

# HOUSE BILL No. 1342

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-39.

**Synopsis:** Withheld conviction and community supervision. Allows a court to receive a plea of guilty and, without entering a judgment of conviction, defer further proceedings and place the defendant on community supervision. Allows the court to withhold the entry of judgment of conviction whenever the court believes that the best interests of society and the defendant are likely to be served. Prohibits a court from withholding judgment of conviction if the defendant commits murder or a Class A or Class B felony, has a previous conviction of an offense, or has had a previous judgment of conviction withheld. Specifies numerous conditions of community supervision, which may include various rehabilitative options such as community service, placement in a community corrections program, inpatient or outpatient mental health treatment, and the payment of restitution. Provides that, upon a violation of the conditions of community supervision

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**Effective:** July 1, 1998.

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January 13, 1998, read first time and referred to Committee on Courts and Criminal Code.

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Digest Continued

supervision, the court may modify or revoke the community supervision. Provides that if the court revokes the community supervision, the court may enter judgment of conviction and continue the proceedings as if the judgment of conviction had not been withheld. Provides that upon the expiration of a community supervision period, if the court has not proceeded to enter a judgment of conviction, the court shall dismiss the proceedings against the defendant and discharge the defendant. Prescribes guidelines for implementing the community supervision program to be operated by the probation department.

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Introduced

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

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## HOUSE BILL No. 1342



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 35-39 IS ADDED TO THE INDIANA CODE AS  
2           A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3           1998]:  
4           **ARTICLE 39. WITHHELD ENTRY OF JUDGEMENT OF**  
5           **CONVICTION**  
6           **Chapter 1. Applicability and Definitions**  
7           **Sec. 1. (a) This article does not apply to a defendant who**  
8           **pleads guilty to any of the following offenses:**  
9           **(1) Murder (IC 35-42-1-1).**  
10           **(2) A Class A or Class B felony.**  
11           **(b) This article does not apply to a defendant who has a**  
12           **previous conviction of an offense.**  
13           **Sec. 2. The definitions in this chapter apply throughout this**  
14           **article.**  
15           **Sec. 3. "Community supervision" means a defendant's**



1 placement by a court under certain programs and sanctions set  
 2 forth in this article, with conditions imposed by the court for a  
 3 specified period during which further criminal proceedings against  
 4 the defendant, including sentencing, are deferred without the court  
 5 entering a judgment of conviction.

6 Sec. 4. "Court" means a court with criminal jurisdiction.

7 Chapter 2. Withheld Entry of Judgment of Conviction and  
 8 Community Supervision

9 Sec. 1. (a) After receiving a plea of guilty, hearing evidence,  
 10 and finding that the plea substantiates a defendant's guilt, a court  
 11 may:

- 12 (1) defer proceedings without entering a judgment of  
 13 conviction; and  
 14 (2) place the defendant in community supervision;

15 whenever the court believes the best interests of society and the  
 16 defendant are likely to be served.

17 (b) A court may not withhold a judgment of conviction under  
 18 this section if the defendant has had a previous judgment of  
 19 conviction withheld.

20 Sec. 2. A court shall appoint a probation officer to supervise a  
 21 defendant who is placed in community supervision by the court.

22 Sec. 3. A court shall inform the defendant verbally or in  
 23 writing of the possible consequences under IC 35-39-5 or  
 24 IC 35-39-6 for violating community supervision. If the information  
 25 is provided verbally, the court shall record and maintain the  
 26 court's statement to the defendant.

27 Sec. 4. For a plea of guilty to a felony, the period of community  
 28 supervision may not exceed ten (10) years. For a plea of guilty to a  
 29 misdemeanor, the period of community supervision may not exceed  
 30 three (3) years. However, a court that has withheld a judgment of  
 31 conviction under section 1 of this chapter may increase the  
 32 maximum period of community supervision in the manner  
 33 provided under IC 35-39-5-2.

