
SENATE BILL No. 425

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-12-11; IC 27-10-2; IC 35-33-14-5.

Synopsis: Bail. Provides that an undertaking for bail does not expire 36 months after it is posted for the release of a defendant from custody if the defendant remains a fugitive after the 36 month period. Requires sureties and bail agents to establish and maintain electronic mail addresses before June 1, 2013. 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, from 365 days to 180 days, by which a surety and bail agent must produce a defendant or provide a valid reason for the defendant's failure to appear. Changes the period of time used to assess late surrender fees against a surety and bail agent. Specifies that 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. Specifies that late surrender fees collected by a court in which a bond was posted must be used as follows: (1) Twenty-five percent of the fees must be retained by the court to defray the costs of operating the court, defray the costs of operating diversion programs, and defray the costs of extraditing criminal defendants by depositing some or all of the fees in the county extradition fund. (2) Twenty-five percent of the fees must be deposited in the county electronic monitoring fund to defray the costs of operating electronic monitoring programs that involve indigent offenders. (3) Twenty-five percent of the fees must be retained by the court to defray the costs of operating the court. (4) Twenty-five percent of the fees must be deposited in the county general fund and dedicated
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Effective: Upon passage; July 1, 2013.

Rogers

January 10, 2013, read first time and referred to Committee on Corrections & Criminal Law.



Digest Continued

to the maintenance of the jail in the county. Removes a provision that requires 50% of the late surrender fees to be deposited in police pension trust funds. Establishes a county electronic monitoring fund in each county. Makes conforming amendments.

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Introduced

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 425

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 11-12-11 IS ADDED TO THE INDIANA CODE
 2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2013]:
 4 **Chapter 11. County Electronic Monitoring Fund**
 5 **Sec. 1. As used in this chapter, "fund" refers to a county**
 6 **electronic monitoring fund established by section 2 of this chapter.**
 7 **Sec. 2. There is established in each county a county electronic**
 8 **monitoring fund.**
 9 **Sec. 3. (a) Except as provided in subsection (b), the fund shall be**
 10 **used to defray the costs incurred by a county to operate electronic**
 11 **monitoring programs that involve indigent offenders.**
 12 **(b) A county may withdraw money in the fund one (1) time:**
 13 **(1) to compensate the county for the initial costs incurred by**
 14 **the county to begin operating a county electronic monitoring**
 15 **program; and**



1 (2) if money in the fund is equal to an amount that is at least
2 two (2) times the amount of the initial costs incurred by the
3 county to begin operating the program.

4 Sec. 4. The fund shall be administered by the county auditor.

5 Sec. 5. The fund consists of late surrender fees deposited in the
6 fund under IC 27-10-2-12(h)(2).

7 Sec. 6. The expenses of administering the fund shall be paid
8 from money in the fund.

9 Sec. 7. Money in the county electronic monitoring fund at the
10 end of a particular calendar year does not revert to any other fund
11 but remains in the county electronic monitoring fund.

12 SECTION 2. IC 27-10-2-3, AS AMENDED BY P.L.105-2010,
13 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 UPON PASSAGE]: Sec. 3. (a) An undertaking is valid if it states:

- 15 (1) the court where the defendant is to appear;
- 16 (2) the amount of the bail; and
- 17 (3) that it was made before an official legally authorized to take
18 the bond.

19 (b) A surety remains liable on an undertaking despite:

- 20 (1) any lack of the surety's qualifications as required by section 4
21 of this chapter;
- 22 (2) any other agreement that is expressed in the undertaking;
- 23 (3) any failure of the defendant to join in the undertaking; or
- 24 (4) any other defect of form or record, or any other irregularity,
25 except as to matters covered by subsection (a).

26 (c) ~~Any An~~ undertaking ~~written after August 31, 1985, shall expire~~
27 **expires** thirty-six (36) months after it is posted for the release of a
28 defendant from custody. This section does not apply to cases in which:

- 29 (1) a bond has been declared to be forfeited and the surety and
30 bail agent have been notified as described in section 12 of this
31 chapter; **or**
- 32 (2) **the defendant remains a fugitive after the thirty-six (36)**
33 **month period.**

34 SECTION 3. IC 27-10-2-10, AS AMENDED BY P.L.2-2005,
35 SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 UPON PASSAGE]: Sec. 10. (a) Recognizances for the appearance of
37 prisoners shall in all cases and in all courts be in writing, be taken with

38 at least one (1) resident freehold surety or be secured by a surety
39 company, and be substantially in the following form:

40 STATE OF INDIANA)
41) SS:
42 COUNTY OF _____)

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State of Indiana.

vs.

