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# HOUSE BILL No. 1055

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-33-8.

**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. Makes the fee discretionary for a person charged with a misdemeanor. Forbids 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.

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**Ayres, Foley, Cheney, Thomas**

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January 4, 2005, read first time and referred to Committee on Courts and Criminal Code.

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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,



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 is charged with a  
 28 misdemeanor and placed under the supervision of a probation  
 29 officer, the court may order the person to pay the pretrial services  
 30 fee prescribed under subsection (e).**

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

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

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

42 (2) **not charged in a city or town court, upon request of the**

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1 county auditor, the clerk shall transfer not more than three  
 2 percent (3%) of the fee to the county auditor for deposit in the  
 3 county general fund.

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

6 (1) an initial pretrial services fee of at least twenty-five dollars  
 7 (\$25) and not more than one hundred dollars (\$100);

8 (2) a monthly pretrial services fee of at least fifteen dollars  
 9 (\$15) and not more than thirty dollars (\$30) for each month  
 10 that the defendant remains on bail and under the supervision  
 11 of a probation officer; and

12 (3) an administrative fee of one hundred dollars (\$100);  
 13 to either the probation department or the clerk of the court.

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

16 (1) an initial pretrial services fee of not more than fifty dollars  
 17 (\$50);

18 (2) a monthly pretrial services fee of at least ten dollars (\$10)  
 19 and not more than twenty dollars (\$20) for each month that  
 20 the defendant remains on bail and under the supervision of a  
 21 probation officer; and

22 (3) an administrative fee of fifty dollars (\$50);  
 23 to either the probation department or the clerk of the court.

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

34 (1) to the county, superior, or circuit court of the county that  
 35 provides probation services to adults to supplement adult  
 36 probation services; and

37 (2) to supplement the salary of a probation officer in  
 38 accordance with the schedule adopted by the county fiscal  
 39 body under IC 36-2-16.5.

40 (g) This subsection applies to a defendant charged in a city or  
 41 town court. The probation department or clerk of the court shall  
 42 collect the administrative fee under subsection (e)(3) before

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1 collecting any other fee under subsection (e). All money collected  
 2 by the probation department or the clerk of the court under this  
 3 section shall be transferred to the fiscal officer of the city or town  
 4 for deposit into the local supplemental adult probation services  
 5 fund. The fiscal body of the city or town shall appropriate money  
 6 from the local supplemental adult probation services fund to the  
 7 city or town court for the court's use in providing supplementary  
 8 probation services to adults and to supplement the salary of a  
 9 probation officer. Money may be appropriated under this  
 10 subsection only to a city or town court that has an adult probation  
 11 services program. If a city or town court does not have an adult  
 12 probation services program, the money collected by the probation  
 13 department must be transferred and appropriated as provided  
 14 under subsection (f).

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

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

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

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

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

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

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

- 34 (1) is a judgment lien that:
  - 35 (A) attaches to the property of the defendant;
  - 36 (B) may be perfected;
  - 37 (C) may be enforced to satisfy any payment that is
  - 38 delinquent under this section; and
  - 39 (D) expires;
- 40 in the same manner as a judgment lien created in a civil
- 41 proceeding;
- 42 (2) is not discharged by the disposition of charges against the

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

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