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**FISCAL IMPACT STATEMENT**

**LS 6709**

**BILL NUMBER:** HB 1158

**NOTE PREPARED:** Mar 1, 2006

**BILL AMENDED:** Mar 1, 2006

**SUBJECT:** Small Claims, Civil Actions, and Sheriff's Fees.

**FIRST AUTHOR:** Rep. Richardson

**FIRST SPONSOR:** Sen. Bray

**BILL STATUS:** 2<sup>nd</sup> Reading - 2<sup>nd</sup> House

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill has the following provisions:

- A. *Judicial Salaries Fee* - It specifies that the 25% of the Judicial Salaries Fees collected by a Marion County small claims court that is not deposited in the state General Fund must be deposited monthly in the general fund of the township in which the small claims court is located.
- B. *Garnishee Defendants* - It provides that the Small Claims Service Fee and Civil Action Service Fee do not apply to garnishee defendants. It creates a \$10 Small Claims Garnishee Service Fee and a \$10 Garnishee Service Fee, and provides that these fees are to be collected in small claims and civil actions involving more than three garnishees or garnishee defendants. It distributes the fees in the same manner as the Small Claims Service Fee and the Service Fee are distributed. It specifies that the garnishee service fees service of process fees only apply to cases filed after June 30, 2006.
- C. *Accident Report Fees* - It increases fees a county sheriff may charge for reports issued by the sheriff's office.
- D. *Service of Process Fee* - It increases fees a county sheriff may charge for service of process for civil actions. It provides that for each verified claim filed by a sheriff for service of writs, orders, process, notices, tax warrants, or other papers completed by the sheriff: (1) a \$13 service process fee is imposed; and (2) the amount that a county fiscal body must appropriate to the sheriff is increased.
- E. *Chief Deputy* - It adds county sheriffs to the list of county officers entitled to appoint a chief deputy and other deputies and employees.
- F. *Accident Report Fee* - It permits the Superintendent of the State Police Department to charge a fee of at least \$5 for furnishing an accident report or for the inspection and copying of other data without having the fee fixed by a local ordinance.
- G. *DNA Sample Processing Fee* - It increases the DNA sample processing fee from \$1 to \$2.

H. It makes conforming amendments.

**Effective Date:** July 1, 2006.

**Explanation of State Expenditures:**

**Explanation of State Revenues:** (Revised) *Accident Report Fees:* This fee would increase revenues in two ways.

First, the current fee for producing an accident report is \$3. If the fee is increased to a minimum \$5, the State Police could collect \$65,000 in new accident report fee revenue. If the department supplying a copy of the accident report is the State Police Department, revenues are placed in the state Accident Report Account to be expended by the State Police superintendent for purposes related to the keeping of accident reports and records or the prevention of street and highway accidents.

On average between FY 2001 and FY 2003, annual revenues to the account were \$97,774, representing about 32,592 reports. Assuming that the fee is increased to \$5, average annual revenues to the account would increase by about \$65,000.

<b>Fees from Providing Copies of Accident Reports at \$3 per Report: FY 1998 to 2002</b>					
<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>5-Year Average</u>
\$107,931	\$99,477	\$89,153	\$102,039	\$90,268	\$97,774

Second, the Indiana State Police would be able to charge companies that gather and compile data on accident reports by vehicle identification number for the costs of providing this information to these companies. The added revenue that this second provision could generate was not able to be determined. In essence, this provision would allow ISP to recover a portion of the costs of staff time expended in compiling this data for commercial entities.

*DNA Sample Processing Fee* – The added \$1 is estimated to generate about \$690,000 in new revenue.

The new revenue is based on the following table.

<b>Revenue Generated From \$1 Fee By Type of Case and Court</b>			
	Courts of Record	City and Town Courts	Total Revenue
Felonies and Misdemeanors	\$67,299	\$28,702	\$96,001
Pretrial Diversion Cases	\$15,004	\$6,950	\$21,954
Infractions	\$365,091	\$127,042	\$492,133
Ordinance Violations	\$51,385	\$14,150	\$65,535
Juvenile	<u>\$14,006</u>	-	<u>\$14,006</u>
Totals	\$512,785	\$176,844	\$689,629

(Revised) *Change in Distribution from State General Fund* – The increases for the the DNA Sample Processing Fund will occur as part of an additional transfer of \$689,628 annually from the state General Fund to a series of court-related programs and the DNA Sample Processing Fund.

Currently, twice a year, \$7,932,209 is transferred from the state General Fund and deposited into a series of court- and criminal justice-related programs. As proposed, \$8,277,023 would be transferred instead. The added money transferred will be used for two basic purposes:

- To increase the payments that would be made to the DNA Sample Processing Fund by \$681,332 annually. The added costs will be financed by the increase in the DNA sample processing fee.
- To provide nominal increases in funding for eight other court- and criminal justice-related programs.

