

February 18, 1998

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# ENGROSSED SENATE BILL No. 264

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DIGEST OF SB 264 (Updated February 17, 1998 8:13 pm - DI 69)

**Citations Affected:** IC 5-10; IC 11-12; IC 35-33.

**Synopsis:** Bail and personal recognizance and inmate work crews. Allows a court to: (1) increase the amount of any required bail; (2) deny a request to reduce bail; or (3) revoke bail or an order for release on personal recognizance on the basis that a defendant poses a risk to the physical safety of another person or the community or that a defendant has threatened or intimidated an alleged victim. Provides that if: (1) a court admits a defendant to bail and requires the defendant to execute a bail bond by depositing cash or securities in an amount not less than 10% of the bail; and (2) the defendant is convicted, the court may retain all or a part of the cash or securities to pay the defendant's fines, costs, fees, and restitution. Removes a provision that allows a court to require a defendant admitted to bail to execute a bond secured by real estate. Allows a county sheriff to establish a program that allows county jail inmates to perform work outside of the jail on county inmate public works crews.

**Effective:** Upon passage.

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## Zakas, Alexa

(HOUSE SPONSORS — MURPHY, DVORAK)

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January 8, 1998, read first time and referred to Committee on Judiciary.  
January 29, 1998, amended, reported favorably — Do Pass.  
February 2, 1998, read second time, ordered engrossed. Engrossed.  
February 3, 1998, read third time, passed. Yeas 48, nays 1.

HOUSE ACTION

February 10, 1998, read first time and referred to Committee on Courts and Criminal Code.  
February 17, 1998, amended, reported — Do Pass.

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ES 264—LS 6530/DI 51+



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February 18, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

## ENGROSSED SENATE BILL No. 264

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-10-10-5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) The special death  
3 benefit fund is established for the purpose of paying lump sum death  
4 benefits under section 6 of this chapter. The fund consists of the fees  
5 remitted to the auditor of state under ~~IC 35-33-8-3.1~~. **IC 35-33-8-3.2**.  
6 The fund shall be administered by the board. The expenses of  
7 administering the fund shall be paid from money in the fund.  
8 (b) The board shall invest the money in the fund not currently  
9 needed to meet the obligations of the fund in the same manner as the  
10 board's other funds may be invested. Interest that accrues from these  
11 investments shall be deposited in the fund.  
12 (c) Money in the fund at the end of a state fiscal year does not revert  
13 to the state general fund.  
14 SECTION 2. IC 11-12-5-2.5 IS ADDED TO THE INDIANA CODE  
15 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
16 1, 1998]: **Sec. 2.5. (a) As used in this section, "crew" refers to a**

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1 county inmate public works crew formed by a county sheriff under  
2 this section.

3 (b) The county sheriff may establish a program that allows  
4 persons who have been committed to the county jail upon:

5 (1) conviction of a crime; or

6 (2) adjudication of contempt;

7 to be temporarily released from custody to work on a crew under  
8 this section.

9 (c) A person is:

10 (1) eligible to participate on a crew if:

11 (A) the person volunteers to work on the crew;

12 (B) the person:

13 (i) is assigned to credit Class I as described in  
14 IC 35-50-6; or

15 (ii) has not been assigned to a credit class as described in  
16 IC 35-50-6 but is otherwise considered eligible for  
17 temporary release under this section by the county  
18 sheriff; and

19 (C) the county sheriff does not consider the person to be a  
20 risk to the safety of the community; and

21 (2) not eligible to participate on a crew if:

22 (A) the person has been committed to the department of  
23 correction;

24 (B) the sentencing or committing court disapproves of the  
25 person's release; or

26 (C) the person has been convicted of:

27 (i) a violent crime (as defined in IC 5-2-6.1-8);

28 (ii) a forcible felony (as defined in IC 35-41-1-11); or

29 (iii) a sex offense under IC 35-42-4 or IC 35-46-1-3.

30 (d) The county sheriff:

31 (1) may select those persons who are eligible under this  
32 section to participate on a crew formed by the sheriff;

33 (2) shall require persons to dress in distinctive county jail  
34 uniforms while performing work on a crew;

35 (3) shall personally supervise or assign a deputy sheriff to  
36 supervise a crew; and

37 (4) may require a crew to perform any work the sheriff  
38 determines to be:

39 (A) appropriate; and

40 (B) of benefit to the community.

41 (e) A person who participates on a crew is not eligible to receive  
42 worker's compensation benefits as a result of any injury sustained

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1 during the person's participation on the crew.

