



February 25, 2005

HOUSE BILL No. 1055

DIGEST OF HB 1055 (Updated February 23, 2005 4:57 pm - DI 69)

Citations Affected: IC 35-33.

Synopsis: Pretrial services fee. Requires a person charged with a felony and placed on bail and supervised by a probation officer to pay a pretrial services fee (fee) to defray the cost of supervision by the probation department if the person has the financial ability to pay the fee. Allows a court to require a person charged with a misdemeanor to pay the fee if the person has the financial ability to pay the fee. Prohibits the bureau of motor vehicles from issuing or reinstating the license of a person who has not paid the person's fee. Makes other changes relating to the collection and distribution of the fee.

Effective: July 1, 2005.

Ayres, Foley, Cheney, Thomas

January 4, 2005, read first time and referred to Committee on Courts and Criminal Code.
February 24, 2005, amended, reported — Do Pass.

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HB 1055—LS 6457/DI 106+



February 25, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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HOUSE BILL No. 1055

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 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.2. (a) A court may
3 admit a defendant to bail and impose any of the following conditions
4 to assure the defendant's appearance at any stage of the legal
5 proceedings, or, upon a showing of clear and convincing evidence that
6 the defendant poses a risk of physical danger to another person or the
7 community, to assure the public's physical safety:
8 (1) Require the defendant to:
9 (A) execute a bail bond with sufficient solvent sureties;
10 (B) deposit cash or securities in an amount equal to the bail;
11 (C) execute a bond secured by real estate in the county, where
12 thirty-three hundredths (0.33) of the true tax value less
13 encumbrances is at least equal to the amount of the bail; or
14 (D) post a real estate bond.
15 (2) Require the defendant to execute a bail bond by depositing
16 cash or securities with the clerk of the court in an amount not less
17 than ten percent (10%) of the bail. If the defendant is convicted,

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1 the court may retain all or a part of the cash or securities to pay
 2 fines, costs, fees, and restitution, if ordered by the court. A portion
 3 of the deposit, not to exceed ten percent (10%) of the monetary
 4 value of the deposit or fifty dollars (\$50), whichever is the lesser
 5 amount, may be retained as an administrative fee. The clerk shall
 6 also retain from the deposit under this subdivision the following:
 7 (A) Fines, costs, fees, and restitution as ordered by the court.
 8 (B) Publicly paid costs of representation that shall be disposed
 9 of in accordance with subsection (b).
 10 (C) In the event of the posting of a real estate bond, the bond
 11 shall be used only to insure the presence of the defendant at
 12 any stage of the legal proceedings, but shall not be foreclosed
 13 for the payment of fines, costs, fees, or restitution.
 14 The individual posting bail for the defendant or the defendant
 15 admitted to bail under this subdivision must be notified by the
 16 sheriff, court, or clerk that the defendant's deposit may be
 17 forfeited under section 7 of this chapter or retained under
 18 subsection (b).
 19 (3) Impose reasonable restrictions on the activities, movements,
 20 associations, and residence of the defendant during the period of
 21 release.
 22 (4) Require the defendant to refrain from any direct or indirect
 23 contact with an individual.
 24 (5) Place the defendant under the reasonable supervision of a
 25 probation officer or other appropriate public official. **If the court**
 26 **places the defendant under the supervision of a probation**
 27 **officer, the court shall determine if the defendant must pay**
 28 **the pretrial services fee under section 3.3 of this chapter.**
 29 (6) Release the defendant into the care of a qualified person or
 30 organization responsible for supervising the defendant and
 31 assisting the defendant in appearing in court. The supervisor shall
 32 maintain reasonable contact with the defendant in order to assist
 33 the defendant in making arrangements to appear in court and,
 34 where appropriate, shall accompany the defendant to court. The
 35 supervisor need not be financially responsible for the defendant.
 36 (7) Release the defendant on personal recognizance unless:
 37 (A) the state presents evidence relevant to a risk by the
 38 defendant:
 39 (i) of nonappearance; or
 40 (ii) to the physical safety of the public; and
 41 (B) the court finds by a preponderance of the evidence that the
 42 risk exists.

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1 (8) Impose any other reasonable restrictions designed to assure
 2 the defendant's presence in court or the physical safety of another
 3 person or the community.