<b>Semi-Annual Revenue Transfer Under IC 33-37-7-9</b>					
Fund Type	Current Law		Proposed Change		New Money
	Percent	Distribution	Percent	Distribution	
Family Violence and Victim Assistance	9.37%	\$ 743,247.98	8.99%	744,104.37	\$ 856
Indiana Judges' Retirement	32.53%	\$ 2,580,347.59	31.18%	2,580,775.77	\$ 428
Law Enforcement Academy Building	2.98%	\$ 236,379.83	2.86%	236,722.86	\$ 343
Law Enforcement Training	12.00%	\$ 951,865.08	11.51%	952,685.35	\$ 820
Violent Crime Victims Compensation	13.95%	\$ 1,106,543.16	13.37%	1,106,637.98	\$ 95
Motor Vehicle Highway Account	22.78%	\$ 1,806,957.21	21.84%	1,807,701.82	\$ 745
Fish and Wildlife	0.28%	\$ 22,210.19	0.27%	22,347.96	\$ 138
In Judicial Center Drug & Alc. Programs	1.89%	\$ 149,918.75	1.82%	150,641.82	\$ 723
DNA Sample Processing	4.22%	\$ 334,739.22	8.16%	675,405.08	\$ 340,666
<b>Totals</b>	<b>100.00%</b>	<b>\$ 7,932,209.00</b>	<b>100.00%</b>	<b>\$ 8,277,023.00</b>	<b>\$ 344,814</b>

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** *Judicial Salaries Fee* – Requiring 25% of the Judicial Salaries fee that is collected by Marion County small claims courts be deposited into the general fund of the township in which the court is located will not create or redistribute any new revenue and, thus, will have no fiscal impact on local revenues.

*Background Information on Judicial Salaries Fee* -- The Judicial Salaries fee was created during the 2005 General Assembly. This fee is collected by trial courts, city and town courts, and Marion County small claims courts. 100% of the fee collected by the trial courts is deposited in the state General Fund, while 75% of the fee collected by both city and town courts and the Marion County small claims court is deposited in the state General Fund. The statute specifically calls for the balance of the fee (25%) in city and town courts be retained at the local level (IC 33-37-7-8(I)), while the statute is silent on what the Marion County small claims courts should do about this fee.

Based on instructions from the Marion County Clerk of the Circuit Court and the State Board of Accounts, the nine Marion County small claims courts are already depositing this 25% in the local township funds.

Consequently, this bill would not create or redistribute any new revenue.

*Garnishee Defendants* – Garnishees are generally employers or banks. They receive a court order not to release funds held for or owed to a customer or employee, pending further order of the court. When the fee is assessed, the party naming the garnishee must pay this \$10 fee for each garnishee named. During testimony at Commission on Courts meetings during the 2005 interim, Commission members reported that courts in Indiana are divided about whether the party naming a garnishee defendant should be subject to the \$10 civil service or small claims service fee. Consequently, some courts assess the fee and others do not. Proceeds from the civil and small claims service fees are deposited in the county and city and town general funds.

Proposed Change -- This bill would exempt parties naming garnishee defendants in civil and small claims actions from paying a civil action fee in civil cases and a small claims action fee in small claims cases. When more than three garnishee defendants are named in either a civil or small claims case, the person naming these defendants will be required to pay \$10 for each garnishee defendant named in the case.

Fiscal Implication -- This new provision could either increase or reduce the revenue collected by counties and municipalities depending on whether the courts already impose a fee for garnishee defendants.

- Courts which already assess a civil action or small claims action fee could see revenue decline if plaintiffs in cases involving fewer than four garnishee defendants no longer pay a \$10 fee for each garnishee defendant.
- Courts which do not require a civil action fee for cases involving garnishee defendants could see revenue increase in cases where more than three garnishee defendants are named by a plaintiff.

Because the civil action fee and the small claims action fee became effective July 1, 2005, information on the revenue generated by all three fees will not be available until the *2005 Indiana Judicial Report* is published in 2006. In addition, no information is available about the number of garnishee defendants named in each civil or small claims case.

*Accident Report Fees:* Under the bill, the lower limit for a fee is currently fixed by ordinance for accident reports. As proposed, this lower limit would increase from \$3 to \$5. On average, counties collect \$5,200 per year, based on a review of CY 2001 revenues for 78 counties representing 92% of the state population. Assuming that the number of claims remains unchanged and that fees increase to \$5, these 78 counties could receive \$271,000 in new revenue.

