



February 17, 2017

SENATE BILL No. 228

DIGEST OF SB 228 (Updated February 14, 2017 1:29 pm - DI 106)

Citations Affected: IC 34-45; IC 35-31.5; IC 35-33.

Synopsis: Bail. Provides that the supreme court should adopt rules to establish the Indiana pretrial risk assessment system before January 1, 2020, to assist courts in assessing an arrestee's likelihood of: (1) committing a new criminal offense; or (2) failing to appear. Repeals a provision relating to the impeachment of witnesses.

Effective: July 1, 2017.

Young M

January 9, 2017, read first time and referred to Committee on Corrections and Criminal Law.
February 16, 2017, amended, reported favorably — Do Pass.

SB 228—LS 6652/DI 106



February 17, 2017

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 IC 34-45-4 IS REPEALED [EFFECTIVE JULY 1,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 35-31.5-2-121.5 IS ADDED TO THE INDIANA
- 4 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 5 [EFFECTIVE JULY 1, 2017]: **Sec. 121.5. "Evidence based risk**
- 6 **assessment", for purposes of IC 35-33-8, has the meaning set forth**
- 7 **in IC 35-33-8-0.5.**
- 8 SECTION 3. IC 35-31.5-2-168.9 IS ADDED TO THE INDIANA
- 9 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 10 [EFFECTIVE JULY 1, 2017]: **Sec. 168.9. "Indiana pretrial risk**
- 11 **assessment system", for purposes of IC 35-33-8, has the meaning**
- 12 **set forth in IC 35-33-8-0.5.**
- 13 SECTION 4. IC 35-33-8-0.5 IS ADDED TO THE INDIANA CODE
- 14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 15 1, 2017]: **Sec. 0.5. (a) The following definitions apply throughout**
- 16 **this chapter:**
- 17 **(1) "Evidence based risk assessment" means an assessment:**

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(A) that identifies factors relevant to determine whether an arrestee is likely to:

(i) commit a new criminal offense; or

(ii) fail to appear;

if released on bail or pretrial supervision; and

(B) that is based on empirical data derived through validated criminal justice scientific research.

(2) "Indiana pretrial risk assessment system" means the statewide evidence based risk assessment system described in subsection (b).

(b) Before January 1, 2020, the supreme court should adopt rules to establish a statewide evidence based risk assessment system to assist courts in selecting the appropriate level of bail or other pretrial supervision for arrestees eligible for pretrial release. The system shall consist of:

(1) an evidence based risk assessment tool; and

(2) other rules as adopted by the supreme court.

(c) The system shall be designed to assist the courts in assessing an arrestee's likelihood of:

(1) committing a new criminal offense; or

(2) failing to appear.

SECTION 5. IC 35-33-8-3.2, AS AMENDED BY P.L.35-2012, SECTION 107, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3.2. (a) **After considering the results of the Indiana pretrial risk assessment system (if available), other relevant factors, and bail guidelines described in section 3.8 of this chapter,** a court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

(1) Require the defendant to:

(A) execute a bail bond with sufficient solvent sureties;

(B) deposit cash or securities in an amount equal to the bail;

(C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;

(D) post a real estate bond; or

(E) perform any combination of the requirements described in clauses (A) through (D).

If the court requires the defendant to deposit cash or cash and



1 another form of security as bail, the court may require the
2 defendant and each person who makes the deposit on behalf of the
3 defendant to execute an agreement that allows the court to retain
4 all or a part of the cash to pay publicly paid costs of
5 representation and fines, costs, fees, and restitution that the court
6 may order the defendant to pay if the defendant is convicted. The
7 defendant must also pay the fee required by subsection (d).

8 (2) Require the defendant to execute:

9 (A) a bail bond by depositing cash or securities with the clerk
10 of the court in an amount not less than ten percent (10%) of
11 the bail; and

12 (B) an agreement that allows the court to retain all or a part of
13 the cash or securities to pay fines, costs, fees, and restitution
14 that the court may order the defendant to pay if the defendant
15 is convicted.

16 A portion of the deposit, not to exceed ten percent (10%) of the
17 monetary value of the deposit or fifty dollars (\$50), whichever is
18 the lesser amount, may be retained as an administrative fee. The
19 clerk shall also retain from the deposit under this subdivision
20 fines, costs, fees, and restitution as ordered by the court, publicly
21 paid costs of representation that shall be disposed of in
22 accordance with subsection (b), and the fee required by
23 subsection (d). In the event of the posting of a real estate bond,
24 the bond shall be used only to insure the presence of the
25 defendant at any stage of the legal proceedings, but shall not be
26 foreclosed for the payment of fines, costs, fees, or restitution. The
27 individual posting bail for the defendant or the defendant
28 admitted to bail under this subdivision must be notified by the
29 sheriff, court, or clerk that the defendant's deposit may be
30 forfeited under section 7 of this chapter or retained under
31 subsection (b).

32 (3) Impose reasonable restrictions on the activities, movements,
33 associations, and residence of the defendant during the period of
34 release.

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

41 (5) Place the defendant under the reasonable supervision of a
42 probation officer, pretrial services agency, or other appropriate



public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

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

(7) Release the defendant on personal recognizance unless:

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

(i) of nonappearance; or

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

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

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

(9) 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 defendant. The portion of the deposit that is not remitted to the defendant 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 division of state court administration with the clerk.

