

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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= CDI objectives/exam questions

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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 who 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.

 **§835. Arrest / Restraint**

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subjected to such restraint as is reasonable for his arrest and detention.

§835a. Police Officer/Reasonable Force

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

§836. Police Officer/Warrant

(a) A peace officer may arrest a person in obedience to a warrant, or, pursuant to the authority granted to him or her by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, without a warrant, may arrest a person whenever any of the following circumstances occur:

(1) The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.

(2) The person arrested has committed a felony, although not in the officer's presence.

(3) The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed.

(b) Any time a peace officer is called out on a domestic violence call, it shall be mandatory that the officer make a good faith effort to inform the victim of his or her right to make a citizen's arrest, unless the peace officer makes an arrest for a violation of paragraph (1) of subdivision (e) of Section 243 or 273.5. This information shall include advising the victim how to safely execute the arrest.

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under Section 527.6 of the Code of Civil Procedure, the Family Code, Section 136.2, 646.91, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, Section 213.5 or 15657.03 of the Welfare and Institutions Code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order Registry maintained pursuant to Section 6380 of the Family Code that a true copy of the protective order has been registered, unless the victim provides the officer with a copy of the protective order.

(2) The person against whom a protective order has been issued shall be deemed to have notice of the order if the victim presents to the officer proof of service of the order, the officer confirms with the appropriate authorities that a true copy of the proof of service is on file, or the person against whom the protective order was issued was present at the protective order hearing or was informed by a peace officer of the contents of the protective order.

(3) In situations where mutual protective orders have been issued under Division 10 (commencing with Section 6200) of the Family Code, liability for arrest under this subdivision applies only to those persons who are reasonably believed to have been the dominant aggressor. In those situations, prior to making an arrest under this subdivision, the peace officer shall make reasonable efforts to identify, and may arrest, the dominant aggressor involved in the incident. The dominant aggressor is the person determined to be

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the most significant, rather than the first, aggressor. In identifying the dominant aggressor, an officer shall consider (A) the intent of the law to protect victims of domestic violence from continuing abuse, (B) the threats creating fear of physical injury, (C) the history of domestic violence between the persons involved, and (D) whether either person involved acted in self-defense.

(d) Notwithstanding paragraph (1) of subdivision (a), if a suspect commits an assault or battery upon a current or former spouse, fiancé, fiancée, a current or former cohabitant as defined in Section 6209 of the Family Code, a person with whom the suspect currently is having or has previously had an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243, a person with whom the suspect has parented a child, or is presumed to have parented a child pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code), a child of the suspect, a child whose parentage by the suspect is the subject of an action under the Uniform Parentage Act, a child of a person in one of the above categories, any other person related to the suspect by consanguinity or affinity within the second degree, or any person who is 65 years of age or older and who is related to the suspect by blood or legal guardianship, a peace officer may arrest the suspect without a warrant where both of the following circumstances apply:

(1) The peace officer has probable cause to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(2) The peace officer makes the arrest as soon as probable cause arises to believe that the person to be arrested has committed the assault or battery, whether or not it has in fact been committed.

(e) In addition to the authority to make an arrest without a warrant pursuant to paragraphs (1) and (3) of subdivision (a), a peace officer may, without a warrant, arrest a person for a violation of Section 25400 when all of the following apply:

(1) The officer has reasonable cause to believe that the person to be arrested has committed the violation of Section 25400.

(2) The violation of Section 25400 occurred within an airport, as defined in Section 21013 of the Public Utilities Code, in an area to which access is controlled by the inspection of persons and property.

(3) The peace officer makes the arrest as soon as reasonable cause arises to believe that the person to be arrested has committed the violation of Section 25400.

§836.1. Peace Officer / Reasonable Cause

When a person commits an assault or battery against the person of a firefighter, emergency medical technician, or mobile intensive care paramedic while that person is on duty engaged in the performance of his or her duties in violation of subdivision (b) of Section 241 or subdivision (b) of Section 243, a peace officer may, without a warrant, arrest the person who commits the assault or battery:

(a) Whenever the peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, although the assault or battery was not committed in the peace officer's presence.

(b) Whenever the peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not the assault or battery has in fact been committed.

§836.3. Peace Officer / Escape

A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person who, while charged with or convicted of a misdemeanor, has escaped from any county or city jail, prison, industrial farm or industrial road camp or from the custody of the officer or person in charge of him while engaged on any county road or other county work or going to or returning from such county road or other county work or from the custody of any officer or person in whose lawful custody he is when such escape is not by force or violence.

§836.5. Public Officer or Employee

(a) A public officer or employee, when authorized by ordinance, may arrest a person without a warrant whenever the officer or employee has reasonable cause to believe that the person to be arrested has committed a misdemeanor in the presence of the officer or employee that is a violation of a statute or ordinance that the officer or employee has the duty to enforce.

(b) There shall be no civil liability on the part of, and no cause of action shall arise against, any public officer or employee acting pursuant to subdivision (a) and within the scope of his or her authority for false arrest or false imprisonment arising out of any arrest that is lawful or that the public officer or employee, at the time of the arrest, had reasonable cause to believe was lawful. No officer or employee shall be

deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or overcome resistance.

(c) In any case in which a person is arrested pursuant to subdivision (a) and the person arrested does not demand to be taken before a magistrate, the public officer or employee making the arrest shall prepare a written notice to appear and release the person on his or her promise to appear, as prescribed by Chapter 5C (commencing with Section 853.5). The provisions of that chapter shall thereafter apply with reference to any proceeding based upon the issuance of a written notice to appear pursuant to this authority.

(d) The governing body of a local agency, by ordinance, may authorize its officers and employees who have the duty to enforce a statute or ordinance to arrest persons for violations of the statute or ordinance as provided in subdivision (a).

(e) For purposes of this section, "ordinance" includes an order, rule, or regulation of any air pollution control district.

(f) For purposes of this section, a "public officer or employee" includes an officer or employee of a nonprofit transit corporation wholly owned by a local agency and formed to carry out the purposes of the local agency.

§836.6. Person Escapes Custody

(a) It is unlawful for any person who is remanded by a magistrate or judge of any court in this state to the custody of a sheriff, marshal, or other police agency, to thereafter escape or attempt to escape from that custody.

(b) It is unlawful for any person who has been lawfully arrested by any peace officer and who knows, or by the exercise of reasonable care should have known, that he or she has been so arrested, to thereafter escape or attempt to escape from that peace officer.

(c) Any person who violates subdivision (a) or (b) is guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed one year. However, if the escape or attempted escape is by force or violence, and the person proximately causes a peace officer serious bodily injury, the person shall be punished by imprisonment in the state prison for two, three, or four years, or by imprisonment in a county jail not to exceed one year.



§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.

§850. Telegraphic Copy of Warrant

(a) A telegraphic copy of a warrant or an abstract of a warrant may be sent by telegraph, teletype, or any other electronic devices, to one or more peace officers, and such copy or abstract is as effectual in the hands of any officer, and he shall proceed in the same manner under it, as though he held the original warrant issued by a magistrate or the issuing authority or agency.

(b) Except as otherwise provided in Section 1549.2 relating to Governor's warrants of extradition, an abstract of the warrant as herein referred to shall contain the following information: the warrant number, the charge, the court or agency of issuance, the subject's name, address and description, the bail, the name of the issuing magistrate or authority, and if the offense charged is a misdemeanor, whether the warrant has been certified for night service.

(c) When the subject of a written or telegraphic warrant or abstract of warrant is in custody on another charge, the custodial officer shall, immediately upon receipt of information as to the existence of any such warrant or abstract, obtain and deliver a written copy of the warrant or abstract to the subject and shall inform him of his rights under Section 1381, where applicable, to request a speedy trial and under Section 858.7 relating to Vehicle Code violations.



§851. Certify Telegraphic Copies

Every officer causing telegraphic copies or abstracts of warrants to be sent, must certify as correct, and file in the telegraphic office from which such copies are sent, a copy of the warrant, and must return the original with a statement of his action thereunder.

§851.5. Arrested Person / Three Calls

(a) (1) Immediately upon being booked and, except where physically impossible, no later than three hours after arrest, an arrested person has the right to make at least three completed telephone calls, as described in subdivision (b).

(2) The arrested person shall be entitled to make at least three calls at no expense if the calls are completed to telephone numbers within the local calling area or at his or her own expense if outside the local calling area.

