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SENATE BILL No. 2

Proposed Changes to introduced printing by AM000201

DIGEST OF PROPOSED AMENDMENT

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.

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 35-33-7-6, AS AMENDED BY P.L.111-2024,
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2026]: Sec. 6. (a) Prior to the completion of the initial hearing,
4 the judicial officer shall determine whether a person who requests
5 assigned counsel is indigent under section 6.5 of this chapter. If the
6 person is found to be indigent, the judicial officer shall assign counsel
7 to the person.

8 (b) If jurisdiction over an indigent defendant is transferred to
9 another court, the receiving court shall assign counsel immediately
10 upon acquiring jurisdiction over the defendant.

11 (c) If the court finds that the person is able to pay part of the cost
12 of representation by the assigned counsel, the court shall order the
13 person to pay the following:

14 (1) For a felony action, a fee of two hundred dollars (\$200).
15 (2) For a misdemeanor action, a fee of one hundred dollars
16 (\$100).

17 However, a court may order a person to pay the fees described in
18 this subsection without an indigency hearing if the person has paid
19 a cash bond and executed an agreement under IC 35-33-8-3.2

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1 allowing the court to retain all or a part of the cash to pay publicly
 2 paid costs of representation and fines, costs, fees, and restitution.

3 (d) If the court orders the person to pay an amount described in
 4 subsection (c)(1) or (c)(2), the court shall inquire at sentencing whether
 5 the person has paid the required amount.

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

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

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

18 (1) the court receives evidence of a material change in the
 19 person's income or assets; or

20 (2) the person has failed to provide the court with sufficient
 21 evidence, including documentary evidence, to sustain the court's
 22 initial indigency determination.

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

27 (1) The person's assets.

28 (2) The person's income.

29 (3) The person's necessary expenses.

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

31 (1) the federal Supplemental Nutrition Assistance Program
 32 (SNAP) (except for 21 U.S.C. 862a(a));

33 (2) the federal and Indiana TANF (Temporary Assistance for
 34 Needy Families) program (except for 21 U.S.C. 862a(a)); or

35 (3) another need based public assistance program;

36 constitutes sufficient evidence to establish that a person is indigent.

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

40 (d) Each court in a county receiving reimbursement under
 41 IC 33-40-6-5(c) shall require a person claiming indigency to submit a
 42 uniform form, prescribed by the office of judicial administration, to



1 assist the court in determining whether the person is indigent. The
 2 court shall review or designate a staff member to review the form
 3 submitted to ensure the accuracy of the information contained in the
 4 form before issuing an indigency determination under this section. The
 5 court may request any additional information needed from the person
 6 to verify the accuracy of the information submitted in the form.

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

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

16 [SECTION 3.] IC 35-33-8-2, AS AMENDED BY P.L.41-2018,

17 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

18 JANUARY 1, 2027]: Sec. 2. **(a)** Murder is not bailable if the state

19 proves by a preponderance of the evidence that the proof is evident or

20 the presumption strong.

21 **(b) Offenses other than murder are not bailable if the state**
 22 **proves at a hearing under section 3.7 of this chapter:**

23 **(1) by a preponderance of the evidence that the proof is**
 24 **evident or the presumption strong for the charged offense;**
 25 **and**

26 **(2) by clear and convincing evidence that:**

27 **(A) the arrestee poses a substantial risk to the safety of**
 28 **any other person or the community; and**

29 **(B) no conditions of release will reasonably protect the**
 30 **safety of any other person or the community.**

31 **(c) In all other cases, offenses are bailable as provided in this**
 32 **chapter.**

33 [SECTION 4. IC 35-33-8-3.2, AS AMENDED BY
 34 P.L.205-2023, SECTION 30, IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2026]: Sec. 3.2. **(a)** After

36 considering the results of the Indiana pretrial risk assessment system
 37 (if available), other relevant factors, and bail guidelines described in
 38 section 3.8 of this chapter, a court may admit a defendant to bail and
 39 impose any of the following conditions to assure the defendant's
 40 appearance at any stage of the legal proceedings, or, upon a showing
 41 of clear and convincing evidence that the defendant poses a risk of
 42 physical danger to another person or the community, to assure the



1 public's physical safety:

2 (1) Require the defendant to:

- 3 (A) execute a bail bond with sufficient solvent sureties;
- 4 (B) deposit cash or securities in an amount equal to the bail;
- 5 (C) execute a bond secured by real estate in the county,
- 6 where thirty-three hundredths (0.33) of the true tax value
- 7 less encumbrances is at least equal to the amount of the
- 8 bail;
- 9 (D) post a real estate bond; or
- 10 (E) perform any combination of the requirements described
- 11 in clauses (A) through (D).

