, for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306.

(b) Every undertaking of bail shall contain the bail agent license number of the owner of the bail agency issuing the undertaking along with the name, address, and phone number of the agency, regardless of whether the owner is an individual, partnership, or corporation.

The bail agency name on the undertaking shall be a business name approved by the Insurance Commissioner for use by the bail agency owner, and be so reflected in the public records of the commissioner.

The license number of the bail agent appearing on the undertaking shall be in the same type size as the name, address, and phone number of the agency.



**§1279. Qualification Of Bail; Justification Of Sureties.**

The qualifications of bail are as follows:

1. Each of them must be a resident, householder, or freeholder within the state; but the court or magistrate may refuse to accept any person as bail who is not a resident of the county where bail is offered;
2. They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution, except that if any of the sureties is not worth the amount specified in the undertaking, exclusive of property exempt from execution, but owns any equity in real property, a hearing must be held before the magistrate to determine the value of such equity. Witnesses may be called and examined at such hearing and if the magistrate is satisfied that the value of the equity is equal to twice the amount of the bond such surety is justified. In any case, the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking, if the whole justification be equivalent to that of sufficient bail.

**§1280. Justification Of Bail.**

The bail must in all cases justify by affidavit taken before the magistrate, that they each possess the qualifications provided in the preceding section. The magistrate may further examine the bail upon oath concerning their sufficiency, in such manner, as he may deem proper.

**§1280a. Justification Of Bail: Affidavits; Contents.**

All affidavits for the justification of bail shall set forth the amount of the bail undertaking, a notice that the affidavit shall constitute a lien upon the real property described in the affidavit immediately upon the recordation of the affidavit with the county recorder pursuant to Section 1280b, and the legal description and assessor's parcel numbers of the real estate owned by the bail, which is scheduled as showing that they each possess the qualifications provided on the preceding sections, the affidavit shall also show all encumbrances upon the real estate known to affiants and shall show the number of bonds, if any, on which each bail has qualified, within one year before the date of the affidavit, together with the amount of each such bond, the date on which, the county in which, and the name of the principal for whom each bond was executed.

The affidavit shall also state the amount of each bail's liability on bonds executed in previous years and not exonerated at the date of the execution of the affidavit and be signed and acknowledged by the owner of the real property.

**§1280b. Justification Of Bail; Filing Of Affidavits; Recording Certified Copies.**

It shall be the duty of the judge or magistrate to file with the clerk of the court, within 24 hours after presentation to him or her, all affidavits for the justification of bail, by delivering or mailing them to the clerk of the court. Certified copies of the affidavits for justification of bail involving equity in real property may upon the written order of the judge or magistrate be recorded with the county recorder.

**§1280.1. Affidavit As Attachment Lien.**

(a) From the time of recording an affidavit for the justification of bail, the affidavit shall constitute an attachment lien governed by Sections 488.500, 488.510 and 489.310 of the Code of Civil Procedure in the amount of the bail undertaking, until exonerated, released, or otherwise discharged. Any release of the undertaking shall be effected by an order of the court, filed with the clerk of the court, with a certified copy of the order recorded in the office of the county recorder.

If the bail is forfeited and summary judgment is entered, pursuant to Sections 1305 and 1306, the lien shall have the force and effect of a judgment lien, by recordation of an abstract of judgment, which, may be enforced and satisfied pursuant to Section 1306 as well as through the applicable execution process set forth in Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

**§1281. Discharge Of Defendant Upon Allowance Of Bail.**

Upon the allowance of bail and the execution and approval of the undertaking, the magistrate must, if the defendant is in custody, make and sign an order for his discharge, upon the delivery of which to the proper officer the defendant must be discharged.

**§1281a. Felony Cases; Judges' Authority For Bail Approval And Defendant's Discharge.**

A judge of any municipal or justice court within the county, wherein a cause is pending against any person charged with a felony, may justify and approve bail in the said cause, and may execute an order for the release of the defendant which shall authorize the discharge of the defendant by any officer having said defendant in custody.

**§1284. Noncapital Offense; Service Of Bench Warrant.**

When the offense charged is not punishable with death, the officer serving the bench warrant must, if required, take the defendant before a magistrate in the county in which it is issued, or in which he is arrested, for the purpose of giving bail. If the defendant appears before such magistrate without the bench warrant having been served upon him, the magistrate shall deliver him into the custody of the sheriff for the purpose of immediate booking and the recording of identification data, whereupon the sheriff shall deliver the defendant back before the magistrate for the purpose of giving bail.

**§1285. Capital Offense; Delivery Of Defendant Into Custody.**

If the offense charged is punishable with death, the officer arresting the defendant must deliver him into custody, according to the command of the bench warrant.

**§1286. Bail On Habeas Corpus When Offense Capital.**

When the defendant is so delivered into custody he must be held by the sheriff, unless admitted to bail on examination upon a writ of habeas corpus.

**§1287. Undertaking For Bail; Sureties; Form.**

(a) The bail shall be put in by a written undertaking, executed by two sufficient sureties (with or without the defendant, in the discretion of the court or magistrate), and acknowledged before the court or magistrate, in substantially the following form:

An indictment having been found on the \_\_\_\_ day of \_\_\_\_, 20\_\_, in the Superior Court of the County of \_\_\_\_, charging \_\_\_\_ with the crime of \_\_\_\_ (designating it generally) and he or she having been admitted to bail in the sum of \_\_\_\_ dollars (\$\_\_\_\_), we, \_\_\_\_ and \_\_\_\_, of \_\_\_\_ (stating their place of residence and occupation), hereby undertake that the above-named \_\_\_\_ will appear and answer any charge in any accusatory pleading based upon the acts supporting the indictment above mentioned, in whatever court it may be prosecuted, and will at all times render himself or herself amenable to the orders and process of the court, and, if convicted, will appear for pronouncement of judgment or grant of probation; or, if he or she fails to perform either of these conditions, that we will pay to the people of the State of California the sum of \_\_\_\_ dollars (\$\_\_\_\_) (inserting the sum in which the defendant is admitted to bail). If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said (naming the sureties, and the defendant if he or she be a party to the bond), for the amount of their respective undertakings herein, as provided by Sections 1305 and 1306.

(b) Every undertaking of bail shall contain the bail agent license number of the owner of the bail agency issuing the undertaking along with the name, address, and phone number of the agency, regardless of whether the owner is an individual, partnership, or corporation. The bail agency name on the undertaking shall be a business name approved by the Insurance Commissioner for use by the bail agency owner, and be so reflected in the public records of the commissioner. The license number of the bail agent appearing on the undertaking shall be in the same type size as the name, address, and phone number of the agency.

**§1288. Application Of Other Sections.**

The provisions contained in sections 1279, 1280, 1280a and 1281, in relation to bail before indictment, apply to bail after indictment.

**§1289. Increase Or Reduction Of Bail: Cause, Commitment, Application.**

After a defendant has been admitted to bail upon an indictment or information, the Court in which the charge is pending may, upon good cause shown, either increase or reduce the amount of bail. If the amount be increased, the Court may order the defendant to be committed to actual custody, unless he give bail in such increased amount. If application be made by the defendant for a reduction of the amount, notice of the application must be served upon the District Attorney.

**§1291. Authority To Admit Bail.**

In the cases in which defendant may be admitted to bail upon an appeal, the order admitting him to bail may be made by any magistrate having the power to issue a writ of habeas corpus, or by the magistrate before whom the trial was had.

**§1292. Qualifications Of Bail: Conditions And Provisions**

The bail must possess the qualifications, and must be put in, in all respects, as provided in Article II of this Chapter, except that the undertakings must be conditioned as prescribed in Section 1273, for undertakings of bail on appeal.

**§1295. Deposit In Lieu Of Bail; Delivery Of Certificate Of Deposit; Discharge Of Defendant.**

(a) The defendant, or any other person, at any time after an order admitting defendant to bail or after arrest and booking of a defendant for having committed a misdemeanor, instead of giving bail may deposit with the clerk of the court in which the defendant is held to answer or notified to appear for arraignment, the sum mentioned in the order, or if no order, in the schedule of bail previously fixed by the judges of said court, and upon delivering to the officer in whose custody defendant is a certificate of the deposit, the defendant must be discharged from custody.

(b) Where more than one such deposit is made with respect to any charge in any accusatory pleading based upon the acts supporting the original charge as a result of which an earlier deposit was made, the defendant shall receive credit in the amount of any such earlier deposit.

(c) The clerk of the court shall not accept a general assistance check for this deposit or any part thereof.

