

S230213

SUPREME COURT COPY

(LASC No. SJ3898)

SUPREME COURT  
FILED

MAR 26 2018

Jorge Navarrete Clerk

IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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Deputy

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COUNTY OF LOS ANGELES,  
*Plaintiff-Appellant,*

v.

FINANCIAL CASUALTY & SURETY, INC.,  
*Defendant and Respondent.*

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On Appeal from the Superior Court, County of Los Angeles  
The Honorable Lia Martin, Judge

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**REQUEST FOR JUDICIAL NOTICE;  
DECLARATION OF LINDSAY YOSHIYAMA  
AND ATTACHMENTS THERETO**

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Attorneys for Plaintiff and Appellant  
County of Los Angeles

Pursuant to California Rules of Court, Rules 8.520, subd. (g) and 8.252, subd. (a) and Evidence Code sections 452 and 459, the plaintiff-appellant, County of Los Angeles ("County"), requests that this Court take judicial notice of the documents attached to the Declaration of Lindsay Yoshiyama as they relate to the issues set forth in the County's supplemental brief filed herewith. The documents attached to the Declaration of Lindsay Yoshiyama are as follows:

1. Exhibit A - Senate Bill No. 1597, Introduced by Senators Rains and Cusanovich, dated February 13, 1976;
2. Exhibit B - Senate Committee on Judiciary Background Information regarding Senate Bill 1597; and
3. Exhibit C – Governor's Office Enrolled Bill Report regarding Senate Bill 1597.

Exhibits A, B, and C are authenticated by the Declarations of Lindsay Yoshiyama and Heather Thomas provided herewith.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

The California Evidence Code<sup>1</sup> allows California courts to take judicial notice of appropriate matters. (Evid. Code §450, *et seq.*) Section 459 allows the reviewing Court to take judicial notice of any matter specified in §452 at the request of a party to an action if that party gives the opposing party reasonable opportunity to see the information and respond.

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<sup>1</sup> All further statutory references are to the Evidence Code unless otherwise specifically specified.

Section 452, subd. (c) permits the Court to take judicial notice of any official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

The Law Revision Commission Comment to §450 indicates that the legislative history materials that County is requesting this court to judicially notice are among those matters subject to judicial notice: "Under the Evidence Code, as under existing law, courts may consider whatever materials are appropriate in construing a statutes, determining constitutional issues, and formulating rules of law. That a court may consider legislative history, discussions by learned writers in treatises and law reviews, materials that contain controversial economic and social facts of findings or that indicate contemporary opinion, and similar materials is inherent in the requirement that it take judicial notice of the law. In many cases, the meaning and validity of statutes, the precise nature of a common law rule, or the correct interpretation of a constitutional provision can be determined only with the help of such extrinsic aids. (*Cf. People v. Sterling Refining Co.* (1927) 86 Cal. App. 558, 564, 261 P. 1 080, 1 083 (statutory authority to notice "public and private acts" of legislature held to authorize examination of legislative history of certain acts); See also *Maben v. Superior Court* (1967) 255 Cal. App. 2d 708, 713 (Legislative Counsel's Digest is a proper resource to determine the intent of the Legislature); *In re J. W.* (2002) 29 Cal. 4th 200,211-212 ("To determine the purpose of legislation, a court may

consult contemporary legislative committee analyses of that legislation, which are subject to judicial notice. [Citations] As this court has recognized, ... these materials, "including analyses of both the Senate and Assembly Committees on the Judiciary, show an intent to codify ... ")

Consequently, this court must take judicial notice of these matters at County's request, provided defendant-respondent Financial Casualty & Surety, Inc. has notice of the request and an opportunity to respond.

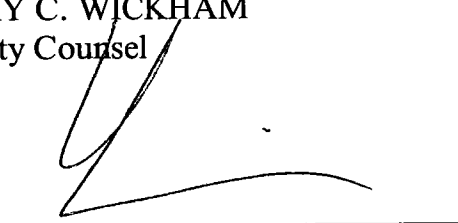
The County respectfully requests this Court to take judicial notice of the materials attached to the Declaration of Lindsay Yoshiyama as Exhibits A, B and C.

