

CHAPTER 8

BAIL AND OWN RECOGNIZANCE

8.01 BAIL AND OWN RECOGNIZANCE GENERALLY

The standards for bail, “no bail” and own recognizance releases (hereinafter OR) are set forth in the California Constitution article I, § 12, and article I, § 28(f)(3).

8.01.01 ARTICLE I, § 12

SEC. 12. A person shall be released on bail by sufficient sureties, except for:

- (a) Capital crimes when the facts are evident or the presumption great;
- (b) 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
- (c) 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.

Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration 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.

A person may be released on his or her own recognizance in the court’s discretion.

8.01.02 ARTICLE I, § 28

SEC. 28 (b)(2) A victim shall be entitled "to be reasonably protected from the defendant and persons acting on behalf of the defendant."

SEC. 28(b)(3) A victim shall be entitled "to have the safety of the victim and the victim’s family considered in fixing bail and release conditions for the defendant." This right is automatic and need not be requested.

SEC. 28(b)(7) A victim shall be entitled to have a right "to reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and prosecutor are entitled to be present . . . and to be present at all such proceedings."

SEC. 28(b)(8) A victim shall be entitled to have a right "to be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post arrest release decision . . . or any proceeding in which a right of the victim is at issue."

SEC. 28(f)(3) Public Safety Bail. A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. 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.

A person may be released on his or her own recognizance in the court's discretion, subject to the same factors considered in setting bail.

Before any person arrested for a serious felony may be released on bail, a hearing may be held before the magistrate or judge, and the prosecuting attorney and the victim shall be given notice and reasonable opportunity to be heard on the matter.

When a judge or magistrate grants or denies bail or release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.

8.02 PUBLIC SAFETY AND SAFETY OF VICTIMS ARE PRIMARY CONSIDERATIONS

“The Los Angeles County District Attorney's Office is dedicated to . . . the safeguarding of crime victims' rights.” Public safety and the safety of victims and their families shall be vigorously asserted in all appropriate cases. Office personnel shall be vigilant to ensure that victims receive a Marsy's law notification when a case is filed. Office personnel shall follow all procedures set forth in LPM § [24.02](#) to ensure that the victims' requests regarding bail and release conditions are safeguarded.

The denial of bail should be recommended in capital cases when the facts are evident or the presumption great and in non-capital felony cases when there is a substantial likelihood the accused's release would result in great bodily harm to others.

8.02.01 ON THE RECORD ONLY

Deputies shall seek enforcement of article I, § 28 (f)(3) which states in part, “When a judge or magistrate grants or denies bail or a release on a person's own recognizance, the reasons for that decision shall be stated in the record and included in the court's minutes.” Penal Code § 1270.1 also requires that bail hearings be held in open court and that the judge state reasons for any deviation from the bail schedule amount. Thus, “off the record” rulings on bail are improper. (See *In re Pipinos* (1982) 33 Cal.3d 189, PC § 1270.1, and Cal. Const. Art. I § 28(f)(3).)

8.03 LOS ANGELES COUNTY SUPERIOR COURT BAIL SCHEDULES

Each year the Executive Committee of the Los Angeles Superior Court approves and publishes bail schedules for felonies, misdemeanors and infractions. The [bail schedules](#) are available on the Superior Court's website at www.lacourt.org under the “Criminal” heading. LADAnet provides a link to these schedules by clicking on “Links,” then “Key Websites,” and then the

“Felony/Misdemeanor Bail Schedule” link located in the “LA County Law” section under “Law Links.” The current Bail Schedules supersede all previous bail schedules.

8.04 BAIL RECOMMENDATION AT TIME OF CHARGING

Bail recommendations at the time of charging should be in accordance with the Superior Court bail schedules and include all sentence enhancements and special allegations.

