

By Mr. Scaccia of Boston, petition of Angelo M. Scaccia relative to eliminating bail bondsmen and creating a court administered percentage deposit bail system. The Judiciary.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty-One.

AN ACT ELIMINATING BAIL BONDSMEN AND CREATING A COURT ADMINISTERED PERCENTAGE DEPOSIT BAIL SYSTEM.

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

1 Chapter 276 of the General Laws is hereby amended by deleting  
2 sections 57, 58, 59, 60, 61A, 61B, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71,  
3 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 82A and inserting in place  
4 thereof the following sections: —

5 *Section 57. Bailable Offenses.*

6 All persons held in custody or committed upon a criminal charge  
7 other than an offense punishable by death, or held in custody or  
8 committed as a witness shall be admitted to bail in accordance  
9 with the provisions of section 59.

10 *Section 58. Officials Empowered to Admit to Bail.*

11 A justice of the Supreme Judicial or Superior Court, a justice of  
12 a district court, or a bail magistrate, upon application of a prisoner  
13 or witness held under arrest or committed either with or without a  
14 warrant, or held in the custody of an officer under a mittimus, may  
15 inquire into the case and release such prisoner or witness upon his  
16 execution of a recognizance in accordance with the provisions of  
17 section 59.

18 A clerk or assistant clerk of courts, or the clerk or assistant clerk  
19 of the Superior Court for criminal business in the County of  
20 Suffolk, or a clerk or assistant clerk of a district court, a standing or  
21 special commissioner appointed by the Supreme Judicial or Superior  
22 Court, or in the County of Suffolk by the Sheriff of Suffolk

23 County with the approval of the Superior Court, upon registration  
24 on a form to be prescribed by the Office of Bail Administration,  
25 shall become a bail magistrate. The Sheriff of Suffolk County may,  
26 with the approval of the Superior Court, appoint standing or  
27 special commissioners to a number not exceeding twenty and may  
28 with like approval, remove them, and said commissioners, upon  
29 registration in accordance with this section, shall become bail  
30 magistrates.

31 All persons authorized under this section to release on recogni-  
32 zance pursuant to the provisions of section 59 shall be governed by  
33 the rules established by the Office of Bail Administration. No  
34 person authorized to admit to bail shall receive from any source in  
35 connection with the admitting to bail anything of value in excess of  
36 the prescribed fees therefor. No person shall act as attorney in any  
37 case in which he has released a prisoner or witness, or set the terms  
38 of release.

39 On the second Monday of each calendar month, every bail  
40 magistrate who admits a prisoner to bail out of court shall transmit  
41 to the Office of Bail Administration a written report according to a  
42 form to be prescribed by said Office which shall include the date of  
43 such release, the name of the defendant, the offense or offenses  
44 charged, the court before which the defendant was required to  
45 appear and such other additional information as said Office may  
46 require.

47 A justice or bail magistrate who releases a person on personal  
48 recognizance or other conditions out of court shall, transmit a copy  
49 of the recognizance and conditions of release and any deposit  
50 thereunder by 9:00 a.m. of the next court day to the clerk of the  
51 court before which the person released is required to appear.

52 *Section 59. Recognizance and Conditions of Bail.*

53 A justice of the Supreme Judicial or Superior Court, a justice of  
54 the district court, or a bail magistrate shall, upon application of a  
55 prisoner or witness held under arrest or committed either with or  
56 without a warrant upon an offense other than an offense punisha-  
57 ble by death, or upon any offense on which a warrant of arrest has  
58 been issued by the superior court, inquire into the case and shall  
59 release such person on his personal recognizance without surety or  
60 further condition, unless said justice or bail magistrate determines,

61 in the exercise of his discretion, that such a release will not reasona-  
62 bly assure the appearance of the prisoner or witness before the  
63 court.

64 In his determination, said justice or bail magistrate shall on the  
65 basis of any information which he can reasonably obtain, take into  
66 account the prisoner's family ties, financial resources, employment  
67 record and history of mental illness, his reputation, the length of  
68 residence in the community, his record of convictions, if any, any  
69 flight to avoid prosecution or any failure to appear at any court  
70 proceeding to answer to an offense and the nature and the circum-  
71 stances of the offense charged.

