

SENATE BILL No. 228

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-45-4; IC 35-33.

Synopsis: Bail. Establishes bail guidelines for arrestees that recommend that arrestees who do not present a substantial risk of flight or danger be released without bail, subject to restrictions determined by the court. Excludes arrestees charged with murder, on pre-trial release for another offense, under court or community supervision, or seeking bail pending appeal. Repeals a provision relating to the impeachment of witnesses.

Effective: July 1, 2017.

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January 9, 2017, read first time and referred to Committee on Corrections and Criminal Law.



First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 228

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-45-4 IS REPEALED [EFFECTIVE JULY 1,
- 2 2017]. (Impeachment of Witnesses).
- 3 SECTION 2. IC 35-33-8-3.2, AS AMENDED BY P.L.35-2012,
- 4 SECTION 107, IS AMENDED TO READ AS FOLLOWS
- 5 [EFFECTIVE JULY 1, 2017]: Sec. 3.2. (a) **After considering the bail**
- 6 **guidelines described in section 3.8 of this chapter**, a court may admit
- 7 a defendant to bail and impose any of the following conditions to
- 8 assure the defendant's appearance at any stage of the legal proceedings,
- 9 or, upon a showing of clear and convincing evidence that the defendant
- 10 poses a risk of physical danger to another person or the community, to
- 11 assure the public's physical safety:
- 12 (1) Require the defendant to:
- 13 (A) execute a bail bond with sufficient solvent sureties;
- 14 (B) deposit cash or securities in an amount equal to the bail;
- 15 (C) execute a bond secured by real estate in the county, where
- 16 thirty-three hundredths (0.33) of the true tax value less
- 17 encumbrances is at least equal to the amount of the bail;



- 1 (D) post a real estate bond; or
 2 (E) perform any combination of the requirements described in
 3 clauses (A) through (D).
 4 If the court requires the defendant to deposit cash or cash and
 5 another form of security as bail, the court may require the
 6 defendant and each person who makes the deposit on behalf of the
 7 defendant to execute an agreement that allows the court to retain
 8 all or a part of the cash to pay publicly paid costs of
 9 representation and fines, costs, fees, and restitution that the court
 10 may order the defendant to pay if the defendant is convicted. The
 11 defendant must also pay the fee required by subsection (d).
 12 (2) Require the defendant to execute:
 13 (A) a bail bond by depositing cash or securities with the clerk
 14 of the court in an amount not less than ten percent (10%) of
 15 the bail; and
 16 (B) an agreement that allows the court to retain all or a part of
 17 the cash or securities to pay fines, costs, fees, and restitution
 18 that the court may order the defendant to pay if the defendant
 19 is convicted.
 20 A portion of the deposit, not to exceed ten percent (10%) of the
 21 monetary value of the deposit or fifty dollars (\$50), whichever is
 22 the lesser amount, may be retained as an administrative fee. The
 23 clerk shall also retain from the deposit under this subdivision
 24 fines, costs, fees, and restitution as ordered by the court, publicly
 25 paid costs of representation that shall be disposed of in
 26 accordance with subsection (b), and the fee required by
 27 subsection (d). In the event of the posting of a real estate bond,
 28 the bond shall be used only to insure the presence of the
 29 defendant at any stage of the legal proceedings, but shall not be
 30 foreclosed for the payment of fines, costs, fees, or restitution. The
 31 individual posting bail for the defendant or the defendant
 32 admitted to bail under this subdivision must be notified by the
 33 sheriff, court, or clerk that the defendant's deposit may be
 34 forfeited under section 7 of this chapter or retained under
 35 subsection (b).
 36 (3) Impose reasonable restrictions on the activities, movements,
 37 associations, and residence of the defendant during the period of
 38 release.
 39 (4) Except as provided in section 3.6 of this chapter, require the
 40 defendant to refrain from any direct or indirect contact with an
 41 individual and, if the defendant has been charged with an offense
 42 under IC 35-46-3, any animal belonging to the individual,



1 including if the defendant has not been released from lawful
2 detention.

3 (5) Place the defendant under the reasonable supervision of a
4 probation officer, pretrial services agency, or other appropriate
5 public official. If the court places the defendant under the
6 supervision of a probation officer or pretrial services agency, the
7 court shall determine whether the defendant must pay the pretrial
8 services fee under section 3.3 of this chapter.

9 (6) Release the defendant into the care of a qualified person or
10 organization responsible for supervising the defendant and
11 assisting the defendant in appearing in court. The supervisor shall
12 maintain reasonable contact with the defendant in order to assist
13 the defendant in making arrangements to appear in court and,
14 where appropriate, shall accompany the defendant to court. The
15 supervisor need not be financially responsible for the defendant.

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

17 (A) the state presents evidence relevant to a risk by the
18 defendant:

19 (i) of nonappearance; or

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

21 (B) the court finds by a preponderance of the evidence that the
22 risk exists.

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

25 (9) Impose any other reasonable restrictions designed to assure
26 the defendant's presence in court or the physical safety of another
27 person or the community.

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

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

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

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

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

42 The clerk of the court shall semiannually remit the fees collected under



1 this subsection to the board of trustees of the Indiana public retirement
 2 system for deposit in the special death benefit fund. The fee required
 3 by subdivision (2) is in addition to the administrative fee retained under
 4 subsection (a)(2).

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

10 (f) When a court imposes a condition of bail described in subsection
 11 (a)(4):

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

13 (2) the prosecuting attorney shall file a confidential form
 14 prescribed or approved by the division of state court
 15 administration with the clerk.

