

# KEEPING SUSPECTS IN CUSTODY: WHEN IS SCHEDULED BAIL NOT ENOUGH?

## INTRODUCTION

After an arrest for most offenses, a defendant can pledge to the court cash or a bond to obtain temporary release from custody. This pledge, known as “bail”, historically was meant to assure a defendant’s appearance in court to answer for any criminal charges that might be filed.

In 1982, voters in California passed Proposition 4<sup>1</sup> (known as the Victim’s Bill of Rights) which, along with some additional legislation, made public safety the primary focus of bail. In doing so, it provided guidance to judges in setting bail for individuals who had been arrested. It gave judges the latitude to take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, the dangerousness of the defendant, and the probability of his or her appearing at the trial or hearing of the case.

California Penal Code section 1269b(c) requires judges of each county to annually establish a schedule of the bail which is to be set for every criminal offense. This becomes the county’s bail schedule and its purpose is to set a reasonable bail for each offense. The bail amounts in this schedule, however, cannot take into consideration all of the aspects of Proposition 4 so the legislature amended the law in Penal Code section 1269(c). If an arresting officer believes the circumstances, surrounding the offense warrants it, this statute gives the officer the ability to request that a judge set bail for an individual higher than what is specified in the county’s bail schedule. Examples of such circumstances are:

1. the suspect has an extensive criminal record,
2. the suspect has a record of failing to appear in court on prior occasions,
3. the suspect is in the country illegally,
4. the suspect may continue to engage in criminal conduct,
5. the suspect is a continuing threat to a victim or,

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<sup>1</sup> Proposition 4 amended Section 12 of Article 1 of the California Constitution.

6. the facts of the current offense are so egregious or extraordinary that the officer believes the current bail is insufficient.

## **BACKGROUND**

In July 2015, a man brutally abused a young child in Paso Robles and inflicted very serious injuries. The severity of these injuries required the child to be transported by air ambulance to a hospital. Police were able to identify a man they suspected of committing the crime and arrested him. Shortly after this arrest, police developed reason to believe the suspect may have been in the country illegally.

Police booked the suspect into the County Jail on P.C. 273a (a) felony child abuse and bail was set at \$100,000 using the standard county bail schedule. During booking, police notified the United States Immigration and Customs Enforcement Agency (ICE) of the arrest of this individual and ICE placed an immigration hold (ICE hold) on the suspect. The arresting officers believed the suspect would be held on the combination of the bail amount and the ICE hold. Therefore, officers never attempted to seek an increase in this bail. Shortly after being booked into jail, the suspect posted bail and was released from custody in spite of the ICE hold. The suspect failed to appear in court as directed and his whereabouts are currently unknown.

## **METHODOLOGY**

This incident prompted an investigation by the 2015-2016 San Luis Obispo County Grand Jury to determine if local law enforcement agencies ensure that bail for offenders they arrest in serious criminal cases is sufficient to preserve public safety and enhance the chances the offender will appear in court.

In the course of the investigation, the Grand Jury requested policies, procedures, and training information from the Sheriff's Department and each of the seven city police departments within the county related to assessing the sufficiency of bail and, if necessary, requesting a court to

increase bail above the scheduled amount. Inquiry was also made of each agency as to the impact ICE holds have on an officer's decision whether or not to seek a bail increase.

The Grand Jury also obtained the current bail schedule for San Luis Obispo County Superior Court, which included a cover letter to all the county law enforcement agencies advising them of their responsibilities for recognizing the need for and requesting an increase in bail.<sup>2</sup>

The Grand Jury interviewed the San Luis Obispo County Sheriff, the San Luis Obispo County District Attorney and his staff, as well as law enforcement officers from the Sheriff's Department, and each of the seven police departments within the county.

Specific inquiry was made of the arresting agency in the previously mentioned July 2015 child abuse case as to their policies, procedures, and training relating to requesting a bail increase. Further, how they handled that particular child abuse case in these regards. Inquiry was also made of the other law enforcement agencies as to their policies, procedures, and training relating to bail increase request in cases of similar seriousness.