**§1296. Substitution Of Deposit For Bail.**

If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the recognizance, and upon the deposit being made the bail is exonerated.

**§1297. Receipt For Deposit; Application Of Deposit To Satisfy Fine And Costs; Refund Of Returns; Notice Of Exoneration.**

When money has been deposited, a receipt shall be issued in the name of the depositor. If the money remains on deposit at the time of a judgment for the payment of a fine, the clerk must, under the direction of the court, if the defendant be the depositor, apply the money in satisfaction thereof, and after satisfying the fine and costs, must refund the surplus, if any, to the defendant. If the person to whom the receipt for the deposit was issued was not the defendant, the deposit after judgment shall be returned to him within 10 days after he claims it by submitting the receipt, and, if a claim is not made within 10 days of the exoneration of bail, the clerk shall immediately notify the depositor of the exoneration of bail.

**§1298. Deposit Of Bonds Or Equity In Real Estate Property In Lieu Of Money.**

In lieu of a deposit of money, the defendant or any other person may deposit bonds of the United States or of the State of California of the face value of the cash deposit required, and these bonds shall be treated in the same manner as a deposit of money or the defendant or any other person may give as security any equity in real property which he or she owns, provided, that no charge is made to the defendant or any other person for the giving as security of any equity in real property. A hearing, at which witnesses may be called or examined, shall be held before the magistrate to determine the value of such equity and if the magistrate finds that the value of the equity is equal to twice the amount of the cash deposit required he or she shall allow the bail. The clerk shall, under the order of the court, when occasion arises therefor, sell the bonds or the equity and apply the proceeds of the sale in the manner that a deposit of cash may be required to be applied.

The county treasurer shall, upon request of the judge, keep the deposit and return it to the clerk on order of the judge.

**Fugitive Recovery Persons §1299 – 1299.12 [effective 01/13/2013]**

**§1299.** This article shall be known as the Bail **Fugitive Recovery Persons Act**.

**§1299.01.** For purposes of this article, the following terms shall have the following meanings:

(a) "Bail fugitive" means a defendant in a pending criminal case who has been released from custody under a financially secured appearance, cash, or other bond and has had that bond declared forfeited, or a defendant in a pending criminal case who has violated a bond condition whereby apprehension and reincarceration are permitted.

(b) "Bail" means a person licensed by the Department of Insurance pursuant to Section 1800 of the Insurance Code.

(c) "Depositor of bail" means a person who or entity that has deposited money or bonds to secure the release of a person charged with a crime or offense.

(d) "Bail fugitive recovery person" means a person who is provided written authorization pursuant to Sections 1300 and 1301 by the bail or depositor of bail, and is contracted to investigate, surveil, locate, and arrest a bail fugitive for surrender to the appropriate court, jail, or police department, and any person who is employed to assist a bail or depositor of bail to investigate, surveil, locate, and arrest a bail fugitive for surrender to the appropriate court, jail, or police department.

#### **§1299.02. Qualifications**

(a) No person, other than a certified law enforcement officer, shall be authorized to apprehend, detain, or arrest a bail fugitive unless that person meets one of the following conditions:

(1) Is a bail as defined in subdivision (b) of Section 1299.01 or a depositor of bail as defined in subdivision (c) of Section 1299.01.

(2) Is a bail fugitive recovery person as defined in subdivision (d) of Section 1299.01.

(3) Holds a bail license issued by a state other than California or is authorized by another state to transact and post bail and is in compliance with the provisions of Section 847.5 with respect to the arrest of a bail fugitive.

(4) Is licensed as a private investigator as provided in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code.

(5) Holds a private investigator license issued by another state, is authorized by the bail or depositor of bail to apprehend a bail fugitive, and is in compliance with the provisions of Section 847.5 with respect to the arrest of a bail fugitive.

(b) This article shall not prohibit an arrest pursuant to Sections 837, 838, and 839.

#### **§1299.04. Qualifications and Training Requirement.**

(a) A bail fugitive recovery person, a bail agent, bail permittee, or bail solicitor who contracts his or her services to another bail agent or surety as a bail fugitive recovery person for the purposes specified in subdivision (d) of Section 1299.01, and any bail agent, bail permittee, or bail solicitor who obtains licensing after January 1, 2000, and who engages in the arrest of a defendant pursuant to Section 1301 shall comply with the following requirements:

(1) The person shall be at least 18 years of age.

(2) The person shall have completed a 40-hour power of arrest course certified by the Commission on Peace Officer Standards and Training pursuant to Section 832. Completion of the course shall be for educational purposes only and not intended to confer the power of arrest of a peace officer or public officer, or agent of any

federal, state, or local government, unless the person is so employed by a governmental agency.

(3) The person shall have completed a minimum of 20 hours of classroom education certified pursuant to Section 1810.7 of the Insurance Code.

(4) The person shall not have been convicted of a felony, unless the person is licensed by the Department of Insurance pursuant to Section 1800 of the Insurance Code.

(b) Upon completion of any course or training program required by this section, an individual authorized by Section 1299.02 to apprehend a bail fugitive shall carry certificates of completion with him or her at all times in the course of performing his or her duties under this article.

**§1299.05.** In performing a bail fugitive apprehension, an individual authorized by Section 1299.02 to apprehend a bail fugitive shall comply with all laws applicable to that apprehension.

**§1299.06.** Before apprehending a bail fugitive, an individual authorized by Section 1299.02 to apprehend a bail fugitive shall have in his or her possession proper documentation of authority to apprehend issued by the bail or depositor of bail as prescribed in Sections 1300 and 1301. The authority

to apprehend document shall include all of the following information: the name of the individual authorized by Section 1299.02 to apprehend a bail fugitive and any fictitious name, if applicable; the address of the principal office of the individual authorized by Section 1299.02 to apprehend a bail fugitive; and the name and principal business address of the bail agency, surety company, or other party contracting with the individual authorized by Section 1299.02 to apprehend a bail fugitive.

**§1299.07. False or Misleading Representation.**

- (a) An individual authorized by Section 1299.02 to apprehend a bail fugitive shall not represent himself or herself in any manner as being a sworn law enforcement officer.
- (b) An individual authorized by Section 1299.02 to apprehend a bail fugitive shall not wear any uniform that represents himself or herself as belonging to any part or department of a federal, state, or local government. Any uniform shall not display the words United States, Bureau, Task Force, Federal, or other substantially similar words that a reasonable person may mistake for a government agency.
- (c) An individual authorized by Section 1299.02 to apprehend a bail fugitive shall not wear or otherwise use a badge that represents himself or herself as belonging to any part or department of the federal, state, or local government.
- (d) An individual authorized by Section 1299.02 to apprehend a bail fugitive shall not use a fictitious name that represents himself or herself as belonging to any federal, state, or local government.
- (e) An individual authorized by Section 1299.02 to apprehend a bail fugitive may wear a jacket, shirt, or vest with the words "BAIL BOND RECOVERY AGENT," "BAIL ENFORCEMENT," or "BAIL ENFORCEMENT AGENT" displayed in letters at least two inches high across the front or back of the jacket, shirt, or vest and in a contrasting color to that of the jacket, shirt, or vest.

**§1299.08. Notification of Law Enforcement**

(a) Except under exigent circumstances, an individual authorized by Section 1299.02 to apprehend a bail fugitive shall, prior to and no more than six hours before attempting to apprehend the bail fugitive, notify the local police department or sheriff's department of the intent to apprehend a bail fugitive in that jurisdiction by doing all of the following:

(1) Indicating the name of an individual authorized by Section 1299.02 to apprehend a bail fugitive entering the jurisdiction.

(2) Stating the approximate time an individual authorized by Section 1299.02 to apprehend a bail fugitive will be entering the jurisdiction and the approximate length of the stay.

(3) Stating the name and approximate location of the bail fugitive.

(b) If an exigent circumstance does arise and prior notification is not given as provided in subdivision (a), an individual authorized by Section 1299.02 to apprehend a bail fugitive shall notify the local police department or sheriff's department immediately after the apprehension, and upon request of the local jurisdiction, shall submit a detailed explanation of those exigent circumstances within three working days after the apprehension is made.

(c) This section shall not preclude an individual authorized by Section 1299.02 to apprehend a bail fugitive from making or attempting to make a lawful arrest of a bail fugitive on bond pursuant to Section 1300 or 1301. The fact that a bench warrant is not located or entered into a warrant depository or system shall not affect a lawful arrest of the bail fugitive.

(d) For the purposes of this section, notice may be provided to a local law enforcement agency by telephone prior to the arrest or, after the arrest has taken place, if exigent circumstances exist. In that case the name or operator number of the employee receiving the notice information shall be obtained and retained by the bail, depositor of bail, or bail fugitive recovery person.