2 (f) A crew or a person who participates on a crew may not  
3 perform any public work (as defined in IC 36-1-12-2).

4 SECTION 3. IC 35-33-8-3.2 IS ADDED TO THE INDIANA CODE  
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
6 1, 1998]: **Sec. 3.2. (a) A court may admit a defendant to bail and  
7 impose any of the following conditions to assure the defendant's  
8 appearance at any stage of the legal proceedings, or, upon a  
9 showing of clear and convincing evidence that the defendant poses  
10 a risk of physical danger to another person or the community, to  
11 assure the public's physical safety:**

12 (1) **Require the defendant to:**

13 (A) execute a bail bond with sufficient solvent sureties;

14 (B) deposit cash or securities in an amount equal to the  
15 bail; or

16 (C) execute a bond.

17 The defendant must also pay the fee required by subsection  
18 (d).

19 (2) **Require the defendant to execute a bail bond by depositing  
20 cash or securities with the clerk of the court in an amount not  
21 less than ten percent (10%) of the bail. If the defendant is  
22 convicted, the court may retain all or a part of the cash or  
23 securities to pay fines, costs, fees, and restitution, if ordered  
24 by the court. A portion of the deposit, not to exceed ten  
25 percent (10%) of the monetary value of the deposit or fifty  
26 dollars (\$50), whichever is the lesser amount, may be retained  
27 as an administrative fee. The clerk shall also retain from the  
28 deposit the following:**

29 (A) The fee required by subsection (d).

30 (B) Fines, costs, fees, and restitution as ordered by the  
31 court.

32 (C) Publicly paid costs of representation that shall be  
33 disposed of in accordance with subsection (b).

34 The individual posting bail for the defendant or the defendant  
35 admitted to bail under this subdivision must be notified by the  
36 sheriff, court, or clerk that the defendant's deposit may be  
37 forfeited under section 7 of this chapter or retained under  
38 subsection (b).

39 (3) **Impose reasonable restrictions on the activities,  
40 movements, associations, and residence of the defendant  
41 during the period of release.**

42 (4) **Require the defendant to refrain from any direct or**

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1 indirect contact with an individual.

2 (5) Place the defendant under the reasonable supervision of a  
3 probation officer or other appropriate public official.

4 (6) Release the defendant into the care of a qualified person or  
5 organization responsible for supervising the defendant and  
6 assisting the defendant in appearing in court. The supervisor  
7 shall maintain reasonable contact with the defendant in order  
8 to assist the defendant in making arrangements to appear in  
9 court and, where appropriate, shall accompany the defendant  
10 to court. The supervisor need not be financially responsible  
11 for the defendant.

12 (7) Release the defendant on personal recognizance where the  
13 defendant shows little risk:

14 (A) of nonappearance; or

15 (B) to the physical safety of the public.

16 (8) Impose any other reasonable restrictions designed to  
17 assure the defendant's presence in court or the physical safety  
18 of another person or the community.

19 (b) Within thirty (30) days after disposition of the charges  
20 against the defendant, the court that admitted the defendant to bail  
21 shall order the clerk to remit the amount of the deposit remaining  
22 under subsection (a)(2) to the defendant. The portion of the deposit  
23 that is not remitted to the defendant shall be deposited by the clerk  
24 in the supplemental public defender services fund established  
25 under IC 33-9-11.5.

26 (c) For purposes of subsection (b), "disposition" occurs when  
27 the indictment or information is dismissed, or the defendant is  
28 acquitted or convicted of the charges.

29 (d) Except as provided by subsection (e), the clerk of the court  
30 shall:

31 (1) collect a fee of five dollars (\$5) for each bond or deposit  
32 under subsection (a)(1); and

33 (2) retain a fee of five dollars (\$5) from each deposit under  
34 subsection (a)(2).

35 The clerk of the court shall semiannually remit these fees to the  
36 board of trustees of the public employees' retirement fund for  
37 deposit into the special death benefit fund. The fee required by  
38 subdivision (2) is in addition to the administrative fee retained  
39 under subsection (a)(2). This subsection expires December 31,  
40 1998.

41 (e) With the approval of the clerk of the court, the county sheriff  
42 may collect the bail and fees required by subsection (d). The county



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1 sheriff shall remit the bail to the clerk of the court by the following  
 2 business day and remit monthly the five dollar (\$5) special death  
 3 benefit fee to the county auditor.

