

SUPREME COURT
FILED

In the Supreme Court of the State of California

MAR 03 2017

Jorge Navarrete Clerk

In re

JOHN MANUEL GUIOMAR,

On Habeas Corpus

Case No. S238888

Deputy

Sixth Appellate District, Case No. H043114
Monterey County Superior Court, Case Nos. SS131590A, SS131650A
The Hon. Lydia M. Villareal, Judge

RESPONDENT'S REQUEST FOR JUDICIAL NOTICE

XAVIER BECERRA
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Attorneys for Respondent

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Deputy

Pursuant to Evidence Code sections 452, subdivision (c), and 459, subdivision (a), and rule 8.252(a) of the California Rules of Court, respondent requests that this court take judicial notice of the following documents, which are taken from the legislative histories of the enactment of and subsequent amendments to Penal Code section 22, and are therefore relevant to determining the intent of the Legislature in enacting those amendments.

1. Senate Bill No. 395 (1983-1984 Reg. Sess.), attached as Exhibit A;
2. Senate Committee on Judiciary, Analysis of Senate Bill No. 395 (1983-1984 Reg. Sess.), attached as Exhibit B;
3. Assembly Committee on Criminal Law & Public Safety, Analysis of Senate Bill No. 395 (1983-1984 Reg. Sess.) May 17, 1983, attached as Exhibit C;
4. Assembly Committee on Criminal Law & Public Safety, Analysis of Senate Bill No. 395 (1983-1984 Reg. Sess.) May 25, 1983, attached as Exhibit D;
5. Assembly Amendment to Senate Bill No. 395 (1983-1984 Reg. Sess.) June 16, 1983, attached as Exhibit E;
6. Senate Bill No. 1393 (1985-1986 Reg. Sess.), attached as Exhibit F;
7. Senate Committee on Judiciary, Analysis of Senate Bill No. 1393 (1985-1986 Reg. Sess.), attached as Exhibit G;
8. Senate Amendment to Senate Bill No. 1393 (1985-1986 Reg. Sess.) May 6, 1985, attached as Exhibit H;
9. Senate Committee on Judiciary, Analysis of Senate Bill No. 1393 (1985-1986 Reg. Sess.) as amended May 6, 1985, attached as Exhibit I;

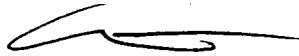
10. Senate Rules Committee, Office of Senate Floor Analyses, Analysis of Senate Bill No. 1393 (1985-1986 Reg. Sess.) as amended May 6, 1985, attached as Exhibit J;
11. Assembly Committee on Public Safety, Analysis of Senate Bill No. 1393 (1985-1986 Reg. Sess.) as amended May 6, 1985, attached as Exhibit K;
12. Senate Bill No. 1393, 3d reading (1985-1986 Reg. Sess.) Aug. 29, 1985, attached as Exhibit L;
13. California Department of Finance, Enrolled Bill Report on Senate Bill No. 1393 (1985-1986 Reg. Sess.) prepared for Governor Deukmejian (Sept. 5, 1985), attached as Exhibit M;
14. Youth & Adult Correctional Agency, Enrolled Bill Report on Senate Bill No. 1393 (1985-1986 Reg. Sess.) prepared for Governor Deukmejian (Sept. 6, 1985), attached as Exhibit N;
15. Senate Rules Committee, Office of Senate Floor Analyses, 3d reading analysis of Senate Bill No. 1571 (1995-1996 Reg. Sess.) as amended Mar. 19, 1996 attached as Exhibit O;
16. Senate Committee on Criminal Procedure, Analysis of Senate Bill No. 1571 (1995-1996 Reg. Sess.) as amended Mar. 19, 1996, attached as Exhibit P;

17. Senate Rules Committee, Office of Senate Floor Analyses,
Analysis of Senate Bill No. 1571 (1995-1996 Reg. Sess.) as amended
July 8, 1996 attached as Exhibit Q.

Dated: March 3, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
GERALD A. ENGLER
Chief Assistant Attorney General
JEFFREY M. LAURENCE
Senior Assistant Attorney General
DONNA M. PROVENZANO
Supervising Deputy Attorney General



AMIT KURLEKAR
Deputy Attorney General
Attorneys for Respondent

Exhibit A

Introduced by Senator Beverly

February 15, 1983

An act to add Section 1320.5 to the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

SB 395, as introduced, Beverly. Bail.

Existing law makes it a felony, punishable by a specified fine, or by imprisonment in the state prison or in the county jail, or by both a fine and imprisonment, for a person charged with a felony and released on his or her own recognizance to fail to appear.

This bill would make it a felony, punishable by a specified fine, or by imprisonment in the state prison or in the county jail, or by both a fine and imprisonment, for a person charged with a felony and released on bail to fail to appear.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would impose a state-mandated local program by mandating a new program or higher level of service on local law enforcement and correctional agencies.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue their other available remedies to seek reimbursement for these costs.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1320.5 is added to the Penal
2 Code, to read:

3 1320.5. Every person who is charged with the
4 commission of a felony, who is released from custody on
5 bail, and who in order to evade the process of the court
6 willfully fails to appear as required, is guilty of a felony,
7 and upon conviction shall be punished by a fine not
8 exceeding five thousand dollars (\$5,000) or by
9 imprisonment in the state prison, or in the county jail for
10 not more than one year, or by both such fine and
11 imprisonment. It shall be presumed that a defendant who
12 willfully fails to appear within 14 days of the date assigned
13 for his or her appearance intended to evade the process
14 of the court.

15 SEC. 2. No appropriation is made and no
16 reimbursement is required by this act pursuant to Section
17 6 of Article XIII B of the California Constitution or
18 Section 2231 or 2234 of the Revenue and Taxation Code
19 because the only costs which may be incurred by a local
20 agency or school district will be incurred because this act
21 creates a new crime or infraction, changes the definition
22 of a crime or infraction, changes the penalty for a crime
23 or infraction, or eliminates a crime or infraction.

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Exhibit B

SENATE COMMITTEE ON JUDICIARY

RECEIVED

BACKGROUND INFORMATION

FEB 24 1983

SB 395

CAPITOL OFFICE

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill? Please list the requestor's telephone number or, if unavailable, his address.

Los Angeles County District Attorney's Office

- (b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

AB 2717 (1979-80) (Alatorre)

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy? Existing law makes it a felony for a person charged with a felony and released on his or her own recognizance to fail to appear. However, there are currently no similar penalty provisions in the law which would apply to a person released on felony bail. SB 395 would correct this anomaly by making it a felony for a person charged with a felony and released on bail to fail to appear.

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2187 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.

SENATE COMMITTEE ON JUDICIARY

1983-84 Regular Session

SB 395 (Beverly)
As introduced
Penal Code
JGD

S
B
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9
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BAIL JUMPING

HISTORY

Source: L.A. District Attorney

Prior Legislation: AB 2717 (1980) - Died on
Assembly inactive file

Support: Attorney General

Opposition: No Known

KEY ISSUE

SHOULD FAILURE TO APPEAR ON FELONY CHARGES AFTER
RELEASE ON BAIL BE A FELONY?

PURPOSE

Existing law makes it an alternative felony/misdemeanor (with a possible \$5,000 fine) to fail to appear on felony charges if released on one's own recognizance (OR), and a misdemeanor to fail to appear on misdemeanor charges if released on OR.

This bill would make it an alternative felony/misdemeanor with a possible \$5,000 fine to fail to appear within 14 days of the date for appearance if released on bail from a felony charge.

The purpose of the bill is to deter bail jumping.