**§1299.09. Entering Premises.**

An individual, authorized by Section 1299.02 to apprehend a bail fugitive shall not forcibly enter a premises except as provided for in Section 844.

**§1299.10.** An individual authorized by Section 1299.02 to apprehend a bail fugitive shall not carry a firearm or other weapon unless in compliance with the laws of the state.

**§1299.11.** Any person who violates this act, or who conspires with another person to violate this act, or who hires an individual to apprehend a bail fugitive, knowing that the individual is not authorized by Section 1299.02 to apprehend a bail fugitive, is guilty of a misdemeanor punishable by a fine of five

thousand dollars (\$5,000) or by imprisonment in a county jail not to exceed one year, or by both that imprisonment and fine.

**§1299.12.** Nothing in this article is intended to exempt from licensure persons otherwise required to be licensed as private investigators pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code.

**§1300. Who May Make Surrender; Method Of Surrender.**

(a) At any time before the forfeiture of their undertaking, or deposit by a third person, the bail or the depositor may surrender the defendant in their exoneration, or he may surrender himself, to the officer to whose custody he was committed at the time of giving bail, in the following manner:

(1) A certified copy of the undertaking of bail, a certified copy of the certificate of deposit where a deposit is made, or an affidavit given by the bail licensee or surety company listing all the specific information that would be included on a certified copy of an undertaking of bail, must be delivered to the officer who must detain the defendant in his custody thereon as upon a commitment, and by a certificate in writing acknowledging the surrender.

(2) The bail or depositor, upon surrendering the defendant, shall make reasonable effort to give notice to the defendant's last attorney of record, if any, of such surrender.

(3) The officer to whom the defendant is surrendered shall, within 48 hours of the surrender, bring the defendant before the court in which the defendant is next to appear on the case for which he has been surrendered. The court shall advise the defendant of his right to move the court for an order permitting the withdrawal of any previous waiver of time and shall advise him of the authority of the court, as provided in subdivision (b), to order the return of the premium paid by the defendant or other person, or any part of it.

(4) Upon the undertaking, or certificate of deposit, and the certification of the officer, the court in which the action or appeal is pending may, upon notice of five days to the district attorney of the county, with a copy of the undertaking, or certificate of deposit, and the certificate of the officer, order that the bail or deposit be exonerated. However, if the defendant is released on his own recognizance or on another bond before the issuance of such an order, the court shall order that the bail or deposit be exonerated without prejudice to the court's authority under subdivision (b).

On filing the order and papers used on the application, they are exonerated accordingly.

(b) Notwithstanding subdivision (a), if the court determines that good cause does not exist for the surrender of a defendant who has not failed to appear or has not violated any order of the court, it may, in its discretion, order the bail or the depositor to return to the defendant or other person who has paid the premium or any part of it, all of the money so paid or any part of it.

**§1301. Arrest Of Defendant For Purpose Of Surrender.**

For the purpose of surrendering the defendant, the bail or any person who has deposited money or bonds to secure the release of the defendant, at any time before such bail or other person is finally discharged, and at any place within the state, may himself arrest defendant, or by written authority endorsed on a certified copy of the undertaking or a certified copy of the certificate of deposit, may empower any person of suitable age to do so.

Any bail or other person who so arrests a defendant in this state shall, without unnecessary delay, and in any event, within 48 hours of the arrest, deliver the defendant to the court or magistrate before whom the defendant is required to appear or to the custody of the sheriff or police for confinement in the appropriate jail in the county or city in which defendant is required to appear. Any bail or other person who arrests a defendant outside this state shall, without unnecessary delay after the time defendant is brought into this state, and, in any event, within 48 hours after defendant is brought into this state, deliver the defendant to the custody of the court or magistrate before whom the defendant is required to appear or to the custody of the sheriff or police for confinement in the appropriate jail in the county or city in which defendant is required to appear.

Any bail or other person who willfully fails to deliver a defendant to the court, magistrate, sheriff, or police as required by this section is guilty of a misdemeanor.

The provisions of this section relating to the time of delivery of a defendant are for his benefit and, with the consent of the bail, may be waived by him. To be valid, such waiver shall be in writing, signed by the defendant, and delivered to such bail or other person within 48 hours after the defendant's arrest or entry into this state, as the case may be. The defendant, at any time and in the same manner, may revoke

said waiver. Whereupon, he shall be delivered as provided herein without unnecessary delay and, in any event within 48 hours from the time of such revocation.

If any 48 hour period specified in this section terminates on a Saturday, Sunday, or holiday, delivery of a defendant by a bail or other person to the court or magistrate or the custody of the sheriff or police may, without violating this section, take place before noon on the next day following which is not a Saturday, Sunday, or holiday.

**§1302. Return Of Money Deposit On Surrender Before Forfeiture.**

If any money has been deposited instead of bail, and the defendant, at any time before the forfeiture thereof, surrenders himself or herself to the officer to whom the commitment was directed in the manner provided in Sections 1300 and 1301, the court shall order a return of the deposit to the defendant or to the person or persons found by the court to have deposited said money on behalf of the defendant upon the production of the certificate of the officer showing the surrender, and upon a notice of five days to the district attorney, with a copy of the certificate.

**§1303. Application Of Bail Upon Dismissal.**

If an action or proceeding against a defendant who has been admitted to bail is dismissed, the bail shall not be exonerated until a period of 15 days has elapsed since the entry of the order of dismissal. If, within such period, the defendant is arrested and charged with a public offense arising out of the same act or omission upon which the action or proceeding was based, the bail shall be applied to the public offense. If an undertaking of bail is on file, the clerk of the court shall promptly mail notice to the surety on the bond and the bail agent who posted the bond whenever the bail is applied to a public offense pursuant to this section.

**§1304. Time For Exoneration; Notice To Court.**

Any bail, or moneys or bonds deposited in lieu of bail, or any equity in real property as security in lieu of bail, or any agreement whereby the defendant is released on his or her own recognizance shall be exonerated two years from the effective date of the initial bond, provided that the court is informed in writing at least 60 days prior to 2 years after the initial bond of the fact that the bond is to be exonerated, or unless the court determines otherwise and informs the party executing the bail of the reasons that the bail is not exonerated.

**§1305. Declaration Of Forfeiture; Notice To Surety Or Depositor; Vacating Forfeiture; Reinstatement Of Bail In Lieu Of Exoneration; Disability.**

(a) 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:

- (1) Arraignment.
- (2) Trial.
- (3) Judgment.
- (4) Any other occasion prior to the pronouncement of judgment if the defendant's presence in court is lawfully required.
- (5) To surrender himself or herself in execution of the judgment after appeal.

However, 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) 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.

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.

The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:

(1) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture.

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

(3) 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) 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:

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

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

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

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.

### **§1305.1 Failure To Appear Without Sufficient Excuse; Continuance Of Case.**

If the defendant fails to appear for arraignment, trial, judgment, or upon any other occasion when his or her appearance is lawfully required, but the court has reason to believe that sufficient excuse may exist for the failure to appear, the court may continue the case for a period it deems reasonable to enable the defendant to appear without ordering a forfeiture of bail or issuing a bench warrant.

If, after the court has made the order, the defendant, without sufficient excuse, fails to appear on or before the continuance date set by the court, the bail shall be forfeited and a warrant for the defendant's arrest may be ordered issued.

### **§1305.2. Notice Of Assessment Made As Condition Of Discharge Of Forfeiture; Payment Procedure.**

If an assessment is made a condition of the order to set aside the forfeiture of an undertaking, deposit, or bail under Section 1305, the clerk of the court shall within 30 days mail notice thereof to the surety or depositor at the address of its principal office, mail a copy to the bail agent whose name appears on the bond, and shall execute a certificate of mailing and place it in the court's file in the case. The time limit for payment shall in no event be less than 30 days after the date of mailing of the notice.

If the assessment has not been paid by the date specified, the court shall determine if a certificate of mailing has been executed, and if a certificate of mailing has been executed, and if none has, the court shall cause a notice to be mailed to the surety, depositor, or bail agent whose name appears on the bond, and the surety, depositor, or bail agent whose name appears on the bond shall be allowed an additional 30 days to pay the assessment.

### **§1305.3. Recovery Of Costs; Motion To Vacate Forfeiture; Collection On Summary Judgment.**

The district attorney, county counsel, or applicable prosecuting agency, as the case may be, shall recover, out of the forfeited bail money, the costs incurred in successfully opposing a motion to vacate the forfeiture and in collecting on the summary judgment prior to the division of the forfeited bail money between the cities and counties in accordance with Section 1463.