4 (f) When a court imposes a condition of bail described in  
 5 subsection (a)(4):

6 (1) the clerk of the court shall comply with IC 5-2-9; and

7 (2) the prosecuting attorney shall file a confidential form  
 8 prescribed or approved by the division of state court  
 9 administration with the clerk.

10 SECTION 4. IC 35-33-8-5 IS AMENDED TO READ AS  
 11 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Upon a  
 12 showing of good cause, the state or the defendant may be granted an  
 13 alteration or revocation of bail by application to the court before which  
 14 the proceeding is pending. In reviewing a motion for alteration or  
 15 revocation of bail, credible hearsay evidence is admissible to establish  
 16 good cause.

17 (b) When the state presents additional:

18 (1) evidence relevant to a high risk of nonappearance, based on  
 19 the factors set forth in section 4(b) of this chapter; or

20 (2) clear and convincing evidence:

21 (A) of the factors described in IC 33-14-10-6(1)(A) and  
 22 IC 33-14-10-6(1)(B); or

23 (B) that the defendant otherwise poses a risk to the  
 24 physical safety of another person or the community;

25 the court may increase bail.

26 (c) When the defendant presents additional evidence of substantial  
 27 mitigating factors, based on the factors set forth in section 4(b) of this  
 28 chapter, which reasonably suggests that the defendant recognizes the  
 29 court's authority to bring him to trial, the court may reduce bail.

30 **However, the court may not reduce bail if the court finds by clear  
 31 and convincing evidence that the factors described in  
 32 IC 33-14-10-6(1)(A) and IC 33-14-10-6(1)(B) exist or that the  
 33 defendant otherwise poses a risk to the physical safety of another  
 34 person or the community.**

35 (d) The court may revoke bail or an order for release on personal  
 36 recognizance upon clear and convincing proof by the state that:

37 (1) while admitted to bail the defendant:

38 (1) (A) or his agent threatened or intimidated a victim,  
 39 prospective witnesses, or jurors concerning the pending  
 40 criminal proceeding or any other matter;

41 (2) (B) or his agent attempted to conceal or destroy evidence  
 42 relating to the pending criminal proceeding;



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- 1           ~~(3)~~ (C) violated any condition of his current release order;  
 2           ~~(4)~~ (D) failed to appear before the court as ordered at any  
 3           critical stage of the proceedings; or  
 4           ~~(5)~~ (E) committed a felony or a Class A misdemeanor that  
 5           demonstrates instability and a disdain for the court's authority  
 6           to bring him to trial;  
 7           **(2) the factors described in IC 33-14-10-6(1)(A) and**  
 8           **IC 33-14-10-6(1)(B) exist or that the defendant otherwise**  
 9           **poses a risk to the physical safety of another person or the**  
 10           **community; or**  
 11           **(3) a combination of the factors described in subdivisions (1)**  
 12           **and (2) exists.**

13           SECTION 5. IC 35-33-8-7 IS AMENDED TO READ AS  
 14           FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) If a defendant:

15           (1) was admitted to bail under section ~~3-1(a)(2)~~ **3.2(a)(2)** of this  
 16           chapter; and

17           (2) has failed to appear before the court as ordered;  
 18           the court shall issue a warrant for the defendant's arrest.

19           (b) In a criminal case, if the court having jurisdiction over the  
 20           criminal case receives written notice of a pending civil action or  
 21           unsatisfied judgment against the criminal defendant arising out of the  
 22           same transaction or occurrence forming the basis of the criminal case,  
 23           funds deposited with the clerk of the court under section ~~3-1(a)(2)~~  
 24           **3.2(a)(2)** of this chapter may not be declared forfeited by the court, and  
 25           the court shall order the deposited funds to be held by the clerk. If there  
 26           is an entry of final judgment in favor of the plaintiff in the civil action,  
 27           and if the deposit and the bond are subject to forfeiture, the criminal  
 28           court shall order payment of all or any part of the deposit to the  
 29           plaintiff in the action, as is necessary to satisfy the judgment. The court  
 30           shall then order the remainder of the deposit, if any, and the bond  
 31           forfeited.

32           (c) Any proceedings concerning the bond, or its forfeiture,  
 33           judgment, or execution of judgment, shall be held in the court that  
 34           admitted the defendant to bail.

35           (d) After a bond has been forfeited under subsection (b), the clerk  
 36           shall mail notice of forfeiture to the defendant. In addition, unless the  
 37           court finds that there was justification for the defendant's failure to  
 38           appear, the court shall immediately enter judgment, without pleadings  
 39           and without change of judge or change of venue, against the defendant  
 40           for the amount of the bail bond, and the clerk shall record the  
 41           judgment.

