

# HOUSE BILL No. 1129

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 9-30-9-8; IC 12-23; IC 33-14-1-7; IC 33-19.

**Synopsis:** Fees from deferred prosecutions. Requires a court to collect an alcohol and drug offense diversion fee of \$200 in each case in which prosecution is conditionally deferred, deferred, or subject to a pretrial diversion and in which the court determines that the use or abuse of alcohol, drugs, or harmful substances was a contributing factor or an element of the offense and the defendant is not indigent. Requires the fees to be distributed to the state drug free communities fund.

**Effective:** July 1, 1999.

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**Frenz**

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January 6, 1999, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

## HOUSE BILL No. 1129

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 9-30-9-8 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) The court shall order a  
3 defendant participating in a program under this chapter to pay:  
4 (1) an alcohol abuse deterrent program fee or a medical fee, or  
5 both; **and**  
6 (2) **an alcohol and drug diversion fee under IC 33-19-6-18;**  
7 unless the court determines that the defendant is indigent.  
8 (b) An alcohol abuse deterrent program fee ordered under this  
9 section may not exceed three hundred fifty dollars (\$350).  
10 (c) A medical fee ordered under this section may not exceed one  
11 hundred dollars (\$100).  
12 SECTION 2. IC 12-23-5-5 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) Subject to  
14 subsection (b), if a court enters an order conditionally deferring charges  
15 that involve a violation of IC 9-30-5, the court shall do the following:  
16 (1) Suspend the defendant's driving privileges for at least ninety  
17 (90) days but not more than two (2) years.



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1           **(2) Require payment of an alcohol and drug offense diversion**  
 2           **fee under IC 33-19-6-18, unless the court determines that the**  
 3           **defendant is indigent.**

4           ~~(2)~~ **(3)** Impose other appropriate conditions.

5           (b) A defendant may be granted probationary driving privileges only  
 6           after the defendant's license has been suspended for at least thirty (30)  
 7           days under IC 9-30-6-9.

8           SECTION 3. IC 12-23-5-6 IS AMENDED TO READ AS  
 9           FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. If a defendant is  
 10          convicted in a proceeding described in section 1 of this chapter and the  
 11          court places the defendant on probation, the court may do the  
 12          following:

13          (1) Refer the defendant to an alcohol and drug services treatment  
 14          program if the court makes a determination under section 1(1) of  
 15          this chapter.

16          (2) Refer the defendant to an appropriate therapy program if the  
 17          court makes a determination under section 1(2) of this chapter.

18          (3) Require the defendant to undergo treatment as a condition of  
 19          probation.

20          **In addition, the court shall require the defendant to pay an alcohol**  
 21          **and drug offense diversion fee under IC 33-19-6-18 if the court**  
 22          **determines that the use or abuse of alcohol, drugs, or harmful**  
 23          **substances is a contributing factor or an element of the offense and**  
 24          **does not determine that the defendant is indigent.**

25          SECTION 4. IC 12-23-7-8 IS AMENDED TO READ AS  
 26          FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. If the court  
 27          determines that an individual is a drug abuser or an alcoholic and is  
 28          likely to be rehabilitated through treatment, the court may, with the  
 29          consent of the prosecuting attorney:

30          (1) defer the trial; or

31          (2) without a jury, conduct the trial of the individual but may,  
 32          with the consent of the prosecuting attorney, do the following:

33                  (A) Defer entering general findings with respect to the  
 34                  individual until the time that prosecution may be resumed.

35                  (B) Place the individual under the supervision of the division  
 36                  for treatment for a maximum of two (2) years.

37          **In addition, the court shall require the defendant to pay an alcohol**  
 38          **and drug offense diversion fee under IC 33-19-6-18 if the court**  
 39          **does not determine that the defendant is indigent.**

40          SECTION 5. IC 33-14-1-7 IS AMENDED TO READ AS  
 41          FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) A prosecuting  
 42          attorney may withhold prosecution against an accused person if:



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- 1 (1) the person is charged with a misdemeanor;  
 2 (2) the person agrees to conditions of a pretrial diversion program  
 3 offered by the prosecuting attorney; and  
 4 (3) the terms of the agreement are recorded in an instrument  
 5 signed by the person and the prosecuting attorney and filed in the  
 6 court in which the charge is pending.

