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## Bail Bond Forfeiture Procedures

### Issue

Can procedures for processing bail bond forfeitures be improved?

### Background

When a person is arrested, a judge determines the amount of the bail to be posted so that the accused can be released from jail on a temporary basis as provided in the Eighth Amendment of the U.S. Constitution and Section 1300 of the California Penal Code. Generally, the accused or his (her) family or friends purchase a bail bond (basically a promise to appear in court) from a local state licensed bail bond agent (bail bond agencies). The bail bond agent secures a bond from a surety company licensed by the California State Department of Insurance to issue bonds. The bail bond is submitted to the Court Clerk's office and placed in the accused's criminal court file. Alternatively, cash or a property bond can be posted instead of a bond. The bail bond simply promises the court that if the accused does not show up in court, the bail bond agent and the surety company will pay the court the full amount of the bail bond. If the accused does not appear, the court is entitled to collect the bail amount from the issuing agency provided that there has been a timely notice of forfeiture<sup>1</sup> mailed to the bail bond agent and to the surety company. Similarly, if cash or property has been posted, the court is entitled to take possession of that cash or property. The posting of a bond by the local bail bond agent represents a large financial and personal responsibility on the part of the bail bond agent and surety company writing the bond.

Most local bail bond agencies have provided this service for many years in the community without any problems. However, some bail bond agencies have not taken the necessary precautions which in turn can cause problems in collecting on the bond. Precautions that a bail bond agencies can take include a requirement of: full premium (cost of bond), an indemnitor (the party who is financially liable) and collateral (which is something of value) to be kept in the file during the life of the bail bond. When bail bond agencies do not write bail bonds properly, they frequently sustain losses when the accused disappears and cannot be located.

If the accused does not appear in court, the court can declare the bond "forfeited". After the court has declared a bond forfeited, a notice is sent out to the surety company and the bail agent that the bond is forfeited. The surety company or bail agent has 185 days from the mailing of that notice to ask the court for relief from forfeiture. The full amount of the bail bond has to be paid to the court if: 1) the court does not grant the bail bond agent an extension of time beyond

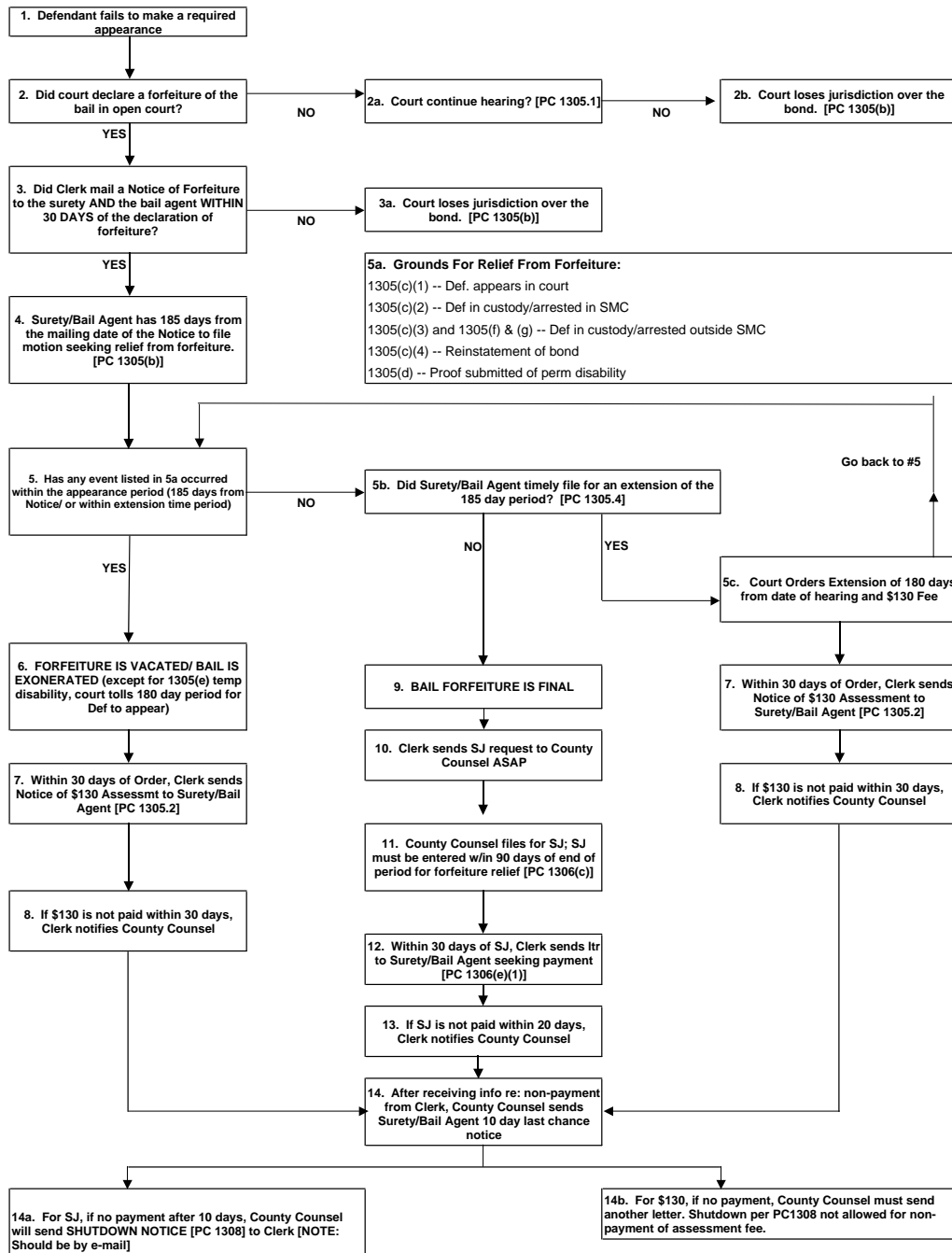
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<sup>1</sup> Bail can be subject to forfeiture when the person released on bail fails to appear or otherwise violates the conditions of bail.

the 185 days to find the accused, or 2) proper timely notice has not been sent by bail bond agencies.

