

## Diversion & Deferral

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## Agenda

- Diversion program (misdemeanor/felony)
- Deferral program (Infractions)
- The Appropriating Ordinance
- IPAC Guidelines
- Programs

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## Diversion Program (misdemeanor & felony)

- IC 38-39-1-8 (effective July 1, 2014)
- Prosecutor may withhold prosecution if charged with a misdemeanor, Level 6 or Level 5 felony.
- Exclusions unchanged
  - Holder of CDL & charged with an offense involving operation of motor vehicle (IC 9-30-5-1 thru 9-30-5-5)
  - offense involved intoxication or the operation of motor vehicle and part of same episode of criminal conduct as the OVWI offense

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**Diversion Program (misdemeanor & felony)**

- IC 38-39-1-8 (effective July 1, 2014)
- Exclusions unchanged
  - IC 7.1-5-7-7(a), 9-30-4-8(a), 35-44.1-2-13(b)(1), or 35-43-1-2(a) and the offense occurred while operating a motor vehicle.
  - The person had a probationary license and was less than 18 at the time of the offense.

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**Diversion Program (misdemeanor & felony)**

- IC 38-39-1-8 (effective July 1, 2014)
- Person must agree to the conditions of the program, in writing and filed in court where charge pending, & *PA electronically transmits information required by IPAC in a manner and format designated by IPAC.*
- PA shall notify victim
- A user fee per IC 33-37-8

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**Diversion Program (misdemeanor & felony)**

- IC 38-39-1-8 (effective July 1, 2014)
- Terms:
  - 1. pay user fee to clerk per 33-37-4-1(c) (\$50 initial plus \$10 per month)
  - 2. work and study
  - 3. undergo medical treatment-counseling
  - 4. support family
  - 5. restitution
  - 6. protective order
  - 7. report to PA at reasonable times
  - 8. answer reasonable Qs of PA & advise of address change
  - 9. participate in programs established by PA
  - 10. Any other rehab program approved by Court

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### Deferral Program - Infractions

- IC 34-28-5-1 (statutes defining an infraction brought in the name of the state by the PA)
- Exclusions:
  - Under 18 with a probationary license alleged to have violated IC 9-19(passenger restraint), 9-21 (speeding –vehicle operations), 9-24(drivers licenses), 9-25 (financial responsibility), 9-26 (accident reporting), 9-30-5 (OVWI), 9-30-10 (HTV), or 9-30-15 (open container) or an offense involving a CDL.

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### Deferral Program - Infractions

- IC 34-28-5-1 - terms
- Person agrees with PA, agreement in writing, filed in court.
  - 1. Agree to conditions -None specifically mentioned
  - 2. Pay program user fee to the clerk per IC 33-37-4-2(e) (\$52 initial plus \$10 per month)
  - Pay an additional \$70 to the clerk if a moving traffic offense involved.
  - PA electronically transmits information required by IPAC in a manner and format designated by IPAC

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### Diversion/Deferral Conditions

- 3 Statutes apply
- Felony/misdemeanors IC 33-39-1-8 conditions
  - 1. pay user fee per 33-37-4-1(c) (\$50 initial plus \$10 per month)
  - 2. work and study
  - 3. undergo medical treatment-counseling
  - 4. support family
  - 5. restitution
  - 6. protective order
  - 7. report to PA at reasonable times
  - 8. answer reasonable Qs of PA & advise of address change
  - 9. participate in programs established by PA
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## Fees & Appropriating Ordinance

- Guidance regarding Diversion fees
    - IC 33-37-4-1 fees collected in criminal cases
      - Subsection (a) - standard court costs are \$120 in a criminal conviction
      - Subsection (b) - 19 other fees described
      - Subsection (b)(10) " A deferred Prosecution fee"(IC 33-37-5-17)
      - Subsection (c) - describes the pretrial diversion program fee
      - Subsection (d) - the clerk shall transfer the pretrial diversion program fee to the auditor w/l 30 days of collection
      - Subsection (e) - the auditor shall deposit the \$ in the appropriate user fee fund established under IC 33-37-8
- IC 33-37-5-17 - The Clerk shall collect a deferred prosecution fee of \$120.00

