

SENATE BILL No. 303

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-8.

Synopsis: Money bail. Provides that an arrestee whose most serious pending charge is a misdemeanor is presumptively entitled to release without money bail or surety under certain conditions.

Effective: July 1, 2020.

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January 9, 2020, read first time and referred to Committee on Corrections and Criminal Law.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

SENATE BILL No. 303

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.161-2018,
2 SECTION 115, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2020]: 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 3.8 of this
6 chapter, **and subject to 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 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, 2020]: 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) ~~Except as provided in sections 3.5 and 4.5 of this chapter,~~
 22 ~~and except as provided in subsection (c), an arrestee whose most~~
 23 ~~serious pending charge is a misdemeanor is presumptively entitled~~
 24 ~~to release without money bail or surety. Unless the court finds by a~~
 25 ~~preponderance of the evidence,~~ based on the results of the Indiana
 26 pretrial risk assessment system (if available) and other relevant factors,
 27 that an arrestee ~~does not present~~ **presents** a substantial risk of flight or
 28 danger to the arrestee or others, the court shall ~~consider releasing~~
 29 **release** the arrestee without money bail or surety, subject to restrictions
 30 and conditions as determined by the court. ~~unless one (1) or more of~~
 31 ~~the following apply:~~

32 (c) **An arrestee is not entitled to release without money bail or**
 33 **surety if one (1) or more of the following apply:**

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

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

37 (3) The arrestee is on probation, parole, or other community
 38 supervision.

39 (d) The court is not required to administer an assessment before
 40 releasing an arrestee if administering the assessment will delay the
 41 arrestee's release.

