

Bail and Release Review Commission

Final Report



Office of the Governor
200 West Washington Street, Room 206
Indianapolis, Indiana 46204

Thursday, October 24, 2024

Report of the Bail and Release Review Commission

MEMBERS OF THE COMMISSION

Sen. Aaron Freeman
Co-Chairperson
Indiana Senate

Rep. Chris Jeter
Co-Chairperson
Indiana House of Representatives

Sen. Greg Taylor
Indiana Senate

Rep. Matt Pierce
Indiana House of Representatives

Sharon Jackson
Deputy General Counsel
Office of the Governor

Doug Carter
Superintendent
Indiana State Police

Christina Reagle
Commissioner
Indiana Department of
Corrections

Jay Chaudhary
Director, DMHA
Family and Social Services
Administration

Joe Habig
Acting State Budget Director
State Budget Agency

Justice Christopher Goff
Indiana Supreme Court

Mark Spitzer, Judge
Grant Co. Superior Court
Indiana Judges Association

Jarrod Holtsclaw
Greene Co. Prosecuting Attorney
Indiana Prosecuting Attorneys
Council

Betsy Baxter
Director of Victim Services
Madison County Prosecutor's Office

Bernice Corley
Executive Director
Indiana Public Defenders Council

Daniel L. Mawhorr
Adams County Sheriff
Indiana Sheriffs Association

Dave Bottoroff
Executive Director
Indiana Association of Counties

The Commission was staffed by the Office of the Governor.

INTRODUCTION

Senate Joint Resolution 1 [SJR 1] passed both chambers in April 2023. If again passed in the upcoming legislative session, and affirmed by voters in 2026, the Indiana Constitution would be amended in the following manner:

Current language:

Article 1, Section 17. Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong.

SJR 1 proposed change [in bold]:

Article 1, Section 17. Offenses, other than murder or treason, shall be bailable by sufficient sureties, **unless the accused poses a substantial risk to any other person or the community.** Murder or treason shall not be bailable when the proof is evident, or the presumption strong. **An offense other than murder or treason shall not be bailable if:**

- (1) the proof is evident or the presumption strong; and**
- (2) the state proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community.**

STATUTORY DIRECTIVE

The Bail and Release Review Commission was established by SEA 70 (2024), now codified at Ind. Code 5-2-25, and is charged to do the following:

Sec. 2. The bail and release review commission is established as a temporary executive branch commission to do the following:

- (1) Review data concerning the effect of bail reform measures on public safety, including violent crime and recidivism.
- (2) Review data concerning the effectiveness of pretrial release measures in ensuring a defendant's court appearance.
- (3) Review data concerning the effectiveness of pretrial release reform efforts in Indiana.
- (4) Review the effect of pretrial detention on defendants.
- (5) Review bail schedules and practices used statewide.
- (6) Review the effectiveness of bail and release measures used in other states.
- (7) Before November 1 of each year, issue a report containing its findings and recommendations to:
 - (A) the governor; and
 - (B) the legislative council.

The report to the legislative council must be in an electronic format under IC 5-14-6.

Ind. Code 5-2-25-2.

SUMMARY OF THE COMMISSION'S WORK

The Committee met two times during 2024: on September 25, 2024, in the State House, Indianapolis at 9:30 a.m. and October 24, 2024, in the State House, Indianapolis, at 9:30 a.m., a quorum was present at each meeting.

At the meeting on September 25, the Commission heard public testimony from the following:

Presentation 1: Judge Mark Spitzer, Indiana Judges Association, made the following points:

- Explained reasons why the courts implemented changes in the bail system due to: limited jail space, delays in trials, Constitutional limitations, and the presumption of innocence.
- Discussed that cash bail is not effective in its execution, results in unfair outcomes due to wealth disparities, and emphasized the unintended, compounding consequences of incarceration.
- Pointed out application of Indiana Rule of Criminal Procedure 2.6 and recent case law in giving judge's discretion, which is best used when they have most information available to them.
- Emphasized the importance of expanding Indiana's pretrial agencies and their impact on court appearance/public safety rates.
- Compared Indiana's bail system to that of other states.

Presentation 2: Jarrod Holtsclaw, Indiana Prosecuting Attorney's Council, made the following points:

- Discussed that currently the bail system results in inconsistent application across state.
- Explained the unreliability of the pretrial risk assessment, stating it relies on an accused person's answers and largely ignores public safety.
- Offered several recent examples of offenses committed by criminals while on discretionary pretrial release.
- Spoke in favor of SJ1 which would take public safety into consideration with the bail process, consider if there is substantial risk before allowing release.
- Described importance of implementing statutes to codify burden of proof, right to counsel, appeal, and other procedural issues.

Presentation 3: Zach Stock & Michael Moore, Indiana Public Defender's Council, made the following points:

- Discussed the overcrowding of jails, much of which is with low level crimes, and necessity that bail reform has in fixing this.
- Provided data that arrest rates are relatively low for accused persons on pretrial release.
- Explained how the use of bail has evolved over time, from ensuring innocent to protecting public.
- Expressed support for constitutional release without conditions to ensure various sources of equity in bail system.
- Described importance in an adversarial pretrial hearing based on finding of facts, with right to appeal, testimony, cross-examine, and a speedy trial.

At the meeting on October 24, the Commission discussed:

- Whether this Commission, another commission or an Interim Study Committee should be extended or created to continue the discussion of issues around Bail and Release.
- Whether the legislature should be encouraged to codify a requirement of bail hearings for certain offenses (serious violent offenses) or certain offenders (persons out on probation, parole or pretrial release) before determining a bail amount and what procedures or process should follow.
- The importance of incorporating Criminal Rule 2.6 and other existing statutory language into recommendations for proposed legislation
- Should SJR1 pass and amend the Indiana Constitution, there will be a need for clarifying/ supporting legislation.

COMMISSION RECOMMENDATIONS

The Commission voted to approve two recommendations at its October 24, 2024, meeting:

- 1. Regardless of the possible passage of SJR 1, the Indiana General Assembly is encouraged to consider whether those charged with serious violent felonies as well as those charged with any offense who is currently out on release (pretrial, probation or parole) should be required to appear before a judicial officer before a bail is set.**
- 2. The Indiana General Assembly is encouraged to consider whether to continue the discussion of what statutory framework would be required should Senate Joint Resolution 1 pass and become part of the State Constitution, either by this Bail and Release Review Commission or by another committee.**

Both recommendations passed unanimously, 12-0.

WITNESS LIST

Making presentations on September 25, 2024:

Judge Mark Spritzer, Grant County Superior Court, representing the Indiana Judges Association and Indiana Supreme Court

Jarrold Holtsclaw, Green County Prosecutor, representing the Indiana Prosecuting Attorney's Council

Zach Stock and Michael Moore, Indiana Public Defender's Council

FINAL COMMISSION VOTE

At the October 24, 2024, meeting, the Commission unanimously adopted this report, 12-0.