72 When said justice or bail magistrate determines that release on  
73 personal recognizance without further condition will not reasona-  
74 bly assure the appearance of the prisoner or witness, he shall  
75 impose the first of the following conditions of release which will  
76 reasonably assure the appearance of the person for trial, or if no  
77 single condition gives that assurance, any combination of the  
78 following conditions, and upon the person's execution of a recog-  
79 nizance so conditioned, and deposit, if any required thereunder,  
80 shall release him:

81 (1) Place the person in the custody of a designated person or  
82 organization agreeing to supervise him;

83 (2) Place restrictions on the travel, association or place of abode  
84 of the person during the period of release;

85 (3) Require the person to recognize without surety in a reasona-  
86 ble sum and to deposit with the clerk of the court in cash a sum not  
87 to exceed five per cent of the amount of recognizance;

88 (4) Impose any other condition deemed reasonably necessary to  
89 assure appearances as required, including a condition requiring  
90 that the person return to custody after specified hours;

91 (5) When a person is charged with an offense punishable by fine  
92 only, the amount of the recognizance shall not exceed double the  
93 amount of the maximum penalty. When a person has been convict-  
94 ed of an offense and a fine only has been imposed, the amount of  
95 the recognizance shall not exceed double the amount of the fine;

96 (6) Where a defendant is charged with a crime, the maximum  
97 sentence for which is twenty years imprisonment or more, or is  
98 charged with a felony and has previously been defaulted in a felony

99 prosecution for more than 30 days, the judge may require the  
100 person to execute a recognizance without surety in a reasonable  
101 sum and deposit with the clerk of the court in cash a sum not to  
102 exceed forty per cent of the amount of the recognizance.

103 If a person fails to recognize in accordance with the conditions  
104 specified by said justice or magistrate, he may be committed to jail.  
105 Before releasing a prisoner or witness pursuant to this section, said  
106 justice or magistrate shall inform him of the penalties provided by  
107 section 65 if he fails without sufficient excuse to appear at the  
108 specified time and place in accordance with the terms of his recog-  
109 nizance, and further that in such a case the amount of his recogni-  
110 zance and any deposit thereunder shall be forfeited.

111 Before the conditions of recognizance of a prisoner or witness  
112 held upon a criminal offense punishable by imprisonment for more  
113 than one year is fixed in court, the court shall obtain from its  
114 probation officer all available information relative to prior criminal  
115 prosecutions, if any, of the prisoner and the disposition of each  
116 of such prosecutions. If the offense with which such a prisoner is  
117 charged is a violation of any provision of sections twenty-two to  
118 twenty-four, inclusive, of chapter two hundred and sixty-five or  
119 section thirty-four or thirty-five of chapter two hundred and seven-  
120 ty-two, and it appears from such information or otherwise that he  
121 had been previously prosecuted for a violation of any such provi-  
122 sion, the court shall, before the amount of the recognizant is fixed,  
123 obtain from the department of mental health a report containing  
124 all information in its possession relative to the prisoner, particular-  
125 ly with respect to any mental disease or defect with which he may  
126 have been afflicted; and said department shall furnish any such  
127 report to the court promptly upon its request.

128 A person who has been released pursuant to this section shall  
129 give written notice to the clerk of the court before which the  
130 charges are pending of any change of his address within 24 hours  
131 after such change.

132 *Section 60. Deposit in Lieu of Cash.*

133 A person for whom a condition of release pursuant to section 59  
134 is the deposit of a sum in cash may, in lieu of cash, deposit a  
135 bankbook of a savings bank or the savings department of a trust  
136 company or national bank, doing business in the Commonwealth,

137 property assigned to the clerk with whom the same is or is to be  
138 deposited, and his successors, and satisfactory to the person who  
139 has imposed the conditions of release, or non-registered bonds of  
140 the United States or of the Commonwealth or of any county, city,  
141 or town within the Commonwealth equal at their face value to  
142 double the amount of the deposit required of him in such recogni-  
143 zance.

