

# HOUSE BILL No. 1733

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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 if 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, a Class A or Class B felony, a violent crime, or a sex offense, has a previous conviction of an offense, or has had a previous judgment of conviction withheld or the local prosecuting attorney does not consent. Specifies numerous conditions of community supervision, which may  
(Continued next page)

**Effective:** July 1, 1999.

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January 26, 1999, read first time and referred to Committee on Courts and Criminal Code.

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Digest Continued

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, 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

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.

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## HOUSE BILL No. 1733



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 1999]:
- 4 ARTICLE 39. WITHHELD ENTRY OF JUDGMENT OF
- 5 CONVICTION
- 6 Chapter 1. Applicability and Definitions
- 7 Sec. 1. (a) This article does not apply to a defendant who pleads
- 8 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 (3) A violent crime (as defined in IC 5-2-6.1-8).
- 12 (4) A sex offense against a child listed under IC 5-2-12-4.
- 13 (b) This article does not apply to a defendant who has a previous
- 14 conviction of an offense.
- 15 Sec. 2. The definitions in this chapter apply throughout this



1 article.

2 **Sec. 3. "Community supervision" means a defendant's**  
 3 **placement by a court under certain programs and sanctions set**  
 4 **forth in this article, with conditions imposed by the court for a**  
 5 **specified period during which further criminal proceedings against**  
 6 **the defendant, including sentencing, are deferred without the court**  
 7 **entering a judgment of conviction.**

8 **Sec. 4. "Court" means a court with criminal jurisdiction.**

9 **Chapter 2. Withheld Entry of Judgment of Conviction and**  
 10 **Community Supervision**

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

13 (1) **defer proceedings without entering a judgment of**  
 14 **conviction; and**

15 (2) **place the defendant in community supervision;**

16 **if the court believes the best interests of society and the defendant**  
 17 **are likely to be served.**

18 **(b) A court may not withhold a judgment of conviction under**  
 19 **this section if:**

20 (1) **the defendant has had a previous judgment of conviction**  
 21 **withheld; or**

22 (2) **the local prosecuting attorney does not agree to the**  
 23 **withheld judgment of conviction.**

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

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

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

38 **Sec. 5. A court that has withheld a judgment of conviction under**  
 39 **section 1 of this chapter may impose a fine applicable to the offense**  
 40 **and require any conditions of community supervision described in**  
 41 **IC 35-39-3. However, upon written motion of the defendant**  
 42 **requesting an entry of judgment of conviction filed less than thirty**



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- 1       **(30) days after:**  
 2           (1) the defendant enters the plea of guilty; and  
 3           (2) the court withholds judgment of conviction under this  
 4           chapter;  
 5       the court shall proceed to enter a judgment of conviction in the  
 6       same manner as in any other criminal proceeding.
- 7       **Sec. 6. (a) If a defendant violates a condition of community**  
 8       **supervision imposed under this chapter, the defendant:**  
 9           (1) may be arrested and detained as provided in IC 35-39-4;  
 10          and  
 11          (2) is entitled to a hearing limited to a determination by the  
 12          court of whether to proceed with an entry of judgment of  
 13          conviction on the defendant's plea of guilty.
- 14       **(b) If the court proceeds to enter a judgment of conviction under**  
 15       **this section, all proceedings, including sentencing, continue as if the**  
 16       **judgment of conviction had not been withheld.**
- 17       **Sec. 7. Upon the expiration of a community supervision period**  
 18       **imposed under this chapter, if a court has not proceeded to enter**  
 19       **a judgment of conviction, the court shall:**  
 20          (1) dismiss the proceedings against the defendant; and  
 21          (2) discharge the defendant.
- 22       **Sec. 8. A court that has withheld a judgment of conviction under**  
 23       **section 1 of this chapter may dismiss the proceedings and discharge**  
 24       **a defendant before the defendant's period of community**  
 25       **supervision expires if:**  
 26          (1) the court believes the best interests of society and the  
 27          defendant are likely to be served; and  
 28          (2) the defendant has successfully completed at least  
 29          two-thirds (2/3) of the defendant's period of community  
 30          supervision.
- 31       **Sec. 9. A dismissal and discharge under section 7 or 8 of this**  
 32       **chapter may not be considered a conviction for the purpose of**  
 33       **disqualifications imposed by law for conviction of an offense,**  
 34       **except that, upon conviction of a subsequent offense, the fact that**  
 35       **the defendant has previously received community supervision with**  
 36       **a withheld judgment of conviction is admissible before a court or**  
 37       **jury, or both, to be considered on the issue of sentencing.**
- 38       **Sec. 10. (a) Except as provided in subsection (b), only a court**  
 39       **may alter the conditions of community supervision.**  
 40          (b) A court that places a defendant on community supervision  
 41          under this article may authorize the probation officer supervising  
 42          the defendant to modify the conditions of community supervision



1 for the limited purpose of transferring the defendant to different  
 2 programs within the community supervision continuum of  
 3 programs.