(b) At any police facility or place where an arrestee is detained, a sign containing the following information in bold block type shall be posted in a conspicuous place:

The arrestee has the right to free telephone calls within the local calling area, or at his or her own expense if outside the local calling area, to three of the following:

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- (1) An attorney of his or her choice or, if he or she has no funds, the public defender or other attorney assigned by the court to assist indigents, whose telephone number shall be posted. This telephone call shall not be monitored, eavesdropped upon, or recorded.
- (2) A bail bondsman.
- (3) A relative or other person.
- (c) As soon as practicable upon being arrested but, except where physically impossible, no later than three hours after arrest, the arresting or booking officer shall inquire as to whether the arrested person is a custodial parent with responsibility for a minor child. The arresting or booking officer shall notify the arrested person who is a custodial parent with responsibility for a minor child that he or she is entitled to, and may request to, make two additional telephone calls at no expense if the telephone calls are completed to telephone numbers within the local calling area, or at his or her own expense if outside the local calling area, to a relative or other person for the purpose of arranging for the care of the minor child or children in the parent's absence.
- (d) At any police facility or place where an arrestee is detained, a sign containing the following information in bold block type shall be posted in a conspicuous place:
The arrestee, if he or she is a custodial parent with responsibility for a minor child, has the right to two additional telephone calls within the local dialing area, or at his or her own expense if outside the local area, for the purpose of arranging for the care of the minor child or children in the parent's absence.
- (e) These telephone calls shall be given immediately upon request, or as soon as practicable.
- (f) The signs posted pursuant to subdivisions (b) and (d) shall make the specified notifications in English and any non-English language spoken by a substantial number of the public, as specified in Section 7296.2 of the Government Code, who are served by the police facility or place of detention.
- (g) The rights and duties set forth in this section shall be enforced regardless of the arrestee's immigration status.
- (h) This provision shall not abrogate a law enforcement officer's duty to advise a suspect of his or her right to counsel or of any other right.
- (i) Any public officer or employee who willfully deprives an arrested person of any right granted by this section is guilty of a misdemeanor.

§851.6. Arrested & Released

- (a) In any case in which a person is arrested and released pursuant to paragraph (1) or (3) of subdivision (b) of Section 849, the person shall be issued a certificate, signed by the releasing officer or his superior officer, describing the action as a detention.
- (b) In any case in which a person is arrested and released and no accusatory pleading is filed charging him with an offense, the person shall be issued a certificate by the law enforcement agency which arrested him describing the action as a detention.
- (c) The Attorney General shall prescribe the form and content of such certificate.
- (d) Any reference to the action as an arrest shall be deleted from the arrest records of the arresting agency and of the Bureau of Criminal Identification and Investigation of the Department of Justice. Thereafter, any such record of the action shall refer to it as a detention.

§851.7. Arrest Minor - Misdemeanor

- (a) Any person who has been arrested for a misdemeanor, with or without a warrant, while a minor, may, during or after minority, petition the court in which the proceedings occurred or, if there were no court proceedings, the court in whose jurisdiction the arrest occurred, for an order sealing the records in the case, including any records of arrest and detention, if any of the following occurred:
 - (1) He was released pursuant to paragraph (1) of subdivision (b) of Section 849.
 - (2) Proceedings against him were dismissed, or he was discharged, without a conviction.
 - (3) He was acquitted.
- (b) If the court finds that the petitioner is eligible for relief under subdivision (a), it shall issue its order granting the relief prayed for. Thereafter, the arrest, detention, and any further proceedings in the case shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence.
- (c) This section applies to arrests and any further proceedings that occurred before, as well as those that occur after, the effective date of this section.
- (d) This section does not apply to any person taken into custody pursuant to Section 625 of the Welfare and Institutions Code, or to any case within the scope of Section 781 of the Welfare and Institutions Code, unless, after a finding of unfitness for the juvenile court or otherwise, there were criminal proceedings in

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the case, not culminating in conviction. If there were criminal proceedings not culminating in conviction, this section shall be applicable to such criminal proceedings if such proceedings are otherwise within the scope of this section.

(e) This section does not apply to arrests for, and any further proceedings relating to, any of the following:

(1) Offenses for which registration is required under Section 290.

(2) Offenses under Division 10 (commencing with Section 11000) of the Health and Safety Code.

(3) Offenses under the Vehicle Code or any local ordinance relating to the operation, stopping, standing, or parking of a vehicle.

(f) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this section to be opened and admitted in evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them. Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

(g) This section shall apply in any case in which a person was under the age of 21 at the time of the commission of an offense as to which this section is made applicable if such offense was committed prior to March 7, 1973.

§851.8. Petition / Destruction of Records

(a) In any case where a person has been arrested and no accusatory pleading has been filed, the person arrested may petition the law enforcement agency having jurisdiction over the offense to destroy its records of the arrest. A copy of the petition shall be served upon the prosecuting attorney of the county or city having jurisdiction over the offense. The law enforcement agency having jurisdiction over the offense, upon a determination that the person arrested is factually innocent, shall, with the concurrence of the prosecuting attorney, seal its arrest records, and the petition for relief under this section for three years from the date of the arrest and thereafter destroy its arrest records and the petition. The law enforcement agency having jurisdiction over the offense shall notify the Department of Justice, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this subdivision, of the sealing of the arrest records and the reason therefor. The Department of Justice and any law enforcement agency so notified shall forthwith seal their records of the arrest and the notice of sealing for three years from the date of the arrest, and thereafter destroy their records of the arrest and the notice of sealing. The law enforcement agency having jurisdiction over the offense and the Department of Justice shall request the destruction of any records of the arrest which they have given to any local, state, or federal agency or to any other person or entity. Each agency, person, or entity within the State of California receiving the request shall destroy its records of the arrest and the request, unless otherwise provided in this section.

(b) If, after receipt by both the law enforcement agency and the prosecuting attorney of a petition for relief under subdivision (a), the law enforcement agency and prosecuting attorney do not respond to the petition by accepting or denying the petition within 60 days after the running of the relevant statute of limitations or within 60 days after receipt of the petition in cases where the statute of limitations has previously lapsed, then the petition shall be deemed to be denied. In any case where the petition of an arrestee to the law enforcement agency to have an arrest record destroyed is denied, petition may be made to the superior court that would have had territorial jurisdiction over the matter. A copy of the petition shall be served on the law enforcement agency and the prosecuting attorney of the county or city having jurisdiction over the offense at least 10 days prior to the hearing thereon. The prosecuting attorney and the law enforcement agency through the district attorney may present evidence to the court at the hearing. Notwithstanding Section 1538.5 or 1539, any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or any other evidence submitted by the parties which is material, relevant, and reliable. A finding of factual innocence and an order for the sealing and destruction of records pursuant to this section shall not be made unless the court finds that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. In any court hearing to determine the factual innocence of a party, the initial burden of proof shall rest with the petitioner to show that no reasonable cause exists to believe that the arrestee committed the offense for which the arrest was made. If the court finds that this showing of no reasonable cause has been made by the petitioner, then the burden of proof shall shift to the respondent to show that a reasonable cause exists to believe that the petitioner committed the offense for which the arrest was made. If the court finds the arrestee to be factually innocent of the charges for which the arrest was made, then the court shall order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency which arrested the petitioner or participated in the arrest of the petitioner for an offense for which the petitioner has been found factually innocent under this section to seal their records

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of the arrest and the court order to seal and destroy the records, for three years from the date of the arrest and thereafter to destroy their records of the arrest and the court order to seal and destroy those records. The court shall also order the law enforcement agency having jurisdiction over the offense and the Department of Justice to request the destruction of any records of the arrest which they have given to any local, state, or federal agency, person or entity. Each state or local agency, person or entity within the State of California receiving such a request shall destroy its records of the arrest and the request to destroy the records, unless otherwise provided in this section. The court shall give to the petitioner a copy of any court order concerning the destruction of the arrest records.

(c) In any case where a person has been arrested, and an accusatory pleading has been filed, but where no conviction has occurred, the defendant may, at any time after dismissal of the action, petition the court that dismissed the action for a finding that the defendant is factually innocent of the charges for which the arrest was made. A copy of the petition shall be served on the prosecuting attorney of the county or city in which the accusatory pleading was filed at least 10 days prior to the hearing on the petitioner's factual innocence. The prosecuting attorney may present evidence to the court at the hearing. The hearing shall be conducted as provided in subdivision (b). If the court finds the petitioner to be factually innocent of the charges for which the arrest was made, then the court shall grant the relief as provided in subdivision (b).

(d) In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the prosecuting attorney, grant the relief provided in subdivision (b) at the time of the dismissal of the accusatory pleading.

(e) Whenever any person is acquitted of a charge and it appears to the judge presiding at the trial at which the acquittal occurred that the defendant was factually innocent of the charge, the judge may grant the relief provided in subdivision (b).

(f) In any case where a person who has been arrested is granted relief pursuant to subdivision (a) or (b), the law enforcement agency having jurisdiction over the offense or court shall issue a written declaration to the arrestee stating that it is the determination of the law enforcement agency having jurisdiction over the offense or court that the arrestee is factually innocent of the charges for which the person was arrested and that the arrestee is thereby exonerated. Thereafter, the arrest shall be deemed not to have occurred and the person may answer accordingly any question relating to its occurrence.

(g) The Department of Justice shall furnish forms to be utilized by persons applying for the destruction of their arrest records and for the written declaration that one person was found factually innocent under subdivisions (a) and (b).

(h) Documentation of arrest records destroyed pursuant to subdivision (a), (b), (c), (d), or (e) that are contained in investigative police reports shall bear the notation "Exonerated" whenever reference is made to the arrestee. The arrestee shall be notified in writing by the law enforcement agency having jurisdiction over the offense of the sealing and destruction of the arrest records pursuant to this section.