144 Real estate situated in the Commonwealth with unencumbered  
145 equity not exempt from execution equal to double the amount of  
146 the required deposit shall satisfy the requirement of a cash deposit  
147 pursuant to section 59 upon the prisoner or witness filing with the  
148 recognizance a sworn schedule which shall contain:

149 (1) A legal description of the real estate;

150 (2) A description of any and all encumbrances on the real estate  
151 including the amount of each and the holder thereof;

152 (3) The market value of the unencumbered equity owned by the  
153 affiant;

154 (4) A statement that the affiant is the sole owner of such unen-  
155 cumbered equity and that it is not exempt from execution;

156 (5) A statement that the real estate has not previously been used  
157 or accepted in lieu of deposit in the Commonwealth during the 12  
158 months preceding the date of the recognizance; and

159 (6) A statement that the real estate is security for the appearance  
160 of the accused in accordance with the condition of the recogni-  
161 zance.

162 The sworn schedule shall constitute a material part of the recog-  
163 nizance. The affiant commits perjury if in the sworn schedule he  
164 makes a false statement which he does not believe to be true and  
165 shall be punished accordingly, or may in the discretion of the court  
166 having jurisdiction of the offense upon which the person was  
167 released, be punished for contempt.

168 A certified copy of the recognizance and schedule of real estate  
169 shall be filed immediately by the court having jurisdiction in the  
170 office of the registrar of deeds of the county in which the real estate  
171 is situated and the Commonwealth shall have a lien on such real  
172 estate from the time such copies are filed in the office of the  
173 registrar of deeds. The registrar of deeds shall enter, index and  
174 record (or register as the case may be) such recognizance and

175 schedule without requiring any advance fee, which fee shall be  
176 taxed as costs in the proceeding and paid out of such costs when  
177 collected.

178 *Section 61. Review of Conditions of Bail.*

179 A prisoner or a witness aforesaid not released by a bail magis-  
180 trate on his personal recognizance without further conditions shall  
181 forthwith be brought before the next session of the court having  
182 jurisdiction of the offense for which he is held for a review of the  
183 conditions of release. A prisoner or witness aggrieved by the denial  
184 of a district court justice to release him on his personal recogni-  
185 zance without further conditions may petition the superior court for  
186 a review of the order of the recognizance and conditions, and the  
187 justice of the district court shall thereupon immediately notify such  
188 person of his right to file a petition for review in the superior court.  
189 When a petition for review is filed in the district court or with the  
190 detaining authority subsequent to petitioner's district court ap-  
191 pearance, the clerk of the district court of the detaining authority,  
192 as the case may be, shall immediately notify by telephone, the clerk  
193 and probation officer of the district court, the district attorney for  
194 the district in which the district court is located, the prosecuting  
195 officer, the petitioner's counsel, if any, and the clerk of courts of the  
196 county to which the petition is to be transmitted. The clerk of the  
197 district court, upon the filing of a petition for review, either in the  
198 district court or with the detaining authority, shall forthwith trans-  
199 mit the petition for review, a copy of the complaint and of the  
200 record of the court, including the appearance of the attorney, if any  
201 is entered, and a summary of the court's reasons for denying the  
202 release of the defendant on his personal recognizance without  
203 further conditions to the superior court for the county in which the  
204 district is located, if a justice thereof is then sitting, or to the  
205 superior court of the nearest county in which a justice is then  
206 sitting; the probation officer of the district court shall transmit  
207 forthwith to the probation officer of the superior court, copies of  
208 all records of the probation office of said district court pertaining  
209 to the petitioner, including the petitioner's record of prior convic-  
210 tions, if any, as currently verified by inquiry of the commissioner of  
211 probation. The district court or the detaining authority, as the case  
212 may be, shall cause any petitioner in its custody to be brought

213 before the said superior court on the same day the petition shall  
214 have been filed, unless the district court or the detaining authority  
215 shall determine that such appearance and hearing on the petition  
216 cannot practically take place before the adjournment of the sitting  
217 of said superior court for that day and in which event, the petition-  
218 er shall be caused to be brought before said court for such hearing  
219 during the morning of the next business day of the sitting of said  
220 superior court. The district court is authorized to order any officer  
221 authorized to execute criminal process to transfer the petitioner  
222 and any papers hereinabove described from the district court or the  
223 detaining authority to the superior court, and to coordinate the  
224 transfer of the petitioner and the papers by such officer. The  
225 petition for review shall constitute authority in the person or  
226 officer having custody of the petitioner to transport the petitioner  
227 to said superior court without the issuance of any writ or other  
228 legal process, provided, however, that any district or superior court  
229 is authorized to issue a writ of habeas corpus for the appearance  
230 forthwith of the petitioner before the superior court.

