
SENATE BILL No. 250

DIGEST OF INTRODUCED BILL

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

Synopsis: Bail. Specifies that fees collected from a defendant admitted to bail that are deposited in the special death benefit fund are in addition to and not considered part of the defendant's bail. Increases the fees from \$5 to \$10.

Effective: July 1, 2009.

Wyss, Broden

January 7, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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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. 250



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.104-2008,
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 3.2. (a) A court may admit a defendant to bail and
4 impose any of the following conditions to assure the defendant's
5 appearance at any stage of the legal proceedings, or, upon a showing
6 of clear and convincing evidence that the defendant poses a risk of
7 physical danger to another person or the community, to assure the
8 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. **In**
 8 **addition to any bail a defendant is required to pay**, the
 9 defendant must also pay the fee required by subsection (d). **The**
 10 **fee required by subsection (d) is not part of a defendant's bail.**
 11 (2) Require the defendant to execute:
 12 (A) a bail bond by depositing cash or securities with the clerk
 13 of the court in an amount not less than ten percent (10%) of
 14 the bail; and
 15 (B) an agreement that allows the court to retain all or a part of
 16 the cash or securities to pay fines, costs, fees, and restitution
 17 that the court may order the defendant to pay if the defendant
 18 is convicted.
 19 A portion of the deposit, not to exceed ten percent (10%) of the
 20 monetary value of the deposit or fifty dollars (\$50), whichever is
 21 the lesser amount, may be retained as an administrative fee. The
 22 clerk shall also retain from the deposit under this subdivision
 23 fines, costs, fees, and restitution as ordered by the court **and**
 24 publicly paid costs of representation that shall be disposed of in
 25 accordance with subsection (b). **and In addition to the fines,**
 26 **costs, fees, and restitution retained by the clerk, the defendant**
 27 **shall pay the clerk** the fee required by subsection (d). **The fee**
 28 **required by subsection (d) is not refundable.** In the event of the
 29 posting of a real estate bond, the bond shall be used only to insure
 30 the presence of the defendant at any stage of the legal
 31 proceedings, but shall not be foreclosed for the payment of fines,
 32 costs, fees, or restitution. The individual posting bail for the
 33 defendant or the defendant admitted to bail under this subdivision
 34 must be notified by the sheriff, court, or clerk that the defendant's
 35 deposit may be forfeited under section 7 of this chapter or
 36 retained under subsection (b).
 37 (3) Impose reasonable restrictions on the activities, movements,
 38 associations, and residence of the defendant during the period of
 39 release.
 40 (4) Require the defendant to refrain from any direct or indirect
 41 contact with an individual, including if the defendant has not been
 42 released from lawful detention.

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

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

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

15 (A) the state presents evidence relevant to a risk by the
 16 defendant:

17 (i) of nonappearance; or

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

19 (B) the court finds by a preponderance of the evidence that the
 20 risk exists.

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

24 (b) Within thirty (30) days after disposition of the charges against
 25 the defendant, the court that admitted the defendant to bail shall order
 26 the clerk to remit the amount of the deposit remaining under subsection
 27 (a)(2) to the defendant. **The amount of the deposit remaining under**
 28 **subsection (a)(2) does not include the fee required by subsection**
 29 **(d).** The portion of the deposit that is not remitted to the defendant shall
 30 be deposited by the clerk in the supplemental public defender services
 31 fund established under IC 33-40-3.

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

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

36 (1) collect a fee of ~~five ten~~ dollars (~~\$5~~) (**\$10**) from **the defendant**
 37 **in addition to** each bond or deposit required under subsection
 38 (a)(1); and

39 (2) retain a fee of ~~five ten~~ dollars (~~\$5~~) (**\$10**) from **the defendant**
 40 **in addition to** each deposit under subsection (a)(2).

41 The clerk of the court shall semiannually remit the fees collected under
 42 this subsection to the board of trustees of the public employees'

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1 retirement fund for deposit in the special death benefit fund. ~~The fee~~
2 ~~required by subdivision (2) is in addition to the administrative fee~~
3 ~~retained under subsection (a)(2):~~

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

9 (f) When a court imposes a condition of bail described in subsection
10 (a)(4):

- 11 (1) the clerk of the court shall comply with IC 5-2-9; and
- 12 (2) the prosecuting attorney shall file a confidential form
- 13 prescribed or approved by the division of state court
- 14 administration with the clerk.

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