

HOUSE BILL No. 1272

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-8.

Synopsis: Bail. Prohibits a court from requiring an arrestee to pay bail as a condition of pretrial release, unless: (1) the court finds by clear and convincing evidence that the arrestee is a flight risk or danger to the community; (2) the arrestee is charged with murder or treason; (3) the arrestee is on pretrial release not related to the incident that is the basis for the present arrest; or (4) the arrestee is on probation, parole, or other community supervision. Requires that the amount of bail be the lowest amount required, based on the defendant's financial circumstances, to assure the arrestee's appearance at trial and to protect the community.

Effective: July 1, 2024.

Hatcher

January 9, 2024, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

HOUSE BILL No. 1272

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 35-33-8-3.2, AS AMENDED BY P.L.205-2023,
2 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2024]: Sec. 3.2. (a) After considering the results of the Indiana
4 pretrial risk assessment system (if available), other relevant factors, and
5 bail guidelines described in ~~section~~ **sections 3.8 and 4** of this chapter,
6 a court may admit a defendant to bail and impose any of the following
7 conditions to assure the defendant's appearance at any stage of the legal
8 proceedings, or, upon a showing of clear and convincing evidence that
9 the defendant poses a risk of physical danger to another person or the
10 community, to assure the public's physical safety:

- 11 (1) Require the defendant to:
- 12 (A) execute a bail bond with sufficient solvent sureties;
 - 13 (B) deposit cash or securities in an amount equal to the bail;
 - 14 (C) execute a bond secured by real estate in the county, where
 - 15 thirty-three hundredths (0.33) of the true tax value less
 - 16 encumbrances is at least equal to the amount of the bail;
 - 17 (D) post a real estate bond; or



1 (E) perform any combination of the requirements described in
2 clauses (A) through (D).
3 If the court requires the defendant to deposit cash or cash and
4 another form of security as bail, the court may require the
5 defendant and each person who makes the deposit on behalf of the
6 defendant to execute an agreement that allows the court to retain
7 all or a part of the cash to pay publicly paid costs of
8 representation and fines, costs, fees, and restitution that the court
9 may order the defendant to pay if the defendant is convicted.
10 Before execution of the agreement, the defendant or person who
11 makes the deposit on behalf of the defendant shall be advised that,
12 upon conviction of the defendant, the court may retain from the
13 cash deposited as bail all or a part of the cash to pay publicly paid
14 costs of representation and fines, costs, fees, and restitution that
15 the court may order the defendant to pay if the defendant is
16 convicted. The defendant must also pay the fee required by
17 subsection (d).
18 (2) Require the defendant to execute:
19 (A) a bail bond by depositing cash or securities with the clerk
20 of the court in an amount not less than ten percent (10%) of
21 the bail; and
22 (B) an agreement that allows the court to retain all or a part of
23 the cash or securities to pay fines, costs, fees, and restitution
24 that the court may order the defendant to pay if the defendant
25 is convicted.
26 A portion of the deposit, not to exceed ten percent (10%) of the
27 monetary value of the deposit or fifty dollars (\$50), whichever is
28 the lesser amount, may be retained as an administrative fee. The
29 clerk shall also retain from the deposit under this subdivision
30 fines, costs, fees, and restitution as ordered by the court, publicly
31 paid costs of representation that shall be disposed of in
32 accordance with subsection (b), and the fee required by
33 subsection (d). In the event of the posting of a real estate bond,
34 the bond shall be used only to insure the presence of the
35 defendant at any stage of the legal proceedings, but shall not be
36 foreclosed for the payment of fines, costs, fees, or restitution. The
37 individual posting bail for the defendant or the defendant
38 admitted to bail under this subdivision must be notified by the
39 sheriff, court, or clerk that the defendant's deposit may be
40 forfeited under section 7 of this chapter or retained under
41 subsection (b).
42 (3) Impose reasonable restrictions on the activities, movements,



1 associations, and residence of the defendant during the period of
2 release.

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

9 (5) Place the defendant under the reasonable supervision of a
10 probation officer, pretrial services agency, or other appropriate
11 public official. If the court places the defendant under the
12 supervision of a probation officer or pretrial services agency, the
13 court shall determine whether the defendant must pay the pretrial
14 services fee under section 3.3 of this chapter.

15 (6) Release the defendant into the care of a qualified person or
16 organization responsible for supervising the defendant and
17 assisting the defendant in appearing in court. The supervisor shall
18 maintain reasonable contact with the defendant in order to assist
19 the defendant in making arrangements to appear in court and,
20 where appropriate, shall accompany the defendant to court. The
21 supervisor need not be financially responsible for the defendant.

