



Senate Joint Resolution 1: *Implementing Language*

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A faint, stylized image of a balance scale is visible in the background. It features a central horizontal beam with two pans hanging from it. The scale is positioned in the upper half of the slide, behind the main title.

The Amendment

Bail Reform's Second Step

Bail Reform's Second Step

- Senate Joint Resolution 1 (2023)
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Bail Reform's Second Step

- Senate Joint Resolution 1 (2023)
 - Variance from current law



Bail Reform's Second Step

- 2025 Legislative Session





Bail Reform's Second Step

Implementing Language

Implementing Language

A proposal

Three Key Sections

Amend IC 35-33-8-2

New IC 35-33-8-3.7

Amend IC 35-33-8-3.8

Amend IC 35-33-8-2

Finding	Burden
Proof is evident or the presumption strong	Preponderance of the Evidence
Poses substantial risk...	Clear and Convincing Evidence
No release conditions will protect...	Clear and Convincing Evidence

SECTION 1. IC 35-33-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2027]: Sec. 2. **(a)** Murder is not bailable if the state proves by a preponderance of the evidence that the proof is evident or the presumption strong.

(b) Offenses other than murder are not bailable if the state proves at a hearing described in IC 35-33-8-3.7:

(1) by a preponderance of the evidence that the proof is evident or the presumption strong for the charged offense(s); and

(2) by clear and convincing evidence that:

(A) the arrestee poses a substantial risk to the safety of any other person or the community; and

(B) no conditions of release will reasonably protect the safety of any other person or the community.

(c) In all other cases, offenses are bailable.

Three Key Sections

Amend IC 35-33-8-2

New IC 35-33-8-3.7

Amend IC 35-33-8-3.8

New IC 35-33-8-3.7

1. Motion by the State or by the court itself

SECTION 2. IC 35-33-8-3.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2027]: Sec. 3.7. **(a) This section does not apply to a charge of murder. A person charged with murder shall be detained as provided in IC 35-33-8-2.**

(b) For charges other than murder, on motion of the state at or before an initial hearing or on the court's own motion, the court shall hold a hearing to determine whether an arrestee shall be denied bail. The state may request detention of the arrestee at a later date if it files a verified petition alleging the existence of new information that was unknown or unavailable at the time of initial hearing.

New IC 35-33-8-3.7

2. Prompt hearing

(c) A hearing on said motion shall be held as soon as practicable. A continuance requested by the accused may not exceed five (5) days. A continuance requested by the state may not exceed three (3) days.

New IC 35-33-8-3.7

3. Defendant has rights to:

- Counsel
 - Testify
 - Present evidence
 - Cross-examine witnesses
-

(d) At the hearing, the arrestee has the right to be represented by counsel and, if the arrestee is indigent, to have counsel appointed. Except as provided in subsection (e), the arrestee also has the right to testify, to present evidence, and to cross-examine witnesses.

New IC 35-33-8-3.7

3. Defendant has rights to:

- Counsel
 - Testify
 - Present evidence
 - Cross-examine witnesses*
-

(e) An arrestee may compel the victim to testify at a hearing under this section only if the arrestee files a verified petition requesting the victim's presence and the court grants the petition. The court may grant such a petition if the ends of justice so require and if the court finds the arrestee will be materially prejudiced if the victim does not appear. Cross-examination of the witness for the purpose of impeachment is insufficient to compel the presence of the witness. In deciding whether to compel the appearance of the victim, the court shall consider the emotional and physical well-being of the witness.

New IC 35-33-8-3.7

5. Rules of evidence and discovery would not apply for and at the hearing

(f) Rules of evidence and procedure (including those governing discovery) applicable to trials shall not apply to a hearing under this section.

New IC 35-33-8-3.7

6. Being detained without bail pending the hearing does not affect the burden of proof

(g) A court may order a person to be denied bail only if it finds that the proof is evident and the presumption strong on the charged offense(s) and finds by clear and convincing evidence that the arrestee poses a substantial risk to the safety of any other person or the community and no conditions of release will reasonably protect the safety of any other person or the community. If an arrestee was detained without bail after arrest and pending initial hearing, it does not affect the burden of proof at a hearing under this section.

New IC 35-33-8-3.7

7. Court shall consider a whole host of factors

(h) In making a determination of whether to deny bail, a court shall consider

(1) The nature and circumstances of the offense charged, including whether the offense is an offense of violence or involves alcohol or drug abuse;

(2) The weight of the evidence against the accused;

(3) The history and characteristics of the accused, including without limitation:

(A) The character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, and criminal history of the accused;

(B) Whether, at the time of the current alleged offense or at the time of the arrest of the accused, the accused was on probation, parole, community corrections, or release pending trial, sentencing, appeal, or completion of sentence for the commission of an offense under the laws of this state, another state, or the United States.

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

New IC 35-33-8-3.7

8. Evidence and findings treated similarly to CR 2.6 assessments

(i) No evidence or finding from a hearing under this section is admissible as substantive evidence at a trial concerning the offense(s) for which the hearing was conducted. Such evidence or findings may be admissible as impeachment or in a prosecution for perjury.

(j) If the court determines that an arrestee should not be denied bail, the court shall proceed to set terms of pretrial release for the arrestee in accordance with this chapter.

New IC 35-33-8-3.7

9. Expedited appeal process

(k) An order granting or denying bail pursuant to this section is a final appealable order. The court on appeal shall resolve the appeal expeditiously. The court on appeal shall not reverse, vacate, or otherwise alter an order under this section until both the arrestee and the state have been given the opportunity to brief the issue. The pendency of an appeal does not deprive a trial court of jurisdiction to conduct further proceedings in the case or to reconsider an order granting or denying bail.

New IC 35-33-8-3.7

10. Reconsideration of the Court's Order

(1) A court may reconsider an order granting or denying bail under this section if, at any time before trial, the court is made aware of information that was unknown or unobtainable at the time of a previous hearing and which information has a material bearing on the issue of whether there are conditions of release that will reasonably assure the safety of any other person or the community. The court may order a new hearing under this section upon motion of the state, the arrestee, or on its own motion.

Three Key Sections

Amend IC 35-33-8-2

New IC 35-33-8-3.7

Amend IC 35-33-8-3.8

Amend IC 35-33-8-3.8

SECTION 1. IC 35-33-8-3.8 IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JANUARY 1, 2027]: Sec. 8. (a) A court shall consider the results of the Indiana pretrial risk assessment system (if available) before setting, ~~or~~ modifying, **or denying** 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, that an arrestee does not present a substantial risk of flight or danger to the arrestee or others, the court shall consider releasing the arrestee without money bail or surety, subject to restrictions and conditions as determined by the court, unless one (1) or more of the following apply:

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

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

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

The court is not required to administer an assessment ~~before releasing an arrestee~~ if administering the assessment will delay ~~the arrestee's release~~ **the setting, modifying, or denying bail for an arrestee**.

