HOUSE BILL No. 1094

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-42; IC 31-14-14; IC 31-17-4; IC 35-33-8-3.2.

Synopsis: Domestic violence. Requires a noncustodial parent's visitation with a child to be supervised if the noncustodial parent has been convicted of battery involving domestic violence or has demonstrated a pattern of domestic violence. Establishes a specific schedule for visitation after the conclusion of supervised visitation. Provides that the visitation provisions apply to both dissolution of marriage and paternity cases. Prohibits a court from releasing a defendant on personal recognizance if the defendant is charged with an offense involving domestic violence. Makes conforming changes.

Effective: July 1, 2000.

Summers

January 10, 2000, read first time and referred to Committee on Courts and Criminal Code.

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Introduced

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

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HOUSE BILL No. 1094

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-9-2-42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 42. "Domestic violence", for purposes of IC 31-14-13-2, **IC 31-14-14-1.5,** IC 31-15, IC 31-16, and IC 31-17, includes conduct found by a court to be physical or sexual abuse against a party or child of a party, including conduct that is an element of an offense under IC 35-42, regardless of whether the conduct results in a criminal prosecution or occurs in the presence of a child of the parties. The term does not include:

(1) negligence or defamation by one (1) parent against the other parent or the child; or

(2) reasonable acts of self defense used to protect a parent or child from the conduct of the other parent.

SECTION 2. IC 31-14-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. **Except as provided in section 1.5 of this chapter,** a noncustodial parent is entitled to reasonable visitation rights unless the court finds, after a hearing, that

visitation might:

(1) endanger the child's physical health and well-being; or

(2) significantly impair the child's emotional development.

SECTION 3. IC 31-14-14-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 1.5. (a) This section applies if the court finds, after a hearing, that:**

(1) the noncustodial parent has:

(A) been convicted of:

(i) battery under IC 35-42-2-1 for an incident involving domestic violence; or

(ii) a crime in another jurisdiction in which the elements of the crime are substantially similar to the crime described in item (i); or

(B) demonstrated a repeated pattern of domestic violence; and

(2) visitation between the child and the noncustodial parent will not:

(A) endanger the child's physical health and well being; or

(B) significantly impair the child's emotional development.

(b) The court shall order that the noncustodial parent's visitation with the child be supervised:

(1) by a person; and

(2) for a period;

that the court considers appropriate.

(c) After the expiration of the period determined by the court under subsection (b)(2), the court shall order visitation as follows:

(1) The noncustodial parent is entitled to physical custody of the child at the following times:

(A) Alternating weekends from 6 p.m. Friday to 7 p.m. Sunday.

(B) Every Wednesday evening from 5 p.m. to 8 p.m. If the child is involved in a school or extracurricular activity that evening, the noncustodial parent shall take the child to and from the activity. If the activity lasts beyond 8 p.m., the noncustodial parent's visitation must conclude when the noncustodial parent returns the child to the custodial parent's home directly after the activity.

(C) The noncustodial parent's birthday from 9 a.m. to 7 p.m.

(D) If the noncustodial parent is the child's mother, Mother's Day weekend from 6 p.m. Friday to 7 p.m.

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Sunday.

(E) If the noncustodial parent is the child's father, Father's Day weekend from 6 p.m. Friday to 7 p.m. Sunday.

(F) In years ending in an odd number, the following:

(i) The night before the child's birthday from 5 p.m. to 8 p.m.

(ii) Spring vacation from 6 p.m. Friday to 7 p.m. the Sunday before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(iii) Memorial Day weekend from 6 p.m. Friday to 7 p.m. Monday.

(iv) Independence Day from 6 p.m. July 3 to 7 p.m. July 5.

(v) Thanksgiving holiday from 6 p.m. Wednesday to 7 p.m. Sunday.

(vi) Christmas Day from noon to 9 p.m.

(vii) The second half of the child's Christmas vacation from school, with the period being counted from the evening the child is released from school to the evening before school resumes. If the child is not of school age, the time period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(G) In years ending in an even number, the following:

(i) The child's birthday.

(ii) Easter weekend from 6 p.m. Good Friday to 7 p.m. Easter Sunday.

(iii) Labor Day weekend from 6 p.m. Friday to 7 p.m. Monday.

(iv) Halloween evening from 6 p.m. to 9 p.m.