Under current law, the fee from an accident report supplied by a county office is placed in a local Accident Report Account to be expended for a purpose related to the keeping of accident reports and records or the prevention of street and highway accidents. The fee from a report supplied by a city or town is placed in the Local Law Enforcement Continuing Education Fund.

Information on report fees for city or town police was not available. Police departments in cities and towns in Indiana would also receive new money for these accident reports depending on how much they increase their report fees.

*New Fees for Service of Legal Documents* -- This provision is estimated to result in new revenue of \$14.34M. When sheriff staff personally deliver court notices to defendants in civil matters, they collect a \$40 fee if the notice is filed by a litigant who does not live in Indiana. If the litigant lives in Indiana, no fee is charged. This

bill would increase the out-of-state fee from the current \$40 to \$60 and establish a new \$13 fee for in-state litigators.

In an annual survey conducted by the Indiana Sheriffs' Association, county sheriffs report that on average 1.07 million civil processes were served during each calendar year between 2001 and 2005. The Sheriffs' Association estimates that sheriffs' deputies deliver 95% of these court notices for civil cases from in-state litigants, while about 5% are delivered for out-of-state litigants. Based on these estimates and the average annual civil processes reported in the annual surveys, the estimated new revenue from these fees is shown in the following table.

Estimated New Revenue from Civil Service of Process Fees						
Type of Civil Process	Annual Number		Percent		New/Incr Fee	New Revenue (In Millions)
In-state	1,074,668	x	95%	x	\$13	= \$13.27
Out-of-State	1,074,668	x	5%	x	\$20	= \$1.07
Total New Revenue						\$14.34

If a county has established a pension trust for the sheriff's office, the revenue generated by this provision would be deposited into this fund. If the county has no pension trust, the fee revenue would be deposited in the county general fund. As of December 2005, three counties do not have sheriffs' pension trusts.

*Fund Transfers for Service of Legal Documents:* This provision would apply to the 89 counties which operate pension trust funds for the county sheriffs and their employees. Under limited circumstances, this could obligate more money for funding sheriffs' pension funds and reduce available monies for other programs. Under current law, a sheriff can submit verified claims to the county auditor for each legal document the sheriff's office delivers. For each verified claim, the auditor is required to transfer \$12 from the share of court fee revenue that the county receives under IC 33-37-7-11.

As proposed, the amount transferred to the pension trust fund would increase from \$12 to \$13 for each claim, potentially increasing the amount of monies from the court fees contributing to the support of the pension funds. There are no statewide data available to indicate how often money is transferred from the county general fund to the sheriff's pension trust fund based on verified service claims, and it appears that this option is seldom used.

*Illustration of Effect of Transfer:* Under current law, \$12 is transferred from the county general fund from court fees deposited in the county general fund when the sheriff completes writs, orders, processes, notices, tax warrants, and other paper completed. The county general fund receives the following shares from court fees.

<b>Transfer of Monies From Court Fees From County General Fund to Sheriffs Pension Fund</b>				
			Net County Share of Court Fee after Transfer of:	
Fee for:	Fee Amount	County Share	\$12.00 (current law)	\$13.00 (proposed)
Criminal Costs	\$120	\$32.40	\$20.40	\$19.40
Infraction & Ord. Violations	\$70	\$18.90	\$6.90	\$5.90
Juvenile	\$120	\$32.40	\$20.40	\$19.40
Civil	\$100	\$27.00	\$15.00	\$14.00
Small Claims	\$35	\$9.45	(\$2.55)	(\$3.55)
Probate	\$120	\$32.40	\$20.40	\$19.40
Deferred Prosecution	\$50	\$13.50	\$1.50	\$0.50

Depending on how frequently these fees are transferred from the county general fund to the sheriff's pension fund and how much the counties directly appropriate to the local pension trust fund, this provision could potentially have no net effect on county finances but, under limited circumstances, could shift more money to the pension fund and away from other funding options.

*Chief Deputy* – Depending on which counties wish to promote chief deputies, the county could incur additional salary expenditures.

**State Agencies Affected:** Indiana State Police.

**Local Agencies Affected:** Local law enforcement agencies; Clerk of the circuit court; Clerk of the city and town courts.

**Information Sources:** Robert Spear, Marion County Small Claims Court, Perry Township; Chuck Nemeth, State Board of Accounts; *2005 Final Report of the Commission on Courts*; State Board of Accounts Audited Annual Reports, CY 2001; *Indiana Handbook of Taxes, Revenues, and Appropriations, FY 2005*; Elaine Beatty of McCready & Keane, Inc.; Indiana Sheriffs' Association Annual Survey.

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