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

23 (A) the state presents evidence relevant to a risk by the
24 defendant:

25 (i) of nonappearance; or

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

27 (B) the court finds by a preponderance of the evidence that the
28 risk exists.

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

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

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

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



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

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

5 (1) collect a fee of five dollars (\$5) from each bond or deposit
 6 required under subsection (a)(1); and

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

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

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

19 (f) When a court imposes a condition of bail described in subsection
 20 (a)(4):

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

22 (2) the prosecuting attorney shall file a confidential form
 23 prescribed or approved by the office of judicial administration
 24 with the clerk.

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

29 SECTION 2. IC 35-33-8-3.8, AS ADDED BY P.L.187-2017,
 30 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2024]: Sec. 3.8. (a) A court shall consider the results of the
 32 Indiana pretrial risk assessment system (if available) before setting or
 33 modifying bail for an arrestee.

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

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

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



1 (3) The arrestee is on probation, parole, or other community
2 supervision.

3 The court is not required to administer an assessment before releasing
4 an arrestee if administering the assessment will delay the arrestee's
5 release.

6 SECTION 3. IC 35-33-8-3.9, AS ADDED BY P.L.187-2017,
7 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2024]: Sec. 3.9. (a) If the court determines that an arrestee is
9 to be held subject to money bail, the court is authorized, **subject to**
10 **section 4 of this chapter**, to determine the amount of bail and whether
11 the bail may be satisfied by surety bond or cash deposit.

12 (b) The court may set and accept a partial cash payment of the bail
13 upon conditions set by the court, including the arrestee's agreement
14 (and the agreement of a person who makes a cash payment on behalf
15 of an arrestee, if applicable) that all court costs, fees, and expenses
16 associated with the proceeding shall be paid from the partial payment.

17 (c) If the court authorizes the acceptance of a cash partial payment
18 to satisfy bail, the court shall first secure the arrestee's agreement (and
19 the agreement of a person who makes a cash payment on behalf of an
20 arrestee, if applicable) that, in the event of failure to appear as
21 scheduled, the deposit shall be forfeited and the arrestee must also pay
22 any additional amounts needed to satisfy the full amount of bail plus
23 associated court costs, fees, and expenses.

24 SECTION 4. IC 35-33-8-4, AS AMENDED BY P.L.187-2017,
25 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2024]: Sec. 4. (a) The court shall order the amount in which
27 a person charged by an indictment or information is to be held to bail,
28 and the clerk shall enter the order on the order book and indorse the
29 amount on each warrant when issued. If no order fixing the amount of
30 bail has been made, the sheriff shall present the warrant to the judge of
31 an appropriate court of criminal jurisdiction, and the judge shall
32 indorse on the warrant the amount of bail.

33 (b) Bail ~~may not shall~~ be set ~~higher than that~~ **at the lowest** amount
34 reasonably required to assure the defendant's appearance in court or to
35 assure the physical safety of another person or the community, **based**
36 **on the defendant's financial circumstances, and may be imposed**
37 **only if the court finds setting bail is necessary to assure the**
38 **defendant's appearance in court or** if the court finds by clear and
39 convincing evidence that the defendant poses a risk to the physical
40 safety of another person or the community. In setting and accepting an
41 amount of bail, the judicial officer shall consider the bail guidelines
42 described in section 3.8 of this chapter and take into account all facts



- 1 relevant to the risk of nonappearance, including:
2 (1) the length and character of the defendant's residence in the
3 community;
4 (2) the defendant's employment status and history and the
5 defendant's ability to give bail;
6 (3) the defendant's family ties and relationships;
7 (4) the defendant's character, reputation, habits, and mental
8 condition;
9 (5) the defendant's criminal or juvenile record, insofar as it
10 demonstrates instability and a disdain for the court's authority to
11 bring the defendant to trial;
12 (6) the defendant's previous record in not responding to court
13 appearances when required or with respect to flight to avoid
14 criminal prosecution;
15 (7) the nature and gravity of the offense and the potential penalty
16 faced, insofar as these factors are relevant to the risk of
17 nonappearance;
18 (8) the source of funds or property to be used to post bail or to pay
19 a premium, insofar as it affects the risk of nonappearance;
20 (9) that the defendant is a foreign national who is unlawfully
21 present in the United States under federal immigration law; and
22 (10) any other factors, including any evidence of instability and
23 a disdain for authority, which might indicate that the defendant
24 might not recognize and adhere to the authority of the court to
25 bring the defendant to trial.