(v) Fall vacation from school from 6 p.m. the evening the child is released from school to 7 p.m. the evening before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(vi) Except for Christmas Day from noon to 9 p.m., the first half of the child's Christmas vacation from school, with the period being counted from the evening the child is released from school to the evening before school

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resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(H) If the child is not of school age, two (2) weeks in June and two (2) weeks in July, with the weeks to be determined by May 1 of each year. If the noncustodial parent's visitation under this provision is more than three (3) consecutive weeks, the noncustodial parent shall arrange a forty-eight (48) hour continuous period of visitation between the child and the custodial parent, unless the noncustodial parent:

(i) has long distance travel plans with the child that make this visitation with the custodial parent impractical; or

(ii) lives more than sixty (60) miles from the county of residence of the custodial parent.

(I) If the child is of school age:

(i) two (2) nonconsecutive three (3) week periods, if the child's summer vacation is twelve (12) weeks long; or

(ii) one half (1/2) of the child's summer vacation, if the child's summer vacation is less than twelve (12) weeks long.

The periods of extended visitation under this clause must be determined by May 1 of each year.

(2) The custodial parent is entitled to physical custody of the child at the following times:

(A) The custodial parent's birthday from 9 a.m. to 7 p.m.

(B) If the custodial parent is the child's mother, Mother's Day weekend from 6 p.m. Friday to 7 p.m. Sunday.

(C) If the custodial parent is the child's father, Father's Day weekend from 6 p.m. Friday to 7 p.m. Sunday.

(D) In years ending in an even number, the following:

(i) The night before the child's birthday from 5 p.m. to 8 p.m.

(ii) Spring vacation from 6 p.m. Friday to 7 p.m. the Sunday before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(iii) Memorial Day weekend from 6 p.m. Friday to 7 p.m. Monday.

(iv) Independence Day from 6 p.m. July 3 to 7 p.m. July 5.

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(v) Thanksgiving holiday from 6 p.m. Wednesday to 7 p.m. Sunday.

(vi) Christmas Day from noon to 9 p.m.

(vii) The second half of the child's Christmas vacation from school, with the period being counted from the evening the child is released from school to the evening before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(E) In years ending in an odd number, the following:

(i) The child's birthday.

(ii) Easter weekend from 6 p.m. Good Friday to 7 p.m. Easter Sunday.

(iii) Labor Day weekend from 6 p.m. Friday to 7 p.m. Monday.

(iv) Halloween evening from 6 p.m. to 9 p.m.

(v) Fall vacation from school from 6 p.m. the evening the child is released from school to 7 p.m. the evening before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(vi) Except for Christmas Day from noon to 9 p.m., the first half of the child's Christmas vacation from school, with the period being counted from the evening the child is released from school to the evening before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(F) If the child is of school age, at least two (2) consecutive weeks each summer, during which time the noncustodial parent has no visitation rights under subdivision (1)(A) or (1)(B).

(3) If there is a conflict between alternate weekend visitation and the specific visitation periods of this section, the specific visitation supersedes the alternate weekend visitation.

(4) Except for either parent's exercise of extended summer visitation, if the child is with one (1) parent for two (2) consecutive weekends, the parent that did not have physical custody of the child for those two (2) weekends shall have the child for the following weekend, and the parties shall then

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reestablish alternate weekend visitation. Unless the parents agree otherwise, this provision does not apply if the parents agree to trade weekends.

(5) Unless the parties agree otherwise, the noncustodial parent shall pick up the child from the custodial parent's home and return the child to the custodial parent's home at the time specified. The custodial parent shall have the child ready for visitation at the time the noncustodial parent is to pick up the child and shall be present at home to receive the child when the noncustodial parent returns the child.

(6) The noncustodial parent shall give the custodial parent three (3) days prior notice if the noncustodial parent does not intend to exercise visitation. If an emergency exists, the noncustodial parent shall give such notice as is possible under the circumstances.

(7) If the noncustodial parent misses visitation as the result of:

(A) illness of the child or noncustodial parent;

(B) an emergency; or

(C) other such reasonable excuse;

the parties shall make a good faith effort to make up a portion of that visitation within a reasonable period.

(8) Each parent shall supply the other parent with that parent's current address and telephone number. Each parent shall allow liberal and reasonable telephone and mail privileges between the child and the other parent.

(9) If the parties mutually agree to permanently change the provisions of the visitation schedule under this section, the parties must petition the court to approve and order that change. If the parties do not obtain a court order, the court is not bound by any alleged agreement of the parties.

(10) The court may alter any visitation period specified by this section if the alternate arrangement:

(A) is necessary because of:

(i) either parent's work schedule;

(ii) the child's school or extracurricular activities; or

(iii) observance of religious holidays other than those addressed by this section; and

(B) allows for visitation periods for both the noncustodial parent and the custodial parent that are similar to the visitation periods under this section.

