

Case No. S229446  
**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

---

THE PEOPLE OF THE STATE OF CALIFORNIA  
Plaintiff and Respondent,

v.

FINANCIAL CASUALTY & SURETY, INC.,  
Defendant and Appellant.

---

After a Decision by the Court of Appeal  
Second Appellate District, Division Five, Case No. B251230  
Los Angeles County Superior Court, Case No. SJ3872 / PA071174  
The Honorable Harvey Giss

**APPLICATION FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE  
BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF  
COUNTIES IN SUPPORT OF PLAINTIFF AND RESPONDENT  
PEOPLE OF THE STATE OF CALIFORNIA**

---

Jennifer B. Henning (SBN 193915)  
Janis L. Herbstman (SBN 228488)  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814-3941  
Telephone: (916) 327-7534  
Facsimile: (916) 443-8867  
jhenning@counties.org

Attorneys for Amicus Curiae California State Association of Counties

## **I. Motion for Leave to File Amicus Brief**

The California State Association of Counties seeks leave to file the attached amicus brief.<sup>1</sup>

## **II. Interest of Amicus Curiae**

The California State Association of Counties (“CSAC”) seeks leave to file the attached amicus brief in support of the People of the State of California, represented by the County of Los Angeles in this case (“People”).

CSAC is a non-profit organization. The membership consists of 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels’ Association of California and is overseen by the Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties. Specifically, this case presents important public policy issues related to bail forfeiture matters. Counties are tasked with administering bail forfeitures and counties are among the agencies that receive a portion of the forfeiture proceeds. Therefore, counties have an interest in ensuring that the forfeiture statutes are properly implemented.

---

<sup>1</sup> No party or counsel for a party authored the attached brief, in whole or in part. No one made a monetary contribution intended to fund the preparation or submission of this brief.

### **III. Reasons Why Filing an Amicus Curiae Brief is Desirable**

This case considers the required showing under the “good cause” requirement for an extension of the appearance period for returning a fugitive, and whether, upon a showing of due diligence by a surety, the burden shifts to the People to show that additional time is not likely to result in the fugitive’s recapture. The courts of this State have held that extension of the appearance period is not automatic and a surety must show both due diligence in its pursuit of the defendant and some likelihood that the defendant will be returned with a grant of additional time. Appellant’s novel burden shifting scheme is unsupported by the statute and the relevant case law.

Further, this case addresses a conflict among the appellate courts regarding how to measure the extension period. In this case, the Second District interpreted the language of the statute as limiting extensions to a maximum of 180 days, measured from the expiration of the initial appearance period provided under Penal Code section 1305. Thus, with the 185 days of the initial appearance period, and a possible 180 day extension, a surety has a total of 365 days to locate and return a defendant. In contrast, as argued by the surety in this case and concluded by the Fifth District in *People v. United States Fire Insurance Company* (2015) 242 Cal.App.4th 991, an extension period would run from the date of a judge’s

order(s) granting an extension, allowing for wide inconsistencies between cases.

The public policy implications of the statute's interpretation are critical to CSAC. The Legislature intended to limit extensions following bond forfeiture and, in related statutes that rely on this section, provided for short timeframes for judgment and payment of the bond, if a defendant is not returned within a certain timeframe. The 185 days provided for the original appearance period, and the additional 180 days available under section 1305.4, provide a certain timeframe for the defendant to be returned rather than having the possibility of limitless delays that unreasonably prolong entry of judgment and payment of the bond.

CSAC has reviewed the briefing submitted by both parties in this matter. The proposed amicus brief does not duplicate the arguments, but is intended to provide additional arguments to assist the Court in deciding the matter. The Second District's interpretation of the Section 1305.4 in this case provides for a clear application of the statute that is consistent with legislative intent. In contrast, the interpretation favored by the surety would create unintended administrative burdens for courts and counties, and thus should be rejected.

For the foregoing reasons, CSAC respectfully requests that this Court accept the accompanying amicus curiae brief.

Dated: \_\_\_\_\_, 2016

Respectfully submitted,

By: \_\_\_\_\_

JENNIFER B. HENNING

Attorney for Amicus Curiae  
California State Association of Counties

Case No. S229446  
**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

---

THE PEOPLE OF THE STATE OF CALIFORNIA  
Plaintiff and Respondent,

v.

FINANCIAL CASUALTY & SURETY, INC.,  
Defendant and Appellant.

---

After a Decision by the Court of Appeal  
Second Appellate District, Division Five, Case No. B251230  
Los Angeles County Superior Court, Case No. SJ3872 / PA071174  
The Honorable Harvey Giss

**[PROPOSED] AMICUS CURIAE BRIEF OF THE CALIFORNIA  
STATE ASSOCIATION OF COUNTIES IN SUPPORT OF  
PLAINTIFF AND RESPONDENT PEOPLE OF THE STATE OF  
CALIFORNIA**

---

Jennifer B. Henning (SBN 193915)  
Janis L. Herbstman (SBN 228488)  
California State Association of Counties  
1100 K Street, Suite 101  
Sacramento, CA 95814-3941  
Telephone: (916) 327-7534  
Facsimile: (916) 443-8867  
jhenning@counties.org

Attorneys for Amicus Curiae California State Association of Counties

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....iii

I. INTRODUCTION..... 1

II. INTEREST OF AMICUS CURIAE..... 3

III. ARGUMENT ..... 4

    A. The “Good Cause” Requirement Under Section 1305.4 Requires a Surety to Show that a Defaulting Defendant’s Apprehension is Likely ... 4

