

# SENATE BILL No. 40

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-10-2; IC 35-33-14.

**Synopsis:** Bail. Provides that an undertaking for bail expires 36 months after the undertaking is posted for the release of a defendant from custody if: (1) the defendant fails to appear as required; and (2) the court fails to make an adjudication concerning the defendant, including refusing to extradite the defendant; during the 36 month period. Requires sureties and bail agents to establish and maintain electronic mail addresses before June 1, 2011. Provides that if a defendant does not appear as provided in a bond and the court orders the bail agent and the surety to surrender the defendant to the court, the clerk may send notice of the order by electronic mail to the bail agent and surety. Reduces the amount of time that a surety and bail agent have to produce a defendant or provide a valid reason for the defendant's failure to appear from 365 days to 180 days. Provides that a court must release the bail agent and surety from liability from a bond if a defendant is arrested before the court enters judgment on the forfeiture of the bond and the court has actual knowledge that the defendant was or is in the custody of the United States pending deportation from the United States. Changes the period used to assess late surrender fees against a surety and bail agent. Specifies the late surrender fee is equal to 80% of the face value of the bond. Provides that costs resulting from a defendant's failure to appear may not be assessed against a bail agent or surety. Provides that the court in which a bond is posted retains late surrender fees instead of the fees being deposited in police pension trust funds and county extradition funds. Specifies that the retained fees must be used by a court to defray the costs of operating the court, extraditing criminal defendants, and operating diversion programs. Repeals the law establishing county extradition funds on July 1, 2013.

**Effective:** Upon passage; July 1, 2013.

### Rogers

January 5, 2011, read first time and referred to Committee on Judiciary.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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**SENATE BILL No. 40**



A BILL FOR AN ACT to amend the Indiana Code concerning bail.

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

1 SECTION 1. IC 27-10-2-3, AS AMENDED BY P.L.105-2010,  
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 3. (a) An undertaking is valid if it states:  
4 (1) the court where the defendant is to appear;  
5 (2) the amount of the bail; and  
6 (3) that it was made before an official legally authorized to take  
7 the bond.  
8 (b) A surety remains liable on an undertaking despite:  
9 (1) any lack of the surety's qualifications as required by section 4  
10 of this chapter;  
11 (2) any other agreement that is expressed in the undertaking;  
12 (3) any failure of the defendant to join in the undertaking; or  
13 (4) any other defect of form or record, or any other irregularity,  
14 except as to matters covered by subsection (a).  
15 (c) ~~Any An~~ undertaking ~~written after August 31, 1985; shall expire~~  
16 **expires** thirty-six (36) months after **it the undertaking** is posted for the  
17 release of a defendant from custody **if:**  
18 (1) **the defendant fails to appear as required; and**



1           **(2) the court fails to make an adjudication concerning the**  
2           **defendant, including refusing to extradite the defendant;**  
3           **during the thirty-six (36) month period.**

4           **(d)** This section does not apply to cases in which a bond has been  
5           declared to be forfeited and the surety and bail agent have been notified  
6           as described in section 12 of this chapter.

7           SECTION 2. IC 27-10-2-12, AS AMENDED BY P.L.105-2010,  
8           SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9           UPON PASSAGE]: Sec. 12. (a) Only if a defendant does not appear as  
10          provided in the bond:

11           (1) the court shall:

12                   (A) issue a warrant for the defendant's arrest; and

13                   (B) order the bail agent and the surety to surrender the  
14                   defendant to the court immediately;

15           (2) the clerk shall, less than thirty (30) days after the defendant's  
16           failure to appear, ~~mail~~ **send** notice of the order **by mail or**  
17           **electronic mail** to both:

18                   (A) the bail agent; and

19                   (B) the surety;

20           at each of the **mailing or electronic mailing** addresses indicated  
21           in the bonds; and

22           (3) if the defendant later is arrested or otherwise appears:

23                   (A) the court shall order that the surety be released from the  
24                   bond; and

25                   (B) after the court issues an order under clause (A), the  
26                   surety's original undertaking shall be reinstated if the surety  
27                   files a written request **or a request by electronic mail** for the  
28                   reinstatement of the undertaking with the court.

