
HOUSE BILL No. 1484

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-8.

Synopsis: Bail. Allows a court to admit a defendant to bail by requiring the defendant to: (1) deposit cash or securities with the clerk of the court in an amount not less than 10% of the total amount of the bail; and (2) execute a bail bond with sufficient solvent sureties in an amount that, when combined with the amount of cash or securities deposited with the clerk, equals 100% of the total amount of the bail. (Current law allows the court to admit a defendant to bail by requiring the defendant to execute a bail bond by depositing cash or securities with the clerk of the court in an amount not less than 10% of the bail.)

Effective: July 1, 2013.

McMillin

January 22, 2013, read first time and referred to Committee on Courts and Criminal Code.

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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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HOUSE BILL No. 1484



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, AS AMENDED BY P.L.35-2012,
- 2 SECTION 107, IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2013]: Sec. 3.2. (a) A court may admit a
- 4 defendant to bail and impose any of the following conditions to assure
- 5 the defendant's appearance at any stage of the legal proceedings, or,
- 6 upon a showing of clear and convincing evidence that the defendant
- 7 poses a risk of physical danger to another person or the community, to
- 8 assure the public's physical safety:
- 9 (1) Require the defendant to:
- 10 (A) execute a bail bond with sufficient solvent sureties;
- 11 (B) deposit cash or securities in an amount equal to the bail;
- 12 (C) execute a bond secured by real estate in the county, where
- 13 thirty-three hundredths (0.33) of the true tax value less
- 14 encumbrances is at least equal to the amount of the bail;
- 15 (D) post a real estate bond; or
- 16 (E) perform any combination of the requirements described in
- 17 clauses (A) through (D).



1 If the court requires the defendant to deposit cash or cash and
 2 another form of security as bail, the court may require the
 3 defendant and each person who makes the deposit on behalf of the
 4 defendant to execute an agreement that allows the court to retain
 5 all or a part of the cash to pay publicly paid costs of
 6 representation and fines, costs, fees, and restitution that the court
 7 may order the defendant to pay if the defendant is convicted. The
 8 defendant must also pay the fee required by subsection (d).

9 (2) Require the defendant: ~~to execute~~

10 (A) ~~to: a bail bond by depositing~~

11 (i) **deposit** cash or securities with the clerk of the court in a
 12 amount not less than ten percent (10%) of the **total amount**
 13 **of the bail**; and

14 (ii) ~~execute~~ ~~(B)~~ an agreement that allows the court to retain
 15 all or a part of the cash or securities to pay fines, costs, fees,
 16 and restitution that the court may order the defendant to pay
 17 if the defendant is convicted; **and**

18 **(B) to execute a bail bond with sufficient solvent sureties in**
 19 **an amount that, when combined with the amount of cash**
 20 **or securities deposited under clause (A), equals one**
 21 **hundred percent (100%) of the total amount of the bail.**

22 A portion of the deposit **of cash or securities**, 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 **of**
 26 **cash or securities** under this subdivision fines, costs, fees, and
 27 restitution as ordered by the court, publicly paid costs of
 28 representation that shall be disposed of in accordance with
 29 subsection (b), and the fee required by subsection (d). In the event
 30 of the posting of a real estate bond, the bond shall be used only to
 31 insure the presence of the defendant at any stage of the legal
 32 proceedings, but shall not be foreclosed for the payment of fines,
 33 costs, fees, or restitution. The individual posting bail for the
 34 defendant or the defendant admitted to bail under this subdivision
 35 must be notified by the sheriff, court, or clerk that the defendant's
 36 deposit may be forfeited under section 7 of this chapter or
 37 retained under subsection (b).

38 (3) Impose reasonable restrictions on the activities, movements,
 39 associations, and residence of the defendant during the period of
 40 release.

41 (4) Except as provided in section 3.6 of this chapter, require the
 42 defendant to refrain from any direct or indirect contact with an

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1 individual and, if the defendant has been charged with an offense
 2 under IC 35-46-3, any animal belonging to the individual,
 3 including if the defendant has not been released from lawful
 4 detention.

5 (5) Place the defendant under the reasonable supervision of a
 6 probation officer, pretrial services agency, or other appropriate
 7 public official. If the court places the defendant under the
 8 supervision of a probation officer or pretrial services agency, the
 9 court shall determine whether the defendant must pay the pretrial
 10 services fee under section 3.3 of this chapter.

11 (6) Release the defendant into the care of a qualified person or
 12 organization responsible for supervising the defendant and
 13 assisting the defendant in appearing in court. The supervisor shall
 14 maintain reasonable contact with the defendant in order to assist
 15 the defendant in making arrangements to appear in court and,
 16 where appropriate, shall accompany the defendant to court. The
 17 supervisor need not be financially responsible for the defendant.

18 (7) Release the defendant on personal recognizance unless:

19 (A) the state presents evidence relevant to a risk by the
 20 defendant:

21 (i) of nonappearance; or

22 (ii) to the physical safety of the public; and

23 (B) the court finds by a preponderance of the evidence that the
 24 risk exists.

