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MEMORANDUM

TO: Honorable Board of Supervisors
Jeffrey V. Smith, County Executive

FROM: James R. Williams, Acting County Counsel 
Garry D. Herceg, Jr., Deputy County Executive 

RE: Bail Forfeiture

DATE: October 4, 2016

At the Bail and Release Work Group's final meeting on August 26, 2016, Supervisor Chavez requested that staff provide the Board of Supervisors with answers to six questions regarding bail forfeiture. This memorandum provides a brief background on bail forfeiture, as well as the answers to the six questions posed by Supervisor Chavez.

Background on Bail Forfeiture

Many defendants obtain release from pretrial custody by paying a private bail agent to post a bail bond with the court. A bail bond is a guarantee that the defendant will appear at all court proceedings and a promise to pay the full bail amount to the court if the defendant fails to appear. When a defendant posts a bail bond through a private bail agent, no money is paid to the court upfront. The bail agent merely *promises* to pay if the defendant fails to appear.

The bail agent remains obligated under the bail bond until bail is either "exonerated" or "forfeited." When bail is *exonerated*, the bail agent is released from his or her obligation under the bail bond, and no money is paid to the court. Exoneration may occur when a case is resolved and the defendant has made all court appearances. But exoneration also occurs in many other circumstances, including cases where the defendant is rearrested on a new charge, the defendant flees to another jurisdiction and the District Attorney declines to pursue extradition, or the court fails to satisfy the strict procedural requirements for "forfeiting" bail.

When bail is *forfeited*, the bail agent must pay the full bail amount to the court. Forfeiture may occur if a defendant has a failure to appear (FTA) for one of the following required court proceedings: arraignment, trial, judgment, post-appeal surrender proceeding, or other court-ordered appearance. However, California law imposes burdensome procedures that the court must follow to forfeit bail successfully and provides bail agents many opportunities to

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exonerate bail after the forfeiture process has begun. As a result, many FTAs do not ultimately result in forfeiture, and bail agents rarely pay bail to the court.

The basic bail forfeiture process is as follows:¹

- The court may forfeit bail bonds of less than \$400 immediately upon an FTA.
- For bonds of \$400 or more, the court must mail a notice of forfeiture to the bail agent within 30 days of the FTA and provide 180 days for the agent to attempt to recover the defendant. The recovery period may be extended by an additional 180 days upon a bail agent's request.
- The court may forfeit bonds of \$400 or more after the notice and 180-day recovery period only if it follows *all* legal steps without exception. The court must exonerate (i.e., release) the bond if any of the following occurs:
 - The court fails to “declare the bail forfeited in open court”;
 - The court fails to perform and provide proof of proper legal service of the FTA and intent to forfeit notice to all parties within 30 days;
 - The court fails to file a certificate of forfeiture within 30 days;
 - The defendant turns himself or herself in;
 - The defendant is arrested, taken to court, or surrendered by a bail agent, bounty hunter, or any other person – including by law enforcement;
 - The defendant appears after the 180-day recovery period elapses, but he or she had been arrested on the same case and was in custody elsewhere;
 - The bail agent shows that the defendant was in custody or was recovered in a foreign jurisdiction;
 - The bail agent shows that the defendant was hospitalized, or otherwise indisposed and unable to appear in court; or
 - After a forfeiture order, the court fails to enter summary judgment against the bail agent in the amount owed within 90 days.
- If the court successfully forfeits bail, the District Attorney must enforce the judgment against the bail agent within 2 years.

A chart illustrating the forfeiture process is provided on page 2 of the 2007-2008 Final Report of the San Mateo County Grand Jury Report on Bail Bond Forfeiture Procedures, which is attached at the end of this memorandum.²

¹ The process is outlined in Penal Code sections 1305, 1305.4-1305.6, 1306, and 1308.

² The 2007-2008 Final Report of the San Mateo County Grand Jury on Bail Bond Forfeiture Procedures is also available at <http://www.sanmateocourt.org/documents/grand_jury/2007/bail_bond.pdf>.

Question 1: Is bail forfeited if the defendant fails to appear?

Yes, bail may be forfeited if the defendant fails to appear for arraignment, trial, judgment, post-appeal surrender, or other court-ordered appearance.

But, as outlined above, even where forfeiture proceedings are initiated after an FTA, they frequently are not completed due to the onerous procedural requirements that the court and District Attorney must follow and the numerous circumstances in which bail must be exonerated.

Question 2: Is bail forfeited if the defendant is arrested for a different offense?

No, bail cannot be forfeited if the defendant is arrested for a different offense. Forfeitures result *only* from failures to appear.

Question 3: Is bail forfeited if the defendant violates a no-contact order?

No, bail cannot be forfeited if a defendant violates a no-contact order.

Question 4: Is bail forfeited if the defendant harms a victim or witness?

No, bail cannot be forfeited if a defendant harms a victim or witness.

Question 5: What percentage of forfeited surety bail is collected by the courts?

Typically less than 20% of all bonds filed go into forfeiture proceedings and less than 7% of all surety bonds filed are ultimately forfeited. We have not been able to obtain information about the percentage of forfeited surety bonds that are actually collected by the court.

