

# HOUSE BILL No. 1539

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## 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, 2019.

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## Hatcher

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January 17, 2019, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

# HOUSE BILL No. 1539

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 35-33-8-3.2, AS AMENDED BY P.L.161-2018,  
2 SECTION 115, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2019]: Sec. 3.2. (a) After considering the results  
4 of the Indiana pretrial risk assessment system (if available), other  
5 relevant factors, and bail guidelines described in ~~section~~ **sections** 3.8  
6 **and 4** of this chapter, a court may admit a defendant to bail and impose  
7 any of the following conditions to assure the defendant's appearance at  
8 any stage of the legal proceedings, or, upon a showing of clear and  
9 convincing evidence that the defendant poses a risk of physical danger  
10 to another person or the community, to assure the public's physical  
11 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 office of judicial administration  
 15 with the clerk.

16 SECTION 2. IC 35-33-8-3.8, AS ADDED BY P.L.187-2017,  
 17 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 JULY 1, 2019]: Sec. 3.8. (a) A court shall consider the results of the  
 19 Indiana pretrial risk assessment system (if available) before setting or  
 20 modifying bail for an arrestee.

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

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

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

30 (3) The arrestee is on probation, parole, or other community  
 31 supervision.

32 The court is not required to administer an assessment before releasing  
 33 an arrestee if administering the assessment will delay the arrestee's  
 34 release.

35 SECTION 3. IC 35-33-8-3.9, AS ADDED BY P.L.187-2017,  
 36 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2019]: Sec. 3.9. (a) If the court determines that an arrestee is  
 38 to be held subject to money bail, the court is authorized, **subject to**  
 39 **section 4 of this chapter**, to determine the amount of bail and whether  
 40 the bail may be satisfied by surety bond or cash deposit.

41 (b) The court may set and accept a partial cash payment of the bail  
 42 upon conditions set by the court, including the arrestee's agreement



1 (and the agreement of a person who makes a cash payment on behalf  
2 of an arrestee, if applicable) that all court costs, fees, and expenses  
3 associated with the proceeding shall be paid from the partial payment.

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

11 SECTION 4. IC 35-33-8-4, AS AMENDED BY P.L.187-2017,  
12 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2019]: Sec. 4. (a) The court shall order the amount in which  
14 a person charged by an indictment or information is to be held to bail,  
15 and the clerk shall enter the order on the order book and indorse the  
16 amount on each warrant when issued. If no order fixing the amount of  
17 bail has been made, the sheriff shall present the warrant to the judge of  
18 an appropriate court of criminal jurisdiction, and the judge shall  
19 indorse on the warrant the amount of bail.

20 (b) Bail ~~may not shall~~ be set ~~higher than that~~ **at the lowest** amount  
21 reasonably required to assure the defendant's appearance in court or to  
22 assure the physical safety of another person or the community, **based**  
23 **on the defendant's financial circumstances, and may be imposed**  
24 **only if the court finds setting bail is necessary to assure the**  
25 **defendant's appearance in court** or if the court finds by clear and  
26 convincing evidence that the defendant poses a risk to the physical  
27 safety of another person or the community. In setting and accepting an  
28 amount of bail, the judicial officer shall consider the bail guidelines  
29 described in section 3.8 of this chapter and take into account all facts  
30 relevant to the risk of nonappearance, including:

- 31 (1) the length and character of the defendant's residence in the  
32 community;  
33 (2) the defendant's employment status and history and the  
34 defendant's ability to give bail;  
35 (3) the defendant's family ties and relationships;  
36 (4) the defendant's character, reputation, habits, and mental  
37 condition;  
38 (5) the defendant's criminal or juvenile record, insofar as it  
39 demonstrates instability and a disdain for the court's authority to  
40 bring the defendant to trial;  
41 (6) the defendant's previous record in not responding to court  
42 appearances when required or with respect to flight to avoid



1 criminal prosecution;  
2 (7) the nature and gravity of the offense and the potential penalty  
3 faced, insofar as these factors are relevant to the risk of  
4 nonappearance;  
5 (8) the source of funds or property to be used to post bail or to pay  
6 a premium, insofar as it affects the risk of nonappearance;  
7 (9) that the defendant is a foreign national who is unlawfully  
8 present in the United States under federal immigration law; and  
9 (10) any other factors, including any evidence of instability and  
10 a disdain for authority, which might indicate that the defendant  
11 might not recognize and adhere to the authority of the court to  
12 bring the defendant to trial.