231 The superior court shall in accordance with the standards set  
232 forth in the second paragraph of section 59 hear the petition for  
233 review as speedily as practicable and except for unusual circum-  
234 stances, on the same day the petition is filed, provided, however,  
235 that the court may continue the hearing to the next business day if  
236 the required records and other necessary information are not  
237 available. The justice of the superior court may, after a hearing on  
238 the petition for review, order that the petitioner be released on his  
239 personal recognizance without surety or further conditions, or, in  
240 his descretion, to reasonably assure the effective administration of  
241 justice, impose any other condition of recognizance consistent with  
242 section fifty-nine or remand the petitioner in accordance with the  
243 terms of the process by which he was ordered committed by the  
244 district court.

245 Except where the defendant has defaulted on his recognizance or  
246 has been surrendered by a probation officer, an order of release or  
247 recognizance shall not be revoked, revised, or amended by the  
248 district court, either because the defendant has appealed or has  
249 been bound over to the superior court, provided, however, that if  
250 any court in its discretion, finds that changed circumstances or

251 other factors not previously known or considered, make the order  
252 of release or recognizance effective to reasonably assure the ap-  
253 pearance of said defendant before the court, the court may make a  
254 further order, imposing additional conditions pursuant to section  
255 fifty-nine, which order will not revoke the order of release or recog-  
256 nizance previously in force and effect.

257 The Chief Justice of the district courts and the Chief Justice of  
258 the municipal court of the city of Boston shall prescribe forms for  
259 use in their respective courts, for the purpose of notifying a person  
260 of his right to file a petition for review in the superior court, forms  
261 for petition for review and forms for the implementation of any  
262 other procedural requirements. The clerk of courts shall forthwith  
263 notify the district court of all orders of judgments of the superior  
264 court on petitions for review. Costs of expenses of services and  
265 transportation under this section shall be ordered paid in the  
266 amount determined by the superior court out of the county treas-  
267 ury of the county where the petition for review was originally filed.

268 *Section 62. Condition of Recognizance.*

269 The condition of recognizance of a person, binding him to  
270 appear before a court or justice to answer to a charge against him  
271 or to prosecute an appeal shall be so framed as to bind him  
272 personally to appear at the time so expressed, and at any subse-  
273 quent time to which the case may be continued, unless previously  
274 surrendered or discharged, and so from time to time, until the final  
275 decree, sentence or order of the court or justice thereon, and to  
276 abide such final sentence, order or decree, and not depart without  
277 leave. The condition of a recognizance of a person held to answer  
278 to a charge before a district court shall be further so framed as to  
279 bind him to appear before the district court to answer to the charge  
280 and before the superior court to prosecute an appeal on said charge  
281 or to answer to any indictment which may be returned against him.  
282 The Office of Bail Administration shall, by rule, provide the forms  
283 of recognizances. A recognizance of a person held to answer to a  
284 complaint before a district court which is required by law to sit in  
285 more than one municipality may, with his consent or at his request,  
286 be conditioned for his appearance at the next sitting of the court at  
287 any one of said municipalities.

288 *Section 63. Refund of Deposit.*

289 When the conditions of the recognizance have been performed

290 and the person has been discharged from all obligations to appear  
291 in the cause of clerk of the court shall return the cash or other  
292 property deposited to the person making the deposit, his heirs, or  
293 assigns, and shall, if such deposit has been satisfied by real estate,  
294 forthwith notify in writing the registrar of deeds that said lien shall  
295 be discharged.

296 *Section 64. Default and Forfeiture.*

297 If a person does not comply with the conditions of his recogni-  
298 zance, the court having jurisdiction of the cause upon which the  
299 person was released shall enter an order of default, which shall  
300 declare the amount of the recognizance and any deposit thereunder  
301 to be forfeited. Notice of such order of forfeiture shall be delivered  
302 or mailed forthwith to the person's last known address. If the  
303 person does not appear and surrender within thirty days from the  
304 date of the forfeiture, or within such period satisfy the court that  
305 appearance and surrender by the accused is impossible and without  
306 his fault, the court shall enter judgment for the Commonwealth  
307 against the person for the amount of recognizance and costs of the  
308 court proceedings. Any deposit made in accordance with section  
309 fifty-nine shall be applied to the payment of costs. If any amount of  
310 such deposit remains after the payment of costs, it shall be applied  
311 to payment of the judgment. Execution may be had on the balance  
312 of the judgment in the same manner as execution on judgments in  
313 civil actions.