        1. The plain language of section 1305.4 requires more than a due diligence showing..... 4

        2. If “good cause” is ambiguous in this context, a requirement that a surety show that an extension is likely to lead to a defaulting defendant’s apprehension is consistent with the text, purpose and intent of section 1305.4. .... 8

    B. Under Section 1305.4, a Surety Should Have No More Than 365 Days to Return a Fugitive..... 10

        1. The Legislative History of section 1305.4 supports the 365 day limit.....10

        2. The 1999 amendments to the Penal Code do not address the *Taylor Billingslea* court’s analysis on how to apply the 180-day extension..... 11

        3. The majority of courts interpreting Section 1305.4 have correctly adopted the reasoning in *Taylor Billingslea*, and decisions to the contrary should be disavowed. .... 14

        4. Reading section 1305.4 as allowing a maximum of 365 days to return a fugitive resolves uncertainty in the application of section 1306 ..... 17

        5. The 365-day limit is consistent with avoiding the harsh results of forfeiture..... 19

C. The People’s Interpretation of Section 1305.4 Avoids Absurd Results.....	20
IV. CONCLUSION .....	22
CERTIFICATION OF COMPLIANCE.....	24

## TABLE OF AUTHORITIES

### CASES

<i>Associates Discount Corp. v. Tobb Co.</i> (1966) 241 Cal.App.2d 541 .....	20, 21
<i>Bd. of Medical Quality Assurance v. Gherardini</i> (1979) 93 Cal.App.3d 669 .....	5
<i>Cal. Teachers Assn. v. San Diego Community College Dist.</i> (1981) 28 Cal.3d 692 .....	4
<i>Callahan v. San Francisco</i> (1945) 68 Cal.App.2d 286 .....	5
<i>County of Los Angeles v. Fairmont Specialty Group</i> (2008) 164 Cal.App.4th 1018 .....	6
<i>County of Los Angeles v. Williamsburg National Ins. Co.</i> (2015) 235 Cal.App.4th 944 .....	15
<i>County of Sacramento v. Ins. Co. of the West</i> (1983) 139 Cal.App.3d 561 .....	18
<i>Dyna-Med, Inc. v. Fair Employment &amp; Housing Com.</i> (1987) 43 Cal.3d 1379 .....	21
<i>In re Estate of Todd</i> (1941) 17 Cal.2d 270.....	21
<i>People v. Accredited Surety &amp; Casualty Co., Inc.</i> (2015) 239 Cal.App.4th 293 .....	6, 7
<i>People v. Accredited Surety &amp; Casualty, Inc.</i> (2006) 137 Cal.App.4th 1349 .....	6, 7
<i>People v. Accredited Surety Casualty Co.</i> (2014) 230 Cal. App. 4th 548 .....	5, 8
<i>People v. Alistar</i> (2003) 115 Cal.App.4th 122 .....	6
<i>People v. American Contractors Indemnity Co.</i> (2004) 33 Cal.App.4th 653 .....	15, 16, 17

<i>People v. Bankers Ins. Co.</i> (2010) 182 Cal.App.4th 1377 .....	15, 19
<i>People v. Granite State Insurance Co.</i> (2003) 114 Cal.App.4th 758 .....	15, 19, 20, 21
<i>People v. Indiana Lumbermens Mutual Ins. Co.</i> (2010) 49 Cal.4th 301 .....	20
<i>People v. International Fidelity Ins. Co.</i> (2001) 92 Cal.App.4th 470 .....	21
<i>People v. McGirr</i> (1988) 198 Cal.App.3d 629 .....	5
<i>People v. Murphy</i> (2001) 25 Cal.4th 136 .....	16
<i>People v. Ranger Ins. Co.</i> (1992) 9 Cal.App.4th 1302 .....	21
<i>People v. Ranger Ins. Co.</i> (2000) 81 Cal.App.4th 676 .....	7
<i>People v. Rolley</i> (1963) 223 Cal.App.2d 639 .....	17
<i>People v. Safety National Casualty Corp.</i> (2010) 186 Cal.App.4th 959.....	13
<i>People v. Safety National Casualty Corp.</i> (2016) 62 Cal. 4th 703 .....	4
<i>People v. Seneca Ins. Co.</i> (2004) 116 Cal.App.4th 75 .....	7, 13
<i>People v. Surety Ins. Co.</i> (1973) 30 Cal.App.3d 75 .....	18
<i>People v. United States Fire Insurance Company</i> (2015) 242 Cal.App.4th 991 .....	15
<i>People v. Wilcox</i> (1960) 53 Cal.2d 651 .....	17
<i>Regents of Univ. of Cal. v. Superior Court of Los Angeles County</i> (1970) 3 Cal.3d 529 .....	19

## **STATUTES**

Penal Code, § 1305 .....	passim
Penal Code, § 1305.3 .....	3
Penal Code section 1305.4 .....	passim

Penal Code, § 1306.....	1, 18, 19
Penal Code, § 1463.099.....	20
Penal Code, § 1463.010.....	19
Stats. 1996, ch. 354, § 1.....	12
Stats. 1999, ch. 570, § 3.....	12
Stats. 2012, ch. 129, § 1.....	12
<b>LEGISLATIVE MATERIALS</b>	
Cal. Bill Analysis, Assembly Committee, Assem. Bill 476.....	13
Sen. Bill No. 1571 .....	10
<b>OTHER</b>	
Definition from Dictionary.com: <a href="http://www.dictionary.com/browse/extended">http://www.dictionary.com/browse/extended</a> .....	11
Definition from The Free Dictionary: <a href="http://legal-dictionary.thefreedictionary.com/tolling">http://legal-dictionary.thefreedictionary.com/tolling</a> .....	10

