

HOUSE BILL No. 1387

DIGEST OF HB 1387 (Updated February 2, 1998 5:06 pm - DI 69)

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. Removes a provision that allows a court to require a defendant admitted to bail to execute a bond secured by real estate.

Effective: July 1, 1998.

Dvorak

January 13, 1998, read first time and referred to Committee on Courts and Criminal Code.
January 27, 1998, amended, reported — Do Pass.
February 2, 1998, read second time, amended, ordered engrossed.



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Reprinted
February 3, 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.

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

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

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

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

32 (3) Impose reasonable restrictions on the activities,
 33 movements, associations, and residence of the defendant
 34 during the period of release.

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

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

39 (6) Release the defendant into the care of a qualified person or
 40 organization responsible for supervising the defendant and
 41 assisting the defendant in appearing in court. The supervisor
 42 shall maintain reasonable contact with the defendant in order



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1 to assist the defendant in making arrangements to appear in
 2 court and, where appropriate, shall accompany the defendant
 3 to court. The supervisor need not be financially responsible
 4 for the defendant.

5 (7) Release the defendant on personal recognizance where the
 6 defendant shows little risk:

7 (A) of nonappearance; or

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

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

12 (b) Within thirty (30) days after disposition of the charges
 13 against the defendant, the court that admitted the defendant to bail
 14 shall order the clerk to remit the amount of the deposit remaining
 15 under subsection (a)(2) to the defendant. The portion of the deposit
 16 that is not remitted to the defendant shall be deposited by the clerk
 17 in the supplemental public defender services fund established
 18 under IC 33-9-11.5.

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

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

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

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

28 The clerk of the court shall semiannually remit these fees to the
 29 board of trustees of the public employees' retirement fund for
 30 deposit into the special death benefit fund. The fee required by
 31 subdivision (2) is in addition to the administrative fee retained
 32 under subsection (a)(2). This subsection expires December 31,
 33 1998.

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

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

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

42 (2) the prosecuting attorney shall file a confidential form



1 **prescribed or approved by the division of state court**
 2 **administration with the clerk.**

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

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

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

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

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

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

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

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

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

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

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

41 SECTION 4. IC 35-33-8-8 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 8. (a) If a defendant

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

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

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

24 SECTION 5. IC 35-33-8-3.1 IS REPEALED [EFFECTIVE JULY
 25 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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HOUSE MOTION

Mr. Speaker: I move that House Bill 1387 be amended to read as follows:

Page 2, line 9, delete ":" and insert ".".

Page 2, delete lines 10 through 17.

(Reference is to House Bill 1387 as printed January 28, 1998.)

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