

**CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 125**

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

Synopsis: Court costs, fees, and fines. Conference committee report for ESB 125. Specifies that the \$13 service of process fee that a sheriff is required to collect from a party requesting service of a writ, an order, a process, a notice, a tax warrant, or any other paper completed by the sheriff may be collected only one time per case for the duration of the case. 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. **(This conference committee report: (1) removes provisions that would allow the Wayne superior court No.1 and Wayne superior court No.2 to appoint a referee and a commissioner; and (2) adds the provision concerning the \$13 service of process fee.)**

Effective: July 1, 2007.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 125 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 courts.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 33-37-2-2 IS AMENDED TO READ AS
- 6 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) Costs in a
- 7 criminal action are not a part of the sentence and may ~~not~~ be suspended
- 8 **only under section 3 of this chapter.** However, if:
- 9 (1) two (2) or more charges against a person are joined for trial;
- 10 and
- 11 (2) the person is convicted of two (2) or more offenses in the trial;
- 12 the court may waive the person's liability for costs for all but one (1) of
- 13 the offenses.
- 14 (b) If a person is acquitted or an indictment or information is
- 15 dismissed by order of the court, the person is not liable for costs.
- 16 SECTION 2. IC 33-37-2-3 IS AMENDED TO READ AS
- 17 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) **Except as**
- 18 **provided in subsection (b),** when the court imposes costs, it shall
- 19 conduct a hearing to determine whether the convicted person is
- 20 indigent. If the person is not indigent, the court shall order the person
- 21 to pay:
- 22 (1) the entire amount of the costs at the time sentence is

1 pronounced;

2 (2) the entire amount of the costs at some later date; or

3 (3) specified parts of the costs at designated intervals.

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

11 **(1) at the time the costs are due; or**

12 **(2) in a manner set forth in subsection (a)(2) through (a)(3).**

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

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

17 (1) an attorney representing the county may bring an action on a
 18 debt for the unpaid amount; ~~or~~

19 (2) the court may direct that the person, if the person is not
 20 indigent, be committed to the county jail and credited toward
 21 payment at the rate of twenty dollars (\$20) for each twenty-four
 22 (24) hour period the person is confined, until the amount paid
 23 plus the amount credited equals the entire amount due; **or**

24 **(3) the court may institute contempt proceedings to enforce**
 25 **the court's order for payment of the costs.**

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

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

37 SECTION 3. IC 33-37-5-15, AS AMENDED BY P.L.174-2006,
 38 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2007]: Sec. 15. (a) The sheriff shall collect a service of
 40 process fee of thirteen dollars (\$13) from a party requesting service of
 41 a writ, an order, a process, a notice, a tax warrant, or any other paper
 42 completed by the sheriff. **A service of process fee collected under this**
 43 **subsection may be collected only one (1) time per case for the**
 44 **duration of the case.**

45 (b) The sheriff shall collect from the person who filed the civil
 46 action a service of process fee of sixty dollars (\$60), in addition to any
 47 other fee for service of process, if:

48 (1) a person files a civil action outside Indiana; and

49 (2) a sheriff in Indiana is requested to perform a service of
 50 process associated with the civil action in Indiana.

51 (c) A sheriff shall transfer fees collected under this section to the

1 county auditor of the county in which the sheriff has jurisdiction.

2 (d) The county auditor shall deposit fees collected under this
3 section:

4 (1) in the pension trust established by the county under
5 IC 36-8-10-12; or

6 (2) if the county has not established a pension trust under
7 IC 36-8-10-12, in the county general fund.

8 SECTION 4. IC 35-38-1-18 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) **Except as
10 provided in subsection (b)**, whenever the court imposes a fine, it shall
11 conduct a hearing to determine whether the convicted person is
12 indigent. If the person is not indigent, the court shall order:

13 (1) that the person pay the entire amount at the time sentence is
14 pronounced;

15 (2) that the person pay the entire amount at some later date;

16 (3) that the person pay specified parts at designated intervals; or

17 (4) at the request of the person, commitment of the person to the
18 county jail for a period of time set by the court in lieu of a fine. If
19 the court orders a person committed to jail under this subdivision,
20 the person's total confinement for the crime that resulted in the
21 conviction must not exceed the maximum term of imprisonment
22 prescribed for the crime under IC 35-50-2 or IC 35-50-3.