## I. INTRODUCTION

This case calls upon this Court to determine the meaning of Penal Code<sup>1</sup> section 1305.4: “The court, upon a hearing and a showing of good cause, may order the period extended to a time not exceeding 180 days from its order.”<sup>2</sup>

Two essential questions are facing the Court. The first is how to apply the statute’s “good cause” requirement. Appellant, Financial Casualty & Surety, Inc. (“Financial Casualty”), argues that good cause should require no more than a showing that a surety has been diligent in its pursuit of a defaulting criminal defendant, and “if there is a burden to prove a ‘likelihood of apprehension,’ or lack thereof...the burden should fall upon the State.” (Opening Brief, p. 41.) This argument should be rejected. A plain reading of good cause requires more than a mere showing that a surety has been pursuing a criminal defendant. Rather, courts applying the good cause requirement in the bail forfeiture context have required due

---

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> If a defendant, released on bail, fails to appear in court, a court will declare the bond forfeited and mail a forfeiture notice to the surety. (§ 1305, subd. (a).) If the defendant is not returned to court within 185 days (180 days plus an additional 5 days for service by mail (“appearance period”) or the bond is not otherwise set aside, the court must enter summary judgment on the bond within 90 days and the bond proceeds are due from the surety within 30 days of judgment. (§§ 1305 & 1306.) Under section 1305.4, the appearance period may be extended “to a time not exceeding 180 days” if “good cause” exists.

diligence and a showing that a defaulting defendant's apprehension is likely. If the term is ambiguous in this context, nothing in the language of the statute or the Legislative history indicates that the Legislature intended a burden shifting scheme that would limit a surety's showing to due diligence, and require instead that the People prove that the requested extension is not likely to lead to capture. The burden for establishing that an extension is warranted falls on the surety.

The other question before this Court is how to measure the extension period provided under section 1305.4. The term "extended" indicates the Legislature's intent to continue the initial 180-day appearance period under section 1305 ("appearance period"), which is "the period" referred to in section 1305.4. The Legislature intentionally rejected the term "toll," indicating that it did not wish to suspend the appearance period pending a decision on a surety's motion to extend. Financial Casualty's interpretation of the phrase "from its order" indicates the possibility of a gap between the expiration of the initial 180-day period under section 1305 and the beginning of the additional time granted, which was not intended by the Legislature.

The Legislature did not intend to create wide inconsistencies in the administration of bail forfeitures. It created a statutory scheme that includes specific requirements and strict statutory timeframes to ensure a fair and efficient process for determining the fate of a bond after a

defendant absconds. The Legislature did not intend for bail forfeiture proceedings to carry on indefinitely. The interpretation of the statute adopted by the Second District in this case, allowing for no more than 365 days for a fugitive's recapture, is consistent with the overall statutory scheme and the Legislative history available for this particular statutory provision. It also supports the public policy behind the legislative scheme, and avoids confusion, uncertainty and absurd results that would interfere with the obligations of courts and counties.

## **II. INTEREST OF AMICUS CURIAE**

The California State Association of Counties ("CSAC") respectfully submits this brief to address the statewide implications of the questions before this court. CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide. In many counties, including the County of Los Angeles, County Counsel is tasked with representing the People in bail forfeiture matters. Counties are also among the government agencies that receive a portion of the forfeiture proceeds. (*See* § 1305.3.)

Statutes governing bonds do not provide for an endless pursuit of a defaulting defendant by a surety. Without meaningful financial incentives, the purpose behind bail is thwarted and public safety concerns arise. As the statutory scheme contemplates, if the defaulting defendant is not returned within a strict statutory period, judgment on the forfeiture must be entered. (See *People v. Safety National Casualty Corp.* (2016) 62 Cal.4th 703, 709 [forfeiture constitutes a breach of contract between the surety and the government and it is the surety who “must suffer the consequences”].)

### III. ARGUMENT

#### A. **The “Good Cause” Requirement Under Section 1305.4 Requires a Surety to Show that a Defaulting Defendant’s Apprehension is Likely.**

##### 1. **The plain language of section 1305.4 requires more than a due diligence showing.**

“Although a court may properly rely on extrinsic aids, it should first turn to the words of the statute to determine the intent of the Legislature. [Citation.] ‘If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.’” (*Cal. Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698.) In general, “courts must take a statute as they find it, and it is their duty to construe it as it stands enacted. [Citation.] Their interpretation must be based on the

language used.” (*Callahan v. San Francisco* (1945) 68 Cal.App.2d 286, 290.)

In the case of section 1305.4, there is no need to look beyond the fact of the statute to understand the meaning of good cause. “‘Good cause’ has acquired reasonable certainty by established usage, interpretation, and a settled common sense meaning.” (*People v. McGirr* (1988) 198 Cal.App.3d 629, 636.) Good cause involves applying principles of common sense to the totality of the circumstances, and calls for “a good reason for a party’s failure to perform that specific requirement from which he seeks to be excused.” (*Ibid*, quoting *Bd. of Medical Quality Assurance v. Gherardini* (1979) 93 Cal.App.3d 669, 681.)

