

SENATE BILL No. 226

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10-10-5; IC 35-33-8.

Synopsis: Bail bonds. Provides that a bail bond may be written only by an insurer. Provides that if a bail bond is secured by real estate, the tax value of the real estate (less encumbrances) must be at least two times the amount of bail. Provides that a defendant who meets certain qualifications can be required to post a cash deposit equal to 10% of the amount of the bail instead of a bail bond and that a defendant who meets other qualifications can be required to post a cash deposit or execute a bail bond in an amount equal to 25% of the amount of the bail. Provides that a court, when requiring a person to post a cash deposit instead of a bail bond, must also require the person to execute an agreement that allows the court to retain all or a part of the cash or
(Continued next page)

Effective: July 1, 1998.

Worman, O'Day

January 6, 1998, read first time and referred to Committee on Judiciary.



Digest Continued

securities to satisfy any fines and costs if the defendant is convicted. Makes amendments to conform to a modification of the law concerning bonds secured by real estate that was added by P.L.6-1997, SECTION 201, and takes effect March 1, 2001.



Introduced

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.

SENATE BILL No. 226

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

1998

IN 226—LS 6617/DI 69+



1, 1998]: **Sec. 3.2. (a) The following definitions apply throughout this section:**

- (1) "Nonviolent" means a crime that is not a violent crime.
- (2) "Serious bodily injury" has the meaning set forth in IC 35-41-1-25.
- (3) "Violent" refers to a crime that:
 - (A) results in death or serious bodily injury; or
 - (B) inherently poses a risk of death or serious bodily injury.

(b) The court may admit the 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 written by an insurer (as defined in IC 27-10-1-7);
 - (B) deposit cash or securities in an amount equal to the bail; or
 - (C) execute a bond:
 - (i) before March 1, 2001, secured by real estate in the county where the true tax value (as determined by IC 6-1.1-1-3) less encumbrances is at least equal to two (2) times the amount of the bail; and
 - (ii) after February 28, 2001, 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 two (2) times the amount of the bail.

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

- (2) In the case of a defendant who is charged with a nonviolent misdemeanor or a nonviolent Class D felony and who has resided continuously for the preceding five (5) years in the county where the defendant is being charged or in a contiguous county, require a person who posts a cash deposit instead of a bail bond to deposit cash or securities with the clerk of the court in an amount not less than the greater of:
 - (A) fifty dollars (\$50); or
 - (B) ten percent (10%) of the amount of the bail.

A defendant admitted to bail under this subdivision must be notified by the court or clerk that the defendant's deposit may



1 be forfeited under section 7 of this chapter, or retained under
2 subsection (c).

3 (3) In the case of a defendant who:

4 (A) is charged with a violent Class D felony, a Class C
5 felony, a Class B felony, a Class A felony, or murder; or

6 (B) has not resided continuously for the preceding five (5)
7 years in the county where the defendant is being charged
8 or in a contiguous county;

9 require the defendant to execute a bond secured by real estate
10 subject to the requirements set forth in subdivision (1) or to
11 post a cash deposit or execute a bail bond written by an
12 insurer (as defined in IC 27-10-1-7) in an amount equal to
13 twenty-five percent (25%) of the amount of the bail.

14 (4) Impose reasonable restrictions on the activities,
15 movements, associations, and residence of the defendant
16 during the period of release.

17 (5) Require the defendant to refrain from any direct or
18 indirect contact with an individual.

19 (6) Place the defendant under the reasonable supervision of a
20 probation officer or other appropriate public official.

21 (7) Release the defendant into the care of some qualified
22 person or organization responsible for supervising the
23 defendant and assisting the defendant in appearing in court.
24 The supervisor shall maintain reasonable contact with the
25 defendant in order to assist the defendant in making
26 arrangements to appear in court and, where appropriate,
27 shall accompany the defendant to court. The supervisor need
28 not be financially responsible for the defendant.

29 (8) Release the defendant on personal recognizance where the
30 defendant shows little risk:

31 (A) of nonappearance; or

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

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

36 (c) A court that requires a person to post a cash deposit instead
37 of a bail bond under subsection (b)(2) shall also require the person
38 to execute an agreement that allows the court to retain all or a part
39 of the cash or securities to satisfy any fines, costs, or restitution the
40 court may order the defendant to pay if the defendant is convicted.

41 (d) Subsection (b)(2) and (b)(3) does not apply to a defendant
42 who:



1 (1) is currently released from custody from any jurisdiction
2 on any charge;

3 (2) has failed to appear in court within the preceding five (5)
4 years; or

5 (3) has been convicted of a felony within the preceding five (5)
6 years.

7 (e) Within thirty (30) days after disposition of the charges
8 against the defendant, the court that admitted the defendant to bail
9 shall order the clerk to remit the amount remaining after
10 deducting from the amount of the deposit made under subsection
11 (b)(2) (less the fees retained by the clerk):

12 (1) the publicly paid costs of representation, if any; and

13 (2) any fines, costs, or restitution the court may retain under
14 subsection (c);

15 to the defendant. The portion of the deposit (less the fees retained
16 by the clerk and any fines, costs, and restitution retained by the
17 court) that is not remitted to the defendant shall be deposited by
18 the clerk in the supplemental public defender services fund
19 established under IC 33-9-11.5.

20 (f) For purposes of subsection (e), "disposition" occurs when the
21 indictment or information has been dismissed, or the defendant has
22 been acquitted or convicted of the charges.

23 (g) Except as provided by subsection (h), the clerk of the court
24 shall:

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

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

29 The clerk of the court shall semiannually remit these fees to the
30 board of trustees of the public employees' retirement fund for
31 deposit into the special death benefit fund. The fee required by
32 subdivision (2) is in addition to the administrative fee retained
33 under subsection (a)(2). This subsection expires December 31,
34 1998.

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

40 (i) When a court imposes a condition of bail described in
41 subsection (b)(4):

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



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

4 (j) The following apply when any cash or securities are
5 deposited under this section:

6 (1) The clerk may retain a portion of the deposit, which may
7 not exceed the lesser of:

8 (A) ten percent (10%) of the monetary value of the deposit;
9 or

10 (B) fifty dollars (\$50);
11 as an administrative fee.

12 (2) The clerk shall retain from the deposit the fee required by
13 subsection (g).

14 (3) If any assigned counsel represents the defendant and there
15 are publicly paid costs of representation, the deposit (less the
16 fees retained by the clerk) shall be retained by the clerk and
17 disposed of in accordance with subsection (e).

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

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

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

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

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

40 (d) After a bond has been forfeited under subsection (b), the clerk
41 shall mail notice of forfeiture to the defendant. In addition, unless the
42 court finds that there was justification for the defendant's failure to



1 appear, the court shall immediately enter judgment, without pleadings
 2 and without change of judge or change of venue, against the defendant
 3 for the amount of the bail bond, and the clerk shall record the
 4 judgment.

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

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

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

10 (f) The clerk shall return a deposit **made under section 3.2(b)(2) of**
 11 **this chapter**, less the administrative fee ~~made~~ **and any fines, costs, or**
 12 **restitution the court may retain** under ~~section 3.1(a)(2)~~ **section 3.2(c)**
 13 of this chapter to the defendant, if the defendant appeared at trial and
 14 the other critical stages of the legal proceedings.

15 SECTION 4. IC 35-33-8-3.1 IS REPEALED [EFFECTIVE JULY
 16 1, 1998].

