



Reprinted  
March 27, 2007

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**ENGROSSED**  
**SENATE BILL No. 125**

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DIGEST OF SB 125 (Updated March 26, 2007 2:14 pm - DI 69)

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

**Synopsis:** Wayne superior courts; court costs and fines. Allows the Wayne superior court No.1 and Wayne superior court No.2 to appoint a referee and a commissioner. 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 or wage garnishment to enforce its order for payment. Makes conforming amendments.

**Effective:** July 1,2007; July 1, 2007.

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**Dillon, Walker, Steele, Lanane**

(HOUSE SPONSORS — KUZMAN, ULMER, KOCH)

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January 8, 2007, read first time and referred to Committee on Judiciary.  
February 8, 2007, amended, reported favorably — Do Pass.  
February 12, 2007, read second time, ordered engrossed. Engrossed.  
February 13, 2007, read third time, passed. Yeas 44, nays 2.

HOUSE ACTION

February 26, 2007, read first time and referred to Committee on Judiciary.  
March 20, 2007, reported — Do Pass.  
March 26, 2007, read second time, amended, ordered engrossed.

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First Regular Session 115th General Assembly (2007)

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 2006 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 125

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 33-33-89-5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. The judge of the  
3 superior court ~~shall may~~ appoint a bailiff, ~~and~~ an official court reporter,  
4 a referee, and a commissioner for the court, to serve ~~during at~~  
5 the pleasure of the court. The judge shall fix their ~~per diem or salary~~  
6 **compensation** within the limits and in the manner as provided by law  
7 concerning ~~bailiffs these officers and official court reporters. The~~  
8 ~~bailiff and court reporter employees. The compensation~~ shall be paid  
9 monthly out of the treasury of Wayne County in the manner provided  
10 by law.

11 SECTION 2. IC 33-33-89.2-4 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. The judge of the  
13 Wayne superior court No. 2 ~~shall may~~ appoint a bailiff, ~~and~~ an official  
14 court reporter, ~~a referee, and a commissioner~~ for the court, to serve  
15 at the pleasure of the court. The judge shall fix their compensation  
16 within the limits and in the manner as ~~may be~~ provided by law  
17 concerning ~~bailiffs these officers and official court reporters.~~

ES 125—LS 6312/DI 69+



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1 **employees.** The compensation shall be paid monthly out of the treasury  
2 of Wayne County in the manner provided by law.

3 SECTION 3. IC 33-37-2-2 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) Costs in a  
5 criminal action are not a part of the sentence and may ~~not~~ be suspended  
6 **only under section 3 of this chapter.** However, if:

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

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

14 SECTION 4. IC 33-37-2-3 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) **Except as**  
16 **provided in subsection (b),** when the court imposes costs, it shall  
17 conduct a hearing to determine whether the convicted person is  
18 indigent. If the person is not indigent, the court shall order the person  
19 to pay:

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

24 **(b) A court may impose costs and suspend payment of all or**  
25 **part of the costs until the convicted person has completed all or**  
26 **part of the sentence. If the court suspends payment of the costs, the**  
27 **court shall conduct a hearing at the time the costs are due to**  
28 **determine whether the convicted person is indigent. If the**  
29 **convicted person is not indigent, the court shall order the convicted**  
30 **person to pay the costs:**

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

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

36 ~~(b)~~ **(d) Upon any default in the payment of the costs:**

- 37 (1) an attorney representing the county may bring an action on a
- 38 debt for the unpaid amount; ~~or~~
- 39 (2) the court may direct that the person, if the person is not
- 40 indigent, be committed to the county jail and credited toward
- 41 payment at the rate of twenty dollars (\$20) for each twenty-four
- 42 (24) hour period the person is confined, until the amount paid

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plus the amount credited equals the entire amount due; **or**  
**(3) the court may institute contempt proceedings to enforce the court's order for payment of the costs.**

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

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

SECTION 5. IC 35-38-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) **Except as provided in subsection (b)**, whenever the court imposes a fine, it shall conduct a hearing to determine whether the convicted person is indigent. If the person is not indigent, the court shall order:

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

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

- (1) at the time the fine is due; or**
- (2) in a manner set forth in subsection (a)(2) through (a)(4).**

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

~~(b)~~ **(d)** Upon any default in the payment of the fine:

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- 1 (1) an attorney representing the county may bring an action on a
- 2 debt for the unpaid amount; **or**
- 3 (2) the court may direct that the person, if the person is not
- 4 indigent, be committed to the county jail and credited toward
- 5 payment at the rate of twenty dollars (\$20) for each twenty-four
- 6 (24) hour period the person is confined, until the amount paid
- 7 plus the amount credited equals the entire amount due; **or**
- 8 **(3) the court may institute contempt proceedings or order the**
- 9 **convicted person's wages, salary, and other income garnished**
- 10 **in accordance with IC 24-4.5-5-105 to enforce the court's**
- 11 **order for payment of the fine.**

12 SECTION 6. IC 35-38-2-3, AS AMENDED BY P.L.13-2005,  
 13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 14 JULY 1, 2007]: Sec. 3. (a) The court may revoke a person's probation  
 15 if:

- 16 (1) the person has violated a condition of probation during the
- 17 probationary period; and
- 18 (2) the petition to revoke probation is filed during the
- 19 probationary period or before the earlier of the following:
  - 20 (A) One (1) year after the termination of probation.
  - 21 (B) Forty-five (45) days after the state receives notice of the
  - 22 violation.
- 23 (b) When a petition is filed charging a violation of a condition of
- 24 probation, the court may:
  - 25 (1) order a summons to be issued to the person to appear; or
  - 26 (2) order a warrant for the person's arrest if there is a risk of the
  - 27 person's fleeing the jurisdiction or causing harm to others.
- 28 (c) The issuance of a summons or warrant tolls the period of
- 29 probation until the final determination of the charge.
- 30 (d) The court shall conduct a hearing concerning the alleged
- 31 violation. The court may admit the person to bail pending the hearing.
- 32 (e) The state must prove the violation by a preponderance of the
- 33 evidence. The evidence shall be presented in open court. The person is
- 34 entitled to confrontation, cross-examination, and representation by
- 35 counsel.
- 36 (f) Probation may not be revoked for failure to comply with
- 37 conditions of a sentence that imposes financial obligations on the
- 38 person unless the person recklessly, knowingly, or intentionally fails to
- 39 pay.
- 40 (g) If the court finds that the person has violated a condition at any
- 41 time before termination of the period, and the petition to revoke is filed
- 42 within the probationary period, the court may:

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1 (1) continue the person on probation, with or without modifying  
 2 or enlarging the conditions;  
 3 (2) extend the person's probationary period for not more than one  
 4 (1) year beyond the original probationary period; or  
 5 (3) order execution of all or part of the sentence that was  
 6 suspended at the time of initial sentencing.

7 (h) If the court finds that the person has violated a condition of  
 8 home detention at any time before termination of the period, and the  
 9 petition to revoke probation is filed within the probationary period, the  
 10 court shall:

11 (1) order a sanction as set forth in subsection (g); and  
 12 (2) provide credit for time served as set forth under  
 13 IC 35-38-2.5-5.

14 (i) If the court finds that the person has violated a condition during  
 15 any time before the termination of the period, and the petition is filed  
 16 under subsection (a) after the probationary period has expired, the court  
 17 may:

18 (1) reinstate the person's probationary period, with or without  
 19 enlarging the conditions, if the sum of the length of the original  
 20 probationary period and the reinstated probationary period does  
 21 not exceed the length of the maximum sentence allowable for the  
 22 offense that is the basis of the probation; or  
 23 (2) order execution of all or part of the sentence that was  
 24 suspended at the time of the initial sentencing.

25 (j) If the court finds that the person has violated a condition of home  
 26 detention during any time before termination of the period, and the  
 27 petition is filed under subsection (a) after the probation period has  
 28 expired, the court shall:

29 (1) order a sanction as set forth in subsection (i); and  
 30 (2) provide credit for time served as set forth under  
 31 IC 35-38-2.5-5.

32 (k) A judgment revoking probation is a final appealable order.

33 (l) Failure to pay fines or costs required as a condition of probation  
 34 may not be the sole basis for commitment to the department of  
 35 correction.

36 (m) Failure to pay fees or costs assessed against a person under  
 37 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  
 38 grounds for revocation of probation.

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SENATE MOTION

Madam President: I move that Senator Walker be added as second author of Senate Bill 125.

DILLON

SENATE MOTION

Madam President: I move that Senators Steele and Lanane be added as coauthors of Senate Bill 125.

DILLON

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 125, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 31, after "proceedings" insert "**or order the convicted person's wages, salary, and other income garnished in accordance with IC 24-4.5-5-105**".

and when so amended that said bill do pass.

(Reference is to SB 125 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 125, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LAWSON L, Chair

Committee Vote: yeas 8, nays 0.

ES 125—LS 6312/DI 69+

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 125 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 33-33-89-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. The judge of the superior court ~~shall may~~ appoint a bailiff, ~~and~~ an official court reporter, **a referee, and a commissioner** for the court, to serve ~~during at~~ the pleasure of the court. The judge shall fix their ~~per diem or salary~~ **compensation** within the limits and in the manner as provided by law concerning ~~bailiffs these officers and official court reporters. The bailiff and court reporter employees. The compensation~~ shall be paid monthly out of the treasury of Wayne County in the manner provided by law.

SECTION 2. IC 33-33-89.2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. The judge of the Wayne superior court No. 2 ~~shall may~~ appoint a bailiff, ~~and~~ an official court reporter, **a referee, and a commissioner** for the court, to serve at the pleasure of the court. The judge shall fix their compensation within the limits and in the manner as ~~may be~~ provided by law concerning ~~bailiffs these officers and official court reporters. employees.~~ The compensation shall be paid monthly out of the treasury of Wayne County in the manner provided by law."

Renumber all SECTIONS consecutively.

(Reference is to ESB 125 as printed March 21, 2007.)

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