(i) (1) Any finding that an arrestee is factually innocent pursuant to subdivision (a), (b), (c), (d), or (e) shall not be admissible as evidence in any action.

(2) Notwithstanding paragraph (1), a finding that an arrestee is factually innocent pursuant to subdivisions (a) to (e), inclusive, shall be admissible as evidence at a hearing before the California Victim Compensation and Government Claims Board.

(j) Destruction of records of arrest pursuant to subdivision (a), (b), (c), (d), or (e) shall be accomplished by permanent obliteration of all entries or notations upon the records pertaining to the arrest, and the record shall be prepared again so that it appears that the arrest never occurred. However, where (1) the only entries on the record pertain to the arrest and (2) the record can be destroyed without necessarily affecting the destruction of other records, then the document constituting the record shall be physically destroyed.

(k) No records shall be destroyed pursuant to subdivision (a), (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of the records has received a certified copy of the complaint in the civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in the civil actions, upon a showing of good cause, may be opened and submitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person authorized by the court. Immediately following the final resolution of the civil action, records subject to subdivision (a), (b), (c), (d), or (e) shall be sealed and destroyed pursuant to subdivision (a), (b), (c), (d), or (e).

(l) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1, 1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years

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prior to the effective date of the statute. Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(m) Any relief which is available to a petitioner under this section for an arrest shall also be available for an arrest which has been deemed to be or described as a detention under Section 849.5 or 851.6.

(n) This section shall not apply to any offense which is classified as an infraction.

(o) (1) This section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence that is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate division of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a court of appeal. A judgment of a court of appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any decision referred to in this subdivision which is a judgment by the appellate division of the superior court shall be appealed by the Attorney General.

(p) A judgment of the court under subdivision (b), (c), (d), or (e) is subject to the following appeal path:

(1) In a felony case, appeal is to the court of appeal.

(2) In a misdemeanor case, or in a case in which no accusatory pleading was filed, appeal is to the appellate division of the superior court.

§851.85. Acquittal / Records Sealed

Whenever a person is acquitted of a charge and it appears to the judge presiding at the trial wherein such acquittal occurred that the defendant was factually innocent of the charge, the judge may order that the records in the case be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case or the court, and with notice to all parties to the case. If such an order is made, the court shall give to the defendant a copy of such order and inform the defendant that he may thereafter state that he was not arrested for such charge and that he was found innocent of such charge by the court.

§851.86. Set Aside / Records Sealed

Whenever a person is convicted of a charge, and the conviction is set aside based upon a determination that the person was factually innocent of the charge, the judge shall order that the records in the case be sealed, including any record of arrest or detention, upon written or oral motion of any party in the case or the court, and with notice to all parties to the case. If such an order is made, the court shall give the defendant a copy of that order and inform the defendant that he or she may thereafter state he or she was not arrested for that charge and that he or she was not convicted of that charge, and that he or she was found innocent of that charge by the court. The court shall also inform the defendant of the availability of indemnity for persons erroneously convicted pursuant to Chapter 5 (commencing with Section 4900) of Title 6 of Part 3, and the time limitations for presenting those claims.

§851.865. Claim / Victim Compensation

(a) If a person has secured a declaration of factual innocence from the court pursuant to Section 851.8 or 851.86, the finding shall be sufficient grounds for payment of compensation for a claim made pursuant to Section 4900. Upon application by the person, the California Victim Compensation and Government Claims Board shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid pursuant to Section 4904.

(b) If the declaration of factual innocence is granted pursuant to a stipulation of the prosecutor, the duty of the board to, without a hearing, recommend to the Legislature payment of the claim, shall apply.

§851.87. Diversion Program / Seal Records

(a) (1) In any case where a person is arrested and successfully completes a prefiling diversion program administered by a prosecuting attorney in lieu of filing an accusatory pleading, the person may, two years after successful completion of the program as determined by the prosecuting attorney, petition the superior court that would have had jurisdiction over the matter to issue an order to seal the records of the arresting agency and related court files and records, and the court may order those records sealed if the court finds that doing so will be in furtherance of justice. A copy of the petition shall be served on the law enforcement agency and the prosecuting attorney of the county or city having jurisdiction over the offense, who may request a hearing within 60 days of receipt of the petition. The court may hear the matter no less than 60 days from the date the law enforcement agency and the prosecuting attorney receive a copy of

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the petition. The prosecuting attorney and the law enforcement agency, through the prosecuting attorney, may present evidence to the court at the hearing.

(2) If the order is made, the clerk of the court shall thereafter not allow access to any records concerning the case, including the court file, index, register of actions, or other similar records.

(3) If the order is made, the court shall give a copy of the order to the person and inform the person that he or she may thereafter state that he or she was not arrested for the charge.

(4) The person may, except as specified in subdivisions (b), (c), and (d), indicate in response to any question concerning the person's prior criminal record that the person was not arrested.

(5) Subject to subdivisions (b), (c), and (d), a record pertaining to the arrest shall not, without the person's permission, be used in any way that could result in the denial of any employment, benefit, or certificate.

(6) A sealing order made pursuant to this subdivision shall not be forwarded to the Department of Justice to be included or notated in the department's manual or electronic fingerprint image or criminal history record systems. Any sealing order made pursuant to this subdivision and received by the Department of Justice need not be processed by the department.

(b) The person shall be advised that, regardless of the person's successful completion of the program, the arrest shall be disclosed by the Department of Justice in response to any peace officer application request, and that, notwithstanding subdivision (a), this section does not relieve the person of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(c) The person shall be advised that, regardless of the person's successful completion of the program, the arrest shall be disclosed by the Department of Justice or the court in which the matter was heard in response to any subsequent inquiry by the district attorney, court, probation department, or counsel for the person concerning the person's eligibility for any diversion program administered by a prosecuting attorney in the future.

(d) A sealing order made pursuant to this section shall not apply to any record or document received or maintained by the Department of Justice. Upon issuing the sealing order, the court shall advise the person that, notwithstanding the issuance of a sealing order pursuant to this section, the Department of Justice shall continue to be able to maintain and disseminate any records or documents received or maintained by the department, as authorized by law.

(e) As used in this section, "prefiling diversion" is a diversion from prosecution that is offered to a person by the prosecuting attorney in lieu of, or prior to, the filing of an accusatory pleading in court as set forth in Section 950.

§851.90. Drug Diversion Program / Seal Records

(a) (1) Whenever a person is diverted pursuant to a drug diversion program administered by a superior court pursuant to Section 1000.5 or is admitted to a deferred entry of judgment program pursuant to Section 1000 or 1000.8, the person successfully completes the program, and it appears to the judge presiding at the hearing where the diverted charges are dismissed that the interests of justice would be served by sealing the records of the arresting agency and related court files and records with respect to the diverted person, the judge may order those records and files to be sealed, including any record of arrest or detention, upon the written or oral motion of any party in the case, or upon the court's own motion, and with notice to all parties in the case.

(2) If the order is made, the clerk of the court shall thereafter not allow access to any records concerning the case, including the court file, index, register of actions, or other similar records.

(3) If the order is made, the court shall give a copy of the order to the defendant and inform the defendant that he or she may thereafter state that he or she was not arrested for the charge.

(4) The defendant may, except as specified in subdivisions (b), (c), and (d), indicate in response to any question concerning the defendant's prior criminal record that the defendant was not arrested or granted statutorily authorized drug diversion or deferred entry of judgment for the offense.

(5) Subject to subdivisions (b), (c), and (d), a record pertaining to an arrest resulting in the successful completion of a statutorily authorized drug diversion or deferred entry of judgment program shall not, without the defendant's permission, be used in any way that could result in the denial of any employment, benefit, or certificate.

(6) Sealing orders made pursuant to this subdivision shall not be forwarded to the Department of Justice to be included or notated in the department's manual or electronic fingerprint image or criminal history record systems. Any sealing order made pursuant to this subdivision and received by the Department of Justice need not be processed by the department.

(b) The defendant shall be advised that, regardless of the defendant's successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the

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case was based shall be disclosed by the Department of Justice in response to any peace officer application request, and that, notwithstanding subdivision (a), this section does not relieve the defendant of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

(c) The defendant shall be advised that, regardless of the defendant's successful completion of a statutorily authorized drug diversion or deferred entry of judgment program, the arrest upon which the case was based shall be disclosed by the Department of Justice or the court in which the matter was heard in response to any subsequent inquiry by the district attorney, court, probation department, or counsel for the defendant concerning the defendant's eligibility for any statutorily authorized drug diversion or deferred entry of judgment program in the future.

(d) A sealing order made pursuant to this section shall not apply to any record or document received or maintained by the Department of Justice; the court shall advise a defendant that, notwithstanding the issuance of a sealing order pursuant to this section, the Department of Justice shall continue to be able to maintain and disseminate any records or documents received or maintained by the department, as authorized by law.

CHAPTER 6. Retaking After an Escape or Rescue [854 - 855]

§854.