### **§1305.4 Motion To Extend 180-Day Period**

Notwithstanding Section 1305, the surety insurer, the bail agent, the surety, or the depositor may file a motion, based upon good cause, for an order extending the 180-day period provided in that section. The motion shall include a declaration or affidavit that states the reasons showing good cause to extend that period. The court, upon a hearing and a showing of good cause, may order the period extended to a time not exceeding 180 days from its order. A motion may be filed and calendared as provided in subdivision (i) of Section 1305. 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 this section as a condition precedent to granting the motion.

### **§1305.5.**

Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil Procedure, the following rules apply to an appeal from an order of the superior court on a motion to vacate a bail forfeiture declared under Section 1305:

(a) If the amount in controversy exceeds twenty-five thousand dollars (\$25,000), the appeal is to the court of appeal and shall be treated as an unlimited civil case.

(b) Except as provided in subdivision (c), if the amount in controversy does not exceed twenty-five thousand dollars (\$25,000), the appeal is to the appellate division of the superior court and shall be treated as a limited civil case.

(c) If the bail forfeiture was in a felony case, or in a case in which both a felony and a misdemeanor were charged, and the forfeiture occurred at or after the sentencing hearing or after the indictment or the legal commitment by a magistrate, the appeal is to the court of appeal and shall be treated as an unlimited civil case.

#### **§1305.6. Vacate after 180 days**

(a) If a person appears in court after the end of the 180-day period specified in Section 1305, the court may, in its discretion, vacate the forfeiture and exonerate the bond if both of the following conditions are met:

(1) The person was arrested on the same case within the county where the case is located, within the 180-day period.

(2) The person has been in continuous custody from the time of his or her arrest until the court appearance on that case.

(b) Upon a showing of good cause, a motion brought pursuant to paragraph (3) of subdivision (c) of Section 1305 may be filed within 20 days from the mailing of the notice of entry of judgment under Section 1306.

(c) In addition to any other notice required by law, the moving party shall give the applicable prosecuting agency written notice of the motion to vacate the forfeiture and exonerate the bond under this section at least 10 court days before the hearing.

#### **§1306. Enforcement Of Judgment On Forfeiture Of Bail Bond.**

1306. (a) When any bond is forfeited and the period of time specified in Section 1305 has elapsed without the forfeiture having been set aside, the court which has declared the forfeiture shall enter a summary judgment against each bondsman named in the bond in the amount for which the bondsman is bound. The judgment shall be the amount of the bond plus costs, and notwithstanding any other law, no penalty assessments shall be levied or added to the judgment.

(b) If a court grants relief from bail forfeiture, it shall impose a monetary payment as a condition of relief to compensate the people for the costs of returning a defendant to custody pursuant to Section 1305, except for cases where the court determines that in the best interest of justice no costs should be imposed. The amount imposed shall reflect the actual costs of returning the defendant to custody. Failure to act within the required time to make the payment imposed pursuant to this subdivision shall not be the basis for a summary judgment against any or all of the underlying amount of the bail. A summary judgment entered for failure to make the payment imposed under this subdivision is subject to the provisions of Section 1308, and shall apply only to the amount of the costs owing at the time the summary judgment is entered, plus administrative costs and interest.

(c) If, because of the failure of any court to promptly perform the duties enjoined upon it pursuant to this section, summary judgment is not entered within 90 days after the date upon which it may first be entered, the right to do so expires and the bail is exonerated.

(d) A dismissal of the complaint, indictment, or information after the default of the defendant shall not release or affect the obligation of the bail bond or undertaking.

(e) The district attorney or county counsel shall:

(1) Demand immediate payment of the judgment within 30 days after the summary judgment becomes final.

(2) If the judgment remains unpaid for a period of 20 days after demand has been made, shall forthwith enforce the judgment in the manner provided for enforcement of money judgments generally. If the judgment is appealed by the surety or bondsman, the undertaking required to be given in these cases shall be provided by a surety other than the one filing the appeal. The undertaking shall comply with the enforcement requirements of Section 917.1 of the Code of Civil Procedure. Notwithstanding Sections 85, 580, 904.1, and 904.2 of the Code of Civil Procedure, jurisdiction of the appeal, and treatment of the appeal as a limited civil case or an unlimited civil case, is governed by Section 1305.5.

(f) The right to enforce a summary judgment entered against a bondsman pursuant to this section shall expire two years after the entry of the judgment.

**§1306.1. Payment Of Bail Deposits In Cases Under Vehicle Code.**

The provisions of Section 1305 and 1306 shall not affect the payment of bail deposits into the city of county treasury, as the case may be, pursuant to Section 40512 of the Vehicle Code in those cases arising under Section 40500 of the Vehicle Code.

**§1307. Payment To County Treasurer Of Forfeited Deposit.**

If by any reason of the neglect of the defendant to appear, money deposited instead of bail is forfeited, and the forfeiture is not discharged or remitted, the clerk with whom it is deposited must, at the end of 180 days, unless the court has before that time discharged the forfeiture, pay over the money deposited to the county treasurer.

**§1308. Surety On Bail Not Accepted Of Summary Judgment Unpaid; Notice Of Entry Of Summary Judgment.**

- (a) No court or magistrate shall accept any person or corporation as surety on bail if any summary judgment against that person or corporation entered pursuant to Section 1306 remains unpaid after the expiration of 30 days after service of notice of the entry of the summary judgment provided, that, if during the 30 days on an action or proceeding available at law is initiated to determine the validity of the order of forfeiture or summary judgment rendered thereon, this section shall be rendered inoperative until that action or proceeding has finally been determined, provided that an appeal bond is posted in compliance with Section 917.1 of the Code of Civil procedure.
- (b) The clerk of the court in which the judgment is rendered shall serve notice of the entry of judgment upon the judgment debtor within five days after the date of the entry of the summary judgment.

**§1309. Disposition Of Moneys Not Called For.**

Whenever any money has been or is deposited as bail in any criminal action or proceeding, including but not limited to any proceeding in habeas corpus, in a superior court either before or after the effective date of this code section and it is made to appear to the satisfaction of the court or judge by affidavit or by testimony in open court that more than three years have elapsed since the exoneration or release of said bail and that said money cannot be paid out because the owner thereof cannot be found, the court or judge must direct that such money shall be deposited in the general fund of the county.

**ARTICLE 8**

**§1310. Circumstances For Recommitment.**

The court to which the committing magistrate returns the depositions, or in which an indictment, information, or appeal is pending, or to which a judgment on appeal is remitted to be carried into effect, may, by an order entered upon its minutes, direct the arrest of the defendant and his or her commitment to the officer to whose custody he or she was committed at the time of giving bail, and his or her detention until legally discharged, in the following cases:

- (a) When, by reason of his or her failure to appear, he or she has incurred a forfeiture of his or her bail, or of money deposited instead thereof.
- (b) When it satisfactorily appears to the court that his or her bail, or either of them are dead or insufficient, or have removed from the state.
- (c) Upon an indictment being found or information filed in the cases provided in Section 985.

**§1311. Contents Of Recommitment Order.**

The order for the recommitment of the defendant must recite generally the facts upon which it is founded, and direct that the defendant be arrested by any Sheriff, Marshall, or Policeman in this state, and committed to the officer in whose custody he or she was at the time he or she was admitted to bail, to be detained until legally discharged.

**§1312. Defendant May Be Arrested In Any County.**

The defendant may be arrested pursuant to the order, upon a certified copy thereof, in any county, in the same manner as upon a warrant of arrest, except that when arrested in another county the order need not be endorsed by a magistrate of that county.

**§1313. Commitment For Nonappearance For Judgment Upon Conviction.**

If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant must be committed according to the requirement of the order.

**§1314. Bail On Order For Recommitment.**

If the order be made for any other cause, and the offense is bailable, the Court may fix the amount of bail, and may cause a direction to be inserted in the order that the defendant be admitted to bail in the sum fixed, which must be specified in the order.

**§1315. Bail On Order Of Recommitment; Magistrates Authorized To Take Bail.**

When the defendant is admitted to bail, the bail may be taken by any magistrate in the county, having authority in a similar case to admit to bail, upon the holding of the defendant to answer before an indictment, or by any other magistrate designated by the court.

