



March 11, 2011

**ENGROSSED
HOUSE BILL No. 1153**

DIGEST OF HB 1153 (Updated March 9, 2011 11:08 am - DI 106)

Citations Affected: IC 12-7; IC 33-23; IC 33-37.

Synopsis: Problem solving courts. Expands the types of persons that may participate in court established alcohol and drug services programs. Establishes procedures to be used by a problem solving court to terminate an individual's participation in a problem solving court program. Provides that the parent or guardian of a child: (1) who is adjudicated a delinquent child or in a program of informal adjustment approved by a juvenile court; and (2) who is accepted into a problem solving court program; is financially responsible for the problem solving court service fees and chemical testing expenses assessed against the child by the problem solving court. Specifies that a city or town user fee fund or county user fee fund includes problem solving court fees collected by the clerk of the court.

Effective: July 1, 2011.

Koch, Austin

(SENATE SPONSORS — BRAY, STEELE, BRODEN)

January 10, 2011, read first time and referred to Committee on Judiciary.
January 20, 2011, amended, reported — Do Pass.
January 24, 2011, read second time, ordered engrossed. Engrossed.
January 31, 2011, read third time, passed. Yeas 98, nays 0.

SENATE ACTION

February 17, 2011, read first time and referred to Committee on Judiciary.
March 10, 2011, amended, reported favorably — Do Pass.

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March 11, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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ENGROSSED HOUSE BILL No. 1153

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

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

1 SECTION 1. IC 12-7-2-12 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. "Alcohol and drug
 3 services program", for purposes of IC 12-23, means a service for a
 4 person:
 5 (1) **arrested for**, charged with, or convicted of a misdemeanor or
 6 felony; **or**
 7 (2) against whom a:
 8 (A) complaint for an infraction is filed; or
 9 (B) judgment for an infraction is entered; **or**
 10 (3) **who is referred to a program under IC 12-23-14-5;**
 11 which provides intervention, education, referral, treatment, or
 12 rehabilitation, under the operation of a court or under private contract.
 13 SECTION 2. IC 33-23-16-2, AS ADDED BY P.L.108-2010,
 14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2011]: Sec. 2. As used in this chapter, "chemical test" means
 16 an analysis of an individual's:
 17 (1) blood;

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- 1 (2) breath;
- 2 (3) hair;
- 3 (4) sweat;
- 4 (5) saliva;
- 5 (6) urine; or
- 6 (7) other bodily substance;

7 to determine the presence of alcohol, **a drug**, or a controlled substance
 8 (as defined in IC 35-48-1-9).

9 SECTION 3. IC 33-23-16-14, AS ADDED BY P.L.108-2010,
 10 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2011]: Sec. 14. (a) A ~~problem solving~~ court, without entering
 12 a judgment of conviction, may defer proceedings against an individual
 13 and place the individual in a problem solving court program under this
 14 section only if:

- 15 (1) the individual meets the conditions for eligibility set forth in
 16 section 13(1) and 13(2) of this chapter;
- 17 (2) the individual pleads guilty and consents to the referral; and
- 18 (3) the judge of the problem solving court, the prosecuting
 19 attorney, and the individual all agree upon certain conditions for
 20 the individual's participation in the problem solving court
 21 program and on the duration of those conditions.

22 ~~(b) If the judge of a problem solving court determines, after a~~
 23 ~~hearing, that:~~

- 24 ~~(1) an individual participating in a problem solving court program~~
 25 ~~under this section violated a condition established under~~
 26 ~~subsection (a)(3); or~~
- 27 ~~(2) the period during which the conditions established under~~
 28 ~~subsection (a)(3) were in effect expired before the individual~~
 29 ~~successfully completed each condition established by the problem~~
 30 ~~solving court;~~

31 ~~the problem solving court may terminate the individual's participation~~
 32 ~~in the problem solving court program.~~

33 ~~(c) (b) When an individual's participation in a problem solving court~~
 34 ~~program under this section has been terminated as provided under~~
 35 ~~subsection (b); section 14.5 of this chapter, the problem solving court~~
 36 ~~shall:~~

- 37 (1) enter a judgment of conviction against the individual;
- 38 (2) refer the individual's case back to the court that referred the
 39 case to the problem solving court to allow the referring court to
 40 enter a judgment of conviction against the individual; or
- 41 (3) otherwise dispose of the case.

42 ~~(d) (c) If an individual fulfills the conditions established by a~~

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1 problem solving court under subsection (a), the problem solving court
2 shall:

- 3 (1) dismiss the charges against the individual;
- 4 (2) refer the individual's case back to the court that referred the
5 case to the problem solving court to allow the referring court to
6 dismiss the charges against the individual; or
- 7 (3) otherwise dispose of the case.

