

HOUSE BILL 682

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11r2628
CF SB 809

By: **Delegate K. Kelly**

Introduced and read first time: February 9, 2011

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: March 20, 2011

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Pretrial Release and Bail Bonds**

3 FOR the purpose of prohibiting a District Court commissioner from authorizing the
4 pretrial release of a defendant who is charged with failure to appear, violation
5 of probation, or violation of parole; providing that a judge may authorize the
6 pretrial release of a certain defendant on suitable bail or certain conditions or
7 both; requiring a judge to order the continued detention of a certain defendant
8 under certain circumstances at a certain time; creating a rebuttable
9 presumption that a certain defendant will flee and pose a danger to another
10 person or the community; authorizing in circuit courts and in the District Court
11 “cash bail”, or “cash bond” to be posted in the form of cash, surety bond, or
12 property bond by the defendant or by a private surety acting for the defendant;
13 requiring “cash bail”, or “cash bond” to be posted by the defendant only, unless
14 the order setting bail expressly provides otherwise, in cases involving a
15 defendant’s failure to pay support to certain individuals; prohibiting a court
16 that exercises criminal jurisdiction from giving back a forfeiture of bail or
17 collateral at a certain time unless a private surety pays a forfeiture of bail or
18 collateral within a certain time period after a defendant’s failure to appear;
19 requiring a court to give back a forfeiture of bail bond or collateral that was not
20 paid within a certain time period after a defendant’s failure to appear if on
21 motion a private surety produces evidence that the defendant was incarcerated
22 when the judgment of forfeiture was entered and the court strikes the judgment
23 for fraud, mistake, or irregularity; providing for the repeal of laws inconsistent
24 with this Act; and generally relating to pretrial release and bail bonds in circuit
25 courts and in the District Court.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
2 Article – Criminal Procedure
3 Section 5–202(j)
4 Annotated Code of Maryland
5 (2008 Replacement Volume and 2010 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Criminal Procedure
8 Section 5–203, 5–205, and 5–208
9 Annotated Code of Maryland
10 (2008 Replacement Volume and 2010 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article – Criminal Procedure**

14 5–202.

15 **(J) (1) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE**
16 **THE PRETRIAL RELEASE OF A DEFENDANT WHO IS CHARGED WITH FAILURE TO**
17 **APPEAR, VIOLATION OF PROBATION, OR VIOLATION OF PAROLE.**

18 **(2) (I) A JUDGE MAY AUTHORIZE THE PRETRIAL RELEASE OF A**
19 **DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION ON:**

20 **1. SUITABLE BAIL;**

21 **2. ANY OTHER CONDITIONS THAT WILL REASONABLY**
22 **ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO**
23 **ANOTHER PERSON OR THE COMMUNITY; OR**

24 **3. BOTH BAIL AND OTHER CONDITIONS DESCRIBED**
25 **UNDER ITEM 2 OF THIS SUBPARAGRAPH.**

26 **(II) WHEN A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF**
27 **THIS SUBSECTION IS PRESENTED TO THE COURT UNDER MARYLAND RULE**
28 **4–216(F), THE JUDGE SHALL ORDER THE CONTINUED DETENTION OF THE**
29 **DEFENDANT IF THE JUDGE DETERMINES THAT NEITHER SUITABLE BAIL NOR**
30 **ANY CONDITION OR COMBINATION OF CONDITIONS WILL REASONABLY ENSURE**
31 **THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER**
32 **PERSON OR THE COMMUNITY BEFORE THE TRIAL.**

1 **(3) THERE IS A REBUTTABLE PRESUMPTION THAT A DEFENDANT**
2 **DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION WILL FLEE AND POSE A**
3 **DANGER TO ANOTHER PERSON OR THE COMMUNITY.**

4 5–203.

5 (a) (1) Subject to [paragraph (2)] **PARAGRAPHS (2) AND (3)** of this
6 subsection, a circuit court may adopt rules setting the terms and conditions of bail
7 bonds filed in that court and rules on the qualifications of and fees charged by bail
8 bondsmen.