(More)

COMMENT

1. Further deterrence

This bill would criminalize failure to appear after release from a felony charge was accomplished by posting bail.

IS NOT THE LOSS OF THE BAIL SUFFICIENT TO DETER BAIL JUMPING IN MOST CASES?

IS THIS BILL NECESSARY?

2. Charging errors

Release on bail often occurs according to a bail schedule before the defendant is formally arraigned. The initial charge may thereafter be reduced from a felony to a misdemeanor at or before arraignment.

IF AN ARRESTING OFFICER MISTAKENLY CHARGES SOMEONE WITH A FELONY, SHOULD JUMPING BAIL ON SUCH A CHARGE BE A FELONY?

3. Intentional failure to appear

This bill would punish only willful evasions of the process of the court.

It would be "presumed" that a defendant who failed to appear within 14 days of his or her appearance intended to evade court process. The same presumption is provided in existing law for "OR jumping".

Exhibit C

ASSEMBLY COMMITTEE ON CRIMINAL LAW AND PUBLIC SAFETY
BYRON SHER, Chairman

State Capitol - Room 2136
(916) 445-3268

MAY 17 1983

BILL ANALYSIS WORKSHEET

BILL NO.: Senate Bill 395 AUTHOR: Senator Beverly

1. Source and background of the bill:

- (a) What, if any, person, organization or governmental entity requested introduction?
Los Angeles County District Attorney's Office (Doug McKee)
- (b) Has a similar bill been before either this session or a previous session of the Legislature? If so, please identify the session, bill number and disposition of the bill.
AB 2717 (Alatorre - 1979-80)
- (c) Has there been an interim committee report on the bill?
If so, please identify the report.
No.
- (d) Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.
- (e) Please attach copies of letters of support or opposition from any group, organization or governmental agency which has contacted you either in support of or opposition to the bill.

2. Amendments prior to hearing:

- (a) Do you plan any substantive amendments to this bill prior to hearing? Yes _____ No X
- (b) If the answer to (a) is yes, please explain briefly the substance of the amendments to be prepared.

3. Need for the bill:

- (a) Please describe the specific problem or deficiency in current law that this bill seeks to remedy. Existing law makes it a misdemeanor for a person charged with a misdemeanor and released on his or her own recognizance, or on bond, to fail to appear. Likewise, an individual charged with a felony and released on his or her own recognizance currently is guilty of a felony for willful failure to appear.
- (b) Please present specific facts or examples that demonstrate the need for this bill. Senate Bill 395 would correct the anomaly in existing law, which fails to impose a criminal penalty for failure to appear on a felony bail release.
- (c) If no facts or examples are presented, please explain why the bill is nonetheless needed.
- (d) If the proposed remedy in the bill goes beyond the need demonstrated by your facts or examples, please explain why.

4. Costs imposed by this bill:

Please estimate the cost or savings to any state or local law enforcement or correctional agency, including the judicial system, imposed by this bill, and explain the format used to estimate the cost or savings. Legislative Analyst reports undetermined General Fund costs to the Department of Corrections and undetermined local law enforcement and incarceration costs. Republican Caucus estimates state and local costs as minor.

RETURN THIS FORM TO: Ann Boone, Committee Secretary
Criminal Law and Public Safety Committee
Room 2136, State Capitol

Exhibit D

ASSEMBLY COMMITTEE ON CRIMINAL LAW
AND PUBLIC SAFETY

BYRON D. SHER, CHAIRMAN

STATE CAPITOL, ROOM 2136
(916) 445-3268

BILL NO: SB 395

FISCAL: YES

URGENCY: NO

HEARING
DATE: 5/25/83

BILL NO: SB 395 (As introduced 2/15/83)

AUTHOR: BEVERLY

PRIOR ACTION:

Senate Judiciary	4/6/83	(8-0)	
Senate Finance	4/26/83	(11-0)	(To Consent Calendar)
Senate Floor	5/2/83	(36-0)	

SUBJECT: SHOULD IT BE A SEPARATE OFFENSE FOR A PERSON CHARGED WITH A FELONY, BUT RELEASED ON BAIL, TO WILLFULLY FAIL TO APPEAR?

DIGEST:

Under existing law (Penal Code Section 1320(b)), it is a felony punishable by a fine not to exceed \$5000, or by imprisonment in state prison, or in the county jail for not more than one year, for a person charged with a felony and released on his or her own recognizance (OR), to willfully fail to appear. This bill would make these same sanctions applicable to a defendant charged with a felony but released on bail who willfully failed to appear.

STAFF COMMENTS:

1. Need For Bill. The sponsor of this bill, the Los Angeles County District Attorney's office, points out that there is a gap in existing law. It is a separate offense (a misdemeanor) for a person charged with a misdemeanor and released pursuant to Penal Code Section 1269d (10% bail provision) on bail or OR, to fail to appear. Similarly, it is a separate offense for a person charged with a felony and released OR to fail to appear. It is not a separate offense, however, for a person charged with a felony and released on bail, to fail to appear. This bill seeks to remedy this oversight in the law by making it a separate offense (a felony) to fail to appear when released on bail on a felony charge. Further, this bill is intended to deter felony bail jumping. Is felony bail jumping a significant problem? The proponents have presented no data or statistics to show the percentage of felons released on bail who fail to appear. Is this bill necessary?

2. Does Failure To Appear Justify A Felony Charge? Does mere failure to appear, as promised when released on bail, justify imposition of felony sanctions? This bill would subject a defendant who failed to appear on a felony charge, even if the defendant was the victim of misidentification or was acquitted on the underlying charge, to a fine of up to \$5000, to a prison term of 16 months, 2 or 3 years, or to up to one year in county jail, or to both such fine and imprisonment. Are such severe sanctions appropriate simply for failure to appear? Note, however, that these same sanctions currently apply to a defendant charged with a felony and released OR, who fails to appear. Similarly, a defendant charged with a misdemeanor and released pursuant to Penal Code Section 1269d (10% bail provision) on bail or released OR, is guilty of a misdemeanor merely for failure to appear.

3. Does Bill Authorize A Double Sanction? A person charged with a felony who is released on bail and who willfully fails to appear, automatically forfeits bail. Felony bail may be a significant amount: for example, \$5000 if the charged offense is robbery; \$15,000 if the charged offense is first degree burglary; \$2000 if the charged offense is grand theft; and \$5000 if the charged offense is sale of less than one ounce of heroin or cocaine (Bail data taken from Sacramento County Felony Bail Schedule.). If a felony bail jumper is subject to an additional \$5000 fine, as this bill proposes, does this constitute a double penalty for persons charged with a felony and released on bail? A person charged with a felony and released OR would be subject only to a \$5000 fine. The apparent inequity in financial consequences to these two similarly situated categories of defendants could be avoided if the bill were amended to provide that a defendant who has forfeited bail shall have all or a portion of such forfeiture credited against any fine imposed by the court. The author might wish to consider the following amendment:

On page 2, strike the period in line 11 and insert:

provided, however, that the court may credit all or a portion of any bail forfeited for failure to appear and demonstrated to the satisfaction of the court as having been paid to the surety by the defendant, as a setoff against any fine imposed by the court.

4. Unconstitutional Presumption? Opponents and proponents alike point out that the presumption (in the bill) that a defendant who willfully fails to appear within 14 days intended to evade the process of the court, may be unconstitutional under People v. Roder (1983) 33 Cal. 3d 491 which held that mandatory presumptions violate due process of law by relieving the prosecution of the burden of proving beyond a reasonable doubt an essential element of the crime. In accord with a suggestion by the Attorney General, the author might wish to consider the following amendment:

On page 2, delete lines 11 through 14 and insert:

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.

