

# HOUSE BILL No. 1760

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-33-8.

**Synopsis:** Bail bonds. Specifies 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 equal to two times the amount of bail. Provides that a defendant who is charged with a nonviolent misdemeanor or nonviolent Class D felony and has resided continuously for the preceding five years in the county where the defendant is being charged or in a contiguous county may be required to post a cash deposit equal to an amount not less than the greater of: (1) \$50; or (2) 10% of the amount of the bail instead of a bail bond. Provides that a defendant who: (1) is charged with a violent misdemeanor, a violent Class D felony, or any other felony or murder;  
(Continued next page)

**Effective:** July 1, 1999.

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## Frizzell

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January 26, 1999, read first time and referred to Committee on Courts and Criminal Code.

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Digest Continued

or (2) has not resided continuously for the preceding five years in the county where the defendant is being charged or in a contiguous county may be required to execute a bond secured by real estate, post a cash deposit, or execute a bail bond in an amount equal to 25% of the amount of the bail.

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Introduced

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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## HOUSE BILL No. 1760



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 35-33-8-3.2 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3.2. (a) **The following**  
 3 **definitions apply throughout this section:**  
 4 (1) **"Nonviolent" refers to a crime that is not a violent crime.**  
 5 (2) **"Serious bodily injury" has the meaning set forth in**  
 6 **IC 35-41-1-25.**  
 7 (3) **"Violent" refers to a crime that:**  
 8 (A) **results in death or serious bodily injury; or**  
 9 (B) **inherently poses a risk of serious bodily injury.**  
 10 (b) A court may admit a defendant to bail and impose any of the  
 11 following conditions to assure the defendant's appearance at any stage  
 12 of the legal proceedings, or, upon a showing of clear and convincing  
 13 evidence that the defendant poses a risk of physical danger to another  
 14 person or the community, to assure the public's physical safety:  
 15 (1) Require the defendant to:



- 1 (A) execute a bail bond ~~with sufficient solvent sureties;~~  
 2 **written by an insurer (as defined in IC 27-10-1-7);**  
 3 (B) deposit cash or securities in an amount equal to the bail;  
 4 (C) execute a bond secured by real estate in the county, where  
 5 thirty-three hundredths (0.33) of the true tax value less  
 6 encumbrances is at least equal to **two (2) times** the amount of  
 7 the bail; **or**  
 8 (D) post a real estate bond.

9 ~~The defendant must also pay the fee required by subsection (d):~~  
 10 **(2) In the case of a defendant who is charged with a**  
 11 **nonviolent misdemeanor or a nonviolent Class D felony and**  
 12 **who has resided continuously for the preceding five (5) years**  
 13 **in the county where the defendant is being charged or in a**  
 14 **contiguous county, require the defendant to execute a person**  
 15 **who posts a cash deposit instead of a bail bond by depositing to**  
 16 **deposit cash or securities with the clerk of the court in an amount**  
 17 **not less than the greater of:**

- 18 (A) **fifty dollars (\$50); or**  
 19 (B) **ten percent (10%) of the amount of the bail.**

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

- 27 (A) ~~The fee required by subsection (d):~~  
 28 (B) ~~Fines, costs, fees, and restitution as ordered by the court.~~  
 29 (C) ~~Publicly paid costs of representation that shall be disposed~~  
 30 ~~of in accordance with subsection (b):~~  
 31 (D) ~~In the event of the posting of a real estate bond, the bond~~  
 32 ~~shall be used only to insure the presence of the defendant at~~  
 33 ~~any stage of the legal proceedings, but shall not be foreclosed~~  
 34 ~~for the payment of fines, costs, fees, or restitution.~~

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): **(d).**

- 40 **(3) In the case of a defendant who:**  
 41 **(A) is charged with a violent misdemeanor, a violent Class**  
 42 **D felony, a Class C felony, a Class B felony, a Class A**

