

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6088

BILL NUMBER: SB 45

NOTE PREPARED: Nov 21, 2008

BILL AMENDED:

SUBJECT: Bail.

FIRST AUTHOR: Sen. Steele

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: This bill has the following provisions:

- A. It changes the Indiana bail law concerning: (1) credit card service fee payments; (2) notices to sureties and bond agents; (3) circumstances under which a cause is determined; (4) failure to appear; and (5) substitution of bail for deposits.
- B. It specifies that a court may require a defendant admitted to bail to execute a bail bond written by an insurer (instead of being executed with sufficient solvent sureties).
- C. It removes a provision that allows a court admitting a defendant to bail to require the defendant to post a real estate bond.
- D. It provides that if a person charged with a felony under IC 35-42 (offenses against the person) is admitted to bail, the person: (1) shall be admitted to bail by executing a bail bond written by an insurer, depositing cash or securities in an amount equal to the bail, or executing a bond secured by certain real estate; and (2) may not be admitted to bail by executing a bail bond by depositing cash or securities in an amount not less than 10% of the bail.

Effective Date: July 1, 2009.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures: *Person Charged with a Felony under IC 35-42 (Offenses Against the Person)* – Defendants who are accused of committing a felony involving a crime against a person would not be able to be released from jail prior to trial if they cannot secure a surety agency who would post bail or pay

either a full cash bond or a property bond.

Any effect on county operations will depend on the following factors:

- Each county's jail population and current capacity.
- The current policies that each court with a criminal jurisdiction has concerning pretrial release.
- The number of criminal defendants who are being detained.
- The financial status of the criminal defendants.

County Jail Population – Depending on the number of felony defendants, their residential status, and their ability to pay any additional fees that this bill requires, this bill could increase the number of felony defendants who are held in county jails awaiting trial. The percentage of felony defendants who are unable to pay the higher fees and be required to remain in jail prior to trial is not known. The average cost per day is approximately \$44.

In CY 2005 and 2006, the Department of Correction (DOC) reports the number of persons in county jails on a one-day count who are a felony offender sentenced to DOC as a felon and serving time in a county jail, sentenced as a misdemeanor, on work release, or awaiting trial. Using this table, LSA estimates that the number of offenders who are in jail and awaiting trial was almost 75% of the total jail population in CY 2006.

Inmates Identified in County Jails by DOC Jail Inspectors				
<u>Calendar Year</u>	<u>CY 2005</u>		<u>CY 2006</u>	
Felony Offenders Under DOC Contract	1,808	11.6%	1,439	9.1%
Sentenced as Misdemeanant	2,755	17.7%	2,563	16.1%
Offenders on Work Release	323	2.1%	409	2.6%
Criminal Defendants Awaiting Trial	10,991	70.7%	11,889	74.8%
Offenders in County Jails	15,554	100.0%	15,891	100.0%

Source: DOC Annual Inspection of Jails.

Local Court Rules and Policies – LSA examined the local rules of circuit and superior courts in 20 other counties that had posted their pretrial release policies on the [Indiana Supreme Court Website](#). The policies that these courts have vary and the effect that this bill would have on jails in these counties will vary as well. Generally, defendants who are arrested for murder will be detained in jail until the completion of the trial. For Class D felons, counties will allow for pretrial releases either with a reduced bail amount, a 10% cash bond that is deposited with the clerk of court, or with no bail depending on the crime and the defendant's criminal history and ties to the community. As examples, Clay, Delaware, and Elkhart Counties all permit the pretrial release of defendants under the conditions mentioned. In contrast, Johnson County requires bonding by surety agents for all defendants.

Offenders Committed to DOC with Jail Credit – LSA found no data about felony defendants who awaited trial and remained in jail compared to the number of defendants who were released from prison. However, DOC does report whether offenders in DOC facilities received a jail credit while awaiting trial. In CY 2007, 95% of offenders who were convicted of a crime against a person and committed to DOC had a jail term credit, which means that they had been detained in jail prior to trial and later committed to DOC for one or more days. The average length of time that these offenders reported receiving in jail credit ranged from 81 days for Class D felons to 654 days for offenders convicted of murder.

DOC Offenders Committed in CY 2007 for Crime Against a Person with Average Jail Credit				
Felony Class	Offenders with Jail Credit	Total Offenders	Percent with Jail Credit	Average Days in Jail
Murder	89	89	100%	654
Felony A	165	168	98%	476
Felony B	728	753	97%	281
Felony C	808	859	94%	188
Felony D	<u>703</u>	<u>769</u>	<u>91%</u>	<u>81</u>
Grand Total	2,493	2,638	95%	220

Background on Pre-Release Securities –

Type of Release	Defendant Required to:	Financial liability for failure to appear	Liable Party
Surety Bond	Pay fee (usually 10% of bail amount), plus collateral if required, to commercial bail agent.	Full Bail Amount	Surety Agent
Deposit Bond	Post deposit (usually 10% of bail amount) with court; a portion is refunded when case is completed.		Defendant
Full Cash Bond	Post full bail amount with court.		Defendant
Property Bond	Post property title as collateral with court.		Defendant

Explanation of Local Revenues:

State Agencies Affected:

Local Agencies Affected: Trial Courts and Sheriffs.

Information Sources: [Indiana Supreme Court Website](#), DOC Offender Databases.

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