

HOUSE BILL 1001

E2

5lr2142

By: **Delegates Jalisi and Moon**

Introduced and read first time: February 13, 2015

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Bail Bonds – Return of Defendant**

3 FOR the purpose of altering a provision of law so as to require a certain court to strike out
4 a forfeiture of bail or collateral and discharge the underlying bail bond if reasonable
5 grounds can be shown for the defendant's failure to appear, rather than if the
6 defendant can show reasonable grounds for the defendant's failure to appear;
7 providing that the filing of a certain motion within a certain time limit shall stay a
8 certain matter and preclude the payment of any forfeiture of bail or collateral until
9 a certain time; granting a certain surety a certain amount of time to pay a certain
10 forfeiture of bail or collateral on denial of a certain motion; altering a provision of
11 law so as to require the court to strike out a forfeiture of bail or collateral and deduct
12 a certain expense if arrest, apprehension, or surrender and return of the defendant
13 occurs after a certain time, the surety paid the forfeiture of bail or collateral during
14 a certain period, or a certain motion was filed within a certain time limit; providing
15 that evidence of confinement of a fugitive defendant in a correctional facility in the
16 United States is a wholly sufficient ground to strike out a forfeiture, if the surety
17 agrees in writing to defray a certain expense; altering a provision of law so as to
18 prohibit a certain court from ordering a forfeiture of a certain bail bond or collateral
19 and require the court to give back the bail bond or collateral to the surety if the
20 defendant fails to appear in court and the surety files a motion accompanied by
21 evidence, within a certain time limit, stating that the defendant is confined in a
22 correctional facility and agreeing to defray certain costs; altering a provision of law
23 so as to require a certain court to give back a certain forfeited bond or collateral if,
24 within a certain time period, the surety files a motion accompanied by evidence
25 stating that the defendant is confined in a correctional facility and agreeing to defray
26 a certain expense at a certain time; prohibiting, when a certain motion is filed, a
27 certain court from ordering a forfeiture of a certain bail bond or collateral and
28 requiring the court to give back the bail bond or collateral to the surety whether or
29 not the State's Attorney is willing to issue a detainer and later extradite the
30 defendant; prohibiting a certain court from ordering a forfeiture of a certain bail bond
31 or collateral and requiring the court to give back the bail bond or collateral to the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 surety if the defendant fails to appear in court and the surety takes certain actions;
2 making a conforming change; and generally relating to bail bonds.

3 BY repealing and reenacting, with amendments,
4 Article – Criminal Procedure
5 Section 5–208
6 Annotated Code of Maryland
7 (2008 Replacement Volume and 2014 Supplement)

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

10 **Article – Criminal Procedure**

11 5–208.

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

15 (b) (1) Subject to paragraph (2) of this subsection, a court that exercises
16 criminal jurisdiction shall strike out a forfeiture of bail or collateral and discharge the
17 underlying bail bond if [the defendant can show] reasonable grounds **CAN BE SHOWN** for
18 the defendant’s failure to appear.

19 (2) (i) The court shall allow a surety 90 days after the date of the
20 defendant’s failure to appear or, for good cause shown, 180 days to return the defendant
21 before requiring the payment of any forfeiture of bail or collateral.

22 **(II) THE FILING OF A MOTION CONCERNING THE SURETY’S**
23 **INABILITY TO RETURN THE DEFENDANT UNDER SUBSECTION (D) OF THIS SECTION,**
24 **FILED WITHIN THE TIME LIMITS SET FORTH IN SUBPARAGRAPH (I) OF THIS**
25 **PARAGRAPH, SHALL STAY THE MATTER AND PRECLUDE THE PAYMENT OF ANY**
26 **FORFEITURE OF BAIL OR COLLATERAL UNLESS AND UNTIL SUCH MOTION, OR ANY**
27 **APPEAL OF SUCH MOTION, IS DENIED.**