7 (b) An agreement under subsection (a) may include conditions that  
 8 the person:

- 9 (1) pay to the clerk of the court an initial user's fee and monthly  
 10 user's fees in the amounts specified in IC 33-19-5-1;  
 11 (2) work faithfully at a suitable employment or faithfully pursue  
 12 a course of study or vocational training that will equip the person  
 13 for suitable employment;  
 14 (3) undergo available medical treatment or counseling and remain  
 15 in a specified facility required for that purpose;  
 16 (4) support the person's dependents and meet other family  
 17 responsibilities;  
 18 (5) make restitution or reparation to the victim of the crime for the  
 19 damage or injury that was sustained;  
 20 (6) refrain from harassing, intimidating, threatening, or having  
 21 any direct or indirect contact with the victim or a witness;  
 22 (7) report to the prosecuting attorney at reasonable times;  
 23 (8) answer all reasonable inquiries by the prosecuting attorney  
 24 and promptly notify the prosecuting attorney of any change in  
 25 address or employment; and  
 26 (9) participate in dispute resolution either under IC 34-57-3 or a  
 27 program established by the prosecuting attorney.

28 **In addition, the agreement must require the defendant to pay an**  
 29 **alcohol and drug offense diversion fee under IC 33-19-6-18 if the**  
 30 **use or abuse of alcohol, drugs (as defined in IC 12-7-2-71), or**  
 31 **harmful substances (as defined in IC 12-7-2-101) is a contributing**  
 32 **factor or an element of the offense and the defendant is not**  
 33 **indigent.**

34 (c) An agreement under subsection (a)(2) may include other  
 35 provisions reasonably related to the defendant's rehabilitation, if  
 36 approved by the court.

37 (d) The prosecuting attorney shall notify the victim when  
 38 prosecution is withheld under this section.

39 (e) All money collected by the clerk as user's fees under this section  
 40 shall be deposited in the appropriate user fee fund under IC 33-19-8.  
 41 **Alcohol and drug offense diversion fees collected by the clerk**  
 42 **under this section shall be deposited as required in IC 33-19-7-1**



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1 **and IC 33-19-7-4.**

2 (f) If a court withholds prosecution under this section and the terms  
3 of the agreement contain conditions described in subsection (b)(6):

- 4 (1) the clerk of the court shall comply with IC 5-2-9; and  
5 (2) the prosecuting attorney shall file a confidential form  
6 prescribed or approved by the division of state court  
7 administration with the clerk.

8 SECTION 6. IC 33-19-5-1 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) For each action  
10 that results in a felony conviction under IC 35-50-2 or a misdemeanor  
11 conviction under IC 35-50-3, the clerk shall collect from the defendant  
12 a criminal costs fee of one hundred twenty dollars (\$120).

13 (b) In addition to the criminal costs fee collected under this section,  
14 the clerk shall collect from the defendant the following fees if they are  
15 required under IC 33-19-6:

- 16 (1) A document fee.  
17 (2) A marijuana eradication program fee.  
18 (3) An alcohol and drug services program user fee.  
19 (4) A law enforcement continuing education program fee.  
20 (5) A drug abuse, prosecution, interdiction, and correction fee.  
21 (6) An alcohol and drug countermeasures fee.  
22 (7) A child abuse prevention fee.  
23 (8) A domestic violence prevention and treatment fee.  
24 (9) A highway work zone fee.  
25 (10) A deferred prosecution fee (IC 33-19-6-16.2).

26 (c) Instead of the criminal costs fee prescribed by this section, the  
27 clerk shall collect a pretrial diversion program fee if an agreement  
28 between the prosecuting attorney and the accused person entered into  
29 under IC 33-14-1-7 requires payment of those fees by the accused  
30 person. The pretrial diversion program fee is:

- 31 (1) an initial user's fee of fifty dollars (\$50); and  
32 (2) a monthly user's fee of ten dollars (\$10) for each month that  
33 the person remains in the pretrial diversion program.

34 (d) The clerk shall transfer to the county auditor or city or town  
35 fiscal officer the following fees, within thirty (30) days after they are  
36 collected, for deposit by the auditor or fiscal officer in the appropriate  
37 user fee fund established under IC 33-19-8:

- 38 (1) The pretrial diversion fee.  
39 (2) The marijuana eradication program fee.  
40 (3) The alcohol and drug services program user fee.  
41 (4) The law enforcement continuing education program fee.

42 (e) Unless otherwise directed by a court, if a clerk collects only part

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1 of a criminal costs fee from a defendant under this section, the clerk  
2 shall distribute the partial payment of the criminal costs fee as follows:

3 (1) First, the clerk shall apply the partial payment to general court  
4 costs.

