

HOUSE BILL No. 1351

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-8.

Synopsis: Bail bonds. Provides that, if a court admits a defendant to bail, the court may require the defendant to do one of the following as selected by the defendant: (1) Execute a bail bond with sufficient solvent sureties. (2) Deposit cash or securities in an amount equal to the bail. (3) Execute a bond secured by real estate in the county, where thirty-three hundredths of the true tax value less encumbrances is at least equal to the amount of the bail. (4) Execute a bail bond by depositing cash or executing a bail bond with sufficient solvent sureties with the clerk of the court in an amount not less than 10% of the bail. Provides that, if a defendant: (1) was admitted to bail by depositing cash or securities; and (2) has failed to appear before the court as ordered; the court shall declare the bond forfeited 120 days after the defendant's failure to appear and issue a warrant for the defendant's arrest. Specifies that, under the law concerning bail and bail procedure, a court: (1) may declare a bond forfeited only if a defendant fails to appear before the court as ordered; and (2) may not declare a bond forfeited because the defendant fails to perform any other condition of bail. Makes conforming amendments.

Effective: July 1, 2016.

Frizzell

January 12, 2016, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1351

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.35-2012,
2 SECTION 107, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2016]: Sec. 3.2. (a) A court may admit a
4 defendant to bail and impose any of the following conditions to assure
5 the defendant's appearance at any stage of the legal proceedings, or,
6 upon a showing of clear and convincing evidence that the defendant
7 poses a risk of physical danger to another person or the community, to
8 assure the public's physical safety:
9 (1) Require the defendant to **do one (1) of the following, as**
10 **selected by the defendant:**
11 (A) Execute a bail bond with sufficient solvent sureties.
12 (B) Deposit cash or securities in an amount equal to the bail.
13 (C) Execute a bond secured by real estate in the county, where
14 thirty-three hundredths (0.33) of the true tax value less
15 encumbrances is at least equal to the amount of the bail.
16 ~~(D) post a real estate bond; or~~
17 ~~(E) perform any combination of the requirements described in~~



1 ~~clauses (A) through (D):~~

2 **(D) Execute a bail bond in an amount not less than ten**
 3 **percent (10%) of the bail:**

4 **(i) by depositing cash with the clerk of the court; or**

5 **(ii) with sufficient solvent sureties.**

6 If the court requires the defendant elects to deposit cash or
 7 **execute a bail bond with sufficient solvent sureties in an**
 8 **amount not less than ten percent (10%) of the bail cash and**
 9 **another form of security as bail,** the court may require the
 10 defendant and each person who makes the deposit on behalf of the
 11 defendant to execute an agreement that allows the court to retain
 12 all or a part of the cash to pay publicly paid costs of
 13 representation and fines, costs, fees, and restitution that the court
 14 may order the defendant to pay if the defendant is convicted. The
 15 defendant must also pay the fee required by subsection (d).

16 ~~(2) Require the defendant to execute:~~

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

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

24 A portion of the deposit **under clause (D)**, not to exceed ten
 25 percent (10%) of the monetary value of the deposit or fifty dollars
 26 (\$50), whichever is the lesser amount, may be retained as an
 27 administrative fee. The clerk shall also retain from the deposit
 28 under this subdivision fines, costs, fees, and restitution as ordered
 29 by the court, publicly paid costs of representation that shall be
 30 disposed of in accordance with subsection (b), and the fee
 31 required by subsection (d). ~~In the event of the posting of a real~~
 32 ~~estate bond, the bond shall be used only to insure the presence of~~
 33 ~~the defendant at any stage of the legal proceedings, but shall not~~
 34 ~~be foreclosed for the payment of fines, costs, fees, or restitution.~~
 35 The individual posting bail for the defendant or the defendant
 36 admitted to bail under **this subdivision clause (D)** must be
 37 notified by the sheriff, court, or clerk that the defendant's deposit
 38 may be forfeited under section 7 of this chapter or retained under
 39 subsection (b).