The bail schedule need not be followed in every case. A filing deputy, after consultation with the investigating officer, should consider the following factors in determining whether the bail schedule amount is appropriate:

- Public safety;
- Safety of the victim;
- Safety of the victim’s family;
- The seriousness of the offense(s) charged including infliction of bodily injury or use of a weapon;
- The defendant’s previous criminal record including his or her probation or parole status, if any;
- The probability the defendant will appear for future court proceedings. In particular, this includes:
 - The defendant’s contacts with the community (e.g., length of residence, family, employment and ownership of property);
 - The defendant’s relative wealth and the defendant’s motivation to avoid bail forfeiture (i.e., a defendant with assets may be willing to flee and forfeit bail);
 - Express indications of the defendant’s unwillingness to appear in court; or
 - The defendant’s prior record of nonappearance.

8.04.01 BAIL DEVIATION PROCEDURES

If a filing deputy determines that the bail schedule amount is not appropriate, he or she shall:

- Prepare a “Declaration for Bail Deviation,”
- Indicate the proposed bail amount on the complaint, and
- Deliver the complaint and the “Declaration for Bail Deviation” to the arraignment court.

The arraignment deputy shall:

- Be prepared to present testimony or oral argument in support of the declaration for bail deviation to demonstrate to the magistrate (or judge) that the bail schedule amount is not appropriate; and
- Ask the magistrate (or judge) to fix the bail in the amount recommended on the complaint.

Felony Complaint: A bail recommendation in excess of \$100,000 must have Head Deputy approval, except when authorized by the bail schedule.

Grand Jury Indictment: A bail recommendation in excess of \$1,000,000 must have Bureau Director approval, through chain of command, except when authorized by the bail schedule.

8.04.02 **RELEASE CONDITIONS**

Victims have a right to be reasonably protected from the defendant and have their safety and the safety of their family considered in setting release conditions for the defendant. Prosecutors shall request a protective order setting forth the victim's requested release conditions in appropriate cases.

8.05 **"NO BAIL" RECOMMENDATIONS**

8.05.01 **CAPITAL CASES**

In capital cases, deputies shall recommend "no bail" when the facts are evident or the presumption great in accordance with Penal Code § 1270.5 and California Constitution, article I, § 12 (Proposition 4).

8.05.02 **NON-CAPITAL CASES**

In non-capital cases, deputies shall recommend "no bail" under the following circumstances:

Violent Felony/Sexual Assault: Deputies shall recommend "no bail" for violent felonies or felony sexual assaults when the facts are evident or the presumption great and there is clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others. (Cal. Const., Art. I, § 12(b).)

Felony Offenses: Deputies shall recommend "no bail" for felony offenses when the facts are evident or the presumption great and there is clear and convincing evidence that the person has threatened another with great bodily harm and there is a substantial likelihood that the person would carry out the threat if released. (Cal. Const., Art. I, § 12(c).)

8.05.03 **AUTHORIZATION FOR "NO BAIL" IN NON-CAPITAL CASE**

A Head Deputy or Deputy-in-Charge must approve a "no bail" recommendation in a non-capital case. No bail recommendations in non-capital cases were declared valid in *In re Nordin* (1983) 143 Cal.App.3d 538.

8.05.04 **BAIL IN MURDER CASES**

According to the Superior Court Felony Bail Schedule, murder with special circumstances is presumptively a "no bail" offense. In all other murder cases, bail is presumptively \$2,000,000. Bureau Director approval is required for a bail recommendation under \$250,000 in any murder case.

8.06 COURT APPEARANCES

Bail motions are typically heard at arraignment, but may be heard at other times as well. A deputy shall be present at all felony bail motions.

In all cases in which “no bail” is recommended or the recommended bail is other than as set forth in the bail schedule, the deputy appearing in court shall be prepared to justify the recommendation. Although an oral statement summarizing the reasons for the recommendation will usually be sufficient, deputies should be prepared to present evidence justifying the recommendation. If necessary, declarations or witness testimony should be presented.

Deputies shall also be prepared to respond to defense motions seeking to reduce bail.