SECTION 4. IC 31-17-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. **Except as provided**

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in section 1.5 of this chapter, a parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation by the noncustodial parent might:

(1) endanger the child's physical health; or

(2) significantly impair the child's emotional development.

SECTION 5. IC 31-17-4-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 1.5. (a) This section applies if the court finds, after a hearing, that:**

(1) the noncustodial parent has:

(A) been convicted of:

(i) battery under IC 35-42-2-1 for an incident involving domestic violence; or

(ii) a crime in another jurisdiction in which the elements of the crime are substantially similar to the crime described in item (i); or

(B) demonstrated a repeated pattern of domestic violence; and

(2) visitation between the child and the noncustodial parent will not:

(A) endanger the child's physical health and well being; or

(B) significantly impair the child's emotional development.

(b) The court shall order that the noncustodial parent's visitation with the child be supervised:

(1) by a person; and

(2) for a period;

that the court considers appropriate.

(c) After the expiration of the period determined by the court under subsection (b)(2), the court shall order visitation as follows:

(1) The noncustodial parent is entitled to physical custody of the child at the following times:

(A) Alternating weekends from 6 p.m. Friday to 7 p.m. Sunday.

(B) Every Wednesday evening from 5 p.m. to 8 p.m. If the child is involved in a school or extracurricular activity that evening, the noncustodial parent shall take the child to and from the activity. If the activity lasts beyond 8 p.m., the noncustodial parent's visitation shall conclude when the noncustodial parent returns the child to the custodial parent's home directly after the activity.

(C) The noncustodial parent's birthday from 9 a.m. to 7 p.m.

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(D) If the noncustodial parent is the child's mother, Mother's Day weekend from 6 p.m. Friday to 7 p.m. Sunday.

(E) If the noncustodial parent is the child's father, Father's Day weekend from 6 p.m. Friday to 7 p.m. Sunday.

(F) In years ending in an odd number, the following:

(i) The night before the child's birthday from 5 p.m. to 8 p.m.

(ii) Spring vacation from 6 p.m. Friday to 7 p.m. the Sunday before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(iii) Memorial Day weekend from 6 p.m. Friday to 7 p.m. Monday.

(iv) Independence Day from 6 p.m. July 3 to 7 p.m. July 5.

(v) Thanksgiving holiday from 6 p.m. Wednesday to 7 p.m. Sunday.

(vi) Christmas Day from noon to 9 p.m.

(vii) The second half of the child's Christmas vacation from school, with the period being counted from the evening the child is released from school to the evening before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(G) In years ending in an even number, the following:

(i) The child's birthday.

(ii) Easter weekend from 6 p.m. Good Friday to 7 p.m. Easter Sunday.

(iii) Labor Day weekend from 6 p.m. Friday to 7 p.m. Monday.

(iv) Halloween evening from 6 p.m. to 9 p.m.

(v) Fall vacation from school from 6 p.m. the evening the child is released from school to 7 p.m. the evening before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(vi) Except for Christmas Day from noon to 9 p.m., the first half of the child's Christmas vacation from school,

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with the period being counted from the evening the child is released from school to the evening before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(H) If the child is not of school age, two (2) weeks in June and two (2) weeks in July, with the weeks to be determined by May 1 of each year. If the noncustodial parent's visitation under this provision is more than three (3) consecutive weeks, the noncustodial parent shall arrange a forty-eight (48) hour continuous period of visitation between the child and the custodial parent, unless the noncustodial parent:

(i) has long distance travel plans with the child that make this visitation with the custodial parent impractical; or

(ii) lives more than sixty (60) miles from the county of residence of the custodial parent.

(I) If the child is of school age:

(i) two (2) nonconsecutive three (3) week periods, if the child's summer vacation is twelve (12) weeks long; or

(ii) one half (1/2) of the child's summer vacation, if the child's summer vacation is less than twelve (12) weeks long.

The periods of extended visitation under this clause must be determined by May 1 of each year.

(2) The custodial parent is entitled to physical custody of the child at the following times:

(A) The custodial parent's birthday from 9 a.m. to 7 p.m.

(B) If the custodial parent is the child's mother, Mother's Day weekend from 6 p.m. Friday to 7 p.m. Sunday.

(C) If the custodial parent is the child's father, Father's Day weekend from 6 p.m. Friday to 7 p.m. Sunday.

(D) In years ending in an even number, the following:

(i) The night before the child's birthday from 5 p.m. to 8 p.m.

(ii) Spring vacation from 6 p.m. Friday to 7 p.m. the Sunday before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(iii) Memorial Day weekend from 6 p.m. Friday to 7 p.m. Monday.

