



April 1, 2005

**ENGROSSED  
SENATE BILL No. 498**

DIGEST OF SB 498 (Updated March 30, 2005 7:21 pm - DI 73)

**Citations Affected:** IC 10-13; IC 24-4; IC 34-28; IC 36-1.

**Synopsis:** Local government. Allows a defendant against whom a judgment is entered in an action to enforce an ordinance to perform community restitution or service instead of paying a monetary judgment. Allows a county or municipality to establish fines for ordinance violations of not more than: (1) \$2,500 for a first violation of an ordinance; and (2) \$7,500 for a second or subsequent violation of an ordinance that does not regulate traffic or parking. Provides that cities, towns, and counties may require: (1) licensing of teen clubs; (2) criminal history background checks of owners and employees of teen clubs; (3) statements concerning the criminal background of employees of teen clubs; (4) age restrictions for individuals who may enter teen clubs; and (5) restrictions on the hours of operation of teen clubs.

**Effective:** July 1, 2005.

**Server, Broden, Howard**

(HOUSE SPONSORS — HINKLE, VAN HAAFTEN)

January 18, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

February 17, 2005, amended, reported favorably — Do Pass.

February 21, 2005, read second time, ordered engrossed.

February 22, 2005, engrossed.

February 28, 2005, read third time, passed. Yeas 47, nays 1.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Local Government.

March 31, 2005, amended, reported — Do Pass.

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ES 498—LS 7730/DI 69+



April 1, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 498

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure and local government.

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

1 SECTION 1. IC 10-13-3-27 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) Except as  
 3 provided in subsection (b), on request, law enforcement agencies shall  
 4 release or allow inspection of a limited criminal history to noncriminal  
 5 justice organizations or individuals only if the subject of the request:  
 6 (1) has applied for employment with a noncriminal justice  
 7 organization or individual;  
 8 (2) has applied for a license and criminal history data as required  
 9 by law to be provided in connection with the license;  
 10 (3) is a candidate for public office or a public official;  
 11 (4) is in the process of being apprehended by a law enforcement  
 12 agency;  
 13 (5) is placed under arrest for the alleged commission of a crime;  
 14 (6) has charged that the subject's rights have been abused  
 15 repeatedly by criminal justice agencies;  
 16 (7) is the subject of a judicial decision or determination with  
 17 respect to the setting of bond, plea bargaining, sentencing, or

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- 1 probation;
- 2 (8) has volunteered services that involve contact with, care of, or
- 3 supervision over a child who is being placed, matched, or
- 4 monitored by a social services agency or a nonprofit corporation;
- 5 (9) has volunteered services at a public school (as defined in
- 6 IC 20-10.1-1-2) or nonpublic school (as defined in
- 7 IC 20-10.1-1-3) that involve contact with, care of, or supervision
- 8 over a student enrolled in the school;
- 9 (10) is being investigated for welfare fraud by an investigator of
- 10 the division of family and children or a county office of family
- 11 and children;
- 12 (11) is being sought by the parent locator service of the child
- 13 support bureau of the division of family and children;
- 14 (12) is or was required to register as a sex and violent offender
- 15 under IC 5-2-12; **or**
- 16 (13) has been convicted of any of the following:
- 17 (A) Rape (IC 35-42-4-1), if the victim is less than eighteen
- 18 (18) years of age.
- 19 (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is
- 20 less than eighteen (18) years of age.
- 21 (C) Child molesting (IC 35-42-4-3).
- 22 (D) Child exploitation (IC 35-42-4-4(b)).
- 23 (E) Possession of child pornography (IC 35-42-4-4(c)).
- 24 (F) Vicarious sexual gratification (IC 35-42-4-5).
- 25 (G) Child solicitation (IC 35-42-4-6).
- 26 (H) Child seduction (IC 35-42-4-7).
- 27 (I) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
- 28 (J) Incest (IC 35-46-1-3), if the victim is less than eighteen
- 29 (18) years of age; **or**
- 30 **(14) is an owner or employee (as defined in IC 24-4-14-1) of a**
- 31 **teen club (as defined in IC 24-4-14-2) that is regulated by a**
- 32 **city, town, or county that has adopted an ordinance under**
- 33 **IC 24-4-14.**

34 However, limited criminal history information obtained from the

35 National Crime Information Center may not be released under this

36 section except to the extent permitted by the Attorney General of the

37 United States.

38 (b) A law enforcement agency shall allow inspection of a limited

39 criminal history by and release a limited criminal history to the

40 following noncriminal justice organizations:

- 41 (1) Federally chartered or insured banking institutions.
- 42 (2) Officials of state and local government for any of the

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1 following purposes:

2 (A) Employment with a state or local governmental entity.