John Doe

We, A B and C D, jointly and severally acknowledge ourselves bound to the state of Indiana in _____ dollars. If A B (the prisoner) shall appear on the ____ day of _____, 20__, in the _____ court, to answer a charge of (here state the offense) and from day to day and from term to term thereof, and abide the order of the court until the cause is determined and not depart therefrom without leave, then this recognizance shall be void, else to remain in full force.

If the above named defendant does not appear at any time fixed in this bond, the court shall order CD (the surety) to produce the defendant. The court shall ~~mail~~ **send** notice of this order to CD, the surety at _____ and _____ in _____ county and state of Indiana. If the surety does not produce the defendant, and does not pay all ~~costs and~~ late surrender fees in compliance with IC 27-10-2-12, the court shall, ~~three one hundred sixty-five (365)~~ **eighty (180)** days after ~~the mailing of~~ the above notice ~~is sent~~ to the surety, declare the bond forfeited, enter judgment forthwith against the surety, and certify the judgment to the clerk for record. Such forfeiture shall be without pleadings and without change of judge or change of venue. The obligors on such bond may appeal to the ruling of the court and appeal to the court of appeals as in other civil cases, and on appeal the evidence may be reviewed. Execution shall issue forthwith to the sheriff against the properties of each of us to be levied as other executions are levied.

Witness our hand and seals this ____ day of _____, 20__.

A B _____ (SEAL)

C D _____ (SEAL)

taken and approved this ____ day of _____, 20__.

(Officer taking surety)

Affidavits shall be taken from each personal surety substantially as follows:

State of Indiana)
County of _____)

I, C D, being duly sworn, on oath say, that I am worth in my personal rights and name, over and above all debts and liabilities of any and every kind, not less than _____ dollars, and that I possess real estate in my own name, located in the above-named county, which is worth over and above all encumbrances and liens, more than _____ dollars; that I am surety on the following recognizance bonds and none other,

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1 aggregating the total amount of _____ to-wit: (Here name bonds
2 and amounts, if any) _____, And that I am not surety on any
3 recognizance bond of any kind in any court which bond has been
4 forfeited which judgment remains unpaid.

5 C D _____ (SEAL)

6 Subscribed and sworn to before me, this ___ day of _____,
7 20__.

8 _____
9 (Officer administering oath)

10 (b) Printed forms of the above bonds shall be kept by all clerks of
11 court that are authorized by law to admit prisoners to bail and shall be
12 supplied by the clerks to sheriffs.

13 (c) For the purposes of this article, a cause is determined when a:

- 14 (1) judgment of conviction or acquittal is entered for a
- 15 misdemeanor;
- 16 (2) judgment is withheld in a misdemeanor case;
- 17 (3) judgment of acquittal is entered in a felony case;
- 18 (4) sentence is imposed in a felony case; or
- 19 (5) defendant has been ordered or admitted to a diversion
- 20 program.

21 SECTION 4. IC 27-10-2-12, AS AMENDED BY P.L.105-2010,
22 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 UPON PASSAGE]: Sec. 12. (a) Only if a defendant does not appear as
24 provided in the bond:

- 25 (1) the court shall:
 - 26 (A) issue a warrant for the defendant's arrest; and
 - 27 (B) order the bail agent and the surety to surrender the
 - 28 defendant to the court immediately;
- 29 (2) the clerk shall, ~~less~~ **not more** than thirty (30) days after the
- 30 defendant's failure to appear, ~~mail~~ **send** notice of the order **by**
- 31 **mail or electronic mail** to both:
 - 32 (A) the bail agent; and
 - 33 (B) the surety;
- 34 at each of the **mailing or electronic mail** addresses indicated in
- 35 the bonds; and
- 36 (3) if the defendant later is arrested or otherwise appears:
 - 37 (A) the court shall order that the surety be released from the
 - 38 bond; and
 - 39 (B) after the court issues an order under clause (A), the
 - 40 surety's original undertaking shall be reinstated if the surety
 - 41 files a written request **or a request by electronic mail** for the
 - 42 reinstatement of the undertaking with the court.