DATED: March 23, 2018

Respectfully submitted,

MARY C. WICKHAM  
County Counsel

By



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LINDSAY YOSHIYAMA  
Deputy County Counsel

Attorneys for plaintiff-appellant,  
COUNTY OF LOS ANGELES

## DECLARATION OF LINDSAY YOSHIYAMA

I, Lindsay Yoshiyama, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a Deputy County Counsel in the office of the Los Angeles County Counsel ("Office"), attorneys of record for the County of Los Angeles ("County"). I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I make this declaration in support of the County's motion requesting the Court take judicial notice in the matter of *County of Los Angeles v. Financial Casualty & Surety Inc.*, Supreme Court Case No. S230213.

### Explanation for Delay

3. In January 2018, this matter was reassigned from Principal Deputy County Counsel Joanne Nielsen to myself. The reason for the reassignment was Ms. Nielsen transferred to a different division within the Office.

4. In 2015, I assisted Ms. Nielsen prepare the County's Petition for Review by preparing drafts of portions thereof and by ordering legislative history regarding Penal Code sections 1305 and 1269b. Before January 2018, this matter was never assigned to me for handling.

5. In January 2018, I was not only assigned this matter, but also assumed Ms. Nielsen's prior duty supervising the Office's bail unit in addition to my previously assigned duties. As a result, my workload was considerably impacted.

6. On March 19, 2018, I informed John Rorabaugh, Esq., counsel for Financial Casualty & Surety, Inc., that I intended to file a list of additional authorities not contained in the briefs including *People v. Safety National Casualty Corp.* (2016) 62 Cal.4th 703, and possibly legislative materials I was reviewing. Mr. Rorabaugh asked that I send him a copy of any legislative materials I request the Court consider.

7. On March 23, 2018, at 12:05 p.m., I send Mr. Rorabaugh true and correct copies of the documents attached hereto as Exhibits A, B and C.

8. This request is not being made for the purposes of delay or harassment.

Authentication of Exhibits A, B and C

9. On or about July 15, 2015, I requested Legislative Intent Service, Inc. search for and provide legislative materials relating to, *inter alia*, Senate Bill 1597, which amended Penal Code section 1269b in 1976.

10. In response to my request, I received the Declaration of Heather Thomas, an attorney with Legislative Intent Service, Inc., along with the documents attached hereto as Exhibits A, B and C.

11. Attached hereto as Exhibit A is a true and correct copy of Senate Bill No. 1597, Introduced by Senators Rains and Cusanovich, dated February 13, 1976, received from Legislative Intent Service, Inc. in response to my aforementioned request.

12. Attached hereto as Exhibit B is a true and correct copy of the Senate Committee on Judiciary Background Information regarding Senate Bill 1597, that was received from Legislative Intent Service, Inc. in response to my aforementioned request.

13. Attached hereto as Exhibit C is a true and correct copy of the Governor's Office Enrolled Bill Report regarding Senate Bill 1597, that was

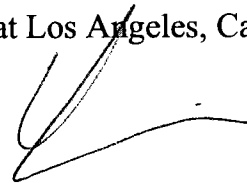
received from Legislative Intent Service, Inc. in response to my  
aforementioned request.

14. Attached hereto as Exhibit D is a true and correct copy of the  
Declaration of Heather Thomas that I received from Legislative Intent  
Service, Inc., in response to my aforementioned request, which  
accompanied the documents attached hereto as Exhibits A, B and C.

15. In her declaration, Ms. Thomas explains that in her capacity  
as an attorney for Legislative Intent Service, Inc., a company specializing in  
researching the history and intent of legislation, she caused other attorneys  
and research staff to locate and obtain all documents relevant to the  
enactment of Senate Bill 1597 of 1976. Exhibits A, B, and C were  
documents located and produced as a result of this search.

I declare under penalty of perjury under the laws of the State of  
California that the foregoing is true and correct.

Executed on March 23, 2018, at Los Angeles, California.



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Lindsay Yoshiyama

# EXHIBIT A



Introduced by Senators Rains and Cusanovich  
(Coauthors: Assemblymen Cline, MacDonald, and Priolo)

February 13, 1976

An act to amend Section 1269b of the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

SB 1597, as introduced, Rains. Forfeiture of bail.