SOURCE: Los Angeles County District Attorney's Office

SUPPORT: Attorney General
California Peace Officers Association (CPOA)
California Union of Safety Employees (CAUSE)
Peace Officers Research Association of California (PORAC)
Peace Officers Association of Los Angeles County

OPPOSITION: Office of the State Public Defender

CONSULTANT: EDGAR A. KERRY

SB 395

aeb

3876-0075

Exhibit E

AMENDED IN ASSEMBLY JUNE 16, 1983

SENATE BILL

No. 395

Introduced by Senator Beverly

February 15, 1983

An act to add Section 1320.5 to the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

SB 395, as amended, Beverly. Bail.

Existing law makes it a felony, punishable by a specified fine, or by imprisonment in the state prison or in the county jail, or by both a fine and imprisonment, for a person charged with a felony and released on his or her own recognizance to fail to appear.

This bill would make it a ~~felony, punishable by a specified fine, or by imprisonment in the state prison or in the county jail, or by both a fine and imprisonment,~~ *misdemeanor* for a person charged with a felony and released on bail to fail to appear.

Article XIII B of the California Constitution and Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disclaiming these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement.

This bill would impose a state-mandated local program by mandating a new program or higher level of service on local law enforcement and correctional agencies.

This bill would provide that no appropriation is made by this act for the purpose of making reimbursement pursuant to the constitutional mandate or Section 2231 or 2234, but would recognize that local agencies and school districts may pursue

their other available remedies to seek reimbursement for these costs.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1320.5 is added to the Penal
2 Code, to read:

3 1320.5. Every person who is charged with the
4 commission of a felony, who is released from custody on
5 bail, and who in order to evade the process of the court
6 willfully fails to appear as required, is guilty of a ~~felony;~~
7 ~~and upon conviction shall be punished by a fine not~~
8 ~~exceeding five thousand dollars (\$5,000) or by~~
9 ~~imprisonment in the state prison, or in the county jail for~~
10 ~~not more than one year, or by both such fine and~~
11 ~~imprisonment. It shall be presumed that a defendant who~~
12 ~~willfully fails to appear within 14 days of the date assigned~~
13 ~~for his or her appearance intended to evade the process~~
14 ~~of the court. misdemeanor. Willful failure to appear~~
15 ~~within 14 days of the date assigned for appearance may~~
16 ~~be found to have been for the purpose of evading the~~
17 ~~process of the court.~~

18 SEC. 2. No appropriation is made and no
19 reimbursement is required by this act pursuant to Section
20 6 of Article XIII B of the California Constitution or
21 Section 2231 or 2234 of the Revenue and Taxation Code
22 because the only costs which may be incurred by a local
23 agency or school district will be incurred because this act
24 creates a new crime or infraction, changes the definition
25 of a crime or infraction, changes the penalty for a crime
26 or infraction, or eliminates a crime or infraction.

Exhibit F

Introduced by Senator Deddeh

March 8, 1985

An act to amend Section 1320.5 of the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

SB 1393, as introduced, Deddeh. Bail.

Existing law makes it a misdemeanor for a person charged with a felony and released on bail to fail to appear.

This bill would make the above offense a felony. A person convicted of this offense would be punishable by imprisonment in the state prison for a term equal to the term of imprisonment which the court may impose upon the person for a conviction of the felony for which the person was initially charged. However, the term of imprisonment shall not exceed 10 years.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1320.5 of the Penal Code is
2 amended to read:
3 1320.5. Every person who is charged with the
4 commission of a felony, who is released from custody on
5 bail, and who in order to evade the process of the court
6 willfully fails to appear as required, is guilty of a
7 ~~misdemeanor~~ felony. Upon a conviction under this
8 section, the person shall be imprisoned in the state prison
9 for a term equal to the term of imprisonment which the
10 court may impose upon the person for a conviction of the
11 felony for which the person was initially charged.
12 However, the term of imprisonment imposed pursuant to

1 *this section shall not exceed 10 years. Willful failure to*
2 *appear within 14 days of the date assigned for appearance*
3 *may be found to have been for the purpose of evading the*
4 *process of the court.*

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Exhibit G

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

SB 1393

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill? Please list the requestor's telephone number or, if unavailable, his address.

Los Angeles Dist. Atty

- (b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

None

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

Unknown

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

Current law makes FTA on a felony a misdemeanor. A defendant may knowingly fail to appear while on bail, knowing that additional time would be unlikely if convicted on the underlying felony, and he/she gets the additional benefit of letting evidence get cold, witnesses may disappear or be coerced, etc., so there is less chance of conviction on the felony. This bill would make the FTA also a felony, making failure to appear less risk-effective. If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

L.A. Dist. Atty is preparing a background package. I'll get it to you when completed.

Contact Les Kleinberg, SOR 5-1727.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2187 AS SOON AS POSSIBLE. THE COMMITTEE STAFF CANNOT SET THE BILL FOR A HEARING UNTIL THIS FORM HAS BEEN RETURNED.

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1985-86 Regular Session

SB 1393 (Deddeh)	S
As introduced	B
Penal Code	
PAW	1
	3
<u>BAIL:</u>	9
<u>FAILURE TO APPEAR</u>	3

HISTORY

Source: Los Angeles District Attorney

Prior Legislation: None

Support: CPOA; California Police Chiefs'
Association; California State
Sheriffs' Association; CDAA

Opposition: ACLU

KEY ISSUE

SHOULD IT BE A FELONY TO FAIL TO APPEAR AS
PFQUIRED WHEN CHARGED WITH A FELONY AND RELEASED
ON BAIL?

PURPOSE

Existing law makes it a misdemeanor for a person
charged with a felony and released on bail to fail
to appear.

This bill would make the above offense a felony.
Upon conviction under this section, the person
would be imprisoned in the state prison for a term
equal to the term imposed by the court for the

(More)

underlying offense or 10 years, whichever is shorter.

The purpose of this bill is to deter persons from failing to appear for court dates when released on bail.

COMMENT

1. Need for legislation

According to the Los Angeles District Attorney, the sponsor of this bill, failure to appear (FTA) when released on bail is occurring with alarming frequency in Los Angeles County. Because a conviction in an FTA case results in only misdemeanor penalties, the sponsor claims that defendants accused of felonies with harsh penalties will fail to appear in order to postpone hearings and waste time, hoping that witnesses will disappear or forget what happened. Consequently, a defendant receives six months in jail and/or a \$1000 fine rather than a state prison term and larger fines.

This bill would impose felony penalties with a term of imprisonment imposed equal to that of the underlying offense. The sponsor hopes that this bill will deter defendants from failing to appear when released on bail.

2. Felony offense to parallel other FTA offenses

Under existing law, FTA on a felony offense when released on bail is a misdemeanor, although a persons who FTA on an offense when released on their own recognizance (OR) is guilty of either a felony or a misdemeanor

(More)

with penalties of a fine of up to \$10,000 and imprisonment in county jail for one year, or in a state prison for 16 months, one year, or two years.

This bill would make it a felony for FTA when released on bail. However, the sentences imposed under this bill could be much higher than those in place under the provision relating to FTA in CR cases.

SHOULD NOT THE PENALTIES FOR FTA BE THE SAME WHETHER A PERSON IS RELEASED ON BAIL OR OUT ON HER OWN RECOGNIZANCE?