29           This subsection may not be construed to prevent a court from revoking  
30           or resetting bail.

31           (b) The bail agent or surety must:

32                   (1) produce the defendant; or

33                   (2) prove within ~~three one hundred sixty-five (365)~~ **eighty (180)**  
34                   days:

35                   (A) that the appearance of the defendant was prevented:

36                           (i) by the defendant's illness or death;

37                           (ii) because the defendant was at the scheduled time of  
38                           appearance or currently is in the custody of the United  
39                           States, a state, or a political subdivision of the United States  
40                           or a state;

41                           (iii) because the required notice was not given; or

42                           (iv) because authorities have refused to extradite the

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1 defendant, by a preponderance of the evidence; and  
2 (B) the defendant's absence was not with the consent or  
3 connivance of the sureties.

4 **However, if a defendant is arrested before a court enters judgment**  
5 **on the forfeiture of a bond and the court has actual knowledge that**  
6 **the defendant was or is in the custody of the United States pending**  
7 **deportation from the United States, the court shall release the bail**  
8 **agent and surety from liability from the bond.**

9 (c) If the bail agent or surety does not comply with the terms of  
10 subsection (b) within one hundred ~~twenty (120)~~ **eighty (180)** days after  
11 ~~the mailing of the notice required under subsection (a)(2) is sent,~~ a late  
12 surrender fee shall be assessed against the bail agent or surety as  
13 follows:

14 (1) If compliance occurs more than one hundred twenty (120)  
15 days but not more than one hundred eighty (180) days after the  
16 mailing of notice, the late surrender fee is twenty percent (20%)  
17 of the face value of the bond:

18 (2) If compliance occurs more than one hundred eighty (180) days  
19 but not more than two hundred ten (210) days after the mailing of  
20 notice, the late surrender fee is thirty percent (30%) of the face  
21 value of the bond:

22 (3) If compliance occurs more than two hundred ten (210) days  
23 but not more than two hundred forty (240) days after the mailing  
24 of notice, the late surrender fee is fifty percent (50%) of the face  
25 value of the bond:

26 (4) If compliance occurs more than two hundred forty (240) days  
27 but not more than three hundred sixty-five (365) days after the  
28 mailing of notice, the late surrender fee is eighty percent (80%)  
29 of the face value of the bond:

30 (5) If the bail agent or surety does not comply with the terms of  
31 subsection (b) within three hundred sixty-five (365) days of the  
32 mailing of notice required under subsection (a)(2), the late  
33 surrender fee is **in an amount equal to** eighty percent (80%) of  
34 the face value of the bond.

35 All late surrender fees are due as of the date of compliance with  
36 subsection (b) or three hundred sixty-five (365) days after the mailing  
37 of notice required under subsection (a)(2), whichever is earlier, and  
38 shall be paid by the surety when due. If the **bail agent or** surety fails  
39 to pay, then the late surrender fees shall be paid by the commissioner  
40 as provided in subsection (f).

41 (d) If the bail agent or surety does not comply with the terms of  
42 subsection (b) within ~~three one hundred sixty-five (365)~~ **eighty (180)**

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1 days ~~of after~~ the ~~mailing of~~ notice ~~is sent as~~ required by subsection  
 2 (a)(2), the court shall declare forfeited an amount equal to twenty  
 3 percent (20%) of the face value of the bond. The court shall  
 4 immediately enter judgment on the forfeiture, without pleadings and  
 5 without change of judge or change of venue. ~~and assess against the bail~~  
 6 ~~agent or surety all actual costs resulting from the defendant's failure to~~  
 7 ~~appear. These costs include jury fees, witness fees, and any other~~  
 8 ~~documented costs incurred by the court.~~

9 (e) Proceedings relative to the bond, forfeiture of a bond, judgment  
 10 on the forfeiture, execution of judgment, or stay of proceedings shall  
 11 be in the court in which the bond was posted. ~~Costs and~~ Late surrender  
 12 ~~fee fees~~ assessed against a bail agent or surety under subsection (c)  
 13 shall be satisfied without further order of the court as provided in  
 14 subsection (f). The court may waive the late surrender fee or extend the  
 15 period for payment beyond the statutorily permitted period, or both, if  
 16 the following conditions are met:

- 17 (1) A written request is filed with the court and the prosecutor.  
 18 (2) The surety or bail agent provides evidence satisfactory to the  
 19 court that diligent efforts were made to locate the defendant.