16 SECTION 3. IC 35-33-8-3.5, AS ADDED BY P.L.74-2008,
 17 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2017]: Sec. 3.5. (a) This section applies only to a sexually
 19 violent predator defendant.

20 (b) As used in this section, "sexually violent predator defendant"
 21 means a person who:

22 (1) is a sexually violent predator under IC 35-38-1-7.5; and

23 (2) is arrested for or charged with the commission of an offense
 24 that would classify the person as a sex or violent offender (as
 25 defined in IC 11-8-8-5).

26 (c) A court may not admit a:

27 (1) sexually violent predator defendant;

28 (2) person charged with child molesting (IC 35-42-4-3); or

29 (3) person charged with child solicitation (IC 35-42-4-6);

30 to bail until the court has conducted a bail hearing in open court.
 31 Except as provided in section 6 of this chapter, the court shall conduct
 32 a bail hearing not later than forty-eight (48) hours after the person has
 33 been arrested, unless exigent circumstances prevent holding the
 34 hearing within forty-eight (48) hours.

35 (d) At the conclusion of the hearing described in subsection (c) **and**
 36 **after consideration of the bail guidelines described in section 3.8 of**
 37 **this chapter**, the court shall consider whether the factors described in
 38 ~~IC 35-33-8-4~~ **section 4 of this chapter** warrant the imposition of a bail
 39 amount that exceeds court or county guidelines, if applicable.

40 SECTION 4. IC 35-33-8-3.8 IS ADDED TO THE INDIANA CODE
 41 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 42 1, 2017]: **Sec. 3.8. (a) A court shall consider the following guidelines**



1 before setting or modifying bail for an arrestee.

2 (b) If an arrestee does not present a substantial risk of flight or
3 danger to the arrestee or others, the court should release the
4 arrestee without money bail or surety, subject to restrictions and
5 conditions as determined by the court, unless one (1) or more of the
6 following apply:

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

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

10 (3) The arrestee is on probation, parole, or other community
11 supervision.

12 In determining whether an arrestee presents a substantial risk of
13 flight or danger to the arrestee, to other persons, or to the public,
14 the court should use the results of an evidence based risk
15 assessment approved by the Indiana office of court services and
16 other information as the court finds relevant. The court is not
17 required to administer an assessment before releasing an arrestee
18 if administering the assessment will delay the arrestee's release.

19 SECTION 5. IC 35-33-8-3.9 IS ADDED TO THE INDIANA CODE
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 2017]: Sec. 3.9. (a) If the court determines that an arrestee is to
22 be held subject to money bail, the court is authorized to determine
23 the amount of bail and whether the bail may be satisfied by surety
24 bond or cash deposit.

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

31 (c) If the court authorizes the acceptance of a cash partial
32 payment to satisfy bail, the court shall first secure the arrestee's
33 agreement (and the agreement of a person who makes a cash
34 payment on behalf of an arrestee, if applicable) that, in the event
35 of failure to appear as scheduled, the deposit shall be forfeited and
36 the arrestee must also pay any additional amounts needed to satisfy
37 the full amount of bail plus associated court costs, fees, and
38 expenses.

39 SECTION 6. IC 35-33-8-4, AS AMENDED BY P.L.171-2011,
40 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2017]: Sec. 4. (a) The court shall order the amount in which
42 a person charged by an indictment or information is to be held to bail,



1 and the clerk shall enter the order on the order book and indorse the
 2 amount on each warrant when issued. If no order fixing the amount of
 3 bail has been made, the sheriff shall present the warrant to the judge of
 4 an appropriate court of criminal jurisdiction, and the judge shall
 5 indorse on the warrant the amount of bail.

6 (b) Bail may not be set higher than that amount reasonably required
 7 to assure the defendant's appearance in court or to assure the physical
 8 safety of another person or the community if the court finds by clear
 9 and convincing evidence that the defendant poses a risk to the physical
 10 safety of another person or the community. In setting and accepting an
 11 amount of bail, the judicial officer shall **consider the bail guidelines**
 12 **described in section 3.8 of this chapter and** take into account all facts
 13 relevant to the risk of nonappearance, including:

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

38 SECTION 7. IC 35-33-8-4.5, AS ADDED BY P.L.171-2011,
 39 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2017]: Sec. 4.5. (a) If bail is set for a defendant who is a
 41 foreign national who is unlawfully present in the United States under
 42 federal immigration law, ~~the defendant may be released from custody~~



- 1 ~~only by posting a:~~ **after considering the bail guidelines described in**
 2 **section 3.8 of this chapter, the court shall consider requiring as bail**
 3 **a:**
 4 (1) cash bond in an amount equal to the bail;
 5 (2) real estate bond in which the net equity in the real estate is at
 6 least two (2) times the amount of the bail; or
 7 (3) surety bond in the full amount of the bail that is written by a
 8 licensed and appointed agent of an insurer (as defined in
 9 IC 27-10-1-7).
 10 (b) If the defendant for whom bail has been posted under this
 11 section does not appear before the court as ordered because the
 12 defendant has been:
 13 (1) taken into custody or deported by a federal agency; or
 14 (2) arrested and incarcerated for another offense;
 15 the bond posted under this section may not be declared forfeited by the
 16 court and the insurer (as defined in IC 27-10-1-7) that issued the bond
 17 is released from any liability regarding the defendant's failure to
 18 appear.
 19 SECTION 8. IC 35-33-9-0.5 IS ADDED TO THE INDIANA CODE
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 21 1, 2017]: **Sec. 0.5. The bail guidelines described in IC 35-33-8-3.8 do**
 22 **not apply to bail on appeal.**