28 **(III) ON DENIAL OF A MOTION CONCERNING THE SURETY’S**
29 **INABILITY TO RETURN THE DEFENDANT FILED UNDER SUBSECTION (D) OF THIS**
30 **SECTION, OR ANY APPEAL OF SUCH MOTION, THE SURETY SHALL HAVE 3 BUSINESS**
31 **DAYS TO PAY ANY FORFEITURE OF BAIL OR COLLATERAL.**

32 **[(ii)] (IV) [The] IF ARREST, APPREHENSION, OR SURRENDER**
33 **AND RETURN OF THE DEFENDANT OCCURS AFTER THE TIME ALLOWED UNDER**
34 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE court shall strike out a forfeiture of bail**
35 **or collateral and deduct only the actual expense incurred for the defendant’s arrest,**
36 **apprehension, or surrender, if:**

1 1. the surety paid the forfeiture of bail or collateral during
2 the period allowed for the return of the defendant under subparagraph (i) of this paragraph;

3 **OR**

4 [2. the defendant is returned; and

5 3. the arrest, apprehension, or surrender occurs more than
6 90 days after the defendant's failure to appear or at the end of the period that the court
7 allows to return the defendant.

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

12 **2. A MOTION WAS FILED UNDER SUBSECTION (E) OF THIS**
13 **SECTION WITHIN THE TIME LIMITS SET FORTH IN SUBPARAGRAPH (I) OF THIS**
14 **PARAGRAPH.**

15 [(d)](C) (1) Except as provided in paragraph (2) of this subsection, if the
16 court indefinitely postpones trial of a criminal charge by marking the criminal charge "stet"
17 on the docket:

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

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

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

25 [(e)](D) (1) **EVIDENCE OF CONFINEMENT OF A FUGITIVE DEFENDANT IN**
26 **A CORRECTIONAL FACILITY IN THE UNITED STATES IS A WHOLLY SUFFICIENT**
27 **GROUND TO STRIKE OUT A FORFEITURE, IF THE SURETY AGREES IN WRITING TO**
28 **DEFRAY THE REASONABLE EXPENSE OF RETURNING THE DEFENDANT TO THE**
29 **JURISDICTION OF THE COURT ON EXPIRATION OF THE SENTENCE AT NO EXPENSE**
30 **TO THE STATE, COUNTY, OR MUNICIPAL CORPORATION.**

31 **(2)** A court exercising criminal jurisdiction may not order a forfeiture of the
32 bail bond or collateral posted by a surety and shall give back the bail bond or collateral to
33 the surety if[:

1 (i) the defendant fails to appear in court[;] and

2 [(ii)] the surety [produces] **FILES A MOTION ACCOMPANIED BY**
3 evidence, within the time limits established under subsection (b)(2)(I) of this section[,
4 that]:

5 [1.] (I) **STATING THAT** the defendant is confined in a
6 correctional facility [outside the State];

7 [2. the State's Attorney is unwilling to issue a detainer and
8 later extradite the defendant;] and

9 [3.] (II) [the surety agrees in writing] **AGREEING** to defray
10 the **REASONABLE** expense of returning the defendant to the jurisdiction [in accordance
11 with subsection (c) of this section] **OF THE COURT ON EXPIRATION OF THE SENTENCE**
12 **AT NO EXPENSE TO THE STATE, COUNTY, OR MUNICIPAL CORPORATION.**

13 [(2)](3) Subject to paragraph [(3)] (6) of this subsection, a court
14 exercising criminal jurisdiction that has ordered forfeiture of a bail bond or collateral after
15 expiration of the time limits established under subsection (b) of this section for a surety to
16 return a defendant shall give back the forfeited bail bond or collateral if, within 10 years
17 after the date the bail bond or collateral was posted, the surety [produces] **FILES A MOTION**
18 **ACCOMPANIED BY** evidence [that]:

19 (i) **STATING THAT** the defendant is confined in a correctional
20 facility [outside the State]; **AND**

21 (ii) [the State's Attorney is unwilling to issue a detainer and later
22 extradite the defendant; and

