

RESOLUTION 07-05-05

DIGEST

Bail: Consideration of Defendant's Wealth in Setting Bail

Amends Penal Code section 1275 to prohibit a bail enhancement predicated solely upon a defendant's financial condition.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Penal Code section 1275 to prohibit a bail enhancement predicated solely upon a defendant's financial condition. This resolution should be approved in principle because the purpose of California's bail system is to assure the defendant's attendance in court and protect the public safety – not to punish financially secure individuals.

The United States Constitution and the California Constitution prohibit excessive bail. (U.S. Const. VIII Amend; Cal. Const., art I, §12(c).) Prior to a 1987 statutory amendment, the only valid basis for determining the proper amount of bail was the amount necessary to secure the defendant's appearance in court. (*In re Underwood* (1973) 9 Cal.3d 345, 348.) Now, in determining the amount of bail, a magistrate considers: 1) protection of the public; 2) the seriousness of the offense; 3) the defendant's previous criminal record; and, 4) the probability of his subsequent appearance in court. (Pen. Code, §1275(a).) However, public safety is the primary consideration. (*Ibid.*)

An argument can be made that a person with vast financial resources may post a large bail and flee. However, a person with a well-paying job has an incentive to continue to appear in court. Additionally, a defendant with a spouse and children in the jurisdiction will find it hard to leave. Furthermore, if a person with strong financial ties to the community were to flee, not only would the defendant lose the bail but also any social ties that such wealth brings.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 1275 to read as follows:

- 1 § 1275.
- 2 (a) In setting, reducing, or denying bail, the judge or magistrate shall take into consideration
- 3 the protection of the public, the seriousness of the offense charged, the previous criminal record of
- 4 the defendant, and the probability of his or her appearing at trial or hearing of the case. The public
- 5 safety shall be the primary consideration. In considering the seriousness of the offense charged, the
- 6 judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats
- 7 to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in
- 8 the commission of the crime charged, and the alleged use or possession of controlled substances by
- 9 the defendant.
- 10 (b) In considering offenses wherein a violation of Chapter 6 (commencing with Section
- 11 11350) of Division 10 of the Health and Safety Code is alleged, the judge or magistrate shall consider
- 12 the following: (1) the alleged amounts of controlled substances involved in the commission of the
- 13 offense, and (2) whether the defendant is currently released on bail for an alleged violation of Chapter
- 14 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.
- 15 (c) Before a court reduces bail below the amount established by the bail schedule approved
- 16 for the county, in accordance with subdivisions (b) and (c) of Section 1269b, for a person charged

17 with a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in
18 subdivision (c) of Section 667.5, the court shall make a finding of unusual circumstances and shall set
19 forth those facts on the record. For purposes of this subdivision, "unusual circumstances" does not
20 include the fact that the defendant has made all prior court appearances or has not committed any
21 new offenses.

22 (d) An increase in bail above the presumptive bail set forth in the bail schedule approved for
23 the county may not be based on the defendant's actual or perceived financial condition, unless the
24 defendant's financial condition is directly relevant to one or more of the factors at issue and
25 considered pursuant to subdivision (a).

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Beverly Hills Bar Association

STATEMENT OF REASONS:

Existing Law: There is no current law prohibiting bail being set in a discriminatory fashion based upon the actual or perceived financial condition of the defendant.

This Resolution: Amends Penal Code section 1275 to provide that an increase in bail above the presumptive bail set forth in the bail schedule approved for the county may not be based on the defendant's actual or perceived financial condition unless his financial condition is relevant to the factors considered under subdivision (a).

The Problem: All defendants are entitled to bail as a matter of right before conviction except in extremely limited circumstances. See Pen. Code § 1271. Bail may not be excessive in amount. (Cal. Const., art. 1, § 12; U.S. Const., 8th Amend.) Bail is not and should not be punitive in nature. Many defendants of means are faced with an enhancement of bail above the presumptive bail set forth in the bail schedule approved by the county based solely on their apparent ability to easily post bond as a result of their actual or perceived financial condition. Bail is not and should not be punitive in nature. The amount of bail should be determined according to the criteria enumerated by the Legislature, and the wealth of the defendant is not one of said criteria. A defendant of means should not be subjected to a higher bail than a defendant without means for the identical offense, solely based upon his financial condition. This resolution would not prevent the judge or magistrate from considering the defendant's financial condition when it is relevant to one of the permissible factors to be considered, such as risk of flight, where said factor is at issue.

IMPACT STATEMENT

This resolution does not affect any other laws.

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RESPONSIBLE FLOOR DELEGATE: Elizabeth L. Bradley; Richard D. Kaplan

COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

This resolution makes it unlawful for a court to increase bail above the presumptive set limit if such increase is based on a defendant's actual or perceived financial condition. A defendant with more wealth

has greater means to flee a jurisdiction. Furthermore, a defendant of financial means has enhanced temptation to flee. This resolution is counterproductive to the purpose of setting bail which is to protect the public and prevent or reduce the risk of flight.