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- 1            **felony, or murder; or**  
 2            **(B) has not resided continuously for the preceding five (5)**  
 3            **years in the county where the defendant is being charged**  
 4            **or in a contiguous county;**  
 5            **require the defendant to execute a bond secured by real estate**  
 6            **subject to the requirements set forth in subdivision (1) or to**  
 7            **post a cash deposit or execute a bail bond written by an**  
 8            **insurer (as defined in IC 27-10-1-7) in an amount equal to**  
 9            **twenty-five percent (25%) of the amount of the bail. If the**  
 10           **defendant is convicted, the court may retain all or a part of**  
 11           **the cash or securities to pay fines, costs, fees, and restitution,**  
 12           **if ordered by the court.**  
 13           ~~(3)~~ **(4) Impose reasonable restrictions on the activities,**  
 14           **movements, associations, and residence of the defendant during**  
 15           **the period of release.**  
 16           ~~(4)~~ **(5) Require the defendant to refrain from any direct or indirect**  
 17           **contact with an individual.**  
 18           ~~(5)~~ **(6) Place the defendant under the reasonable supervision of a**  
 19           **probation officer or other appropriate public official.**  
 20           ~~(6)~~ **(7) Release the defendant into the care of a qualified person**  
 21           **or organization responsible for supervising the defendant and**  
 22           **assisting the defendant in appearing in court. The supervisor shall**  
 23           **maintain reasonable contact with the defendant in order to assist**  
 24           **the defendant in making arrangements to appear in court and,**  
 25           **where appropriate, shall accompany the defendant to court. The**  
 26           **supervisor need not be financially responsible for the defendant.**  
 27           ~~(7)~~ **(8) Release the defendant on personal recognizance unless:**  
 28                  **(A) the state presents evidence relevant to a risk by the**  
 29                  **defendant:**  
 30                      **(i) of nonappearance; or**  
 31                      **(ii) to the physical safety of the public; and**  
 32                  **(B) the court finds by a preponderance of the evidence that the**  
 33                  **risk exists.**  
 34           ~~(8)~~ **(9) Impose any other reasonable restrictions designed to**  
 35           **assure the defendant's presence in court or the physical safety of**  
 36           **another person or the community.**  
 37           **(c) Subsection (b)(2) and (b)(3) do not apply to a defendant who:**  
 38                  **(1) is currently released from custody from any jurisdiction**  
 39                  **on any charge;**  
 40                  **(2) has failed to appear in court within the preceding five (5)**  
 41                  **years; or**  
 42                  **(3) has been convicted of a felony within the preceding five (5)**

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1           **years.**

2           ~~(b)~~ **(d)** Within thirty (30) days after disposition of the charges  
3 against the defendant, the court that admitted the defendant to bail shall  
4 order the clerk to remit the amount of the deposit remaining under  
5 subsection ~~(a)(2)~~ **(b)(2)** to the defendant. The portion of the deposit  
6 that is not remitted to the defendant shall be deposited by the clerk in  
7 the supplemental public defender services fund established under  
8 IC 33-9-11.5.

9           ~~(c)~~ **(e)** For purposes of subsection ~~(b)~~; **(d)**, "disposition" occurs  
10 when the indictment or information is dismissed, or the defendant is  
11 acquitted or convicted of the charges.

12           ~~(d)~~ Except as provided by subsection ~~(c)~~; the clerk of the court shall:

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

15                 (2) retain a fee of five dollars (\$5) from each deposit under  
16 subsection ~~(a)(2)~~;

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

22           ~~(e)~~ With the approval of the clerk of the court, the county sheriff  
23 may collect the bail and fees required by subsection ~~(d)~~. The county  
24 sheriff shall remit the bail to the clerk of the court by the following  
25 business day and remit monthly the five dollar (\$5) special death  
26 benefit fee to the county auditor.

27           ~~(f)~~ When a court imposes a condition of bail described in subsection  
28 ~~(a)(4)~~; **(b)(5)**:

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

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

33           **(g) The following apply when any cash or securities are**  
34 **deposited under this section:**

35                 **(1) The clerk may retain a portion of the deposit, which may**  
36 **not exceed the lesser of:**

37                         **(A) ten percent (10%) of the monetary value of the deposit;**  
38 **or**

39                         **(B) fifty dollars (\$50);**  
40 **as an administrative fee.**

41                 **(2) The clerk shall retain fines, costs, fees, and restitution as**  
42 **ordered by the court.**

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1           **(3) The clerk shall retain publicly paid costs of representation**  
 2           **that shall be disposed of in accordance with subsection (d).**

3           **(h) If a real estate bond is posted, the bond may be used only to**  
 4           **insure the presence of the defendant at any stage of the legal**  
 5           **proceeding and may not be foreclosed for the payment of fines,**  
 6           **costs, fees, or restitution.**

7           SECTION 2. IC 35-33-8-7 IS AMENDED TO READ AS  
 8           FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) If a defendant:

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

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

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

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

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

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

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

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

41           (f) The clerk shall return a deposit, less the administrative fee, made  
 42           under section ~~3.2(a)(2)~~ **3.2(b)(2)** of this chapter to the defendant, if the

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1 defendant appeared at trial and the other critical stages of the legal  
2 proceedings.

3 SECTION 3. IC 35-33-8-8 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) If a defendant  
5 was admitted to bail under section ~~3-2(a)~~ **3.2(b)** of this chapter and the  
6 defendant has knowingly and intentionally failed to appear before the  
7 court as ordered, the court:

- 8 (1) shall issue a warrant for the defendant's arrest;  
9 (2) may not release the defendant on personal recognizance; and  
10 (3) may not set bail for the rearrest of the defendant on the  
11 warrant at an amount that is less than the greater of:

- 12 (A) the amount of the original bail; or  
13 (B) two thousand five hundred dollars (\$2,500);  
14 in the form of a bond issued by an entity defined in IC 27-10-1-7  
15 or the full amount of the bond in cash.

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

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