

LEXSTAT CALIFORNIA CONSTITUTION ARTICLE 1 SECTION 12

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THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6 AND
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CONSTITUTION OF THE STATE OF CALIFORNIA
Article I. DECLARATION OF RIGHTS

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Cal Const, Art. I § 12 (2007)

§ 12. Bail; Release on own recognizance

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.

HISTORY:

Adopted November 5, 1974. Amended June 8, 1982. Amendment approved by voters, Prop. 189, effective November 9, 1994.

NOTES:

Former Sections:

Former Art I § 12, similar to present Const Art I § 5, was adopted May 7, 1879 and repealed November 5, 1974.

Amendments:**1982 Amendment:**

Substituted the section for the former section which read: "A person shall 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.

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

1994 Amendment:

Added ", or felony sexual assault offenses on another person," in subd (b).

Editor's Notes

Proposition 8, "The Victims' Bill of Rights," which was also approved by the voters on June 8, 1982, proposed that this section be repealed, but it received fewer votes than the proposition which proposed the amendment stated above. The California Constitution provides that, where proposed amendments conflict, the measure receiving the highest affirmative vote prevails. (Art II § 10; Art XVIII § 4.)

Historical Derivation:

(a) Former Const Art I § 6, as adopted May 7, 1879.

(b) Former 1849 Const Art I §§ 6, 7.

Cross References:

Sex offenses deemed to be felonies involving act of violence and great bodily harm: *Pen C § 292*.

Fixing amount of bail: *Pen C §§ 815a, 1269b, 1269c, 1275*.

Admission to bail: *Pen C §§ 1268 et seq*.

Admission to bail on application for probation or on appeal: *Pen C § 1272*.

Bail in disordered sex offender commitment proceedings: *W & I C § 6319*.

Finality of decision on bail: *CRC Rule 24*.

Stay of execution and bail upon appeal: *CRC Rule 32*.

Bail in criminal cases: *CRC Rule 801*.

Uniform bail schedules: *CRC Rule 850*.

Collateral References:

7 Witkin Summary (10th ed) Constitutional Law § 204.

Cal Jur 3d (Rev) Constitutional Law §§ 231, 235; Criminal Law §§ 2582, 2600, 2601; Delinquent and Dependent Children § 50.

Am Jur 2d (Rev) Bail and Recognizance §§ 11 et seq., 22 et seq.

Federal prohibition against excessive bail: *US Constitution Amendment VIII.*

Crim Const Law Ch 7, "Pretrial Release" (Matthew Bender).

Law Review Articles:

Parolee's right to bail. *62 Cal LR 521.*

Public safety exception to right to bail. *62 Cal LR 561.*

The problems facing California's new bail standard. *5 Glendale LR 203.*

Constitutional controversy of a juvenile's right to bail in juvenile preadjudication proceedings. *1 Hast Const LQ 215.*

Bail as a matter of right. *26 Hast LJ 559.*

Equal protection and the own recognizance release statutes. *5 Pacific LJ 690.*

Victims' rights symposium. *23 Pacific LJ 815.*

Defective bail system-Current California Law. *5 Southwestern U LR 263.*

Admission to bail in California-To bail or not to bail? *49 St BJ 366.*

The wrongs of victim's rights. *37 Stan LR 937.*

Attorney General's Opinions:

Defense attorney is not required to file written declaration of supporting facts under penalty of perjury when applying for reduction in bail or own recognizance release on behalf of defendant; defense attorney must notify district attorney when applying for reduction in bail or own recognizance release on behalf of defendant after information or indictment has been filed, after arrest for specified violent felonies, and where admission to bail is matter of discretion rather than matter of right. *71 Ops. Cal. Atty. Gen. 64.*

Annotations:

Upon whom rests burden of proof, where bail is sought before judgment but after indictment in capital case, as to whether proof is evident or the presumption great. 89 ALR2d 355.

Insanity of accused as affecting right to bail in criminal case. 11 ALR3d 1385.

Right of bail in juvenile courts. 53 ALR3d 848.

Pretrial preventive detention by state court. 75 ALR3d 956.

Right of extraditee to bail after issuance of governor's warrant and pending final disposition of habeas corpus claim. 13 ALR5th 118.

Construction and application of provisions of Federal Bail Reform Act of 1966 (*11 USCS §§ 3146, 3147*) governing pretrial release or bail of persons charged with noncapital offense. 8 ALR Fed 586.

Excessiveness of bail in state criminal cases-Amounts over \$500,000. 7 ALR6th 487.