5 (2) Second, if there is money remaining after the partial payment  
6 is applied to general court costs under subdivision (1), the clerk  
7 shall distribute the partial payment for deposit in the appropriate  
8 county user fee fund.

9 (3) Third, if there is money remaining after distribution under  
10 subdivision (2), the clerk shall distribute the partial payment for  
11 deposit in the state user fee fund.

12 (4) Fourth, if there is money remaining after distribution under  
13 subdivision (3), the clerk shall distribute the partial payment to  
14 any other applicable user fee fund.

15 (5) Fifth, if there is money remaining after distribution under  
16 subdivision (4), the clerk shall apply the partial payment to any  
17 outstanding fines owed by the defendant.

18 **(f) The clerk shall collect an alcohol and drug offense diversion  
19 fee as required under IC 33-19-6-18.**

20 SECTION 7. IC 33-19-5-2 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) Except as  
22 provided in subsections (d) and (e), for each action that results in a  
23 judgment:

24 (1) for a violation constituting an infraction; or

25 (2) for a violation of an ordinance of a municipal corporation (as  
26 defined in IC 36-1-2-10);

27 the clerk shall collect from the defendant an infraction or ordinance  
28 violation costs fee of seventy dollars (\$70).

29 (b) In addition to the infraction or ordinance violation costs fee  
30 collected under this section, the clerk shall collect from the defendant  
31 the following fees if they are required under IC 33-19-6:

32 (1) A document fee.

33 (2) An alcohol and drug services program user fee.

34 (3) A law enforcement continuing education program fee.

35 (4) An alcohol and drug countermeasures fee.

36 (5) A highway work zone fee.

37 (6) A deferred prosecution fee (IC 33-19-6-16.2).

38 (c) The clerk shall transfer to the county auditor or fiscal officer of  
39 the municipal corporation the following fees, within thirty (30) days  
40 after they are collected, for deposit by the auditor or fiscal officer in the  
41 user fee fund established under IC 33-19-8:

42 (1) The alcohol and drug services program user fee.

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- 1 (2) The law enforcement continuing education program fee.  
 2 (3) The deferral program fee.  
 3 (d) The defendant is not liable for any ordinance violation costs fee  
 4 in an action in which:  
 5 (1) the defendant was charged with an ordinance violation subject  
 6 to IC 33-6-3;  
 7 (2) the defendant denied the violation under IC 33-6-3-2;  
 8 (3) proceedings in court against the defendant were initiated  
 9 under IC 34-28-5 (or IC 34-4-32 before its repeal); and  
 10 (4) the defendant was tried and the court entered judgment for the  
 11 defendant for the violation.  
 12 (e) Instead of the infraction or ordinance violation costs fee  
 13 prescribed by subsection (a), the clerk shall collect a deferral program  
 14 fee if an agreement between a prosecuting attorney or an attorney for  
 15 a municipal corporation and the person charged with a violation  
 16 entered into under IC 34-28-5-1 (or IC 34-4-32-1 before its repeal)  
 17 requires payment of those fees by the person charged with the  
 18 violation. The deferral program fee is:  
 19 (1) an initial user's fee not to exceed fifty-two dollars (\$52); and  
 20 (2) a monthly user's fee not to exceed ten dollars (\$10) for each  
 21 month the person remains in the deferral program.  
 22 **(f) The clerk shall collect an alcohol and drug offense diversion**  
 23 **fee as required under IC 33-19-6-18.**  
 24 SECTION 8. IC 33-19-6-18 IS ADDED TO THE INDIANA CODE  
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 26 1, 1999]: **Sec. 18. In each case in which a defendant is:**  
 27 **(1) conditionally deferred under IC 9-30-9;**  
 28 **(2) conditionally deferred under IC 12-23-5;**  
 29 **(3) deferred under IC 12-23-7; or**  
 30 **(4) subject to a pretrial diversion under IC 33-14-1-7;**  
 31 **and IC 9-30-9-8, IC 12-23-5-5, IC 12-23-5-6, IC 12-23-7-8, or**  
 32 **IC 33-14-1-7 requires an alcohol and drug offense diversion fee to**  
 33 **be imposed, the clerk shall collect an alcohol and drug diversion fee**  
 34 **of two hundred dollars (\$200).**  
 35 SECTION 9. IC 33-19-7-1 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) The clerk of a  
 37 circuit court shall semiannually distribute to the auditor of state as the  
 38 state share for deposit in the state general fund seventy percent (70%)  
 39 of the amount of fees collected under the following:  
 40 (1) IC 33-19-5-1(a) (criminal costs fees).  
 41 (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).  
 42 (3) IC 33-19-5-3(a) (juvenile costs fees).