42           (e) If a bond is forfeited and the court has entered a judgment under

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1 subsection (d), the clerk shall transfer to the state common school fund:

2 (1) any amount remaining on deposit with the court (less the fees  
3 retained by the clerk); and

4 (2) any amount collected in satisfaction of the judgment.

5 (f) The clerk shall return a deposit, less the administrative fee, made  
6 under section ~~3.1(a)(2)~~ **3.2(a)(2)** of this chapter to the defendant, if the  
7 defendant appeared at trial and the other critical stages of the legal  
8 proceedings.

9 SECTION 6. IC 35-33-8-8 IS AMENDED TO READ AS  
10 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) If a defendant  
11 was admitted to bail under ~~section 3.1(a)~~ **section 3.2(a)** of this chapter  
12 and the defendant has knowingly and intentionally failed to appear  
13 before the court as ordered, the court:

14 (1) shall issue a warrant for the defendant's arrest;

15 (2) may not release the defendant on personal recognizance; and

16 (3) may not set bail for the rearrest of the defendant on the  
17 warrant at an amount that is less than the greater of:

18 (A) the amount of the original bail; or

19 (B) two thousand five hundred dollars (\$2,500);

20 in the form of a bond issued by an entity defined in IC 27-10-1-7  
21 or the full amount of the bond in cash.

22 (b) In a criminal case, if the court having jurisdiction over the  
23 criminal case receives written notice of a pending civil action or  
24 unsatisfied judgment against the criminal defendant arising out of the  
25 same transaction or occurrence forming the basis of the criminal case,  
26 funds deposited with the clerk of the court under section ~~3.1(a)(1)~~  
27 **3.2(a)(2)** of this chapter may not be declared forfeited by the court, and  
28 the court shall order the deposited funds to be held by the clerk. If there  
29 is an entry of final judgment in favor of the plaintiff in the civil action,  
30 and if the deposit is subject to forfeiture, the criminal court shall order  
31 payment of all or any part of the deposit to the plaintiff in the action, as  
32 is necessary to satisfy the judgment. The court shall then order the  
33 remainder of the deposit, if any, forfeited.

34 SECTION 7. IC 35-33-8-3.1 IS REPEALED [EFFECTIVE JULY  
35 1, 1998].

36 SECTION 8. **An emergency is declared for this act.**

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SENATE MOTION

Mr. President: I move that Senator Alexa be added as second author of Senate Bill 264.

ZAKAS

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COMMITTEE REPORT

Mr. President: The Senate Committee on Judiciary, to which was referred Senate Bill 264, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, delete lines 29 through 34.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to Senate Bill 264 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 1.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 264, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-10-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 5. (a) The special death benefit fund is established for the purpose of paying lump sum death benefits under section 6 of this chapter. The fund consists of the fees remitted to the auditor of state under ~~IC 35-33-8-3.1~~. **IC 35-33-8-3.2**. The fund shall be administered by the board. The expenses of administering the fund shall be paid from money in the fund.

(b) The board shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as the board's other funds may be invested. Interest that accrues from these investments shall be deposited in the fund.

(c) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 2. IC 11-12-5-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 2.5. (a) As used in this section, "crew" refers to a county inmate public works crew formed by a county sheriff under this section.**

**(b) The county sheriff may establish a program that allows persons who have been committed to the county jail upon:**

- (1) conviction of a crime; or**
- (2) adjudication of contempt;**

**to be temporarily released from custody to work on a crew under this section.**

**(c) A person is:**

**(1) eligible to participate on a crew if:**

**(A) the person volunteers to work on the crew;**

**(B) the person:**

**(i) is assigned to credit Class I as described in IC 35-50-6; or**

**(ii) has not been assigned to a credit class as described in IC 35-50-6 but is otherwise considered eligible for temporary release under this section by the county sheriff; and**

**(C) the county sheriff does not consider the person to be a**



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- risk to the safety of the community; and
- (2) not eligible to participate on a crew if:
- (A) the person has been committed to the department of correction;
  - (B) the sentencing or committing court disapproves of the person's release; or
  - (C) the person has been convicted of:
    - (i) a violent crime (as defined in IC 5-2-6.1-8);
    - (ii) a forcible felony (as defined in IC 35-41-1-11); or
    - (iii) a sex offense under IC 35-42-4 or IC 35-46-1-3.
- (d) The county sheriff:
- (1) may select those persons who are eligible under this section to participate on a crew formed by the sheriff;
  - (2) shall require persons to dress in distinctive county jail uniforms while performing work on a crew;
  - (3) shall personally supervise or assign a deputy sheriff to supervise a crew; and
  - (4) may require a crew to perform any work the sheriff determines to be:
    - (A) appropriate; and
    - (B) of benefit to the community.
- (e) A person who participates on a crew is not eligible to receive worker's compensation benefits as a result of any injury sustained during the person's participation on the crew.
- (f) A crew or a person who participates on a crew may not perform any public work (as defined in IC 36-1-12-2).