Hierarchy Notes:

Art. I Note

NOTES OF DECISIONS A. DECISIONS UNDER CURRENT SECTION 1. Bail 2. Release on Own Recognizance B. DECISIONS UNDER FORMER ART I § 6 3. Bail Generally 4. Applications

A. DECISIONS UNDER CURRENT SECTION

1. Bail

This section was intended to abrogate the common law rule that bail was a matter of judicial discretion; nevertheless, the right to bail, while absolute, pertains only to persons incarcerated on a charge of the commission of a criminal offense. None of the statutory provisions which implement this section contemplates bail from restraints, eg. "parole hold" status, imposed after the finality of a judgment of conviction. *In re Law (1973) 10 Cal 3d 21, 109 Cal Rptr 573, 513 P2d 621, 1973 Cal LEXIS 139.*

Defendant, convicted of two counts of rape with prior convictions of forgery and receiving stolen property, was not entitled to bail, as a matter of right, pending appeal from the judgment. A statement in a recent California Supreme Court decision that "the purpose of bail is to assure the defendant's attendance in court when his presence is required, whether before or after conviction" is not properly interpreted as conferring a constitutional right to bail on appeal; it merely points out that in granting bail, whether as a matter of right or a matter of discretion, the punishment of the defendant is not a criteria, and it suggests that other means should be taken for protecting the public's safety. *People v. Turner (1974, Cal App 1st Dist) 39 Cal App 3d 682, 114 Cal Rptr 372, 1974 Cal App LEXIS 1001.*

Denial of defendant's motion in the Court of Appeal for bail pending appeal from his conviction of two counts of rape with prior convictions of forgery and receiving stolen property was required, where the record of defendant's application in the trial court for bail pending appeal consisted of a short statement by his attorney, and defendant made no showing as required by *Cal Rules of Court, rule 32(b)*, that a proper application for bail was made to the trial court and that such court unjustifiably denied the application. *People v. Turner (1974, Cal App 1st Dist) 39 Cal App 3d 682, 114 Cal Rptr 372, 1974 Cal App LEXIS 1001.*

Counsel for a defendant charged with first degree murder did not fail in his duty by not requesting bail at defendant's arraignment, since by virtue of the charge against him he was not entitled to be released on bail. *People v. Obie* (1974, Cal App 1st Dist) 41 Cal App 3d 744, 116 Cal Rptr 283, 1974 Cal App LEXIS 823, overruled *People v. Rollo* (1977) 20 Cal 3d 109, 141 Cal Rptr 177, 569 P2d 771, 1977 Cal LEXIS 172.

A defendant charged with murder was not denied his constitutional rights by the trial court's denial of bail during trial; Pen Cal § 1129 gives the court discretion once trial has commenced to commit the defendant into custody even where he has previously been admitted to bail, and in any event defendant had made no showing that the conduct of his trial was prejudiced by his incarceration. *People v. Obie* (1974, Cal App 1st Dist) 41 Cal App 3d 744, 116 Cal Rptr 283, 1974 Cal App LEXIS 823, overruled *People v. Rollo* (1977) 20 Cal 3d 109, 141 Cal Rptr 177, 569 P2d 771, 1977 Cal LEXIS 172.

A juvenile is not entitled to bail under Cal Const, art I, § 12, Penal Code provisions authorizing bail, provisions of the Juvenile Court Law (*Welf. & Inst. Code*, §§ 500-945) explicitly authorizing prehearing detention, or the 8th Amendment, U. S. Const. The absence of a system of bail under the Juvenile Court Law is not unconstitutional in view of provisions of *Welf. & Inst. Code*, § 635, authorizing detention when "it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained;" and, in situations where "the person or property of another" requires protection, the minor may be detained when the same acts that threaten society also threaten the minor, whose protection then becomes a "matter of immediate and urgent necessity." *Aubry v. Gadbois* (1975, Cal App 2d Dist) 50 Cal App 3d 470, 123 Cal Rptr 365, 1975 Cal App LEXIS 1311.

An application for reduction of bail set at \$750,000 pending appeal to a Federal Court of Appeals from a Federal District Court conviction of a federal drug offense would be denied by an individual Justice of the United States Supreme Court, as Circuit Justice, even though the District Court failed to comply with the requirements of 18 USCS § 3146(d) and Rule 9(b) of the Federal Rules of Appellate Procedure as to providing a statement of reasons for setting bail at so high an amount, and even though the applicant alleged that he had substantial roots in the community, that he had never before been charged with a criminal offense, that his local business interests would serve to keep him from fleeing the jurisdiction, and that neither of the lower courts had made a specific finding that he would fail to appear. *Mecom v. United States* (1977) 434 US 1340, 54 L Ed 2d 49, 98 S Ct 19, 1977 US LEXIS 4372.