12 If the court requires the defendant to deposit cash or cash and
 13 another form of security as bail, the court may, subject to
 14 subsection (h), require the defendant and each person who
 15 makes the deposit on behalf of the defendant to execute an
 16 agreement that allows the court, without holding an indigency
 17 hearing, to retain all or a part of the cash to pay publicly paid
 18 costs of representation and fines, costs, fees, and restitution that
 19 the court may order the defendant to pay if the defendant is
 20 convicted. Before execution of the agreement, the defendant or
 21 person who makes the deposit on behalf of the defendant shall
 22 be advised that, upon conviction of the defendant, the court may
 23 retain from the cash deposited as bail all or a part of the cash to
 24 pay publicly paid costs of representation and fines, costs, fees,
 25 and restitution that the court may order the defendant to pay if
 26 the defendant is convicted. The defendant must also pay the fee
 27 required by subsection (d).

28 (2) Require the defendant to execute:

- 29 (A) a bail bond by depositing cash or securities with the
- 30 clerk of the court in an amount not less than ten percent
- 31 (10%) of the bail; and
- 32 (B) an agreement that allows the court to retain all or a part
- 33 of the cash or securities to pay fines, costs, fees, and
- 34 restitution that the court may order the defendant to pay if
- 35 the defendant is convicted.

36 A portion of the deposit, not to exceed ten percent (10%) of the
 37 monetary value of the deposit or fifty dollars (\$50), whichever is
 38 the lesser amount, may be retained as an administrative fee. The
 39 clerk shall also retain from the deposit under this subdivision
 40 fines, costs, fees, and restitution as ordered by the court, publicly
 41 paid costs of representation that shall be disposed of in
 42 accordance with subsection (b), and the fee required by



1 subsection (d). In the event of the posting of a real estate bond,
 2 the bond shall be used only to insure the presence of the
 3 defendant at any stage of the legal proceedings, but shall not be
 4 foreclosed for the payment of fines, costs, fees, or restitution.
 5 The individual posting bail for the defendant or the defendant
 6 admitted to bail under this subdivision must be notified by the
 7 sheriff, court, or clerk that the defendant's deposit may be
 8 forfeited under section 7 of this chapter or retained under
 9 subsection (b).

10 (3) Impose reasonable restrictions on the activities, movements,
 11 associations, and residence of the defendant during the period of
 12 release.

13 (4) Except as provided in section 3.6 of this chapter, require the
 14 defendant to refrain from any direct or indirect contact with an
 15 individual and, if the defendant has been charged with an offense
 16 under IC 35-46-3, any animal belonging to the individual,
 17 including if the defendant has not been released from lawful
 18 detention.

19 (5) Place the defendant under the reasonable supervision of a
 20 probation officer, pretrial services agency, or other appropriate
 21 public official. If the court places the defendant under the
 22 supervision of a probation officer or pretrial services agency, the
 23 court shall determine whether the defendant must pay the pretrial
 24 services fee under section 3.3 of this chapter.

25 (6) Release the defendant into the care of a qualified person or
 26 organization responsible for supervising the defendant and
 27 assisting the defendant in appearing in court. The supervisor
 28 shall maintain reasonable contact with the defendant in order to
 29 assist the defendant in making arrangements to appear in court
 30 and, where appropriate, shall accompany the defendant to court.
 31 The supervisor need not be financially responsible for the
 32 defendant.

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

34 (A) the state presents evidence relevant to a risk by the
 35 defendant:

36 (i) of nonappearance; or

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

38 (B) the court finds by a preponderance of the evidence that
 39 the risk exists.

40 (8) Require a defendant charged with an offense under
 41 IC 35-46-3 to refrain from owning, harboring, or training an
 42 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.

(h) A court may not permit a person to execute an agreement

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1 allowing the court to retain all or a part of cash bail to pay publicly
 2 paid costs of representation and fines, costs, fees, and restitution
 3 without first determining on the record that the person:

- 4 (1) understands the nature and consequences of the
 5 agreement;
- 6 (2) has knowingly and voluntarily agreed to execute the
 7 agreement; and
- 8 (3) has had the opportunity to consult with counsel before
 9 executing the agreement.

10 **SECTION 5.** IC 35-33-8-3.4, AS ADDED BY P.L.197-2025,
 11 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2026]: Sec. 3.4. (a) This section applies only to a violent
 13 arrestee. ~~or a repeat violent arrestee~~.

