



SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

PRE-ARRAIGNMENT RELEASE PROTOCOLS

FREQUENTLY ASKED QUESTIONS FROM LAW ENFORCEMENT

ENHANCEMENTS

Q: There are several enhancements listed in the new bail schedules. Examples include an offense committed for the benefit of a gang (\$40,000), arrestee served prior prison term within the past 5 years (\$10,000 per prior), and felony offense committed while felony charges are pending against the arrestee (\$25,000). If an arrestee is booked for an offense designated in the bail schedule as CR, BR, or MR and there is an applicable enhancement, what is the bail amount?

A: Enhancement bail amounts should be added to the dollar amount of bail for the underlying offense. Offenses designated as CR, BR, or MR in the bail schedules are \$0 bail offenses. If an enhancement is alleged, that amount should be added to the \$0 bail amount to obtain the enhanced bail amount. If the offense is designated in the bail schedule as **CR, BR, or MR and an enhancement is alleged**, the law enforcement agency (LEA) must notify the magistrate by contacting the Superior Court of Los Angeles's Pre-Arraignment Support Unit (PSU) at (213) 633-6350 **within 2 hours of the booking**. The Pre-Arraignment Support Unit will notify the magistrate of the enhancement, and the arrestee will not be subject to magistrate review unless the arrestee is statutorily eligible for own recognizance release.²

Enhancement amounts are listed on page 25 of the Felony Bail Schedule and in other places throughout the schedule where applicable. As stated in the bail schedules, no additional financial conditions of release other than those listed in the enhancements section may be added to the bail amounts for offenses designated as CR, BR, or MR.

Example: An individual is arrested for grand theft auto (PC § 487(d)(1)) and is alleged to be stealing cars for the benefit of a criminal street gang within the meaning of PC § 186.22. There is an applicable enhancement as a result of the alleged felony offense being committed for the benefit of a criminal street gang. The bail amount for the underlying offense of grand theft auto is \$0 and BR, but because the alleged enhancement requires bail in the amount of \$40,000, the bail would be \$40,000 (\$0 for the underlying offense + \$40,000 for the enhancement = \$40,000 money bail). The person is not eligible for a non-financial condition of release because a financial condition of release (money bail amount) is required for the enhancement and the arrestee is not eligible for OR release. The Felony Bail Computation Worksheet on page 10 can be used to calculate the final bail amount when enhancements are included.

¹ Cal. Crim. Practice: Motions, Jury Instr. & Sent. § 5:1 (4th ed.) ["Under the schedule, bail must be the sum of the amount listed for the offense, plus the amount listed for all applicable enhancements and prior convictions."]; see *Kiperman v. Klenshetyn* (2005) 133 Cal.App.4th 934, 939 [stating "a person may not be released on bond for an amount less than the amount of the bail ordered by the court."]; see generally *Dant v. Superior Court* (1998) 61 Cal.App.4th 380, 386 [stating that bail schedules usually specify "additional amounts for cases in which sentence enhancing allegations or other extraordinary facts are present."].

² The enhancements for which OR release may be ordered are Penal Code sections 12022.1 (out on bail or OR), 12022.4 (furnishing a firearm to another), 667.5(b) (Prior prison term for a sexually violent offense), 186.11 (aggravated white-collar crime), 422.7 (hate crime), and 422.75 (hate crime).



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Q: How do we notify the magistrate that there is an enhancement when the underlying offense is designated as CR, BR, or MR?

A: If a LEA alleges that there is an enhancement to an underlying offense that is designated as **CR, BR, or MR**, the LEA will need to notify the magistrate by contacting the Superior Court of Los Angeles's Pre-Arraignment Support Unit at (213) 633-6350 within **2 hours of the booking**. The Pre-Arraignment Support Unit will notify the magistrate of the enhancement, and the arrestee will not be subject to magistrate review unless the arrestee is statutorily eligible for own recognizance release.

Even when the enhancement requires money bail, the LEA should notify the Pre-Arraignment Support Unit of the enhancement because the booking may be reviewed by a magistrate if release on own recognizance is not precluded by statute.³ However, the amount of the enhancement will not be reviewed or changed by the magistrate.