The denial of bail to an accused under the provisions of *Cal. Const., art. I, § 8*, applicable to persons threatening another with great bodily harm with a substantial likelihood of carrying out the threat, did not violate state constitutional guarantees against excessive bail. Although the June 8, 1982, amendment to *Cal. Const., art. I, § 12*, did not delete the state constitutional guarantee against excessive bail, under familiar rules of construction, if it is impossible to harmonize or reconcile portions of a constitution, special provisions control more general provisions, and the general and special provisions operate together, neither working the repeal of the other. *In re Nordin* (1983, Cal App 1st Dist) 143 Cal App 3d 538, 192 Cal Rptr 38, 1983 Cal App LEXIS 1783.

The denial of bail to an accused under the provisions of *Cal. Const., art. I, § 8*, applicable to a person threatening another with great bodily harm with a substantial likelihood of carrying out the threat, did not deprive the accused of substantive due process by jailing him without an adjudication of guilt. Because pretrial detention is regulatory rather than penal in nature and not in a legal sense identical to imprisonment, pretrial preventive detention comports with substantive due process, provided that the punishment implicit in the sanction employed is merely incidental to some other legitimate governmental purpose. In the accused's case, the governmental purpose was the salutary one of protecting a particular individual from physical danger in the event of pretrial release of one accused of a crime who made specific threats against the individual. *In re Nordin* (1983, Cal App 1st Dist) 143 Cal App 3d 538, 192 Cal Rptr 38, 1983 Cal App LEXIS 1783.

The denial of bail to an accused under the provisions of *Cal. Const., art. I, § 8*, applicable to persons threatening another with great bodily harm with a substantial likelihood of carrying out the threat, did not deprive the accused of the effective assistance of counsel in violation of *U.S. Const., 6th Amend.* While a detainee's ability to consult with an

attorney and gather evidence and interview witnesses is impaired, lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying the penal system. The fact of confinement, as well as the legitimate goals and policies of a penal institution, limits retained constitutional rights. *In re Nordin* (1983, Cal App 1st Dist) 143 Cal App 3d 538, 192 Cal Rptr 38, 1983 Cal App LEXIS 1783.

The denial of bail to an accused under the provisions of *Cal. Const., art. I, § 8*, applicable to persons threatening another with great bodily harm with a substantial likelihood of carrying out the threat, did not deprive the accused of his right to trial by jury as guaranteed by *Cal. Const., art. I, § 16*, and *U.S. Const., 6th Amend.* The presumption of innocence has no application to the determination of the rights of a pretrial detainee during confinement before his trial has even begun, and there is no question but that the government may permissibly detain a person suspected of committing a crime prior to a formal adjudication of guilt. *In re Nordin* (1983, Cal App 1st Dist) 143 Cal App 3d 538, 192 Cal Rptr 38, 1983 Cal App LEXIS 1783.

In a prosecution for murder with special circumstances, in which the prosecutor sent a letter to defense counsel stating that the People would not seek the death penalty, the trial court erred in determining that it lacked jurisdiction to conduct a bail hearing in that the crime for which defendant was indicted could have warranted the death penalty. Under *Cal. Const., art. I, § 12*, a person must be released on bail by sufficient sureties except for capital crimes "when the facts are evident or the presumption great." In a capital case, there must be a hearing in order to determine if these criteria are met. Further, a defendant is entitled to a bail hearing when charged by complaint or information rather than indictment, and under *Pen. Code, § 1270.5*, implementing the constitutional right to bail, the "finding of an indictment does not add to the strength of the proof or the presumptions to be drawn therefrom." Therefore, regardless of how a defendant is charged, the Constitution provides the right to a bail hearing. Whether the district attorney's decision not to seek the death penalty had any effect on the required inquiry was a question for the trial court. *Clark v. Superior Court* (1992, Cal App 4th Dist) 11 Cal App 4th 455, 14 Cal Rptr 2d 49, 1992 Cal App LEXIS 1388.

The trial court properly denied pretrial bail in a pending prosecution for murder with special circumstances, even though the People did not seek the death penalty. Regardless of whether the People actually seek the death penalty, bail properly may be denied pursuant to *Cal. Const., art. I, § 12*, subd. (a), whenever the accused is charged with an offense statutorily punishable by death and the "facts are evident or the presumption [of guilt is] great." Even if the phrases "capital crime" (*Cal. Const., art. I, § 12*) and "offense punishable with death" (*Pen. Code, § 1270.5*) are ambiguous-referring either to the nature of the charges or the actual punishment risked-consideration of the purposes of the law leads to the conclusion that all capital offenses must fall within the exception to the right to bail in order to assure the attendance of special circumstance murder defendants at trial. The nature of the charge controls the availability of bail, not the punishment actually faced by the accused. For the purposes of bail, the phrases "capital crime" and "offenses punishable with death" include any offense which statutorily may be punished by death. *In re Bright* (1993, Cal App 2d Dist) 13 Cal App 4th 1664, 17 Cal Rptr 2d 105, 1993 Cal App LEXIS 221, review denied (1993, Cal) 1993 Cal LEXIS 2950.