**§1316. Form Of Undertaking.**

When bail is taken upon the recommitment of the defendant, the undertaking must be in substantially the following form:

An order having been made on the \_\_\_\_\_ day of \_\_\_\_, A.D. eighteen \_\_\_\_\_, by the Court (naming It), that A. B. be admitted to bail in the sum or \_\_\_\_\_ dollars, in an action pending in that Court against him in behalf of the people of the State of California, upon an (information, presentment, indictment, or appeal, as the case may be), we, C. D. and E. F. of (stating their places of residence and occupation), hereby undertake that the above named A. B. will appear in that or any other Court in which his appearance may be lawfully required upon that (information, presentment, indictment, or appeal, as the case may be), and will at all times render himself amenable to its orders and process, and appear for judgment and surrender himself in execution thereof; or if he fails to perform either of these conditions, that we will pay to the people of the State of California the sum of \_\_\_\_\_ dollars (insert the sum in which defendant is admitted to bail).

(Enacted in 1872)

**§1317. Bail On Order For Recommitment: Qualifications; Procedure: Provisions Applicable.**

The bail must possess the qualifications, and must be put in, in all respects, in the manner prescribed in Article II of this Chapter.

**§1318. Release Agreement; Necessity; Filing; Signature; Contents**

(a) The defendant shall not be released from custody under an own recognizance until the defendant files with the clerk of the court or other person authorized to accept bail a signed release agreement which includes:

- (1) The defendant's promise to appear at all times and places, as ordered by the court or magistrate and as ordered by any court in which, or any magistrate before whom the charge is subsequently pending.
- (2) The defendant's promise to obey all reasonable conditions imposed by the court or magistrate.
- (3) The defendant's promise not to depart this state without leave of the court.
- (4) Agreement by the defendant to waive extradition if the defendant fails to appear as required and is apprehended outside the State of California.
- (5) The acknowledgment of the defendant that he or she has been informed of the consequences and penalties applicable to violation of the conditions of release.

**§1318.1. Investigative Staff; Violent Felony Cases; Reports; Salaries.**

(a) A court, with the concurrence of the board of supervisors, may employ an investigative staff for the purpose of recommending whether a defendant should be released on his or her own recognizance.

(b) Whenever a court has employed an investigative staff pursuant to subdivision (a), an investigative report shall be prepared in all cases involving a violent felony, as described in subdivision (c) of Section 667.5 or a felony in violation of subdivision (a) of Section 23153 of the Vehicle Code, recommending whether the defendant should be released on his or her own recognizance. The report shall include all of the following:

- (1) Written verification of any outstanding warrants against the defendant.
- (2) Written verification of any prior incidents where the defendant has failed to make a court appearance.
- (3) Written verification of the criminal record of the defendant.
- (4) Written verification of the residence of the defendant during the past year.

After the report is certified pursuant to this subdivision, it shall be submitted to the court for review, prior to a hearing held pursuant to Section 1319.

(c) The salaries of the staff are a proper charge against the county.

### **§1319. Violent Felonies; Hearing: Statement Of Reasons For Decision; Violent Felony Defined.**

(a) No person arrested for a violent felony, as described in subdivision (c) of Section 667.5, may be released on his or her own recognizance until a hearing is held in open court before the magistrate or judge, and until the prosecuting attorney is given notice and a reasonable opportunity to be heard on the matter. In all cases, these provisions shall be implemented in a manner consistent with the defendant's right to be taken before the magistrate or judge without unreasonable delay pursuant to Section 825.

(b) A defendant charged with a violent felony, as described in subdivision (c) of Section 667.5, shall not be released on his or her own recognizance where it appears, by clear and convincing evidence, that he or she previously has been charged with a felony offense and has willfully and without excuse from the court failed to appear in court as required while that charge was pending. In all other cases, in making the determination as to whether or not to grant release under this section, the court shall consider all of the following:

- (1) The existence of any outstanding felony warrants on the defendant.
- (2) Any information presented in the report prepared pursuant to Section 1318.1. The fact that the court has not received the report required by Section 1318.1, at the time of the hearing to decide whether to release the defendant on his or her own recognizance, shall not preclude that release.
- (3) Any other information presented by the prosecuting attorney.

(c) The judge or magistrate who, pursuant to this section, grants or denies release on a person's own recognizance, within the time period prescribed in Section 825, shall state the reasons for that decision in the record. This statement shall be included in the court's minutes. The report prepared by the investigative staff pursuant to subdivision (b) of Section 1318.1 shall be placed in the court file for that particular matter.

### **§1319.5. Hearing For Release On Own Recognizance.**

- a) No person described in subdivision (b) who is arrested for a new offense may be released on his or her own recognizance until a hearing is held in open court before the magistrate or judge.
- b) Subdivision (a) shall apply to the following:
  - (1) Any person who is currently on felony probation or felony parole.
  - (2) Any person who has failed to appear in court as ordered, resulting in a warrant being issued, three or more times over the three years preceding the current arrest, except for infractions arising from violations of the Vehicle Code, and who is arrested for any of the following offenses:
    - (a) Any felony offense.
    - (b) Any violation of the California Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1)

- (c) Any violation of Chapter 9 (commencing with Section 240) of Title 8 of Part 1 (assault and battery).
- (d) A violation of Section 484 (theft)
- (e) A violation of Section 459 (burglary)
- (f) Any offense in which the defendant is alleged to have been armed with or to have personally used a firearm.

**§1320. Failure To Appear After Release On Own Recognizance; Penalties; Presumptions.**

(a) Every person who is charged with or convicted of the commission of misdemeanor who is released from custody on his or her own recognizance and who in order to evade the process of the court willfully fails to appear as required, is guilty of a misdemeanor. It shall be presumed that a defendant who willfully fails to appear within 14 days of the date assigned for his or her appearance intended to evade the process of the court .

(b) Every person who is charged with or convicted of the commission of a felony who is released from custody on his or her own recognizance and who in order to evade the process of the court willfully fails to appear as required, is guilty of a felony, and upon conviction shall be punished by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in the state prison, or in the county jail for not more than one year, or by both that fine and imprisonment. It shall be presumed that a defendant who willfully fails to appear within 14 days of the date assigned for his or her appearance intended to evade the process of the court.

**§1320.5. Release On Bail; Willful Failure To Appear.**

Every person who is charged with or convicted of the commission of a felony, who is released from custody on bail, and who in order to evade the process of the court willfully fails to appear as required, is guilty of a felony. Upon a conviction under this section, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000) or by imprisonment in the state prison, or in the county jail for not more than one year, or by both the fine and imprisonment. Willful failure to appear within 14 days of the date assigned for appearance may be found to have been for the purpose of evading the process of the court.

**§1459. Undertaking Of Admitted Surety Insurers.**

Undertakings of bail filed by admitted surety insurers shall meet all other requirements of the law and the obligation of the insurer shall be in the following form except to the extent a different form is otherwise provided by statute:

\_\_\_\_\_ (stating the title and the location of the court). Defendant \_\_\_\_\_ (stating the name of the defendant) having been admitted to bail in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_) (stating the amount of the bail fixed) and ordered to appear in the above-named court on \_\_\_\_, 19\_\_ (stating the date for appearance in court), on \_\_\_\_\_ (stating only the word "misdemeanor" or the word "felony") charge/s; Now, the \_\_\_\_\_ (stating the name of admitted surety insurer and state of incorporation) hereby undertakes that the above-named defendant will appear in the above-named court on the date above set forth to answer any charge in any accusatory pleading based upon the acts supporting the complaint filed against him/her and all duly authorized amendments thereof, in whatever court it may be prosecuted, and will at all times hold him/herself amenable to the orders and process of the court and, if convicted, will appear for pronouncement of judgment or grant of probation or if he/she fails to perform either of these conditions, that the \_\_\_\_\_ (stating the name of admitted surety insurer and state of incorporation) will pay to the people of the State of California the sum of \_\_\_\_\_ dollars (\$\_\_\_\_) (setting the amount of the undertaking of the admitted surety insurer).

If the forfeiture of this bond be ordered by the court, judgment may be summarily made and entered forthwith against the said \_\_\_\_\_ (stating the name of admitted surety insurer and state of incorporation) for the amount of its undertaking herein, as provided by Sections 1305 and 1306 of the California penal Code.

\_\_\_\_\_  
(Stating the Name of admitted surety insurer and state of incorporation),  
\_\_\_\_\_  
(Signature)

By

\_\_\_\_\_  
Attorney in fact  
(Corporate seal)

(Jurat of notary public or other officer authorized to administer oaths.)