SECTION 6. IC 35-33-8-3.5, AS ADDED BY P.L.74-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3.5. (a) This section applies only to a sexually violent predator defendant.

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

- (1) is a sexually violent predator under IC 35-38-1-7.5; and
- (2) is arrested for or charged with the commission of an offense that would classify the person as a sex or violent offender (as defined in IC 11-8-8-5).

(c) A court may not admit a:

- (1) sexually violent predator defendant;
- (2) person charged with child molesting (IC 35-42-4-3); or
- (3) person charged with child solicitation (IC 35-42-4-6);

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

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

SECTION 7. IC 35-33-8-3.8 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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,**



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

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

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

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

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

14 SECTION 8. IC 35-33-8-3.9 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 16 1, 2017]: Sec. 3.9. (a) If the court determines that an arrestee is to
 17 be held subject to money bail, the court is authorized to determine
 18 the amount of bail and whether the bail may be satisfied by surety
 19 bond or cash deposit.

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

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

34 SECTION 9. IC 35-33-8-4, AS AMENDED BY P.L.171-2011,
 35 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2017]: Sec. 4. (a) The court shall order the amount in which
 37 a person charged by an indictment or information is to be held to bail,
 38 and the clerk shall enter the order on the order book and indorse the
 39 amount on each warrant when issued. If no order fixing the amount of
 40 bail has been made, the sheriff shall present the warrant to the judge of
 41 an appropriate court of criminal jurisdiction, and the judge shall
 42 indorse on the warrant the amount of bail.



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

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

SECTION 10. IC 35-33-8-4.5, AS ADDED BY P.L.171-2011, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4.5. (a) If bail is set for a defendant who is a foreign national who is unlawfully present in the United States under federal immigration law, ~~the defendant may be released from custody only by posting a:~~ **after considering the results of the Indiana pretrial risk assessment system (if available) and other relevant factors, and the bail guidelines described in section 3.8 of this chapter, the court shall consider requiring as bail a:**

- (1) cash bond in an amount equal to the bail;



1 (2) real estate bond in which the net equity in the real estate is at
2 least two (2) times the amount of the bail; or
3 (3) surety bond in the full amount of the bail that is written by a
4 licensed and appointed agent of an insurer (as defined in
5 IC 27-10-1-7).

6 (b) If the defendant for whom bail has been posted under this
7 section does not appear before the court as ordered because the
8 defendant has been:

9 (1) taken into custody or deported by a federal agency; or

10 (2) arrested and incarcerated for another offense;

11 the bond posted under this section may not be declared forfeited by the
12 court and the insurer (as defined in IC 27-10-1-7) that issued the bond
13 is released from any liability regarding the defendant's failure to
14 appear.

15 SECTION 11. IC 35-33-9-0.5 IS ADDED TO THE INDIANA
16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2017]: **Sec. 0.5. The Indiana pretrial risk**
18 **assessment system and the bail guidelines described in**
19 **IC 35-33-8-3.8 do not apply to bail on appeal.**



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 228, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 2 and 3, begin a new paragraph and insert:

"SECTION 1. IC 35-31.5-2-121.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 121.5. "Evidence based risk assessment", for purposes of IC 35-33-8, has the meaning set forth in IC 35-33-8-0.5.**

SECTION 2. IC 35-31.5-2-168.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 168.9. "Indiana pretrial risk assessment system", for purposes of IC 35-33-8, has the meaning set forth in IC 35-33-8-0.5.**

SECTION 4. IC 35-33-8-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 0.5. (a) The following definitions apply throughout this chapter:**

- (1) "Evidence based risk assessment" means an assessment:**
 - (A) that identifies factors relevant to determine whether an arrestee is likely to:**
 - (i) commit a new criminal offense; or**
 - (ii) fail to appear;**
 - if released on bail or pretrial supervision; and**
 - (B) that is based on empirical data derived through validated criminal justice scientific research.**
- (2) "Indiana pretrial risk assessment system" means the statewide evidence based risk assessment system described in subsection (b).**

(b) Before January 1, 2020, the supreme court should adopt rules to establish a statewide evidence based risk assessment system to assist courts in selecting the appropriate level of bail or other pretrial supervision for arrestees eligible for pretrial release. The system shall consist of:

- (1) an evidence based risk assessment tool; and**
- (2) other rules as adopted by the supreme court.**
- (c) The system shall be designed to assist the courts in assessing an arrestee's likelihood of:**
 - (1) committing a new criminal offense; or**

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(2) failing to appear."

Page 1, line 5, after "the" insert **"results of the Indiana pretrial risk assessment system (if available), other relevant factors, and"**.

Page 4, line 42, delete "following guidelines" and insert **"results of the Indiana pretrial risk assessment system (if available)"**.

Page 5, line 2, after "If" insert **"the court finds, based on the results of the Indiana pretrial risk assessment system (if available) and other relevant factors, that"**.

Page 5, line 3, delete "should release" and insert **"shall consider releasing"**.

Page 5, delete lines 12 through 15.

Page 5, line 16, delete "other information as the court finds relevant."

Page 7, line 1, after "considering" insert **"the results of the Indiana pretrial risk assessment system (if available) and other relevant factors, and"**.

Page 7, line 21, after "The" insert **"Indiana pretrial risk assessment system and the"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 228 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 8, Nays 1.