8.07 BAIL RECOMMENDATION PRIOR TO ARRAIGNMENT

Felony arrestees may be released on bail prior to arraignment. If a suspect is arrested on a warrant, the amount of bail is designated in the warrant. This amount is not subject to deviation prior to arraignment. (PC § 1269a.)

If a suspect is arrested on probable cause, the amount of bail should follow the Felony Bail Schedule unless a deviation is obtained pursuant to Penal Code § 1269c.

8.07.01 BAIL DEVIATIONS (PC § 1269C)

When a bail deviation is being sought by either a police agency seeking higher bail or an arrestee seeking lower bail, a deputy shall make a recommendation in accordance with the factors discussed above, but only after consultation with law enforcement officers who have knowledge of the particular case and arrestee.

8.07.02 EXCEPTIONS TO BAIL DEVIATION PROCEDURES

Arrest Warrants: The bail on suspects arrested on warrants shall remain as set on the warrant and cannot be increased or decreased until the arrestee is physically before a magistrate at the time of arraignment on the offense for which he was arrested. If the arrest is made pursuant to a warrant and additional charges, then increased bail can be required based upon the additional charges.

Serious or Violent Felonies: Before any person who is arrested for an offense enumerated in Penal Code §§ 1270.1(a)(1) through (4) may be released on bail in an amount either more or less than the amount designated in the Felony Bail Schedule for the offense, or released on his or her own recognizance, a hearing shall be held in open court before a magistrate or judge. The offenses enumerated in Penal Code §§ 1270.1(a)(1) through (4) are:

- A serious felony, as defined in Penal Code § 1192.7(c), or a violent felony, as defined in Penal Code § 667.5(c), but not including a violation of Penal Code § 460(a) (residential burglary);

- A violation of Penal Code § 136.1 where punishment is imposed pursuant to Penal Code §§ 136.1(c), 262, 273.5, 422 where the offense is punished as a felony, or Penal Code § 646.9;
- A violation of paragraph (1) of Penal Code § 243(e); and
- A violation of Penal Code § 273.6 if the detained person made threats to kill or harm, has engaged in violence against, or has gone to the residence or workplace of, the protected party.

8.07.03 BAIL DEVIATION PROCEDURES

All requests to increase or reduce bail pursuant to Penal Code § 1269c on probable cause arrests must be submitted through the Probation Department Pre-Trial Services Division, Bail Deviation Program. Bail Deviation Program personnel will investigate the requests and report to the Bail Commissioner who will determine whether the bail should be increased or reduced.

Any bail recommendation by a deputy should be made only after consulting with law enforcement and after consideration of the factors set forth above.

A deputy on After Hours Duty may be contacted for his or her opinion regarding bail deviation requests between 6 p.m. and 6 a.m. and on weekends and holidays.

8.07.04 8 HOUR HOLD

Penal Code § 1269c provides that after booking an arrestee may be held without bail for up to eight hours while a bail increase is being sought. If no order increasing bail is obtained within the eight-hour period, the arrestee is entitled to be released on the amount set forth in the Felony Bail Schedule.

8.08 MOTION TO EXAMINE SOURCE OF BAIL

8.08.01 PENAL CODE § 1275.1

Penal Code § 1275.1(a) prohibits the use of feloniously obtained money or goods for bail purposes:

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.

“Feloniously obtained” refers to any money or goods obtained through an unlawful act, transaction, or occurrence constituting a felony. (PC § 1275.1(k).)

8.08.02 HOLD ON RELEASE OF DEFENDANT

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 (PC § 1275.1(b)):

- A peace officer, as defined in Penal Code § 830, files a declaration 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; or
- A prosecutor files a declaration 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 obtained by felonious means; or
- A 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.

8.08.03 HEARING TO DETERMINE SOURCE OF BAIL

Once a magistrate or judge has determined that probable cause exists to believe that the source of bail was feloniously obtained:

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. (PC § 1275.1(c).)

