
ENGROSSED SENATE BILL No. 264

DIGEST OF SB 264 (Updated February 20, 1998 6:04 pm - DI 51)

Citations Affected: IC 5-10; IC 11-12; IC 31-14; IC 31-16; 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; (2) the defendant is convicted; and (3) the
(Continued next page)

Effective: Upon passage.

Zakas, Alexa

(HOUSE SPONSORS — MURPHY, DVORAK)

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.
February 20, 1998, read second time, amended, ordered engrossed.

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bond does not consist of real property; 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.

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Reprinted
February 23, 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

ES 264—LS 6530/DI 51+



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1 1, 1998]: **Sec. 2.5. (a)** As used in this section, "crew" refers to a
 2 county inmate public works crew formed by a county sheriff under
 3 this section.

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

6 **(1)** conviction of a crime; or

7 **(2)** adjudication of contempt;

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

10 **(c)** A person is:

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

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

13 **(B)** the person:

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

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

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

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

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

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

27 **(C)** the person has been convicted of:

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

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

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

31 **(d)** The county sheriff:

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

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

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

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

40 **(A)** appropriate; and

41 **(B)** of benefit to the community.

42 **(e)** A person who participates on a crew is not eligible to receive

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1 **worker's compensation benefits as a result of any injury sustained**
 2 **during the person's participation on the crew.**

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

5 SECTION 3. IC 11-12-5-3 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Any earnings
 7 of a person employed under this chapter, less payroll deductions
 8 required by law and court ordered deductions for satisfaction of a
 9 judgment against that person, **including a judgment regarding**
 10 **delinquent child support described in IC 31-16-16-2**, shall be
 11 collected by the county sheriff, probation department, county office of
 12 family and children, or other agency designated by the sentencing or
 13 committing court. Unless otherwise ordered by the court, the remaining
 14 earnings shall be distributed in the following order:

15 (1) To pay state and federal income taxes and Social Security
 16 deductions not otherwise withheld.

17 (2) To pay the cost of membership in an employee organization.

18 (3) Not less than fifteen percent (15%) of the person's gross
 19 earnings, if that amount of the gross is available after the above
 20 deductions, to be given to that person or retained for the person,
 21 with accrued interest, until the person's release or discharge.

22 (4) To pay for the person's room and board provided by the
 23 county.

24 (5) To pay transportation costs to and from work, and other work
 25 related incidental expenses.

26 (6) To pay court ordered costs, fines, or restitution.

27 (b) After the amounts prescribed in subsection (a) are deducted, the
 28 remaining amount may be used to:

29 (1) when directed by the person or ordered by the court, pay for
 30 the support of the person's dependents (if the person's dependents
 31 are receiving welfare assistance, the appropriate office of family
 32 and children or welfare department in another state shall be
 33 notified of such disbursements); and

34 (2) with the consent of the person, pay to the person's victims or
 35 others any unpaid obligations of that person.

36 (c) Any remaining amount shall be given to the person or retained
 37 for the person according to subsection (a)(3).

38 (d) The collection of room and board under subsection (a)(4) may
 39 be waived.

40 SECTION 4. IC 31-14-12-3, AS ADDED BY P.L.1-1997,
 41 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 UPON PASSAGE]: Sec. 3. (a) If the court finds that a party is



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1 delinquent as a result of an intentional violation of an order for support,
2 the court may find the party in contempt of court.

3 (b) The court may order a party who is found in contempt of court
4 under this section to **do one (1) or all of the following:**

5 (1) Perform community service without compensation in a
6 manner specified by the court.

7 (2) **Participate in a work release program under IC 11-12-5**
8 **for the purpose of using the party's earnings to satisfy under**
9 **IC 11-12-5-3 the party's child support arrearage.**

10 SECTION 5. IC 31-16-12-6, AS ADDED BY P.L.1-1997,
11 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 UPON PASSAGE]: Sec. 6. If the court finds that a party is delinquent
13 as a result of an intentional violation of an order for support, the court
14 may find the party in contempt of court. The court may order a party
15 who is found in contempt of court under this section to:

16 (1) Perform community service without compensation in a
17 manner specified by the court.

18 (2) **Participate in a work release program under IC 11-12-5**
19 **for the purpose of using the party's earnings to satisfy under**
20 **IC 11-12-5-3 the party's child support arrearage.**

21 SECTION 6. IC 35-33-8-3.2 IS ADDED TO THE INDIANA CODE
22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
23 1, 1998]: Sec. 3.2. (a) **A court may admit a defendant to bail and**
24 **impose any of the following conditions to assure the defendant's**
25 **appearance at any stage of the legal proceedings, or, upon a**
26 **showing of clear and convincing evidence that the defendant poses**
27 **a risk of physical danger to another person or the community, to**
28 **assure the public's physical safety:**