34 Sec. 5. A court that has withheld a judgment of conviction  
 35 under section 1 of this chapter may impose a fine applicable to the  
 36 offense and require any conditions of community supervision  
 37 described in IC 35-39-3. However, upon written motion of the  
 38 defendant requesting an entry of judgment of conviction filed less  
 39 than thirty (30) days after:

- 40 (1) the defendant enters the plea of guilty; and  
 41 (2) the court withholds judgment of conviction under this  
 42 chapter;

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1 the court shall proceed to enter a judgment of conviction in the  
2 same manner as in any other criminal proceeding.

3 **Sec. 6. (a) If a defendant violates a condition of community  
4 supervision imposed under this chapter, the defendant:**

5 (1) may be arrested and detained as provided in IC 35-39-4;  
6 and

7 (2) is entitled to a hearing limited to a determination by the  
8 court of whether to proceed with an entry of judgment of  
9 conviction on the defendant's plea of guilty.

10 (b) If the court proceeds to enter a judgment of conviction  
11 under this section, all proceedings, including sentencing, continue  
12 as if the judgment of conviction had not been withheld.

13 **Sec. 7. Upon the expiration of a community supervision period  
14 imposed under this chapter, if a court has not proceeded to enter  
15 a judgment of conviction, the court shall:**

16 (1) dismiss the proceedings against the defendant; and

17 (2) discharge the defendant.

18 **Sec. 8. A court that has withheld a judgment of conviction  
19 under section 1 of this chapter may dismiss the proceedings and  
20 discharge a defendant before the defendant's period of community  
21 supervision expires if:**

22 (1) the court believes the best interests of society and the  
23 defendant are likely to be served; and

24 (2) the defendant has successfully completed at least  
25 two-thirds (2/3) of the defendant's period of community  
26 supervision.

27 **Sec. 9. A dismissal and discharge under section 7 or 8 of this  
28 chapter may not be considered a conviction for the purpose of  
29 disqualifications imposed by law for conviction of an offense,  
30 except that upon conviction of a subsequent offense, the fact that  
31 the defendant has previously received community supervision with  
32 a withheld judgment of conviction is admissible before a court, or  
33 jury, or both, to be considered on the issue of sentencing.**

34 **Sec. 10. (a) Except as provided in subsection (b), only a court  
35 may alter the conditions of community supervision.**

36 (b) A court that places a defendant on community supervision  
37 under this article may authorize the probation officer supervising  
38 the defendant to modify the conditions of community supervision  
39 for the limited purpose of transferring the defendant to different  
40 programs within the community supervision continuum of  
41 programs.

42 **Sec. 11. (a) If a probation officer modifies the conditions of**



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1 community supervision, the officer shall:

- 2 (1) deliver a copy of the modified conditions to the  
3 defendant;  
4 (2) file a copy of the modified conditions with the court; and  
5 (3) note the date of delivery of the copy in the defendant's  
6 file.

7 (b) If the defendant agrees to the modification in writing, the  
8 probation officer shall:

- 9 (1) file a copy of the modified conditions with the clerk of the  
10 court; and  
11 (2) enforce the conditions as modified.

12 (c) If the defendant does not agree to the modifications in  
13 writing, the probation officer shall refer the case to the court for  
14 modification of the terms of community supervision.

15 **Chapter 3. Conditions of Community Supervision**

16 **Sec. 1.** A court that has withheld a judgment of conviction  
17 under IC 35-39-2-1 shall determine the conditions of community  
18 supervision imposed under this article and may, at any time during  
19 the period of community supervision, modify the conditions. The  
20 court may impose any condition that is designed to:

- 21 (1) protect or restore the community or a victim; or  
22 (2) punish, rehabilitate, or reform a defendant.

23 **Sec. 2. (a)** Whenever a court places a defendant in community  
24 supervision under this article, the court shall require, as a  
25 condition of community supervision, that the defendant work a  
26 specified number of hours on a community service project unless  
27 the court determines that:

- 28 (1) the defendant is physically or mentally incapable of  
29 participating in the project;  
30 (2) participating in the project is likely to cause a hardship  
31 on the defendant's dependents; or  
32 (3) the defendant is to be confined in an inpatient alcohol or  
33 drug abuse treatment facility.