In a homicide prosecution, the trial court properly denied defendant's motion to set bail, even though that motion was made after the prosecution stated it was no longer seeking the death penalty. Under *Cal. Const., art. I, § 12*, a defendant committing a "capital crime" is not entitled to bail where the facts are evident or the presumption great. In determining whether certain benefits or liabilities extend to capital defendants who do not actually face the death penalty, the purpose of the benefit or liability must be examined. Statutes which give a capital defendant the right to certain ancillary defense services due to the complexity of a capital case have been construed to provide that a case in which the defendant is not actually subject to the death penalty is not "capital," and thus the defendant is not entitled to such services. By contrast, the purpose of the exception to the right to bail for capital defendants is to protect the public from those who commit intensely serious crimes. Thus, for purposes of the bail exception, a capital crime remains "capital" even if the defendant does not actually face the death penalty. *Maniscalco v. Superior Court* (1993, Cal App 1st Dist) 19 Cal App 4th 60, 23 Cal Rptr 2d 322, 1993 Cal App LEXIS 984.

Defendant could not attack the validity of his nolo contendere plea that was entered after the expiration of a 60-day time period in a conditional issuance of a federal writ of habeas corpus. The conditional order established that defendant could not be held in custody as a result of his unconstitutional sentence, but defendant never asked that bail be set, a motion that would have to have been granted in the absence of evidence of risks to victims or witnesses that fell within certain constitutional provisions. *People v. Black* (2004, Cal App 2d Dist) 116 Cal App 4th 103, 10 Cal Rptr 3d 113, 2004 Cal App LEXIS 223, review denied (2004, Cal) 2004 Cal LEXIS 4245.

2. Release on Own Recognizance

In determining whether a detainee will appear for subsequent court proceedings if released on his own recognizance, the trial court must consider the detainee's ties to the community, including his employment or other sources of income, the duration and location of his residence, his family attachments, property holdings, and any independent reason for wanting to leave or remain in the community, the detainee's record of appearance at past court hearings or flight to avoid prosecution, and the severity of the sentence the detainee faces. Only where the most serious offenses are charged can the severity of sentence be considered dispositive of the own recognizance release decision. *Van Atta v. Scott* (1980) 27 Cal 3d 424, 166 Cal Rptr 149, 613 P2d 210, 1980 Cal LEXIS 183, superseded by statute as stated in *In re York* (1995, Cal) 1995 Cal LEXIS 2949.

The prosecution bears a heavy burden of proof in any proceeding in which the state threatens to deprive an individual of his good name and freedom. In a hearing on a pretrial detainee's request for release on his own recognizance, due process under the federal and state Constitutions requires the burden of proof concerning the detainee's likelihood of appearing for future court proceedings to be borne by the prosecution, since the probable value of placing the burden of proof on the prosecution would be great and the potential harm to the government's interest, including any administrative cost that the procedural requirement might entail, would be minimal. The prosecution also bears the burden of producing evidence of the detainee's record of nonappearance at prior court hearings and the severity of the sentence the detainee faces, while the detainee bears the burden of producing evidence of community ties. The trial court is not constitutionally required to issue a statement of reasons when own recognizance release is denied. *Disapproving Kawaichi v. Madigan* (1975) 53 Cal App 3d 461, 126 Cal Rptr 63, 1975 Cal App LEXIS 1579 to the extent it is inconsistent. *Van Atta v. Scott* (1980) 27 Cal 3d 424, 166 Cal Rptr 149, 613 P 2d 210, 1980 Cal LEXIS 183.

In determining whether a detainee will appear for subsequent court proceedings if released on his own recognizance, the trial court must consider the detainee's ties to the community, including his employment or other sources of income, the duration and location of his residence, his family attachments, property holdings, and any independent reason for wanting to leave or remain in the community, the detainee's record of appearance at past court hearings or flight to avoid prosecution, and the severity of the sentence the detainee faces. Only where the most serious offenses are charged can the severity of sentence be considered dispositive of the own recognizance release decision. *Van Atta v. Scott* (1980) 27 Cal 3d 424, 166 Cal Rptr 149, 613 P2d 210, 1980 Cal LEXIS 183, superseded by statute as stated in *In re York* (1995, Cal) 1995 Cal LEXIS 2949.

