

County of Santa Clara

Office of the Sheriff

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(408) 808-4400



MEMORANDUM

Laurie Smith
Sheriff

TO : Sheriff's Office Personnel

FROM : COVID-19 Incident Command Center

SUBJECT : ICC Directive 20-29 Emergency Bail Schedule

DATE : June 26, 2020

As part of California's response to the COVID-19 crisis, the Judicial Council of California adopted Emergency Rule 4 on April 6, 2020, establishing a statewide Emergency Bail Schedule. The Judicial Council voted to rescind the Emergency Bail Schedule for California, providing all 58 counties the opportunity to determine a bail schedule appropriate for their individual needs. On June 23, 2020, the Santa Clara County Superior Court extended an Emergency Bail Schedule until September 1, 2020 (attached). This directive provides guidance on changes to policies and practices relevant to the implementation of the Bail Schedule order dated June 23, 2020.

1. Dollar Bail Amounts on the Pre-Booking Information Sheet (Pre-Booking) and Affidavit Re Probable Cause and Bail Setting (Affidavit)

On the Pre-Booking the Affidavit, lower booking deputies will write the dollar bail amount for each on-view offense and offense listed on a warrant.

- For on-view offenses, deputies will obtain the dollar bail amount from the Emergency Bail Schedule (zero bail schedule). Dollar bail amounts for offenses exempted by the Emergency Bail Schedule will be set by the existing 2020 Criminal Bail Schedule. Bail will be set at "\$0" for each on-view offense if the Emergency Bail Schedule sets \$0 bail.
- For offenses listed on a warrant, deputies will obtain the dollar bail amount from the warrant.

This Directive will not apply if the on-view offense does not qualify for \$0 bail under the Emergency Bail Schedule and either (1) the 2020 Criminal Bail Schedule sets a bail amount or "NBA" (No Bail Allowed) or (2) the offense is for a crime identified in Sections K or L of the 2020 Bail Schedule as requiring judicial review. For these offenses, deputies will write "MAG" on the Pre-Booking and Affidavit.

As described below in greater detail, the arresting law enforcement officer may seek judicial review of the bail amount under Penal Code § 1269c. If this arresting officer seeks judicial review for a \$0 bail offense, the lower booking deputy will set bail at \$0 and mark the Pre-Booking and Affidavit with “PC 1269c” and submit the forms to Pretrial Services for review by the duty magistrate.

2. Magistrate Review Under Penal Code § 1269c

The arresting deputy **may** apply to the magistrate for bail in excess of the scheduled amount (i.e., more than zero) at the time of booking pursuant to Penal Code § 1269c for all felonies and misdemeanor offenses involving a domestic violence restraining order.

Requesting judicial review allows the jail to hold the arrestee for up to 8-hours for the magistrate to review the facts and circumstances of the case and consider setting bail at a higher amount or other terms and conditions for release. Penal Code § 1269c specifically states:

If, after the application is made, no order changing the amount of bail is issued within eight hours after booking, the defendant shall be entitled to be released on posting the amount of bail set forth in the applicable bail schedule.

Specifically, Penal Code section 1269c states:

“If a defendant is arrested without a warrant for a bailable felony offense or for the misdemeanor offense of violating a domestic violence restraining order, and a peace officer has reasonable cause to believe that the amount of bail set forth in the schedule of bail for that offense is insufficient to ensure the defendant’s appearance or to ensure the protection of a victim, or family member of a victim, of domestic violence.”

To request judicial review of the bail, the arresting deputy must document the “reasonable cause to believe that the amount of bail set forth in the schedule of bail for that offense is insufficient” to (1) ensure the defendant’s appearance or (2) ensure the protection of a victim, or family member of a victim, of domestic violence.

These details should be specific and clearly articulate the risk to public safety, including the victim(s). Any additional details should be added to the Affidavit. For example, arresting deputies may want to describe specific threats, the level of injuries, weapons involved, criminal history (including currently out on bail, OR, probation, parole, etc.), prior failures to appear, and other aggravating circumstances of the offense.

