

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 507 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 35-33-8-3.2 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3.2. (a) A court may
- 5 admit a defendant to bail and impose any of the following conditions
- 6 to assure the defendant's appearance at any stage of the legal
- 7 proceedings, or, upon a showing of clear and convincing evidence that
- 8 the defendant poses a risk of physical danger to another person or the
- 9 community, to assure the public's physical safety:
- 10 (1) Require the defendant to:
- 11 (A) execute a bail bond with sufficient solvent sureties;
- 12 (B) deposit cash or securities in an amount equal to the bail;
- 13 (C) execute a bond secured by real estate in the county,
- 14 where thirty-three hundredths (0.33) of the true tax value
- 15 less encumbrances is at least equal to the amount of the
- 16 bail;
- 17 (D) post a real estate bond.
- 18 The defendant must also pay the fee required by subsection (d).
- 19 (2) Require the defendant to execute a bail bond by depositing
- 20 cash or securities with the clerk of the court in an amount not
- 21 less than ten percent (10%) of the bail. If the defendant is
- 22 convicted, the court may retain all or a part of the cash or
- 23 securities to pay fines, costs, fees, and restitution, if ordered by
- 24 the court. A portion of the deposit, not to exceed ten percent
- 25 (10%) of the monetary value of the deposit or fifty dollars (\$50),
- 26 whichever is the lesser amount, may be retained as an

1 administrative fee. The clerk shall also retain from the deposit
2 under this subdivision the following:

- 3 (A) The fee required by subsection (d).
- 4 (B) Fines, costs, fees, and restitution as ordered by the
5 court.
- 6 (C) Publicly paid costs of representation that shall be
7 disposed of in accordance with subsection (b).
- 8 (D) In the event of the posting of a real estate bond, the
9 bond shall be used only to insure the presence of the
10 defendant at any stage of the legal proceedings, but shall not
11 be foreclosed for the payment of fines, costs, fees, or
12 restitution.

13 The individual posting bail for the defendant or the defendant
14 admitted to bail under this subdivision must be notified by the
15 sheriff, court, or clerk that the defendant's deposit may be
16 forfeited under section 7 of this chapter or retained under
17 subsection (b).

- 18 (3) Impose reasonable restrictions on the activities, movements,
19 associations, and residence of the defendant during the period of
20 release.
- 21 (4) Require the defendant to refrain from any direct or indirect
22 contact with an individual.
- 23 (5) Place the defendant under the reasonable supervision of a
24 probation officer or other appropriate public official.
- 25 (6) Release the defendant into the care of a qualified person or
26 organization responsible for supervising the defendant and
27 assisting the defendant in appearing in court. The supervisor
28 shall maintain reasonable contact with the defendant in order to
29 assist the defendant in making arrangements to appear in court
30 and, where appropriate, shall accompany the defendant to court.
31 The supervisor need not be financially responsible for the
32 defendant.
- 33 (7) Release the defendant on personal recognizance unless:
 - 34 (A) the state presents evidence relevant to a risk by the
35 defendant:
 - 36 (i) of nonappearance; or
 - 37 (ii) to the physical safety of the public; and
 - 38 (B) the court finds by a preponderance of the evidence that
39 the risk exists.
- 40 (8) Impose any other reasonable restrictions designed to assure
41 the defendant's presence in court or the physical safety of
42 another person or the community.
- 43 **(9) If the defendant has been charged with a Class A felony**
44 **or Class B felony described in IC 35-48-4, the court shall**
45 **impose at least one (1) of the following conditions:**
 - 46 **(A) Require the defendant to avoid all contact with**
47 **persons involved in the use, manufacture, growth, or**
48 **distribution of controlled substances.**
 - 49 **(B) Require the defendant to refrain from knowingly or**
50 **intentionally remaining in places where controlled**
51 **substances are being used, manufactured, grown, or**

- 1 **distributed.**
 2 **(C) Require the defendant to refrain from being**
 3 **physically present within:**
 4 **(i) a two (2) block area of; or**
 5 **(ii) a designated area near;**
 6 **the location at which the Class A felony or Class B**
 7 **felony described in IC 35-48-4 allegedly occurred unless**
 8 **the defendant resides within the area.**
 9 **(D) Require the defendant to refrain from possessing a**
 10 **firearm, destructive device, or other dangerous weapon.**

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

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

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

- 22 (1) collect a fee of five dollars (\$5) for each bond or deposit
 23 under subsection (a)(1); and
 24 (2) retain a fee of five dollars (\$5) from each deposit under
 25 subsection (a)(2).

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

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

36 (f) When a court imposes a condition of bail described in
 37 subsection (a)(4):

- 38 (1) the clerk of the court shall comply with IC 5-2-9; and
 39 (2) the prosecuting attorney shall file a confidential form
 40 prescribed or approved by the division of state court
 41 administration with the clerk.

42 SECTION 2. IC 35-33-8-4 IS AMENDED TO READ AS
 43 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The court shall
 44 order the amount in which a person charged by an indictment or
 45 information is to be held to bail, and the clerk shall enter the order on
 46 the order book and indorse the amount on each warrant when issued.
 47 If no order fixing the amount of bail has been made, the sheriff shall
 48 present the warrant to the judge of an appropriate court of criminal
 49 jurisdiction, and the judge shall indorse on the warrant the amount of
 50 bail.

1 (b) Bail may not be set higher than that amount reasonably
 2 required to assure the defendant's appearance in court or to assure the
 3 physical safety of another person or the community if the court finds by
 4 clear and convincing evidence that the defendant poses a risk to the
 5 physical safety of another person or the community. In setting and
 6 accepting an amount of bail, the judicial officer shall take into account
 7 all facts relevant to the risk of nonappearance, including:

8 (1) the length and character of the defendant's residence in the
 9 community;

10 (2) the defendant's employment status and history and his ability
 11 to give bail;

12 (3) the defendant's family ties and relationships;

13 (4) the defendant's character, reputation, habits, and mental
 14 condition;

15 (5) the defendant's criminal or juvenile record, insofar as it
 16 demonstrates instability and a disdain for the court's authority to
 17 bring him to trial;

18 (6) the defendant's previous record in not responding to court
 19 appearances when required or with respect to flight to avoid
 20 criminal prosecution;

21 (7) the nature and gravity of the offense and the potential penalty
 22 faced, insofar as these factors are relevant to the risk of
 23 nonappearance;

24 (8) the source of funds or property to be used to post bail or to
 25 pay a premium, insofar as it affects the risk of nonappearance;
 26 and

27 **(9) if the defendant has been charged with a Class A felony
 28 or Class B felony described in IC 35-48-4, the amount of the
 29 controlled substance involved in the offense; and**

30 ~~(9)~~ **(10) any other factors, including any evidence of instability
 31 and a disdain for authority, which might indicate that the
 32 defendant might not recognize and adhere to the authority of the
 33 court to bring him to trial.**

34 **(c) If the defendant has been charged with a Class A felony or
 35 Class B felony described in IC 35-48-4, the court shall carefully
 36 consider the necessity of setting a substantial amount of bail to
 37 assure the defendant's appearance in court or to assure the
 38 physical safety of another person or the community."**

39 Renumber all SECTIONS consecutively.

(Reference is to ESB 507 as printed April 6, 1999.)

Representative SMITH V