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

3 (b) The bail agent or surety must:

4 (1) produce the defendant; or

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

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

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

9 (ii) because the defendant was at the scheduled time of
10 appearance or currently is in the custody of the United
11 States, a state, or a political subdivision of the United States
12 or a state;

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

14 (iv) because authorities have refused to extradite the
15 defendant, by a preponderance of the evidence; and

16 (B) the defendant's absence was not with the consent or
17 connivance of the sureties.

18 (c) If the bail agent or surety does not comply with the terms of
19 subsection (b) within one hundred ~~twenty (120)~~ **eighty (180)** days after
20 the mailing of the notice **is sent as** required under subsection (a)(2):

21 (1) a late surrender fee shall be assessed against the bail agent or
22 surety as follows:

23 (1) If compliance occurs more than one hundred twenty (120)
24 days but not more than one hundred eighty (180) days after the
25 mailing of notice, the late surrender fee is twenty percent (20%)
26 of the face value of the bond.

27 (2) If compliance occurs more than one hundred eighty (180) days
28 but not more than two hundred ten (210) days after the mailing of
29 notice, the late surrender fee is thirty percent (30%) of the face
30 value of the bond.

31 (3) If compliance occurs more than two hundred ten (210) days
32 but not more than two hundred forty (240) days after the mailing
33 of notice, the late surrender fee is fifty percent (50%) of the face
34 value of the bond.

35 (4) If compliance occurs more than two hundred forty (240) days
36 but not more than three hundred sixty-five (365) days after the
37 mailing of notice, the late surrender fee is eighty percent (80%)
38 of the face value of the bond.

39 (5) If the bail agent or surety does not comply with the terms of
40 subsection (b) within three hundred sixty-five (365) days of the
41 mailing of notice required under subsection (a)(2); the late
42 surrender fee is **in an amount equal to** eighty percent (80%) of

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1 the face value of the bond; and
 2 **(2) the bond shall be declared forfeited and judgment entered**
 3 **in an amount equal to twenty percent (20%) of the face value**
 4 **of the bond without pleadings and without change of judge or**
 5 **change of venue.**

6 All late surrender fees are due as of the date of compliance with
 7 subsection (b) or three hundred sixty-five (365) days after the mailing
 8 of notice required under subsection (a)(2), whichever is earlier, and
 9 shall be paid by the surety when due. If the surety fails to pay, then the
 10 late surrender fees ~~fee~~ and forfeiture shall be paid by the
 11 commissioner as provided in subsection (f): **(e).**

12 **(d)** If the bail agent or surety does not comply with the terms of
 13 subsection (b) within three hundred sixty-five (365) days of the mailing
 14 of notice required by subsection (a)(2), the court shall declare forfeited
 15 an amount equal to twenty percent (20%) of the face value of the bond.
 16 The court shall immediately enter judgment on the forfeiture, without
 17 pleadings and without change of judge or change of venue and assess
 18 against the bail agent or surety all actual costs resulting from the
 19 defendant's failure to appear. These costs include jury fees, witness
 20 fees, and any other documented costs incurred by the court.

21 **(e) (d)** Proceedings relative to the bond, forfeiture of a bond,
 22 judgment on the forfeiture, execution of judgment, or stay of
 23 proceedings shall be in the court in which the bond was posted. ~~Costs~~
 24 ~~and~~ **The** late surrender fee assessed against a bail agent or surety under
 25 subsection (c) shall be satisfied **as provided in subsection (c)** without
 26 ~~further an order of from~~ the court, as ~~provided in subsection (f)~~. The
 27 court may waive the late surrender fee or extend the period for payment
 28 beyond the statutorily permitted period, or both, if the following
 29 conditions are met:

30 (1) A written request **or a request by electronic mail** is filed
 31 with the court and the prosecutor.

32 (2) The surety or bail agent provides evidence satisfactory to the
 33 court that diligent efforts were made to locate the defendant.