3 (B) Licensing.

4 (3) Segments of the securities industry identified under 15 U.S.C.  
5 78q(f)(2).

6 (c) Any person who uses limited criminal history for any purpose  
7 not specified under this section commits a Class A misdemeanor.

8 SECTION 2. IC 24-4-14 IS ADDED TO THE INDIANA CODE AS  
9 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
10 1, 2005]:

11 **Chapter 14. Regulation of Teen Clubs**

12 **Sec. 1. As used in this chapter, "employee" means a person**  
13 **employed or permitted to work or perform any service in a teen**  
14 **club for remuneration or under any contract of hire, written or**  
15 **oral, express or implied, by an owner of a teen club.**

16 **Sec. 2. As used in this chapter, "teen club" means a for-profit**  
17 **establishment that:**

18 **(1) is open to the public for the primary purpose of:**

19 **(A) offering an individual who is under the legal age for**  
20 **purchasing or consuming alcoholic beverages an**  
21 **opportunity to engage in social activities; and**

22 **(B) providing entertainment, food, or nonalcoholic**  
23 **beverages for a profit; and**

24 **(2) does not serve alcoholic beverages.**

25 **Sec. 3. A city, town, or county may adopt an ordinance to**  
26 **regulate a teen club and impose one (1) or more of the following:**

27 **(1) A requirement that a teen club be licensed.**

28 **(2) A requirement that an owner or employee of a teen club**  
29 **submit to a criminal history check.**

30 **(3) A requirement that an owner of a teen club require, and**  
31 **provide to third parties upon request, a statement from each**  
32 **employee that the employee has not been convicted of:**

33 **(A) a felony; or**

34 **(B) a crime involving children.**

35 **(4) An age restriction for individuals who may enter a teen**  
36 **club.**

37 **(5) A restriction on the hours of operation of a teen club.**

38 SECTION 3. IC 34-28-5-1 IS AMENDED TO READ AS  
39 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) An action to  
40 enforce a statute defining an infraction shall be brought in the name of  
41 the state of Indiana by the prosecuting attorney for the judicial circuit  
42 in which the infraction allegedly took place. However, if the infraction

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1 allegedly took place on a public highway (as defined in IC 9-25-2-4)  
2 that runs on and along a common boundary shared by two (2) or more  
3 judicial circuits, a prosecuting attorney for any judicial circuit sharing  
4 the common boundary may bring the action.

5 (b) An action to enforce an ordinance shall be brought in the name  
6 of the municipal corporation. The municipal corporation need not  
7 prove that it or the ordinance is valid unless validity is controverted by  
8 affidavit.

9 (c) Actions under this chapter (or IC 34-4-32 before its repeal):  
10 (1) shall be conducted in accordance with the Indiana Rules of  
11 Trial Procedure; and  
12 (2) must be brought within two (2) years after the alleged conduct  
13 or violation occurred.

14 (d) The plaintiff in an action under this chapter must prove the  
15 commission of an infraction or ordinance violation by a preponderance  
16 of the evidence.

17 (e) The complaint and summons described in IC 9-30-3-6 may be  
18 used for any infraction or ordinance violation.

19 (f) The prosecuting attorney or the attorney for a municipal  
20 corporation may establish a deferral program for deferring actions  
21 brought under this section. Actions may be deferred under this section  
22 if:

- 23 (1) the defendant in the action agrees to conditions of a deferral  
24 program offered by the prosecuting attorney or the attorney for a  
25 municipal corporation;
- 26 (2) the defendant in the action agrees to pay to the clerk of the  
27 court an initial user's fee and monthly user's fee set by the  
28 prosecuting attorney or the attorney for the municipal corporation  
29 in accordance with IC 33-37-4-2(e);
- 30 (3) the terms of the agreement are recorded in an instrument  
31 signed by the defendant and the prosecuting attorney or the  
32 attorney for the municipal corporation;
- 33 (4) the defendant in the action agrees to pay court costs of  
34 twenty-five dollars (\$25) to the clerk of court if the action  
35 involves a moving traffic offense (as defined in IC 9-13-2-110);  
36 and
- 37 (5) the agreement is filed in the court in which the action is  
38 brought.

39 When a defendant complies with the terms of an agreement filed under  
40 this subsection (or IC 34-4-32-1(f) before its repeal), the prosecuting  
41 attorney or the attorney for the municipal corporation shall request the  
42 court to dismiss the action. Upon receipt of a request to dismiss an

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1 action under this subsection, the court shall dismiss the action. An  
2 action dismissed under this subsection (or IC 34-4-32-1(f) before its  
3 repeal) may not be refiled.