9 (2) Notwithstanding any other law or rule to the contrary, if expressly
10 authorized by the court, a defendant or a private surety acting for the defendant may
11 post a bail bond by executing it in the full penalty amount and depositing with the
12 clerk of court the greater of 10% of the penalty amount or \$25.

13 **(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
14 **PARAGRAPH, AN ORDER SETTING “CASH BAIL” OR “CASH BOND” MAY BE**
15 **POSTED IN THE FORM OF CASH, SURETY BOND, OR PROPERTY BOND BY THE**
16 **DEFENDANT OR BY A PRIVATE SURETY ACTING FOR THE DEFENDANT.**

17 **(II) UNLESS OTHERWISE ORDERED BY THE COURT, AN**
18 **ORDER SETTING “CASH BAIL” OR “CASH BOND” FOR A FAILURE TO PAY**
19 **SUPPORT UNDER TITLE 10, TITLE 11, TITLE 12, OR TITLE 13 OF THE FAMILY**
20 **LAW ARTICLE MAY BE POSTED BY THE DEFENDANT ONLY.**

21 **[(3)] (4)** A bail bond commissioner may be appointed to carry out
22 rules adopted under this section.

23 **[(4)] (5)** A violation of a rule adopted under this section is contempt
24 of court and shall be punished in accordance with Title 15, Chapter 200 of the
25 Maryland Rules.

26 **[(5)] (6)** A person may not engage in the business of becoming a
27 surety for compensation on bail bonds in criminal cases unless the person is:

28 (i) approved in accordance with any rules adopted under this
29 section; and

30 (ii) if required under the Insurance Article, licensed in
31 accordance with the Insurance Article.

32 (b) (1) In the circuit courts in the Seventh Judicial Circuit, a bail
33 bondsman approved under subsection (a) of this section shall pay a license fee of 1% of
34 the gross value of all bail bonds written in all courts of the circuit, if the fee is
35 approved by the court of the county in which it applies.

1 (2) The fee shall be paid to the court as required by the rules of court
2 and shall be used to pay the expenses of carrying out this section.

3 (3) Any absolute bail bond forfeitures collected may be used to pay the
4 expenses of carrying out this section.

5 5-205.

6 (a) A District Court judge may:

7 (1) set bond or bail;

8 (2) release a defendant on personal recognizance or on a personal or
9 other bail bond;

10 (3) commit a defendant to a correctional facility in default of a bail
11 bond;

12 (4) order a bail bond forfeited if the defendant fails to meet the
13 conditions of the bond; and

14 (5) exercise all of the powers of a justice of the peace under the
15 Constitution of 1867.

16 **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
17 **SUBSECTION, AN ORDER SETTING “CASH BAIL” OR “CASH BOND” MAY BE**
18 **POSTED IN THE FORM OF CASH, SURETY BOND, OR PROPERTY BOND BY THE**
19 **DEFENDANT OR BY A PRIVATE SURETY ACTING FOR THE DEFENDANT.**

20 **(2) UNLESS OTHERWISE EXPRESSLY ORDERED BY THE COURT OR**
21 **DISTRICT COURT COMMISSIONER, AN ORDER SETTING “CASH BAIL” OR “CASH**
22 **BOND” FOR A FAILURE TO PAY SUPPORT UNDER TITLE 10, TITLE 11, TITLE 12,**
23 **OR TITLE 13 OF THE FAMILY LAW ARTICLE MAY BE POSTED BY THE**
24 **DEFENDANT ONLY.**

25 **[(b)] (C) (1)** This subsection does not apply to a defendant who has been
26 arrested for failure to appear in court or for contempt of court.

27 (2) (i) Notwithstanding any other law or rule to the contrary, in a
28 criminal or traffic case in the District Court in which a bail bond has been set and if
29 expressly authorized by the court or District Court commissioner, the defendant or a
30 private surety acting for the defendant may post the bail bond by:

31 1. executing it in the full penalty amount; and

1 2. depositing with the clerk of the court or a
2 commissioner the greater of 10% of the penalty amount or \$25.