4 **Sec. 11. (a) If a probation officer modifies the conditions of**  
 5 **community supervision, the officer shall:**

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

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

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

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

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

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

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

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

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

36 (b) The amount of community service imposed under this article  
 37 may not:

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

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

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- 1 (1) Not commit an offense against the laws of Indiana, any  
2 other state, or the United States.  
3 (2) Avoid injurious or vicious habits.  
4 (3) Avoid persons or places of disreputable or harmful  
5 character.  
6 (4) Report to the defendant's probation officer and obey all  
7 rules of the community supervision and corrections  
8 department.  
9 (5) Permit the defendant's probation officer to visit the  
10 defendant at the defendant's home or elsewhere.  
11 (6) Work faithfully at suitable employment to the extent  
12 possible.  
13 (7) Supervise or participate in a program that:  
14 (A) includes as participants or recipients persons who are  
15 less than eighteen (18) years of age; and  
16 (B) regularly provides athletic, civic, or cultural activities.  
17 (8) Remain within a specified geographical location.  
18 (9) Refrain from:  
19 (A) going on or within certain premises; or  
20 (B) having contact with or harassing a certain person or  
21 class of persons specified by the court.  
22 (10) Pay court costs, fines, and any other relevant fees.  
23 (11) Support the defendant's dependents.  
24 (12) Reimburse the county in which the prosecution against  
25 the defendant was filed for any costs to:  
26 (A) the county for a public defender; or  
27 (B) other appointed counsel who provided representation  
28 to the defendant.  
29 (13) Remain under custodial supervision in a community  
30 corrections program, obey the rules and regulations of the  
31 program, and pay a percentage of the defendant's income  
32 toward costs relating to the defendant's participation in the  
33 program.  
34 (14) Submit to testing for alcohol or controlled substances.  
35 (15) Attend counseling sessions for substance abusers or  
36 participate in any other court approved alcohol or substance  
37 abuse treatment services.  
38 (16) With the consent of the victim, participate in  
39 victim-defendant mediation.  
40 (17) Submit to electronic monitoring.  
41 (18) Reimburse the crime victims compensation fund for  
42 money paid from the fund to a victim.

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1 (19) Reimburse a law enforcement agency for the analysis,  
 2 storage, or disposal of raw materials, controlled substances,  
 3 chemical precursors, drug paraphernalia, or other materials  
 4 seized in connection with the offense.

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

7 (A) psychological counseling; or

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

11 made necessary by the offense.

12 (21) Submit a blood sample or other specimen to create a  
 13 DNA record of the defendant.

14 (22) Undergo domestic violence counseling.

15 (23) Refrain from operating a motor vehicle.

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

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

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

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

35 (1) the intellectual capacity; or

36 (2) the learning ability;

37 to achieve that level of skill.

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

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- 1 (1) mental illness is chronic in nature; or  
 2 (2) ability to function independently is likely to deteriorate if  
 3 the defendant is not treated.

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

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

- 8 (1) issue a warrant for a violation of the conditions of the  
 9 community supervision; and  
 10 (2) cause the defendant to be arrested.

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

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

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

- 22 (1) shall cause the defendant to be brought before the court  
 23 for a hearing not later than twenty (20) days after the filing of  
 24 the defendant's motion; and  
 25 (2) after a hearing is held by the court, may continue, extend,  
 26 modify, or revoke the defendant's community supervision.

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

- 31 (1) waives the defendant's right to a hearing and to counsel;  
 32 (2) affirms that the defendant has no comment regarding why  
 33 a judgment of conviction should not be entered against the  
 34 defendant; and  
 35 (3) requests the court to:  
 36 (A) revoke community supervision; and  
 37 (B) enter a judgment of conviction against the defendant.

38 **Sec. 4. In a community supervision revocation hearing at which**  
 39 **it is alleged only that the defendant violated the conditions of**  
 40 **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 held  
 28 under IC 35-39-4, the court may proceed to dispose of the case as  
 29 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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