4 (b) Within thirty (30) days after disposition of the charges against
 5 the defendant, the court that admitted the defendant to bail shall order
 6 the clerk to remit the amount of the deposit remaining under subsection
 7 (a)(2) to the defendant. The portion of the deposit that is not remitted
 8 to the defendant shall be deposited by the clerk in the supplemental
 9 public defender services fund established under IC 33-40-3.

10 (c) For purposes of subsection (b), "disposition" occurs when the
 11 indictment or information is dismissed, or the defendant is acquitted or
 12 convicted of the charges.

13 (d) With the approval of the clerk of the court, the county sheriff
 14 may collect the bail posted under this section. The county sheriff shall
 15 remit the bail to the clerk of the court by the following business day.

16 (e) When a court imposes a condition of bail described in subsection
 17 (a)(4):

18 (1) the clerk of the court shall comply with IC 5-2-9; and
 19 (2) the prosecuting attorney shall file a confidential form
 20 prescribed or approved by the division of state court
 21 administration with the clerk.

22 SECTION 2. IC 35-33-8-3.3 IS ADDED TO THE INDIANA CODE
 23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 24 1, 2005]: **Sec. 3.3. (a) If a defendant is charged with a felony and is
 25 placed under the supervision of a probation officer, the court shall
 26 order the defendant to pay the pretrial services fee prescribed
 27 under subsection (d) if the defendant has the financial ability to
 28 pay the fee. If the defendant is charged with a misdemeanor and
 29 placed under the supervision of a probation officer, the court may
 30 order the person to pay the pretrial services fee prescribed under
 31 subsection (e) if the defendant has the financial ability to pay the
 32 fee.**

33 **(b) If a clerk of a court collects a pretrial services fee, the clerk
 34 may retain not more than three percent (3%) of the fee to defray
 35 the administrative costs of collecting the fee and shall deposit
 36 amounts retained under this subsection in the clerk's record
 37 perpetuation fund established under IC 33-37-5-2.**

38 **(c) If a clerk of a court collects a pretrial services fee and the
 39 defendant is:**

40 **(1) charged in a city or town court, upon request of the city or
 41 town fiscal officer, the clerk shall transfer not more than
 42 three percent (3%) of the fee to the city or town general fund;**

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or
(2) not charged in a city or town court, upon request of the county auditor, the clerk shall transfer not more than three percent (3%) of the fee to the county auditor for deposit in the county general fund.

(d) The court shall order a defendant who is supervised by a probation officer and charged with a felony to pay:

- (1) an initial pretrial services fee of at least twenty-five dollars (\$25) and not more than one hundred dollars (\$100);
- (2) a monthly pretrial services fee of at least fifteen dollars (\$15) and not more than thirty dollars (\$30) for each month that the defendant remains on bail and under the supervision of a probation officer; and
- (3) an administrative fee of one hundred dollars (\$100);

to either the probation department or the clerk of the court if the defendant has the financial ability to pay the fees.

(e) The court may order a defendant who is supervised by a probation officer and charged with a misdemeanor to pay:

- (1) an initial pretrial services fee of not more than fifty dollars (\$50);
- (2) a monthly pretrial services fee of at least ten dollars (\$10) and not more than twenty dollars (\$20) for each month that the defendant remains on bail and under the supervision of a probation officer; and
- (3) an administrative fee of fifty dollars (\$50);

to either the probation department or the clerk of the court if the defendant has the financial ability to pay the fees.

(f) This subsection does not apply to a defendant charged in a city or town court. The probation department or clerk of the court shall collect the administrative fees under subsections (d)(3) and (e)(3) before collecting any other fee under subsection (d) or (e). All money collected by the probation department or the clerk of the court under this section shall be transferred to the county treasurer who shall deposit the money into the county supplemental adult probation services fund. The fiscal body of the county shall appropriate money from the county supplemental adult probation services fund:

- (1) to the county, superior, or circuit court of the county that provides probation services to adults to supplement adult probation services; and
- (2) to supplement the salary of a probation officer in accordance with the schedule adopted by the county fiscal

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body under IC 36-2-16.5.