**§1463. Fines and Forfeitures: Distribution of funds**

All fines and forfeitures imposed and collected for crimes shall be distributed in accordance with Section 1463.001. The following definitions shall apply to terms used in this chapter:

- (a) "Arrest" means any law enforcement action, including issuance of a notice to appear or notice of violation, which results in a criminal charge.
- (b) "City" includes any city, city and county, district, including any enterprise special district, community service district, or community service area engaged in police protection activities as reported to the Controller for inclusion in the 1989-90 edition of the Financial Transactions Report Concerning Special Districts under the heading of Police Protection and Public Safety, authority, or other local agency (other than a county) which employs persons authorized to make arrests or to issue notices to appear or notices of violation which may be filed in court.
- (c) "City Arrest" means an arrest by an employee of a city, or by a California Highway Patrol officer within the limits of a city.
- (d) "County" means the county in which the arrest took place.
- (e) "County Arrest" means an arrest by a California Highway Patrol Officer outside the limits of a city, or any arrest by a county officer, or by any other state officer.
- (f) "Court" means the superior or municipal court or a juvenile forum established under Section 257 of the Welfare and Institutions Code, in which the case arising from the arrest is filed.
- (g) "Division of moneys" means an allocation of base fine proceeds between agencies as required by statute including, but not limited to, Sections 1463.003, 1463.9, 1463.23, 1643.26, and Sections 13001, 13002, and 13003 of the Fish and Game Code, and Section 11502 of the Health and Safety Code.
- (h) "Offense" means any infraction, misdemeanor, or felony, and any act by a juvenile leading to an order to pay a financial sanction by reason of the act being defined as an infraction, misdemeanor, or felony, whether defined in this or any other code, except any parking offense as defined in subdivision (i).
- (i) "Parking offense" means any offense charged pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, including registration and equipment offenses included on a notice of parking violation.
- (j) "Penalty allocation" means the deposit of a specified part of moneys to offset designated processing costs, as provided by Section 1463.16 and by Section 68090.8 of the Government Code.
- (k) "Total parking penalty" means the total sum to be collected for a parking offense, whether as a fine, forfeiture of bail, or payment of penalty to the Department of Motor Vehicles. It may include the following components:
  - (1) The base-parking penalty as established pursuant to Section 40203.5 of the Vehicle Code.
  - (2) The Department of Motor Vehicles (DMV) fees added upon the placement of a hold pursuant to Section 40220 of the Vehicle Code.
  - (3) The surcharges required by Section 76000 of the Government Code.
  - (4) The notice penalty added to the base-parking penalty when a notice of delinquent parking violations is given.
- (l) "Total fine or forfeiture" means the total sum to be collected upon a conviction, or the total amount of bail forfeited or deposited as cash bail subject to forfeiture. It may include, but is not limited to, the following components as specified for the particular offense:
  - (1) The "base fine" upon which the state penalty and additional county penalty is calculated.
  - (2) The "county penalty" required by Section 76000 of the Government Code.
  - (3) The "DNA penalty" required by Sections 76104.6 and 76104.7 of the Government Code.
  - (4) The "emergency medical services penalty" authorized by Section 76000.5 of the Government Code.
  - (5) The "service charge" permitted by Section 853.7 of the Penal Code and Section 40508.5 of the Vehicle Code.
  - (6) The "special penalty" dedicated for blood alcohol analysis, alcohol program services, traumatic brain injury research, and similar purposes.
  - (7) The "state penalty" required by Section 1464.

**§1463.001. Fines and Forfeitures: Deposited with County Treasurer/Distribution**

Except as otherwise provided in this section, all fines and forfeitures imposed and collected for crimes other than parking offenses resulting from a filing in a court shall as soon as practicable after receipt thereof, be deposited with the county treasurer, and each month the total fines and forfeitures which have accumulated within the past month shall be distributed, as follows:

- (a) The state penalties, county penalties, special penalties, service charges, and penalty allocations shall be transferred to the proper funds as required by law.
- (b) The base fines shall be distributed, as follows:
  - a. Any base fines which are subject to specific distribution under any section shall be distributed to the specified funds of the state or local agency.
  - b. Base fines resulting from county arrest not included in paragraph (1), shall be transferred into the proper funds of the county.
  - c. Base fines resulting from city arrests not included in paragraph (1), an amount equal to the applicable county percentages set forth in Section 1463.002, as modified by Section 1463.28, shall be transferred into the proper funds of the county. Until July 1, 1998, the remainder of base fines resulting from city arrests shall be divided between each city and county, with 50 percent deposited to the county's general fund, and 50 percent deposited to the treasury of the appropriate city, and thereafter the remainder of base fines resulting from city arrests shall be deposited to the treasury of the appropriate city.
  - d. In a county that had an agreement as of March 22, 1977, that provides for city fines and forfeitures to accrue to the county in exchange for sales tax receipts, base fines resulting from city arrests not included in paragraph (1) shall be deposited into the proper funds of the county.
- (c) Each county shall keep a record of its deposits to its treasury and its transmittal to each city treasury pursuant to this section.
- (d) The distribution specified in subdivision (b) applies to all funds subject thereto distributed on or after July 1, 1992, regardless of whether the court has elected to allocate and distribute funds pursuant to Section 1464.8.
- (e) Any amounts remitted to the county from amounts collected by the Franchise Tax Board upon referral by a county pursuant to Article 6 (commencing with Section 19280) of Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code shall be allocated pursuant to this section.

**§11105.6 Criminal Records; Dissemination to Bail Agent**

Upon request of a licensed bail agent or bail bond licensee, as described in Sections 1276 and 1275.5, a local law enforcement agency may furnish an individual's known aliases and booking photograph, information identifying whether the individual has been convicted of any violent felony, as defined in subdivision (c) of Section 776.5, and an unaltered copy of the booking and property record, excluding any medical information, to the agent or licensee if all of the following circumstances exist:

- a. The information is from the record of the person for whom a bench warrant has been issued, or for whom a bail forfeiture has been ordered.
- b. The person described in subdivision (a) is a client of the agent or licensee.
- c. The agent or licensee pays to the law enforcement agency a fee equal to the cost of providing the information.
- d. Any information obtained pursuant to this section is confidential and the recipient bail agent or bail bond licensee shall not disclose its contents, other than for the purpose for which it was acquired. A violation of this subdivision is a misdemeanor.

**Business & Professions Code**

**§25762. Fines and Forfeitures**



(a) All fines and forfeitures of bail imposed for a violation of this division and collected in any felony case after the indictment or the legal commitment by a magistrate, or at or after the sentencing hearing, shall be paid to the county treasurer of the county in which the court is held.

(b) All fines and forfeitures of bail imposed for violation of this division and collected upon conviction or upon forfeiture of bail, together with money deposited as bail, in any misdemeanor or infraction case, or in any felony case at the preliminary hearing or at another proceeding before the legal commitment by a magistrate, shall be deposited with the county treasurer of the county in which the court is situated and the money deposited shall be distributed and disposed of pursuant to Section 1463 of the Penal Code.

(c) For purposes of this section, a case in which both a felony and a misdemeanor were charged shall be treated as a felony case.

#### **§7583.7. Training; Exercise of the Power to Arrest**

(a) The course of training in the exercise of the power to arrest may be administered, tested, and certified by any licensee or by any organization or school approved by the department. The department may approve any person or school to teach the course in the exercise of the power to arrest. The course of training shall be approximately eight hours in length and shall cover the following topics:

- (1) Responsibilities and ethics in citizen arrest.
- (2) Relationship between a security guard and a peace officer in making an arrest.
- (3) Limitations on security guard power to arrest.
- (4) Restrictions on searches and seizures.
- (5) Criminal and civil liabilities
  - (A) Personal liability.
  - (B) Employer liability.
- (6) Trespass law.
- (7) Ethics and communications.
- (8) Emergency situation response, including response to medical emergencies.
- (9) Security officer safety.
- (10) Any other topic deemed appropriate by the bureau.

(b) The majority of the course shall be taught by means of verbal instruction. This instruction may include the use of a video presentation.

(c) The department shall make available a guidebook as a standard for teaching the course in the exercise of the power to arrest. The department shall encourage additional training and may provide a training guide recommending additional courses to be taken by security personnel.

(d) Private patrol operators shall provide a copy of the guidebook described in subdivision (c) to each person that they currently employ as a security guard and to each individual that they intend to hire as a security guard. The private patrol operator shall provide the guidebook to each person he or she intends to hire as a security guard a reasonable time prior to the time the person begins the course in the exercise of the power to arrest.

(e) The bureau may inspect, supervise, or view the administration of the test at any time and without any prior notification. Any impropriety in the administration of the course or the test shall constitute grounds for disciplinary action.

(f) This section shall become operative on July 1, 2004.