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

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

30 (b) Within thirty (30) days after disposition of the charges against
 31 the defendant, the court that admitted the defendant to bail shall order
 32 the clerk to remit the amount of the deposit **of cash or securities**
 33 remaining under subsection ~~(a)(2)~~ **(a)(2)(A)** to the defendant. The
 34 portion of the deposit that is not remitted to the defendant shall be
 35 deposited by the clerk in the supplemental public defender services
 36 fund established under IC 33-40-3.

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

40 (d) Except as provided in subsection (e), the clerk of the court shall:

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

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1 (2) retain a fee of five dollars (\$5) from each deposit **of cash or**
 2 **securities** under subsection ~~(a)(2)~~: **(a)(2)(A)**.

3 The clerk of the court shall semiannually remit the fees collected under
 4 this subsection to the board of trustees of the Indiana public retirement
 5 system for deposit in the special death benefit fund. The fee required
 6 by subdivision (2) is in addition to the administrative fee retained under
 7 subsection (a)(2).

8 (e) With the approval of the clerk of the court, the county sheriff
 9 may collect the bail posted under this section. The county sheriff shall
 10 remit the bail to the clerk of the court by the following business day
 11 and remit monthly the five dollar (\$5) special death benefit fee to the
 12 county auditor.

13 (f) When a court imposes a condition of bail described in subsection
 14 (a)(4):

- 15 (1) the clerk of the court shall comply with IC 5-2-9; and
 16 (2) the prosecuting attorney shall file a confidential form
 17 prescribed or approved by the division of state court
 18 administration with the clerk.

19 SECTION 2. IC 35-33-8-7, AS AMENDED BY P.L.105-2010,
 20 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2013]: Sec. 7. (a) If a defendant:

22 (1) was admitted to bail under section 3.2(a)(2) of this chapter;
 23 and

24 (2) has failed to appear before the court as ordered;
 25 the court shall, except as provided in subsection (b) or section 8(b) of
 26 this chapter, declare the bond forfeited not earlier than one hundred
 27 twenty (120) days after the defendant's failure to appear and issue a
 28 warrant for the defendant's arrest.

29 (b) In a criminal case, if the court having jurisdiction over the
 30 criminal case receives written notice of a pending civil action or
 31 unsatisfied judgment against the criminal defendant arising out of the
 32 same transaction or occurrence forming the basis of the criminal case,
 33 ~~funds~~ **cash or securities** deposited with the clerk of the court under
 34 section ~~3.2(a)(2)~~ **3.2(a)(2)(A)** of this chapter may not be declared
 35 forfeited by the court, and the court shall order the deposited ~~funds~~
 36 **cash or securities** to be held by the clerk. If there is an entry of final
 37 judgment in favor of the plaintiff in the civil action, and if the deposit
 38 **of cash and securities** and the bond are subject to forfeiture, the
 39 criminal court shall order payment of all or any part of the deposit to
 40 the plaintiff in the action, as is necessary to satisfy the judgment. The
 41 court shall then order the remainder of the deposit, if any, and the bond
 42 forfeited.

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

4 (d) After a bond has been forfeited under subsection (a) or (b), the
5 clerk shall mail notice of forfeiture to the defendant. In addition, unless
6 the court finds that there was justification for the defendant's failure to
7 appear, the court shall immediately enter judgment, without pleadings
8 and without change of judge or change of venue, against the defendant
9 for the amount of the bail bond, and the clerk shall record the
10 judgment.

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

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

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

16 (f) The clerk shall return a deposit, less the administrative fee, made
17 under section 3.2(a)(2) of this chapter to the defendant, if the defendant
18 appeared at trial and the other critical stages of the legal proceedings.

19 SECTION 3. IC 35-33-8-8 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. (a) If a defendant
21 was admitted to bail under section 3.2(a) of this chapter and the
22 defendant has knowingly and intentionally failed to appear before the
23 court as ordered, the court:

24 (1) shall issue a warrant for the defendant's arrest;

25 (2) may not release the defendant on personal recognizance; and

26 (3) may not set bail for the rearrest of the defendant on the
27 warrant at an amount that is less than the greater of:

28 (A) the amount of the original bail; or

29 (B) two thousand five hundred dollars (\$2,500);

30 in the form of a bond issued by an entity defined in IC 27-10-1-7
31 or the full amount of the bond in cash.

32 (b) In a criminal case, if the court having jurisdiction over the
33 criminal case receives written notice of a pending civil action or
34 unsatisfied judgment against the criminal defendant arising out of the
35 same transaction or occurrence forming the basis of the criminal case,
36 ~~funds cash or securities~~ deposited with the clerk of the court under
37 section ~~3.2(a)(2)~~ **3.2(a)(2)(A)** of this chapter may not be declared
38 forfeited by the court, and the court shall order the deposited ~~funds~~
39 **cash or securities** to be held by the clerk. If there is an entry of final
40 judgment in favor of the plaintiff in the civil action, and if the deposit
41 is subject to forfeiture, the criminal court shall order payment of all or
42 any part of the deposit to the plaintiff in the action, as is necessary to

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1 satisfy the judgment. The court shall then order the remainder of the
2 deposit, if any, forfeited.

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