If a person arrested escape or is rescued, the person from whose custody he escaped or was rescued, may immediately pursue and retake him at any time and in any place within the State.

§855.

To retake the person escaping or rescued, the person pursuing may break open an outer or inner door or window of a dwelling house, if, after notice of his intention, he is refused admittance.

CHAPTER 7. Examination of the Case, and Discharge of the Defendant, or Holding Him to Answer [858 - 883]

§858.

When the defendant is brought before the magistrate upon an arrest, either with or without warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings. If it appears that the defendant may be a minor, the magistrate shall ascertain whether such is the case, and if the magistrate concludes that it is probable that the defendant is a minor, and unless the defendant is a member of the armed forces of the United States and the offense charged is a misdemeanor, he shall immediately either notify the parent or guardian of the minor, by telephone, telegram, or messenger, of the arrest, or appoint counsel to represent the minor.

§858.5.

(a) In any case in which a defendant is, on his demand, brought before a magistrate pursuant to Section 822 after arrest for a misdemeanor Vehicle Code violation, the magistrate shall give such instructions to the defendant as required by law and inform the defendant of his rights under this section, and, if the defendant desires to plead guilty or nolo contendere to the charge in the complaint, he may so advise the magistrate. If the magistrate determines that such plea would be in the interest of justice, he shall direct the defendant to appear before a specified appropriate court in the county in which defendant has been arrested at a designated certain time, which in no case shall be more than 10 calendar days from the date of arrest, for plea and sentencing. The magistrate shall request the court in which the complaint has been filed to transmit a certified copy of the complaint and any citation and any factual report which may have been prepared by the law enforcement agency that investigated the case to the court in which defendant is to appear for plea and sentencing. If the court of which the request is made deems such action to be in the interest of justice, and the district attorney of the county in which that court sits, after notice from the court of the request it has received, does not object to such action, the court shall immediately transmit a certified copy of the complaint and the report of the law enforcement agency that investigated the case, and, if not, shall advise the requesting magistrate of its decision not to take such action. When defendant appears for plea and sentencing, and if a copy of the complaint has been transmitted, the court shall read the copy of the complaint to him, and the defendant may plead guilty or nolo

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contendere. Such court shall have jurisdiction to accept the plea and impose a sentence. Such court shall notify the court in which the complaint was originally filed of the disposition of the case. If defendant does not plead guilty or nolo contendere, or if transmittal of a copy of the complaint has been refused or if a copy of the complaint has not been received, the court shall terminate the proceedings under this section and shall direct the defendant to appear before the court or magistrate by whom the warrant was issued on or before a certain day which in no case shall be more than five days after the date such direction is made.

(b) Any fines imposed by a court which is given authority to sentence pursuant to this section shall be remitted to the court in which the complaint was originally filed for disposition as required by law. The county of the sentencing court shall bear all costs incurred incident to acceptance of the plea and sentencing, and no part of such costs shall be deducted from the fine remitted to the court in which the complaint was filed.

§858.7.

(a) In any case in which the defendant has been convicted of a misdemeanor and is serving a sentence as a result of such conviction and there has been filed and is pending in another county a complaint charging him with a misdemeanor Vehicle Code violation, the defendant may appear before the court that sentenced him, and a magistrate of that court shall give such instructions to the defendant as required by law and inform the defendant of his rights under this section, and, if the defendant desires to plead guilty or nolo contendere to the charge in the complaint, he may so advise the magistrate. If the magistrate determines that such plea would be in the interest of justice, he shall direct the defendant to appear before a specified appropriate court in the county in which defendant is serving his sentence at a designated certain time for plea and sentencing. The magistrate shall request the court in which the complaint has been filed to transmit a certified copy of the complaint and any citation and any factual report which may have been prepared by the law enforcement agency that investigated the case to the court in which defendant is to appear for plea and sentencing. If the court of which the request is made deems such action to be in the interest of justice, and the district attorney of the county in which that court sits, after notice from the court of the request it has received, does not object to such action, the court shall immediately transmit a certified copy of the complaint and any report of the law enforcement agency that investigated the case, and, if not, shall advise the requesting magistrate of its decision not to take such action.

When defendant appears for plea and sentencing, and if a copy of the complaint has been transmitted, the court shall read the copy of the complaint to him, and the defendant may plead guilty or nolo contendere. Such court shall have jurisdiction to accept the plea and impose a sentence. Such court shall notify the court in which the complaint was originally filed of the disposition of the case. If defendant does not plead guilty or nolo contendere, or if transmittal of a copy of the complaint has been refused or if a copy of the complaint has not been received, the court shall terminate the proceedings under this section and shall direct the defendant to appear before the court in which the complaint was filed and is pending on or before a certain day.

(b) (1) Any fines imposed by a court which is given authority to sentence pursuant to this section shall be remitted to the court in which the complaint was originally filed for disposition as required by law. Except as otherwise provided in paragraph (2) of this subdivision, the county of the sentencing court shall bear all costs incurred incident to acceptance of the plea and sentencing, and no part of such costs shall be deducted from the fine remitted to the court in which the complaint was filed.

(2) In any case in which a defendant is sentenced to imprisonment pursuant to this section, and as a result of such sentence he is required to be imprisoned for a time in addition to, and not concurrent with, the time he is imprisoned as a result of the sentence he is otherwise serving, the county in which the complaint was originally filed shall bear the cost of such additional time of imprisonment that the defendant is required to serve. Such cost may be deducted from any fine required to be remitted pursuant to paragraph (1) of this subdivision to the court in which the complaint was originally filed.

(c) As used in this section, "complaint" includes, but is not limited to, a notice to appear which is within the provisions of Section 40513 of the Vehicle Code.

§859.

When the defendant is charged with the commission of a felony by a written complaint subscribed under oath and on file in a court within the county in which the felony is triable, he or she shall, without unnecessary delay, be taken before a magistrate of the court in which the complaint is on file. The magistrate shall immediately deliver to the defendant a copy of the complaint, inform the defendant that he

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or she has the right to have the assistance of counsel, ask the defendant if he or she desires the assistance of counsel, and allow the defendant reasonable time to send for counsel. However, in a capital case, the court shall inform the defendant that the defendant must be represented in court by counsel at all stages of the preliminary and trial proceedings and that the representation will be at the defendant's expense if the defendant is able to employ counsel or at public expense if he or she is unable to employ counsel, inquire of him or her whether he or she is able to employ counsel and, if so, whether the defendant desires to employ counsel of the defendant's choice or to have counsel assigned for him or her, and allow the defendant a reasonable time to send for his or her chosen or assigned counsel. If the defendant desires and is unable to employ counsel, the court shall assign counsel to defend him or her; in a capital case, if the defendant is able to employ counsel and either refuses to employ counsel or appears without counsel after having had a reasonable time to employ counsel, the court shall assign counsel to defend him or her. If it appears that the defendant may be a minor, the magistrate shall ascertain whether that is the case, and if the magistrate concludes that it is probable that the defendant is a minor, he or she shall immediately either notify the parent or guardian of the minor, by telephone or messenger, of the arrest, or appoint counsel to represent the minor.

§859.1.

(a) In any criminal proceeding in which the defendant is charged with any offense specified in Section 868.8 on a minor under the age of 16 years, or a dependent person with a substantial cognitive impairment, as defined in paragraph (3) of subdivision (f) of Section 288, the court shall, upon motion of the prosecuting attorney, conduct a hearing to determine whether the testimony of, and testimony relating to, a minor or dependent person shall be closed to the public in order to protect the minor's or the dependent person's reputation.

(b) In making this determination, the court shall consider all of the following:

- (1) The nature and seriousness of the offense.
- (2) The age of the minor, or the level of cognitive development of the dependent person.
- (3) The extent to which the size of the community would preclude the anonymity of the victim.
- (4) The likelihood of public opprobrium due to the status of the victim.
- (5) Whether there is an overriding public interest in having an open hearing.
- (6) Whether the prosecution has demonstrated a substantial probability that the identity of the witness would otherwise be disclosed to the public during that proceeding, and demonstrated a substantial probability that the disclosure of his or her identity would cause serious harm to the witness.
- (7) Whether the witness has disclosed information concerning the case to the public through press conferences, public meetings, or other means.
- (8) Other factors the court may deem necessary to protect the interests of justice.

§859.5.

(a) Except as otherwise provided in this section, a custodial interrogation of a minor, who is in a fixed place of detention, and suspected of committing murder, as listed in paragraph (1) of subdivision (b) of Section 707 of the Welfare and Institutions Code, shall be electronically recorded in its entirety. A statement that is electronically recorded as required pursuant to this section creates a rebuttable presumption that the electronically recorded statement was, in fact, given and was accurately recorded by the prosecution's witnesses, provided that the electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible.

