

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6312
BILL NUMBER: SB 125

NOTE PREPARED: Mar 27, 2007
BILL AMENDED: Mar 26, 2007

SUBJECT: Collection of Court Costs and Fines.

FIRST AUTHOR: Sen. Dillon
FIRST SPONSOR: Rep. Kuzman

BILL STATUS: As Passed House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

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

- A. It allows the Wayne Superior Court No.1 and Wayne Superior Court No.2 to appoint a referee and a commissioner.
- B. It allows a court to suspend payment of court costs and court-imposed fines until a convicted person has completed all or part of the person's sentence.
- C. It grants a court continuing jurisdiction over the convicted person until the costs and fines are completely paid.
- D. It allows a court to use contempt proceedings or wage garnishment to enforce its order for payment.
- E. It makes conforming amendments.

Effective Date: July 1, 2007.

Explanation of State Expenditures:

Explanation of State Revenues: *Continuing Jurisdiction Over a Convicted Person* -- This bill is estimated to result in indeterminable increases in court fee revenue collected in future years. However, the increases are likely to be small.

Background – Under current law, a sentencing court is required to hold two separate indigency hearings for a criminal defendant. The first would occur at the beginning of the trial to determine if the defendant needs pauper counsel (IC 35-33-7-6). The second hearing would come at the time of sentencing if a defendant is found to be guilty and if the court decides to assess a fine. At this point, the court is required to again determine if the defendant is able to pay any court fees, fines, or both. (IC 33-37-2-3). The Indiana Court of Appeals has ruled that once courts determine at the time of the first hearing that a criminal

defendant is indigent, they can assume at the time of sentencing and imposing a fine that the defendant will still be indigent. Courts are also not permitted to suspend the fees imposed as part of a sentence. Consequently, it is possible that some defendants who would not be able to pay the costs of legal defense, which could cost as much as \$1,500 for a first time OWI (Operating While Intoxicated) offense, might be able to pay the costs of court fees and fines, which would be considerably less.

As proposed, this bill would permit a court to suspend the fees and fines that a person may be ordered to pay as part of the defendant's sentence until a later time when the defendant is financially able to pay the fee and fines. Consequently, courts would be able to collect more fee revenue from criminal defendants if they able to suspend payments and use contempt proceedings and wage garnishments until a defendant is able to pay the fee. The following table shows the fees and fines associated with criminal cost fees effective July 1, 2005.

<u>Fee</u>	<u>Code Cite</u>	<u>Amount</u>	
Marijuana Eradication Program Fee	IC 33-37-5-7		
Alcohol and Drug Services Program Fee	IC 33-37-5-8(b)		
Drug Abuse, Prosecution, Interdiction, and Correction Fee	IC 33-37-5-9	Judge determines whether fee should be collected and the amount of the fee to collect	
Alcohol and Drug Countermeasures Fee	IC 33-37-5-10		
Child Abuse Prevention Fee	IC 33-37-5-12		
Domestic Violence Prevention and Treatment Fee	IC 33-37-5-13		
Safe School Fee	IC 33-37-5-18		
Late Payment Fee	IC 33-37-5-22		
Criminal Fine	IC 21-1-3-7		
Sexual Assault Victims Assistance Fee	IC 33-37-5-23		
Highway Work Zone Fee	IC 33-37-5-14		\$0.50 or \$25.50
Judicial Insurance Adjustment Fee	IC 33-37-5-25		1.00
DNA Sample Processing Fee	IC 33-37-5-26.2	1.00	
Document Storage Fee	IC 33-37-5-20	2.00	
Jury Fee	IC 33-37-5-19	2.00	
Court Administration Fee	IC 33-37-5-27	2.00	
Law Enforcement Continuing Education Fee	IC 33-37-5-8(c)	3.00	
Public Defense Administration Fee	IC 33-37-5-21.2	3.00	
Automated Record Keeping Fee	IC 33-37-5-21	7.00	
Judicial Salaries Fee	IC 33-37-5-26	15.00	
Criminal Costs Fee or Deferred Prosecution Fee	IC 33-37-4-1 or IC 33-37-5-17	<u>\$120.00</u>	
Minimum Amount		<u>\$156.50</u>	

The following table shows the number of defendants for whom pauper counsel was appointed between CY 2002 and CY 2005. It is possible that some percentage of these defendants would be able to pay some proportion of fees and fines even if they are not able to pay for the costs of legal counsel.

Number of Defendants for Whom Pauper Counsel Was Appointed Between CY 2002 and CY 2005				
	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Felony A	1,391	1,641	1,795	2,021
Felony B	3,472	4,167	4,985	6,410
Felony C	6,482	6,932	7,681	8,688
Felony D	23,712	28,075	31,480	31,503
Misdemeanor	45,169	47,494	51,637	53,905
Juvenile Delinquency	<u>14,149</u>	<u>12,649</u>	<u>16,437</u>	<u>18,748</u>
Totals	<u>94,375</u>	<u>100,958</u>	<u>114,015</u>	<u>121,275</u>

Explanation of Local Expenditures: (Revised) *Wayne Superior Courts No. 1 and 2* – Under current law Wayne Superior Court No. 3 may appoint "a bailiff, official court reporter, referee, commissioner, and any other personnel as the judge considers necessary to facilitate and transact the business of the court". Wayne Superior Courts No. 1 and 2 are required to appoint a bailiff and an official court reporter. The following table illustrates how the appointment authority of Wayne Superior Courts Nos. 1 and 2 would be changed.

Appointing Authority by Court Under Current Law and Proposed by SB 125		
<u>Position</u>	Wayne Superior Courts <u>No. 1 and 2</u>	Wayne Superior Court <u>No. 3</u>
Bailiff and Court Reporter	Required by statute to appoint. Proposed: Give courts discretion to appoint bailiff or court reporter.	Superior Court No. 3 has discretion to appoint bailiffs, court reporters, referees and commissioners.
Referee and Commissioner	No mention in statute on appointments. Proposed: Give courts discretion to appoint referee or commissioner.	

In 2005, Wayne County Superior Court No. 3 reported that it employed one commissioner at the salary of \$41,807. If both courts appointed an additional commissioner, the added costs to Wayne County would be \$83,614.

Explanation of Local Revenues: Counties and municipalities can receive a portion of some of the fees that are collected.

State Agencies Affected:

Local Agencies Affected: Trial courts with criminal jurisdiction; Wayne Superior Courts No. 1 and 2.

Information Sources: Indiana Code; Indiana Supreme Court, Division of State Court Administration; *Wooden v. State*, 757 N.E.2d 212, 218 (Ind. Ct. App. 2001); Jeffrey Heffelfinger, Huntington Superior Court; Stacy Ulinana, Public Defender Council.

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