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

30 **(1) at the time the fine is due; or**

31 **(2) in a manner set forth in subsection (a)(2) through (a)(4).**

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

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

36 (1) an attorney representing the county may bring an action on a
37 debt for the unpaid amount; ~~or~~

38 (2) the court may direct that the person, if the person is not
39 indigent, be committed to the county jail and credited toward
40 payment at the rate of twenty dollars (\$20) for each twenty-four
41 (24) hour period the person is confined, until the amount paid
42 plus the amount credited equals the entire amount due; **or**

43 **(3) the court may institute contempt proceedings or order the
44 convicted person's wages, salary, and other income garnished
45 in accordance with IC 24-4.5-5-105 to enforce the court's
46 order for payment of the fine.**

47 SECTION 5. IC 35-38-2-3, AS AMENDED BY P.L.13-2005,
48 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
49 JULY 1, 2007]: Sec. 3. (a) The court may revoke a person's probation
50 if:

51 (1) the person has violated a condition of probation during the

- 1 probationary period; and
- 2 (2) the petition to revoke probation is filed during the
- 3 probationary period or before the earlier of the following:
- 4 (A) One (1) year after the termination of probation.
- 5 (B) Forty-five (45) days after the state receives notice of the
- 6 violation.
- 7 (b) When a petition is filed charging a violation of a condition of
- 8 probation, the court may:
- 9 (1) order a summons to be issued to the person to appear; or
- 10 (2) order a warrant for the person's arrest if there is a risk of the
- 11 person's fleeing the jurisdiction or causing harm to others.
- 12 (c) The issuance of a summons or warrant tolls the period of
- 13 probation until the final determination of the charge.
- 14 (d) The court shall conduct a hearing concerning the alleged
- 15 violation. The court may admit the person to bail pending the hearing.
- 16 (e) The state must prove the violation by a preponderance of the
- 17 evidence. The evidence shall be presented in open court. The person is
- 18 entitled to confrontation, cross-examination, and representation by
- 19 counsel.
- 20 (f) Probation may not be revoked for failure to comply with
- 21 conditions of a sentence that imposes financial obligations on the
- 22 person unless the person recklessly, knowingly, or intentionally fails to
- 23 pay.
- 24 (g) If the court finds that the person has violated a condition at any
- 25 time before termination of the period, and the petition to revoke is filed
- 26 within the probationary period, the court may:
- 27 (1) continue the person on probation, with or without modifying
- 28 or enlarging the conditions;
- 29 (2) extend the person's probationary period for not more than one
- 30 (1) year beyond the original probationary period; or
- 31 (3) order execution of all or part of the sentence that was
- 32 suspended at the time of initial sentencing.
- 33 (h) If the court finds that the person has violated a condition of
- 34 home detention at any time before termination of the period, and the
- 35 petition to revoke probation is filed within the probationary period, the
- 36 court shall:
- 37 (1) order a sanction as set forth in subsection (g); and
- 38 (2) provide credit for time served as set forth under
- 39 IC 35-38-2.5-5.
- 40 (i) If the court finds that the person has violated a condition during
- 41 any time before the termination of the period, and the petition is filed
- 42 under subsection (a) after the probationary period has expired, the court
- 43 may:
- 44 (1) reinstate the person's probationary period, with or without
- 45 enlarging the conditions, if the sum of the length of the original
- 46 probationary period and the reinstated probationary period does
- 47 not exceed the length of the maximum sentence allowable for the
- 48 offense that is the basis of the probation; or
- 49 (2) order execution of all or part of the sentence that was
- 50 suspended at the time of the initial sentencing.
- 51 (j) If the court finds that the person has violated a condition of home

- 1 detention during any time before termination of the period, and the
2 petition is filed under subsection (a) after the probation period has
3 expired, the court shall:
- 4 (1) order a sanction as set forth in subsection (i); and
 - 5 (2) provide credit for time served as set forth under
6 IC 35-38-2.5-5.
- 7 (k) A judgment revoking probation is a final appealable order.
- 8 (l) Failure to pay fines or costs required as a condition of probation
9 may not be the sole basis for commitment to the department of
10 correction.
- 11 (m) Failure to pay fees or costs assessed against a person under
12 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
13 grounds for revocation of probation.
- (Reference is to ESB 125 as reprinted March 27, 2007.)

Conference Committee Report
on
Engrossed Senate Bill 125

Signed by:

Senator Dillon
Chairperson

Representative Kuzman

Senator Lanane

Representative Elrod

Senate Conferees

House Conferees