(b) The requirement for the electronic recordation of a custodial interrogation pursuant to this section shall not apply under any of the following circumstances:

- (1) Electronic recording is not feasible because of exigent circumstances. The exigent circumstances shall be recorded in the police report.
- (2) The person to be interrogated states that he or she will speak to a law enforcement officer only if the interrogation is not electronically recorded. If feasible, that statement shall be electronically recorded. The requirement also does not apply if the person being interrogated indicates during interrogation that he or she will not participate in further interrogation unless electronic recording ceases. If the person being interrogated refuses to record any statement, the officer shall document that refusal in writing.
- (3) The custodial interrogation took place in another jurisdiction and was conducted by law enforcement officers of that jurisdiction in compliance with the law of that jurisdiction, unless the interrogation was conducted with intent to avoid the requirements of this section.
- (4) The interrogation occurs when no law enforcement officer conducting the interrogation has knowledge of facts and circumstances that would lead an officer to reasonably believe that the individual being interrogated may have committed murder for which this section requires that a custodial interrogation be

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recorded. If during a custodial interrogation, the individual reveals facts and circumstances giving a law enforcement officer conducting the interrogation reason to believe that murder has been committed, continued custodial interrogation concerning that offense shall be electronically recorded pursuant to this section.

(5) A law enforcement officer conducting the interrogation or the officer's superior reasonably believes that electronic recording would disclose the identity of a confidential informant or jeopardize the safety of an officer, the individual being interrogated, or another individual. An explanation of the circumstances shall be recorded in the police report.

(6) The failure to create an electronic recording of the entire custodial interrogation was the result of a malfunction of the recording device, despite reasonable maintenance of the equipment, and timely repair or replacement was not feasible.

(7) The questions presented to a person by law enforcement personnel and the person's responsive statements were part of a routine processing or booking of that person. Electronic recording is not required for spontaneous statements made in response to questions asked during the routine processing of the arrest of the person.

(c) If the prosecution relies on an exception in subdivision (b) to justify a failure to make an electronic recording of a custodial interrogation, the prosecution shall show by clear and convincing evidence that the exception applies.

(d) A person's statements that were not electronically recorded pursuant to this section may be admitted into evidence in a criminal proceeding or in a juvenile court proceeding, as applicable, if the court finds that all of the following apply:

(1) The statements are admissible under applicable rules of evidence.

(2) The prosecution has proven by clear and convincing evidence that the statements were made voluntarily.

(3) Law enforcement personnel made a contemporaneous audio or audio and visual recording of the reason for not making an electronic recording of the statements. This provision does not apply if it was not feasible for law enforcement personnel to make that recording.

(4) The prosecution has proven by clear and convincing evidence that one or more of the circumstances described in subdivision (b) existed at the time of the custodial interrogation.

(e) Unless the court finds that an exception in subdivision (b) applies, all of the following remedies shall be granted as relief for noncompliance:

(1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress a statement of a defendant made during or after a custodial interrogation.

(2) Failure to comply with any of the requirements of this section shall be admissible in support of claims that a defendant's statement was involuntary or is unreliable, provided the evidence is otherwise admissible.

(3) If the court finds that a defendant was subject to a custodial interrogation in violation of subdivision (a), the court shall provide the jury with an instruction, to be developed by the Judicial Council, that advises the jury to view with caution the statements made in that custodial interrogation.

(f) The interrogating entity shall maintain the original or an exact copy of an electronic recording made of a custodial interrogation until a conviction for any offense relating to the interrogation is final and all direct and habeas corpus appeals are exhausted or the prosecution for that offense is barred by law or, in a juvenile court proceeding, as otherwise provided in subdivision (b) of Section 626.8 of the Welfare and Institutions Code. The interrogating entity may make one or more true, accurate, and complete copies of the electronic recording in a different format.

(g) For the purposes of this section, the following terms have the following meanings:

(1) "Custodial interrogation" means any interrogation in a fixed place of detention involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses, and in which a reasonable person in the subject's position would consider himself or herself to be in custody, beginning when a person should have been advised of his or her constitutional rights, including the right to remain silent, the right to have counsel present during any interrogation, and the right to have counsel appointed if the person is unable to afford counsel, and ending when the questioning has completely finished.

(2) "Electronic recording" means a video recording that accurately records a custodial interrogation.

(3) "Fixed place of detention" means a fixed location under the control of a law enforcement agency where an individual is held in detention in connection with a criminal offense that has been, or may be, filed against that person, including a jail, police or sheriff's station, holding cell, correctional or detention facility, juvenile hall, or a facility of the Division of Juvenile Facilities.

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(4) "Law enforcement officer" means a person employed by a law enforcement agency whose duties include enforcing criminal laws or investigating criminal activity, or any other person who is acting at the request or direction of that person.

§859a.

(a) If the public offense charged is a felony not punishable with death, the magistrate shall immediately upon the appearance of counsel for the defendant read the complaint to the defendant and ask him or her whether he or she pleads guilty or not guilty to the offense charged therein and to a previous conviction or convictions of crime if charged. While the charge remains pending before the magistrate and when the defendant's counsel is present, the defendant may plead guilty to the offense charged, or, with the consent of the magistrate and the district attorney or other counsel for the people, plead nolo contendere to the offense charged or plead guilty or nolo contendere to any other offense the commission of which is necessarily included in that with which he or she is charged, or to an attempt to commit the offense charged and to the previous conviction or convictions of crime if charged upon a plea of guilty or nolo contendere. The magistrate may then fix a reasonable bail as provided by this code, and upon failure to deposit the bail or surety, shall immediately commit the defendant to the sheriff. Upon accepting the plea of guilty or nolo contendere the magistrate shall certify the case, including a copy of all proceedings therein and any testimony that in his or her discretion he or she may require to be taken, to the court in which judgment is to be pronounced at the time specified under subdivision (b), and thereupon the proceedings shall be had as if the defendant had pleaded guilty in that court. This subdivision shall not be construed to authorize the receiving of a plea of guilty or nolo contendere from any defendant not represented by counsel. If the defendant subsequently files a written motion to withdraw the plea under Section 1018, the motion shall be heard and determined by the court before which the plea was entered.

(b) Notwithstanding Section 1191 or 1203, the magistrate shall, upon the receipt of a plea of guilty or nolo contendere and upon the performance of the other duties of the magistrate under this section, immediately appoint a time for pronouncing judgment in the superior court and refer the case to the probation officer if eligible for probation, as prescribed in Section 1191.

§859b.

At the time the defendant appears before the magistrate for arraignment, if the public offense is a felony to which the defendant has not pleaded guilty in accordance with Section 859a, the magistrate, immediately upon the appearance of counsel, or if none appears, after waiting a reasonable time therefor as provided in Section 859, shall set a time for the examination of the case and shall allow not less than two days, excluding Sundays and holidays, for the district attorney and the defendant to prepare for the examination. The magistrate shall also issue subpoenas, duly subscribed, for witnesses within the state, required either by the prosecution or the defense.

Both the defendant and the people have the right to a preliminary examination at the earliest possible time, and unless both waive that right or good cause for a continuance is found as provided for in Section 1050, the preliminary examination shall be held within 10 court days of the date the defendant is arraigned or pleads, whichever occurs later, or within 10 court days of the date criminal proceedings are reinstated pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2.

Whenever the defendant is in custody, the magistrate shall dismiss the complaint if the preliminary examination is set or continued beyond 10 court days from the time of the arraignment, plea, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2, and the defendant has remained in custody for 10 or more court days solely on that complaint, unless either of the following occur:

(a) The defendant personally waives his or her right to preliminary examination within the 10 court days.

(b) The prosecution establishes good cause for a continuance beyond the 10-court-day period.

For purposes of this subdivision, "good cause" includes, but is not limited to, those cases involving allegations that a violation of one or more of the sections specified in subdivision (a) of Section 11165.1 or in Section 11165.6 has occurred and the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court. Any continuance under this paragraph shall be limited to a maximum of three additional court days.

If the preliminary examination is set or continued beyond the 10-court-day period, the defendant shall be released pursuant to Section 1318 unless:

(1) The defendant requests the setting of continuance of the preliminary examination beyond the 10-court-day period.

(2) The defendant is charged with a capital offense in a cause where the proof is evident and the presumption great.

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- (3) A witness necessary for the preliminary examination is unavailable due to the actions of the defendant.
- (4) The illness of counsel.
- (5) The unexpected engagement of counsel in a jury trial.
- (6) Unforeseen conflicts of interest which require appointment of new counsel.

The magistrate shall dismiss the complaint if the preliminary examination is set or continued more than 60 days from the date of the arraignment, plea, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2, unless the defendant personally waives his or her right to a preliminary examination within the 60 days.

§859c.

Procedures under this code that provide for superior court review of a challenged ruling or order made by a superior court judge or a magistrate shall be performed by a superior court judge other than the judge or magistrate who originally made the ruling or order, unless agreed to by the parties.

§860.