## **California Government Code**

### **§68150. Court Records; Retention; Reproduction**

- (a) Trial court records may be preserved in any form of communication or representation, including optical, electronic, magnetic, micrographic, or photographic media or other technology capable of accurately producing or reproducing the original record according to minimum standards or guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management. Specifications for electronic recordings made as the official record of the oral proceedings shall be governed by the California Rules of Court.
- (b) No additions, deletions, or changes shall be made to the content of the record. The records shall be indexed for convenient access.
- (c) A copy of the record preserved or reproduced according to subdivisions (a) and (b) shall be deemed the original court record and may be certified as a correct copy of the original record.
- (d) A court record preserved or reproduced in accordance with subdivisions (a) and (b) shall be stored in a manner and in a place that reasonably assures its preservation against loss, theft, defacement, or destruction for the prescribed retention period under Section 68152. Electronic recordings made as the official record of the oral proceedings shall not require a backup copy unless otherwise specified in the California Rules of Court.
- (e) The court record that was reproduced in accordance with subdivisions (a) and (b) may be disposed of in accordance with the procedure under Section 68153, unless it is subject to subdivision (f).
- (f) The following court records may be preserved or reproduced under subdivisions (a) and (b) but shall also be preserved on paper, microfilm, or in another form of communication or representation approved by and in accordance with standards that are defined as archival by the American National Standards Institute for the duration of the record's retention period:
  - (1) The comprehensive historical and sample superior court records preserved for research under the California Rules of Court.
  - (2) Court records that are preserved permanently.
    - Court records that must be preserved longer than 10 years but not permanently may be reproduced on media other than paper or microfilm using technology authorized under subdivisions (a) and (b). However the records shall be reproduced before the expiration of their estimated lifespan for the medium in which they are stored as specified in subdivision (g).
- (g) Instructions for access to data stored on a medium other than paper shall be documented. Each court shall conduct a periodic review of the media in which the court records are stored to assure that the storage medium is not obsolete and that current technology is capable of accessing and reproducing the records. The court shall reproduce records before the expiration of their estimated lifespan for the medium in which they are stored according to minimum standards and guidelines for the preservation and reproduction of the medium adopted by the American National Standards Institute or the Association for Information and Image Management.
- (h) Court records preserved or reproduced under subdivisions (a) and (b) shall be made reasonably accessible to all members of the public for viewing and duplication as would the paper records. Reasonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court.

### **§68151. Chapter Definitions**

The following definitions apply to this chapter:

- (a) "Court record" shall consist of the following:
  - (1) All filed papers and documents in the case folder; but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created.
  - (2) Administrative records filed in an action or proceeding, depositions, paper exhibits, transcripts, including preliminary hearing transcripts, and tapes of electronically recorded proceedings filed, lodged, or maintained in connection with the case, unless disposed of earlier in the case pursuant to law.
  - (3) Other records listed under subdivision (j) of Section 68152.
- (b) "Notice of destruction and no transfer" means that the clerk has given notice of destruction of the superior court records open to public inspection, and that there is no request and order for transfer of the records as provided in the California Rules of Court.
- (c) "Final disposition of the case" means that an acquittal, dismissal, or order of judgment has been entered in the case or proceeding, the judgment has become final, and no post judgment motions

or appeals are pending in the case or for the reviewing court upon the mailing of notice of the issuance of the remitter.

In a criminal prosecution, the order of judgment shall mean imposition of sentence, entry of an appealable order (including, but not limited to, an order granting probation, commitment of a defendant for insanity, or commitment of a defendant as a narcotics addict appealable under Section 1237 of the Penal Code), or forfeiture of bail without issuance of a bench warrant or calendaring of other proceedings.

(d) "Retain permanently" means that the original court records shall never be transferred or destroyed.

### **§68152. Destruction of Court Records**

The trial court clerk may destroy court records under Section 68153 after notice of destruction and if there is no request and order for transfer of the records, except the comprehensive historical and sample superior court records preserved for research under the California Rules of Court, when the following times have expired after final disposition of the case in the categories listed:

- (a) Adoption: retain permanently.
- (b) Change of name: retain permanently.
- (c) Other civil actions and proceedings, as follows:
  - (1) Except as otherwise specified: 10 years.
  - (2) Where a party appears by a guardian ad litem: 10 years after termination of the court's jurisdiction.
  - (3) Domestic violence: same period as duration of the restraining or other orders and any renewals, then retain the restraining or other orders as a judgment; 60 days after expiration of the temporary protective or temporary restraining order.
  - (4) Eminent domain: retain permanently.
  - (5) Family law, except as otherwise specified: 30 years.
  - (6) Harassment: same period as duration of the injunction and any renewals, then retain the injunction as a judgment; 60 days after expiration of the temporary restraining order.
  - (7) Mental health (Lanterman Developmental Disabilities Services Act and Lanterman-Petris-Short Act): 30 years.
  - (8) Paternity: retain permanently.
  - (9) Petition, except as otherwise specified: 10 years.
  - (10) Real property other than unlawful detainer: retain permanently if the action affects title or an interest in real property.
  - (11) Small claims: 10 years.
  - (12) Unlawful detainer: one year if judgment is for possession of the premises; 10 years if judgment is for money.
- (d) Notwithstanding subdivision (c), any civil or small claims case in the trial court:
  - (1) Involuntarily dismissed by the court for delay in prosecution or failure to comply with state or local rules: one year.
  - (2) Voluntarily dismissed by a party without entry of judgment: one year.  
Notation of the dismissal shall be made on the civil index of cases or on a separate dismissal index.
- (e) **Criminal.**
  - (1) Capital felony (murder with special circumstances where the prosecution seeks the death penalty): retain permanently. If the charge is disposed of by acquittal or a sentence less than death, the case shall be reclassified.
  - (2) Felony, except as otherwise specified: 75 years.**
  - (3) Felony, except capital felony, with court records from the initial complaint through the preliminary hearing or plea and for which the case file does not include final sentencing or other final disposition of the case because the case was bound over to the superior court: five years.
  - (4) Misdemeanor, except as otherwise specified: five years.**
  - (5) Misdemeanor alleging a violation of the Vehicle Code, except as otherwise specified: three years.
  - (6) Misdemeanor alleging a violation of Section 23103, 23152, or 23153 of the Vehicle Code: seven years.
  - (7) Misdemeanor alleging a violation of Section 14601, 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five years.

- (8) Misdemeanor alleging a marijuana violation under subdivision (b), (c), (d), or (e) of Section 11357 of the Health and Safety Code, or subdivision (b) of Section 11360 of the Health and Safety Code in accordance with the procedure set forth in Section 11361.5 of the Health and Safety Code: records shall be destroyed two years from the date of conviction or from the date of arrest if no conviction.
  - (9) Misdemeanor, infraction, or civil action alleging a violation of the regulation and licensing of dogs under Sections 30951 to 30956, inclusive, of the Food and Agricultural Code or violation of any other local ordinance: three years.
  - (10) Infraction, except as otherwise specified: three years.
  - (11) Parking infractions, including alleged violations under the stopping, standing, and parking provisions set forth in Chapter 9 (commencing with Section 22500) of Division 11 of the Vehicle Code: two years.
- (f) Habeas corpus: same period as period for retention of the records in the underlying case category.
- (g) Juvenile.
- (1) Dependent (Section 300 of the Welfare and Institutions Code): upon reaching age 28 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed pursuant to subdivision (c) of Section 389 of the Welfare and Institutions Code.
  - (2) Ward (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or on written request shall be released to the juvenile five years after jurisdiction over the person has terminated under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order five years after the records have been sealed under subdivision (d) of Section 781 of the Welfare and Institutions Code.
  - (3) Ward (Section 602 of the Welfare and Institutions Code): upon reaching age 38 under subdivision (a) of Section 826 of the Welfare and Institutions Code. Sealed records shall be destroyed upon court order when the subject of the record reaches the age of 38 under subdivision (d) of Section 781 of the Welfare and Institutions Code.
  - (4) Traffic and some nontraffic misdemeanors and infractions (Section 601 of the Welfare and Institutions Code): upon reaching age 21 or five years after jurisdiction over the person has terminated under subdivision (c) of Section 826 of the Welfare and Institutions Code. May be microfilmed or photocopied.
  - (5) Marijuana misdemeanor under subdivision (e) of Section 11357 of the Health and Safety Code in accordance with procedures specified in subdivision (a) of Section 11361.5 of the Health and Safety Code: upon reaching age 18 the records shall be destroyed.
- (h) Probate.
- (1) Conservatorship: 10 years after decree of termination.
  - (2) Guardianship: 10 years after the age of 18.
  - (3) Probate, including probated wills, except as otherwise specified: retain permanently.
- (i) Court records of the appellate division of the superior court: five years.
- (j) Other records.
- (1) Applications in forma pauperis: any time after the disposition of the underlying case.
  - (2) Arrest warrant:** same period as period for retention of the records in the underlying case category.
  - (3) Bench warrant:** same period as period for retention of the records in the underlying case category.
  - (4) Bond: three years after exoneration and release.**
  - (5) Coroner's inquest report: same period as period for retention of the records in the underlying case category; if no case, then permanent.
  - (6) Court orders not associated with an underlying case, such as orders for destruction of court records for telephone taps, or to destroy drugs, and other miscellaneous court orders: three years.
  - (7) Court reporter notes: 10 years after the notes have been taken in criminal and juvenile proceedings and five years after the notes have been taken in all other proceedings, except notes reporting proceedings in capital felony cases (murder with special circumstances where the prosecution seeks the death penalty and the sentence is death), including notes reporting the preliminary hearing, which shall be retained permanently, unless the Supreme Court on request of the court clerk authorizes the destruction.

