

## **IC 35-33-9**

### **Chapter 9. Bail Upon Appeal**

#### **IC 35-33-9-1**

##### **Discretion of court; excepted felonies**

Sec. 1. A person convicted of an offense who has appealed or desires to appeal the conviction may file a petition to be admitted to bail pending appeal. The person may be admitted to bail pending appeal at the discretion of the court in which the case was tried, but he may not be admitted to it if he has been convicted of a Class A felony or a felony for which the court may not suspend the sentence under IC 35-50-2-2.

*As added by Acts 1981, P.L.298, SEC.2.*

#### **IC 35-33-9-2**

##### **Petition; filing**

Sec. 2. When a person has been sentenced to a term of imprisonment and has filed an appeal, that person may file a petition for bail pending appeal unless he is barred from admission to bail pending appeal by section 1 of this chapter. The petition must be filed in the court in which the case was tried, and a copy shall be sent to the prosecuting attorney of the circuit where the judgment was rendered.

*As added by Acts 1981, P.L.298, SEC.2.*

#### **IC 35-33-9-3**

##### **Bond; conditions of undertaking**

Sec. 3. (a) The sureties on all appeal bonds must possess the qualifications that are required of bail in criminal cases, except the undertaking must also include the defendant's promise to:

- (1) faithfully prosecute his appeal;
- (2) abide by the order and judgment of the court to which the cause is appealed;
- (3) surrender himself in execution of the judgment if the appeal be affirmed or dismissed; and
- (4) surrender himself to the trial court if required by the judgment upon reversal.

(b) If undertaking is given before an appeal has been perfected, the undertaking must include a promise that an appeal will be perfected by the defendant.

*As added by Acts 1981, P.L.298, SEC.2.*

#### **IC 35-33-9-4**

##### **Amount; order; surrender by surety and recommitment; failure to comply**

Sec. 4. (a) The court in which a petition to be admitted to bail is filed shall:

- (1) fix bail in a reasonable amount, considering the nature of the offense and the penalty adjudged, as will insure the compliance by the defendant with the terms of the bond; and

(2) make an order containing the terms of bail.

If the defendant furnishes bail to the satisfaction of the court, he shall be discharged from custody until he is required to surrender himself according to the terms of the order.

(b) The sureties on the bail bond may, at any time, surrender the principal of the bond to the court and be released from liability. If the court so orders, the defendant shall immediately be committed to the institution to which he was sentenced unless the court approves a new bond.

(c) If the defendant fails to comply with the terms of the bail bond:

(1) the bond shall be forfeited in the court from which the appeal was taken;

(2) a warrant shall be immediately issued for his arrest; and

(3) upon arrest, he shall be committed to the institution to which he was originally sentenced.

*As added by Acts 1981, P.L.298, SEC.2.*

#### **IC 35-33-9-5**

##### **Stay of judgment; commencement of sentence upon surrender; prior time credit**

Sec. 5. (a) Whenever any defendant is admitted to bail under the provisions of this chapter, the judgment of conviction shall be stayed until the appeal is disposed of. If the appeal is dismissed or the judgment affirmed, the term of imprisonment prescribed in the judgment shall commence to run from the time the defendant surrenders himself according to the terms of the bond.

(b) If the defendant is surrendered by his sureties under section 4, the judgment shall commence to run from the time of the surrender, and the defendant shall be immediately confined in the institution to which he was committed by the original sentence.

(c) If a defendant is admitted to bail under this chapter after he has commenced to serve his sentence, and his appeal is dismissed or the judgment from which the appeal was taken is affirmed, the defendant shall have credit on his term of sentence for the time he served before being admitted to bail. During the time any defendant is released from custody under this chapter, the judgment of conviction shall be stayed.

*As added by Acts 1981, P.L.298, SEC.2.*

#### **IC 35-33-9-6**

##### **Penalty of fine only; stay**

Sec. 6. Where a penalty in a criminal case is a fine only, the defendant may have a stay of execution on appeal as provided by law.

*As added by Acts 1981, P.L.298, SEC.2.*

#### **IC 35-33-9-7**

##### **Repealed**

*(Repealed by P.L.65-2004, SEC.23.)*

**IC 35-33-9-8**

**Credit card service fee**

Sec. 8. In addition to any other condition of bail imposed under this chapter, a defendant who posts bail by means of a credit card shall pay the credit card service fee under IC 33-37-6.

*As added by P.L.65-2004, SEC.12.*