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## Fees & Appropriating Ordinance

- Guidance regarding Deferral fees
    - IC 33-37-4-2 fees collected in infraction/ordinance cases
      - Subsection (a)(2)- standard court costs are \$70 in a infraction case
      - Subsection (b) - 15 other fees described
      - Subsection (b)(6) " A deferred Prosecution fee"(IC 33-37-5-17)
      - Subsection (c) - clerk shall transfer \$ to auditor w/l 30 days of collection & auditor shall deposit the \$ in the appropriate user fee fund established under IC 33-37-8
      - Subsection (e) describes the deferral program fee.
- IC 33-37-5-17 - The Clerk shall collect a deferred prosecution fee of \$120.00

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## Fees & Appropriating Ordinance

- Guidance regarding Diversion/Deferral fees
  - IC 33-37-8-5 establishes county user fees
    - Subsection (a) fund administered by auditor
    - Subsection (b) 8 funds created
      - #1 is Pretrial Diversion Program Fee. (50 + 10 per month)
      - #6 is Deferral Program fee. (52 + 10 per month)
    - Subsection (c) takes \$2 from deferral for a jury fee.

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### Fees & Appropriating Ordinance

- Guidance regarding Diversion/Deferral fees
  - IC 33-37-8-6 (a) appropriation from county user fee fund by county fiscal body upon receipt of sworn claim
  - Subsection (b) - funds derived from a pretrial diversion or deferral programs may be disbursed only by the adoption of an ordinance appropriating funds for one or more of the following purposes: 9 listed.
    1. Program personnel expenses
    2. Special Training for PA, DPA, Staff and LEO
    3. Employment of DPA and staff

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### Fees & Appropriating Ordinance

- Guidance regarding Diversion/Deferral fees purposes:
  4. Victims assistance
  5. Electronic research
  6. Equipments, machinery, furnishings, & supplies
  7. Expenses of a criminal investigation & prosecution
  8. An activity/program operated by PA to reduce crime, including: substance & child abuse, domestic violence, OVWI, and delinquency.
  9. Any other purpose that benefits the PA or LEA and is agreed upon by the fiscal body and the PA

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### Fees & Appropriating Ordinance

- IC 33-37-8-7 deals with appropriating excess funds from pretrial diversion fund.
- Allows the PA to ask the county fiscal body to adopt an ordinance that permits spending funds beyond original appropriation to run the program
- May be used for any purpose authorized by appropriating ordinance
- Fiscal body cannot transfer funds previously appropriated to the PA as a result of an appropriation
- What if you do not ask for the appropriation?

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## Fees & Appropriating Ordinance

- What should your appropriating ordinance look like?
  - Cover all purposes permitted by statute
  - Allow for spending discretion by PA
  - Provide guidance for your annual budget
- Who signs it? Prosecutor, County Fiscal Body, & County Executive
- Where is it kept? By the Auditor
- How often should you review it? Possibly annually, but certainly every year when Prosecutor begins a new term
- Draft appropriating ordinance in materials

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## IPAC Guidelines

- IC 33-39-8-5 IPAC duties
- Subsection (6) "Adopt guidelines for the expenditure of funds derived from a deferral or a pretrial diversion program."
- Guidelines recently updated by the Council and in your materials.

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## Programs

- Do you have them?
- Do you want them?
- How do you know what works?
- How do you decide who is eligible?
- IC 33-37-8-6(b)(8) & (9)
  - Child & Substance Abuse
  - Domestic Violence
  - OVWI
  - Delinquency
  - Any other purpose that benefits PA or LEA & agreed upon by PA and county fiscal body

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**Diversion & Deferral**

Good Luck and be careful

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