3 (ii) A judicial officer may increase the percentage of cash surety
4 required in a particular case but may not authorize a cash deposit of less than \$25.

5 (3) On depositing the amount required under paragraph (2) of this
6 subsection and executing the recognizance, the defendant shall be released from
7 custody subject to the conditions of the bail bond.

8 **[(c)] (D)** (1) When all conditions of the bail bond have been performed
9 without default and the defendant has been discharged from all obligations in the
10 cause for which the recognizance was posted, the clerk of the court shall return the
11 deposit to the person or private surety who deposited it.

12 (2) (i) If the defendant fails to perform any condition of the bail
13 bond, the bail bond shall be forfeited.

14 (ii) If the bail bond is forfeited, the liability of the bail bond shall
15 extend to the full amount of the bail bond set and the amount posted as a deposit shall
16 be applied to reduce the liability incurred by the forfeiture.

17 5–208.

18 (a) In this section, “return” means to place in the custody of a police officer,
19 sheriff, or other commissioned law enforcement officer who is authorized to make
20 arrests within the jurisdiction of the court.

21 (b) (1) Subject to paragraph (2) of this subsection, a court that exercises
22 criminal jurisdiction shall strike out a forfeiture of bail or collateral and discharge the
23 underlying bail bond if the defendant can show reasonable grounds for the defendant’s
24 failure to appear.

25 (2) **(I)** The court shall[:

26 (i)] allow a surety 90 days after the date of the defendant’s failure
27 to appear or, for good cause shown, 180 days to return the defendant before requiring
28 the payment of any forfeiture of bail or collateral[; and].

29 (ii) **THE COURT SHALL** strike out a forfeiture of bail or
30 collateral and deduct only the actual expense incurred for the defendant’s arrest,
31 apprehension, or surrender, if:

32 1. **THE SURETY PAID THE FORFEITURE OF BAIL OR**
33 **COLLATERAL DURING THE PERIOD ALLOWED FOR THE RETURN OF THE**
34 **DEFENDANT UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH;**

1 after expiration of the time limits established under subsection (b) of this section for a
2 surety to return a defendant shall give back the forfeited bail bond or collateral if,
3 within 10 years after the date the bail bond or collateral was posted, the surety
4 produces evidence that:

5 (i) the defendant is confined in a correctional facility outside
6 the State;

7 (ii) the State's Attorney is unwilling to issue a detainer and
8 later extradite the defendant; and

9 (iii) the surety agrees in writing to defray the expense of
10 returning the defendant to the jurisdiction in accordance with subsection (c) of this
11 section.

12 **(3) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**
13 **THE COURT MAY NOT GIVE BACK A FORFEITED BAIL BOND OR COLLATERAL TO A**
14 **SURETY UNDER THIS SUBSECTION UNLESS THE SURETY PAID THE FORFEITURE**
15 **OF BAIL OR COLLATERAL WITHIN THE TIME LIMITS ESTABLISHED FOR THE**
16 **SURETY TO RETURN THE DEFENDANT UNDER SUBSECTION (B)(2)(I) OF THIS**
17 **SECTION.**

18 **(II) THE COURT MAY GIVE BACK A FORFEITED BAIL BOND**
19 **OR COLLATERAL THAT WAS NOT PAID WITHIN THE TIME LIMITS ESTABLISHED**
20 **UNDER SUBSECTION (B) OF THIS SECTION, IF:**

21 **1. ON MOTION, THE SURETY PRODUCES EVIDENCE**
22 **THAT THE DEFENDANT WAS INCARCERATED WHEN THE JUDGMENT OF**
23 **FORFEITURE WAS ENTERED; AND**

24 **2. THE COURT STRIKES OUT THE JUDGMENT OF**
25 **FORFEITURE FOR FRAUD, MISTAKE, OR IRREGULARITY.**

26 SECTION 2. AND BE IT FURTHER ENACTED, That all laws or parts of laws,
27 public general or public local, inconsistent with this Act, are repealed to the extent of
28 the inconsistency.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2011.