

HOUSE No. 1530

By Mr. Moran of Boston, a petition (accompanied by bill, House, No. 1530) of Michael J. Moran and others relative to the bail review and rendition processes. The Judiciary.

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Moran

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to improving the bail review and rendition processes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael J. Moran	18th Suffolk
Stephen J. Buoniconti	
Pam Richardson	6th Middlesex
Peter J. Koutoujian	10th Middlesex
Bruce E. Tarr	First Essex and Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO IMPROVING THE BAIL REVIEW AND RENDITION PROCESSES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 **SECTION 1.** Chapter 10 of the General Laws, as appearing in the 2006 Official Edition,
2 is hereby amended by inserting at the end thereof the following section:-

3 Section 75. (a) As used in this section the following words shall, unless the context clearly
4 requires otherwise, have the following meanings:

5 “Board”, the commonwealth rendition board established pursuant to subsection (c).

6 “Fund” the commonwealth rendition fund established pursuant to subsection (b).

7 “Prosecuting officer”, the attorney general or a district attorney.

8 (b) There shall be established and set upon the books of the commonwealth a fund to be
9 known as the Commonwealth Rendition Fund. The fund shall be credited any appropriations,
10 bond proceeds or other monies authorized by the general court and specifically designated to be
11 credited thereto, such additional funds as are subject to the direction and control of the board
12 established pursuant to subsection (c) including all money, bonds or bank books ordered
13 forfeited under section 80 of chapter 276. Notwithstanding section 81 of chapter 276, any
14 revenues, deposits, receipts, or funds received through the receipt of royalties, interest or
15 dividends shall be deposited in the fund, and shall be available to the board for the purposes
16 described in this section, without further appropriation. All available moneys in the fund that are
17 unexpended at the end of each fiscal year shall not revert to the General Fund and shall be
18 available for expenditure in the subsequent fiscal year.

19 The fund shall be held and applied by the board for the purposes of rendition of criminal
20 defendants who have defaulted on the commonwealth court cases in such manner as directed by

21 the board. No expenditure made from the fund shall cause the fund to become deficient at any
22 point during a fiscal year.

23 (c) There shall be established within the executive office of public safety a
24 commonwealth rendition board consisting of the secretary of the executive office of public
25 safety, or his designee, the attorney general, or his designee, a chief of police appointed by the
26 Massachusetts chiefs of police association, and two district attorneys appointed by the
27 Massachusetts District Attorneys Association. Each member shall serve for a term of 2 years.
28 Members shall be eligible for reappointment and serve without compensation. The board shall
29 meet at least bi-annually, but shall meet as often as the members shall determine. The board
30 shall be responsible for the administration and oversight of the commonwealth rendition fund
31 established pursuant to this section including, but not limited to, the administration and approval
32 of reimbursement to prosecuting officers for the costs associated with the rendition of criminal
33 defendants who have defaulted on court appearances and against whom default warrants have
34 been issued.

35 The board shall establish guidelines for use of the fund including, but not limited to, a list
36 of priority cases, based upon the seriousness of the offense alleged, for automatic approval of
37 rendition reimbursement from the fund. Said guidelines shall include an application process to
38 access the fund, reimbursement procedures, and a process for approving requests for non-priority
39 case renditions.

40 Nothing in this section shall prohibit a prosecuting officer from incurring rendition costs,
41 reimbursable or otherwise, for the return of a defaulted criminal defendant.

42 **SECTION 2.** Section 86 of Chapter 221 of the General Laws as so appearing is hereby amended by
43 adding at the end thereof the following : —

44 Payment of transcription costs shall be made as provided in section 88 of chapter 221.

45 **SECTION 3.** Section 88 of Chapter 221, as so appearing , is hereby amended in line 11 by striking
46 the words “commonwealth upon voucher approved by him,” and inserting thereof the following: —
47 administrative office of the trial court upon a voucher approved by the judge,

48 Said section 88 is further amended by adding at the end thereof the following : —
49 If a judge orders that a statement given to the police be transcribed, all parties shall receive a copy,
50 and payment therefore shall be at the same rate and made by the administrative office of the trial
51 court upon a voucher approved by the judge.