“‘[T]he essential ingredients of reasonable grounds and good faith’ are at the nucleus of the concept of good cause. [Citation.] This view of good cause contains an objective component (i.e., reasonable grounds) and a subjective component (i.e., good faith).” (*People v. Accredited Surety Casualty Co.* (2014) 230 Cal.App.4th 548, 559-560.)

Financial Casualty asks this Court to find a “sufficient reason” for an extension based solely on a surety’s due diligence. Although due diligence may show good faith on the part of the surety in requesting an extension, it does not provide a reasonable grounds for extending the appearance period. Rather, if a defaulting defendant’s apprehension is not likely, continuing the appearance period would be a futile act.

Courts have consistently required more than a mere due diligence showing before granting a motion for extension under section 1305.4. (*County of Los Angeles v. Fairmont Specialty Group* (2008) 164 Cal.App.4th 1018, 1028-1029, citing *People v. Accredited Surety & Casualty, Inc.* (2006) 137 Cal.App.4th 1349, 1358.)<sup>3</sup> A court analyzes the facts before it and makes a determination as to whether the surety has been diligent in its pursuit of the fugitive, and whether, with a grant of additional time, there is a reasonable likelihood that the fugitive will be recaptured. (*Ibid.*)

Courts are not making “guestimates” as Financial Casualty suggests, but the facts provided to a court in the required declaration either establish that a fugitive’s return is likely or it is not. (*County of Los Angeles, supra*, 164 Cal.App.4th at p. 1023 [affirming trial court’s denial of the surety’s motion to extend because the declaration indicated that the fugitive was in Mexico avoiding the criminal case against him and more time would not “necessarily assist” the surety in finding the fugitive]; *People v. Alistar* (2003) 115 Cal.App.4th 122, 128 [reasonable likelihood of defendant’s recapture based on cooperation from the family and good reason to believe that defendant was currently in a particular geographic area]; *People v.*

---

<sup>3</sup> This issue is also pending before this Court in *People v. Accredited Surety & Casualty Co., Inc.* (2015) 239 Cal.App.4th 293, petition for review granted (S229271). Further action in that case has been deferred pending consideration and disposition of related issues in this case.

*Accredited Surety & Casualty Co., Inc., supra*, 137 Cal.App.4th at p. 1359 [reasonable likelihood of defendant’s recapture based on confirmed locations of the fugitive, identification of individuals helping the fugitive and cooperation by the fugitive’s family]; *People v. Ranger Ins. Co.* (2000) 81 Cal.App.4th 676, 681 [“The supposition that a defendant is in Mexico gives no assurance such defendant might be placed in custody and extradited to the United States.”].)<sup>4</sup>

The test for good cause has been described as a low bar, but it still must be a meaningful gauge of the circumstances if an extension is to have any chance of achieving the desired result. (*People v. Accredited Surety & Casualty Co., Inc., supra*, 137 Cal.App.4th at p. 1358.) Requiring a surety to show that more time may be productive in apprehending the fugitive is not an interpretation of the statute that was created by the People for its defense of this case. It is the interpretation of section 1305.4 adopted by the courts. Having a firm a basis in the plain language of the statute, it is the interpretation that should be adopted by this Court. (*See County of Los*

---

<sup>4</sup> Financial Casualty argues that the facts of *People v. Accredited Surety & Casualty Co., Inc.* (2015) 239 Cal.App.4th 293, undercut the court’s ability to draw conclusions regarding the likelihood of recapture. (Opening Brief, p. 34.) [“...it was ruled that a ‘likelihood of apprehension’ did not exist in a bail fugitive investigation that went on to in fact, *apprehend the bail fugitive.*”].) The court, however, only looks at facts present during the original appearance period. A surety’s time to search for a fugitive is not indefinite and the surety must locate and apprehend the fugitive within the statutory period. (*See People v. Seneca Ins. Co.* (2004) 116 Cal.App.4th 75.)

*Angeles v. Fairmont Specialty Group, supra*, 164 Cal.App.4th at pp. 1028-1029.)

Similarly, this Court should reject Financial Casualty’s request to create a burden shifting scheme that would grant a surety an extension after it demonstrated a diligent investigation unless the People provided a “compelling reason” as to why an extension should not be granted. There is nothing, however, in the statute to support this. Such an interpretation serves only the interests of the surety and places an unwarranted burden on the People. As the People addressed in its brief, a surety is the custodian of the facts necessary for a good cause determination. (Answer Brief, p. 28.) Due to a lack of available facts to support its burden, the People’s efforts would likely lead to little success. Such a result is in direct conflict with the intent of the statute and the Legislature’s decision not to grant automatic extensions.

2. **If “good cause” is ambiguous in this context, a requirement that a surety show that an extension is likely to lead to a defaulting defendant’s apprehension is consistent with the text, purpose and intent of section 1305.4.**

Should this Court conclude that the proper application of section 1305.4’s “good cause” requirement cannot be determined on the face of the statute, its purpose and intent surely resolve the question in favor of the People. (*People v. Accredited Surety Casualty Co., supra*, 230 Cal.App.4th at p. 558 [“When statutory language is susceptible to more than one

reasonable interpretation, it is regarded as ambiguous and courts must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute....”].) The “likelihood of apprehension” inquiry in the test for good cause is consistent with the text, purpose and intent of section 1305.4. The Legislature could have added additional time to the appearance period under section 1305; however, it did not, and chose instead to provide for that period to be extended only if good cause exists.

