

DAN DOW
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COUNTY OF SAN LUIS OBISPO

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July 18, 2016

RECEIVED

JUL 26 2016

San Luis Obispo
Grand Jury

The Honorable Barry T. LaBarbera
Presiding Judge of the Superior Court of California
1050 Monterey Street
San Luis Obispo, CA, 93408

Re. Grand Jury 2016 Report- Keeping Suspects in Custody: When is Scheduled
Bail Not Enough?

Dear Judge LaBarbera,

Having reviewed the 2016 San Luis Obispo County Grand Jury Report entitled *Keeping Suspects in Custody: When is Scheduled Bail Not Enough?*, my response to the findings and recommendations are as follows:

Findings:

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.

The respondent agrees with this finding. The respondent is aware that these processes are used routinely by law enforcement officers throughout the County on a case by case basis, as is deemed necessary by the investigating officer(s). Further, the bail increase process is often considered by investigating officers in serious felony cases involving domestic violence, sexual assault, child abuse, murder, gang crimes, and financial crimes.

5. San Luis Obispo County Superior Court has advised local law enforcement agencies to be mindful of this tool when considering bail.

The respondent is aware of the bail schedule published by the San Luis Obispo County Superior Court and the cover letter that advises local law enforcement:

"[p]revailing legislation places the burden on law enforcement agencies to notify the magistrate if the scheduled bail is not adequate for the crime. It is recommended that each agency make their personnel cognizant of Penal Code Sections 1269c and 1270.1 as certain provisions may apply if bail modification occurs."

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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.

The respondent agrees with this finding. Training is critical for every professional law enforcement agency. Ongoing and continuous professional training is the responsibility of each local law enforcement agency. The respondent is aware that the Sheriff's Office does provide training regarding bail enhancement procedures to Sheriff Deputies as a part of its regular training program.

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.

The respondent disagrees with this finding. As stated on Page 5 of the Grand Jury Report, the District Attorney has made, and will continue to make, information and resources available to local law enforcement agencies with respect to procedures for seeking bail enhancements in appropriate cases. See for example, Attachment A – a Memorandum to San Luis Obispo County Law Enforcement Agencies re: Setting Bail at Booking, dated 11/20/15 (1 page); Attachment B – CJIS LEA Templates List (2 pages), Item #4 Bail Increase Request & Declaration & Order (Word templates accessible to all law enforcement officers); and Attachment C – Word document template entitled “Request for Bail in Excess of Felony Bail Schedule and Declaration of < >” (3 pages). However, the District Attorney is not in a position to ensure that every law enforcement officer in every agency receives the available training and information. This must necessarily be the responsibility of each respective agency.

Recommendations:

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.

The respondent partially agrees with this recommendation. The District Attorney has already provided this role to the extent appropriate. The District Attorney's office has already provided all local law enforcement agencies with training on the subject matter and the use of the bail enhancement templates. The responsibility for providing written departmental policies lies squarely with each law enforcement agency. The District Attorney's Office is available for consultation should any local law enforcement agency seek its assistance. Additionally, the San Luis Obispo County Criminal Justice Administrators Association meets monthly to discuss matters of importance including the need for county-wide protocols or policies.

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2. The District Attorney should coordinate formal training programs for the local law enforcement agencies in the process for obtaining bail increases.

The respondent disagrees with this recommendation because the District Attorney has already fulfilled this role to the extent appropriate. Training is the individual responsibility of each law enforcement agency (see discussion above). Further, the process of seeking a bail increase is quite simple. The District Attorney's training memorandum has been provided to each local law enforcement agency along with a form template for assistance in preparation of the necessary documents. Further, if an officer requires assistance, he or she may contact a member of the District Attorney's office who is available "24/7" for consultation. It is the responsibility of each department to require and provide for the ongoing training of its officers. As stated in response to Recommendation 1, the District Attorney's Office is available for consultation should any local law enforcement agency seek its assistance.

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.

The District Attorney remains available for consultation in the development of policies and procedures relative to bail increases, however the District Attorney cannot, and should not, dictate policy and procedure for any independent law enforcement agency.

Very Respectfully,



Dan Dow
District Attorney

OFFICE OF THE DISTRICT ATTORNEY
County of San Luis Obispo



MEMORANDUM

TO: San Luis Obispo County Law Enforcement Agencies
FROM: Sandy Mitchell, Training DDA (781-5858)
DATE: November 20, 2015
RE: Setting Bail at Booking

The charges listed on the Booking Sheet determine the initial bail amount. In order to ensure appropriate bail is set, please consider the following:

1. **For a felony arrest, check the CII history for prior prison terms and/or prior "strikes".** A prior prison term under PC 667.5(b) adds \$10,000 bail. A serious or violent felony prior, PC 667(e)(1), adds \$50,000 bail; two or more serious or violent felony priors, PC 667(e)(2,) adds \$250,000. There are numerous priors which apply to sex offenses. See pages 56-57 of the SLO County Bail Schedule.
2. **For a felony arrest, consider adding applicable enhancements.** A great bodily injury enhancement, PC 12022.7, adds \$30,000 bail. The enhancement for a principal being armed with a firearm, PC 12022(a)(1), adds \$15,000. Personal use of a deadly weapon, PC 12022(b), adds \$20,000. The enhancement for committing a felony while released on another felony, PC 12022.1, adds \$25,000 bail. There are enhancements relating to discharge of firearms, taking or damaging property of great value, and causing great bodily injury to special victims. See pages 29-30 of the SLO County Bail Schedule.
3. **When the arrestee has a stolen access card, consider a felony PC 530.5(a) or PC 484e(d) charge.** The USE of a stolen access card or access card information is a violation of PC 530.5(a), a felony, regardless of the amount charged. There is a split in authority as to whether Prop 47 applies to PC 484e(d), possession of a stolen card with the intent to defraud (no use required); see *People v. Grayson* (2015) 241 Cal App 4th 454 and *People v. Romanowski* 2015 WL 7074794.
4. **Consider a Declaration to Increase Bail or a Declaration to Examine Source of Bail.** Pursuant to PC 1269c, the officer can request an increase in bail if the arrest is for any felony OR for a misdemeanor violation of a domestic violence restraining order, and the arresting officer has reasonable cause to believe that the scheduled bail amount is insufficient to ensure the arrestee's appearance OR to ensure the protection of the victim or the victim's family. Pursuant to PC 1275.1, the officer can seek an order to examine the source of bail if there is probable cause to believe bail will be posted using funds that are feloniously obtained. Financial crimes, gang crimes and narcotics sales often qualify for such an order. The CJIS "Templates" tab has templates for both requests. Contact the on-duty supervisor at the jail to HOLD the arrestee while the declaration is prepared and the order signed by a judge (the on-call judge if after hours).