40 ~~(3) (2) Impose reasonable restrictions on the activities,~~
 41 ~~movements, associations, and residence of the defendant during~~
 42 ~~the period of release.~~



1 ~~(4)~~ **(3)** Except as provided in section 3.6 of this chapter, require
 2 the defendant to refrain from any direct or indirect contact with an
 3 individual and, if the defendant has been charged with an offense
 4 under IC 35-46-3, any animal belonging to the individual,
 5 including if the defendant has not been released from lawful
 6 detention.

7 ~~(5)~~ **(4)** Place the defendant under the reasonable supervision of a
 8 probation officer, pretrial services agency, or other appropriate
 9 public official. If the court places the defendant under the
 10 supervision of a probation officer or pretrial services agency, the
 11 court shall determine whether the defendant must pay the pretrial
 12 services fee under section 3.3 of this chapter.

13 ~~(6)~~ **(5)** Release the defendant into the care of a qualified person
 14 or organization responsible for supervising the defendant and
 15 assisting the defendant in appearing in court. The supervisor shall
 16 maintain reasonable contact with the defendant in order to assist
 17 the defendant in making arrangements to appear in court and,
 18 where appropriate, shall accompany the defendant to court. The
 19 supervisor need not be financially responsible for the defendant.

20 ~~(7)~~ **(6)** Release the defendant on personal recognizance unless:
 21 (A) the state presents evidence relevant to a risk by the
 22 defendant:
 23 (i) of nonappearance; or
 24 (ii) to the physical safety of the public; and
 25 (B) the court finds by a preponderance of the evidence that the
 26 risk exists.

27 ~~(8)~~ **(7)** Require a defendant charged with an offense under
 28 IC 35-46-3 to refrain from owning, harboring, or training an
 29 animal.

30 ~~(9)~~ **(8)** Impose any other reasonable restrictions designed to
 31 assure the defendant's presence in court or the physical safety of
 32 another person or the community.

33 (b) Within thirty (30) days after disposition of the charges against
 34 the defendant, the court that admitted the defendant to bail shall order
 35 the clerk to remit the amount of the deposit remaining under subsection
 36 ~~(a)(2)~~ **(a)(1)(D)** to the defendant **or to the surety**. The portion of the
 37 deposit that is not remitted to the defendant shall be deposited by the
 38 clerk in the supplemental public defender services fund established
 39 under IC 33-40-3.

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



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

2 (1) collect a fee of five dollars (\$5) from each bond or deposit
3 required under subsection ~~(a)(1)~~; **(a)(1)(A) through (a)(1)(C)**;
4 and

5 (2) retain a fee of five dollars (\$5) from each deposit under
6 subsection ~~(a)(2)~~; **(a)(1)(D)**.

7 The clerk of the court shall semiannually remit the fees collected under
8 this subsection to the board of trustees of the Indiana public retirement
9 system for deposit in the special death benefit fund. The fee required
10 by subdivision (2) is in addition to the administrative fee retained under
11 subsection ~~(a)(2)~~; **(a)(1) for bail bonds executed under subsection**
12 **(a)(1)(D)**.

13 (e) With the approval of the clerk of the court, the county sheriff
14 may collect the bail posted under this section. The county sheriff shall
15 remit the bail to the clerk of the court by the following business day
16 and remit monthly the five dollar (\$5) special death benefit fee to the
17 county auditor.

18 (f) When a court imposes a condition of bail described in subsection
19 ~~(a)(4)~~; **(a)(3)**:

20 (1) the clerk of the court shall comply with IC 5-2-9; and

21 (2) the prosecuting attorney shall file a confidential form
22 prescribed or approved by the division of state court
23 administration with the clerk.

24 SECTION 2. IC 35-33-8-4.5, AS ADDED BY P.L.171-2011,
25 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2016]: Sec. 4.5. (a) **Notwithstanding section 3.2(a)(1) of this**
27 **chapter**, if bail is set for a defendant who is a foreign national who is
28 unlawfully present in the United States under federal immigration law,
29 the defendant may be released from custody only by posting a:

30 (1) cash bond in an amount equal to the bail;

31 (2) real estate bond in which the net equity in the real estate is at
32 least two (2) times the amount of the bail; or

33 (3) surety bond in the full amount of the bail that is written by a
34 licensed and appointed agent of an insurer (as defined in
35 IC 27-10-1-7).