8.08.04 MOTION AND ORDER TO PLACE HOLD ON RELEASE OF DEFENDANT

A Notice of Motion and Motion Concerning Bail, Memorandum of Points and Authorities, Supporting Declaration, and Proposed Order Prohibiting Acceptance of Proffered Bail are available in PIMS. An Order Prohibiting Acceptance of Proffered Bail will place a hold on the release of a defendant until a determination is made by the court whether the proffered bail was obtained by felonious means.

8.09 CHANGING BAIL AFTER DEFENDANT ADMITTED TO BAIL

After a defendant has been admitted to bail on an indictment or information, Penal Code § 1289 permits the court in which the charge is pending to increase or reduce bail upon a showing of good cause. The statute does not require the prosecution to give notice to the defense of a motion to increase bail, but does require the defense to give the prosecutor notice of a motion to reduce bail. If the amount of bail is increased, the court may commit the defendant into actual custody until the defendant gives such bail.

8.10 BAIL FORFEITURE

If a defendant on bail fails to appear in court, the court must immediately forfeit the bond in open court on the record. (PC § 1305(a).) Following forfeiture, the bail agent or surety has 185 days, known as the “exoneration period,” from the date that the notice of forfeiture is mailed to the bail

agent and surety to return the defendant to court in order for the forfeiture be set aside. (PC § 1305(c).)

A bail agent or surety with “good cause” may move the court for up to, but not more than, an additional 180 days, to locate the defendant. (PC § 1305.4.) Any request from a surety, bail agent or their attorney for an extension of time should be immediately forwarded or scanned and emailed to the Extradition Services Section (ESS).

If the defendant is not returned to court within the initial 185 day period, plus any additional extension of time, the court shall enter summary judgment on the bond forfeiture and the surety is required to pay the full bond amount. (PC § 1306.)

8.10.01 EXCEPTIONS

Penal Code § 1305 sets forth the specific circumstances under which a defendant’s failure to appear will be excused such that forfeiture will be set aside and the bond exonerated.

Sufficient Excuse for Non-Appearance

Penal Code § 1305.1 provides that if the defendant fails to appear in court 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 the forfeiture of bail or issuing a bench warrant. If the defendant fails to appear on or before the continuance date set by the court, the bail must be forfeited and a warrant issued.

A defense attorney’s statement, “If the court will hold the warrant and forfeiture I will endeavor to locate the defendant and bring him in” is not a sufficient legal justification for a delay of the forfeiture. (PC § 1305(b); *People v. Surety Ins. Co.* (1984) 160 Cal.App.3d 963.) The deputy shall ensure that the court states its reasons for the continuance on the record, or object to the court holding the bench warrant without a sufficient explanation for the defendant’s failure to appear.

Permanent Disability

A defendant’s failure to appear will be considered justified if the defendant is dead or is otherwise permanently unable to appear in court due to illness, insanity or detention by military or civil authorities. (PC § 1305(d).)

Temporary Disability

In the case of the defendant’s temporary disability, including illness, insanity or detention by military or civil authorities, the remainder of the 185-day exoneration period may be tolled to allow for the defendant to be returned to court. (PC § 1305(e).)

Out-of-Custody Defendant's Detention in the United States

California law provides for bond exoneration when a defendant is not in custody and is found by the bail agent or surety and temporarily detained, but not taken into custody. (PC § 1305(g).) For the bond to be exonerated under this procedure, the bail agent or surety must provide the District Attorney with documentation providing that:

1. The defendant was temporarily detained by the bail agent;
2. In the presence of a local law enforcement officer from the jurisdiction where the defendant is located; and
3. He or she was positively identified by the law enforcement officer in an affidavit signed under penalty of perjury.

Once this information is provided to the Office and verified, the Office must then elect whether or not to seek the defendant's extradition.