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- 1 (4) IC 33-19-5-4(a) (civil costs fees).
- 2 (5) IC 33-19-5-5(a) (small claims costs fees).
- 3 (6) IC 33-19-5-6(a) (probate costs fees).
- 4 (7) IC 33-19-6-16.2 (deferred prosecution fees).

5 (b) The clerk of a circuit court shall semiannually distribute to the  
6 auditor of state for deposit in the state user fee fund established under  
7 IC 33-19-9-2 the following:

- 8 (1) Twenty-five percent (25%) of the drug abuse, prosecution,  
9 interdiction, and correction fees collected under  
10 IC 33-19-5-1(b)(5).
- 11 (2) Twenty-five percent (25%) of the alcohol and drug  
12 countermeasures fees collected under IC 33-19-5-1(b)(6),  
13 IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).
- 14 (3) Fifty percent (50%) of the child abuse prevention fees  
15 collected under IC 33-19-5-1(b)(7).
- 16 (4) One hundred percent (100%) of the domestic violence  
17 prevention and treatment fees collected under IC 33-19-5-1(b)(8).
- 18 (5) One hundred percent (100%) of the highway work zone fees  
19 collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).
- 20 (6) One hundred percent (100%) of the safe schools fee collected  
21 under IC 33-19-6-16.3.

22 **(7) Twenty-five percent (25%) of the alcohol and drug offense**  
23 **diversion fees collected under IC 33-19-5-1(f) and**  
24 **IC 33-19-5-2(f).**

25 (c) The clerk of a circuit court shall monthly distribute to the county  
26 auditor the following:

- 27 (1) Seventy-five percent (75%) of the drug abuse, prosecution,  
28 interdiction, and correction fees collected under  
29 IC 33-19-5-1(b)(5).
- 30 (2) Seventy-five percent (75%) of the alcohol and drug  
31 countermeasures fees collected under IC 33-19-5-1(b)(6),  
32 IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).
- 33 **(3) Seventy-five percent (75%) of the alcohol and drug offense**  
34 **diversion fees collected under IC 33-19-5-1(f) and**  
35 **IC 33-19-5-2(f).**

36 The county auditor shall deposit fees distributed by a clerk under this  
37 subsection into the county drug free community fund established under  
38 IC 5-2-11.

39 (d) The clerk of a circuit court shall monthly distribute to the county  
40 auditor fifty percent (50%) of the child abuse prevention fees collected  
41 under IC 33-19-5-1(b)(8). The county auditor shall deposit fees  
42 distributed by a clerk under this subsection into the county child

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1 advocacy fund established under IC 12-17-17.

2 SECTION 10. IC 33-19-7-4 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The clerk of a  
4 city or town court shall semiannually distribute to the auditor of state  
5 as the state share for deposit in the state general fund fifty-five percent  
6 (55%) of the amount of fees collected under the following:

- 7 (1) IC 33-19-5-1(a) (criminal costs fees).  
8 (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).  
9 (3) IC 33-19-5-4(a) (civil costs fees).  
10 (4) IC 33-19-5-5 (small claims costs fees).  
11 (5) IC 33-19-6-16.2 (deferred prosecution fees).

12 (b) Once each month the city or town fiscal officer shall distribute  
13 to the county auditor as the county share twenty percent (20%) of the  
14 amount of fees collected under the following:

- 15 (1) IC 33-19-5-1(a) (criminal costs fees).  
16 (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).  
17 (3) IC 33-19-5-4(a) (civil costs fees).  
18 (4) IC 33-19-5-5 (small claims costs fees).  
19 (5) IC 33-19-6-16.2 (deferred prosecution fees).

20 (c) The city or town fiscal officer shall retain twenty-five percent  
21 (25%) as the city or town share of the fees collected under the  
22 following:

- 23 (1) IC 33-19-5-1(a) (criminal costs fees).  
24 (2) IC 33-19-5-2(a) (infraction or ordinance violation costs fees).  
25 (3) IC 33-19-5-4(a) (civil costs fees).  
26 (4) IC 33-19-5-5 (small claims costs fees).  
27 (5) IC 33-19-6-16.2 (deferred prosecution fees).