3. Different penalties--same offense

This bill would impose different penalties on different people for the same offense, i.e. FTA. If one person was arrested on a felony offense, failed to appear, and later received a two year sentence on the original offense, that person would receive a total of four years in jail. However, if another person was arrested for a felony, failed to appear, and later received an eight year sentence, this person would receive a 16 year sentence. Thus one person would receive an eight year sentence for the FTA--the same offense for which the first person received two years.

SHOULD NOT THE SAME CRIME BE PUNISHED WITH THE SAME PENALTIES?

4. Opponents' arguments

The opponents of this bill claim that because FTA is not more than contempt of court, the imposition of felony penalties is too severe.

Exhibit H

SENATE BILL

No. 1393

Introduced by Senator Deddeh

March 8, 1985

An act to amend Section 1320.5 of the Penal Code, relating to bail.

LEGISLATIVE COUNSELS DIGEST

SB 1393, as amended, Deddeh. Bail.

Existing law makes it a misdemeanor for a person charged with a felony and released on bail to fail to appear.

This bill would make the above offense a felony. A person convicted of this offense would be punishable by a fine of \$10,000, or by imprisonment in the state prison for a term equal to the term of imprisonment which the court may impose upon the person for a conviction of the felony for which the person was initially charged. However, the term of imprisonment shall not exceed 10 years, by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

To the extent that the bill would extend the amount of time to one year that a person convicted of the above may be imprisoned in county jail, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1320.5 of the Penal Code is
2 amended to read:

3 1320.5. Every person who is charged with the
4 commission of a felony, who is released from custody on
5 bail, and who in order to evade the process of the court
6 willfully fails to appear as required, is guilty of a felony.
7 Upon a conviction under this section, ~~the person shall be~~
8 ~~imprisoned in the state prison for a term equal to the~~
9 ~~term of imprisonment which the court may impose upon~~
10 ~~the person for a conviction of the felony for which the~~
11 ~~person was initially charged. However, the term of~~
12 ~~imprisonment imposed pursuant to this section shall not~~
13 ~~exceed 10 years. Willful failure to section, the person~~
14 ~~shall be punished by a fine not exceeding ten thousand~~
15 ~~dollars (\$10,000) or by imprisonment in the state prison,~~
16 ~~or in the county jail for not more than one year, or by both~~
17 ~~the fine and imprisonment. Willful failure to appear~~
18 ~~within 14 days of the date assigned for appearance may~~
19 ~~be found to have been for the purpose of evading the~~
20 ~~process of the court.~~

21 SEC. 2. *No reimbursement is required by this act*
22 *pursuant to Section 6 of Article XIII B of the California*
23 *Constitution because the only costs which may be*
24 *incurred by a local agency or school district will be*
25 *incurred because this act creates a new crime or*
26 *infraction, changes the definition of a crime or infraction,*
27 *changes the penalty for a crime or infraction, or*
28 *eliminates a crime or infraction.*

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Exhibit I

SENATE COMMITTEE ON JUDICIARY
Bill Lockyer, Chairman
1985-86 Regular Session

SB 1393 (Deddeh)	S
As amended May 6	B
Penal Code	
PAW	1
	3
<u>BAIL:</u>	9
<u>FAILURE TO APPEAR</u>	3

HISTORY

Source: Los Angeles District Attorney

Prior Legislation: None

Support: CPOA; California Police Chiefs'
Association; California State
Sheriffs' Association; CDA

Opposition: No known

KEY ISSUE

SHOULD IT BE A FELONY TO FAIL TO APPEAR AS
REQUIRED WHEN CHARGED WITH A FELONY AND RELEASED
ON BAIL?

PURPOSE

Existing law makes it a misdemeanor for a person
charged with a felony and released on bail to fail
to appear.

This bill would make the above offense either a
misdemeanor or a felony. Upon conviction under
this section, the person would be imprisoned in
either the county jail for one year or in the

(More)

state prison for a term of 16 months, one year, or two years.

The purpose of this bill is to deter persons from failing to appear for court dates when released on bail.

COMMENT

1. Need for legislation

According to the Los Angeles District Attorney, the sponsor of this bill, failure to appear (FTA) when released on bail is occurring with alarming frequency in Los Angeles County. Because a conviction in an FTA case results in only misdemeanor penalties, the sponsor claims that defendants accused of felonies with harsh penalties will fail to appear in order to postpone hearings and waste time, hoping that witnesses will disappear or forget what happened. Consequently, a defendant receives six months in jail and/or a \$1000 fine rather than a state prison term and larger fines.

This bill would allow courts to impose felony penalties with a term of imprisonment longer than they are presently allowed to impose. The sponsor hopes that this bill will deter defendants from failing to appear when released on bail.

2. Felony offense to parallel other FTA offenses

Under existing law, FTA on a felony offense when released on bail is a misdemeanor, although persons who FTA on an offense when released on their own recognizance (OR) is guilty of either a felony or a misdemeanor

(More)

with penalties of a fine of up to \$10,000 and imprisonment in county jail for one year, or in a state prison for 16 months, one year, or two years.

This bill would impose identical penalties for FTA when released on bail.

3. Opposition removed

As introduced, the bill had opposition both because the penalties were too severe and because they were not uniformly applied. The recent amendments remove the opposition.

Exhibit J

CONSENT

<p>SENATE RULES COMMITTEE</p> <p>Office of Senate Floor Analyses 1100 J Street, Suite 305 445-6614</p>	<p>Bill No. SB 1393</p> <p>Author: Deddeh (D)</p> <p>Amended: 5/6/85</p> <p>Vote Required: Majority</p>
---	--

Committee Votes:

Senate Floor Vote:

COMMITTEE: JUDICIARY		
BILL NO.: SB 1393		
DATE OF HEARING: 5-7-85		
SENATORS:	AYE	NO
Doolittle	✓	
Keene	✓	
Marks	✓	
Patris	✓	
Presley	✓	
Torres		
Watson	✓	
Davis (VC)	✓	
Lockyer (Ch)	✓	
TOTAL:	8	0

COMMITTEE: APPROPRIATIONS		
BILL NO.: SB 1393		
DATE OF HEARING: 5-29-85		
SENATORS:	AYE	NO
Ayala	✓	
Boatwright	✓	
Campbell	✓	
Deddeh	✓	
Billis	✓	
Foran	✓	
Maddy	✓	
Beverly (VC)	✓	
Alquist (Ch)	✓	
TOTAL:	9	0

Assembly Floor Vote:

SUBJECT: Bail -- failure to appear

SOURCE: Los Angeles District Attorney

DIGEST: This bill would change from a misdemeanor to a felony, the failure to appear in court of persons charged with felony offenses.

ANALYSIS: This bill increases criminal penalties for any person who has been charged with a felony and released on bail, and who subsequently fails to appear in court. Under existing law, such an offense is punishable by imprisonment in county jail for up to six months or a fine up to \$1,000, or both imprisonment and a fine. This bill would make the offense punishable by imprisonment in state prison for 16 months, 2 or 3 years, or in county jail up to one year, or by a fine up to \$10,000, or both imprisonment and a fine.

According to the Los Angeles District Attorney, the sponsor of this bill, failure to appear (FTA) when released on bail is occurring with alarming frequency in Los Angeles County. Because a conviction in an FTA case results in only misdemeanor penalties, the sponsor claims that defendants accused of felonies with harsh penalties will fail to appear in order to postpone hearings and waste time, hoping that witnesses will disappear or forget what happened. Consequently, a defendant receives six months in jail and/or a \$1,000 fine, rather than a state prison term and larger fines.