14 (b) The following definitions apply throughout this section:

- 15 (1) "Crime of violence" means an offense:
 16 (A) described in IC 35-50-1-2(a); and
 17 (B) that is a Level 1, Level 2, Level 3, Level 4, or Level 5
 18 felony.
- 19 (2) "Repeat violent arrestee" means a person arrested for or
 20 charged with a crime of violence who has a prior conviction for
 21 a crime of violence.
- 22 (3) (2) "Violent arrestee" means a person arrested for or charged
 23 with a crime of violence.

24 (c) A violent arrestee ~~or a repeat violent arrestee~~ may only be
 25 released on bail set individually by the court following a hearing held
 26 in open court. Before releasing a violent arrestee ~~or a repeat violent~~
 27 ~~arrestee~~ on bail, the court must:

- 28 (1) review the probable cause affidavit or arrest warrant; and
 29 (2) impose money bail payable by surety bond or cash deposit.

30 (d) In accordance with IC 27-10-2-4.5(g)(2), a charitable bail
 31 organization may not pay money bail imposed under this section on
 32 behalf of a violent arrestee. ~~or a repeat violent arrestee~~.

33 SECTION ~~↔~~[6]. IC 35-33-8-3.7 IS ADDED TO THE INDIANA
 34 CODE AS A NEW SECTION TO READ AS FOLLOWS
 35 [EFFECTIVE JANUARY 1, 2027]: **Sec. 3.7. (a) This section does not**
 36 **apply to a charge of murder. A person charged with murder shall**
 37 **be detained as provided in section 2 of this chapter.**

38 (b) **For a charge other than murder, on motion of the state at**
 39 **or before an initial hearing, the court shall hold a hearing to**
 40 **determine whether an arrestee shall be denied bail. The state may**
 41 **request detention of the arrestee at a later date if it files a verified**
 42 **petition alleging the existence of new information that was**



unknown or unavailable at the time of the initial hearing.

(c) The court shall hold the bail hearing described in subsection (b) not later than forty-eight (48) hours from the time of filing, unless doing so is impracticable. However, the court may grant a continuance of:

(1) not more than five (5) days, if requested by the arrestee; and

(2) not more than three (3) days, if requested by the state.

(d) At the bail hearing, the arrestee has the right to be represented by counsel and, if the arrestee is indigent, to have counsel appointed. Except as provided in subsection (e), the arrestee also has the right to testify, to present evidence, and to cross-examine witnesses.

(e) An arrestee may compel the victim to testify at a hearing under this section only if the arrestee files a verified petition requesting the victim's presence and the court grants the petition. The court may grant the petition if the ends of justice so require and if the court finds the arrestee will be materially prejudiced if the victim does not appear. Cross-examination of the victim for the purpose of impeachment is insufficient to compel the presence of the victim. In deciding whether to compel the appearance of the victim, the court shall consider the emotional and physical well-being of the victim.

(f) In making a determination of whether to deny bail, a court shall consider the following factors, in addition to any other fact or circumstance relevant to reasonably assuring appearance and the safety of any other person or the community:

(1) The nature and circumstances of the offense charged, including whether the offense is an offense of violence or involves alcohol or drug abuse.

(2) The weight of the evidence against the arrestee.

(3) The history and characteristics of the arrestee, including:

(A) the character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, and criminal history of the arrestee; and

(B) whether, at the time of the current alleged offense or at the time of the arrest of the arrestee, the arrestee was on probation, parole, community corrections, or release pending trial, sentencing, appeal, or completion of sentence for the commission of an offense under the laws

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of this state, another state, or the United States.

(4) The nature and seriousness of the danger to any person or the community that would be posed by the arrestee's release.

(5) The availability, suitability, and effectiveness of less restrictive alternatives to detention and specific conditions of release that could reasonably mitigate the identified risk.

(6) Any other fact or circumstance that is relevant to reasonably assuring the appearance of the arrestee and the safety of any other person or the community.

(g) If the court denies bail under this section, the court shall issue brief written findings and conclusions setting forth reasons for the denial.

(h) No evidence or finding from a hearing under this section is admissible as substantive evidence at a trial concerning the offense for which the hearing was conducted. The evidence or findings may be admissible as impeachment or in a prosecution for perjury.

(i) If the court determines that an arrestee should not be denied bail, the court shall set terms of pretrial release for the arrestee in accordance with this chapter.

(j) An order granting or denying bail is a final appealable order.

(k) A court may reconsider an order granting or denying bail under this section if, at any time before trial, the court is made aware of information that was unknown or unobtainable at the time of a previous hearing and that has a material bearing on the issue of whether there are conditions of release that will reasonably assure the safety of any other person or the community. The court may order a new hearing under this section upon motion of the state, the arrestee, or on its own motion.

SECTION ~~44~~⁴⁴ [7]. IC 35-33-8-3.8, AS ADDED BY P.L.187-2017, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2027]: 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 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.

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