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MEMORANDUM

To: Law Enforcement Partners
From: Eric J. Dobroth, Assistant District Attorney 
Date: May 12, 2020
Subj.: Penal Code section 463 (Serial thefts during the COVID 19 pandemic)

Under the California Judicial Council's Emergency Bail Schedule many arrestees are presumed subject to \$0 bail based on their crime of arrest. (See attached Emergency Bail Schedule Memo).

This has created an environment in which an individual can be arrested for an offense, released on \$0 bail, only to re-offend and be released, again, without posting a bond. This compromises public safety and frustrates law enforcement resources. The following may prove helpful in addressing the serial thief during this time of emergency.

Penal Code section 463 – An individual arrested for a felony violation of section 463 is exempt from the Emergency Bail Schedule - meaning that bail is presumed to be set at the regular schedule for the underlying offense. Note that the section is a “wobbler” for which an arrest can be made as a misdemeanor or felony. Only a felony is exempt from the Emergency Bail Schedule.

Section 463 prohibits the following conduct:

Second Degree Burglary During a “State of Emergency” (Section 463(a))
Where an individual commits second degree burglary in violation of Penal Code section 459, during and within an affected county in a “state of emergency”, “local emergency” or under an “evacuation order”.

This would include the second degree burglary of an automobile or commercial property. Burglary of a residence is also exempted from the Emergency Bail Schedule.

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Grand Theft During a “State of Emergency” (Section 463(b))

Where an individual commits grand theft in violation of Penal Code section 487, during and within an affected county in a “state of emergency”, “local emergency” or under an “evacuation order”.

Both subdivision (a) and (b) provide for increased sanctions, including a minimum sentences of 180-days in jail and community work service when probation is granted.

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 1. Of Crimes and Punishments (Refs & Annos)

Title 13. Of Crimes Against Property (Refs & Annos)

Chapter 2. Burglary (Refs & Annos)

West's Ann.Cal.Penal Code § 463

§ 463. Looting during emergency or evacuation;
punishment; probation; definitions; consensual entry

Effective: January 1, 2019

Currentness

(a) Every person who violates [Section 459](#), punishable as a second-degree burglary pursuant to [subdivision \(b\) of Section 461](#), during and within an affected county in a “state of emergency” or a “local emergency,” or under an “evacuation order,” resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of the crime of looting, punishable by imprisonment in a county jail for one year or pursuant to [subdivision \(h\) of Section 1170](#). Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 180 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 240 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

For purposes of this subdivision, the fact that the structure entered has been damaged by the earthquake, fire, flood, or other natural or manmade disaster shall not, in and of itself, preclude conviction.

(b) Every person who commits the crime of grand theft, as defined in [Section 487](#) or [subdivision \(a\) of Section 487a](#), except grand theft of a firearm, during and within an affected county in a “state of emergency” or a “local emergency,” or under an

“evacuation order,” resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting, punishable by imprisonment in a county jail for one year or pursuant to [subdivision \(h\) of Section 1170](#). Every person who commits the crime of grand theft of a firearm, as defined in [Section 487](#), during and within an affected county in a “state of emergency” or a “local emergency” resulting from an earthquake, fire, flood, riot, or other natural or unnatural disaster shall be guilty of the crime of looting, punishable by imprisonment in the state prison, as set forth in [subdivision \(a\) of Section 489](#). Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 180 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 160 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

(c) Every person who commits the crime of petty theft, as defined in [Section 488](#), during and within an affected county in a “state of emergency” or a “local emergency,” or under an “evacuation order,” resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster shall be guilty of a misdemeanor, punishable by imprisonment in a county jail for six months. Any person convicted under this subdivision who is eligible for probation and who is granted probation shall, as a condition thereof, be confined in a county jail for at least 90 days, except that the court may, in the case where the interest of justice would best be served, reduce or eliminate that mandatory minimum jail sentence, if the court specifies on the record and enters into the minutes the circumstances indicating that the interest of justice would best be served by that disposition. In addition to whatever custody is ordered, the court, in its discretion, may require any person granted probation following conviction under this subdivision to serve up to 80 hours of community service in any program deemed appropriate by the court, including any program created to rebuild the community.

(d)(1) For purposes of this section, “state of emergency” means conditions that, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(2) For purposes of this section, “local emergency” means conditions that, by reason of their magnitude, are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat.

