

**SENATE BILL No. 45**

**DIGEST OF INTRODUCED BILL**

**Citations Affected:** IC 27-10-2; IC 35-33-8.

**Synopsis:** Bail. Makes changes to 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. 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). Removes a provision that allows a court admitting a defendant to bail to require the defendant to post a real estate bond. 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:** July 1, 2009.

**Steele**

January 7, 2009, read first time and referred to Committee on Judiciary.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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## SENATE BILL No. 45



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 27-10-2-3 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) An undertaking
- 3 is valid if it states:
- 4 (1) the court where the defendant is to appear;
- 5 (2) the amount of the bail; and
- 6 (3) that it was made before an official legally authorized to take
- 7 the bond.
- 8 (b) A surety remains liable on an undertaking despite:
- 9 (1) any lack of the surety's qualifications as required by section 4
- 10 of this chapter;
- 11 (2) any other agreement that is expressed in the undertaking;
- 12 (3) any failure of the defendant to join in the undertaking; or
- 13 (4) any other defect of form or record, or any other irregularity,
- 14 except as to matters covered by subsection (a).
- 15 (c) Any undertaking written after August 31, 1985, shall expire
- 16 thirty-six (36) months after it is posted for the release of a defendant
- 17 from custody. This section does not apply to cases in which a bond has



1 been declared to be forfeited or in which the defendant is a fugitive  
2 from the jurisdiction after thirty-six (36) months; and the surety and  
3 bail agent have been notified as described in section 12 of this  
4 chapter.

5 SECTION 2. IC 27-10-2-4 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. Every surety for the  
7 release of a person on bail **under this chapter or IC 35-33-8-3.2(a)(2)**  
8 shall be qualified as:

9 (1) an insurer as defined and meeting the qualifications prescribed  
10 in IC 27-1-5-1, and represented by a bail agent as defined in and  
11 meeting the qualifications prescribed in this article; or

- 12 (2) a person who:
  - 13 (A) has reached the age of eighteen (18) years;
  - 14 (B) is a citizen of the United States;
  - 15 (C) has been a bona fide resident of Indiana for at least one (1)
  - 16 year immediately preceding the execution of the bond;
  - 17 (D) is related to the person for whom release on bail is sought
  - 18 within the third degree of affinity; and
  - 19 (E) owns real or tangible personal property in Indiana with a
  - 20 net asset value that is acceptable to the proper authority
  - 21 approving the bond.

22 SECTION 3. IC 27-10-2-8 IS AMENDED TO READ AS  
23 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) The court shall  
24 give the bail agent or insurer ~~legal~~ **written** notice of the defendant's  
25 trial or hearing **for purposes of entering a plea** at least seventy-two  
26 (72) hours before the defendant's appearance is required unless the  
27 appearance is scheduled within seventy-two (72) hours from the  
28 execution of the bond.

29 (b) The defendant's failure to appear constitutes a breach of the  
30 undertaking. The court before which the cause is pending shall make  
31 a record of the breach at which time section 12 of this chapter then  
32 applies.

33 SECTION 4. IC 27-10-2-10, AS AMENDED BY P.L.2-2005,  
34 SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
35 JULY 1, 2009]: Sec. 10. (a) Recognizances for the appearance of  
36 prisoners shall in all cases and in all courts be in writing, be taken with  
37 at least one (1) resident freehold surety or be secured by a surety  
38 company, and be substantially in the following form:

39 STATE OF INDIANA )  
 40 ) SS:  
 41 COUNTY OF \_\_\_\_\_ )  
 42 State of Indiana.

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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 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 hundred sixty-five (365) days after the mailing of the above notice 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, aggregating the total amount of \_\_\_\_\_ to-wit: (Here name bonds and amounts, if any) \_\_\_\_\_, And that I am not surety on any

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1 recognizance bond of any kind in any court which bond has been  
2 forfeited which judgment remains unpaid.

3 C D \_\_\_\_\_ (SEAL)  
4 Subscribed and sworn to before me, this \_\_\_ day of \_\_\_\_\_,  
5 20\_\_.

6 \_\_\_\_\_  
7 (Officer administering oath)

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

11 (c) For the purposes of this article, a cause is determined when a:  
12 (1) judgment of conviction or acquittal is entered; ~~for a~~  
13 ~~misdemeanor;~~  
14 (2) judgment is withheld; ~~in a misdemeanor case;~~  
15 ~~(3) judgment of acquittal is entered in a felony case;~~  
16 ~~(4) sentence is imposed in a felony case;~~ or  
17 ~~(5) (3) defendant has been ordered or admitted to a diversion~~  
18 ~~program.~~

19 SECTION 5. IC 27-10-2-12 IS AMENDED TO READ AS  
20 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) **Only** if a  
21 defendant does not appear as provided in the bond:

- 22 (1) the court shall:  
23 (A) issue a warrant for the defendant's arrest; and  
24 (B) order the bail agent and the surety to surrender the  
25 defendant to the court immediately;  
26 (2) the clerk shall, **less than thirty (30) days after the**  
27 **defendant's failure to appear**, mail notice of the order to both:  
28 (A) the bail agent; and  
29 (B) the surety;  
30 at each of the addresses indicated in the bonds; and  
31 (3) if the defendant later is arrested or otherwise appears:  
32 (A) the court shall order that the surety be released from the  
33 bond; and  
34 (B) after the court issues an order under clause (A), the  
35 surety's original undertaking shall be reinstated if the surety  
36 files a written request for the reinstatement of the undertaking  
37 with the court.

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

- 40 (b) The bail agent or surety must:  
41 (1) produce the defendant; or  
42 (2) prove within three hundred sixty-five (365) days:

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- 1 (A) that the appearance of the defendant was prevented:  
 2 (i) by the defendant's illness or death;  
 3 (ii) because the defendant was at the scheduled time of  
 4 appearance or currently is in the custody of the United  
 5 States, a state, or a political subdivision of the United States  
 6 or a state; **or**  
 7 (iii) because the required notice was not given; **or**  
 8 **(iv) because authorities have failed or refused to**  
 9 **extradite the defendant, through evidence satisfactory to**  
 10 **the court; and**  
 11 (B) the defendant's absence was not with the consent or  
 12 connivance of the sureties.  
 13 (c) If the bail agent or surety does not comply with the terms of  
 14 subsection (b) within one hundred twenty (120) days after the mailing  
 15 of the notice required under subsection (a)(2), a late surrender fee shall  
 16 be assessed against the bail agent or surety as follows:  
 17 (1) If compliance occurs more than one hundred twenty (120)  
 18 days but not more than one hundred eighty (180) days after the  
 19 mailing of notice, the late surrender fee is twenty percent (20%)  
 20 of the face value of the bond.  
 21 (2) If compliance occurs more than one hundred eighty (180) days  
 22 but not more than two hundred ten (210) days after the mailing of  
 23 notice, the late surrender fee is thirty percent (30%) of the face  
 24 value of the bond.  
 25 (3) If compliance occurs more than two hundred ten (210) days  
 26 but not more than two hundred forty (240) days after the mailing  
 27 of notice, the late surrender fee is fifty percent (50%) of the face  
 28 value of the bond.  
 29 (4) If compliance occurs more than two hundred forty (240) days  
 30 but not more than three hundred sixty-five (365) days after the  
 31 mailing of notice, the late surrender fee is eighty percent (80%)  
 32 of the face value of the bond.  
 33 (5) If the bail agent or surety does not comply with the terms of  
 34 subsection (b) within three hundred sixty-five (365) days of the  
 35 mailing of notice required under subsection (a)(2), the late  
 36 surrender fee is eighty percent (80%) of the face value of the  
 37 bond.  
 38 All late surrender fees are due as of the date of compliance with  
 39 subsection (b) or three hundred sixty-five (365) days after the mailing  
 40 of notice required under subsection (a)(2), whichever is earlier, and  
 41 shall be paid by the surety when due. If the surety fails to pay, then the  
 42 late surrender fees shall be paid by the commissioner as provided in

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subsection (f).

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

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

- (1) A written request is filed with the court and the prosecutor.
- (2) The surety or bail agent provides evidence satisfactory to the court that diligent efforts were made to locate the defendant.

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

- (1) within ten (10) days of receipt of the notice forward a copy by certified mail to the insurer;
- (2) forty-five (45) days after receipt of the notice from the clerk, if the commissioner has not been notified by the clerk that the fees or judgment or both have been paid, pay the late surrender fee assessment, costs, and any judgment of forfeiture ordered by the court from funds the insurer has on deposit with the department of insurance;
- (3) upon paying the assessment, costs, and judgment, if any, from funds on deposit, immediately revoke the license of the insurer, if the satisfaction causes the deposit remaining to be less than the amount required by this article; and
- (4) within ten (10) days after revoking a license, notify the insurer and the insurer's agents and the clerk of each county in Indiana of the revocation and the insurer shall be prohibited from conducting a bail bond business in Indiana until the deposit has been replenished.

(g) The notice mailed by the clerk to the commissioner pursuant to

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- 1 the terms of subsection (f) shall include:
- 2 (1) the date on which the defendant originally failed to appear as
- 3 provided in the bond;
- 4 (2) the date of compliance with subsection (b), if compliance was
- 5 achieved within three hundred sixty-five (365) days after the
- 6 mailing of the notice required by subsection (a)(2);
- 7 (3) the amount of the bond;
- 8 (4) the dollar amount of the late surrender fee due;
- 9 (5) the amount of costs resulting from the defendant's failure to
- 10 appear; and
- 11 (6) if applicable, the dollar amount of the judgment of forfeiture
- 12 entered by the court.