20 (f) In the case of an insurer, if the fees ~~costs~~, or judgment is not  
 21 paid, then the clerk shall mail the notice to the commissioner. The  
 22 commissioner shall:

- 23 (1) within ten (10) days of receipt of the notice forward a copy by  
 24 certified mail to the insurer;  
 25 (2) forty-five (45) days after receipt of the notice from the clerk,  
 26 if the commissioner has not been notified by the clerk that the  
 27 fees or judgment or both have been paid, pay the late surrender  
 28 fee assessment ~~costs~~, and any judgment of forfeiture ordered by  
 29 the court from funds the insurer has on deposit with the  
 30 department of insurance;  
 31 (3) upon paying the assessment ~~costs~~, and judgment, if any, from  
 32 funds on deposit, immediately revoke the license of the insurer,  
 33 if the satisfaction causes the deposit remaining to be less than the  
 34 amount required by this article; and  
 35 (4) within ten (10) days after revoking a license, notify the insurer  
 36 and the insurer's agents and the clerk of each county in Indiana of  
 37 the revocation and the insurer shall be prohibited from conducting  
 38 a bail bond business in Indiana until the deposit has been  
 39 replenished.

40 (g) The notice mailed by the clerk to the commissioner pursuant to  
 41 the terms of subsection (f) shall include:

- 42 (1) the date on which the defendant originally failed to appear as

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1 provided in the bond;  
 2 (2) the date of compliance the bail agent or surety failed to  
 3 **comply** with subsection (b); if compliance was achieved within  
 4 three hundred sixty-five (365) days after the mailing of the notice  
 5 required by subsection (a)(2);  
 6 (3) the amount of the bond;  
 7 (4) the dollar amount of the late surrender fee due;  
 8 (5) the amount of costs resulting from the defendant's failure to  
 9 appear; and  
 10 (6) (5) if applicable, the dollar amount of the judgment of  
 11 forfeiture entered by the court.  
 12 (h) Any surety on a bond may appeal to the court of appeals as in  
 13 other civil cases without moving for a new trial, and on the appeal the  
 14 evidence, if any, shall be reviewed.  
 15 (i) Fifty percent (50%) of The court in which the bond was posted  
 16 shall retain the late surrender fees collected under this chapter. shall  
 17 be deposited in the police pension trust fund established under  
 18 IC 36-8-10-12 and the remaining fifty percent (50%) shall be deposited  
 19 in the county extradition fund established under IC 35-33-14. Late  
 20 surrender fees retained under this subsection may be used by a  
 21 court to defray the costs of:  
 22 (1) operating the court;  
 23 (2) extraditing criminal defendants; or  
 24 (3) operating diversion programs.  
 25 (j) Before June 1, 2011, each surety and bail agent shall  
 26 establish and maintain an electronic mail address for purposes of  
 27 conducting business under this section.  
 28 SECTION 3. IC 35-33-14 IS REPEALED [EFFECTIVE JULY 1,  
 29 2013].  
 30 SECTION 4. [EFFECTIVE UPON PASSAGE] (a) Any funds  
 31 remaining in a county extradition fund established by IC 35-33-14,  
 32 as repealed by this act, on June 30, 2013, shall be transferred on  
 33 July 1, 2013, to the general fund of the county in which the county  
 34 extradition fund was established.  
 35 (b) This SECTION expires July 2, 2013.  
 36 SECTION 5. An emergency is declared for this act.

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