



January 31, 2014

SENATE BILL No. 395

DIGEST OF SB 395 (Updated January 29, 2014 2:42 pm - DI 106)

Citations Affected: IC 35-33.

Synopsis: Bail. 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 with the clerk of the court in an amount not less than 15% 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 only declare a bond forfeited 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, 2014.

Steele

January 14, 2014, read first time and referred to Committee on Judiciary.
January 30, 2014, amended, reported favorably — Do Pass.

SB 395—LS 6817/DI 69



January 31, 2014

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 395

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, 2014]: 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~~

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1 ~~(E)~~ perform any combination of the requirements described in
 2 ~~clauses (A) through (D)~~:

3 **(D) Execute a bail bond by depositing cash with the clerk**
 4 **of the court in an amount not less than fifteen percent**
 5 **(15%) of the bail.**

6 If the court requires the defendant ~~elects~~ to deposit cash ~~or cash~~
 7 ~~and another form of security~~ as bail, the court may require the
 8 defendant and each person who makes the deposit on behalf of the
 9 defendant to execute an agreement that allows the court to retain
 10 all or a part of the cash to pay publicly paid costs of
 11 representation and fines, costs, fees, and restitution that the court
 12 may order the defendant to pay if the defendant is convicted. The
 13 defendant must also pay the fee required by subsection (d).

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

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

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

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

38 ~~(3) (2)~~ Impose reasonable restrictions on the activities,
 39 movements, associations, and residence of the defendant during
 40 the period of release.

41 ~~(4) (3)~~ Except as provided in section 3.6 of this chapter, require
 42 the defendant to refrain from any direct or indirect contact with an



- 1 individual and, if the defendant has been charged with an offense
 2 under IC 35-46-3, any animal belonging to the individual,
 3 including if the defendant has not been released from lawful
 4 detention.
- 5 ~~(5)~~ **(4)** Place the defendant under the reasonable supervision of a
 6 probation officer, pretrial services agency, or other appropriate
 7 public official. If the court places the defendant under the
 8 supervision of a probation officer or pretrial services agency, the
 9 court shall determine whether the defendant must pay the pretrial
 10 services fee under section 3.3 of this chapter.
- 11 ~~(6)~~ **(5)** Release the defendant into the care of a qualified person
 12 or organization responsible for supervising the defendant and
 13 assisting the defendant in appearing in court. The supervisor shall
 14 maintain reasonable contact with the defendant in order to assist
 15 the defendant in making arrangements to appear in court and,
 16 where appropriate, shall accompany the defendant to court. The
 17 supervisor need not be financially responsible for the defendant.
- 18 ~~(7)~~ **(6)** Release the defendant on personal recognizance unless:
 19 (A) the state presents evidence relevant to a risk by the
 20 defendant:
 21 (i) of nonappearance; or
 22 (ii) to the physical safety of the public; and
 23 (B) the court finds by a preponderance of the evidence that the
 24 risk exists.
- 25 ~~(8)~~ **(7)** Require a defendant charged with an offense under
 26 IC 35-46-3 to refrain from owning, harboring, or training an
 27 animal.
- 28 ~~(9)~~ **(8)** Impose any other reasonable restrictions designed to
 29 assure the defendant's presence in court or the physical safety of
 30 another person or the community.
- 31 (b) Within thirty (30) days after disposition of the charges against
 32 the defendant, the court that admitted the defendant to bail shall order
 33 the clerk to remit the amount of the deposit remaining under subsection
 34 ~~(a)(2)~~ **(a)(1)(D)** to the defendant. The portion of the deposit that is not
 35 remitted to the defendant shall be deposited by the clerk in the
 36 supplemental public defender services fund established under
 37 IC 33-40-3.
- 38 (c) For purposes of subsection (b), "disposition" occurs when the
 39 indictment or information is dismissed or the defendant is acquitted or
 40 convicted of the charges.
- 41 (d) Except as provided in subsection (e), the clerk of the court shall:
 42 (1) collect a fee of five dollars (\$5) from each bond or deposit



1 required under subsection ~~(a)(1)~~; **(a)(1)(A) through (a)(1)(C)**;
 2 and

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

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

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

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

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

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

22 SECTION 2. IC 35-33-8-4.5, AS ADDED BY P.L.171-2011,
 23 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2014]: Sec. 4.5. (a) **Notwithstanding section 3.2(a)(1) of this**
 25 **chapter**, if bail is set for a defendant who is a foreign national who is
 26 unlawfully present in the United States under federal immigration law,
 27 the defendant may be released from custody only by posting a:

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

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

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

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

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

38 (2) arrested and incarcerated for another offense;

39 the bond posted under this section may not be declared forfeited by the
 40 court and the insurer (as defined in IC 27-10-1-7) that issued the bond
 41 is released from any liability regarding the defendant's failure to
 42 appear.



1 SECTION 3. IC 35-33-8-7, AS AMENDED BY P.L.105-2010,
 2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2014]: Sec. 7. (a) If a defendant:

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

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

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

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

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

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

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

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

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

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

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

40 (f) The clerk shall return a deposit, less the administrative fee, made
 41 under section ~~3.2(a)(2)~~ **3.2(a)(1)** of this chapter to the defendant, if the
 42 defendant appeared at trial and the other critical stages of the legal



1 proceedings.

2 SECTION 4. IC 35-33-8-8 IS AMENDED TO READ AS
 3 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) If a defendant
 4 was admitted to bail under section 3.2(a) of this chapter and the
 5 defendant has knowingly and intentionally failed to appear before the
 6 court as ordered, the court:

7 (1) shall issue a warrant for the defendant's arrest;
 8 (2) may not release the defendant on personal recognizance; and
 9 (3) may not set bail for the rearrest of the defendant on the
 10 warrant at an amount that is less than the greater of:

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

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

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

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

28 SECTION 5. IC 35-33-8-8.5 IS ADDED TO THE INDIANA CODE
 29 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 30 1, 2014]: **Sec. 8.5. A court:**

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

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



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 395, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 12, reset in roman "cash or".

Page 2, line 7, reset in roman "the court may require the".

Page 2, reset in roman lines 8 through 11.

Page 2, line 12, reset in roman "may order the defendant to pay if the defendant is convicted."

Page 2, line 12, after "conviction" delete "the" and insert "The".

Page 2, delete lines 22 through 26.

Page 2, line 27, delete "individual is otherwise entitled to receive."

Page 2, line 30, reset in roman "The".

Page 2, reset in roman lines 31 through 34.

Page 2, line 35, reset in roman "subsection (d)".

Page 2, line 35, strike "In the event of the posting of a real estate bond,".

Page 2, strike lines 36 through 37.

Page 2, line 38, strike "foreclosed for the payment of fines, costs, fees, or restitution."

and when so amended that said bill do pass.

(Reference is to SB 395 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 5, Nays 2.