13 (h) Any surety on a bond may appeal to the court of appeals as in

14 other civil cases without moving for a new trial, and on the appeal the

15 evidence, if any, shall be reviewed.

16 (i) Fifty percent (50%) of the late surrender fees collected under this

17 chapter shall be deposited in the police pension trust fund established

18 under IC 36-8-10-12 and the remaining fifty percent (50%) shall be

19 deposited in the county extradition fund established under IC 35-33-14.

20 SECTION 6. IC 27-10-2-17 IS ADDED TO THE INDIANA CODE

21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

22 1, 2009]: **Sec. 17. If a bail agent accepts a premium by means of a**

23 **credit card transaction, the person using the credit card shall pay,**

24 **in addition to the premium, any credit card service fee charged by**

25 **the credit card issuer in relation to the credit card transaction.**

26 SECTION 7. IC 35-33-8-3.2, AS AMENDED BY P.L.104-2008,

27 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

28 JULY 1, 2009]: **Sec. 3.2. (a) Except as provided in subsection (b), a**

29 **court may admit a defendant to bail and impose any of the following**

30 **conditions to assure the defendant's appearance at any stage of the legal**

31 **proceedings, or, upon a showing of clear and convincing evidence that**

32 **the defendant poses a risk of physical danger to another person or the**

33 **community, to assure the public's physical safety:**

- 34 (1) Require the defendant to:
- 35 (A) execute a bail bond ~~with sufficient solvent sureties;~~
- 36 **written by an insurer (as defined in IC 27-10-1-7);**
- 37 (B) deposit cash or securities in an amount equal to the bail;
- 38 (C) execute a bond secured by real estate in the county, where
- 39 thirty-three hundredths (0.33) of the true tax value less
- 40 encumbrances is at least equal to the amount of the bail; **or**
- 41 ~~(D) post a real estate bond; or~~
- 42 ~~(E)~~ **(D)** perform any combination of the requirements

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described in clauses (A) through ~~(D)~~: **(C)**.

If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may 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 that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection ~~(d)~~: **(e)**.

(2) Require the defendant to execute:

(A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and

(B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection ~~(b)~~, **(c)**, and the fee required by subsection ~~(d)~~: **(e)**. In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection ~~(b)~~: **(c)**. **IC 27-10-2-15 applies to a deposit made under this subdivision.**

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

(4) Require the defendant to refrain from any direct or indirect contact with an individual, including if the defendant has not been released from lawful detention.

(5) Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate

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public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

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

(7) Release the defendant on personal recognizance unless:  
(A) the state presents evidence relevant to a risk by the defendant:  
(i) of nonappearance; or  
(ii) to the physical safety of the public; and  
(B) the court finds by a preponderance of the evidence that the risk exists.

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

**(b) If a defendant is charged with a felony described in IC 35-42 and the court admits the defendant to bail, the court:**

- (1) shall admit the defendant to bail under subsection (a)(1);**
- (2) may not admit the defendant to bail under subsection (a)(2); and**
- (3) may impose on the defendant any other appropriate condition described in subsection (a)(3) through (a)(8).**

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

~~(c)~~ **(d)** For purposes of subsection ~~(b)~~; **(c)**, "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

~~(d)~~ **(e)** Except as provided in subsection ~~(c)~~; **(f)**, the clerk of the court shall:

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

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1 (2) retain a fee of five dollars (\$5) from each deposit under  
2 subsection (a)(2).

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

8 ~~(e)~~ (f) 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)~~ (g) When a court imposes a condition of bail described in  
14 subsection (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 8. IC 35-33-8-7 IS AMENDED TO READ AS  
20 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) If a defendant:

- 21 (1) was admitted to bail under section 3.2(a)(2) of this chapter;  
22 and  
23 (2) has failed to appear before the court as ordered;

24 the court shall, **except as provided in subsection (b) or section 8(b)**  
25 **of this chapter, declare the bond forfeited and** issue a warrant for the  
26 defendant's arrest.

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

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

42 (d) After a bond has been forfeited under subsection (a) or (b), the

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1 clerk shall mail notice of forfeiture to the defendant. In addition, unless  
2 the court finds that there was justification for the defendant's failure to  
3 appear, the court shall immediately enter judgment, without pleadings  
4 and without change of judge or change of venue, against the defendant  
5 for the amount of the bail bond, and the clerk shall record the  
6 judgment.

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

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

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

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

15 SECTION 9. IC 35-33-8-8 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) If a defendant  
17 was admitted to bail under section 3.2(a) of this chapter and the  
18 defendant has knowingly and intentionally failed to appear before the  
19 court as ordered, the court:

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

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

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

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

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

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

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

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