There is no conflict between Pen Cal § 859b and *Cal Const Art I § 12*; even if Proposition 8 had become law, the portion of Proposition 8 that would prevent the release of a defendant charged with committing a serious felony could not be read in isolation. *People v. Standish* (2004, Cal App 2d Dist) 123 Cal App 4th 799, 20 Cal Rptr 3d 458, 2004 Cal App LEXIS 1823, review gr, unpublished (2005, Cal) 24 Cal Rptr 3d 179, 105 P3d 543, 2005 Cal LEXIS 1024, rev'd, superseded (2006) 38 Cal 4th 858, 43 Cal Rptr 3d 785, 135 P3d 32, 2006 Cal LEXIS 6516.

Revocation of release on own recognizance (OR) status, where a felony arrest had occurred within the probationary period for another felony offense, was within the trial court's discretion under *Cal Const Art I, § 12(c)* because the OR release was improper in the absence of a release agreement under Pen Cal § 1318, an investigation and report in accordance with Pen Cal § 1318.1(a), (b), and a hearing pursuant to Pen Cal § 1319.5(a). *In re Annis* (2005, Cal App 2d Dist) 127 Cal App 4th 1190, 26 Cal Rptr 3d 321, 2005 Cal App LEXIS 470.

Neither the terms of *Cal Const Art I, § 12* regarding own recognizance release nor the separation-of-powers doctrine render the mandatory own recognizance release provision of Pen Cal § 859b unconstitutional on its face. *People v. Standish* (2006) 38 Cal 4th 858, 43 Cal Rptr 3d 785, 135 P3d 32, 2006 Cal LEXIS 6516, modified (2006, Cal) 2006 Cal LEXIS 9876, rehearing denied (2006, Cal) 2006 Cal LEXIS 10108.

B. DECISIONS UNDER FORMER ART I § 6

3. Bail Generally

An indictment for a capital offense furnishes of itself a presumption of the guilt of the defendant too great to entitle him to bail as matter of right. *People v. Tinder* (1862) 19 Cal 539, 1862 Cal LEXIS 146.

The Constitution, in declaring bail to be a matter of right, contemplates only those cases in which the party has not been already convicted. However, a statute which makes bail a matter of discretion after conviction for manslaughter is not unconstitutional. *Ex parte Voll* (1871) 41 Cal 29, 1871 Cal LEXIS 43.

In proceedings on habeas corpus where the prisoner has been indicted, his guilt will be assumed upon an application for reduction of bail. *Ex parte Duncan* (1879) 53 Cal 410, 1879 Cal LEXIS 23.

A prisoner arrested for a felony must, in order to procure bail, be taken before the magistrate who issued the warrant, or some other magistrate in the same county, and may not be admitted to bail by the Supreme Court on a writ of habeas corpus. *Ex parte Hung Sin* (1880) 54 Cal 102, 1880 Cal LEXIS 7.

A prisoner indicted for murder when a death resulted from certain of his acts but where there was no evidence to show actual intent to kill, should be admitted to bail. *Ex parte Wolff* (1880) 57 Cal 94, 1880 Cal LEXIS 503.

It is within the power of the trial court to order the defendant into custody as soon as the trial has commenced, and such an order does not violate the defendant's right to bail. *People v. Williams* (1881) 59 Cal 674, 1881 Cal LEXIS 484; *People v. Nickell* (1937, Cal App) 22 Cal App 2d 117, 70 P2d 659, 1937 Cal App LEXIS 78.

To sustain an order refusing to admit to bail a prisoner charged with a capital offense, it is not necessary that the evidence be so convincing as to justify a verdict against the accused, but it is sufficient if it points to him and induces the belief that he may have committed the offense charged. *Ex parte Walpole* (1890) 85 Cal 362, 24 P 657, 1890 Cal LEXIS 919; *In re Application of Page* (1927, Cal App) 82 Cal App 576, 255 P 887, 1927 Cal App LEXIS 837.

The district attorney should be allowed to bring witnesses, and examine them freely, and to cross-examine the sureties, and all reasonable means of investigation should be allowed at a bail hearing, but no unreasonable delay should be granted. *Ex parte Ruef* (1908, Cal App) 8 Cal App 468, 97 P 89, 1908 Cal App LEXIS 166.

A person under arrest for the purpose of determining whether he should be committed to a State hospital is entitled to be admitted to bail until a hearing and examination can be held, unless there is an affirmative showing of danger to the safety of one or to society. *In re Henley* (1912, Cal App) 18 Cal App 1, 121 P 933, 1912 Cal App LEXIS 374, overruled *In re Underwood* (1973) 9 Cal 3d 345, 107 Cal Rptr 401, 508 P2d 721, 1973 Cal LEXIS 194; *In re Application of Westcott* (1928, Cal App) 93 Cal App 575, 270 P 247, 1928 Cal App LEXIS 829.