4 **(g) If a judgment is entered against a defendant in an action to**  
5 **enforce an ordinance, the defendant may perform community**  
6 **restitution or service (as defined in IC 35-41-1-4.6) instead of**  
7 **paying a monetary judgment for the ordinance violation as**  
8 **described in section 4(e) of this chapter if:**

9 **(1) the:**

10 **(A) defendant; and**

11 **(B) attorney for the municipal corporation;**

12 **agree to the defendant's performance of community**  
13 **restitution or service instead of the payment of a monetary**  
14 **judgment;**

15 **(2) the terms of the agreement described in subdivision (1):**

16 **(A) include the amount of the judgment the municipal**  
17 **corporation requests that the defendant pay under section**  
18 **4(e) of this chapter for the ordinance violation if the**  
19 **defendant fails to perform the community restitution or**  
20 **service provided for in the agreement as approved by the**  
21 **court; and**

22 **(B) are recorded in an instrument signed by the defendant**  
23 **and the attorney for the municipal corporation;**

24 **(3) the agreement is filed in the court where the judgment was**  
25 **entered; and**

26 **(4) the court approves the agreement.**

27 **If a defendant fails to comply with an agreement approved by a**  
28 **court under this subsection, the court shall require the defendant**  
29 **to pay up to the amount of the judgment requested in the action**  
30 **under section 4(e) of this chapter as if the defendant had not**  
31 **entered into an agreement under this subsection.**

32 SECTION 4. IC 34-28-5-4 IS AMENDED TO READ AS  
33 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A judgment of up  
34 to ten thousand dollars (\$10,000) may be entered for a violation  
35 constituting a Class A infraction.

36 (b) A judgment of up to one thousand dollars (\$1,000) may be  
37 entered for a violation constituting a Class B infraction.

38 (c) A judgment of up to five hundred dollars (\$500) may be entered  
39 for a violation constituting a Class C infraction.

40 (d) A judgment of up to twenty-five dollars (\$25) may be entered for  
41 a violation constituting a Class D infraction.

42 (e) **Subject to section 1(g) of this chapter**, a judgment:

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- 1 (1) up to the amount requested in the complaint; and
- 2 (2) not exceeding any limitation under IC 36-1-3-8;
- 3 may be entered for an ordinance violation.

4 SECTION 5. IC 34-28-5-8 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The violations clerk  
 6 or deputy violations clerk shall:

- 7 (1) accept:
  - 8 (A) written appearances;
  - 9 (B) waivers of trial;
  - 10 (C) admissions of violation;
  - 11 (D) declarations of nolo contendere for moving traffic
  - 12 violations;
  - 13 (E) payments of judgments (including costs) in traffic
  - 14 violation cases; ~~and~~
  - 15 (F) deferral agreements made under section 1(f) of this chapter
  - 16 (or IC 34-4-32-1(f) before its repeal) and deferral program fees
  - 17 prescribed under IC 33-37-4-2(e); **and**
  - 18 **(G) community restitution or service agreements made**
  - 19 **under section 1(g) of this chapter;**
- 20 (2) issue receipts and account for any judgments (including costs)
- 21 collected; and
- 22 (3) pay the judgments (including costs) collected to the
- 23 appropriate unit of government as provided by law.

24 SECTION 6. IC 36-1-3-8 IS AMENDED TO READ AS FOLLOWS  
 25 [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Subject to subsection (b), a  
 26 unit does not have the following:

- 27 (1) The power to condition or limit its civil liability, except as
- 28 expressly granted by statute.
- 29 (2) The power to prescribe the law governing civil actions
- 30 between private persons.
- 31 (3) The power to impose duties on another political subdivision,
- 32 except as expressly granted by statute.
- 33 (4) The power to impose a tax, except as expressly granted by
- 34 statute.
- 35 (5) The power to impose a license fee greater than that reasonably
- 36 related to the administrative cost of exercising a regulatory power.
- 37 (6) The power to impose a service charge or user fee greater than
- 38 that reasonably related to reasonable and just rates and charges
- 39 for services.
- 40 (7) The power to regulate conduct that is regulated by a state
- 41 agency, except as expressly granted by statute.
- 42 (8) The power to prescribe a penalty for conduct constituting a