Financial Casualty cites to the legislative record to support its assertion that the Legislature did not intend to require a surety to show a likelihood of success in returning a defendant, arguing that “[n]ot once in the entire legislative history of Penal Code section 1305.4 do the words ‘likelihood,’ or ‘probability’ appear.” (Reply Brief, p. 15.) That alone does not resolve the matter, since nothing in the legislative history cited by Financial Casualty uses the term “due diligence” either. Financial Casualty suggests no reason to this Court why the absence of “likelihood” in the legislative history should be given special weight, while the absence of “due diligence” does not. The fact is that the standard – both in the statute and in its legislative history – is “good cause,” a term which has a specific meaning within the context of this statute, and which has been interpreted by the courts as requiring more than merely a continued search for a fugitive.

**B. Under Section 1305.4, a Surety Should Have No More Than 365 Days to Return a Fugitive.**

Section 1305.4 allows a court to extend the initial 180-day period to return a criminal defendant for another 180 days “from its order.” This somewhat ambiguous language raises the question of whether the additional 180 days runs from the expiration of the original order, or from the date the court grants the extension. For the reasons set forth below, this Court should conclude the additional time runs from the expiration of the original order, resulting in no more than a total of 365 days to return a fugitive.

**1. The Legislative History of section 1305.4 supports the 365 day limit.**

CSAC agrees with the People’s examination of the Legislative history and will only supplement those arguments here. (Answer Brief, pp. 34-46.)

As introduced, the proposed statutory changes that ultimately became the language of section 1305.4 used the word “toll.” (Sen. Bill No. 1571 (1995-1996 Reg. Sess.) as introduced Feb. 15, 1996.) A subsequent amendment removed the word “toll” in favor of the word “extend.” (Sen. Bill No. 1571 (1995-1996 Reg. Sess.) as amended Mar. 19, 1996.) Tolling means “to delay, suspend or hold off the effect of a statute.” (Definition from The Free Dictionary: <http://legal-dictionary.thefreedictionary.com/tolling>.) In contrast, to extend a period is

“to increase the length or duration of; lengthen; prolong” something that already exists. (Definition from Dictionary.com: [http://www.dictionary.com/browse/extended.](http://www.dictionary.com/browse/extended))

As Financial Casualty points out, “the express purpose of Penal Code section 1305.4 is ‘to allow such an investigation to be extended.’” (Reply Brief, p. 19, citing Cal. Bill Analysis, Senate Committee, Sen. Bill 1571 (1995-1996 Reg. Sess.) July 8, 1996.) Financial Casualty agrees with the basic premise, stating “...there is simply no compelling reason to halt a diligent investigation that can otherwise be statutorily extended.” (Reply Brief, p. 11.) Yet, Financial Casualty’s interpretation results in a gap between the original appearance period and any additional time granted under section 1305.4. Such an interpretation is inconsistent with Legislature’s intent to “extend the period,” and it undercuts the Legislature’s efforts to limit the appearance period and establish certain timeframes for bail forfeitures.

**2. The 1999 amendments to the Penal Code do not address the *Taylor Billingslea* court’s analysis on how to apply the 180-day extension.**

Section 1305.4’s 180-day extension language was addressed in *People v. Taylor Billingslea Bail Bonds* (1999) 74 Cal.App.4th 1193 (“*Taylor Billingslea*”). That decision addressed the portion of the statute stating that a court “may order the period extended to a time not exceeding 180 days from its order.” This particular language was not disturbed by a

1999 amendment to the Penal Code.<sup>5</sup> Although *Taylor Billingslea* was decided before the 1999 amendment, courts have continued to adopt the reasoning of *Taylor Billingslea* as the correct interpretation of statute.<sup>6</sup>

Nothing in the Legislative history for the 1999 amendment indicates that the Legislature was making substantive changes to the timeframes in section 1305.4. The amendments regarding calendaring and hearing motions were described as technical and noncontroversial:

According to the author, the intent of this bill is "to assure that a judge has an opportunity to examine the

---

<sup>5</sup> The 1999 Amendment to section 1305.4 altered the section to permit motions to extend to be filed and calendared as provided in subdivision (j) of section 1305. (Stats. 1999, ch. 570, § 3; *see* Stats. 2012, ch. 129, § 1 [former subd. (i) relettered as subd. (j)].)

<sup>6</sup> The language considered by the court in *Taylor Billingslea*: "Notwithstanding Section 1305, the surety or depositor may file a motion, based upon good cause, for an order extending the 180-day period provided in that section. The motion shall include a declaration or affidavit that states the reasons showing good cause to extend that period. The motion shall be duly served on the prosecuting agency at least 10 days prior to the hearing date. The court, upon a hearing and a showing of good cause, may order the period extended to a time not exceeding 180 days from its order. (Stats. 1996, ch. 354, § 1.)" (*Taylor Billingslea*, *supra*, 74 Cal.App.4th at p. 1198(emphasis added).) Compare current version of Section 1305.4: "Notwithstanding Section 1305, the surety insurer, the bail agent, the surety, or the depositor may file a motion, based upon good cause, for an order extending the 180-day period provided in that section. The motion shall include a declaration or affidavit that states the reasons showing good cause to extend that period. The court, upon a hearing and a showing of good cause, may order the period extended to a time not exceeding 180 days from its order. A motion may be filed and calendared as provided in subdivision (j) of Section 1305. In addition to any other notice required by law, the moving party shall give the prosecuting agency a written notice at least 10 court days before a hearing held pursuant to this section as a condition precedent to granting the motion." (Emphasis added.)

record of a convicted individual prior to release and pending sentencing if that individual is out on bail." The other provisions of the bill are technical and noncontroversial.