SECTION 3. IC 35-33-8-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3.2. (a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

- (1) Require the defendant to:
  - (A) execute a bail bond with sufficient solvent sureties;
  - (B) deposit cash or securities in an amount equal to the bail; or
  - (C) execute a bond.

The defendant must also pay the fee required by subsection (d).

- (2) Require the defendant to execute a bail bond by depositing



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cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail. If the defendant is convicted, the court may retain all or a part of the cash or securities to pay fines, costs, fees, and restitution, if ordered by the court. A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit the following:

- (A) The fee required by subsection (d).
- (B) Fines, costs, fees, and restitution as ordered by the court.
- (C) Publicly paid costs of representation that shall be disposed of in accordance with subsection (b).

The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

- (3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.
  - (4) Require the defendant to refrain from any direct or indirect contact with an individual.
  - (5) Place the defendant under the reasonable supervision of a probation officer or other appropriate public official.
  - (6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.
  - (7) Release the defendant on personal recognizance where the defendant shows little risk:
    - (A) of nonappearance; or
    - (B) to the physical safety of the public.
  - (8) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.
- (b) Within thirty (30) days after disposition of the charges



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against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-9-11.5.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed, or the defendant is acquitted or convicted of the charges.

(d) Except as provided by subsection (e), the clerk of the court shall:

- (1) collect a fee of five dollars (\$5) for each bond or deposit under subsection (a)(1); and
- (2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit these fees to the board of trustees of the public employees' retirement fund for deposit into the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2). This subsection expires December 31, 1998.

(e) With the approval of the clerk of the court, the county sheriff may collect the bail and fees required by subsection (d). The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

- (1) the clerk of the court shall comply with IC 5-2-9; and
- (2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk."

Page 2, between lines 28 and 29, begin a new paragraph and insert:  
"SECTION 5. IC 35-33-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) If a defendant:

- (1) was admitted to bail under section ~~3-1(a)(2)~~ **3.2(a)(2)** of this chapter; and
- (2) has failed to appear before the court as ordered;

the court shall issue a warrant for the defendant's arrest.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the



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same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section ~~3.1(a)(2)~~ **3.2(a)(2)** of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

(c) Any proceedings concerning the bond, or its forfeiture, judgment, or execution of judgment, shall be held in the court that admitted the defendant to bail.

(d) After a bond has been forfeited under subsection (b), the clerk shall mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear, the court shall immediately enter judgment, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail bond, and the clerk shall record the judgment.

(e) If a bond is forfeited and the court has entered a judgment under subsection (d), the clerk shall transfer to the state common school fund:

- (1) any amount remaining on deposit with the court (less the fees retained by the clerk); and
- (2) any amount collected in satisfaction of the judgment.

(f) The clerk shall return a deposit, less the administrative fee, made under section ~~3.1(a)(2)~~ **3.2(a)(2)** of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.

SECTION 6. IC 35-33-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) If a defendant was admitted to bail under ~~section 3.1(a)~~ **section 3.2(a)** of this chapter and the defendant has knowingly and intentionally failed to appear before the court as ordered, the court:

- (1) shall issue a warrant for the defendant's arrest;
- (2) may not release the defendant on personal recognizance; and
- (3) may not set bail for the rearrest of the defendant on the warrant at an amount that is less than the greater of:
  - (A) the amount of the original bail; or
  - (B) two thousand five hundred dollars (\$2,500);
 in the form of a bond issued by an entity defined in IC 27-10-1-7 or the full amount of the bond in cash.



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(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section ~~3.1(a)(1)~~ **3.2(a)(2)** of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit is subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, forfeited.

SECTION 7. IC 35-33-8-3.1 IS REPEALED [EFFECTIVE JULY 1, 1998]."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to Senate Bill 264 as printed January 30, 1998.)

DVORAK, Chair

Committee Vote: yeas 12, nays 0.

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