Deputies receiving a request from a bail agent or surety for extradition of an out-of-custody defendant temporarily detained, but not taken into custody, in the United States shall forward the original request to Extradition Services Section. Scan and email the request and forward the original via county mail and place a copy in the case file. If the information provided by the bail agent or surety is verified and the exoneration period has not expired, the matter will be returned to the appropriate Head Deputy for their extradition decision. (LPM § [21.01.04.](#))

Out-of-Custody Defendant's Temporary Detention Outside the United States

The same requirements must be met by a bail agent or surety who seeks a bail forfeiture exoneration when they temporarily detain, but do not take into custody, a defendant in a foreign country. (PC § 1305(g).) However, the Office's procedures are different from those for a domestic extradition.

Deputies receiving a request from a bail agent or surety seeking a decision regarding an international extradition shall scan and email the request to the ESS Deputy-in-Charge. The original shall be sent by county mail to the ESS Deputy-in-Charge's attention and a copy placed in the case file.

After verification of the bail agent or surety's documentation, and if the exoneration period has not expired, a decision will be made by the Head Deputy of the Post-Conviction Litigation and Discovery Division whether or not to seek the defendant's extradition from the foreign country.

Tolling of Bail Forfeiture During Extradition

In cases arising under Penal Code § 1305(g), § 1305(h) permits the District Attorney to agree to a tolling of the forfeiture exoneration period, but only if an extradition decision has been made by the appropriate Head Deputy prior to the expiration of the period.

A deputy receiving a tolling request or motion under § 1305(h) for an international extradition shall refer the request or motion to the ESS Deputy-in-Charge for a decision on whether the Office will agree to the toll of the forfeiture deadline.

The bail agent or surety must give the District Attorney written notice of a motion brought pursuant to Penal Code § 1305(f), (g) or (j) at least 10 court days prior to the hearing. (PC § 1305(k)) Unless the bail agent or surety produces the defendant in court, deputies shall request a hearing and require the bail agent or surety to prove by competent evidence that an exception to Penal Code § 1305 applies.

Any request for exoneration or extradition under Penal Code § 1305 (d), (e), (f), and (g) shall be referred to Extradition Services Section for processing.

8.10.02 APPEAL OF ADVERSE DECISION ON BAIL FORFEITURE

If the court issues an adverse decision at a bail hearing on a motion to set aside a bail forfeiture, the deputy shall prepare a memorandum documenting the proceedings and forward it to the Writs and Appeals Division to determine whether the ruling should be appealed. The memorandum shall be prepared and forwarded within 10 days following the adverse decision. The memorandum should contain the factual circumstances and legal reasoning why the court erred.

8.10.03 COSTS AND ATTORNEY'S FEES

If a court grants relief from bond forfeiture, it shall impose costs which the prosecution incurred in returning the defendant to custody. (PC § 1306(b).) All motions for costs sought under this provision are handled by deputies assigned to ESS in the assigned bond court at the Clara Shortridge Foltz Criminal Justice Center (CJC).

If the Office successfully opposes a motion to vacate the bond forfeiture, deputies assigned to ESS shall move to recover costs and attorney's fees incurred in successfully opposing such a motion. (PC § 1305.3)

8.11 BAIL EXONERATION

Exoneration refers to the canceling of the bail agreement such that the bail is no longer subject to forfeiture. Exoneration occurs when a defendant is convicted of a crime and judgment is pronounced, when a defendant is acquitted, or when the charges against the defendant are dismissed such that there are no additional court appearances.

Exoneration also occurs when the bail agent or surety surrenders the defendant into custody and says it no longer wishes to post a bond to ensure the defendant's appearance. If the bonding company surrenders a defendant into custody and the defendant has not previously failed to appear or violated any court order, and the court determines that good cause did not exist for the surrender, the court may order the bonding company to return all or part of the premium paid by or on behalf of the defendant to purchase the bond. (PC § 1300(b))

If the bond is exonerated, the bail agent or surety is absolved of any further liability if the defendant subsequently fails to appear in court.