28 (d) The clerk of a city or town court shall semiannually distribute to  
29 the auditor of state for deposit in the state user fee fund established  
30 under IC 33-19-9 the following:

- 31 (1) Twenty-five percent (25%) of the drug abuse, prosecution,  
32 interdiction, and corrections fees collected under  
33 IC 33-19-5-1(b)(5).  
34 (2) Twenty-five percent (25%) of the alcohol and drug  
35 countermeasures fees collected under IC 33-19-5-1(b)(6),  
36 IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).  
37 (3) One hundred percent (100%) of the highway work zone fees  
38 collected under IC 33-19-5-1(b)(9) and IC 33-19-5-2(b)(5).  
39 (4) One hundred percent (100%) of the safe schools fee collected  
40 under IC 33-19-6-16.3.

41 **(5) Twenty-five percent (25%) of the alcohol and drug offense**  
42 **diversion fees collected under IC 33-19-5-1(f) and**



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1           **IC 33-19-5-2(f).**

2           (e) The clerk of a city or town court shall monthly distribute to the  
3 county auditor the following:

4           (1) Seventy-five percent (75%) of the drug abuse, prosecution,  
5 interdiction, and corrections fees collected under  
6 IC 33-19-5-1(b)(5).

7           (2) Seventy-five percent (75%) of the alcohol and drug  
8 countermeasures fees collected under IC 33-19-5-1(b)(6),  
9 IC 33-19-5-2(b)(4), and IC 33-19-5-3(b)(5).

10           **(3) Seventy-five percent (75%) of the alcohol and drug offense**  
11 **diversion fees collected under IC 33-19-5-1(f) and**  
12 **IC 33-19-5-2(f).**

13           The county auditor shall deposit fees distributed by a clerk under this  
14 subsection into the county drug free community fund established under  
15 IC 5-2-11.

16           SECTION 11. IC 33-19-9-4 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The treasurer of  
18 state shall semiannually distribute one million eighty-seven thousand  
19 five hundred dollars (\$1,087,500) of the amounts transferred to the  
20 state fund under section 3 of this chapter as follows:

21           (1) Seventeen and seventy-three hundredths percent (17.73%)  
22 shall be deposited into the alcohol and drug countermeasures fund  
23 established under IC 9-27-2-11.

24           (2) Nine and ninety-seven hundredths percent (9.97%) shall be  
25 deposited into the drug interdiction fund established under  
26 IC 10-1-8-2.

27           (3) Five and fifty-four hundredths percent (5.54%) shall be  
28 deposited into the drug prosecution fund established under  
29 IC 33-14-8-5.

30           (4) Six and sixty-five hundredths percent (6.65%) shall be  
31 deposited into the corrections drug abuse fund established under  
32 IC 11-8-2-11.

33           (5) Twenty-six and sixty-hundredths percent (26.60%) shall be  
34 deposited into the state drug free communities fund established by  
35 IC 5-2-10-2.

36           (6) Nine and forty-five hundredths percent (9.45%) shall be  
37 distributed to the Indiana department of transportation for use  
38 under IC 8-23-2-15.

39           (7) Twenty-four and six-hundredths percent (24.06%) shall be  
40 deposited in the family violence and victim assistance fund  
41 established by IC 12-18-5-2.

42           **(b) The treasurer of state shall semiannually distribute one**

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1 **hundred percent (100%) of the alcohol and drug offense diversion**  
 2 **fees deposited in the state fund under section 3 of this chapter to**  
 3 **the state drug free communities fund established by IC 5-2-10-2.**  
 4     ~~(b)~~ (c) The treasurer of state shall semiannually distribute the  
 5 amount remaining after the distributions in ~~subsection~~ **subsections** (a)  
 6 **and (b)** to the Indiana safe schools fund established by IC 5-2-10.1.  
 7     SECTION 12. [EFFECTIVE JULY 1, 1999] **IC 33-19-6-18, as**  
 8 **added by this act, applies to each offense:**  
 9         **(1) that is conditionally deferred under IC 9-30-9;**  
 10         **(2) that is conditionally deferred under IC 12-23-5;**  
 11         **(3) that is deferred under IC 12-23-7; or**  
 12         **(4) for which an agreement to withhold prosecution is entered**  
 13         **under IC 33-14-1-7;**  
 14 **after June 30, 1999.**

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