(Cal. Bill Analysis, Assembly Committee, Assem. Bill 476 (1999-2000 Reg. Sess.) April 20, 1999.)

Extending the time for a surety to produce a defaulting defendant cannot fairly be described as technical amendment. Nor would extending the original 185-day period by more than 180 days under the 1999 amendment, which would be the effect of Financial Casualty's interpretation, be a mere technical or noncontroversial amendment. Indeed, sureties may receive inconsistent grants of extension periods across different cases and sureties may be treated differently, and perhaps unfairly, from one another if the 180 days was to be measured from the day the extension is granted. Again, this would not result in a mere technical or noncontroversial amendment, so it cannot be what the Legislature believed it was doing in adopting the 1999 amendment.<sup>7</sup>

---

<sup>7</sup> The amendment to the statute in 1999 was jurisdictional. (*See People v. Safety National Casualty Corp.* (2010) 186 Cal.App.4th 959, 965.) It allowed a court to continue jurisdiction long enough to hear a motion to extend. If good cause exists, additional time is granted and a court's jurisdiction continues. If not, the motion is denied and summary judgment must be entered within the required timeframe. Nothing prevents a surety from continuing to search for a defendant pending a hearing on its motion. If the surety has been diligent and recapture is likely, it would be detrimental to recapture efforts to halt the search for 30 days or more. Financial Casualty suggests that *People v. Seneca Ins. Co.* (2004) 116 Cal.App.4th 75, is in conflict with the interpretation of the Section 1305.4 adopted by the lower court in this case. (Opening Brief, pp. 59-60.) In that

**3. The majority of courts interpreting Section 1305.4 have correctly adopted the reasoning in *Taylor Billingslea*, and decisions to the contrary should be disavowed.**

After reviewing the Legislative history of section 1305.4, the court in *Taylor Billingslea* held:

“Guided by the language of the statute and the explanation of its provisions provided by the legislative counsel, we are of the opinion that the Legislature intended section 1305.4 to allow an extension of no more than 180 days past the 180-day period set forth in section 1305.”

(*Taylor Billingslea*, *supra*, 74 Cal.App.4th at p. 1999.)

The majority of courts to examine this issue, including the appellate court decision on review in this case, have agreed with the reasoning of the *Taylor Billingslea* court. The court in *People v. Accredited Surety & Casualty Company, Inc.* (2013) 220 Cal.App.4th 1137, cited *Taylor Billingslea* in finding that an extension was effective the day after the initial appearance period ended. That court noted that it applied the “construction of section 1305.4 adopted by every court that has thus far considered the question...” (*Id.* at p. 1148, citing *People v. Granite State Insurance Co.*

---

case, a surety failed to give timely notice of the bail forfeiture order to its agent. Little was done to locate the fugitive prior to expiration of the appearance period and the court refused to consider efforts made after the appearance period expired as evidence of “good cause” for an extension. The case does not stand for the proposition that all efforts are suspended while a hearing is pending. It merely prevents evidence of those efforts in support of the “good cause” showing that must be fully supported by the efforts and circumstances present during the appearance period.

(2003) 114 Cal.App.4th 758, 768 and *People v. Bankers Ins. Co.* (2010) 182 Cal.App.4th 1377, 1382.)

However, in a recent case, *People v. United States Fire Insurance Company* (2015) 242 Cal.App.4th 991 (“*United States Fire*”), the Fifth District Court of Appeal rejected this line of cases. The court erroneously concluded that the 1999 amendment made substantive changes to the manner in which extensions are measured. (*Id.* at p. 1007.) The court based its decision on the “plain wording of the statute,” despite the ambiguity recognized by a number of other courts. (*Id.* at p. 995.) By not analyzing the overall statutory scheme, legislative intent and policy considerations at issue, the court missed the mark.

Similarly, in *County of Los Angeles v. Williamsburg National Ins. Co.* (2015) 235 Cal.App.4th 944 (“*Williamsburg*”), the Second District Court of Appeal, in a footnote, called into question the holding in *Taylor Billingslea* because it predates the 1999 statutory amendments. (*Id.* at p. 952, fn. 7, citing *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, 658)(“*American Contractors*”).)

The dicta in *Williamsburg* should not control the outcome of this case. First, the language regarding the interpretation of section 1305.4 lacked any substantive analysis of the 1999 amendment, prior legislative intent or the language of the statute and its place within the overall statutory. Compared to the thorough review of the legal question provided

in *Taylor Billingslea*, the *Williamsburg* case does not provide a basis for straying from the long-established rule on this question. Second, the *Williamsburg* court's disagreement with *Taylor Billingslea* relies on language from this court's decision in *American Contractors*. That decision considered whether a summary judgment that was entered before a hearing on a section 1305.4 motion was void or voidable; it did not analyze the language of section 1305.4 at issue here. (*American Contractors, supra*, 33 Cal.4th at p. 660.)

The holding in *United States Fire* and the dicta in *Williamsburg* undercut the Legislature's efforts to limit the appearance period and establish certain timeframes for bail forfeitures. (*People v. Murphy* (2001) 25 Cal.4th 136, 142 [courts construe the words of a statute "in context, keeping in mind the nature and obvious purpose of the statute..." and harmonize the "various parts of [the statute] by considering the particular clause or section in the context of the statutory framework as a whole."].) The Legislature would not have developed a comprehensive scheme governing bond forfeitures if it meant for the details to be decided on a case-by-case basis and without regard to consistent, uniform procedures and timeframes.