FISCAL EFFECT: Appropriation: No Fiscal Committee: Yes Local: Yes

According to the Legislative Analyst, the bill could result in unknown annual General Fund costs due to additional commitments to state prison. The

CONTINUED

Department of Corrections advises it cannot estimate the impact of the bill on the state's prison population because of the lack of data on the number of cases that would be affected by its provisions.

The bill could result in unknown additional revenue to local governments and certain state special funds from increased fines and penalty assessments.

Mandated Local Program. The bill would result in unknown, if any, local law enforcement and incarceration costs. The bill contains a crimes and infractions disclaimer.

SUPPORT: (Verified 5/28/85)

Los Angeles District Attorney (source)
California Peace Officers Association
California Police Chiefs Association
California State Sheriffs Association
California District Attorneys Association
San Diego County Sheriff's Department

OPPOSITION: (Verified 5/28/85)

ACLU

ARGUMENTS IN SUPPORT: The California District Attorneys Association declares that this bill would raise the stakes for a person who would jump bail to escape prosecution for a felony, thus deterring those who would risk the misdemeanor for the possibility of escape from felony prosecution.

ARGUMENTS IN OPPOSITION: According to the ACLU, such conduct (failing to appear) is contempt of court and should be treated as such, not with the same penalties as criminal conduct. Under present law, a person may be confined and may lose financial interests posted as security. This is more than sufficient.

VW:ctl 5/28/85 Senate Floor Analyses

Exhibit K

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Larry Stirling, Chair

1100 J Street, Room 404
Sacramento, CA 95814
(916) 445-3268

BILL NO.: SB 1393

FISCAL: YES

URGENCY: NO

HEARING
DATE: 7/8/85

CONSULTANT: Susan Shaw Goodman

BILL NO.: Senate Bill 1393 (as amended 5/6/85)

AUTHOR: DEDDEH

SUBJECT: SHOULD THE WILLFUL FAILURE TO APPEAR IN COURT WHEN RELEASED ON BAIL FOR A FELONY OFFENSE BE PUNISHABLE AS A FELONY/MISDEMEANOR?

PRIOR ACTION

Senate Judiciary:	<u>8</u>	ayes;	<u>0</u>	noes	CONSENT
Senate Appropriations:	<u>9</u>	ayes;	<u>0</u>	noes	CONSENT
Senate Floor:	<u>38</u>	ayes;	<u>0</u>	noes	CONSENT

DIGEST

Under current law it is a misdemeanor, punishable by a maximum of six months in jail and/or a \$1,000 fine, for a person charged with a felony and released on bail to willfully fail to appear in court.

This bill would make the above offense a "wobbler" (felony/misdemeanor alternative) punishable by a maximum \$10,000 fine and/or three year imprisonment.

COMMENTS

- 1) Need. According to the Los Angeles District Attorney, the sponsor of this bill, failure to appear (FTA) when released on bail is occurring with alarming frequency in Los Angeles County. Because a conviction in an FTA case results in misdemeanor penalties, the sponsor claims that defendants accused of felonies with harsh penalties will fail to appear in order to postpone hearings and waste time, hoping that witnesses will disappear or forget what happened. Consequently, according to the sponsor, a defendant receives six months in jail and/or a \$1,000 fine rather than a state prison term and larger fines.

"There are approximately 200 cases a year in Los Angeles County where defendants jump bail, are subsequently apprehended, but the underlying felony cannot be prosecuted due to the unavailability or poor recollection of witnesses."

The sponsor hopes that this bill will deter defendants from failing to appear when released on bail.

Senate Bill 1393
(as amended 5/6/85)

- 2) Bail Forfeiture And Confinement: Currently, a defendant who FTA's will, in addition to being prosecuted for the misdemeanor offense, forfeit his or her bail and, in all likelihood, be placed back in custody with a higher or no bail.

Once in custody the defendant would in all probability withdraw any time waivers and seek a speedy trial. Is it necessarily to the defendant's advantage to FTA?

- 3) FTA's When Released O.R. Under current law failure to appear on a felony offense when released on one's own recognizance is punishable as a wobbler. Proponents assert that failure to appear while released on bail should have an identical punishment.

Is this equitable in light of the fact that when on bail the defendant has posted money and/or property?

SOURCE: Los Angeles District Attorney

SUPPORT: California District Attorney's Association
California Peace Officer's Association
California Police Chief's Association
California State Sheriff's Association
San Diego County Sheriff's Department
City of San Diego

OPPOSITION: None on file

SSG:jf

Exhibit L

ASSEMBLY THIRD READING

SB 1393 (Deddeh) - As Amended: May 6, 1985

SENATE VOTE: 38-0

ASSEMBLY ACTIONS:

COMMITTEE _____ PUB. S. _____ VOTE 6-0 COMMITTEE _____ W. & M. _____ VOTE 22-0

Ayes: _____ Ayes: _____

Nays: _____ Nays: _____

DIGEST

Under current law it is a misdemeanor, punishable by a maximum of six months in jail and/or a \$1,000 fine, for a person charged with a felony and released on bail to willfully fail to appear in court.

This bill makes the above offense a "wobbler" (felony/misdemeanor alternative) punishable by a maximum \$10,000 fine and/or three years imprisonment.

FISCAL EFFECT

The bill could result in unknown annual General Fund costs due to additional commitments to state prisons, according to the Legislative Analyst. The bill could also result in unknown additional revenue to local governments and certain state special funds from increased fines and penalty assessments. The bill would result in unknown, if any, local law enforcement and incarceration costs. The bill contains a crimes and infractions disclaimer.

COMMENTS

- 1) Need. According to the Los Angeles District Attorney, the sponsor of this bill, failure to appear (FTA) when released on bail is occurring with alarming frequency in Los Angeles County. Because a conviction in an FTA case results in misdemeanor penalties, the sponsor claims that defendants accused of felonies with harsh penalties fail to appear in order to postpone hearings and waste time, hoping that witnesses will disappear or forget what happened. Consequently, according to the sponsor, a defendant receives six months in jail and/or a \$1,000 fine rather than a state prison term and larger fines.

- continued -

The sponsor states "there are approximately 200 cases a year in Los Angeles County where defendants jump bail, are subsequently apprehended, but the underlying felony cannot be prosecuted due to the unavailability or poor recollection of witnesses."

- 2) FTA's When Released on Own Recognizance. Under current law, failure to appear on a felony offense when released on one's own recognizance is punishable as a wobbler. Proponents assert that failure to appear while released on bail should have the identical punishment.
- 3) Bail Forfeiture and Confinement. Currently, a defendant who fails to appear, in addition to being prosecuted for the misdemeanor offense, forfeits his or her bail and, in all likelihood, will be returned to custody with a higher bail or no bail.

Susan Shaw Goodman
445-3268
8/29/85:apubs

Exhibit M

Honorable Wadie Deddeh
 Member of the Senate
 State Capitol, Room 3048
 Sacramento, CA 95814

DEPARTMENT
 Finance

BILL NUMBER
 SB 1393

AUTHOR
 Deddeh

DATE LAST AMENDED
 May 6, 1985

SUBJECT

SB 1393 would change from a misdemeanor to a felony the failure to appear in court by persons charged with felony offenses.

SUMMARY OF REASONS FOR SIGNATURE

This bill is intended to enhance the deterrents against the failure to appear in court. The fiscal impact of this bill upon the State's prison system is estimated to be minor.

FISCAL SUMMARY--STATE LEVEL

Department/Agency or Revenue Type	Code	SO LA CO RV	(Fiscal Impact by Fiscal Year)						Code	Fund
			(Dollars in Thousands)							
			FC	1984-85	FC	1985-86	FC	1986-87		
Corrections	5240	SO		--	C	\$25	C	\$50	001	General

ANALYSIS

A. Specific Findings

Current law makes it a misdemeanor to fail to appear in court by persons charged with felony acts.