A defendant against whom several indictments returned for murder all founded on a single transaction, and who has been tried on one indictment and acquitted, should be admitted to bail if the trial on other indictments is not immediately carried on. *In re Application of Weinberg* (1918) 177 Cal 781, 171 P 937, 1918 Cal LEXIS 685.

The district court of appeal before which an appeal from a judgment of conviction of a felony is pending has jurisdiction to entertain an application for admission to bail pending appeal, notwithstanding that denial by the superior court of two previous similar applications. *People v. Pantages* (1930, Cal App) 104 Cal App 396, 286 P 467, 1930 Cal

App LEXIS 1016.

Pending appeal from a judgment of conviction, the determination of the amount of bail to be given by the prisoner ordinarily should be addressed to the trial court. *People v. Oreck (1945, Cal App) 69 Cal App 2d 317, 158 P2d 940, 1945 Cal App LEXIS 663.*

The primary purpose of bail is to assure defendant's presence in court when required, but other matters may be considered in determining whether a convicted defendant should be retained in custody pending appeal, one important consideration being whether there is any danger that, if released, he would continue to commit crime. *In re Scaggs (1956) 47 Cal 2d 416, 303 P2d 1009, 1956 Cal LEXIS 291.*

Before conviction, a defendant charged with felony not punishable with death is entitled to be admitted to bail as a matter of right, but after conviction his admission to bail is a matter of discretion, unless only a fine is imposed. *In re Scaggs (1956) 47 Cal 2d 416, 303 P2d 1009, 1956 Cal LEXIS 291.*

A prisoner admitted to bail is constructively in custody and may test the constitutionality of the holding statute via habeas corpus. *In re Petersen (1958) 51 Cal 2d 177, 331 P2d 24, 1958 Cal LEXIS 220, 77 ALR2d 1291, appeal dismissed (1959) 360 US 314, 79 S Ct 1294, 3 L Ed 2d 1259, 1959 US LEXIS 815.*

The Supreme Court may admit a petitioner to bail pending determination of habeas corpus proceedings. *In re Petersen (1958) 51 Cal 2d 177, 331 P2d 24, 1958 Cal LEXIS 220, 77 ALR2d 1291, appeal dismissed (1959) 360 US 314, 79 S Ct 1294, 3 L Ed 2d 1259, 1959 US LEXIS 815.*

Absolute right to bail extends to pendency of appeal after judgment imposing imprisonment in cases of misdemeanor under Penal Cal § 1272(2). *In re Newbern (1961) 55 Cal 2d 500, 11 Cal Rptr 547, 360 P2d 43, 1961 Cal LEXIS 229, superseded by statute as stated in In re McSherry (2003, Cal App 2d Dist) 112 Cal App 4th 856, 5 Cal Rptr 3d 497, 2003 Cal App LEXIS 1561.*

Entitlement to bail prior to conviction is not ipso facto affected by entering a plea of not guilty by reason of insanity. *In re Gentry (1962, Cal App 2d Dist) 206 Cal App 2d 723, 24 Cal Rptr 208, 1962 Cal App LEXIS 2076, overruled In re Underwood (1973) 9 Cal 3d 345, 107 Cal Rptr 401, 508 P2d 721, 1973 Cal LEXIS 194.*

Penal Cal § 1295, providing for booking a defendant anterior to his release on a deposit of cash bail, is not unconstitutional as violative of the Eighth Amendment or of Const Art I § 6. *Moore v. San Francisco (1970, Cal App 1st Dist) 5 Cal App 3d 728, 85 Cal Rptr 281, 1970 Cal App LEXIS 1476.*

Any suggestion of revenue to the government or punishment to defendant's surety in the granting or withholding of bail would be improper. *People v. Pugh (1970, Cal App 1st Dist) 9 Cal App 3d 241, 88 Cal Rptr 110, 1970 Cal App LEXIS 1942; McDermott v. Superior Court of San Francisco (1972) 6 Cal 3d 693, 100 Cal Rptr 297, 493 P2d 1161, 1972 Cal LEXIS 158.*

The language of this section, expressly providing that all persons shall be bailable except for a capital offense, was consciously added to the "no excessive bail" language adopted from the *Eighth Amendment to the Federal Constitution* in order to make clear that, unlike the federal rule, all except the one class of defendants were to be bailable. *In re Underwood (1973) 9 Cal 3d 345, 107 Cal Rptr 401, 508 P2d 721, 1973 Cal LEXIS 194, superseded by statute as stated in In re York (1995) 9 Cal 4th 1133, 40 Cal Rptr 2d 308, 892 P2d 804, 1995 Cal LEXIS 2181, superseded by statute as stated in In re Christie (2001, Cal App 2d Dist) 92 Cal App 4th 1105, 112 Cal Rptr 2d 495, 2001 Cal App LEXIS 803.*