The forfeiture process is administrative, and to the extent that inconsistency and delay is prevalent in such a system, administrative costs and errors increase. The *United States Fire* and *Williamsburg* decisions

encourage sureties to prolong judgment on forfeiture by seeking partial extensions with multiple hearings and multiple “grace periods.”<sup>8</sup> The decisions also promote delay by encouraging requests for hearing continuances. This Court should disavow this interpretation of section 1305.4, which creates unintended consequences, including additional burdens on court and county resources.

**4. Reading section 1305.4 as allowing a maximum of 365 days to return a fugitive resolves uncertainty in the application of section 1306.**

Statutes regarding bail and bail forfeiture relate to the administration of justice and related public safety concerns. (*People v. American Contractors Indemnity Co.*, *supra*, 33 Cal.4th at p. 657, quoting *People v. Wilcox* (1960) 53 Cal.2d 651, 654 [“The object of bail and its forfeiture is to insure the accused's attendance and his or her obedience to the orders and judgment of the court.”].) If a defendant absconds, the statutes “are intended to provide the bail with an incentive to secure the arrest of the defaulting defendant.” (*People v. Rolley* (1963) 223 Cal.App.2d 639, 641.) As the general construction and interpretation of sections 1305 and 1305.4 indicate, these statutes provide a framework for a declaration of bond forfeiture, notice of forfeiture, and specific requirements and timeframes for exoneration of the bond. And if the bond is not exonerated within the

---

<sup>8</sup> Financial Casualty argues that each motion for an extension should be treated the same. (Opening Brief, p. 54.)

statutory timeframe, those provisions trigger the timeframe for entry of judgment under section 1306.<sup>9</sup> Thus, taken together, sections 1305, 1305.4, and 1306 work to incentivize the return of a defaulting defendant.

“The provisions of Penal Code section 1306 are clear and unambiguous. They place the responsibility for entering summary judgment on defaulted bail on the court, unequivocally limit the time within which the judgment may be entered, and provide that the right to enter judgment terminates when that time limit has expired ....” (*County of Sacramento v. Ins. Co. of the West* (1983) 139 Cal.App.3d 561, 565, quoting *People v. Surety Ins. Co.* (1973) 30 Cal.App.3d 75, 79-80.)

Underlying these provisions is the limited jurisdiction of a court in bail forfeiture matters. Strict compliance is required if judgment on the bond is to be entered and enforced. Thus, consistency in the application of section 1305.4 is essential to the proper administration of bail bonds and the entry of judgments under section 1306. With the confusion and lack of uniformity that is currently present in forfeiture proceedings, a court may “fail to promptly perform the duties enjoined upon it,” not because of its own delay in attending to the matter, but simply because it adopts an

---

<sup>9</sup> Section 1306 states: “If, because of the failure of any court to promptly perform the duties enjoined upon it pursuant to this section, summary judgment is not entered within 90 days after the date upon which it may first be entered, their right to do expires and the bail is exonerated.”

interpretation of the ambiguities in section 1305.4 that is different from the interpretation adopted by a reviewing court.

Further, sureties have exploited ambiguities in bail forfeiture statutes in attempts to exonerate bonds under section 1306. (*People v. Bankers Ins. Co.*, *supra*, 182 Cal.App.4th at p. 1382. [surety argued that extension was outside of 365 day window]; *People v. Granite State Insurance Co.*, *supra*, 114 Cal.App.4th 758 [surety argued that its pending motion to vacate did not alter the timeframe under section 1306].) Bright line rules in bail forfeiture proceedings promote consistency and fairness in the application of bail forfeiture statutes. (*Regents of Univ. of Cal. v. Superior Court* (1970) 3 Cal.3d 529, 536-537. [“It is the duty of the courts, within the framework of the statutes passed by the Legislature, to interpret the statutes so as to make them workable and reasonable.”].)

**5. The 365-day limit is consistent with avoiding the harsh results of forfeiture.**

Bail forfeiture statutes are to be construed in favor of the surety to avoid the harsh results of forfeiture.<sup>10</sup> (*People v. Granite State Insurance*

---

<sup>10</sup> Apprehending fugitives and avoiding the harsh results of forfeiture are not only policy goals the Legislature has considered regarding forfeitures. The Legislature has identified enforcement of court-ordered debts as “an important element of California’s judicial system” and stated that “[p]rompt, efficient, and effective imposition and collection of court-ordered...forfeitures...ensure the appropriate respect for court orders.” (Section 1463.010.) The Legislature has also provided for victims of certain sex crimes and serious and violent felonies by allocating a certain percentage of bail forfeiture proceeds to “satisfy any civil court judgment in

*Co., supra*, 114 Cal.App.4th at p. 769.) In *People v. Indiana Lumbermens Mutual Ins. Co.* (2010) 49 Cal.4th 301, 313, this Court stated:

[T]he existing statutory scheme has been designed to avoid undue hardship for bail sureties. A surety undertakes to guarantee the defendant's timely appearance in court. If the defendant fails to appear, the surety is contractually obligated to the government in the amount of its bond. (Citation) Section 1305 allows the surety 180 days, *a generous period*, to obtain relief....

(Italics added.)

Limiting the timeframe to 365 days does not result in undue hardship, create an undue burden or result in any other unfair treatment of sureties that assume the risk of bond forfeitures. It does, however, provide consistency that a surety can count on in its own affairs and consistency between cases that promotes fairness through uniformity.