52 **SECTION 4.** Section 24 of Chapter 262 of the General Laws, as so appearing, is hereby
53 amended in lines, 10 through 20, by striking subsection (c) and inserting thereof the following:--

54 (c) A Bail Compensation Fund is hereby created under this chapter. All sums received under
55 section 24 (a) of this chapter shall be paid into Bail Compensation Fund, under the direction of
56 the treasury of the Commonwealth, and shall be credited as follows:-

57 (1) Any and all fees paid by the person seeking bail or release on personal recognizance in
58 the case of a person arrested for any misdemeanor or felony shall be paid directly into the Bail
59 Compensation Fund. All such revenue collected by the person authorized to take bail shall be
60 deposited in and credited to the Bail Compensation Fund during the fiscal year in which it is
61 received. In the event that a question arises as to the correct year to credit the receipt of
62 revenues, the comptroller shall make a determination as to the correct fiscal year and the
63 determination of the comptroller shall be conclusive.

64 (2) Any person authorized to take bail or to release on personal recognizance in the case of a
65 person arrested for any misdemeanor or felony, and who goes to the place of detention where the
66 prisoner is held, shall be receive a daily stipend. The stipend shall be of a fixed amount and shall
67 not be dependent upon the authorization of bail or the release on personal recognizance of the
68 prisoner.

69 (3) The balance remaining after crediting the amounts required under section (2) shall be
70 credited to the General Fund.

71 Said Section 24 is hereby further amended by adding at the end thereof the following new section:--

72 (d) Stipend splitting arrangements are prohibited. No person authorized to take bail shall
73 administer by telephone, or otherwise than in the physical presence of the affiant, any oath or
74 affirmation required in the course of taking bail or releasing on personal recognizance. No person
75 authorized to take bail shall delegate the setting or taking of bail or the setting of taking of release on
76 personal recognizance to any other person.

77 **SECTION 5.** Section 58 of Chapter 276, as so appearing, is hereby amended in line 105 by adding
78 a paragraph break after the words "reasonably possible."

79 Said section 58 is further amended in line 114 by striking the words "by telephone" and inserting
80 thereof the following words:-- by writing delivered in hand or by facsimile that same day

81 Said section 58 is further amended in lines 133 to 139 by striking the words "on the same day the
82 petition shall have been filed, unless the district court or detaining authority shall determine that such
83 appearance and hearing on the petition cannot practically take place before the adjournment of the
84 sitting of said superior court for that day and in which event, the petitioner shall be caused to be
85 brought before said court for such hearing during the morning of the next business day of the sitting
86 of said superior court." and inserting thereof the following words:--

87 on the third business day of the sitting of said superior court after the petition shall have been filed,
88 unless said superior or district court orders otherwise for good cause shown.

89 Said section 58 is further amended by striking the paragraph at lines 150 to 161 and inserting thereof
90 the following:--

91 The justice of the superior court shall review the order of the district court and the reasons
92 given by the district court. Unless the justice of the superior court determines that the district court
93 committed a clear error of law or fact, or set a clearly excessive bail, the justice shall remand the
94 prisoner in accordance with the terms of the process by which he was ordered committed by the
95 district court. If the justice of the superior court determines that the district court committed a clear
96 error of law or fact, or set a clearly excessive bail, the justice shall consider the standards set forth in
97 the first paragraph of this section and may order that the petitioner be released on bail on his
98 personal recognizance without surety, or, in his discretion, make any other order of bail or
99 recognizance.

100 **SECTION 6.** Section 4 of Section 58A of Chapter 276, as so appearing, is hereby amended in line
101 96 by deleting the words "held under arrest" and inserting thereof the words:-- charged with

102 **SECTION 7.** Section 63 of Chapter 276, as so appearing, is hereby amended by striking in line 2
103 the words "any fee or" and in line 5 the words "statutory fees therefore" and inserting in each place
104 the following:--

105 stipend therefore, as set forth in section (c)(2) of chapter 262.

106 **SECTION 8.** Section 80 of chapter 276, as so appearing, is hereby amended by striking, in lines
107 4, 8, and 10, inclusive, the words "state treasurer" and inserting in place thereof the following
108 words:--

109 the Commonwealth Rendition Fund established pursuant to section 75 of chapter 10.