EXCEPTIONS

Q: The new bail schedules provide for certain exceptions that elevate the booking to a magistrate review (MR) category. How will the magistrate know that an offense designated as CR or BR in the schedule should be reviewed because it falls into an exception (e.g assault offense alleged to have been committed while the arrestee is on parole)?

A: The bail schedules provide that if an arrestee is on felony probation, parole or post-release community supervision (PRCS) when the arrestee is booked for an offense designated as CR or BR, the arrestee should be referred to a magistrate for review. If a law enforcement agency finds that an arrestee is on felony probation, parole or PRCS, the agency should indicate this information to the magistrate by contacting the Superior Court of Los Angeles's Pre-Arraignment Support Unit at (213) 633-6350 within **2 hours of the booking**. The Pre-Arraignment Support Unit will notify the magistrate of the exception, and the arrest will be referred to the magistrate for review. If the law enforcement agency does not notify the magistrate of the fact that the arrestee is on felony probation, parole or PRCS in that timeframe, the arrestee shall be released by the LEA because they failed to provide this information to the Magistrate Unit via PSU personnel and therefore the arrest will never go before the Magistrate Unit for review.

³ See footnote 2 for the list of enhancements for which OR release may be ordered.



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DETENTION

- Q:** How long can a LEA legally hold someone who has been arrested and booked at our facility for multiple CR charges (e.g., Penal Code § 484, Health & Safety Code §§ 11377 and 11364) and/or BR charges? Once the person is identified via Livescan, is law enforcement required to cite them out?
- A:** Nothing in the bail schedules changes a LEA's statutory authority to hold an arrestee pursuant to applicable laws. Similarly, nothing in the bail schedules changes a LEA's responsibility to release an arrestee entitled to **release** pursuant to Penal Code section 825 or on bail as authorized by law. An arrestee booked for an offense designated as CR or BR is presumed to have a money bail amount of \$0.
- Q:** Some LEAs issue a detention certificate pursuant to Penal Code § 849(b)(2) for certain offenses (e.g. § 647(f) – public intoxication) after the arrestee has been booked and held in custody to sober up. Will this still be an option with the new bail schedules?
- A:** Yes. Nothing in the bail schedules changes the authority of LEAs to temporarily detain arrestees pursuant to applicable statutory authority. As has always been the case with bail schedules, they do not override or supplant applicable laws. Similarly, the new bail schedules do not impede with LEAs' discretion to cite and release or detain individuals pursuant to existing statutory authority.

PROBABLE CAUSE DECLARATIONS

- Q:** Are Probable Cause Declarations required for offenses designated to be MR?
- A:** No. Nothing in the bail schedules changes the circumstances for when preparing and submitting a PCD is required.

BAIL DEVIATION

- Q:** Pursuant to Penal Code § 1269c, an arrestee may request a bail deviation downward and, a law enforcement officer, under certain circumstances, may request a bail deviation upwards. Will the Court maintain a procedure for application for bail deviations after October 1, 2023?
- A:** Yes. Nothing in the bail schedules changes the authority under Penal Code § 1269c to request bail deviation. Penal Code § 1269c sets forth the procedures and instances when upward bail deviation is appropriate for crimes requiring money bail. It is available for the following arrestees:



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1. Those defendants arrested without a warrant for a bailable felony offense or for the misdemeanor offense of violating a domestic violence restraining order; and
2. 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.

For crimes requiring money bail, LEAs may request to increase the amount of money bail designated in the bail schedule by calling the Pre-Arraignment Support Unit within two hours of booking at (213) 633-6350. LEAs must also submit a signed, written declaration to the magistrate, SCLAC Crim 205, which is available on the Court's website. Requests to reduce the designated money bail are not available prior to arraignment for offenses listed within Penal Code section 1270.1(a).

For crimes not requiring a financial condition of release, LEAs may request to elevate the designated protocol (e.g., CR/BR to MR) pursuant to the bail schedules (Penal Code, § 1269b(c)) by calling the Pre-Arraignment Support Unit within two hours of booking at (213) 633-6350. Requests to elevate the bail protocol designation must communicate the facts and circumstances that support the request for the upward deviation (such as those listed in Penal Code section 1269c), but a signed, written declaration (LASC Crim 205) is not required.

