

Sources of bail under Cal. Pen. Code 1275.1

Cal. Pen. Code 1275.1 creates a special condition of bail in which a defendant is ordered to show that the source of the funds with which they are posting bail are not proceeds gained from illegal activity. The statute directs that: “[b]ail, pursuant to this chapter, shall not be accepted unless a judge or magistrate finds that no portion of the consideration, pledge, security, deposit, or indemnification paid, given, made, or promised for its execution was feloniously obtained.”ⁱ

When can a 1275.1 order be obtained?

A 1275.1 hold can be requested by the prosecutor, law enforcement, or enacted *sua sponte* by the judge or magistrate setting bail. A request for bail by a prosecutor or law enforcement must be accompanied by a declaration executed under penalty of perjury setting forth probable cause to believe that the defendant intends to post bail using the profits of illicit felonious activity. Once the magistrate is convinced that probable cause exists, a 1275.1 order can be issued.

Why request a 1275.1 Order?

In cases where a defendant is directly charged with financially motivated crimes such as drug or human trafficking, it is certainly likely that their illicit activity makes up a significant portion of the defendant’s income. A prosecutor may obtain direct evidence through jail calls, texts, or other evidence obtained during a defendant’s arrest that they intend to use funds procured via illicit means to post bail. Aside from ensuring that the defendant is not using the profit from the illicit activity they are charged with to post bail, a 1275.1 hearing provides the state with additional discovery; Such documents may link the defendant to accounts or businesses not known to investigators tracking the links in an organized criminal enterprise or reveal potential co-conspirators through which the defendant is laundering money.

What proof must a defendant provide under 1275.1?

After an order has been issued under 1275.1, a defendant may request a hearing to prove that no portion of the funds with which they are posting bail are the proceeds of illicit activity. In that request, the defendant must provide: the identity of the bail agent or surety, the source of the bond premium (including the names and addresses of individuals paying said premium), and the source of the security or pledge.ⁱⁱ This offer of proof must be provided in advance of a 1275.1 hearing (though the exact time frame varies by local court rule), and may include documents like pay stubs or sale receipts that show that they can legitimately access the funds required to post bail; or they may provide title documents or other paperwork to show owned assets that could be used as collateral.

What happens if a defendant cannot show a legitimate source of funds?

At a 1275.1 hearing, the defendant must prove by a preponderance of the evidence that the funds have a legitimate source. If they cannot do so the judge may refuse to accept the offered funds to pay for bail, or they find that the defendant misled the court during such a hearing, it is grounds for the judge to raise or revoke bail.

ⁱ Cal. Penal Code § 1275.1 (West)

ⁱⁱ See, e.g.; Penal Code § 1275.1, CA R STANISLAUS SUPER CT Rule 4.13 and CA R TRINITY SUPER CT Rule 5.02