The purpose of California's bail system does not encompass protection of "public safety." *In re Underwood (1973) 9 Cal 3d 345, 107 Cal Rptr 401, 508 P2d 721, 1973 Cal LEXIS 194, superseded by statute as stated in In re York (1995) 9 Cal 4th 1133, 40 Cal Rptr 2d 308, 892 P2d 804, 1995 Cal LEXIS 2181, superseded by statute as stated in In re Christie (2001, Cal App 2d Dist) 92 Cal App 4th 1105, 112 Cal Rptr 2d 495, 2001 Cal App LEXIS 803.*

4. Applications

The sum of \$112,000 is not excessive bail for 10 distinct felonies, such being the amount alleged to have been received by the prisoner by reason of the felonious acts. *Ex parte Duncan* (1879) 53 Cal 410, 1879 Cal LEXIS 23.

Bail is not to be deemed excessive merely because the person under indictment cannot give the bail required. *Ex parte Ruef* (1908, Cal App) 7 Cal App 750, 96 P 24, 1908 Cal App LEXIS 287.

Any considerable additional bail required upon a second indictment for the same offense must be per se excessive. *Ex parte Ruef* (1908, Cal App) 7 Cal App 750, 96 P 24, 1908 Cal App LEXIS 287.

Where the trial court denied an application for bail on appeal in a felony case on the erroneous assumption that it had no discretion to allow such bail in the absence of any intervening extraordinary circumstance, and where a petition for writ of habeas corpus was denied by the District Court of Appeal with leave to petitioner again to apply for bail before the trial court, petitioner may not properly refuse to make a new application for bail in the trial court on the ground that such application would be a useless act. *In re Friedman on behalf of Brumback* (1956) 46 Cal 2d 810, 299 P2d 217, 1956 Cal LEXIS 233.

It was not an abuse of discretion to refuse to admit a convicted defendant to bail pending his appeal where the judge who presided at the trial and denied the motions for bail stated in an affidavit that there were strong indications that defendant had engaged in other criminal activities before, during, and after the trial, and where the judge additionally referred to the unfavorable recommendation of the probation officer, to the fact that, after his conviction, defendant was at liberty for several weeks during which he had an opportunity to put his affairs in order, and to his own belief that no substantial errors in the trial of the case would be shown on appeal. *In re Scaggs* (1956) 47 Cal 2d 416, 303 P2d 1009, 1956 Cal LEXIS 291.

Defendant's claim that bail "was never set by a magistrate" was unsupported where it appeared that when the indictment was presented to the court and filed, bail was set in a specified amount, a judge of the superior court being a magistrate. *People v. Lollis* (1960, Cal App 2d Dist) 177 Cal App 2d 665, 2 Cal Rptr 420, 1960 Cal App LEXIS 2530, overruled *People v. Perez* (1965) 62 Cal 2d 769, 44 Cal Rptr 326, 401 P2d 934, 1965 Cal LEXIS 294.

Bail of \$500 was not excessive on charges of intoxication where petitioner, representing himself, appeared in court in an "obviously intoxicated" condition. *In re Newbern* (1961) 55 Cal 2d 500, 11 Cal Rptr 547, 360 P2d 43, 1961 Cal LEXIS 229, superseded by statute as stated in *In re McSherry* (2003, Cal App 2d Dist) 112 Cal App 4th 856, 5 Cal Rptr 3d 497, 2003 Cal App LEXIS 1561.

An order admitting to bail one convicted of noncapital offenses was within the court's discretionary powers upon resumption of liability of the surety where earlier an order forfeiting bail on the accused's failure to appear for pronouncement of sentence had been vacated on his belated appearance with surety and he had been committed pending further proceedings. *People v. National Auto. & Casualty Ins. Co.* (1966, Cal App 2d Dist) 244 Cal App 2d 491, 53 Cal Rptr 297, 1966 Cal App LEXIS 1598.

The penalty assessment appended as part of bail for the contingent benefit of the Peace Officers Training Fund under Penal Cal § 13521 constitutes neither a bill of attainder nor the imposition of excessive bail. *People v. Norman* (1967, Cal App 1st Dist) 252 Cal App 2d 381, 60 Cal Rptr 609, 1967 Cal App LEXIS 1514, cert den (1968) 391 US 923, 20 L Ed 2d 661, 88 S Ct 1819, 1968 US LEXIS 1712, overruled *McDermott v. Superior Court of San Francisco* (1972) 6 Cal 3d 693, 100 Cal Rptr 297, 493 P2d 1161, 1972 Cal LEXIS 158.

