

HOUSE BILL No. 1323

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-8.

Synopsis: Bail. Prohibits a court from requiring an arrestee to pay bail as a condition of pretrial release, unless: (1) the court finds by clear and convincing evidence that the arrestee is a flight risk or danger to the community; (2) the arrestee is charged with murder or treason; (3) the arrestee is on pretrial release not related to the incident that is the basis for the present arrest; or (4) the arrestee is on probation, parole, or other community supervision. Requires that the amount of bail be the lowest amount required, based on the defendant's financial circumstances, to assure the arrestee's appearance at trial and to protect the community.

Effective: July 1, 2026.

Hatcher

January 6, 2026, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 124th General Assembly (2026)

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 2025 Regular Session of the General Assembly.

HOUSE BILL No. 1323

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.205-2023,
2 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2026]: Sec. 3.2. (a) After considering the results of the Indiana
4 pretrial risk assessment system (if available), other relevant factors, and
5 bail guidelines described in ~~section~~ **sections 3.8 and 4** of this chapter,
6 a court may admit a defendant to bail and impose any of the following
7 conditions to assure the defendant's appearance at any stage of the legal
8 proceedings, or, upon a showing of clear and convincing evidence that
9 the defendant poses a risk of physical danger to another person or the
10 community, to assure the public's physical safety:
11 (1) Require the defendant to:
12 (A) execute a bail bond with sufficient solvent sureties;
13 (B) deposit cash or securities in an amount equal to the bail;
14 (C) execute a bond secured by real estate in the county, where
15 thirty-three hundredths (0.33) of the true tax value less
16 encumbrances is at least equal to the amount of the bail;
17 (D) post a real estate bond; or



(E) perform any combination of the requirements described in clauses (A) through (D).

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. Before execution of the agreement, the defendant or person who makes the deposit on behalf of the defendant shall be advised that, upon conviction of the defendant, the court may retain from the cash deposited as bail 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).

(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), and the fee required by subsection (d). 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).

(3) Impose reasonable restrictions on the activities, movements,



associations, and residence of the defendant during the period of release.

(4) Except as provided in section 3.6 of this chapter, require the defendant to refrain from any direct or indirect contact with an individual and, if the defendant has been charged with an offense under IC 35-46-3, any animal belonging to the 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 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) Require a defendant charged with an offense under IC 35-46-3 to refrain from owning, harboring, or training an animal.

(9) Require a defendant to participate in a mental health referral program under IC 33-23-18.

(10) 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) 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 person who made the deposit. The portion of the deposit that is not remitted to the person who made the deposit shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.



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

(d) Except as provided in subsection (e), 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

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

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

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

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

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

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the office of judicial administration with the clerk.

(g) The clerk of the court shall record the name, address, and bail agent license number, if applicable, of the bail agent or a person authorized by the surety posting bail for the defendant in the county court electronic case management system.

SECTION 2. IC 35-33-8-3.8, AS ADDED BY P.L.187-2017, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 3.8. (a) A court shall consider the results of the Indiana pretrial risk assessment system (if available) before setting or modifying bail for an arrestee.

(b) If the court finds, based on the results of the Indiana pretrial risk assessment system (if available) and other relevant factors, that an arrestee does not present a substantial risk of flight or danger to the arrestee or others, the court shall ~~consider releasing~~ **release** the arrestee without money bail or surety, subject to restrictions and conditions as determined by the court, unless one (1) or more of the following apply:

(1) The arrestee is charged with murder or treason.

(2) The arrestee is on pretrial release not related to the incident that is the basis for the present arrest.



(3) The arrestee is on probation, parole, or other community supervision.

The court is not required to administer an assessment before releasing an arrestee if administering the assessment will delay the arrestee's release.

SECTION 3. IC 35-33-8-3.9, AS ADDED BY P.L.187-2017, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 3.9. (a) If the court determines that an arrestee is to be held subject to money bail, the court is authorized, **subject to section 4 of this chapter**, to determine the amount of bail and whether the bail may be satisfied by surety bond or cash deposit.

(b) The court may set and accept a partial cash payment of the bail upon conditions set by the court, including the arrestee's agreement (and the agreement of a person who makes a cash payment on behalf of an arrestee, if applicable) that all court costs, fees, and expenses associated with the proceeding shall be paid from the partial payment.

(c) If the court authorizes the acceptance of a cash partial payment to satisfy bail, the court shall first secure the arrestee's agreement (and the agreement of a person who makes a cash payment on behalf of an arrestee, if applicable) that, in the event of failure to appear as scheduled, the deposit shall be forfeited and the arrestee must also pay any additional amounts needed to satisfy the full amount of bail plus associated court costs, fees, and expenses.

SECTION 4. IC 35-33-8-4, AS AMENDED BY P.L.187-2017, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 4. (a) The court shall order the amount in which a person charged by an indictment or information is to be held to bail, and the clerk shall enter the order on the order book and indorse the amount on each warrant when issued. If no order fixing the amount of bail has been made, the sheriff shall present the warrant to the judge of an appropriate court of criminal jurisdiction, and the judge shall indorse on the warrant the amount of bail.

(b) Bail ~~may not~~ **shall** be set ~~higher than that~~ **at the lowest** amount reasonably required to assure the defendant's appearance in court or to assure the physical safety of another person or the community, **based on the defendant's financial circumstances, and may be imposed only if the court finds setting bail is necessary to assure the defendant's appearance in court or** if the court finds by clear and convincing evidence that the defendant poses a risk to the physical safety of another person or the community. In setting and accepting an amount of bail, the judicial officer shall consider the bail guidelines described in section 3.8 of this chapter and take into account all facts



- 1 relevant to the risk of nonappearance, including:
- 2 (1) the length and character of the defendant's residence in the
- 3 community;
- 4 (2) the defendant's employment status and history and the
- 5 defendant's ability to give bail;
- 6 (3) the defendant's family ties and relationships;
- 7 (4) the defendant's character, reputation, habits, and mental
- 8 condition;
- 9 (5) the defendant's criminal or juvenile record, insofar as it
- 10 demonstrates instability and a disdain for the court's authority to
- 11 bring the defendant to trial;
- 12 (6) the defendant's previous record in not responding to court
- 13 appearances when required or with respect to flight to avoid
- 14 criminal prosecution;
- 15 (7) the nature and gravity of the offense and the potential penalty
- 16 faced, insofar as these factors are relevant to the risk of
- 17 nonappearance;
- 18 (8) the source of funds or property to be used to post bail or to pay
- 19 a premium, insofar as it affects the risk of nonappearance;
- 20 (9) that the defendant is a foreign national who is unlawfully
- 21 present in the United States under federal immigration law; and
- 22 (10) any other factors, including any evidence of instability and
- 23 a disdain for authority, which might indicate that the defendant
- 24 might not recognize and adhere to the authority of the court to
- 25 bring the defendant to trial.