314 A person may surrender himself at any time within the thirty  
315 days from the date of forfeiture, and the court shall thereupon  
316 order the cash or bonds so deposited to be returned or the bank-  
317 books reassigned to the person in whose name the deposit is made  
318 or to his order, and the lien on real estate pursuant to section sixty  
319 discharged. At any time thirty days after the date of forfeiture, on  
320 the surrender or recapture of the defendant, the court may order  
321 the whole or any part of the money so deposited or of the bonds, or  
322 of the amount of the net proceeds of the sale of said bonds, or the  
323 bankbooks, or the whole or any part of the amount collected from  
324 the depository thereunder or the whole or any part of the lien on  
325 real estate pursuant to section sixty discharged to be returned to  
326 the person in whose name the deposit is made or to his order. If the  
327 amount realized by sale or collection pursuant to this section

328 exceeds the amount of the recognizance, the court shall, on an  
329 application made at any time, order such excess to be returned to  
330 the person entitled thereto.

331 A court which has rendered judgment on a recognizance after  
332 forfeiture may, upon petition of any person interested, stating  
333 ground relied upon and filed in said court, grant a review and a  
334 rehearing of the judgment entered, upon the surrender or recapture  
335 of the person who was released or for any sufficient cause which  
336 has occurred or been ascertained by the person interested after the  
337 rendition of such judgment or at such time as not to have afforded  
338 opportunity for presenting the same in evidence.

339 *Section 65. Default Penalty.*

340 A person who is released on personal recognizance with or  
341 without other conditions as provided in section fifty-nine, includ-  
342 ing the condition that he will appear personally at a specified time  
343 and place and who fails without sufficient excuse to so appear shall  
344 be punished by a fine of not more than one thousand dollars or by  
345 imprisonment in a house of correction for not more than one year  
346 or both, in no event shall the fine or imprisonment exceed the  
347 maximum sentence prescribed for any crime in connection with  
348 which his appearance is required.

349 If thirty days from the time of initial default, such person has not  
350 surrendered or been surrendered to the court or has not appeared  
351 voluntarily, the court having jurisdiction of the cause upon which  
352 the person was released shall order the clerk to issue a complaint  
353 charging such person with the above offense and ordering a war-  
354 rant to issue for his arrest.

355 Nothing in this section shall interfere with or prevent the exer-  
356 cise by any court of its power to punish for contempt.

357 *Section 66. Office of Bail Administration.*

358 There shall be an Office of Bail Administration and an Advisory  
359 Committee on Bail to superintend release on bail and recognizance  
360 in the Commonwealth.

361 The Advisory Committee on Bail shall consist of two justices of  
362 the district courts appointed by the Chief Justice of the district  
363 courts, two justices of the superior court appointed by the Chief  
364 Justice of the superior court, and one person who has been a

365 member of the bar for at least five years appointed by the Chief  
366 Justice of the superior court.

367 The Advisory Committee on Bail may, after notice and hearing,  
368 suspend temporarily or permanently any bail magistrate who vio-  
369 lates the rules or regulations established by the Office of Bail  
370 Administration or commits any other misconduct in office. A per-  
371 son so suspended shall not exercise any powers of release pursuant  
372 to sections 58 and 59 of this chapter.

373 The Chief Justices of the superior and district courts shall  
374 appoint the director of the Office of Bail Administration to serve at  
375 their pleasure at a salary equivalent to not less than sixty per cent of  
376 the salary of a justice of the superior court.

377 The Office of Bail Administration shall, with the approval of the  
378 Advisory Committee, establish rules and regulations and provide  
379 such forms as the efficient operation of bail, in its discretion,  
380 requires, and shall gather statistics relative to the efficient and fair  
381 administration of bail in the Commonwealth. The director of the  
382 Office shall submit an annual report to the Chief Justices of the  
383 Superior and district courts.

384 *Section 67.* A bail magistrate who violates the rules and regula-  
385 tions established by the Office of Bail Administration or a provi-  
386 sion of section 58 shall be guilty of a misdemeanor and shall be  
387 punished by not more than ninety days imprisonment in a house of  
388 correction, or \$500 fine, or both.

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