Existing law authorizes various persons to accept bail, in specified circumstances, to issue and sign an order for the release of an arrested person, and to set the time and place for the appearance of the arrested person in the appropriate court and give notice thereof and provides that if the arrested person so released fails to appear at the time and in the court ordered upon his release, the court before which he was ordered to appear may forfeit the bail.

This bill would specifically make applicable in such bail forfeiture an express procedure of existing law for the general forfeiture of bail and enforcement and discharge of forfeiture of bail. These provisions require the forfeiture of bail if, without sufficient cause, the defendant neglects to appear on any occasion when his presence in court is lawfully required unless the court has reason to believe that sufficient cause may exist, in which instance the court may continue the case for a reasonable period without ordering a forfeiture.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1269b of the Penal Code is
- 2 amended to read:
- 3 1269b. The officer in charge of a jail wherein an

1 arrested person is held in custody, an officer of a sheriff's  
2 department or police department of a city who is in  
3 charge of a jail or employed at a fixed police or sheriff's  
4 facility and is acting under an agreement with the agency  
5 which keeps the jail wherein an arrested person is held  
6 in custody, an employee of a sheriff's department or  
7 police department of a city who is assigned by such  
8 department to collect bail, the clerk of the justice or  
9 municipal court of the judicial custody, the clerk of the  
10 justice or municipal court of the judicial district in which  
11 the offense was alleged to have been committed, and the  
12 clerk of the superior court in which the case against the  
13 defendant is pending shall have authority to approve and  
14 accept bail in such amount as fixed by the warrant of  
15 arrest or schedule of bail or order admitting to bail in cash  
16 or surety bond executed by a certified, admitted surety  
17 insurer as provided in the Insurance Code, to issue and  
18 sign an order for the release of the arrested person, and  
19 to set a time and place for the appearance of the arrested  
20 person before the appropriate court and give notice  
21 thereof, as follows:

22 (a) For appearance before the court of an arrested  
23 person who has been arrested for having committed a  
24 felony, misdemeanor or infraction and is being held in  
25 custody prior to the filing of a formal complaint,  
26 indictment or information, and for appearance before  
27 the court of a defendant charged with a felony,  
28 misdemeanor, or infraction by a formal complaint,  
29 indictment or information filed in the court. If a  
30 defendant has appeared before a judge of the court on  
31 the charge contained in the complaint, indictment, or  
32 information the bail shall be in the amount fixed by such  
33 judge at the time of such appearance; if no such  
34 appearance has been made the bail shall be in the amount  
35 fixed in the warrant of arrest or, if no warrant of arrest has  
36 been issued, the amount of bail shall be pursuant to a  
37 schedule of bail in such case previously fixed and  
38 approved as provided in subdivision (b).

39 (b) It is the duty of the superior, municipal and justice  
40 court judges in each county to prepare and adopt, by a

1 majority vote, at a meeting called by the presiding judge  
2 of the superior court of the county, a uniform countywide  
3 schedule of bail for allailable felony offenses. It is the  
4 duty of the municipal and justice court judges in each  
5 county to prepare and adopt, by a majority vote, at a  
6 meeting called by the presiding judge of the municipal  
7 court at each county seat, a uniform, countywide  
8 schedule of bail for all misdemeanor and infraction  
9 offenses. Each schedule shall contain a list of such  
10 offenses and the amounts of bail applicable thereto as the  
11 judges determine to be appropriate. If the schedules do  
12 not list all offenses specifically, they shall contain a  
13 general clause for designated amounts of bail as the  
14 judges of the county determined to be appropriate for all  
15 such offenses not specifically listed in the schedules. The  
16 schedules of bail may be revised from time to time by the  
17 judges of the county, and one or more meetings of judges  
18 for this purpose may be called by the presiding judges of  
19 the superior and municipal courts located at each county  
20 seat. A copy of the bail schedules shall be sent to the  
21 officer in charge of the county jail and to the officer in  
22 charge of each city jail within the county and to each  
23 superior, municipal and justice court judge and  
24 commissioner.

25 (c) Upon posting such bail the defendant or arrested  
26 person shall be discharged from custody as to the offense  
27 on which the bail is posted.