SB 1393 would make the failure to appear a felony punishable by a fine of up to \$10,000 or imprisonment in State prison, or imprisonment in county jail for not more than one year or by both fine and imprisonment.

The Department of Corrections (CDC) is neutral on this bill. CDC reports that data regarding this issue is not available, but CDC estimates that the fiscal impact of this bill would be negligible.

B. Fiscal Analysis

The fiscal impact of this bill upon the State's prison system is estimated to be minor (i.e., less than \$100,000 per year).

RECOMMENDATION
 Sign the Bill.

Department Director Date
[Signature] SEP 05 1985

Principal Analyst	Date	Program Budget Manager	Date	Governor's Office use
(252) W. Fitzer	9-5-85	LaFenus Standell	9/5/85	Position noted
<i>[Signature]</i>		<i>[Signature]</i>		Position approved
				Position disapproved
				by: date:

ENROLLED BILL REPORT Form DF-44 (Rev 1/85 500 Pk)
 CJ:1277A/81100

Exhibit N

ENROLLED BILL REPORT

AGENCY	YOUTH AND ADULT CORRECTIONAL AGENCY	BILL NUMBER	SB 1393
DEPARTMENT, BOARD OR COMMISSION	CORRECTIONS	AUTHOR	DEDDEN

Increases the penalty for any person, as specified, on bail who fails to appear in court from a misdemeanor to a misdemeanor/felony (wobbler).

IMPACT ASSESSMENT

Current law, Penal Code (PC) Section 1320, provides that every person who is charged with the commission of a 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. If the person is charged with the commission of a felony, the person is guilty of a felony, punishable by imprisonment in state prison for 16 months, 2 or 3 years, or the county jail for not more than one year, or a fine not exceeding \$10,000, or by both fine and imprisonment.

Current law, PC Section 1320.5, provides that every person who is charged with 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 misdemeanor.

This bill increases the punishment for the latter to a misdemeanor/felony (wobbler).

This bill could result in persons new to prison and felons spending additional time in state prison. A person released from custody on bail who failed to appear, who was subsequently tried and acquitted, could still receive the felony punishment for the initially charged offense under the provisions of this bill. If the person who failed to appear was initially charged with a felony, but was subsequently convicted of a misdemeanor, he or she could also receive the proposed Section 1320.5 felony punishment. These persons would be new to the prison system. In addition, such offenders who failed to appear, but who are subsequently convicted of a felony (other than the proposed Section 1320.5 felony), would spend additional time in prison because of the proposed Section 1320.5 felony penalty.

PC Section 1320.5 was added to the Penal Code by Chapter 403, Statutes of 1983, which took effect January 1, 1984. Therefore, misdemeanor data are not yet available at the Bureau of Criminal Statistics (BCS) which identify the number of persons convicted of a violation of PC 1320.5. It would not be possible to estimate the penalty to be received for a violation of PC 1320.5, as proposed under this bill.

RECOMMENDATION

SIGN THE BILL

DEPARTMENT HEAD	DATE	AGENCY HEAD	DATE
<i>[Signature]</i>	9/6/85	<i>[Signature]</i>	9/6/85

ENROLLED BILL REPORT
SB 1393 (Daddeh)
Page Two

ARGUMENTS PRO AND CON

PRO: According to the Los Angeles District Attorney, the sponsor of this bill, failure to appear (FTA) when released on bail is occurring with alarming frequency in Los Angeles County. Because a conviction in an FTA case results in misdemeanor penalties, the sponsor claims that defendants accused of felonies with harsh penalties will fail to appear in order to postpone hearings and waste time, hoping that witnesses will disappear or forget what happened. Consequently, according to the sponsor, a defendant receives six months in jail and/or a \$1,000 fine rather than a state prison term and larger fines. The sponsor hopes that this bill will deter defendants from failing to appear when released on bail.

CON: None. There is no opposition to this bill.

RECOMMENDATION: SIGN THE BILL

Exhibit O

CA B. An., S.B. 1571 Sen., 3/19/1996

California Bill Analysis, Senate Floor, 1995-1996 Regular Session, Senate Bill 1571

March 19, 1996
California Senate
1995-1996 Regular Session

SENATE RULES COMMITTEE

Office of Senate Floor Analyses

THIRD READING

Bill No: SB 1571

Author: Kopp (I)

Amended: 3/19/96

Vote: 21

SENATE CRIMINAL PROCEDURE COMMITTEE: 4-0, 4/9/96

AYES: Kopp, Polanco, Boatwright, Marks

NOT VOTING: Johnson, Watson

SUBJECT: Bail: failure to appear

SOURCE: California Bail Agents Association

DIGEST: This bill authorizes the court, for good cause, to extend the existing 180-day limitation on return of bail.

This bill also provides that the existing crimes of failure to appear in court after being released on bail or on one's own recognizance be extended to persons convicted of, as well as charged with, a crime.

ANALYSIS: Under existing law, the undertaking or deposit of bail is forfeited if the defendant fails to appear for further court proceedings. Upon the appearance or surrender of the defendant within 180 days of the forfeiture, or within 180 days of the mailing of a notice of forfeiture, the court is required to vacate the forfeiture and exonerate the bond. The 180-day period is tolled in the case of a temporary disability.

This bill authorizes the surety or depositor to file a motion, based upon good cause, for an order extending the 180-day period. The motion would include a declaration or affidavit stating the reasons showing good cause to extend the period. The motion would have to be served on the prosecuting agency at least 10 days prior to the hearing. At the hearing, upon a showing of good cause, the court could order the period extended up to 180 additional days.

Existing law provides that it is a misdemeanor to willfully fail to appear in court after being charged with a misdemeanor and being released on one's own recognizance, punishable by up to six months in jail and/or a fine not exceeding \$1,000. (Penal Code Section 1320(a).) Existing law provides that it is an alternative felony/misdemeanor (wobbler) to willfully fail to appear in court after being charged with a felony and being released on one's own recognizance or on bail, punishable by up to one

year in jail or by 16 months, 2 years, or 3 years in state prison, and/or a fine of up to \$5,000 or \$10,000. (Penal Code Sections 1320(b), 1320.5.)

This bill extends those penalties to persons convicted of, as well as charged with, misdemeanors or felonies who do not appear in court.

The purpose of this bill is to allow bail forfeiture to be stayed beyond the current statutory limitation for good cause and to clarify that the prohibitions against failure to appear apply to probation revocation hearings and cases on appeal as well as to pre-convictions hearings.

Background

Under existing law it is a crime for a person accused of a crime to fail to appear in court after release on bail or on his or her own recognizance. This provision is also often used to ensure appearance when a defendant is awaiting a probation violation hearing.

However, in *People v. Stripe*, ___ Cal.App.4th ___, 96 Daily Journal D.A.R. 2161, decided February 29, 1996, the defendant pleaded no contest to a felony. A petition to revoke probation was filed and he was released on bail. He failed to appear in court and was convicted under Penal Code Section 1320.5, failing to appear after being charged with a felony and being released on bail.

The appellate court overturned the conviction, noting that the clear language of the law applies only to persons "charged with the commission of a felony", while the defendant had already been convicted of a felony and was on probation.