34 **(f) (e)** In the case of an insurer, if the ~~fees, costs, fee~~ or judgment is
 35 not paid, then the clerk shall mail the notice to the commissioner. The
 36 commissioner shall:

37 (1) within ten (10) days of receipt of the notice forward a copy by
 38 certified mail to the insurer;

39 (2) forty-five (45) days after receipt of the notice from the clerk,
 40 if the commissioner has not been notified by the clerk that the
 41 ~~fees fee~~ or judgment or both have been paid, pay the late
 42 surrender fee assessment ~~costs~~, and any judgment of forfeiture

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- 1 ~~ordered by the court~~ **owed** from funds the insurer has on deposit
 2 with the department of insurance;
 3 (3) upon paying the assessment ~~costs~~; and judgment ~~if any~~; from
 4 funds on deposit, immediately revoke the license of the insurer,
 5 if the satisfaction causes the deposit remaining to be less than the
 6 amount required by this article; and
 7 (4) within ten (10) days after revoking a license, notify the insurer
 8 and the insurer's agents and the clerk of each county in Indiana of
 9 the revocation and the insurer shall be prohibited from conducting
 10 a bail bond business in Indiana until the deposit has been
 11 replenished.
 12 ~~(g)~~ **(f)** The notice mailed by the clerk to the commissioner pursuant
 13 to the terms of subsection ~~(f)~~ **(e)** shall include:
 14 (1) the date on which the defendant originally failed to appear as
 15 provided in the bond;
 16 ~~(2) the date of compliance with subsection (b), if compliance was~~
 17 ~~achieved within three hundred sixty-five (365) days after the~~
 18 ~~mailing of the notice required by subsection (a)(2);~~
 19 ~~(3)~~ **(2)** the amount of the bond;
 20 ~~(4)~~ **(3)** the dollar amount of the late surrender fee due;
 21 ~~(5) the amount of costs resulting from the defendant's failure to~~
 22 ~~appear; and~~
 23 ~~(6) if applicable;~~ **(4)** the dollar amount of the judgment of
 24 forfeiture. ~~entered by the court.~~
 25 ~~(h)~~ **(g)** Any surety on a bond may appeal to the court of appeals as
 26 in other civil cases without moving for a new trial, and on the appeal
 27 the evidence, if any, shall be reviewed.
 28 ~~(i) Fifty percent (50%) of (h)~~ **(h)** The late surrender fees collected under
 29 this chapter shall be deposited in the police pension trust fund
 30 established under IC 36-8-10-12 and the remaining fifty percent (50%)
 31 shall be deposited in the county extradition fund established under
 32 IC 35-33-14. **used as follows:**
 33 **(1) Twenty-five percent (25%) of the late surrender fees shall**
 34 **be retained by the court in which the bond was posted to do**
 35 **one (1) or more of the following:**
 36 **(A) Defray the costs of operating the court.**
 37 **(B) Defray the costs of operating diversion programs.**
 38 **(C) Defray the costs of extraditing criminal defendants by**
 39 **depositing some or all of the fees in the county extradition**
 40 **fund established under IC 35-33-14 by the county in which**
 41 **the court has jurisdiction.**
 42 **(2) Twenty-five percent (25%) of the late surrender fees shall**

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be deposited in the county electronic monitoring fund established under IC 11-12-11 in the county in which the bond was posted to defray the costs of operating electronic monitoring programs that involve indigent offenders.

(3) Twenty-five percent (25%) of the late surrender fees shall be retained by the court in which the bond was posted to defray the costs of operating the court.

(4) Twenty-five percent (25%) of the late surrender fees collected by the court in which the bond was posted shall be deposited in the county general fund:

- (A) of the county in which the court has jurisdiction; and
- (B) dedicated to the maintenance of the jail in the county.

(i) Any costs incurred in collecting late surrender fees shall be paid from the collected late surrender fees.

(j) Before June 1, 2013, each surety and bail agent shall establish and maintain an electronic mail address for purposes of conducting business under this section.

SECTION 5. IC 35-33-14-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. The fund consists of the portion of late surrender fees deposited in the fund under ~~IC 27-10-2-12(i)~~; IC 27-10-2-12(h)(1)(C).

SECTION 6. An emergency is declared for this act.

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