At the time set for the examination of the case, if the public offense is a felony punishable with death, or is a felony to which the defendant has not pleaded guilty in accordance with Section 859a of this code, then, if the defendant requires the aid of counsel, the magistrate must allow the defendant a reasonable time to send for counsel, and may postpone the examination for not less than two nor more than five days for that purpose. The magistrate must, immediately after the appearance of counsel, or if, after waiting a reasonable time therefor, none appears, proceed to examine the case; provided, however, that a defendant represented by counsel may when brought before the magistrate as provided in Section 858 or at any time subsequent thereto, waive the right to an examination before such magistrate, and thereupon it shall be the duty of the magistrate to make an order holding the defendant to answer, and it shall be the duty of the district attorney within 15 days thereafter, to file in the superior court of the county in which the offense is triable the information; provided, further, however, that nothing contained herein shall prevent the district attorney nor the magistrate from requiring that an examination be held as provided in this chapter.

§861.

(a) The preliminary examination shall be completed at one session or the complaint shall be dismissed, unless the magistrate, for good cause shown by affidavit, postpones it. The postponement shall not be for more than 10 court days, unless either of the following occur:

- (1) The defendant personally waives his or her right to a continuous preliminary examination.
- (2) The prosecution establishes good cause for a postponement beyond the 10-court-day period. If the magistrate postpones the preliminary examination beyond the 10-court-day period, and the defendant is in custody, the defendant shall be released pursuant to subdivision (b) of Section 859b.

(b) The preliminary examination shall not be postponed beyond 60 days from the date the motion to postpone the examination is granted, unless by consent or on motion of the defendant.

(c) Nothing in this section shall preclude the magistrate from interrupting the preliminary examination to conduct brief court matters so long as a substantial majority of the court's time is devoted to the preliminary examination.

(d) A request for a continuance of the preliminary examination that is made by the defendant or his or her attorney of record for the purpose of filing a motion pursuant to paragraph (2) of subdivision (f) of Section 1538.5 shall be deemed a personal waiver of the defendant's right to a continuous preliminary examination.

§861.5.

Notwithstanding subdivision (a) of Section 861, the magistrate may postpone the preliminary examination for one court day in order to accommodate the special physical, mental, or emotional needs of a child witness who is 10 years of age or younger or a dependent person, as defined in paragraph (3) of subdivision (f) of Section 288.

The magistrate shall admonish both the prosecution and defense against coaching the witness prior to the witness' next appearance in the preliminary examination.

 **§862.**

If a postponement is had, the magistrate must commit the defendant for examination, admit him to bail or discharge him from custody upon the deposit of money as provided in this Code, as security for his appearance at the time to which the examination is postponed.

§863.

The commitment for examination is made by an indorsement, signed by the magistrate on the warrant of arrest, to the following effect: "The within named A. B. having been brought before me under this warrant, is committed for examination to the Sheriff of ____." If the Sheriff is not present, the defendant may be committed to the custody of a peace officer.

§864.

At the examination, the magistrate must first read to the defendant the depositions of the witnesses examined on taking the information.

§865.

The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf.

§866.

(a) When the examination of witnesses on the part of the people is closed, any witness the defendant may produce shall be sworn and examined.

Upon the request of the prosecuting attorney, the magistrate shall require an offer of proof from the defense as to the testimony expected from the witness. The magistrate shall not permit the testimony of any defense witness unless the offer of proof discloses to the satisfaction of the magistrate, in his or her sound discretion, that the testimony of that witness, if believed, would be reasonably likely to establish an affirmative defense, negate an element of a crime charged, or impeach the testimony of a prosecution witness or the statement of a declarant testified to by a prosecution witness.

(b) It is the purpose of a preliminary examination to establish whether there exists probable cause to believe that the defendant has committed a felony. The examination shall not be used for purposes of discovery.

(c) This section shall not be construed to compel or authorize the taking of depositions of witnesses.

§866.5.

The defendant may not be examined at the examination, unless he is represented by counsel, or unless he waives his right to counsel after being advised at such examination of his right to aid of counsel.

§867.

While a witness is under examination, the magistrate shall, upon motion of either party, exclude all potential and actual witness who have not been examined.

The magistrate shall also order the witnesses not to converse with each other until they are all examined.

The magistrate may also order, where feasible, that the witnesses be kept separated from each other until they are all examined.

This section does not apply to the investigating officer or the investigator for the defendant, nor does it apply to officers having custody of persons brought before the magistrate.

Either party may challenge the exclusion of any person under this section. Upon motion of either party, the magistrate shall hold a hearing, on the record, to determine if the person sought to be excluded is, in fact, a person excludable under this section.

§868.

The examination shall be open and public. However, upon the request of the defendant and a finding by the magistrate that exclusion of the public is necessary in order to protect the defendant's right to a fair and impartial trial, the magistrate shall exclude from the examination every person except the clerk, court reporter and bailiff, the prosecutor and his or her counsel, the Attorney General, the district attorney of the county, the investigating officer, the officer having custody of a prisoner witness while the prisoner is testifying, the defendant and his or her counsel, the officer having the defendant in custody, and a person

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chosen by the prosecuting witness who is not himself or herself a witness but who is present to provide the prosecuting witness moral support, provided that the person so chosen shall not discuss prior to or during the preliminary examination the testimony of the prosecuting witness with any person, other than the prosecuting witness, who is a witness in the examination. Upon motion of the prosecution, members of the alleged victim's family shall be entitled to be present and seated during the examination. The court shall grant the motion unless the magistrate finds that the exclusion is necessary to protect the defendant's right to a fair and impartial trial, or unless information provided by the defendant or noticed by the court establishes that there is a reasonable likelihood that the attendance of members of the alleged victim's family poses a risk of affecting the content of the testimony of the victim or any other witness. The court shall admonish members of the alleged victim's family who are present and seated during the examination not to discuss any testimony with family members, witnesses, or the public. Nothing in this section shall affect the exclusion of witnesses as provided in Section 867 of the Penal Code. For purposes of this section, members of the alleged victim's family shall include the alleged victim's spouse, parents, legal guardian, children, or siblings.

§868.5.

(a) Notwithstanding any other law, a prosecuting witness in a case involving a violation or attempted violation of Section 187, 203, 205, or 207, subdivision (b) of Section 209, Section 211, 215, 220, 236.1, 240, 242, 243.4, 245, 261, 262, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 266k, 267, 269, 273a, 273d, 273.5, 273.6, 278, 278.5, 285, 286, 288, 288a, 288.5, 288.7, 289, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10, 311.11, 422, 646.9, or 647.6, former Section 277 or 647a, subdivision (1) of Section 314, or subdivision (b), (d), or (e) of Section 368 when the prosecuting witness is the elder or dependent adult, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

§868.6.

(a) It is the purpose of this section to provide a nonthreatening environment for minors involved in the judicial system in order to better enable them to speak freely and accurately of the experiences that are the subject of judicial inquiry.

(b) Each county is encouraged to provide a room, located within, or within a reasonable distance from, the courthouse, for the use of minors under the age of 16. Should any such room reach full occupancy, preference shall be given to minors under the age of 16 whose appearance has been subpoenaed by the court. The room may be multipurpose in character. The county may seek the assistance of civic groups in the furnishing of the room and the provision of volunteers to aid in its operation and maintenance. If a county newly constructs, substantially remodels or refurbishes any courthouse or facility used as a courthouse on or after January 1, 1988, that courthouse or facility shall contain the room described in this subdivision.

§868.7.

(a) Notwithstanding any other provision of law, the magistrate may, upon motion of the prosecutor, close the examination in the manner described in Section 868 during the testimony of a witness:

(1) Who is a minor or a dependent person, as defined in paragraph (3) of subdivision (f) of Section 288, with a substantial cognitive impairment and is the complaining victim of a sex offense, where testimony before the general public would be likely to cause serious psychological harm to the witness and where no alternative procedures, including, but not limited to, video recorded deposition or contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, are available to avoid the perceived harm.

(2) Whose life would be subject to a substantial risk in appearing before the general public, and where no alternative security measures, including, but not limited to, efforts to conceal his or her features or physical description, searches of members of the public attending the examination, or the temporary exclusion of other actual or potential witnesses, would be adequate to minimize the perceived threat.

(b) In any case where public access to the courtroom is restricted during the examination of a witness pursuant to this section, a transcript of the testimony of the witness shall be made available to the public as soon as is practicable.

§868.8.

Notwithstanding any other provision of law, in any criminal proceeding in which the defendant is charged with a violation or attempted violation of subdivision (b) of Section 209, Section 220, 236.1, 243.4, 261, 269, 273a, 273d, 285, 286, 288, 288a, 288.5, 288.7, or 289, subdivision (1) of Section 314, Section 422, 646.9, 647.6, or former Section 647a, or any crime that constitutes domestic violence defined in Section 13700, committed with or upon a person with a disability or a minor under 11 years of age, the court shall take special precautions to provide for the comfort and support of the person with a disability or minor and to protect him or her from coercion, intimidation, or undue influence as a witness, including, but not limited to, any of the following:

(a) In the court's discretion, the witness may be allowed reasonable periods of relief from examination and cross-examination during which he or she may retire from the courtroom. The judge may also allow other witnesses in the proceeding to be examined when the person with a disability or child witness retires from the courtroom.

(b) Notwithstanding Section 68110 of the Government Code, in his or her discretion, the judge may remove his or her robe if the judge believes that this formal attire intimidates the person with a disability or the minor.