## **NARRATIVE**

In August 2015, the San Luis Obispo County Sheriff met with the newly seated Grand Jury. During this meeting, among other topics, the Sheriff discussed the previously mentioned case wherein an illegal immigrant had been released from custody on bail even though an ICE hold was reportedly in place. Due to this fact, the case had received extensive media coverage. The Sheriff informed the Grand Jury that federal courts have held that it is against the law for local law enforcement officials to hold an individual in custody solely based on their immigration status or deny the individual the opportunity to post bail solely because of immigration status. According to the Sheriff, this is a problem County Sheriffs throughout the state are facing and repeated requests to the federal government for assistance in dealing with this issue have left the matter unresolved. Consequently, unless and until the federal government provides enforcement authority or direction to counties on immigration matters, local law enforcement officials must

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<sup>2</sup> [http://slocourts.net/downloads/court\\_documents/2015\\_Complete\\_Bail\\_Schedule\\_&\\_LTR.pdf](http://slocourts.net/downloads/court_documents/2015_Complete_Bail_Schedule_&_LTR.pdf)

rely solely on the bail set by each county's bail schedule or otherwise authorized bail set by a judge to lawfully continue to detain individuals arrested for serious offenses.

The Sheriff acknowledged that a request to increase the standard bail for offenses can be made if an arresting officer feels the circumstances of the offense or the offender would support an increase in bail. The Sheriff said, to his knowledge, such a request was not made in this case.

The Grand Jury determined that the bail increase process is contained in California Penal Code section 1269c. This Penal Code statute and the duties of law enforcement in using it are stated in the Superior Court's 2015 Bail Schedule cover letter to the law enforcement agencies wherein the court said, "Prevailing legislation places the burden on law enforcement agencies to notify the magistrate if the scheduled bail is not adequate for the crime." The court further said in this letter, "It is recommended that each agency make their personnel cognizant of Penal Code Sections 1269c ... as certain provisions may apply if bail modification occurs."

The Grand Jury interviewed the two officers who were involved in the arrest of the suspect in this case. The Grand Jury learned the following: In July 2015, their police department received a report from a hospital that a two-year old child with very serious injuries had been admitted to the hospital. The injuries were numerous and included two broken arms and a broken leg. Hospital staff suspected that the child's injuries were the result of severe child abuse. Believing that the abuse had occurred within the jurisdiction of this police department, two police officers went to the hospital and began an investigation. These officers determined the identity of the suspect whom they knew from prior incidents and believed he was in the United States illegally.

The officers then arrested and transported the suspect, booking him into the San Luis Obispo County Jail on the child abuse charges. Using the standard bail schedule for these charges, bail was set at \$100,000. Believing the suspect to be in the country illegally, the officers sent a fax to ICE informing them of the arrest. An ICE hold was placed on this suspect that lead the arresting officers to believe that ICE officials would pick him up before he was released from custody.

Shortly after his arrest, the suspect was able to post bail. Although ICE did place a hold on the suspect with the jail, the suspect was not stopped from posting bail. Upon posting bail, he was given a date to appear in San Luis Obispo County Superior Court and was released from custody. The suspect did not appear as directed in court and, to date, law enforcement does not know where he is.

On November 24, 2015, the Grand Jury spoke with the District Attorney (also known as the “Chief Law Enforcement Officer”) and his staff. In this role, the District Attorney provides legal guidance to law enforcement agencies in matters of importance. The District Attorney provided the Grand Jury with a copy of a training memorandum from his office dated November 20, 2015, and directed to the San Luis Obispo County law enforcement agencies titled “Setting Bail at Booking”. Among the points raised in the memorandum was the use of PC1269c to obtain a bail increase as well as “templates” available to the officers to assist in preparing the necessary paperwork. The District Attorney demonstrated the ease with which law enforcement officers can electronically access these templates, prepare them on a computer, and either print the documents out or submit them to a judge electronically. The District Attorney also said that attorneys from his office are available 24 hours a day, 365 days per year for legal assistance to law enforcement officers in the preparation of this paperwork.

The Grand Jury also went to each of the seven city police departments in the county. The purpose of the visits was to interview law enforcement officers to determine:

- 1) Whether the officers were aware of the provisions of PC1269c,
- 2) Did the department have a written policy regarding the use of PC1269c,
- 3) Did the department provide training to the officers of the department on PC1269c,
- 4) How often has PC1269c been used by officers of the department and,
- 5) What information or training is provided to the officers of the department regarding federal immigration (ICE) holds?

