

# SENATE BILL 809

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CF HB 682

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By: **Senator Zirkin**

Introduced and read first time: February 4, 2011

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 27, 2011

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Procedure – ~~Pretrial Release and~~ Forfeiture of 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 refunding a forfeiture of~~  
17 ~~bail or collateral at a certain time unless a private surety pays a forfeiture of~~  
18 ~~bail or collateral within a certain time period after a defendant’s failure to~~  
19 ~~appear; requiring a court to give back refund a forfeiture of bail bond or~~  
20 ~~collateral that was not paid within a certain time period after a defendant’s~~  
21 ~~failure to appear if on motion a private surety produces evidence that the~~  
22 ~~defendant was incarcerated when the judgment of forfeiture was entered and~~  
23 ~~the court strikes the judgment for fraud, mistake, or irregularity; providing for~~  
24 ~~the repeal of laws inconsistent with this Act; and generally relating to ~~pretrial~~~~  
25 ~~release and forfeiture of bail bonds in circuit courts and in the District Court.~~

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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 ~~(H) 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  
27 failure to appear or, for good cause shown, 180 days to return the defendant before  
28 requiring 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                   2.     the defendant is returned; and

2                                     [2.] 3. the arrest, apprehension, or surrender occurs more  
3 than 90 days after the defendant's failure to appear or at the end of the period that the  
4 court allows to return the defendant.

5           (c)     Evidence of confinement of a fugitive defendant in a correctional facility  
6 in the United States is a wholly sufficient ground to strike out a forfeiture, if  
7 assurance is given that the defendant will come back to the jurisdiction of the court on  
8 expiration of the sentence at no expense to the State, county, or municipal corporation.

9           (d)     (1)     Except as provided in paragraph (2) of this subsection, if the court  
10 indefinitely postpones trial of a criminal charge by marking the criminal charge "stet"  
11 on the docket:

12                                 (i)     the defendant or other person who gave collateral for bail or  
13 recognizance is entitled to a refund; and

14                                 (ii)    if a bail bond or other security was given, the bail bond or  
15 other security shall be discharged.

16                                 (2)     If the bail bond or other security has been declared forfeited and 10  
17 years have passed since the bail bond or other security was posted, the defendant or  
18 other person may not receive a refund or discharge.

19           (e)     (1)     A court exercising criminal jurisdiction may not order a forfeiture  
20 of the bail bond or collateral posted by a surety and shall give back the bail bond or  
21 collateral to the surety if:

22                                 (i)     the defendant fails to appear in court; and

23                                 (ii)    the surety produces evidence, within the time limits  
24 established under subsection (b) of this section, that:

25                                     1.     the defendant is confined in a correctional facility  
26 outside the State;

27                                     2.     the State's Attorney is unwilling to issue a detainer  
28 and later extradite the defendant; and

29                                     3.     the surety agrees in writing to defray the expense of  
30 returning the defendant to the jurisdiction in accordance with subsection (c) of this  
31 section.

32                                 (2)     **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, [A]** A court  
33 exercising criminal jurisdiction that has ordered forfeiture of a bail bond or collateral

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~~ REFUND A FORFEITED BAIL BOND OR**  
14 **COLLATERAL TO A SURETY UNDER THIS SUBSECTION UNLESS THE SURETY PAID**  
15 **THE FORFEITURE OF BAIL OR COLLATERAL WITHIN THE TIME LIMITS**  
16 **ESTABLISHED FOR THE SURETY TO RETURN THE DEFENDANT UNDER**  
17 **SUBSECTION (B)(2)(I) OF THIS SECTION.**

18 **(II) THE COURT MAY ~~GIVE BACK~~ REFUND A FORFEITED BAIL**  
19 **BOND OR COLLATERAL THAT WAS NOT PAID WITHIN THE TIME LIMITS**  
20 **ESTABLISHED 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.