34 (b) The amount of community service imposed under this  
35 article may not:

- 36 (1) exceed one thousand (1,000) hours; or  
37 (2) be less than twenty-four (24) hours.

38 **Sec. 3.** As a condition of community supervision imposed  
39 under this article, a court may order the defendant to do the  
40 following:

- 41 (1) Not commit an offense against the laws of Indiana, any  
42 other state, or the United States.

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- 1 (2) Avoid injurious or vicious habits.  
2 (3) Avoid persons or places of disreputable or harmful  
3 character.  
4 (4) Report to the defendant's probation officer and obey all  
5 rules of the community supervision and corrections  
6 department.  
7 (5) Permit the defendant's probation officer to visit the  
8 defendant at the defendant's home or elsewhere.  
9 (6) Work faithfully at suitable employment to the extent  
10 possible.  
11 (7) Supervise or participate in a program that:  
12 (A) includes as participants or recipients persons who  
13 are less than eighteen (18) years of age; and  
14 (B) regularly provides athletic, civic, or cultural  
15 activities.  
16 (8) Remain within a specified geographical location.  
17 (9) Refrain from:  
18 (A) going on or within certain premises; or  
19 (B) having contact with or harassing a certain person or  
20 class of persons specified by the court.  
21 (10) Pay court costs, fines, and any other relevant fees.  
22 (11) Support the defendant's dependents.  
23 (12) Reimburse the county in which the prosecution against  
24 the defendant was filed for any costs to:  
25 (A) the county for a public defender; or  
26 (B) other appointed counsel who provided  
27 representation to the defendant.  
28 (13) Remain under custodial supervision in a community  
29 corrections program, obey the rules and regulations of the  
30 program, and pay a percentage of the defendant's income  
31 toward costs relating to the defendant's participation in the  
32 program.  
33 (14) Submit to testing for alcohol or controlled substances.  
34 (15) Attend counseling sessions for substance abusers or  
35 participate in any other court approved alcohol or substance  
36 abuse treatment services.  
37 (16) With the consent of the victim, participate in  
38 victim-defendant mediation.  
39 (17) Submit to electronic monitoring.  
40 (18) Reimburse the crime victims compensation fund for any  
41 amounts paid from the fund to a victim.  
42 (19) Reimburse a law enforcement agency for the analysis,

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1 storage, or disposal of raw materials, controlled substances,  
 2 chemical precursors, drug paraphernalia, or other materials  
 3 seized in connection with the offense.

4 (20) Pay all or part of the reasonable and necessary costs  
 5 incurred by the victim for:

6 (A) psychological counseling; or

7 (B) counseling or education relating to acquired immune  
 8 deficiency syndrome (AIDS) or human  
 9 immunodeficiency virus (HIV);

10 made necessary by the offense.

11 (21) Submit a blood sample or other specimen for purpose of  
 12 creating a DNA record of the defendant.

13 (22) Undergo domestic violence counseling.

14 (23) Refrain from operating a motor vehicle.

15 Sec. 4. (a) A court may not order a defendant to make any  
 16 payments as a condition of community supervision, except for  
 17 fines, court costs, restitution to the victim, and other conditions  
 18 related to the rehabilitation of the defendant or otherwise expressly  
 19 authorized by law.

20 (b) A court shall consider the ability of the defendant to make  
 21 payments when ordering the defendant to make payments under  
 22 this chapter.

23 Sec. 5. (a) Whenever a court places a defendant in community  
 24 supervision under this article, the court shall require the defendant  
 25 to demonstrate to the court whether the defendant has an  
 26 educational skill level that is at least equal to the skill level of  
 27 students who have completed the sixth grade in public schools in  
 28 Indiana.

29 (b) If the court determines that the defendant has not attained  
 30 the skill level specified in subsection (a), the court shall require as  
 31 a condition of community supervision that the defendant attain the  
 32 specified level of skill, unless the court determines the defendant  
 33 lacks:

34 (1) the intellectual capacity; or

35 (2) the learning ability;

36 to achieve that level of skill.