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

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

31 (B) **deposit cash or securities in an amount equal to the**
32 **bail;**

33 (C) **execute a bond secured by real estate in the county,**
34 **where thirty-three hundredths (0.33) of the true tax value**
35 **less encumbrances is at least equal to the amount of the**
36 **bail.**

37 (D) **post a real estate bond.**

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

40 (2) **Require the defendant to execute a bail bond by depositing**
41 **cash or securities with the clerk of the court in an amount not**
42 **less than ten percent (10%) of the bail. If the defendant is**

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1 convicted, the court may retain all or a part of the cash or
 2 securities to pay fines, costs, fees, and restitution, if ordered
 3 by the court. A portion of the deposit, not to exceed ten
 4 percent (10%) of the monetary value of the deposit or fifty
 5 dollars (\$50), whichever is the lesser amount, may be retained
 6 as an administrative fee. The clerk shall also retain from the
 7 deposit under this subdivision the following:

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

9 (B) Fines, costs, fees, and restitution as ordered by the
 10 court.

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

13 (D) In the event of the posting of a real estate bond, the
 14 bond shall be used only to insure the presence of the
 15 defendant at any stage of the legal proceedings, but shall
 16 not be foreclosed for the payment of fines, costs, fees or
 17 restitution.

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

23 (3) Impose reasonable restrictions on the activities,
 24 movements, associations, and residence of the defendant
 25 during the period of release.

26 (4) Require the defendant to refrain from any direct or
 27 indirect contact with an individual.

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

30 (6) Release the defendant into the care of a qualified person or
 31 organization responsible for supervising the defendant and
 32 assisting the defendant in appearing in court. The supervisor
 33 shall maintain reasonable contact with the defendant in order
 34 to assist the defendant in making arrangements to appear in
 35 court and, where appropriate, shall accompany the defendant
 36 to court. The supervisor need not be financially responsible
 37 for the defendant.

38 (7) Release the defendant on personal recognizance where the
 39 defendant shows little risk:

40 (A) of nonappearance; or

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

42 (8) Impose any other reasonable restrictions designed to

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1 **assure the defendant's presence in court or the physical safety**
 2 **of another person or the community.**

3 **(b) Within thirty (30) days after disposition of the charges**
 4 **against the defendant, the court that admitted the defendant to bail**
 5 **shall order the clerk to remit the amount of the deposit remaining**
 6 **under subsection (a)(2) to the defendant. The portion of the deposit**
 7 **that is not remitted to the defendant shall be deposited by the clerk**
 8 **in the supplemental public defender services fund established**
 9 **under IC 33-9-11.5.**

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

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

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

17 **(2) retain a fee of five dollars (\$5) from each deposit under**
 18 **subsection (a)(2).**

19 **The clerk of the court shall semiannually remit these fees to the**
 20 **board of trustees of the public employees' retirement fund for**
 21 **deposit into the special death benefit fund. The fee required by**
 22 **subdivision (2) is in addition to the administrative fee retained**
 23 **under subsection (a)(2). This subsection expires December 31,**
 24 **1998.**

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

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

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

33 **(2) the prosecuting attorney shall file a confidential form**
 34 **prescribed or approved by the division of state court**
 35 **administration with the clerk.**

36 **SECTION 7. IC 35-33-8-5 IS AMENDED TO READ AS**
 37 **FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Upon a**
 38 **showing of good cause, the state or the defendant may be granted an**
 39 **alteration or revocation of bail by application to the court before which**
 40 **the proceeding is pending. In reviewing a motion for alteration or**
 41 **revocation of bail, credible hearsay evidence is admissible to establish**
 42 **good cause.**



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1 (b) When the state presents additional:

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

4 **(2) clear and convincing evidence:**

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

7 **(B) that the defendant otherwise poses a risk to the**
8 **physical safety of another person or the community;**

9 the court may increase bail.

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

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

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

21 (1) while admitted to bail the defendant:

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

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

27 (3) (C) violated any condition of his current release order;

28 (4) (D) failed to appear before the court as ordered at any
29 critical stage of the proceedings; or

30 (5) (E) committed a felony or a Class A misdemeanor that
31 demonstrates instability and a disdain for the court's authority
32 to bring him to trial;

33 **(2) the factors described in IC 33-14-10-6(1)(A) and**
34 **IC 33-14-10-6(1)(B) exist or that the defendant otherwise**
35 **poses a risk to the physical safety of another person or the**
36 **community; or**

37 **(3) a combination of the factors described in subdivisions (1)**
38 **and (2) exists.**

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

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

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

3 (b) In a criminal case, if the court having jurisdiction over the
 4 criminal case receives written notice of a pending civil action or
 5 unsatisfied judgment against the criminal defendant arising out of the
 6 same transaction or occurrence forming the basis of the criminal case,
 7 funds deposited with the clerk of the court under section ~~3.1(a)(2)~~
 8 **3.2(a)(2)** of this chapter may not be declared forfeited by the court, and
 9 the court shall order the deposited funds to be held by the clerk. If there
 10 is an entry of final judgment in favor of the plaintiff in the civil action,
 11 and if the deposit and the bond are subject to forfeiture, the criminal
 12 court shall order payment of all or any part of the deposit to the
 13 plaintiff in the action, as is necessary to satisfy the judgment. The court
 14 shall then order the remainder of the deposit, if any, and the bond
 15 forfeited.