The arresting deputy should then notify lower booking that they are requesting judicial review pursuant to Penal Code § 1269c. The lower booking deputy will mark the Pre-Booking and Affidavit with “PC 1269c” and submit the forms to Pretrial Services for review by the duty magistrate.

3. Housing and Transportation of Arrestees

This Directive temporarily suspends the current policy of housing arrestees within five hours of booking for arrestees whose total bail amount is set at \$0 at booking. This temporary policy applies to “\$0 bail” arrestees even if the arresting officer has requested judicial review under Penal Code § 1269c.

Lower booking deputies must continue to monitor \$0 bail arrestees for release, communicate with Administrative Booking and the Office of Pretrial Services, and notify the lower booking sergeant after eight hours have elapsed since booking. If needed, the lower booking sergeant will communicate with an Administrative Booking supervisor to expedite releases. Arrestees with a bail set at \$0, should be housed and/or transported only (1) after twelve (12) hours have elapsed since booking and (2) if their release is not likely to occur within the next hour.

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FILED

JUN 23 2020

Clerk of the Court
Superior Court of CA County of Santa Clara
BY David K. Walker DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

ORDER SETTING BAIL SCHEDULE AS AMENDED ON JUNE 23, 2020

GOOD CAUSE APPEARING, the Court orders application of the below Bail Schedule. This schedule shall be applied to all accused persons arrested and in pretrial custody, and to all accused persons held in pretrial custody effective June 23, 2020. This schedule will remain in effect until September 1, 2020 unless amended or repealed by the Court.

SANTA CLARA COUNTY SUPERIOR COURT BAIL SCHEDULE

Bail for all misdemeanor and felony offenses must be set at \$0, with the exception of only the offenses listed below:

1. A serious felony, as defined in Penal Code section 1192.7(c), or a violent felony, as defined in Penal Code section 667.5(c);
2. A felony violation of Penal Code section 69;
3. A violation of Penal Code section 166(c)(1);
4. A violation of Penal Code section 136.1, when punishment is imposed under section 136.1(c);
5. A violation of Penal Code section 262;
6. A violation of Penal Code sections 243(e)(1) or 273.5;

- 1 7. A violation of Penal Code section 273.6 if the detained person made threats to kill or
- 2 harm, has engaged in violence against, or has gone to the residence or workplace of, the
- 3 protected party;
- 4 8. A violation of Penal Code section 422 where the offense is punished as a felony;
- 5 9. A violation of Penal Code section 646.9;
- 6 10. A violation of an offense listed in Penal Code section 290(c);
- 7 11. A violation of Vehicle Code sections 23152 or 23153;
- 8 12. A felony violation of Penal Code section 463; and
- 9 13. A violation of Penal Code section 29800.

10 Bail for all violations of misdemeanor probation, whether the arrest is with or without a bench
11 warrant, must be set at \$0. Bail for all violations of felony probation, parole, post-release
12 community supervision, or mandatory supervision, must be set in accord with the statewide
13 Emergency Bail Schedule contained in this order, or for the bail amount in the court's 2020 local
14 county bail schedule for charges of conviction listed in exceptions (1) through (13), including any
15 enhancements.

16 The 2020 Santa Clara County Bail Schedule, including the April 1st Emergency Amendment,
17 will remain in effect for all offenses listed in (1) through (13) above, including any count-specific
18 conduct enhancements and any status enhancements.

19 The court retains discretion to deny bail as authorized by article I, section 12, or 28(f)(3) of the
20 California Constitution, to set a higher bail for any offense, including those with a bail of \$0, and/or
21 to order conditions of release deemed appropriate for any offense. Setting of bail is at the
22 discretion of the judicial officer reviewing the case with due consideration of public safety and
23 health concerns.

24 IT IS SO ORDERED.

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26 Dated: June 23, 2020



27 Presiding Judge Deborah A. Ryan
28 Santa Clara County Superior Court