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- 1 crime or infraction under statute.
- 2 (9) The power to prescribe a penalty of imprisonment for an
- 3 ordinance violation.
- 4 (10) The power to prescribe a penalty of a fine as follows:
- 5 (A) More than ten thousand dollars (\$10,000) for the violation
- 6 of an ordinance or a regulation concerning air emissions
- 7 adopted by a county that has received approval to establish an
- 8 air program under IC 13-17-12-6.
- 9 (B) **For a violation of any other ordinance:**
- 10 (i) more than two thousand five hundred dollars (\$2,500) for
- 11 any other a first violation of the ordinance; and
- 12 (ii) **except as provided in subsection (c), more than seven**
- 13 **thousand five hundred dollars (\$7,500) for a second or**
- 14 **subsequent violation of the ordinance.**
- 15 (11) The power to invest money, except as expressly granted by
- 16 statute.
- 17 (12) The power to order or conduct an election, except as
- 18 expressly granted by statute.
- 19 (b) A township does not have the following, except as expressly
- 20 granted by statute:
- 21 (1) The power to require a license or impose a license fee.
- 22 (2) The power to impose a service charge or user fee.
- 23 (3) The power to prescribe a penalty.
- 24 (c) **Subsection (a)(10)(B)(ii) does not apply to the violation of an**
- 25 **ordinance that regulates traffic or parking.**

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SENATE MOTION

Madam President: I move that Senator Broden be added as second author of Senate Bill 498.

SERVER

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 498, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, line 42, after "(ii)" insert "**except as provided in subsection (c),**".

Page 5, after line 11, begin a new paragraph and insert:

**"(c) Subsection (a)(10)(B)(ii) does not apply to the violation of an ordinance that regulates traffic or parking."**

and when so amended that said bill do pass.

(Reference is to SB 498 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 10, Nays 1.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred Senate Bill 498, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 10-13-3-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) Except as provided in subsection (b), on request, law enforcement agencies shall release or allow inspection of a limited criminal history to noncriminal justice organizations or individuals only if the subject of the request:

- (1) has applied for employment with a noncriminal justice organization or individual;
- (2) has applied for a license and criminal history data as required by law to be provided in connection with the license;
- (3) is a candidate for public office or a public official;
- (4) is in the process of being apprehended by a law enforcement agency;
- (5) is placed under arrest for the alleged commission of a crime;
- (6) has charged that the subject's rights have been abused repeatedly by criminal justice agencies;
- (7) is the subject of a judicial decision or determination with respect to the setting of bond, plea bargaining, sentencing, or probation;
- (8) has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation;
- (9) has volunteered services at a public school (as defined in IC 20-10.1-1-2) or nonpublic school (as defined in IC 20-10.1-1-3) that involve contact with, care of, or supervision over a student enrolled in the school;
- (10) is being investigated for welfare fraud by an investigator of the division of family and children or a county office of family and children;
- (11) is being sought by the parent locator service of the child support bureau of the division of family and children;
- (12) is or was required to register as a sex and violent offender under IC 5-2-12; or
- (13) has been convicted of any of the following:
  - (A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

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- (B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
- (C) Child molesting (IC 35-42-4-3).
- (D) Child exploitation (IC 35-42-4-4(b)).
- (E) Possession of child pornography (IC 35-42-4-4(c)).
- (F) Vicarious sexual gratification (IC 35-42-4-5).
- (G) Child solicitation (IC 35-42-4-6).
- (H) Child seduction (IC 35-42-4-7).
- (I) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
- (J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age; or

**(14) is an owner or employee (as defined in IC 24-4-14-1) of a teen club (as defined in IC 24-4-14-2) that is regulated by a city, town, or county that has adopted an ordinance under IC 24-4-14.**

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) A law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to the following noncriminal justice organizations:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for any of the following purposes:
  - (A) Employment with a state or local governmental entity.
  - (B) Licensing.
- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) Any person who uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

SECTION 2. IC 24-4-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

**Chapter 14. Regulation of Teen Clubs**

**Sec. 1. As used in this chapter, "employee" means a person employed or permitted to work or perform any service in a teen club for remuneration or under any contract of hire, written or oral, express or implied, by an owner of a teen club.**

**Sec. 2. As used in this chapter, "teen club" means a for-profit establishment that:**

- (1) is open to the public for the primary purpose of:**

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- (A) offering an individual who is under the legal age for purchasing or consuming alcoholic beverages an opportunity to engage in social activities; and
- (B) providing entertainment, food, or nonalcoholic beverages for a profit; and

(2) does not serve alcoholic beverages.

Sec. 3. A city, town, or county may adopt an ordinance to regulate a teen club and impose one (1) or more of the following:

- (1) A requirement that a teen club be licensed.
- (2) A requirement that an owner or employee of a teen club submit to a criminal history check.
- (3) A requirement that an owner of a teen club require, and provide to third parties upon request, a statement from each employee that the employee has not been convicted of:
  - (A) a felony; or
  - (B) a crime involving children.
- (4) An age restriction for individuals who may enter a teen club.
- (5) A restriction on the hours of operation of a teen club."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 498 as printed February 18, 2005.)

HINKLE, Chair

Committee Vote: yeas 10, nays 0.

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