37 Sec. 6. If a court places a defendant who has a mental illness  
 38 in community supervision under this article, the court may require  
 39 the defendant, as a condition of community supervision, to submit  
 40 to outpatient or inpatient mental health treatment if the  
 41 defendant's:

42 (1) mental illness is chronic in nature; or



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1           (2) ability to function independently is likely to deteriorate if  
2           the defendant is not treated.

3           **Chapter 4. Violation of Community Supervision and Detention**  
4           **and Hearing**

5           **Sec. 1. (a) At any time during a defendant's period of**  
6           **community supervision, the court may:**

7                 (1) issue a warrant for a violation of the conditions of the  
8                 community supervision; and

9                 (2) cause the defendant to be arrested.

10            (b) A probation officer or law enforcement officer may arrest  
11            the defendant with or without a warrant upon the order of the  
12            court. The order must be noted on the court's docket.

13            **Sec. 2. A defendant who is arrested under section 1 of this**  
14            **chapter may be detained in the county jail or another appropriate**  
15            **place of confinement until the defendant is taken before the court.**  
16            **The arresting officer shall immediately report the arrest and**  
17            **detention to the court.**

18            **Sec. 3. (a) If the defendant has not been released on bail, on**  
19            **motion of the defendant, the court having jurisdiction over the**  
20            **defendant:**

21                 (1) shall cause the defendant to be brought before the court  
22                 for a hearing not later than twenty (20) days after the filing  
23                 of the defendant's motion; and

24                 (2) after a hearing is held by the court, may continue, extend,  
25                 modify, or revoke the defendant's community supervision.

26            (b) A court that has withheld a judgment of conviction against  
27            a defendant may revoke without a hearing the community  
28            supervision of a defendant who is confined if the defendant, in  
29            writing before the court:

30                 (1) waives the defendant's right to a hearing and to counsel;

31                 (2) affirms that the defendant has no comment regarding  
32                 why a judgment of conviction should not be entered against  
33                 the defendant; and

34                 (3) requests the court to:

35                         (A) revoke community supervision; and

36                         (B) enter a judgment of conviction against the  
37                         defendant.

38            **Sec. 4. In a community supervision revocation hearing at**  
39            **which it is alleged only that the defendant violated the conditions**  
40            **of community supervision by failure to pay:**

41                 (1) compensation to appointed counsel;

42                 (2) community supervision fees;

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- 1           (3) court costs; or  
 2           (4) restitution or other reparations;  
 3       the defendant's inability to make the payments is an affirmative  
 4       defense to revocation. However, the defendant must prove the  
 5       defense by a preponderance of the evidence.  
 6           **Chapter 5. Continuation or Modification**  
 7           **Sec. 1.** If, after a hearing held under IC 35-39-4, a court  
 8       continues or modifies community supervision after determining  
 9       that the defendant violated a condition of community supervision,  
 10      the court may:  
 11           (1) extend the period of community supervision; and  
 12           (2) impose additional conditions on the community  
 13           supervision as described under IC 35-39-3.  
 14           **Sec. 2.** A court that has withheld a judgment of conviction  
 15      against a defendant may extend the period of community  
 16      supervision imposed on a defendant under this chapter as often as  
 17      the court determines is necessary. However, the period of  
 18      community supervision imposed under this article for a:  
 19           (1) felony may not exceed ten (10) years; and  
 20           (2) misdemeanor may not exceed three (3) years.  
 21           **Sec. 3.** A court may extend a defendant's period of community  
 22      supervision under this chapter at any time during the period of  
 23      supervision or, if a motion for revocation of community  
 24      supervision is filed before the period of supervision ends, before the  
 25      end of the last year of community supervision.  
 26           **Chapter 6. Revocation**  
 27           **Sec. 1.** If community supervision is revoked after a hearing  
 28      held under IC 35-39-4, the court may proceed to dispose of the case  
 29      as if there had not been a withheld entry of judgment of conviction.  
 30           **Sec. 2.** If a court orders a defendant to serve an executed  
 31      sentence, the period that the defendant served on community  
 32      supervision may not be considered to offset any part of the  
 33      defendant's sentence.

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