The County Counsel's office assists the court in the collection of forfeited bail bonds. Figure 1 (provided by the Court Clerk's office) shows the flow of information and responsibility after bail has been forfeited. It is apparent that there are many opportunities for communication failure in this highly complex administrative process.

FIGURE 1 FLOW CHART OF BAIL COLLECTION PROCESS AFTER FORFEITURE



## **Investigation**

While the focus of this report was the County Counsel's office, the Grand Jury interviewed members of the San Mateo Bail Agents Association, the Court Clerk's office, the Court's Finance office as well as the County Counsel's office. Additionally, the Grand Jury reviewed the court's "Bond Book" from 2001 to the present. The Bond Book is a record of the amount and chronology of each bail bond imposed by the court. The Bond Book tracks the amount of bail, how it was posted (bail bond, cash, etc.), and the date the judge set bail, as well as, subsequent exoneration or forfeiture of the bail.

## **Findings**

There is a substantial number of bail bonds issued.

Each year there are some bail bonds that are forfeited.

The County Counsel's office becomes involved in the process once notified of a forfeited bond.

State laws regarding bail bonds are complex and it can take many steps over the course of a year for a case to be completed (see Figure 1).

Sharing of information is key to a successful collection of forfeited bail bonds.

Bail that is forfeited is placed in an account and then distributed to the state, cities and county pursuant to a formula set forth in the California Penal Code.

## **Conclusions**

The Grand Jury was unable to determine how much money had gone uncollected from the available information. Some counties in California have recovered large amounts in forfeiture bonds. While forfeiture bond money is not counted on as a revenue source, it may still offset some of the court's costs. More importantly, failure to collect undermines the intent of the bail bond system.

To achieve the objective of bail, it is necessary to hold the bail bond agencies and surety companies accountable by strictly enforcing the California Penal Code sections regarding bail bond procedures and collection. The certainty of an effective process for forfeiture enforcement will ensure that bail bond agencies and surety companies use the correct procedures when bailing a person out of jail to limit the likelihood that those bailed will fail to appear before the court as required. An accused person's failure to appear can compromise the effectiveness of the courts, because more court proceedings and arrest warrants may be required. In addition, those who jump bail pose a potential threat to public safety that warrants more formal procedures to keep track of the status of each case.

Sharing of bail bond information can be improved which in turn will improve the collection of forfeited bail bonds.

## **Recommendations**

The Grand Jury recommends that the Board of Supervisors direct County Counsel to:

1. Work with the court to develop an automated procedure for informing County Counsel when bail bond forfeitures take place.
2. Work with the court to ensure that County Counsel obtains the necessary information to effectively process bail bond forfeitures.



**COUNTY OF SAN MATEO**  
**Inter-Departmental Correspondence**

County Manager's Office

**DATE:** June 10, 2008  
**BOARD MEETING DATE:** July 8, 2008  
**SPECIAL NOTICE:** None  
**VOTE REQUIRED:** None

**TO:** Honorable Board of Supervisors  
**FROM:** John L. Maltbie, County Manager  
**SUBJECT:** 2007-08 Grand Jury Response

**RECOMMENDATION**

Accept this report containing the County's responses to the following 2007-08 Grand Jury report: Bail Bond Forfeiture Procedures.

**VISION ALIGNMENT:**

**Commitment:** Responsive, effective and collaborative government.

**Goal 20:** Government decisions are based on careful consideration of future impact, rather than temporary relief or immediate gain.

This activity contributes to the goal by ensuring that all Grand Jury findings and recommendations are thoroughly reviewed by the appropriate County departments and that, when appropriate, process improvements are made to improve the quality and efficiency of services provided to the public and other agencies.

**DISCUSSION**

The County is mandated to respond to the Grand Jury within 90 days from the date that reports are filed with the County Clerk and Elected Officials are mandated to respond within 60 days. To that end, attached is the County's response to the Grand Jury report on Bail Bond Forfeiture Procedures, issued on May 8, 2008.

## **Bail Bond Forfeiture Procedures**

### **Findings:**

Staff is in general agreement with the Grand Jury's findings.

### **Recommendations:**

**The Board of Supervisors should direct the County Counsel to:**

- 1. Work with the court to develop an automated procedure for informing County Counsel when bail bond forfeitures take place.**

**Response:** Concur. The development of an automated procedure for informing the County Counsel when bail forfeitures take place would ensure a more efficient and effective system of processing bail forfeitures and recovering the funds that result from the forfeiture. The County Counsel will work with the Court to develop the system, and has initiated contact with the Court to begin the recommended process.

- 2. Work with the court to ensure that County Counsel obtains the necessary information to effectively process bail bond forfeitures.**

**Response:** Concur. The timely exchanges of complete and accurate information will facilitate a more effective and efficient system of processing bail forfeitures. County Counsel will work with the Court on the process, and will explore whether this can be incorporated into the automated system that is the subject of the first recommendation. County Counsel has contacted the Court to begin the process of developing the automated system, and it is anticipated that this process will improve the collection of forfeited bail funds.