36 (b) If the defendant for whom bail has been posted under this
37 section does not appear before the court as ordered because the
38 defendant has been:

39 (1) taken into custody or deported by a federal agency; or

40 (2) arrested and incarcerated for another offense;

41 the bond posted under this section may not be declared forfeited by the
42 court and the insurer (as defined in IC 27-10-1-7) that issued the bond



1 is released from any liability regarding the defendant's failure to
2 appear.

3 SECTION 3. IC 35-33-8-7, AS AMENDED BY P.L.105-2010,
4 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2016]: Sec. 7. (a) If a defendant:

6 (1) was admitted to bail **by depositing cash or securities** under:

7 **(A) section ~~3.2(a)(2)~~ 3.2(a)(1)(B) of this chapter; or**

8 **(B) section 3.2(a)(1)(D) of this chapter; and**

9 (2) has failed to appear before the court as ordered;

10 the court shall, except as provided in subsection (b) or section 8(b) of
11 this chapter, declare the bond forfeited **not earlier than** one hundred
12 twenty (120) days after the defendant's failure to appear and issue a
13 warrant for the defendant's arrest.

14 (b) In a criminal case, if the court having jurisdiction over the
15 criminal case receives written notice of a pending civil action or
16 unsatisfied judgment against the criminal defendant arising out of the
17 same transaction or occurrence forming the basis of the criminal case,
18 **funds cash or securities** deposited with the clerk of the court under
19 section ~~3.2(a)(2)~~ **3.2(a)(1)(B) or 3.2(a)(1)(D)** of this chapter may not
20 be declared forfeited by the court, and the court shall order the
21 deposited **funds cash or securities** to be held by the clerk. If there is an
22 entry of final judgment in favor of the plaintiff in the civil action, and
23 if the deposit and the bond are subject to forfeiture, the criminal court
24 shall order payment of all or any part of the deposit to the plaintiff in
25 the action, as is necessary to satisfy the judgment. The court shall then
26 order the remainder of the deposit, if any, and the bond forfeited.

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

30 (d) After a bond has been forfeited under subsection (a) or (b), the
31 clerk shall mail notice of forfeiture to the defendant. In addition, unless
32 the court finds that there was justification for the defendant's failure to
33 appear, the court shall immediately enter judgment, without pleadings
34 and without change of judge or change of venue, against the defendant
35 for the amount of the bail bond, and the clerk shall record the
36 judgment.

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

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

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

42 (f) The clerk shall return a deposit, less the administrative fee, made



1 under section ~~3.2(a)(2)~~ **3.2(a)(1)** of this chapter to the defendant, if the
 2 defendant appeared at trial and the other critical stages of the legal
 3 proceedings.

4 SECTION 4. IC 35-33-8-8 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8. (a) If a defendant
 6 was admitted to bail under section 3.2(a) of this chapter and the
 7 defendant has knowingly and intentionally failed to appear before the
 8 court as ordered, the court:

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

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

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

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

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

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

17 (b) In a criminal case, if the court having jurisdiction over the
 18 criminal case receives written notice of a pending civil action or
 19 unsatisfied judgment against the criminal defendant arising out of the
 20 same transaction or occurrence forming the basis of the criminal case,
 21 ~~funds cash or securities~~ deposited with the clerk of the court under
 22 section ~~3.2(a)(2)~~ **3.2(a)(1)(B) or 3.2(a)(1)(D)** of this chapter may not
 23 be declared forfeited by the court, and the court shall order the
 24 deposited ~~funds cash or securities~~ to be held by the clerk. If there is an
 25 entry of final judgment in favor of the plaintiff in the civil action, and
 26 if the deposit is subject to forfeiture, the criminal court shall order
 27 payment of all or any part of the deposit to the plaintiff in the action, as
 28 is necessary to satisfy the judgment. The court shall then order the
 29 remainder of the deposit, if any, forfeited.

30 SECTION 5. IC 35-33-8-8.5 IS ADDED TO THE INDIANA CODE
 31 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2016]: **Sec. 8.5. A court:**

33 **(1) may declare a bond forfeited under this chapter only if a**
 34 **defendant fails to appear before the court as ordered; and**

35 **(2) may not declare a bond forfeited because the defendant**
 36 **fails to perform any other condition of bail.**