- (8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.
- (9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.
- (10) Index, except as otherwise specified: retain permanently.
- (11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.
- (12) Judgments within the jurisdiction of the superior court other than in a limited civil case: retain permanently.
- (13) Judgments within the jurisdiction of the municipal court or of the superior court in a limited civil case: same period as period for retention of the records in the underlying case category.
- (14) Minutes: same period as period for retention of the records in the underlying case category.
- (15) Naturalization index: retain permanently.
- (16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.
- (17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.
- (18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.
- (k) Retention of any of the court records under this section shall be extended as follows:
  - (1) By order of the court on its own motion, or on application of a party or any interested member of the public for good cause shown and on such terms as are just. No fee shall be charged for making the application.
  - (2) Upon application and order for renewal of the judgment to the extended time for enforcing the judgment.

## California Vehicle Code

### §40512. Forfeiture Of Bail.

- (a) (1) Except as specified in paragraph (2), if at the time the case is called for arraignment before the magistrate the defendant does not appear, either in person or by counsel, the magistrate may declare the bail forfeited and may, in his or her discretion, order that no further proceedings be had in the case, unless the defendant has been charged with a violation of Section 23111 or 23112, or subdivision (a) of Section 23113, and he or she has been previously convicted of the same offense, except if the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in the case.
  - (2) If the defendant has posted surety bail and the magistrate has ordered the bail forfeited and that no further proceedings shall be had in the case, the bail retains the right to obtain relief from the forfeiture as provided in Section 1305 of the Penal Code if the amount of the bond, money, or property deposited exceeds seven hundred dollars (\$700).
- (b) Upon making of the order that no further proceedings shall be had, all sums deposited as bail shall forthwith be paid into the city or county treasury, as the case may be.
- (c) If a guaranteed traffic arrest bail bond certificate has been filed, the clerk of the court shall bill the issuer for the amount of bail fixed by the uniform countywide schedule of bail required under subdivisions (b) and (d) of Section 1296 of the Penal Code.
  - (d) Upon presentation by a court of the bill for a fine or bail assessed against an individual covered by a guaranteed traffic arrest bail bond certificate, the issuer shall pay to the court the amount of the fine or forfeited bail which is within the maximum amount guaranteed by the terms of the certificate.
- (e) The court shall return the guaranteed traffic arrest bail bond certificate to the issuer upon receipt of payment in accordance with subdivision (d).

### §40512.5. Optional Bail Forfeiture.

- (a) Except as specified in subdivision (b), if at the time the case is called for trial the defendant does not appear, either in person or by counsel, and has not requested in writing that the trial proceed in his or her absence, the court may declare the bail forfeited and may, in its discretion, order that no further proceedings be had in the case, or the court may act pursuant to Section 1043 of the Penal Code. However, if the defendant has been charged with a violation of Section 23111 or 23112, or subdivision (a) of Section 23113, and he or she has been previously convicted of a violation of the same section, the court may declare the bail forfeited, but shall issue a bench warrant for the arrest of the person charged, except if the magistrate finds that undue hardship will be imposed upon the defendant by requiring him or her to appear, the magistrate may declare the bail forfeited and order that no further proceedings shall be had in the case.
- (b) If the defendant has posted surety bail and the magistrate has ordered the bail forfeited and that no further proceedings shall be had in the case, the bail retains the right to obtain relief from the forfeiture as provided in Section 1305 of the Penal Code if the amount of the bond, money, or property deposited exceeds seven hundred dollars (\$700).

**US Code 18 – Sections 1033-1034**

**Title 18 – Crimes and Criminal Procedure**

**Part I – Crimes**

**Chapter 47 – Fraud and False Statements**

**§1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce**

**(a)**

**(1)** Whoever is engaged in the business of insurance whose activities affect interstate commerce and knowingly, with the intent to deceive, makes any false material statement or report or willfully and materially overvalues any land, property or security—

**(A)** in connection with any financial reports or documents presented to any insurance regulatory official or agency or an agent or examiner appointed by such official or agency to examine the affairs of such person, and

**(B)** for the purpose of influencing the actions of such official or agency or such an appointed agent or examiner, shall be punished as provided in paragraph (2).

**(2)** The punishment for an offense under paragraph (1) is a fine as established under this title or imprisonment for not more than 10 years, or both, except that the term of imprisonment shall be not more than 15 years if the statement or report or overvaluing of land, property, or security jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court.

**(b)**

**(1)** Whoever—

**(A)** acting as, or being an officer, director, agent, or employee of, any person engaged in the business of insurance whose activities affect interstate commerce, or

**(B)** is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, willfully embezzles, abstracts, purloins, or misappropriates any of the moneys, funds, premiums, credits, or other property of such person so engaged shall be punished as provided in paragraph (2).

**(2)** The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if such embezzlement, abstraction, purloining, or misappropriation described in paragraph (1) jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court, such imprisonment shall be not more than 15 years. If the amount or value so embezzled, abstracted, purloined, or misappropriated does not exceed \$5,000, whoever

violates paragraph (1) shall be fined as provided in this title or imprisoned not more than one year, or both.

**(c)**

**(1)** Whoever is engaged in the business of insurance and whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, knowingly makes any false entry of material fact in any book, report, or statement of such person engaged in the business of insurance with intent to deceive any person, including any officer, employee, or agent of such person engaged in the business of insurance, any insurance regulatory official or agency, or any agent or examiner appointed by such official or agency to examine the affairs of such person, about the financial condition or solvency of such business shall be punished as provided in paragraph (2).

**(2)** The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the false entry in any book, report, or statement of such person jeopardized the safety and soundness of an insurer and was a significant cause of such insurer being placed in conservation, rehabilitation, or liquidation by an appropriate court, such imprisonment shall be not more than 15 years.

**(d)** Whoever, by threats or force or by any threatening letter or communication, corruptly influences, obstructs, or impedes or endeavors corruptly to influence, obstruct, or impede the due and proper administration of the law under which any proceeding involving the business of insurance whose activities affect interstate commerce is pending before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of a person engaged in the business of insurance whose activities affect interstate commerce, shall be fined as provided in this title or imprisoned not more than 10 years, or both.

**(e)**

**(1)**

**(A)** Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

**(B)** Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

**(2)** A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

**(f)** As used in this section—

**(1)** the term “business of insurance” means—

**(A)** the writing of insurance, or

**(B)** the reinsuring of risks,

by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons;

**(2)** the term “insurer” means any entity the business activity of which is the writing of insurance or the reinsuring of risks, and includes any person who acts as, or is, an officer, director, agent, or employee of that business;

**(3)** the term “interstate commerce” means—

**(A)** commerce within the District of Columbia, or any territory or possession of the United States;

**(B)** all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;

**(C)** all commerce between points within the same State through any place outside such State; or

**(D)** all other commerce over which the United States has jurisdiction; and

**(4)** the term “State” includes any State, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

**§ 1034. Civil penalties and injunctions for violations of section 1033**

(a) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 1033 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than \$50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense has contributed to the decision of a court of appropriate jurisdiction to issue an order directing the conservation, rehabilitation, or liquidation of an insurer, such penalty shall be remitted to the appropriate regulatory official for the benefit of the policyholders, claimants, and creditors of such insurer. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

(b) If the Attorney General has reason to believe that a person is engaged in conduct constituting an offense under section 1033, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.

**US code Title 42 §1983: Civil Action**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.