Question 6: What percentage of forfeited cash bail is collected by the courts?

Instead of paying a bail agent to post a bail bond, a small number of defendants post bail by depositing the full bail amount in cash directly with the court. Unlike a bail bond, which is merely a *promise* to pay, cash bail is an upfront payment to the court of the full bail amount. Because the court already has cash bail in its possession, 100% of forfeited cash bail is collected by the courts.

The procedural requirements for forfeiture of cash bail are also somewhat less onerous. Cash bail is immediately forfeited 180 days after an FTA, unless the court exonerates due to reappearance of the defendant or for some other reason during that 180-day period.³ Unlike surety bonds, the District Attorney does not need to pursue, and the court does not need to enter, summary judgment and then pursue collection of cash bail.

Attachment: 2007-2008 Final Report of the San Mateo County Grand Jury on Bail Bond Forfeiture Procedures

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³ Penal Code § 1307.



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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 forfeiture¹ 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.

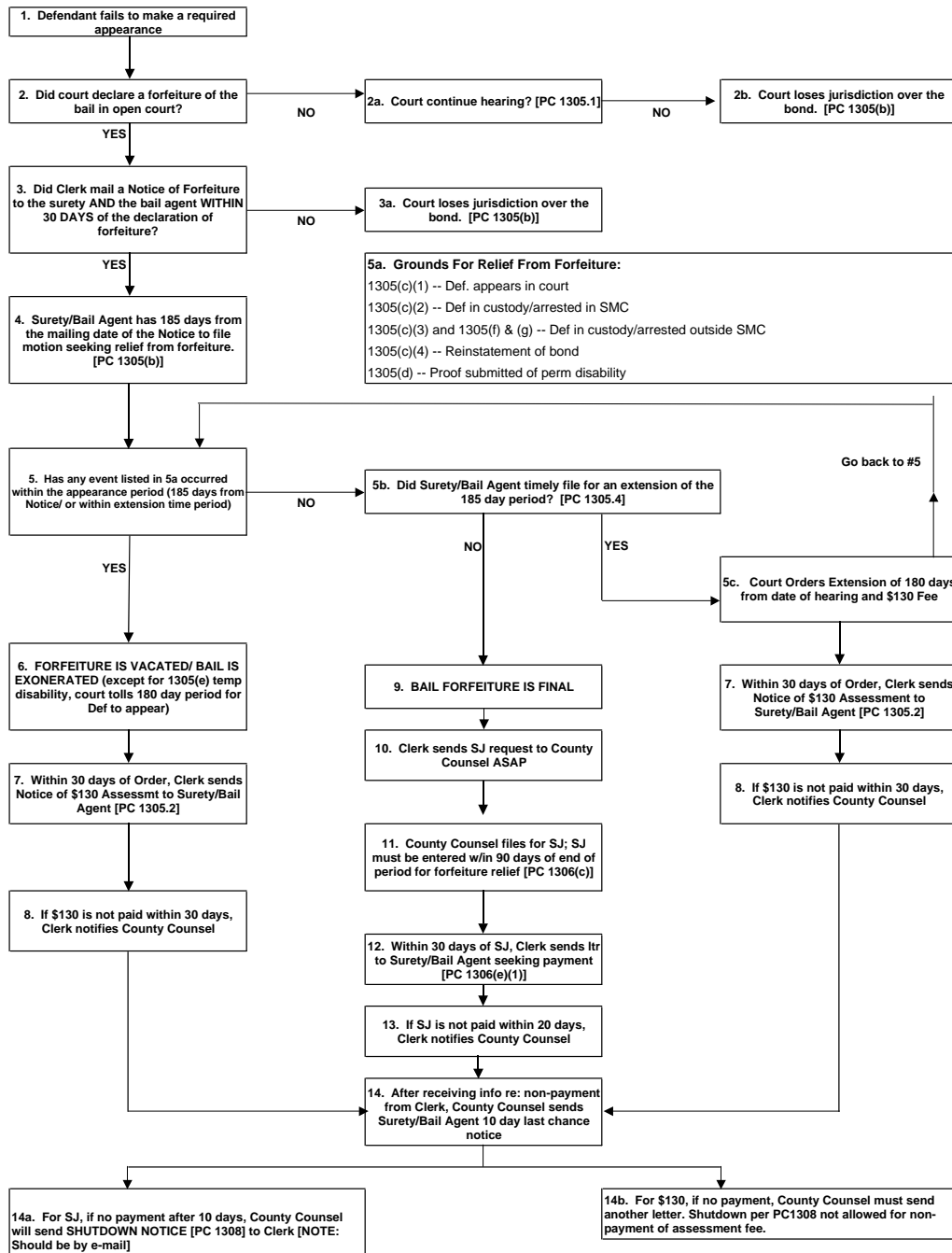
If the accused does not appear in court, the court can declare the bond "forfeited". After the court has declared a bond forfeited, a notice is sent out to the surety company and the bail agent that the bond is forfeited. The surety company or bail agent has 185 days from the mailing of that notice to 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

¹ 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.