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SENATE BILL No. 2

Proposed Changes to introduced printing by AM000202

DIGEST OF PROPOSED AMENDMENT

Misdemeanors and Level 6 felonies. Provides that a person charged with a misdemeanor or a Level 6 felony is entitled to bail.

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 35-33-8-2, AS AMENDED BY P.L.41-2018,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2027]: Sec. 2. **(a)** Murder is not bailable if the state
4 proves by a preponderance of the evidence that the proof is evident or
5 the presumption strong.

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

8 **(1) by a preponderance of the evidence that the proof is
9 evident or the presumption strong for the charged offense;
10 and**

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

12 **(A) the arrestee poses a substantial risk to the safety of
13 any other person or the community; and**
14 **(B) no conditions of release will reasonably protect the
15 safety of any other person or the community.**

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

18 SECTION 2. IC 35-33-8-3.4, AS ADDED BY P.L.197-2025,
19 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2026]: Sec. 3.4. **(a) This section applies only to a violent
21 arrestee, or a repeat violent arrestee.**

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1 **(b) This section does not apply to a person charged with a:**

2 **(1) misdemeanor; or**

3 **(2) Level 6 felony;**

if the misdemeanor or Level 6 felony is the most serious offense with which the person is charged. A person whose most serious charge is a misdemeanor or Level 6 felony is entitled to release on bail.

1 (~~b~~c) For a charge other than murder, on motion of the
2 state at or before an initial hearing, the court shall hold a hearing
3 to determine whether an arrestee shall be denied bail. The state
4 may request detention of the arrestee at a later date if it files a
5 verified petition alleging the existence of new information that was
6 unknown or unavailable at the time of the initial hearing.

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

42 (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.

(~~←→~~[e]) 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 (~~←→~~[f]), the arrestee also has the right to testify, to present evidence, and to cross-examine witnesses.

( **1f**) 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.

( [gl]) 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 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



1 release that could reasonably mitigate the identified risk.

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

5 (☞[h]) If the court denies bail under this section, the court
6 shall issue brief written findings and conclusions setting forth
7 reasons for the denial.

8 (☞[i]) No evidence or finding from a hearing under this
9 section is admissible as substantive evidence at a trial concerning
10 the offense for which the hearing was conducted. The evidence or
11 findings may be admissible as impeachment or in a prosecution for
12 perjury.

13 (☞[j]) If the court determines that an arrestee should not be
14 denied bail, the court shall set terms of pretrial release for the
15 arrestee in accordance with this chapter.

16 (☞[k]) An order granting or denying bail is a final appealable
17 order.

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

26 SECTION 4. IC 35-33-8-3.8, AS ADDED BY P.L.187-2017,
27 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JANUARY 1, 2027]: Sec. 3.8. (a) A court shall consider the results of
29 the Indiana pretrial risk assessment system (if available) before setting
30 or modifying bail for an arrestee.

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

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

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

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

42 (4) **The arrestee is a violent arrestee as defined in section 3.4**



1 of this chapter.

(5) The arrestee is a sexually violent predator defendant as defined in section 3.5 of this chapter.

9 The court is not required to administer an assessment before releasing
10 an arrestee if administering the assessment will delay the arrestee's
11 release.¹

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