A request for upward bail deviation of an offense designated in the bail schedule as CR or BR may cause the arrest to be referred to the magistrate for review.

Requests for release on bail lower than that provided in the schedules or on own recognizance may be made by an attorney, friend, or family member of the arrestee by calling the Pre-Arraignment Support Unit at the number above within two hours of booking.

Q: If an arresting charge includes an enhancement for which money bail applies under the enhancements section of the bail schedule, can the LEA request an upward bail deviation on the enhancement amount?

A: No. Penal Code § 1269c does not provide for bail deviation for enhancement bail amounts.



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MAGISTRATE REVIEW

- Q: What must LEAs do to request magistrate review for offenses that are designated CR, BR, or MR?**
- A:** Arrestees must be booked for all offenses in which magistrate review is designated or requested. For offenses designated as MR, LEAs need only book the arrestee and the case will be sent for magistrate review. For enhancements designated as MR in the bail schedules, LEAs must book the arrestee and, within 2 hours of booking, inform the Pre-Arrestment Support Unit of the enhancement so that the case will be sent for magistrate review. For offenses designated CR or BR that LEAs request to be elevated to MR (bail deviation), LEAs must book the arrestee and, within 2 hours of booking, inform the Pre-Arrestment Support Unit of the request and communicate why the protocol designation should be elevated within the meaning of the bail schedules so that the case will be sent for magistrate review.

RELEASING MR ARRESTEES

- Q: How will a booking agency know the decision of the magistrate when an offense is designated in the bail schedule as MR or the arrest is otherwise referred to the magistrate for review?**
- A:** The PREP program makes available to LEAs release orders as well as magistrate decisions to hold an arrestee for further review. In the new PREP portal, the jailer and the arresting officer will be able to view a copy of the release, regardless of what agency effected the arrest or booked the arrestee. Magistrates will begin the review process 4 hours after the arrestee completes a livescan. A decision by the magistrate should then be completed within 2-4 hours.

The jailer must then print the Release Order and have the arrestee sign it. If an arrestee refuses to sign the Release Order, the jailer has the authority to continue to hold the arrestee per Penal Code § 853.6(i)(8).



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Q: If an offense is designated in the bail schedule or is referred for magistrate review, would one of the conditions of release be a financial bail amount?

A: No, offenses designated in the bail schedules as CR, BR, and MR are \$0 bail offenses, meaning that only non-financial conditions of release are available for individuals arrested on these offenses. When a magistrate reviews an individual's suitability for release, they will determine and assess the most appropriate non-financial conditions of release for the individual arrestee. Pursuant to *In re Humphrey* (2021) 11 Cal.5th 135, 156, and based upon the facts and circumstances known to the magistrate at the time, if a magistrate finds by clear and convincing evidence based on available information that there are no non-financial conditions of release available prior to arraignment that assure public or victim safety or the arrestee's appearance in court, then the magistrate may defer until arraignment consideration of the arrestee's release. If no charges are filed by the prosecuting agency prior to arraignment, the arrestee will be released without conditions. The judicial officer presiding over the arraignment is not bound by pre-arraignment orders made by a magistrate and will determine the arrestee's suitability for all conditions of release, financial and non-financial, within the timing outlined in Penal Code section 825 and within the meaning of current statutory and case authority.

Q: If an offense is designated in the bail schedule or is referred for magistrate review and the jailer does not receive a release notice, how long may the arrestee be held? May the arrestee be released on \$0 bail?

A: Pursuant to the bail schedules, MR offenses may only be released on conditions of release as determined by the magistrate. Until and unless the jailer receives a release order stating the conditions of release, if any, the arrestee may continue to be held pursuant to the bail schedules. But the bail schedules do not impede jailers' discretion or responsibility to release arrestees as otherwise authorized by law.

Q: If an individual has been released pursuant to a Release Order and is arrested on a new charge, may the individual have an additional charge for violating the Release Order?

A: Yes, the Release Order is a legal court order and violations thereof may be charged the same as any violation of a legal court order. However, the validity of the conditions of the Release Order expires at arraignment, unless extended by the arraignment judge, or at the time the prosecutor declines to file a criminal case.