**C. The People’s Interpretation of Section 1305.4 Avoids Absurd Results.**

“Where the construction of a statute is necessary, it should be interpreted so as to produce a result that is reasonable ...” (*Associates Discount Corp. v. Tobb Co.* (1966) 241 Cal.App.2d 541, 552.) “The provisions of section 1305 in particular must be accorded ‘a reasonable, commonsense construction in line with [their] apparent purpose, in order to advance wise legislative policy and avoid absurdity.’” (*People v. Ranger*

---

favor of a victim as a result of the offense or a restitution order” under certain circumstances. (§ 1463.099.)

*Ins. Co.* (1992) 9 Cal.App.4th 1302, 1307.) While bail forfeiture statutes must be strictly construed in favor of the surety to avoid the harsh results of a forfeiture, the statutes must also be “given a reasonable and commonsense interpretation consistent with the apparent legislative purpose ‘and intent and which, when applied, will result in wise policy rather than mischief or absurdity’”. (*People v. Granite State Insurance Co.*, *supra*, 114 Cal.App.4th at p. 769, citing *People v. International Fidelity Ins. Co.* (2001) 92 Cal.App.4th 470, 473) and quoting *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1392.) Thus, “...a construction ‘which is consistent with sound sense and wise policy, with a view to promoting justice’ should be accepted; that which would produce an absurdity should be rejected...” (*Associates Discount Corp.*, *supra*, 241 Cal.App.2d at p. 552, quoting *In re Estate of Todd* (1941) 17 Cal.2d 270, 275.)

In this case, the interpretation of section 1305.4 supported by the People is consistent with “sound sense and wise policy.” Requiring “good cause” to be more than a mere due diligence standard avoids the potential for absurd result of prolonging bail forfeiture proceedings that have no likelihood of leading to a fugitive’s recapture. The People, consistent with the majority of courts, argue that extensions of the appearance period should be limited to no more than 365 days. Interpreting the statute in this

manner allows courts and counties to efficiently manage public resources and properly apply provisions in related statutes.

Moreover, adopting Financial Casualty's position would essentially provide no time limit at all to return a fugitive, which renders ineffective the bail forfeiture system. A surety would be able to request multiple extensions, and would only have to show that it is continuing a diligent search for defendant, not that the additional time is likely to result in the defendant's return. By contrast, the interpretation advanced by the People would avoid the absurd result of encouraging sureties to prolong a final forfeiture judgment by seeking any number of partial extensions and hearing continuances.

#### **IV. CONCLUSION**

A legislative requirement that "good cause" be shown before an extension is granted must be given meaningful effect. If the Legislature preferred an automatic extension, it would have saved everyone the time and expense of required hearings and simply extended the appearance period by 180 days in every case. The same is true for the burden shifting scheme suggested by Financial Casualty. If the Legislature wanted the burden to fall on the People, it is capable of crafting such language. As enacted, the burden of showing that "good cause" exists falls solely on the surety.

Additionally, though the maximum period available under section 1305.4 for returning a defendant may be ambiguous, case law and analysis of the Legislature's intent support the conclusion that it extends the appearance period under section 1305 by not more than 180 days, allowing for a total of 365 days for a bond to be exonerated. This conclusion provides a clear timeframe for courts to apply related statutes, promotes fairness and consistency, and it avoids administrative impracticalities for both courts and the counties.

To advance the intent of the statute and avoid its circumvention, CSAC urges the court to affirm the lower court's ruling.

Dated: March , 2016      By:

---

Jennifer B. Henning  
Attorney for Amicus Curiae  
California State Association of Counties

**CERTIFICATION OF COMPLIANCE WITH  
CALIFORNIA RULES OF COURT, RULE 8.204(c)(1)**

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the word count feature in my Microsoft Word software, this brief contains 4,635 words.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this \_\_\_ day of March, 2016 in Sacramento, California.

Respectfully submitted,

By: \_\_\_\_\_  
JENNIFER B. HENNING  
Attorney for Amicus Curiae

Proof of Service by Mail

*People v. Financial Casualty & Surety, Inc.*

Case No. S229446

I, Mary Penney, declare:

That I am, and was at the time of the service of the papers herein referred to, over the age of eighteen years, and not a party to the within action; and I am employed in the County of Sacramento, California, within which county the subject mailing occurred. My business address is 1100 K Street, Suite 101, Sacramento, California, 95814. I served the within

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND PROPOSED AMICUS CURIAE BRIEF OF THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF PLAINTIFF AND**

**RESPONDENT PEOPLE OF THE STATE OF CALIFORNIA** by placing a copy thereof in a separate envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

**Proof of Service List**

<b>Party</b>	<b>Attorney</b>
The People : Plaintiff and Respondent	Brian Thomas Chu Office of the Los Angeles County Counsel 500 West Temple Street, Suite 606 Los Angeles, CA 90012
Financial Casualty & Surety, Inc. : Defendant and Appellant	John M. Rorabaugh Robert Tomlin White Law Office of John Rorabaugh 801 Parkcenter Drive, Suite 205 Santa Ana, CA 92705
Court of Appeal	Clerk of the Court 300 S. Spring Street, Floor 2 North Tower Los Angeles, CA 90013-1213
Trial Court	Clerk of the Court Los Angeles County Superior Court 111 North Hill Street Los Angeles, CA 90012

and by placing the envelopes for collection and mailing following our ordinary business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage prepaid.

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

Executed on \_\_\_\_\_, at Sacramento, California.

---

MARY PENNEY