

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 561 be amended to read as follows:

- 1 Page 36, between lines 31 and 32, begin a new paragraph and insert:
2 "SECTION 39. IC 35-33-8-3.2, AS AMENDED BY P.L.94-2010,
3 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2011]: Sec. 3.2. (a) **Except as provided in subsection (b)**, a
5 court may admit a defendant to bail and impose any of the following
6 conditions 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, where
14 thirty-three hundredths (0.33) of the true tax value less
15 encumbrances is at least equal to the amount of the bail;
16 (D) post a real estate bond; or
17 (E) perform any combination of the requirements described in
18 clauses (A) through (D).
19 If the court requires the defendant to deposit cash or cash and
20 another form of security as bail, the court may require the
21 defendant and each person who makes the deposit on behalf of the
22 defendant to execute an agreement that allows the court to retain
23 all or a part of the cash to pay publicly paid costs of
24 representation and fines, costs, fees, and restitution that the court
25 may order the defendant to pay if the defendant is convicted. The
26 defendant must also pay the fee required by subsection ~~(d)~~ (e).
27 (2) Require the defendant to execute:
28 (A) a bail bond by depositing cash or securities with the clerk
29 of the court in an amount not less than ten percent (10%) of
30 the bail; and

- 1 (B) an agreement that allows the court to retain all or a part of
2 the cash or securities to pay fines, costs, fees, and restitution
3 that the court may order the defendant to pay if the defendant
4 is convicted.
- 5 A portion of the deposit, not to exceed ten percent (10%) of the
6 monetary value of the deposit or fifty dollars (\$50), whichever is
7 the lesser amount, may be retained as an administrative fee. The
8 clerk shall also retain from the deposit under this subdivision
9 fines, costs, fees, and restitution as ordered by the court, publicly
10 paid costs of representation that shall be disposed of in
11 accordance with subsection ~~(b)~~; (c), and the fee required by
12 subsection ~~(d)~~; (e). In the event of the posting of a real estate
13 bond, the bond shall be used only to insure the presence of the
14 defendant at any stage of the legal proceedings, but shall not be
15 foreclosed for the payment of fines, costs, fees, or restitution. The
16 individual posting bail for the defendant or the defendant
17 admitted to bail under this subdivision must be notified by the
18 sheriff, court, or clerk that the defendant's deposit may be
19 forfeited under section 7 of this chapter or retained under
20 subsection ~~(b)~~ (c).
- 21 (3) Impose reasonable restrictions on the activities, movements,
22 associations, and residence of the defendant during the period of
23 release.
- 24 (4) Except as provided in section 3.6 of this chapter, require the
25 defendant to refrain from any direct or indirect contact with an
26 individual and, if the defendant has been charged with an offense
27 under IC 35-46-3, any animal belonging to the individual,
28 including if the defendant has not been released from lawful
29 detention.
- 30 (5) Place the defendant under the reasonable supervision of a
31 probation officer, pretrial services agency, or other appropriate
32 public official. If the court places the defendant under the
33 supervision of a probation officer or pretrial services agency, the
34 court shall determine whether the defendant must pay the pretrial
35 services fee under section 3.3 of this chapter.
- 36 (6) Release the defendant into the care of a qualified person or
37 organization responsible for supervising the defendant and
38 assisting the defendant in appearing in court. The supervisor shall
39 maintain reasonable contact with the defendant in order to assist
40 the defendant in making arrangements to appear in court and,
41 where appropriate, shall accompany the defendant to court. The
42 supervisor need not be financially responsible for the defendant.
- 43 (7) Release the defendant on personal recognizance unless:
44 (A) the state presents evidence relevant to a risk by the
45 defendant:
46 (i) of nonappearance; or

1 (ii) to the physical safety of the public; and
 2 (B) the court finds by a preponderance of the evidence that the
 3 risk exists.

4 (8) Require a defendant charged with an offense under IC 35-46-3
 5 to refrain from owning, harboring, or training an animal.

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

9 **(b) If a defendant is charged with a felony described in**
 10 **IC 35-41-1-5.5 and the court admits the defendant to bail, the**
 11 **court:**

12 **(1) shall admit the defendant to bail under subsection (a)(1);**

13 **(2) may not admit the defendant to bail under subsection**
 14 **(a)(2); and**

15 **(3) may impose on the defendant any other appropriate**
 16 **condition set forth in subsection (a)(3) through (a)(9).**

17 ~~(b)~~ (c) Within thirty (30) days after disposition of the charges
 18 against the defendant, the court that admitted the defendant to bail shall
 19 order the clerk to remit the amount of the deposit remaining under
 20 subsection (a)(2) to the defendant. The portion of the deposit that is not
 21 remitted to the defendant shall be deposited by the clerk in the
 22 supplemental public defender services fund established under
 23 IC 33-40-3.

24 ~~(c)~~ (d) For purposes of subsection ~~(b)~~, (c), "disposition" occurs
 25 when the indictment or information is dismissed or the defendant is
 26 acquitted or convicted of the charges.

27 ~~(d)~~ (e) Except as provided in subsection ~~(c)~~ (f), the clerk of the court
 28 shall:

29 (1) collect a fee of five dollars (\$5) from each bond or deposit
 30 required under subsection (a)(1); and

31 (2) retain a fee of five dollars (\$5) from each deposit under
 32 subsection (a)(2).

33 The clerk of the court shall semiannually remit the fees collected under
 34 this subsection to the board of trustees of the public employees'
 35 retirement fund for deposit in the special death benefit fund. The fee
 36 required by subdivision (2) is in addition to the administrative fee
 37 retained under subsection (a)(2).

38 ~~(e)~~ (f) With the approval of the clerk of the court, the county sheriff
 39 may collect the bail posted under this section. The county sheriff shall
 40 remit the bail to the clerk of the court by the following business day
 41 and remit monthly the five dollar (\$5) special death benefit fee to the
 42 county auditor.

43 ~~(f)~~ (g) When a court imposes a condition of bail described in
 44 subsection (a)(4):

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

46 (2) the prosecuting attorney shall file a confidential form

- 1 prescribed or approved by the division of state court
- 2 administration with the clerk."
- 3 Renumber all SECTIONS consecutively.
(Reference is to SB 561 as printed February 18, 2011.)

Senator HEAD