EXHIBIT A

San Luis Obispo County, California: CJIS Portal

LEA Templates List

Index	Name	Type
1. Arrest: Probable Cause (Ramey) Arrest Warrant & Certificate of Service	Arrest Warrant Ramey Certificate Of Service	
	Arrest Warrant Ramey Warrant	
2. Arrest: Steagald Warrant (Search of Res for Ramey subject)	Search Warrant Steagald Warrant - Conventional	
3. Arrest: Anticipatory Steagald Warrant	Search Warrant Steagald Warrant - Anticipatory	
4. Bail Increase Request & Declaration & Order	Bail Increase Request Order	
5. Felonious Source of Bail Declaration & Order - (Fillable pdf)	Declaration Re Felonious Source Of Bail Rev	
6. Search Warrant & Affidavit - Cell Phone in P.O. Custody	Search Warrant Affidavit - Cell Phone	
	Search Warrant Cell Phone In Police Custody	
7. Search Warrant - DUI Blood Draw & Procedure (Search Warrant in fillable pdf)	Blood Draw Search Warrant Procedures 082114	
	DUI Search Warrant	
	Return To Search Warrant Blood Draw	
8. Combination Search Warrant & Affidavit	Search Warrant Combination Warrant - Galli Rev	
	Search Warrant Combination Warrant	
9. Multi-Function Search Warrant & Affidavit (Delete sections that do not apply)	Search Warrant Multifunctional Affidavit	
	Search Warrant Multifunctional Warrant - Galli Rev	
	Search Warrant Multifunctional Warrant	
10. Request & Order for Off-Site Computer Search (If not using Multi-Function form)	Off Site Computer Search Request Order	
11. Electronic Search Warrants	Calecpa Cover Letter To Provider	
	Calecpa Cslw Warrant	
	Calecpa Declaration Of Custodian Of Records	
	Calecpa Electronic Communications Provider Records	
	Calecpa Electronic Device In Police Custody	
	Calecpa Electronic Device Not In Police Custody	
	Calecpa Extension For Notice	

	Calecpa Notice Of Electronic Comm Search Warrant Execution Calecpa Order For Delayed Notice Calecpa Post-Search Emergency Application Calecpa Specific Consent Form Consent Form Financial Records Dec Electronic Communications Emergency Dec Financial Crime Report Filed	      
12. Search Warrant Affidavit & PC Statement - Bank Records	Search Warrant Affidavit - Bank Records Search Warrant Financial Records	 
13. Vehicle Tracking (GPS) - Search Warrant & Affidavit	GPS Affidavit Search Warrant Tracking Extension Search Warrant Tracking Warrant Return Search Warrant Tracking Warrant	   
14. Vehicle Tracking (GPS) - Hardwire Search Warrant & Affidavit	Vehicle Tracking Search Warrant - Hardwire Vehicle Tracking Search Warrant Affidavit - Hardwire	 
15. Sealing Order	Sealing Order	
16. Search Warrant Extension - Records	Search Warrant Extension For Business Records Rev	
17. Search Warrant Return Inventory	Search Warrant Return Rev Search Warrant Return	 
18. Forms for Records Division	Bench Probation Violation Submission Form For LEAs Booking Order Form Request For Complaint	  
Saving a Word Document: To make changes to a document please save the document using the "Save As" feature of Word. To find out more click "Saving a document in Word" Working with a PDF File For instructions on dealing with PDF files please click "PDF editing"		

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8 Attorney for the People of the State of California

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN LUIS OBISPO

11 THE PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO:

12 Plaintiff,)

13 vs.)

14 REQUEST FOR BAIL IN EXCESS OF
15 FELONY BAIL SCHEDULE AND
16 DECLARATION OF < >
17 (Penal Code Section 1269c

18 <Defendant(s)>)

19 Date:

20 Defendant,) Time:
21 Dept.

22 DECLARATION

23 The undersigned hereby declares that he/she is a peace officer; that the defendant
24 named above has been arrested for the crimes of < >; and that the bail set thereon by
25 the San Luis Obispo County Felony Bail Schedule is < >.

26 For the following reasons, the undersigned believes that the standard bail is
27 insufficient to assure the defendant's appearance in court and therefore requests that bail
28 be set in the amount of \$< >.

< (Reasons) >

EXHIBIT C

1 I declare under penalty of perjury that the foregoing is true and correct, dated this
2 _____ day of _____, 2015 at _____, California.

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6 < Name >

7 Declarant
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ORDER

Good cause appearing, it is hereby ordered that bail be set in the amount of

\$_____.

Dated: _____

Judge of the Superior Court