(3) For purposes of this section, a “state of emergency” shall exist from the time of the proclamation of the condition of the emergency until terminated pursuant to [Section 8629 of the Government Code](#). For purposes of this section only, a “local emergency” shall exist from the time of the proclamation of the condition of the emergency by the local governing body until terminated pursuant to [Section 8630 of the Government Code](#).

(4) For purposes of this section, “evacuation order” means an order from the Governor, or a county sheriff, chief of police, or fire marshal, under which persons subject to the order are required to relocate outside of the geographic area covered by the order due to an imminent danger resulting from an earthquake, fire, flood, riot, or other natural or manmade disaster.

(5) Consensual entry into a commercial structure with the intent to commit a violation of [Section 470](#), [476](#), [476a](#), [484f](#), or [484g](#) shall not be charged as a violation under this section.

Credits

(Added by [Stats.1990, c. 1126 \(A.B.3894\)](#), § 1. Amended by [Stats.1992, c. 1339 \(S.B.2066\)](#), § 1, eff. Sept. 30, 1992; [Stats.1994, c. 290 \(A.B.2965\)](#), § 1; [Stats.2009-2010, 3rd Ex.Sess., c. 28 \(S.B.18\)](#), § 12, eff. Jan. 25, 2010; [Stats.2011, c. 15 \(A.B.109\)](#), § 356, eff. April 4, 2011, operative Oct. 1, 2011; [Stats.2013, c. 618 \(A.B.924\)](#), § 6; [Stats.2018, c. 132 \(A.B.3078\)](#), § 1, eff. Jan. 1, 2019.)

West's Ann. Cal. Penal Code § 463, CA PENAL § 463

Current with urgency legislation through Ch. 3 of 2020 Reg.Sess



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MEMORANDUM

To: Law Enforcement Partners
From: Eric J. Dobroth, Assistant District Attorney 
Date: May 12, 2020 (modified from April 10, 2020)
Subj.: EMERGENCY BAIL SCHEDULE

The Judicial Council of California has adopted an Emergency Bail Schedule in response to the COVID-19 pandemic. This will result in the release of many inmates currently in custody on pending charges and will also affect persons arrested by your departments over the next few months. Importantly, the Emergency Bail Schedule will go into effect **April 13, 2020**, and will remain in effect for 90 days after the Governor lifts the state of emergency related to the COVID-19 pandemic.

Under the Emergency Bail Schedule, **bail is to be set at \$0 for most non-serious / non-violent felonies and misdemeanors.**

Exceptions to the Emergency Bail Schedule

The Emergency Bail Schedule does **not** apply to suspects booked for the most serious and violent crimes. Bail for the following crimes should continue to be set according to the existing County of San Luis Obispo Bail Schedule:

MISCELLANEOUS CRIMES

1. Resisting an executive officer (felony only) - 69.
2. Protective or stay away order violation - 166(c)(1).
3. Domestic violence – 243(e) and 273.5.
4. Restraining order violations – 273.6 (Note, for bail to be imposed the violation must include threats to harm or kill, engaging in violence against or going to the home or residence of the protected party. See also 166(c).).
5. Stalking – 646.9.
6. Any offense requiring registration under 290(c) – See below.
7. Driving under the influence – 23152.
8. Driving under the influence causing injury – 23153.
9. Felon in possession of a firearm – 29800.
10. Felony looting – 463(a) and (b), felony violation only.

SERIOUS FELONIES - California Penal Code section PC 1192.7(c):

1. Assault with a deadly weapon on a peace officer or firefighter – 245(c).
2. Arson – 451(a) and 451(b).
3. Residential burglary – 459 1st.
4. Any felony where defendant personally used a deadly weapon – examples include 12022(b), 245(a)(1), 245(a)(2) and 245(b) etc.
5. Selling, furnishing or giving a minor listed drugs.
6. Any felony committed for the benefit of a criminal street gang – 186.22(b).
7. Throwing acid or flammable substances – 244.
8. Assault with a deadly weapon on a public transit employee, custodial officer or school employee – 245.2, 245.3, 245.5
9. Discharging a firearm at a dwelling, vehicle or aircraft – 246.
10. Shooting from a vehicle – 26100(c) and 26100(d).
11. Intimidation of victims or witnesses – 136.1(c).
12. Criminal threats – 422.