(c) In the court's discretion the judge, parties, witnesses, support persons, and court personnel may be relocated within the courtroom to facilitate a more comfortable and personal environment for the person with a disability or the child witness.

(d) In the court's discretion, the taking of the testimony of the person with a disability or the minor may be limited to normal school hours if there is no good cause to take the testimony of the person with a disability or the minor during other hours.

(e) For the purposes of this section, the term "disability" is defined in subdivision (j) of Section 12926 of the Government Code.

§869.

The testimony of each witness in cases of homicide shall be reduced to writing, as a deposition, by the magistrate, or under his or her direction, and in other cases upon the demand of the prosecuting attorney, or the defendant, or his or her counsel. The magistrate before whom the examination is had may, in his or her discretion, order the testimony and proceedings to be taken down in shorthand in all examinations herein mentioned, and for that purpose he or she may appoint a shorthand reporter. The deposition or testimony of the witness shall be authenticated in the following form:

(a) It shall state the name of the witness, his or her place of residence, and his or her business or profession; except that if the witness is a peace officer, it shall state his or her name, and the address given in his or her testimony at the hearing.

(b) It shall contain the questions put to the witness and his or her answers thereto, each answer being distinctly read to him or her as it is taken down, and being corrected or added to until it conforms to what he or she declares is the truth, except in cases where the testimony is taken down in shorthand, the answer or answers of the witness need not be read to him or her.

(c) If a question put be objected to on either side and overruled, or the witness declines answering it, that fact, with the ground on which the question was overruled or the answer declined, shall be stated.

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(d) The deposition shall be signed by the witness, or if he or she refuses to sign it, his or her reason for refusing shall be stated in writing, as he or she gives it, except in cases where the deposition is taken down in shorthand, it need not be signed by the witness.

(e) The reporter shall, within 10 days after the close of the examination, if the defendant be held to answer the charge of a felony, or in any other case if either the defendant or the prosecution orders the transcript, transcribe his or her shorthand notes, making an original and one copy and as many additional copies thereof as there are defendants (other than fictitious defendants), regardless of the number of charges or fictitious defendants included in the same examination, and certify and deliver the original and all copies to the clerk of the superior court in the county in which the defendant was examined. The reporter shall, before receiving any compensation as a reporter, file his or her affidavit setting forth that the transcript has been delivered within the time herein provided for. The compensation of the reporter for any services rendered by him or her as the reporter in any court of this state shall be reduced one-half if the provisions of this section as to the time of filing said transcript have not been complied with by him or her.

(f) In every case in which a transcript is delivered as provided in this section, the clerk of the court shall file the original of the transcript with the papers in the case, and shall deliver a copy of the transcript to the district attorney immediately upon his or her receipt thereof and shall deliver a copy of said transcript to each defendant (other than a fictitious defendant) at least five days before trial or upon earlier demand by him or her without cost to him or her; provided, that if any defendant be held to answer to two or more charges upon the same examination and thereafter the district attorney shall file separate informations upon said several charges, the delivery to each such defendant of one copy of the transcript of the examination shall be a compliance with this section as to all of those informations.

(g) If the transcript is delivered by the reporter within the time hereinbefore provided for, the reporter shall be entitled to receive the compensation fixed and allowed by law to reporters in the superior courts of this state.

§870.

The magistrate or his or her clerk shall keep the depositions taken on the information or the examination, until they are returned to the proper court; and shall not permit them to be examined or copied by any person except a judge of a court having jurisdiction of the offense, or authorized to issue writs of habeas corpus, the Attorney General, district attorney, or other prosecuting attorney, and the defendant and his or her counsel; provided however, upon demand by the defendant or his or her attorney the magistrate shall order a transcript of the depositions taken on the information, or on the examination, to be immediately furnished the defendant or his or her attorney, after the commitment of the defendant as provided by Sections 876 and 877, and the reporter furnishing the depositions, shall receive compensation in accordance with Section 869.

§871.

If, after hearing the proofs, it appears either that no public offense has been committed or that there is not sufficient cause to believe the defendant guilty of a public offense, the magistrate shall order the complaint dismissed and the defendant to be discharged, by an indorsement on the depositions and statement, signed by the magistrate, to the following effect: "There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order that the complaint be dismissed and that he or she shall be discharged."

§871.5.

(a) When an action is dismissed by a magistrate pursuant to Section 859b, 861, 871, 1008, 1381, 1381.5, 1385, 1387, or 1389 of this code or Section 41403 of the Vehicle Code, or a portion thereof is dismissed pursuant to those same sections which may not be charged by information under Section 739, the prosecutor may make a motion in the superior court within 15 days to compel the magistrate to reinstate the complaint or a portion thereof and to reinstate the custodial status of the defendant under the same terms and conditions as when the defendant last appeared before the magistrate.

(b) Notice of the motion shall be made to the defendant and the magistrate. The only ground for the motion shall be that, as a matter of law, the magistrate erroneously dismissed the action or a portion thereof.

(c) The superior court shall hear and determine the motion on the basis of the record of the proceedings before the magistrate. If the motion is litigated to decision by the prosecutor, the prosecution is prohibited from refileing the dismissed action, or portion thereof.

(d) Within 10 days after the magistrate has dismissed the action or a portion thereof, the prosecuting attorney may file a written request for a transcript of the proceedings with the clerk of the magistrate. The

reporter shall immediately transcribe his or her shorthand notes pursuant to Section 869 and file with the clerk of the superior court an original plus one copy, and as many copies as there are defendants (other than a fictitious defendant). The reporter shall be entitled to compensation in accordance with Section 869. The clerk of the superior court shall deliver a copy of the transcript to the prosecuting attorney immediately upon its receipt and shall deliver a copy of the transcript to each defendant (other than a fictitious defendant) upon his or her demand without cost.

(e) When a court has ordered the resumption of proceedings before the magistrate, the magistrate shall resume the proceedings and when so ordered, issue an order of commitment for the reinstated offense or offenses within 10 days after the superior court has entered an order to that effect or within 10 days after the remittitur is filed in the superior court. Upon receipt of the remittitur, the superior court shall forward a copy to the magistrate.

(f) Pursuant to paragraph (9) of subdivision (a) of Section 1238 the people may take an appeal from the denial of the motion by the superior court to reinstate the complaint or a portion thereof. If the motion to reinstate the complaint is granted, the defendant may seek review thereof only pursuant to Sections 995 and 999a. That review may only be sought in the event the defendant is held to answer pursuant to Section 872.

(g) Nothing contained herein shall preclude a magistrate, upon the resumption of proceedings, from considering a motion made pursuant to Section 1318.

If the superior court grants the motion for reinstatement and orders the magistrate to issue an order of commitment, the defendant, in lieu of resumed proceedings before the magistrate, may elect to waive his or her right to be committed by a magistrate, and consent to the filing of an amended or initial information containing the reinstated charge or charges. After arraignment thereon, he or she may adopt as a motion pursuant to Section 995, the record and proceedings of the motion taken pursuant to this section and the order issued pursuant thereto, and may seek review of the order in the manner prescribed in Section 999a.

§871.6.

If in a felony case the magistrate sets the preliminary examination beyond the time specified in Section 859b, in violation of Section 859b, or continues the preliminary hearing without good cause and good cause is required by law for such a continuance, the people or the defendant may file a petition for writ of mandate or prohibition in the superior court seeking immediate appellate review of the ruling setting the hearing or granting the continuance. Such a petition shall have precedence over all other cases in the court to which the petition is assigned. If the superior court grants a peremptory writ, it shall issue the writ and a remittitur three court days after its decision becomes final as to the court if this action is necessary to prevent mootness or to prevent frustration of the relief granted, notwithstanding the rights of the parties to seek review in a court of appeal. When the superior court issues the writ and remittitur as provided in this section, the writ shall command the magistrate to proceed with the preliminary hearing without further delay, other than that reasonably necessary for the parties to obtain the attendance of their witnesses. The court of appeal may stay or recall the issuance of the writ and remittitur. The failure of the court of appeal to stay or recall the issuance of the writ and remittitur shall not deprive the parties of any right they would otherwise have to appellate review or extraordinary relief.

§872.

(a) If, however, it appears from the examination that a public offense has been committed, and there is sufficient cause to believe that the defendant is guilty, the magistrate shall make or indorse on the complaint an order, signed by him or her, to the following effect: "It appearing to me that the offense in the within complaint mentioned (or any offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe that the within named A. B. is guilty, I order that he or she be held to answer to the same."

(b) Notwithstanding Section 1200 of the Evidence Code, the finding of probable cause may be based in whole or in part upon the sworn testimony of a law enforcement officer or honorably retired law enforcement officer relating the statements of declarants made out of court offered for the truth of the matter asserted. An honorably retired law enforcement officer may only relate statements of declarants made out of court and offered for the truth of the matter asserted that were made when the honorably retired officer was an active law enforcement officer. Any law enforcement officer or honorably retired law enforcement officer testifying as to hearsay statements shall either have five years of law enforcement experience or have completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

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(c) For purposes of subdivision (b), a law enforcement officer is any officer or agent employed by a federal, state, or local government agency to whom all of the following apply:

(1) Has either five years of law enforcement experience or who has completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings.