23 (iii) the surety agrees in writing] **AGREEING** to defray the
24 **REASONABLE** expense of returning the defendant to the jurisdiction [in accordance with
25 subsection (c) of this section] **OF THE COURT ON EXPIRATION OF THE SENTENCE AT NO**
26 **EXPENSE TO THE STATE, COUNTY, OR MUNICIPAL CORPORATION.**

27 (4) **WHEN A MOTION IS FILED IN ACCORDANCE WITH PARAGRAPH (1)**
28 **OR (3) OF THIS SUBSECTION, A COURT EXERCISING CRIMINAL JURISDICTION MAY**
29 **NOT ORDER A FORFEITURE OF THE BAIL BOND OR COLLATERAL POSTED BY A**
30 **SURETY AND SHALL GIVE BACK THE BAIL BOND OR COLLATERAL TO THE SURETY**
31 **WHETHER OR NOT THE STATE'S ATTORNEY IS WILLING TO ISSUE A DETAINER AND**
32 **LATER EXTRADITE THE DEFENDANT.**

1 **(5) A COURT EXERCISING CRIMINAL JURISDICTION MAY NOT ORDER**
2 **A FORFEITURE OF THE BAIL BOND OR COLLATERAL POSTED BY A SURETY AND SHALL**
3 **GIVE BACK THE BAIL BOND OR COLLATERAL TO THE SURETY IF:**

4 **(I) THE DEFENDANT FAILS TO APPEAR IN COURT; AND**

5 **(II) THE SURETY FILES A MOTION WITHIN THE TIME LIMITS SET**
6 **FORTH IN SUBSECTION (B)(2)(I) OF THIS SECTION, AND:**

7 **1. PRODUCES EVIDENCE THAT THE DEFENDANT IS**
8 **DECEASED;**

9 **2. PROVIDES AN AFFIDAVIT SIGNED BY THE BONDSMAN**
10 **SWEARING, UNDER THE PENALTY OF PERJURY, THAT THE BONDSMAN HAS LOCATED**
11 **THE DEFENDANT IN ANOTHER COUNTRY AND HAS REQUESTED THE STATE'S**
12 **ATTORNEY TO APPLY TO THE FEDERAL GOVERNMENT FOR AN UNLAWFUL FLIGHT**
13 **TO AVOID PROSECUTION WARRANT UNDER 18 U.S.C. § 1073; OR**

14 **3. PROVIDES AN AFFIDAVIT SIGNED BY THE BONDSMAN**
15 **SWEARING, UNDER THE PENALTY OF PERJURY, THAT THE BONDSMAN HAS LOCATED**
16 **THE DEFENDANT IN ANOTHER UNITED STATES JURISDICTION, BUT THE LAW OF THE**
17 **OTHER JURISDICTION OR FEDERAL LAW PROHIBITS THE BONDSMAN FROM**
18 **RETURNING THE DEFENDANT WITHIN THE TIME LIMITS SET FORTH IN SUBSECTION**
19 **(B)(2)(I) OF THIS SECTION.**

20 **[(3)] (6) (i)** Subject to subparagraph (ii) of this paragraph, the court
21 may not refund a forfeited bail bond or collateral to a surety under this subsection unless
22 the surety paid the forfeiture of bail or collateral within the time limits established for the
23 surety to return the defendant under subsection (b)(2)(i) of this section.

24 **(ii)** The court may refund a forfeited bail bond or collateral that was
25 not paid within the time limits established under subsection (b) of this section, if:

26 **1. [on motion, the surety produces evidence that the**
27 **defendant was incarcerated when the judgment of forfeiture was entered] A MOTION IS**
28 **FILED UNDER SUBSECTION (D) OF THIS SECTION, WITHIN THE TIME LIMITS SET**
29 **FORTH IN SUBSECTION (B)(2)(I) OF THIS SECTION; and**

30 **2. the court strikes out the judgment of forfeiture for fraud,**
31 **mistake, or irregularity.**

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2015.