HOUSE BILL No. 1077

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DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-8-3.2.

Synopsis: Bail requirements. Allows a court that admits a defendant to bail to require the defendant to post a combination of property and surety bonds as a condition of bail. Provides that if a court requires a defendant to deposit cash in an amount equal to the defendant's bail, the court shall require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution the court may order the defendant to pay if the defendant is convicted.

Effective: July 1, 2000.

Tincher

January 10, 2000, read first time and referred to Committee on Courts and Criminal Code.

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

HOUSE BILL No. 1077

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 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3.2. (a) A court may
3 admit a defendant to bail and impose any of the following conditions
4 to assure the defendant's appearance at any stage of the legal
5 proceedings, or, upon a showing of clear and convincing evidence that
6 the defendant poses a risk of physical danger to another person or the
7 community, to assure the public's physical safety:
8   (1) Require the defendant to:
9   (A) execute a bail bond with sufficient solvent sureties;
10   (B) deposit cash or securities in an amount equal to the bail;
11   (C) execute a bond secured by real estate in the county, where
12   thirty-three hundredths (0.33) of the true tax value less
13   encumbrances is at least equal to the amount of the bail;
14   (D) post a real estate bond; **or**
15   **(E) perform any combination of the requirements**
16   **described in clauses (A) through (D).**
17   **If the court requires the defendant to deposit cash in an**

1 **amount equal to the defendant's bail, the court shall require**
2 **the defendant and each person who makes the deposit on**
3 **behalf of the defendant to execute an agreement that allows**
4 **the court to retain all or a part of the cash to pay publicly**
5 **paid costs of representation and fines, costs, fees, and**
6 **restitution the court may order the defendant to pay if the**
7 **defendant is convicted.** The defendant must also pay the fee
8 required by subsection (d).
9 (2) Require the defendant to execute:
10 **(A)** a bail bond by depositing cash or securities with the clerk
11 of the court in an amount not less than ten percent (10%) of
12 the bail; ~~If the defendant is convicted,~~ **and**
13 **(B) an agreement that allows** the court ~~may~~ **to** retain all or a
14 part of the cash or securities to pay fines, costs, fees, and
15 restitution ~~if ordered by~~ the court **may order the defendant to**
16 **pay if the defendant is convicted.**
17 A portion of the deposit, not to exceed ten percent (10%) of the
18 monetary value of the deposit or fifty dollars ($50), whichever is
19 the lesser amount, may be retained as an administrative fee. The
20 clerk shall also retain from the deposit under this subdivision the
21 ~~following: (A) The~~ fee required by subsection (d), ~~(B)~~ fines, costs,
22 fees, and restitution as ordered by the court, ~~(C)~~ **and** publicly paid
23 costs of representation that shall be disposed of in accordance
24 with subsection (b). ~~(D)~~ In the event of the posting of a real estate
25 bond, the bond shall be used only to insure the presence of the
26 defendant at any stage of the legal proceedings, but shall not be
27 foreclosed for the payment of fines, costs, fees, or restitution. The
28 individual posting bail for the defendant or the defendant
29 admitted to bail under this subdivision must be notified by the
30 sheriff, court, or clerk that the defendant's deposit may be
31 forfeited under section 7 of this chapter or retained under
32 subsection (b).
33 (3) Impose reasonable restrictions on the activities, movements,
34 associations, and residence of the defendant during the period of
35 release.
36 (4) Require the defendant to refrain from any direct or indirect
37 contact with an individual.
38 (5) Place the defendant under the reasonable supervision of a
39 probation officer or other appropriate public official.
40 (6) Release the defendant into the care of a qualified person or
41 organization responsible for supervising the defendant and
42 assisting the defendant in appearing in court. The supervisor shall

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1        maintain reasonable contact with the defendant in order to assist
2        the defendant in making arrangements to appear in court and,
3        where appropriate, shall accompany the defendant to court. The
4        supervisor need not be financially responsible for the defendant.
5     (7) Release the defendant on personal recognizance unless:
6        (A) the state presents evidence relevant to a risk by the
7        defendant:
8           (i) of nonappearance; or
9           (ii) to the physical safety of the public; and
10       (B) the court finds by a preponderance of the evidence that the
11       risk exists.
12    (8) Impose any other reasonable restrictions designed to assure
13       the defendant's presence in court or the physical safety of another
14       person or the community.
15   (b) Within thirty (30) days after disposition of the charges against
16 the defendant, the court that admitted the defendant to bail shall order
17 the clerk to remit the amount of the deposit remaining under subsection
18 (a)(2) to the defendant. The portion of the deposit that is not remitted
19 to the defendant shall be deposited by the clerk in the supplemental
20 public defender services fund established under IC 33-9-11.5.
21   (c) For purposes of subsection (b), "disposition" occurs when the
22 indictment or information is dismissed, or the defendant is acquitted or
23 convicted of the charges.
24   (d) Except as provided by subsection (e), the clerk of the court shall:
25    (1) collect a fee of five dollars ($5) for each bond or deposit under
26       subsection (a)(1); and
27    (2) retain a fee of five dollars ($5) from each deposit under
28       subsection (a)(2).
29 The clerk of the court shall semiannually remit these fees to the board
30 of trustees of the public employees' retirement fund for deposit into the
31 special death benefit fund. The fee required by subdivision (2) is in
32 addition to the administrative fee retained under subsection (a)(2). This
33 subsection expires December 31, 1998.
34   (e) With the approval of the clerk of the court, the county sheriff
35 may collect the bail and fees required by subsection (d). The county
36 sheriff shall remit the bail to the clerk of the court by the following
37 business day and remit monthly the five dollar ($5) special death
38 benefit fee to the county auditor.
39   (f) When a court imposes a condition of bail described in subsection
40 (a)(4):
41    (1) the clerk of the court shall comply with IC 5-2-9; and
42    (2) the prosecuting attorney shall file a confidential form
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1   prescribed or approved by the division of state court
2   administration with the clerk.