

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS
FISCAL IMPACT STATEMENT**

LS 7109
BILL NUMBER: SB 2

NOTE PREPARED: Jan 13, 2026
BILL AMENDED: Jan 13, 2026

SUBJECT: Bail Procedures.

FIRST AUTHOR: Sen. Freeman
FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides that offenses other than murder are not bailable if the state proves: (1) by a preponderance of the evidence that the proof is evident or the presumption strong; and (2) by clear and convincing evidence that the arrestee is dangerous and that no conditions of release will reasonably protect the safety of other persons or the community.

It establishes procedures for a bail hearing.

It removes duplicative provisions concerning repeat violent arrestees.

It also 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.

Effective Date: July 1, 2026; January 1, 2027.

Explanation of State Expenditures:

Explanation of State Revenues: (Revised) *Potential Revenue Increase:* The state General Fund receives a portion of the proceeds collected from certain court fees assessed by a sentencing court when an individual is convicted of a felony, misdemeanor, or infraction. [See *Explanation of Local Revenue*]

Explanation of Local Expenditures: *Summary* - This bill could reduce the number of persons awaiting trial in county jails and thereby reducing the likelihood of jail overcrowding in some counties. Any additional workload for the counties would depend on the frequency of cases filed and the availability of adequate indigent defense in each county. The number of persons who could be released cannot be determined.

In CY 2023, the most recent year that information was available, the Indiana Criminal Justice Institute reported that 22 county jails were overcrowded (between 80% and 99% capacity) and 12 county jails were over 100% capacity. This is based on annual jail inspection reports, representing a snapshot of one day when the inspection occurred. The percent of this jail population that is due to pretrial population was not able to

be estimated but is likely to be significant.

Additional Information - The court must conduct a hearing on the petition no later than 48 hours after it is filed. At the request of the prosecuting attorney, the arrestee, or on its own motion, the court may order a new hearing if it becomes aware of new information or information that was unknown or unavailable at the time of the initial hearing that has material bearing on bail or conditions of pretrial release. If the court denies bail, it must issue brief written findings and conclusions explaining the reasons for the denial. If the court determines that bail should not be denied, it must set the appropriate terms of pretrial release. In determining whether to deny bail, the bill outlines factors for the court to consider to ensure the safety of any person or the community. The court should be able to carry out these requirements within existing resources.

Attorneys at Initial Hearing: Using misdemeanor filings in CY 2023, 41 of the 92 counties had fewer than 10 filings per week, representing possibly two hearings per day on average. While these counties have relatively few misdemeanor filings, it is also likely that the courts have few attorneys who will represent mostly indigent defendants. Counties with more than 50 filings per week will likely have greater access to attorneys who would provide criminal defense for indigent defendants.

Misdemeanor Filings in CY 2023					
Average Misdemeanor Filings Per Week	Less than 10	Between 10 and 25	Between 25 and 50	Between 50 and 100	More than 100
Number of Counties	41	26	12	10	3

On average, there are 70 counties that had fewer than ten new felony filings per week in CY 2023.

Level 6 Felony Filings in CY 2023					
Average Felony Filings Per Week	Less than 10	Between 10 and 25	Between 25 and 50	Between 50 and 100	More than 100
Number of Counties	70	11	9	1	1

[The Gateway reports show that in CY 2023, housing offenders in 33 Indiana county jails cost an average of \$56 to \$79 per day.]

Explanation of Local Revenues: (Revised) *Potential Revenue Increase:* If an individual has paid a cash bond and executed an agreement under IC 35-33-8-3.2 that allows the court to retain all or part of the cash deposit to pay criminal fines, costs, fees, restitution, and publicly paid costs of representation, the bill could potentially increase court fee collections. This would increase state, local, and dedicated revenues. However, information regarding the amount of court fee revenue counties retain from cash bonds is not available.

Some defendants may choose an alternative form of collateral to secure release on bail instead of a cash bond. In some cases, cash bonds are paid by a friend or relative when a defendant cannot afford to pay the bond themselves; however, the frequency of this occurrence is unknown.

Bond Administration Fee: Under current law, when a defendant deposits a cash bond, the court collects a bond administration fee of up to 10% of the monetary value of the bond or \$50, whichever is less. The fee is deposited in the county or local unit general fund, depending on the court collecting the fee.

State Agencies Affected:

Local Agencies Affected: Trial courts; clerk of the courts; county sheriffs.

Information Sources: IC 35-33-8-3.2; Indiana Supreme Court, Judicial Services Report, CY 2023, <https://www.in.gov/courts/iocs/statistics/trial-probation/2023/>; 2024 Indiana Criminal Code Reform Evaluation Report, Indiana Criminal Justice Institute, https://iga.in.gov/publications/agency_report.

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