(2) Whose primary responsibility is the enforcement of any law, the detection and apprehension of persons who have violated any law, or the investigation and preparation for prosecution of cases involving violation of laws.

§872.5.

Notwithstanding Article 1 (commencing with Section 1520) of Chapter 2 of Division 11 of the Evidence Code, in a preliminary examination the content of a writing may be proved by an otherwise admissible original or otherwise admissible secondary evidence.

§873.

If the offense is not bailable, the following words must be added to the indorsement: "And he is hereby committed to the Sheriff of the County of ____."

§875.

If the offense is bailable, and the defendant is admitted to bail, the following words must be added to the order, "and that he be admitted to bail in the sum of ____ dollars, and is committed to the Sheriff of the County of ____ until he gives such bail."

§876.

If the magistrate order the defendant to be committed, he must make out a commitment, signed by him, with his name of office, and deliver it, with the defendant, to the officer to whom he is committed, or, if that officer is not present, to a peace officer, who must deliver the defendant into the proper custody, together with the commitment.

§877.

The commitment must be to the following effect except when it is made under the provisions of section 859a of this code.

County of ____ (as the case may be).

The people of the State of California to the sheriff of the county of ____:

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this ____ day of ____ nineteen ____.

§877a.

When the commitment is made under the provisions of section 859a of this code, it must be made to the following effect:

County of ____ (as the case may be).

The people of the State of California to the sheriff of the county of ____.

A. B. having pleaded guilty to the offense of (stating briefly the nature of the offense, and giving as near as may be the time when and the place where the same was committed), you are commanded to receive him into your custody and detain him until he is legally discharged.

Dated this ____ day of ____ nineteen ____.

§878.

On holding the defendant to answer or on a plea of guilty where permitted by law, the magistrate may take from each of the material witnesses examined before him on the part of the people a written undertaking, to the effect that he will appear and testify at the court to which the depositions and statements or case are to be sent, or that he will forfeit the sum of five hundred dollars.

§879.

When the magistrate or a Judge of the Court in which the action is pending is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify unless security is required, he may order the witness to enter into a written undertaking, with sureties, in such sum as he may deem proper, for his appearance as specified in the preceding section.

§880.

Infants who are material witnesses against the defendant may be required to procure sureties for their appearance, as provided in the last section.

§881.

(a) If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses compliance with the order for that purpose, the magistrate shall commit him or her to prison until he or she complies or is legally discharged.

(b) If a witness fails to appear at the preliminary hearing in response to a subpoena, the court may hear evidence, including testimony or an affidavit from the arresting or interviewing officer, and if the court determines on the basis of the evidence that the witness is a material witness, the court shall issue a bench warrant for the arrest of the witness, and upon the appearance of the witness, may commit him or her into custody until the conclusion of the preliminary hearing, or until the defendant enters a plea of nolo contendere, or the witness is otherwise legally discharged.

The court may order the witness to enter into a written undertaking to the effect that he or she will appear and testify at the time and place ordered by the court or that he or she will forfeit an amount that the court deems proper.

(c) Once the material witness has been taken into custody on the bench warrant he or she shall be brought before the magistrate issuing the warrant, if available, within two court days for a hearing to determine if the witness should be released on security of appearance or maintained in custody.

(d) A material witness shall remain in custody under this section for no longer than 10 days.

(e) If a material witness is being held in custody under this section the prosecution is entitled to have the preliminary hearing proceed, as to this witness only, within 10 days of the arraignment of the defendant. Once this material witness has completed his or her testimony the defendant shall be entitled to a reasonable continuance.

§882.

When, however, it satisfactorily appears by examination, on oath of the witness, or any other person, that the witness is unable to procure sureties, he or she may be forthwith conditionally examined on behalf of the people. The examination shall be by question and answer, in the presence of the defendant, or after notice to him or her, if on bail, and conducted in the same manner as the examination before a committing magistrate is required by this code to be conducted, and the witness thereupon discharged; and the deposition may be used upon the trial of the defendant, except in cases of homicide, under the same conditions as mentioned in Section 1345; but this section does not apply to an accomplice in the commission of the offense charged.

§883.

When a magistrate has discharged a defendant, or has held him to answer, he must return, without delay, to the Clerk of the Court at which the defendant is required to appear, the warrant, if any, the depositions, and all undertakings of bail, or for the appearance of witnesses taken by him.

CHAPTER 1. Of the Arraignment of the Defendant [976 - 992]

 **§976.**

(a) When the accusatory pleading is filed, the defendant shall be arraigned thereon before the court in which it is filed, unless the action is transferred to some other court for trial. However, within any county, if the defendant is in custody, upon the approval of both the presiding judge of the court in which the accusatory pleading is filed and the presiding judge of the court nearest to the place in which he or she is held in custody the arraignment may be before the court nearest to that place of custody.

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(b) A defendant arrested in another county shall have the right to be taken before a magistrate in the arresting county for the purpose of being admitted to bail, as provided in Section 821 or 822. The defendant shall be informed of this right.

(c) Prior to being taken from the place where he or she is in custody to the place where he or she is to be arraigned, the defendant shall be allowed to make three completed telephone calls, at no expense to the defendant, in addition to any other telephone calls which the defendant is entitled to make pursuant to law.

§977.

(a) (1) In all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as provided in paragraphs (2) and (3). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) If the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, the accused shall be present for arraignment and sentencing, and at any time during the proceedings when ordered by the court for the purpose of being informed of the conditions of a protective order issued pursuant to Section 136.2.

(3) If the accused is charged with a misdemeanor offense involving driving under the influence, in an appropriate case, the court may order a defendant to be present for arraignment, at the time of plea, or at sentencing. For purposes of this paragraph, a misdemeanor offense involving driving under the influence shall include a misdemeanor violation of any of the following:

(A) Subdivision (b) of Section 191.5.

(B) Section 23103 as specified in Section 23103.5 of the Vehicle Code.

(C) Section 23152 of the Vehicle Code.

(D) Section 23153 of the Vehicle Code.

(b) (1) In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

(2) The accused may execute a written waiver of his or her right to be personally present, approved by his or her counsel, and the waiver shall be filed with the court. However, the court may specifically direct the defendant to be personally present at any particular proceeding or portion thereof. The waiver shall be substantially in the following form:

“Waiver of Defendant’s Personal Presence”

“The undersigned defendant, having been advised of his or her right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that his or her interest is represented at all times by the presence of his or her attorney the same as if the defendant were personally present in court, and further agrees that notice to his or her attorney that his or her presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of his or her appearance at that time and place.”

(c) The court may permit the initial court appearance and arraignment of defendants held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an arraignment on an information in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests. If the defendant decides not to exercise the right to be physically present in the courtroom, he or she shall execute a written waiver of that right. A judge may order a defendant’s personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this

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subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

(d) Notwithstanding subdivision (c), if the defendant is represented by counsel, the attorney shall be present with the defendant in any county exceeding 4,000,000 persons in population.

§977.1.

The resolution of questions of fact or issues of law by trial or hearing which can be made without the assistance or participation of the defendant is not prohibited by the existence of any pending proceeding to determine whether the defendant is or remains mentally incompetent or gravely disabled pursuant to the provisions of either this code or the Welfare and Institutions Code.

§977.2.

(a) Notwithstanding Section 977 or any other law, in any case in which the defendant is charged with a misdemeanor or a felony and is currently incarcerated in the state prison, the Department of Corrections may arrange for all court appearances in superior court, except for the preliminary hearing, trial, judgment and sentencing, and motions to suppress, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. Nothing in this section shall be interpreted to eliminate the authority of the court to issue an order requiring the defendant to be physically present in the courtroom in those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom. For those court appearances that the department determines to conduct by two-way electronic audiovideo communication, the department shall arrange for two-way electronic audiovideo communication between the superior court and any state prison facility located in the county. The department shall provide properly maintained equipment and adequately trained staff at the prison as well as appropriate training for court staff to ensure that consistently effective two-way communication is provided between the prison facility and the courtroom for all appearances that the department determines to conduct by two-way electronic audiovideo communication.

(b) If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an arraignment on an information or indictment in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing.

(c) In lieu of the physical presence of the defendant's counsel at the institution with the defendant, the court and the department shall establish a confidential telephone and facsimile transmission line between the court and the institution for communication between the defendant's counsel in court and the defendant at the institution. In this case, counsel for the defendant shall not be required to be physically present at the institution during any court appearance that is conducted via electronic audiovideo communication. Nothing in this section shall be construed to prohibit the physical presence of the defense counsel with the defendant at the state prison.

§978.

When his personal appearance is necessary, if he is in custody, the Court may direct and the officer in whose custody he is must bring him before it to be arraigned.

§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

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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 not 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 clear 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,

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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

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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 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.

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(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.

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(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 (j) 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 or 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.

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§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).

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- (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 be provided 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.

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- (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

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- 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

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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.