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**SENATE BILL No. 207**

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DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-37-2; IC 35-38.

**Synopsis:** Collection of court costs and fines. Allows a court to suspend payment of court costs and court imposed fines until a convicted person has completed all or part of the person's sentence. Grants a court continuing jurisdiction over the convicted person until the costs and fines are completely paid. Allows a court to use contempt proceedings to enforce its order for payment. Makes conforming amendments.

**Effective:** July 1, 2006.

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**Dillon**

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January 9, 2006, read first time and referred to Committee on Judiciary.

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Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

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## SENATE BILL No. 207



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 33-37-2-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) Costs in a  
3 criminal action are not a part of the sentence and may ~~not~~ be suspended  
4 **only under section 3 of this chapter**. However, if:

5 (1) two (2) or more charges against a person are joined for trial;  
6 and  
7 (2) the person is convicted of two (2) or more offenses in the trial;  
8 the court may waive the person's liability for costs for all but one (1) of  
9 the offenses.

10 (b) If a person is acquitted or an indictment or information is  
11 dismissed by order of the court, the person is not liable for costs.

12 SECTION 2. IC 33-37-2-3 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) **Except as**  
14 **provided in subsection (b)**, when the court imposes costs, it shall  
15 conduct a hearing to determine whether the convicted person is  
16 indigent. If the person is not indigent, the court shall order the person  
17 to pay:



- 1 (1) the entire amount of the costs at the time sentence is
- 2 pronounced;
- 3 (2) the entire amount of the costs at some later date; or
- 4 (3) specified parts of the costs at designated intervals.

5 **(b) A court may impose costs and suspend payment of all or**  
 6 **part of the costs until the convicted person has completed all or**  
 7 **part of the sentence. If the court suspends payment of the costs, the**  
 8 **court shall conduct a hearing at the time the costs are due to**  
 9 **determine whether the convicted person is indigent. If the**  
 10 **convicted person is not indigent, the court shall order the convicted**  
 11 **person to pay the costs:**

- 12 (1) at the time the costs are due; or
- 13 (2) in a manner set forth in subsection (a)(2) through (a)(3).

14 **(c) If a court suspends payment of costs under subsection (b),**  
 15 **the court retains jurisdiction over the convicted person until the**  
 16 **convicted person has paid the entire amount of the costs.**

- 17 ~~(b)~~ **(d) Upon any default in the payment of the costs:**
- 18 (1) an attorney representing the county may bring an action on a
  - 19 debt for the unpaid amount; or
  - 20 (2) the court may direct that the person, if the person is not
  - 21 indigent, be committed to the county jail and credited toward
  - 22 payment at the rate of twenty dollars (\$20) for each twenty-four
  - 23 (24) hour period the person is confined, until the amount paid
  - 24 plus the amount credited equals the entire amount due; or
  - 25 **(3) the court may institute contempt proceedings to enforce**  
 26 **the court's order for payment of the costs.**

27 ~~(c)~~ **(e) If, after a hearing under subsection (a) or (b), the court**  
 28 **determines that a convicted person is able to pay part of the costs of**  
 29 **representation, the court shall order the person to pay an amount of not**  
 30 **more than the cost of the defense services rendered on behalf of the**  
 31 **person. The clerk shall deposit the amount paid by a convicted person**  
 32 **under this subsection in the county's supplemental public defender**  
 33 **services fund established under IC 33-40-3-1.**

34 ~~(d)~~ **(f) A person ordered to pay part of the cost of representation**  
 35 **under subsection (c) (e) has the same rights and protections as those of**  
 36 **other judgment debtors under the Constitution of the State of Indiana**  
 37 **and Indiana law.**

38 SECTION 3. IC 35-38-1-18 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 18. (a) **Except as**  
 40 **provided in subsection (b),** whenever the court imposes a fine, it shall  
 41 conduct a hearing to determine whether the convicted person is  
 42 indigent. If the person is not indigent, the court shall order:

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- 1 (1) that the person pay the entire amount at the time sentence is
- 2 pronounced;
- 3 (2) that the person pay the entire amount at some later date;
- 4 (3) that the person pay specified parts at designated intervals; or
- 5 (4) at the request of the person, commitment of the person to the
- 6 county jail for a period of time set by the court in lieu of a fine. If
- 7 the court orders a person committed to jail under this subdivision,
- 8 the person's total confinement for the crime that resulted in the
- 9 conviction must not exceed the maximum term of imprisonment
- 10 prescribed for the crime under IC 35-50-2 or IC 35-50-3.