If a case is dismissed after bail has been forfeited due to a defendant's failure to appear, the bond shall not be exonerated. (PC § 1306(d).) A subsequent dismissal has no effect upon a prior bond forfeiture.

8.11.01 EXONERATION AND REMAND WHEN JURY RETURNS GUILTY VERDICT

When a jury returns a guilty verdict against a defendant who is in custody, the defendant must be remanded. (PC § 1166) If the defendant is on bail, the court shall commit the defendant to the custody of the sheriff to await the judgment of the court upon the verdict unless the court makes a specific finding, on the record, based upon consideration of the following factors, to allow the defendant to remain out on bail:

- The protection of the public;
- The seriousness of the offense charged and proven;
- The previous criminal record of the defendant;
- The probability of the defendant failing to appear for the judgment of the court upon the verdict; and
- Public safety.

Unless the court makes such a finding, on the record, deputies shall urge the court to commit the defendant to the custody of the sheriff. When the defendant is committed, his or her bail is exonerated. (See Penal Code § 1166)

8.11.02 EXONERATION AT TIME OF JUDGMENT

When a defendant who is on bail appears for judgment, and judgment is pronounced, or probation is granted, Penal Code § 1195 requires that the bond shall be exonerated. If a court, on its own or at the request of the defendant, appears ready to grant a defendant a temporary "stay" to "get his affairs in order," the deputy shall advise the court that the bond has been exonerated and the defendant will have no financial incentive to appear to serve his or her sentence.

8.12 REFILEING - REINSTATEMENT OF BOND

Penal Code § 1303 provides that if a case is dismissed against a defendant who is out on bail, the bond shall not be exonerated until 15 days after the dismissal. If, within this 15-day period, the case is refiled, the bond will be applied to the refiled case so long as it arises out of the same conduct as the dismissed case. The clerk must promptly notify the bonding company of the reapplication of the bond.

8.13 BAIL ON APPEAL

Penal Code § 1272 provides that after conviction, except when convicted of an offense punishable by death, a defendant who has made application for probation or who has appealed may be admitted to bail:

- As a matter of right in cases of misdemeanors; and
- As a matter of discretion in all other cases.

A defendant convicted of a felony who makes a motion to set bail after sentencing shall provide notice of the hearing to the deputy at least five court days prior to the hearing. (PC § 1272.3) Penal Code § 1272.1 sets forth the factors a judge must consider in deciding whether to allow bail on appeal and in setting the amount. In relevant part, Penal Code § 1272.1 provides as follows:

Release on bail pending appeal under subdivision (3) of § 1272 shall be ordered by the court if the defendant demonstrates all 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 § 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' motions for bail under subdivision (3) of § 1272, the court shall include a brief statement of reasons in support of an order granting or denying a motion for bail on appeal. The statement need only include the basis for the order with sufficient specificity to permit meaningful review.

The constitutional provisions for setting bail are also applicable to bail on appeal.

Notice of Appeal Required: A notice of appeal must be filed before a court grants bail on appeal. If bail is granted on appeal and no appeal is filed, the defendant will remain on bail and may never serve his sentence.

8.13.01 BAIL ON APPEAL: MAKING A RECORD

Deputies shall request that the court make a record of its reasons for granting or denying bail on appeal.

If bail is denied, the deputy shall request the court order the clerk to include the reasons in the minute order. In the event a writ of habeas corpus is filed requesting bail from an appellate court, the minute order may support opposition to the writ.

If bail is granted, the deputy shall request the court order the defendant to return to court on a certain day, generally 120 days later, for the court to determine if the defendant is diligently perfecting his or her appeal. If the defendant is not diligently perfecting his or her appeal, the deputy shall request the court revoke the bail on appeal.

When a court abuses its discretion by granting bail on appeal or setting an unreasonably low bail amount, the deputy shall immediately document the court's action and refer the case to the Writs and Appeals Division.