In a prosecution for burglary, the defendant failed to show that the amount of bail set on the indictment was excessive or that there was any abuse of discretion in the denial of his motions to reduce bail where defendant was first released on \$1,100 bail and made no arrangements to secure his own counsel during that period, where the \$11,000 bail

subsequently required was not unreasonable in view of the amount of the merchandise stolen and of the past criminal record of defendant. *People v. Norman* (1967, Cal App 1st Dist) 252 Cal App 2d 381, 60 Cal Rptr 609, 1967 Cal App LEXIS 1514, cert den (1968) 391 US 923, 20 L Ed 2d 661, 88 S Ct 1819, 1968 US LEXIS 1712, overruled *McDermott v. Superior Court of San Francisco* (1972) 6 Cal 3d 693, 100 Cal Rptr 297, 493 P2d 1161, 1972 Cal LEXIS 158.

Defendant, charged with non-capital solicitation of the crime of murder, was entitled to bail as of right, but the error committed in denying bail for a five-day period from the time of his arrest until the morning of his preliminary examination did not affect the jurisdiction of the magistrate to proceed with the examination, nor did it deprive the trial court of jurisdiction to try defendant, where there was no showing that defendant's incarceration handicapped him in his preparation for the preliminary hearing, and where experienced counsel did not seek a continuance of the prelim. *People v. Hinman* (1967, Cal App 2d Dist) 253 Cal App 2d 896, 61 Cal Rptr 609, 1967 Cal App LEXIS 2419, cert den (1968) 391 US 923, 88 S Ct 1818, 20 L Ed 2d 660, 1968 US LEXIS 1707.

The setting of bail at \$62,500 for each defendant in a prosecution under a multicount indictment charging conspiracy and completed crimes by possessing counterfeit travelers checks with intent to complete and utter them, and the denial of reduction thereof, were not prejudicial to defendants, nor was the bail set unconstitutionally excessive, where (1) defendants made no showing to support their claim of inability to obtain evidence of their innocence or that the bail amount probably affected the outcome of the trial, (2) one defendant was actually free on bail some weeks before trial, and (3) the four-count indictment charged 12 overt acts of conspiracy, other counts charged one defendant with being armed, and an interstate counterfeiting ring concerned with \$2,000,000 in spurious travelers checks and similar sidelines was involved. *People v. Amata* (1969, Cal App 1st Dist) 270 Cal App 2d 575, 75 Cal Rptr 860, 1969 Cal App LEXIS 1558.

In a robbery prosecution, it was not improper for the trial judge to consider a prior conviction in fixing bail where the judge's ruling that the prior could not be used for impeachment purposes was simply a ruling suppressing evidence, tantamount to a ruling sustaining an objection to the admissibility of evidence, and was in no sense a judgment declaring such prior conviction to be a void judgment. *People v. Bryan* (1970, Cal App 2d Dist) 3 Cal App 3d 327, 83 Cal Rptr 291, 1970 Cal App LEXIS 1131.

The trial court properly denied the motion of defendant charged with manslaughter to substitute State of California bonds in a face amount equal to the amount of the cash bail previously fixed and posted where the bonds would not mature for some 35 years and had a current market value of slightly over half of their face amount, and where defendant did not challenge the propriety of the amount of the bail fixed. Construing Penal Cal § 1298, providing that such bonds may be deposited in lieu of money, so as to permit the court to reject tendered bonds when their actual market value is not commensurate with the bail fixed by the court is consistent with this section excessive, and with Penal Cal § 1275, requiring that, in fixing bail, consideration be given to the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his appearing at the trial or hearing. *Newton v. Superior Court* (1971, Cal App 1st Dist) 16 Cal App 3d 499, 94 Cal Rptr 120, 1971 Cal App LEXIS 1605.

The trial court abused its discretion in denying an application for a stay of execution and release on personal recognizance of defendant convicted and sentenced for bribery violations where the trial court correctly found that defendant's appeal from the conviction was not frivolous or vexatious and that there was no danger that defendant would try to escape, and where it did not appear that defendant would have the opportunity to commit similar criminal offenses pending appeal, he having been removed from office on conviction. *In re Robinson* (1971, Cal App 2d Dist) 16 Cal App 3d 539, 94 Cal Rptr 148, 1971 Cal App LEXIS 1610.

Penal Cal § 13521, levying a penalty assessment on certain forfeitures, is unconstitutional as it applies to bail. *McDermott v. Superior Court of San Francisco* (1972) 6 Cal 3d 693, 100 Cal Rptr 297, 493 P2d 1161, 1972 Cal LEXIS 158.

SUGGESTED FORMS

Habeas Corpus Petition Alleging Excess Bail