28 All money and surety bonds so deposited with such  
29 officer shall be transmitted immediately to the judge or  
30 clerk of the court by which the order was made or  
31 warrant issued or bail schedule fixed. If, in the case of  
32 felonies, an indictment is filed, such judge or clerk of the  
33 court shall transmit all such money and surety bonds to  
34 the county clerk.

35 (d) If a defendant or arrested person so released fails  
36 to appear at the time and in the court so ordered upon  
37 his release from custody, the court before which he was  
38 ordered to appear may forfeit the cash bail or surety bond  
39 and if the bail is a surety bond the surety company is  
40 obligated as provided by Section 1306 of the Penal Code;

1 subject to the right of the court to set aside the forfeiture  
2 as provided by law. *provisions of Sections 1305 and 1306*  
3 *shall apply.*

4 (e) For the appearance before the proper court of a  
5 person who has been arrested for an offense on a warrant  
6 issued in a county of this state other than the county  
7 where such person is held in custody.

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# EXHIBIT B

SENATE COMMITTEE ON JUDICIARY

BACKGROUND INFORMATION

SB 1597

1. Source

- (a) What group, organization, governmental agency, or other person, if any, requested the introduction of the bill?

*Ventura County*

- (b) Which groups, organizations, or governmental agencies have contacted you in support of, or in opposition to, your bill?

*Ventura County*

- (c) If a similar bill has been introduced at a previous session of the Legislature, what was its number and the year of its introduction?

*Unknown*

2. Purpose

What problem or deficiency under existing law does the bill seek to remedy?

*see attached*

If you have any further background information or material relating to the bill, please enclose a copy of it or state where the information or material is available.

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE SENATE COMMITTEE ON JUDICIARY, ROOM 2046 AS SOON AS POSSIBLE. IN ANY CASE, PLEASE RETURN IT NOT LATER THAN 14 DAYS AFTER RECEIPT.

CONFLICTING PENAL CODE PROVISIONS  
RELATING TO BAIL FORFEITURES

The Problem

Currently, there are two sections within the Penal Code which contain conflicting provisions relating to the forfeiture of bail posted on behalf of a defendant in a criminal action. Those sections are 1305 (which has been in force since 1872 and the subject of countless reported judicial decisions) and 1269b(d) (which was adopted in 1957 and has not been the subject of any reported judicial decisions). While the courts have been following the provisions of Section 1305, a recent challenge has been made seeking to rely upon the conflicting provisions of Section 1269b(d). If this challenge is successful, or if additional challenges are initiated, it is our County Counsel's judgment that it could create widespread confusion in the forfeiture of bail, not only in Ventura but throughout the State.

More specifically, the conflict can be set forth as follows:

Section 1269b(d) indicates that if a defendant or arrested person fails to appear, a court "may forfeit the cash bail or surety bond". On the other hand, Section 1305, under the same circumstances, requires that the undertaking of bail or money deposited instead of bail "must thereupon be declared discretionary and the latter section appears to make the same forfeiture mandatory.

To compound the problem, Penal Code Section 1459 sets forth the required form for undertakings of bail. That form indicates that the surety agrees that a consent summary judgment may be entered against it "as provided

by Sections 1305 and 1306 of the California Penal Code." This section does not purport on its face to provide for a consent summary judgment for forfeitures as provided by Section 1269b(d). In fact, our County Counsel has been unable to find any such section which does. If a court did conclude that a forfeiture provided by Section 1269b(d) did not result in the entry of a consent summary judgment, it is an opinion that the bail system currently utilized in the State would be seriously jeopardized.

#### Intent of Proposed Legislation

The intent of the proposed legislation is to dove-tail Section 1269b(d) into the long established procedures set forth in Section 1305 (and, incidentally, into its companion Section 1306).

Not only would the proposed amendment eliminate the conflict between the two sections, it would ensure that all forfeitures of bail within California could be processed through consent summary judgments as provided in Penal Code Section 1459.

#### Needed Code Changes

Section 1269b(d) of the Penal Code should be amended as follows:

"(d) If a defendant or an arrested person so released fails to appear at the time and in the court so ordered upon his release from custody, the provisions of Sections 1305 and 1306 of the Penal Code shall apply."