

January 28, 1998

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## HOUSE BILL No. 1387

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DIGEST OF HB 1387 (Updated January 27, 1998 2:27 pm - DI 51)

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

**Synopsis:** Bail bonds. 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. Makes amendments to conform to a modification of the law concerning bonds secured by real estate that was enacted during the 1997 legislative session and that takes effect March 1, 2001.

**Effective:** July 1, 1998.

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January 13, 1998, read first time and referred to Committee on Courts and Criminal Code.  
January 27, 1998, amended, reported — Do Pass.

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HB 1387—LS 6775/DI 69



January 28, 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.

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## HOUSE BILL No. 1387



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 35-33-8-3.2 IS ADDED TO THE INDIANA CODE  
 15 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 16 1, 1998]: **Sec. 3.2. (a) A court may admit a defendant to bail and**  
 17 **impose any of the following conditions to assure the defendant's**

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1 appearance at any stage of the legal proceedings, or, upon a  
 2 showing of clear and convincing evidence that the defendant poses  
 3 a risk of physical danger to another person or the community, to  
 4 assure the public's physical safety:

5 (1) Require the defendant to:

- 6 (A) execute a bail bond with sufficient solvent sureties;  
 7 (B) deposit cash or securities in an amount equal to the  
 8 bail; or

9 (C) execute a bond:

- 10 (i) before March 1, 2001, secured by real estate in the  
 11 county where the true tax value (as determined by  
 12 IC 6-1.1-1-3) less encumbrances is at least equal to the  
 13 amount of the bail; and  
 14 (ii) after February 28, 2001, secured by real estate in the  
 15 county where thirty-three hundredths (0.33) of the true  
 16 tax value less encumbrances is at least equal to the  
 17 amount of the bail.

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

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

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

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

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



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- 1           **(4) Require the defendant to refrain from any direct or**  
 2           **indirect contact with an individual.**
- 3           **(5) Place the defendant under the reasonable supervision of a**  
 4           **probation officer or other appropriate public official.**
- 5           **(6) Release the defendant into the care of a qualified person or**  
 6           **organization responsible for supervising the defendant and**  
 7           **assisting the defendant in appearing in court. The supervisor**  
 8           **shall maintain reasonable contact with the defendant in order**  
 9           **to assist the defendant in making arrangements to appear in**  
 10           **court and, where appropriate, shall accompany the defendant**  
 11           **to court. The supervisor need not be financially responsible**  
 12           **for the defendant.**
- 13           **(7) Release the defendant on personal recognizance where the**  
 14           **defendant shows little risk:**
- 15                   **(A) of nonappearance; or**  
 16                   **(B) to the physical safety of the public.**
- 17           **(8) Impose any other reasonable restrictions designed to**  
 18           **assure the defendant's presence in court or the physical safety**  
 19           **of another person or the community.**
- 20           **(b) Within thirty (30) days after disposition of the charges**  
 21           **against the defendant, the court that admitted the defendant to bail**  
 22           **shall order the clerk to remit the amount of the deposit remaining**  
 23           **under subsection (a)(2) to the defendant. The portion of the deposit**  
 24           **that is not remitted to the defendant shall be deposited by the clerk**  
 25           **in the supplemental public defender services fund established**  
 26           **under IC 33-9-11.5.**
- 27           **(c) For purposes of subsection (b), "disposition" occurs when**  
 28           **the indictment or information is dismissed, or the defendant is**  
 29           **acquitted or convicted of the charges.**
- 30           **(d) Except as provided by subsection (e), the clerk of the court**  
 31           **shall:**
- 32                   **(1) collect a fee of five dollars (\$5) for each bond or deposit**  
 33                   **under subsection (a)(1); and**  
 34                   **(2) retain a fee of five dollars (\$5) from each deposit under**  
 35                   **subsection (a)(2).**
- 36           **The clerk of the court shall semiannually remit these fees to the**  
 37           **board of trustees of the public employees' retirement fund for**  
 38           **deposit into the special death benefit fund. The fee required by**  
 39           **subdivision (2) is in addition to the administrative fee retained**  
 40           **under subsection (a)(2). This subsection expires December 31,**  
 41           **1998.**
- 42           **(e) With the approval of the clerk of the court, the county sheriff**



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

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

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

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

11 SECTION 3. IC 35-33-8-7 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 7. (a) If a defendant:

13 (1) was admitted to bail under section ~~3.1(a)(2)~~ **3.2(a)(2)** of this  
 14 chapter; and

15 (2) has failed to appear before the court as ordered;

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

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

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

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

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

42 (1) any amount remaining on deposit with the court (less the fees

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1 retained by the clerk); and

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

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

7 SECTION 4. IC 35-33-8-8 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) If a defendant  
9 was admitted to bail under ~~section 3.1(a)~~ **section 3.2(a)** of this chapter  
10 and the defendant has knowingly and intentionally failed to appear  
11 before the court as ordered, the court:

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

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

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

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

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

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

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

32 SECTION 5. IC 35-33-8-3.1 IS REPEALED [EFFECTIVE JULY  
33 1, 1998].

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1387, 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 2, line 24, after "costs," insert "**fees**,".

Page 2, line 31, after "costs," insert "**fees**,".

Page 2, line 34, delete "A" and insert "**The individual posting bail for the defendant or the**".

Page 2, line 35, after "by the" insert "**sheriff**,".

Page 2, line 35, after "court" insert ",".

and when so amended that said bill do pass.

(Reference is to House Bill 1387 as introduced.)

DVORAK, Chair

Committee Vote: yeas 11, nays 3.

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