8.14 FAILURE TO APPEAR AS A SUBSTANTIVE CRIME

8.14.01 FAILURE TO APPEAR WHEN RELEASED OR

Misdemeanors: Penal Code § 1320(a) provides that every person who is charged with or convicted 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. 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.

Felonies: Penal Code § 1320(b) provides that every person who is charged with or convicted 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. 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.

8.14.02 FAILURE TO APPEAR WHEN RELEASED ON BAIL ON A FELONY

Penal Code § 1320.5 makes it a felony for a person who is charged with or convicted 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. "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."

8.15 FAILURE TO APPEAR - POLICY AND PROCEDURE

8.15.01 DEFENDANT CHARGED WITH FELONY

When a defendant fails to appear for any felony court appearance, and the court issues a bench warrant for the defendant's arrest, the deputy shall ascertain from the court clerk whether the defendant was on bail or OR. The defendant's bail status shall be noted in bold writing on the outside of the DA case file.

Thirty days after the defendant's failure to appear, the Head Deputy or Deputy-in-Charge shall request the appropriate law enforcement agency submit evidence necessary to issue a complaint for a violation of Penal Code § 1320 or 1320.5. If the necessary evidence is obtained, the deputy shall file a new felony complaint.

8.15.02 DEFENDANT CHARGED WITH MISDEMEANOR

When a defendant fails to appear for any misdemeanor court appearance, and the court issues a bench warrant for the defendant's arrest, the deputy shall ascertain from the court clerk whether the defendant was on bail or OR. The defendant's bail status shall be noted in bold writing on the outside of the case file.

Thirty days after the defendant's failure to appear, the Head Deputy or Deputy-in-Charge shall request the appropriate law enforcement agency to submit the evidence necessary to issue a complaint for a violation of Penal Code § 1320. If the necessary evidence is obtained, the prosecutor shall file a new misdemeanor complaint.

8.16 "NO BAIL" ON EXTRADITION ARRESTS

Defendants who are arrested in this state and who are to be extradited to another state may not be released from custody pending transfer to the requesting state.

Deputies in the Bureau of Central Operations, Charge Evaluation Division, will process most cases in which fugitives are being sought by other states.

Cases involving juvenile fugitives must first be filed in adult court. (WIC § 216(a).) These cases are prepared and handled by the Los Angeles County Sheriff's Department, Fugitive Division, except cases from the City of the Los Angeles and City of Long Beach. These police departments handle their own fugitive matters.

8.17 "NO BAIL" ON JUVENILE MATTERS

No minor handled by the juvenile court is entitled to bail while under the jurisdiction of the juvenile court.

8.18 FELONY COMMITTED WHILE ON BAIL OR OWN RECOGNIZANCE

Penal Code § 12022.1 provides a two-year enhancement for any person who commits a new felony while released from custody on bail or own recognizance (OR) prior to final judgment on a pending felony. The two year enhancement shall be served consecutive to any other term imposed by the court.

If the pending felony and new felony are of the same class of crimes, consideration should be given to consolidating the two offenses in one proceeding. (PC § 954.) Consolidation would eliminate additional problems of proof when a trial judge might not permit evidence of an unrelated, uncharged offense to prove the enhancement allegation.

8.19 RELEASE OF ACCUSED ON OWN RECOGNIZANCE

8.19.01 OR RECOMMENDATIONS

Article I, § 12 of the California Constitution states: “A person may be released on his or her own recognizance in the court’s discretion.” The appropriateness of an OR release shall be determined by the same factors governing the setting of bail. Deputies shall oppose inappropriate OR releases. A deputy shall be present at all OR motions in felony cases and should be prepared to present testimony, oral argument or declarations, if necessary.

Police officers should follow the bail deviation procedures set forth above when seeking an OR release prior to filing a case. The Bail Commissioner is empowered to grant OR releases.

No person arrested for a violent felony (PC § 667.5(c)) may be released OR until a hearing is conducted in open court before a magistrate or judge and until the prosecutor is given notice and a reasonable opportunity to be heard on the matter. (PC § 1319)