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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:

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

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

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

(2) by clear and convincing evidence that:

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

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

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

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



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(b) The following definitions apply throughout this section:

(1) "Crime of violence" means an offense:

(A) described in IC 35-50-1-2(a); and

(B) that is a Level 1, Level 2, Level 3, Level 4, or Level 5 felony.

(2) "Repeat violent arrestee" means a person arrested for or charged with a crime of violence who has a prior conviction for a crime of violence.

(3) (2) "Violent arrestee" means a person arrested for or charged with a crime of violence.

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

(1) review the probable cause affidavit or arrest warrant; and

(2) impose money bail payable by surety bond or cash deposit.

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

SECTION 3. IC 35-33-8-3.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2027]: **Sec. 3.7. (a) This section does not apply to a charge of murder. A person charged with murder shall be detained as provided in section 2 of this chapter.**

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

(1) misdemeanor; or

(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.

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

(d) The court shall hold the bail hearing described in subsection ~~(c)~~ **(c)** 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;



1 and

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

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

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

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

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

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

26 (3) The history and characteristics of the arrestee, including:
27 (A) the character, physical and mental condition, family
28 ties, employment, financial resources, length of
29 residence in the community, community ties, past
30 conduct, history relating to drug or alcohol abuse, and
31 criminal history of the arrestee; and

32 (B) whether, at the time of the current alleged offense or
33 at the time of the arrest of the arrestee, the arrestee was
34 on probation, parole, community corrections, or release
35 pending trial, sentencing, appeal, or completion of
36 sentence for the commission of an offense under the laws
37 of this state, another state, or the United States.

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

41 (5) The availability, suitability, and effectiveness of less
42 restrictive alternatives to detention and specific conditions of



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

(~~h~~) **(i)** 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~~) **(j)** 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~~) **(k)** An order granting or denying bail is a final appealable order.

(~~k~~) **(l)** 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 4. 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.

(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.

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



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1 of this chapter.
2 (5) The arrestee is a sexually violent predator defendant as
3 defined in section 3.5 of this chapter.
4 (6) The arrestee has been denied bail pursuant to section 3.7
5 of this chapter.
6 (7) The arrestee is a foreign national who is unlawfully
7 present in the United States as described in section 4.5 of this
8 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.
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