

PROPOSED AMENDMENT

SB 2 # 1

DIGEST

Cash bail agreements. Permits a court to retain cash bail for the payment of certain costs without an indigency hearing if the defendant has executed an agreement permitting the court to retain the cash bail for these purposes.

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 35-33-7-6, AS AMENDED BY P.L.111-2024,
4 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2026]: Sec. 6. (a) Prior to the completion of the initial hearing,
6 the judicial officer shall determine whether a person who requests
7 assigned counsel is indigent under section 6.5 of this chapter. If the
8 person is found to be indigent, the judicial officer shall assign counsel
9 to the person.
10 (b) If jurisdiction over an indigent defendant is transferred to
11 another court, the receiving court shall assign counsel immediately
12 upon acquiring jurisdiction over the defendant.
13 (c) If the court finds that the person is able to pay part of the cost of
14 representation by the assigned counsel, the court shall order the person
15 to pay the following:
16 (1) For a felony action, a fee of two hundred dollars (\$200).
17 (2) For a misdemeanor action, a fee of one hundred dollars
18 (\$100).
19 **However, a court may order a person to pay the fees described in**
20 **this subsection without an indigency hearing if the person has paid**
21 **a cash bond and executed an agreement under IC 35-33-8-3.2**
22 **allowing the court to retain all or a part of the cash to pay publicly**
23 **paid costs of representation and fines, costs, fees, and restitution.**
24 (d) If the court orders the person to pay an amount described in
25 subsection (c)(1) or (c)(2), the court shall inquire at sentencing whether
26 the person has paid the required amount.

(e) The clerk of the court shall deposit the first one hundred dollars (\$100) in a felony case and the first fifty dollars (\$50) in a misdemeanor case of the fees described in subsection (c) in the county's supplemental public defender services fund established by IC 33-40-3-1.

(f) The clerk of the court shall transfer the remaining one hundred dollars (\$100) in a felony case and the remaining fifty dollars (\$50) in a misdemeanor case of the fees described in subsection (c) to the state comptroller for deposit in the public defense fund established by IC 33-40-6-1.

(g) The court may review the finding of indigency at any time during the proceedings if:

- (1) the court receives evidence of a material change in the person's income or assets; or
- (2) the person has failed to provide the court with sufficient evidence, including documentary evidence, to sustain the court's initial indigency determination.

SECTION 2. IC 35-33-7-6.5, AS AMENDED BY P.L.111-2024, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 6.5. (a) In determining whether a person is indigent, the court shall consider the following:

- (1) The person's assets.
- (2) The person's income.
- (3) The person's necessary expenses.

(b) The court may consider that a person's eligibility for:

- (1) the federal Supplemental Nutrition Assistance Program (SNAP) (except for 21 U.S.C. 862a(a));
- (2) the federal and Indiana TANF (Temporary Assistance for Needy Families) program (except for 21 U.S.C. 862a(a)); or
- (3) another need based public assistance program;

constitutes sufficient evidence to establish that a person is indigent.

(c) The court may issue an initial indigency determination pending receipt of documentary or other evidence from the person concerning the person's income, assets, expenses, or welfare eligibility.

(d) Each court in a county receiving reimbursement under IC 33-40-6-5(c) shall require a person claiming indigency to submit a uniform form, prescribed by the office of judicial administration, to assist the court in determining whether the person is indigent. The court shall review or designate a staff member to review the form submitted to ensure the accuracy of the information contained in the

form before issuing an indigency determination under this section. The court may request any additional information needed from the person to verify the accuracy of the information submitted in the form.

(e) If the court finds that the person is able to pay some of the fines, fees, and court costs, the court may prorate the person's fine, fee, and court costs, and require the person to pay an amount that the person can reasonably afford.

(f) If a person has paid a cash bond and executed an agreement under IC 35-33-8-3.2 allowing the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution, the court may retain these funds pursuant to the agreement without holding an indigency hearing."

Page 1, after line 17, begin a new paragraph and insert:

"SECTION 3. IC 35-33-8-3.2, AS AMENDED BY P.L.205-2023, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 3.2. (a) After considering the results of the Indiana pretrial risk assessment system (if available), other relevant factors, and bail guidelines described in section 3.8 of this chapter, a court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

(1) Require the defendant to:

(A) execute a bail bond with sufficient solvent sureties;

(B) deposit cash or securities in an amount equal to the bail;

(C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;

(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, **subject to subsection (h)**, require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court, **without holding an indigency hearing**, 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.

1 Before execution of the agreement, the defendant or person who
2 makes the deposit on behalf of the defendant shall be advised that,
3 upon conviction of the defendant, the court may retain from the
4 cash deposited as bail all or a part of the cash to pay publicly paid
5 costs of representation and fines, costs, fees, and restitution that
6 the court may order the defendant to pay if the defendant is
7 convicted. The defendant must also pay the fee required by
8 subsection (d).

9 (2) Require the defendant to execute:

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

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

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

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

36 (4) Except as provided in section 3.6 of this chapter, require the
37 defendant to refrain from any direct or indirect contact with an
38 individual and, if the defendant has been charged with an offense
39 under IC 35-46-3, any animal belonging to the individual,
40 including if the defendant has not been released from lawful

1 detention.

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

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

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

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

18 (i) of nonappearance; or

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

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

22 (8) Require a defendant charged with an offense under IC 35-46-3
23 to refrain from owning, harboring, or training an animal.

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

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

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

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

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

40 (1) collect a fee of five dollars (\$5) from each bond or deposit

1 required under subsection (a)(1); and

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

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

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

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

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

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

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

24 **(h) A court may not permit a person to execute an agreement**
25 **allowing the court to retain all or a part of cash bail to pay publicly**
26 **paid costs of representation and fines, costs, fees, and restitution**
27 **without first determining on the record that the person:**

28 **(1) understands the nature and consequences of the**
29 **agreement;**

30 **(2) has knowingly and voluntarily agreed to execute the**
31 **agreement; and**

32 **(3) has had the opportunity to consult with counsel before**
33 **executing the agreement."**

34 Renumber all SECTIONS consecutively.

(Reference is to SB 2 as introduced.)