The Grand Jury noted that the police departments interviewed early in the investigation had little or no knowledge of PC1269c and little or no training in the use of these provisions. The officers interviewed in one of the police departments said that some of their detectives are experienced

and knowledgeable in using PC1269c. This knowledge however, is only passed on verbally from one detective to another. The police departments did not have written policies or training in this area. The officers indicated that their detectives handle all serious crimes and the detectives talk with one another about their cases. If the need arose, an experienced detective would assist a fellow detective in the use of the PC1269c to obtain an increase in bail.

At the conclusion of our interviews, it appeared to the Grand Jury that there was little consistency among the law enforcement agencies as to the policies, procedures, training, and use of PC1269c.

Each of the agencies said that they rarely handled arrests for crimes within the county that would justify an increase in the bail. They categorized these types of crimes generally as serious felonies with extenuating circumstances or serious felonies committed by an individual with an extensive or serious criminal background. Each of these agencies, however, did acknowledge the importance for their officers to be familiar with and know how to use PC1269c to obtain a bail increase. Further, these agencies each felt that the serious crimes for which PC1269c would be used, occur very infrequently and ongoing training is important.

None of the city police department officers interviewed indicated a clear understanding of ICE hold's ineffectiveness in keeping individuals in custody.

The Grand Jury spoke with a training officer and a detective from the San Luis Obispo County Sheriff's Department about their PC1269c policies and training. The Grand Jury reviewed the PC1269c written policies, which included the district attorney memorandum of November 20, 2015. The Sheriff's Department provides their detectives with PC1269c training and bail enhancements have been sought when appropriate.

## **FINDINGS**

F.1. Of the eight county law enforcement agencies (Sheriff and the seven city police departments), not every agency had a formal training program for PC1269c.

- F.2. The recommendation of the San Luis Obispo County Superior Court regarding the responsibility of officers to seek a bail increase “...if the scheduled bail is not adequate for the crime ... ” and to “... make their personnel cognizant of Penal Code Sections 1269c . . .” was not being adhered to by all law enforcement agencies.
- F.3. The failure of law enforcement officers to be “... cognizant of Penal Code Sections 1269c . . .” and be regularly trained in its use can lead to situations where public safety is compromised and/or justice is thwarted.
- F.4. The processes are in place for San Luis Obispo County law enforcement officers to readily prepare requests for bail increases and submit the requests to a judge for approval.
- F.5. San Luis Obispo County Superior Court has advised local law enforcement agencies to be mindful of this tool when considering bail.
- F.6. The few crimes handled by San Luis Obispo County law enforcement officers warranting a bail enhancement increases the importance of ongoing training in this area to maintain knowledge and proficiency.
- F.7. Not all of the county law enforcement officers are aware of the current Immigration and Customs Enforcement (ICE) hold procedures.
- F.8. The District Attorney is in the best position to coordinate and lead an effort to ensure that each law enforcement agency in the county provides training to its personnel on bail enhancement tools.

## **RECOMMENDATIONS**

- R.1. The District Attorney should coordinate the development of uniform written policies and procedures for local law enforcement agencies to make requests of the court for appropriate bail increases.
- R.2. The District Attorney should coordinate formal training programs for the local law enforcement agencies in the process for obtaining bail increases.
- R.3. Local law enforcement agencies should work with the District Attorney in the development of the above policies and programs within the resources of their respective departments.

R.4. Local law enforcement agencies should rely only on California State Law when considering whether a bail increase is appropriate.

### REQUIRED RESPONSES

1. The San Luis Obispo County District Attorney is required to respond to Findings 4, 5, 6, and 8 and Recommendations 1, 2, and 3.
2. The San Luis Obispo County Sheriff is required to respond to Findings 1, 2, 3, 4, 5, 6, and 7 and Recommendations 1, 2, 3, and 4.
3. The Chiefs of Police for each of the following agencies: Arroyo Grande, Atascadero, Grover Beach, Morro Bay, Pismo Beach, Paso Robles and San Luis Obispo are required to respond to Findings 1, 2, 3, 4, 5, 6, and 7 and Recommendations 1, 2, 3, and 4.

Presiding Judge	Grand Jury
Presiding Judge Barry T. LaBarbera Superior Court of California 1035 Palm Street Room 355 San Luis Obispo, CA 93408	San Luis Obispo County Grand Jury P.O. Box 4910 San Luis Obispo, CA 93403