"The people's construction [that 'charge' includes 'conviction'] is not reasonable because it assumes a bizarre interpretation of the word "charge." Moreover, if, as the People suggest, the Legislature wanted to penalize all felons or persons charged with felonies who fail to appear after release on bail it would not have employed the term "charge," it would simply have said it is a crime for any person to violate the terms of bail having been charged with or convicted of a felony." (Underline added.)

The purpose of this bill is to clarify the Legislative intent that a person convicted of a crime and release on bail or on his or her own recognizance should suffer the same consequences as a person charged with, but not convicted of, the crime.

California's "Three Strikes" law, AB 971 (Jones/Costa, Chapter 12, Statutes of 1994), provides that the conviction of any felony with a prior conviction of a violent or serious felony must result in twice the term otherwise provided as punishment. In addition, probation may not be granted, there is no aggregate term limitation, conduct credits are limited to 20% of the term (instead of the usual 50%), and any additional convictions must be imposed consecutively. If the person has two prior violent or serious felony convictions, the term under "Three Strikes" for this crime would be 25 years to life.

The term "charged with the commission of a felony" with relation to granting of bail has been broadly interpreted.

In light of *Stripe*, and without the statutory modifications of this bill, trial courts will likely be reluctant to allow bail to convicted defendants, causing additional persons to be held in custody pending the outcomes of their cases.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 4/9/96)

California Bail Agents Association (source)

ARGUMENTS IN SUPPORT: According to the sponsor, the court cannot currently extend the 180-day period before bail forfeiture is required, even when good cause for an extension can be shown. This bill would authorize an extension for up to an additional 180 days in such a case upon a hearing and showing of good cause.

RJG:lm 4/9/96 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

CA B. An., S.B. 1571 Sen., 3/19/1996

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Exhibit P

CA B. An., S.B. 1571 Sen., 4/09/1996

California Bill Analysis, Senate Committee, 1995-1996 Regular Session, Senate Bill 1571

April 9, 1996
California Senate
1995-1996 Regular Session

SENATE COMMITTEE ON CRIMINAL PROCEDURE

Senator Milton Marks, Chair

1995-96 Regular Session

sb 1571 (Kopp)

As amended March 19, 1996

Hearing date: April 9, 1996

Penal Code

LK:ll

bail

HISTORY

Source: California Bail Agents Association (Section 1)

Prior Legislation: SB 1245 (1995) -- Chaptered

AB 3059 (1994) -- Chaptered

Support: Unknown

Opposition: None known

KEY ISSUES

should the court be authorized for good cause to extend the existing 180-day LIMITATION on return of bail?

should the existing crimes of failure to appear in court after being released on bail or on one's own recognizance be extended

to persons convicted of, as well as charged with, a crime? (SEE COMMENT 3 FOR otHREE sTRIKESo IMPLICATIONS.)

PURPOSE

Under existing law, the undertaking or deposit of bail is forfeited if the defendant fails to appear for further court proceedings. Upon the appearance or surrender of the defendant within 180 days of the forfeiture, or within 180 days of the mailing of a notice of forfeiture, the court is required to vacate the forfeiture and exonerate the bond. The 180-day period is tolled in the case of a temporary disability.

This bill would authorize the surety or depositor to file a motion, based upon good cause, for an order extending the 180-day period. The motion would include a declaration or affidavit stating the reasons showing good cause to extend the period. The motion would have to be served on the prosecuting agency at least 10 days prior to the hearing. At the hearing, upon a showing of good cause, the court could order the period extended up to 180 additional days.

Existing law provides that it is a misdemeanor to willfully fail to appear in court after being charged with a misdemeanor and being released on one's own recognizance, punishable by up to six months in jail and/or a fine not exceeding \$1,000. (Penal Code Section 1320(a).) Existing law provides that it is an alternative felony/misdemeanor (wobbler) to willfully fail to appear in court after being charged with a felony and being released on one's own recognizance or on bail, punishable by up to one year in jail or by 16 months, 2 years, or 3 years in state prison, and/or a fine of up to \$5,000 or \$10,000. (Penal Code Sections 1320(b), 1320.5.)

This bill would extend those penalties to persons convicted of, as well as charged with, misdemeanors or felonies who do not appear in court.

The purpose of this bill is to allow bail forfeiture to be stayed beyond the current statutory limitation for good cause and to clarify that the prohibitions against failure to appear apply to probation revocation hearings and cases on appeal as well as to pre-convictions hearings.

COMMENTS

1. Expressed Purpose of the Bill.

According to the sponsor, the court cannot currently extend the 180-day period before bail forfeiture is required, even when good cause for an extension can be shown. This bill would authorize an extension for up to an additional 180 days in such a case upon a hearing and showing of good cause.

2. Need for Clarification of Criminal Statutes.

Under existing law it is a crime for a person accused of a crime to fail to appear in court after release on bail or on his or her own recognizance. This provision is also often used to ensure appearance when a defendant is awaiting a probation violation hearing.

However, in *People v. Stripe*, ___ Cal.App.4th ___, 96 Daily Journal D.A.R. 2161, decided February 29, 1996, the defendant pleaded no contest to a felony. A petition to revoke probation was filed and he was released on bail. He failed to appear in court and was convicted under Penal Code Section 1320.5, failing to appear after being charged with a felony and being released on bail.

The appellate court overturned the conviction, noting that the clear language of the law applies only to persons charged with the commission of a felony, while the defendant had already been convicted of a felony and was on probation.

The people's construction [that ochargeo includes oconvictiono] is not reasonable because it assumes a bizarre interpretation of the word ocharge.o Moreover, if, as the People suggest, the Legislature wanted to penalize all felons or persons charged with felonies who fail to appear after release on bail it would not have employed the term ocharge,o it would simply have said it is a crime for any person to violate the terms of bail having been charged with or convicted of a felony. (Underline added.)

The purpose of Sections 2 and 3 of this bill is to clarify the Legislative intent that a person convicted of a crime and release on bail or on his or her own recognizance should suffer the same consequences as a person charged with, but not convicted of, the crime.

3. o Three Strikeso concerns.

California's oThree Strikeso law, AB 971 (Jones/Costa, Chapter 12, Statutes of 1994), provides that the conviction of any felony with a prior conviction of a violent or serious felony must result in twice the term otherwise provided as punishment. In addition, probation may not be granted, there is no aggregate term limitation, conduct credits are limited to 20% of the term (instead of the usual 50%), and any additional convictions must be imposed consecutively. If the person has two prior violent or serious felony convictions, the term under oThree Strikeso for this crime would be 25 years to life.

It has been the policy of this committee to exempt new felonies from the oThree Strikeso requirements. However, the committee has examined expansions of existing felonies on a case-by-case basis.

As discussed in Comment 2, the term ocharged with the commission of a felonyo with relation to granting of bail has been broadly interpreted. In light of Stripe, and without the statutory modifications of this bill, trial courts will likely be reluctant to allow bail to convicted defendants, causing additional persons to be held in custody pending the outcomes of their cases.

Additionally, the expansion provisions of this bill may be seen as a clarification of the law to allow what has been the past practice of the courts and what was likely legislative intent (even if inartfully drafted).

Given that basis, it appears that not exempting the provision from the oThree Strikeso law is consistent with this committee's policies.