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(iv) Independence Day from 6 p.m. July 3 to 7 p.m. July 5.

(v) Thanksgiving holiday from 6 p.m. Wednesday to 7 p.m. Sunday.

(vi) Christmas Day from noon to 9 p.m.

(vii) The second half of the child's Christmas vacation from school, with the period being counted from the evening the child is released from school to the evening before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(E) In years ending in an odd number, the following:

(i) The child's birthday.

(ii) Easter weekend from 6 p.m. Good Friday to 7 p.m. Easter Sunday.

(iii) Labor Day weekend from 6 p.m. Friday to 7 p.m. Monday.

(iv) Halloween evening from 6 p.m. to 9 p.m.

(v) Fall vacation from school from 6 p.m. the evening the child is released from school to 7 p.m. the evening before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(vi) Except for Christmas Day from noon to 9 p.m., the first half of the child's Christmas vacation from school, with the period being counted from the evening the child is released from school to the evening before school resumes. If the child is not of school age, the period shall be determined by the vacation period of the public grade school in the custodial parent's school district.

(F) If the child is of school age, at least two (2) consecutive weeks each summer, during which time the noncustodial parent has no visitation rights under subdivision (1)(A) or (1)(B).

(3) If there is a conflict between alternate weekend visitation and the specific visitation periods of this section, the specific visitation supersedes the alternate weekend visitation.

(4) Except for either parent's exercise of extended summer visitation, if the child is with one parent for two (2) consecutive weekends, the parent that did not have physical

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custody of the child for those two (2) weekends shall have the child for the following weekend, and the parties shall then reestablish alternate weekend visitation. Unless the parents agree otherwise, this provision does not apply if the parents agree to trade weekends.

(5) Unless the parties agree otherwise, the noncustodial parent shall pick up the child from the custodial parent's home and return the child to the custodial parent's home at the time specified. The custodial parent shall have the child ready for visitation at the time the noncustodial parent is to pick up the child and shall be present at home to receive the child when the noncustodial parent returns the child.

(6) The noncustodial parent shall give the custodial parent three (3) days prior notice if the noncustodial parent does not intend to exercise visitation. If an emergency exists, the noncustodial parent shall give such notice as is possible under the circumstances.

(7) If the noncustodial parent misses visitation as the result of:

(A) illness of the child or noncustodial parent;

(B) an emergency; or

(C) other such reasonable excuse;

the parties shall make a good faith effort to make up a portion of that visitation within a reasonable period.

(8) Each parent shall supply the other parent with that parent's current address and telephone number. Each parent shall allow liberal and reasonable telephone and mail privileges between the child and the other parent.

(9) If the parties mutually agree to permanently change the provisions of the visitation schedule under this section, the parties must petition the court to approve and order that change. If the parties do not obtain a court order, the court is not bound by any alleged agreement of the parties.

(10) The court may alter any visitation period specified by this section if the alternate arrangement:

(A) is necessary because of:

(i) either parent's work schedule;

(ii) the child's school or extracurricular activities; or

(iii) observance of religious holidays other than those addressed by this section; and

(B) allows for visitation periods for both the noncustodial parent and the custodial parent that are similar to the visitation periods under this section.

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SECTION 6. IC 35-33-8-3.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 3.2. (a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

(1) Require the defendant to:

(A) execute a bail bond with sufficient solvent sureties;

(B) deposit cash or securities in an amount equal to the bail;

(C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;

(D) post a real estate bond.

The defendant must also pay the fee required by subsection (d).

(2) Require the defendant to execute a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail. If the defendant is convicted, the court may retain all or a part of the cash or securities to pay fines, costs, fees, and restitution, if ordered by the court. A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars ($50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision the following:

(A) The fee required by subsection (d).

(B) Fines, costs, fees, and restitution as ordered by the court.

(C) Publicly paid costs of representation that shall be disposed of in accordance with subsection (b).

(D) In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution.

The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Require the defendant to refrain from any direct or indirect contact with an individual.

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(5) Place the defendant under the reasonable supervision of a probation officer or other appropriate public official.

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless **the defendant is charged with an offense involving domestic violence (as defined in IC 31-9-2-42) or:**

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

(8) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-9-11.5.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed, or the defendant is acquitted or convicted of the charges.

(d) Except as provided by subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars ($5) for each bond or deposit under subsection (a)(1); and

(2) retain a fee of five dollars ($5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit these fees to the board of trustees of the public employees' retirement fund for deposit into the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2). This subsection expires December 31, 1998.

(e) With the approval of the clerk of the court, the county sheriff may collect the bail and fees required by subsection (d). The county

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sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar ($5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

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