(g) This subsection applies to a defendant charged in a city or town court. The probation department or clerk of the court shall collect the administrative fee under subsection (e)(3) before collecting any other fee under subsection (e). All money collected by the probation department or the clerk of the court under this section shall be transferred to the fiscal officer of the city or town for deposit into the local supplemental adult probation services fund. The fiscal body of the city or town shall appropriate money from the local supplemental adult probation services fund to the city or town court for the court's use in providing supplementary probation services to adults and to supplement the salary of a probation officer. Money may be appropriated under this subsection only to a city or town court that has an adult probation services program. If a city or town court does not have an adult probation services program, the money collected by the probation department must be transferred and appropriated as provided under subsection (f).

(h) The county or local supplemental adult probation services fund may be used only to supplement adult probation services and to supplement salaries for probation officers. A supplemental probation services fund may not be used to replace other probation services funding. Any money remaining in the fund at the end of the year does not revert to any other fund but continues in the county or local supplemental adult probation services fund.

(i) A defendant who is charged with more than one (1) offense and who is supervised by the probation department as a condition of bail may not be required to pay more than one (1):

- (1) initial pretrial services fee; and
- (2) monthly pretrial services fee per month.

(j) A probation department may petition a court to:

- (1) impose a pretrial services fee on a defendant; or
- (2) increase a defendant's pretrial services fee;

if the financial ability of the defendant to pay a pretrial services fee changes while the defendant is on bail and supervised by a probation officer.

(k) An order to pay a pretrial services fee under this section:

- (1) is a judgment lien that:
 - (A) attaches to the property of the defendant;
 - (B) may be perfected;
 - (C) may be enforced to satisfy any payment that is delinquent under this section; and

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1 **(D) expires;**
2 **in the same manner as a judgment lien created in a civil**
3 **proceeding;**
4 **(2) is not discharged by the disposition of charges against the**
5 **defendant or by the completion of a sentence imposed on the**
6 **defendant, if any; and**
7 **(3) is not discharged by the liquidation of a defendant's estate**
8 **by a receiver under IC 32-30-5.**
9 **(l) If a court orders a defendant to pay a pretrial services fee,**
10 **the court may enforce the order by garnishing the wages, salary,**
11 **and other income earned by the defendant.**
12 **(m) If:**
13 **(1) a defendant is delinquent in paying the defendant's**
14 **pretrial services fee; and**
15 **(2) the defendant's driver's license or permit has been**
16 **suspended or revoked or the defendant has never been issued**
17 **a driver's license or permit;**
18 **the court may order the bureau of motor vehicles to not issue or**
19 **not reinstate a driver's license or permit to the defendant until the**
20 **defendant has paid the defendant's delinquent pretrial services fee.**
21 **(n) In addition to other methods of payment allowed by law, a**
22 **probation department may accept payment of a pretrial services**
23 **fee by credit card (as defined in IC 14-11-1-7(a)). The liability for**
24 **payment is not discharged until the probation department receives**
25 **payment or credit from the institution responsible for making the**
26 **payment or credit.**
27 **(o) The probation department may contract with a bank or**
28 **credit card vendor for acceptance of a bank or credit card.**
29 **However, if there is a vendor transaction charge or discount fee,**
30 **whether billed to the probation department or charged directly to**
31 **the probation department's account, the probation department**
32 **may collect a credit card service fee from the person using the**
33 **bank or credit card. The fee collected under this subsection is a**
34 **permitted additional charge to the fee the probation department is**
35 **required to collect under subsection (d) or (e).**
36 **(p) The probation department shall forward a credit card**
37 **service fee collected under subsection (o) to the county treasurer or**
38 **city or town fiscal officer in accordance with subsection (f) or (g).**
39 **These funds may be used without appropriation to pay the**
40 **transaction charge or discount fee charged by the bank or credit**
41 **card vendor.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1055, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 27, delete "." and insert "**if the defendant has the financial ability to pay the fee.**".

Page 3, line 30, delete "." and insert "**if the defendant has the financial ability to pay the fee.**".

Page 4, line 13, delete "." and insert "**if the defendant has the financial ability to pay the fees.**".

Page 4, line 23, delete "." and insert "**if the defendant has the financial ability to pay the fees.**".

and when so amended that said bill do pass.

(Reference is to HB 1055 as introduced.)

ULMER, Chair

Committee Vote: yeas 7, nays 4.

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