CA B. An., S.B. 1571 Sen., 4/09/1996

End of Document

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Exhibit Q

CA B. An., S.B. 1571 Sen., 7/08/1996

California Bill Analysis, Senate Floor, 1995-1996 Regular Session, Senate Bill 1571

July 8, 1996
California Senate
1995-1996 Regular Session

SENATE RULES COMMITTEE

Office of Senate Floor Analyses

UNFINISHED BUSINESS

Bill No: SB 1571

Author: Kopp (I)

Amended: 7/8/96

Vote: 21

SENATE CRIMINAL PROCEDURE COMMITTEE: 4-0, 4/9/96

AYES: Kopp, Polanco, Boatwright, Marks

NOT VOTING: Johnson, Watson

SENATE FLOOR: 37-0, 4/18/96 (Passed on Consent)

AYES: Alquist, Ayala, Beverly, Boatwright, Calderon, Costa, Craven, Dills, Greene, Hayden, Haynes, Hurtt, Johannessen, Johnson, Johnston, Kelley, Killea, Kopp, Leonard, Lewis, Lockyer, Maddy, Marks, Mello, Monteith, Mountjoy, O'Connell, Peace, Petris, Polanco, Rogers, Rosenthal, Russell, Sher, Thompson, Watson, Wright

NOT VOTING: Hughes, Leslie, Solis

ASSEMBLY FLOOR: 63-4, 7/11/96 - See last page for vote

SUBJECT: Bail: failure to appear

SOURCE: California Bail Agents Association

DIGEST: This bill authorizes the court, for good cause, to extend the existing 180-day limitation on return of bail.

This bill also provides that the existing crimes of failure to appear in court after being released on bail or on one's own recognizance be extended to persons convicted of, as well as charged with, a crime.

Assembly Amendments were technical. They simply moved the provision from Section 1305 of the Penal Code to Section 1305.4.

ANALYSIS: Under existing law, the undertaking or deposit of bail is forfeited if the defendant fails to appear for further court proceedings. Upon the appearance or surrender of the defendant within 180 days of the forfeiture, or within 180 days of the mailing of a notice of forfeiture, the court is required to vacate the forfeiture and exonerate the bond. The 180-day period

is tolled in the case of a temporary disability.

This bill authorizes the surety or depositor to file a motion, based upon good cause, for an order extending the 180-day period. The motion would include a declaration or affidavit stating the reasons showing good cause to extend the period. The motion would have to be served on the prosecuting agency at least 10 days prior to the hearing. At the hearing, upon a showing of good cause, the court could order the period extended up to 180 additional days.

Existing law provides that it is a misdemeanor to willfully fail to appear in court after being charged with a misdemeanor and being released on one's own recognizance, punishable by up to six months in jail and/or a fine not exceeding \$1,000. (Penal Code Section 1320(a).) Existing law provides that it is an alternative felony/misdemeanor (wobbler) to willfully fail to appear in court after being charged with a felony and being released on one's own recognizance or on bail, punishable by up to one year in jail or by 16 months, 2 years, or 3 years in state prison, and/or a fine of up to \$5,000 or \$10,000. (Penal Code Sections 1320(b), 1320.5.)

This bill extends those penalties to persons convicted of, as well as charged with, misdemeanors or felonies who do not appear in court.

The purpose of this bill is to allow bail forfeiture to be stayed beyond the current statutory limitation for good cause and to clarify that the prohibitions against failure to appear apply to probation revocation hearings and cases on appeal as well as to pre-convictions hearings.

Background

Under existing law it is a crime for a person accused of a crime to fail to appear in court after release on bail or on his or her own recognizance. This provision is also often used to ensure appearance when a defendant is awaiting a probation violation hearing.

However, in *People v. Stripe*, Cal.App.4th, 96 Daily Journal D.A.R. 2161, decided February 29, 1996, the defendant pleaded no contest to a felony. A petition to revoke probation was filed and he was released on bail. He failed to appear in court and was convicted under Penal Code Section 1320.5, failing to appear after being charged with a felony and being released on bail.

The appellate court overturned the conviction, noting that the clear language of the law applies only to persons "charged with the commission of a felony", while the defendant had already been convicted of a felony and was on probation.

"The people's construction [that 'charge' includes 'conviction'] is not reasonable because it assumes a bizarre interpretation of the word "charge." Moreover, if, as the People suggest, the Legislature wanted to penalize all felons or persons charged with felonies who fail to appear after release on bail it would not have employed the term "charge," it would simply have said it is a crime for any person to violate the terms of bail having been charged with or convicted of a felony." (Underline added.)

The purpose of this bill is to clarify the Legislative intent that a person convicted of a crime and release on bail or on his or her own recognizance should suffer the same consequences as a person charged with, but not convicted of, the crime.

California's "Three Strikes" law, AB 971 (Jones/Costa, Chapter 12, Statutes of 1994), provides that the conviction of any felony with a prior conviction of a violent or serious felony must result in twice the term otherwise provided as punishment. In addition, probation may not be granted, there is no aggregate term limitation, conduct credits are limited to 20% of the term (instead of the usual 50%), and any additional convictions must be imposed consecutively. If the person has two prior violent or serious felony convictions, the term under "Three Strikes" for this crime would be 25 years to life.

The term "charged with the commission of a felony" with relation to granting of bail has been broadly interpreted. In light of *Stripe*, and without the statutory modifications of this bill, trial courts will likely be reluctant to allow bail to convicted defendants, causing additional persons to be held in custody pending the outcomes of their cases.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/11/96)

California Bail Agents Association (source)

ARGUMENTS IN SUPPORT: According to the sponsor, the court cannot currently extend the 180-day period before bail forfeiture is required, even when good cause for an extension can be shown. This bill would authorize an extension for up to an additional 180 days in such a case upon a hearing and showing of good cause.

ASSEMBLY FLOOR:

AYES: Ackerman, Aguiar, Alby, Alpert, Archie-Hudson, Baca, Baldwin, Battin, Baugh, Boland, Bordonaro, Bowler, Brewer, Brown, Brulte, Caldera, Cannella, Conroy, Cortese, Cunneen, Davis, Ducheny, Escutia, Figueroa, Firestone, Frusetta, Gallegos, Goldsmith, Granlund, Hannigan, Harvey, Hauser, Hawkins, Hoge, Kaloogian, Katz, Knight, Knowles, Knox, Kuehl, Kuykendall, Lee, Machado, Margett, Mazzoni, McPherson, Morrissey, Morrow, K. Murray, W. Murray, Napolitano, Olberg, Poochigian, Rainey, Rogan, Setencich, Takasugi, Thompson, Tucker, Villaraigosa, Weggeland, Woods, Pringle

NOES: Campbell, Martinez, Speier, Vasconcellos

NOT VOTING: Bates, Bowen, Burton, Bustamante, Friedman, House, Isenberg, Migden, Miller, Richter, Sweeney

RJG:lm 7/12/96 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

CA B. An., S.B. 1571 Sen., 7/08/1996

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **In re John Manuel Guiomar on Habeas Corpus**

Case No.: **S238888**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 3, 2017, I served the attached **Answer Brief on the Merits and Request for Judicial Notice** by placing a true copy enclosed in sealed envelopes in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Attn: Executive Director
Sixth District Appellate Program
95 South Market Street, Suite 570
San Jose, CA 95113

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Staff Attorney
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95 South Market Street, Suite 570
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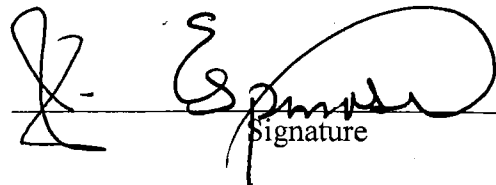
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Court of Appeal of the State of California
333 West Santa Clara Street, Suite 1060
San Jose, CA 95113

Monterey Superior Court
Salinas Division
240 Church Street, Suite 318
Salinas, CA 93901

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 3, 2017, at San Francisco, California.

J. Espinosa
Declarant


Signature

SF2017401223

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