
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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SEA 264—CC.No.01+



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 ENROLLED ACT No. 264

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

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

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 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**

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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;
- (C) execute a 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;
- (D) post a real estate bond.

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

(2) Require the defendant to execute a bail bond by depositing 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 under this subdivision 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).
- (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.

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



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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 unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

(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 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,



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(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.

SECTION 3. IC 35-33-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Upon a showing of good cause, the state or the defendant may be granted an alteration or revocation of bail by application to the court before which the proceeding is pending. In reviewing a motion for alteration or revocation of bail, credible hearsay evidence is admissible to establish good cause.

(b) When the state presents additional:

- (1) evidence relevant to a high risk of nonappearance, based on the factors set forth in section 4(b) of this chapter; **or**
- (2) **clear and convincing evidence:**
 - (A) of the factors described in IC 33-14-10-6(1)(A) and IC 33-14-10-6(1)(B); **or**
 - (B) that the defendant otherwise poses a risk to the physical safety of another person or the community;

the court may increase bail.

(c) When the defendant presents additional evidence of substantial mitigating factors, based on the factors set forth in section 4(b) of this chapter, which reasonably suggests that the defendant recognizes the court's authority to bring him to trial, the court may reduce bail. **However, the court may not reduce bail if the court finds by clear and convincing evidence that the factors described in IC 33-14-10-6(1)(A) and IC 33-14-10-6(1)(B) exist or that the defendant otherwise poses a risk to the physical safety of another person or the community.**

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

- (1) while admitted to bail the defendant:
 - (†) (A) or his agent threatened or intimidated a victim, prospective witnesses, or jurors concerning the pending



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criminal proceeding or any other matter;
~~(2)~~ **(B)** or his agent attempted to conceal or destroy evidence relating to the pending criminal proceeding;
~~(3)~~ **(C)** violated any condition of his current release order;
~~(4)~~ **(D)** failed to appear before the court as ordered at any critical stage of the proceedings; or
~~(5)~~ **(E)** committed a felony or a Class A misdemeanor that demonstrates instability and a disdain for the court's authority to bring him to trial;

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

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

SECTION 4. 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 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



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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 5. 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.

(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 6. IC 35-33-8-3.1 IS REPEALED [EFFECTIVE JULY 1, 1998].

SECTION 7. An emergency is declared for this act.



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