11 **(b) A court may impose a fine and suspend payment of all or**  
 12 **part of the fine until the convicted person has completed all or part**  
 13 **of the sentence. If the court suspends payment of the fine, the court**  
 14 **shall conduct a hearing at the time the fine is due to determine**  
 15 **whether the convicted person is indigent. If the convicted person is**  
 16 **not indigent, the court shall order the convicted person to pay the**  
 17 **fine:**

- 18 (1) at the time the fine is due; or
- 19 (2) in a manner set forth in subsection (a)(2) through (a)(4).
- 20 **(c) If a court suspends payment of a fine under subsection (b),**  
 21 **the court retains jurisdiction over the convicted person until the**  
 22 **convicted person has paid the entire amount of the fine.**

- 23 ~~(b)~~ **(d) Upon any default in the payment of the fine:**
- 24 (1) an attorney representing the county may bring an action on a
- 25 debt for the unpaid amount; or
- 26 (2) the court may direct that the person, if the person is not
- 27 indigent, be committed to the county jail and credited toward
- 28 payment at the rate of twenty dollars (\$20) for each twenty-four
- 29 (24) hour period the person is confined, until the amount paid
- 30 plus the amount credited equals the entire amount due; or
- 31 **(3) the court may institute contempt proceedings to enforce**  
 32 **the court's order for payment of the fine.**

33 SECTION 4. IC 35-38-2-3, AS AMENDED BY P.L.13-2005,  
 34 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2006]: Sec. 3. (a) The court may revoke a person's probation  
 36 if:

- 37 (1) the person has violated a condition of probation during the
- 38 probationary period; and
- 39 (2) the petition to revoke probation is filed during the
- 40 probationary period or before the earlier of the following:
- 41 (A) One (1) year after the termination of probation.
- 42 (B) Forty-five (45) days after the state receives notice of the

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- 1 violation.
- 2 (b) When a petition is filed charging a violation of a condition of
- 3 probation, the court may:
- 4 (1) order a summons to be issued to the person to appear; or
- 5 (2) order a warrant for the person's arrest if there is a risk of the
- 6 person's fleeing the jurisdiction or causing harm to others.
- 7 (c) The issuance of a summons or warrant tolls the period of
- 8 probation until the final determination of the charge.
- 9 (d) The court shall conduct a hearing concerning the alleged
- 10 violation. The court may admit the person to bail pending the hearing.
- 11 (e) The state must prove the violation by a preponderance of the
- 12 evidence. The evidence shall be presented in open court. The person is
- 13 entitled to confrontation, cross-examination, and representation by
- 14 counsel.
- 15 (f) Probation may not be revoked for failure to comply with
- 16 conditions of a sentence that imposes financial obligations on the
- 17 person unless the person recklessly, knowingly, or intentionally fails to
- 18 pay.
- 19 (g) If the court finds that the person has violated a condition at any
- 20 time before termination of the period, and the petition to revoke is filed
- 21 within the probationary period, the court may:
- 22 (1) continue the person on probation, with or without modifying
- 23 or enlarging the conditions;
- 24 (2) extend the person's probationary period for not more than one
- 25 (1) year beyond the original probationary period; or
- 26 (3) order execution of all or part of the sentence that was
- 27 suspended at the time of initial sentencing.
- 28 (h) If the court finds that the person has violated a condition of
- 29 home detention at any time before termination of the period, and the
- 30 petition to revoke probation is filed within the probationary period, the
- 31 court shall:
- 32 (1) order a sanction as set forth in subsection (g); and
- 33 (2) provide credit for time served as set forth under
- 34 IC 35-38-2.5-5.
- 35 (i) If the court finds that the person has violated a condition during
- 36 any time before the termination of the period, and the petition is filed
- 37 under subsection (a) after the probationary period has expired, the court
- 38 may:
- 39 (1) reinstate the person's probationary period, with or without
- 40 enlarging the conditions, if the sum of the length of the original
- 41 probationary period and the reinstated probationary period does
- 42 not exceed the length of the maximum sentence allowable for the

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1 offense that is the basis of the probation; or  
 2 (2) order execution of all or part of the sentence that was  
 3 suspended at the time of the initial sentencing.  
 4 (j) If the court finds that the person has violated a condition of home  
 5 detention during any time before termination of the period, and the  
 6 petition is filed under subsection (a) after the probation period has  
 7 expired, the court shall:  
 8 (1) order a sanction as set forth in subsection (i); and  
 9 (2) provide credit for time served as set forth under  
 10 IC 35-38-2.5-5.  
 11 (k) A judgment revoking probation is a final appealable order.  
 12 (l) Failure to pay fines or costs required as a condition of probation  
 13 may not be the sole basis for commitment to the department of  
 14 correction.  
 15 (m) Failure to pay fees or costs assessed against a person under  
 16 IC 33-40-3-6, ~~IC 33-37-2-3(c)~~, IC 33-37-2-3(e), or IC 35-33-7-6 is not  
 17 grounds for revocation of probation.

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