VIOLENT FELONIES - California Penal code section 667.5(c):

1. Murder or voluntary manslaughter – 187 or 192(a).
2. Mayhem – 203, 205.
3. Rape – 261(a)(2), 261(a)(6), 262(a)(1) or 262(a)(4).
4. Sodomy – 286(c) and 286(d).
5. Oral Copulation – 287(c), 287(d) (Formerly 288a.)
6. Lewd and lascivious act – 288(a) and 288(b).
7. Any felony punishable by life in prison.
8. Any felony where defendant personally inflicts great bodily injury – 12022.7.
9. Any felony where defendant personally used a firearm – 12022.53, 12022.5.
10. Robbery – 211.
11. Arson – 451(a) and 451(b).
12. Sexual penetration – 289(a) and 289(j).
13. Attempted murder – 664/187.
14. Explosive device violations – 18745, 18750, and 18755.
15. Kidnapping – 207, 208, 209, 209.5 and 210.
16. Assault with intent to commit specified felonies – 220.
17. Continuous sexual abuse of a child – 288.5.
18. Carjacking – 215.
19. Rape, spousal rape or sexual penetration in concert – 264.1.
20. Extortion for the benefit of a criminal street gang - 518 / 186.22.
21. Threats to victims or witnesses for the benefit of a criminal street gang – 136.1 / 186.22.
22. Residential burglary with a person present – 459 1st.
23. Weapon of mass destruction – 11418.

SEXUAL ASSAULT-TYPE OFFENSES - Penal Code section 290(c):

1. Kidnapping - 207 or 209 committed with intent to commit sexual assault (including 261, 286, 287, 288, or 289 or former Section 288a).
2. Human Trafficking - 236.1(b) and (c).
3. Sexual Battery - 243.4.
4. Rape - 261.
5. Spousal Rape - 262(a)(1) with use of force or violence and state prison sentence.
6. Penetration by Foreign Object - 264.1.
7. Enticing Minor to Prostitution - 266.
8. Unlawful Sexual Intercourse by Fraud - 266c.
9. Pimping of a Minor - 266h(b).
10. Pandering with a Minor - 266i(b).
11. Procuring Child Under 16 for Lewd Acts - 266j.
12. Abduction a Minor for Prostitution - 267.
13. Aggravated Sexual Assault of Child 269.
14. Incest - 285.
15. Sodomy - 286.
16. Oral Copulation - 287.

Parole, Probation, PCRS or Mandatory Supervision Violations

Bail for violations of misdemeanor probation are to be set at \$0.

Bail for violations of felony probation, parole, post-release community supervision or mandatory supervision are to be set in accord with the Emergency Bail Schedule for the initial crime of conviction. For example, bail for a parole violation is to be set at \$0, unless the initial crime of conviction is listed as an exception above. In those cases, bail will be set using the existing (non-emergency) Bail Schedule.

Judge's Discretion and Motions for Public Safety Hold

In very limited circumstances, a judge may set or deny bail on a suspect arrested for a crime subject to the Emergency Bail Schedule where there are genuine concerns related to public safety, safety of the victim or securing the arrestee's attendance in court.

First, the Emergency Bail Schedule allows a judge to **deny** bail based on Article 1, section 12 of the California Constitution. Section 12 states that a person shall be released on bail except under the following circumstances:

1. Capital crimes when the facts are evident or the presumption great;
2. Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that *there is a substantial likelihood the person's release would result in great bodily harm to others*; or

3. Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has *threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.* (emphasis added)

Second, the Emergency Bail Schedule allows a judge to consider public safety, and **set or deny** bail for the reasons set forth in Article 1, section 28(f)(3), of the California Constitution:

In setting, reducing or denying bail, the judge or magistrate shall take into consideration the *protection of the public*, the *safety of the victim*, the seriousness of the offense charged, the *previous criminal record of the defendant*, and the *probability of his or her appearing at the trial or hearing of the case*. *Public safety and the safety of the victim shall be the primary considerations.*

The italicized language may provide deputies and officers with a basis to seek bail when the crime is not one of the listed exceptions to the Emergency Bail Schedule.

Request to Set Bail Higher Than Zero

For arrestees that pose a **sever threat of physical violence towards an individual or the public or flight from prosecution**, who are subject to the zero bail provisions, the arresting agency should consider preparing a request to set bail. A fillable pdf. Request is attached. (See attached).

As always, I am available for questions. Be well.