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

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

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

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

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

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

- 40 (1) shall issue a warrant for the defendant's arrest;
 41 (2) may not release the defendant on personal recognizance; and
 42 (3) may not set bail for the rearrest of the defendant on the

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1 warrant at an amount that is less than the greater of:

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

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

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

6 (b) In a criminal case, if the court having jurisdiction over the
7 criminal case receives written notice of a pending civil action or
8 unsatisfied judgment against the criminal defendant arising out of the
9 same transaction or occurrence forming the basis of the criminal case,
10 funds deposited with the clerk of the court under section ~~3-1(a)(1)~~
11 **3.2(a)(2)** of this chapter may not be declared forfeited by the court, and
12 the court shall order the deposited funds to be held by the clerk. If there
13 is an entry of final judgment in favor of the plaintiff in the civil action,
14 and if the deposit is subject to forfeiture, the criminal court shall order
15 payment of all or any part of the deposit to the plaintiff in the action, as
16 is necessary to satisfy the judgment. The court shall then order the
17 remainder of the deposit, if any, forfeited.

18 SECTION 10. IC 35-33-8-3.1 IS REPEALED [EFFECTIVE JULY
19 1, 1998].

20 SECTION 11. **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.

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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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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 264 be amended to read as follows:

Page 3, line 16, delete "bond." and insert "**bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail.**".

Page 3, line 28, after "deposit" insert "**under this subdivision**".

(Reference is to Engrossed Senate Bill 264 as printed February 18, 1998.)

SUMMERS

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 264 be amended to read as follows:

Page 3, line 15, delete "or".

Page 3, line 16, delete "(C) execute a bond." and insert "**(C) execute a bond; or**".

Page 3, between lines 16 and 17, insert:

"(D) post a real estate bond."

Page 3, between lines 33 and 34, insert:

"(D) In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees or restitution."

(Reference is to Engrossed Senate Bill 264 as printed February 18, 1998.)

STEELE

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 264 be amended to read as follows:

Page 3, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 3. IC 11-12-5-3 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Any earnings of a person employed under this chapter, less payroll deductions required by law and court ordered deductions for satisfaction of a judgment against that person, **including a judgment regarding delinquent child support described in IC 31-16-16-2**, shall be collected by the county sheriff, probation department, county office of family and children, or other agency designated by the sentencing or committing court. Unless otherwise ordered by the court, the remaining earnings shall be distributed in the following order:

- (1) To pay state and federal income taxes and Social Security deductions not otherwise withheld.
- (2) To pay the cost of membership in an employee organization.
- (3) Not less than fifteen percent (15%) of the person's gross earnings, if that amount of the gross is available after the above deductions, to be given to that person or retained for the person, with accrued interest, until the person's release or discharge.
- (4) To pay for the person's room and board provided by the county.
- (5) To pay transportation costs to and from work, and other work related incidental expenses.
- (6) To pay court ordered costs, fines, or restitution.

(b) After the amounts prescribed in subsection (a) are deducted, the remaining amount may be used to:

- (1) when directed by the person or ordered by the court, pay for the support of the person's dependents (if the person's dependents are receiving welfare assistance, the appropriate office of family and children or welfare department in another state shall be notified of such disbursements); and
- (2) with the consent of the person, pay to the person's victims or others any unpaid obligations of that person.

(c) Any remaining amount shall be given to the person or retained for the person according to subsection (a)(3).

(d) The collection of room and board under subsection (a)(4) may be waived.

SECTION 4. IC 31-14-12-3, AS ADDED BY P.L.1-1997, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) If the court finds that a party is delinquent as a result of an intentional violation of an order for support, the court may find the party in contempt of court.

(b) The court may order a party who is found in contempt of court under this section to **do one (1) or all of the following**:

- (1) Perform community service without compensation in a



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manner specified by the court.

(2) Participate in a work release program under IC 11-12-5 for the purpose of using the party's earnings to satisfy under IC 11-12-5-3 the party's child support arrearage.

SECTION 5. IC 31-16-12-6, AS ADDED BY P.L.1-1997, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. If the court finds that a party is delinquent as a result of an intentional violation of an order for support, the court may find the party in contempt of court. The court may order a party who is found in contempt of court under this section to:

(1) Perform community service without compensation in a manner specified by the court.

(2) Participate in a work release program under IC 11-12-5 for the purpose of using the party's earnings to satisfy under IC 11-12-5-3 the party's child support arrearage."

Renumber all SECTIONS consecutively.

(Reference is to Engrossed Senate Bill 264 as printed February 18, 1998.)

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