8 SECTION 4. IC 33-23-16-14.5 IS ADDED TO THE INDIANA
9 CODE AS A NEW SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2011]: **Sec. 14.5. (a) A problem solving court
11 may terminate an individual's participation in a problem solving
12 court program if the individual has violated at least one (1) of the
13 conditions of the individual's:**

- 14 (1) participation agreement; or
- 15 (2) case management plan.

16 (b) If it is alleged that an individual has violated at least one (1)
17 condition of a problem solving court program, the problem solving
18 court may:

- 19 (1) remand the individual into custody;
- 20 (2) order a summons to be issued to the individual to appear;
- 21 or
- 22 (3) order a warrant for the individual's arrest if there is a risk
23 that the individual may:
- 24 (A) flee the jurisdiction; or
- 25 (B) cause harm to the individual or another individual.

26 (c) The problem solving court judge or other hearing officer
27 shall conduct a hearing concerning an alleged violation of a
28 condition of a problem solving court program as follows:

- 29 (1) The state must prove the violation by a preponderance of
30 the evidence.
- 31 (2) The evidence must be presented in open court.
- 32 (3) The individual who is alleged to have committed the
33 violation is entitled to:
- 34 (A) receive written notice of the alleged violation;
- 35 (B) obtain the disclosure of evidence against the individual;
- 36 (C) confront and cross-examine witnesses; and
- 37 (D) be represented by counsel.

38 (d) An individual participating in a problem solving court
39 program may not be terminated from the problem solving court
40 program for failure to pay a:

- 41 (1) problem solving court program service fee; or
- 42 (2) chemical testing fee;

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assessed against the individual by the problem solving court unless the individual recklessly fails or willfully refuses to pay the assessed fee.

(e) Except as provided in sections 14 and 15 of this chapter, if the problem solving court judge or hearing officer finds that an individual participating in a problem solving court program has violated a condition of the program, the problem solving court judge or hearing officer may:

(1) continue the individual's participation in the problem solving court program with or without modifying or expanding the individual's conditions for participating in the problem solving court program; or

(2) terminate the individual's participation in the problem solving court program.

SECTION 5. IC 33-23-16-15, AS ADDED BY P.L.108-2010, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. (a) A problem solving court may place an individual in a problem solving court program under this section only if:

- (1) the individual is convicted of an offense that is nonsuspendible and the individual meets the conditions for eligibility set forth in section 13(1) and 13(2) of this chapter; and
- (2) the judge of the problem solving court and the individual agree upon agrees to the conditions for the individual's of participation in the problem solving court program.

(b) If the requirements of subsection (a) are met in the case of an individual, the court may:

- (1) order the execution of the individual's nonsuspendible sentence and stay execution of all or part of the nonsuspendible part of the individual's sentence pending the individual's successful completion of a problem solving court program; and
- (2) suspend all or part of the suspendible part of the individual's nonsuspendible sentence, place the individual on probation for the suspended part of the sentence, and require as a condition of probation that the person successfully complete a problem solving court program.

(c) If an individual fails to successfully complete and has been terminated from a problem solving court program under this section as provided in section 14.5 of this chapter, the problem solving court may:

- (1) if the person is serving the nonsuspendible part of the person's sentence:

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- 1 (A) lift the stay of execution of the nonsuspendible part of the
- 2 individual's sentence and order the individual to serve all or a
- 3 part of the nonsuspendible sentence; or
- 4 (B) otherwise dispose of the case; or
- 5 (2) if the individual is serving the suspendible part of the
- 6 individual's sentence:
- 7 (A) order all or a part of the individual's suspendible sentence
- 8 to be executed; or
- 9 (B) otherwise dispose of the case.

10 (d) If an individual successfully completes a problem solving court
 11 program under this section, the problem solving court may:

- 12 (1) waive execution of the nonsuspendible part of the individual's
- 13 sentence; or
- 14 (2) otherwise dispose of the case.

15 SECTION 6. IC 33-23-16-23.5 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2011]: **Sec. 23.5. (a) A parent or guardian of**
 18 **a child:**

- 19 (1) **who is:**
- 20 (A) **adjudicated a delinquent child; or**
- 21 (B) **in a program of informal adjustment approved by a**
- 22 **juvenile court under IC 31-37-9; and**

23 (2) **who is accepted into a problem solving court program;**
 24 **is financially responsible for the problem solving court services fee**
 25 **and chemical testing expenses assessed against the child by the**
 26 **problem solving court under this chapter.**

27 (b) **A parent or guardian of a child described in subsection (a)**
 28 **shall, before a hearing under subsection (c) concerning payment of**
 29 **fees and expenses assessed against the child, provide financial**
 30 **information to the problem solving court as ordered by the**
 31 **problem solving court.**

32 (c) **The problem solving court shall hold a hearing and may**
 33 **order the parent or guardian to pay fees and expenses assessed**
 34 **against a child described in subsection (a) unless the problem**
 35 **solving court makes a specific finding that:**

- 36 (1) **the parent or guardian is unable to pay the fees or**
- 37 **expenses; or**
- 38 (2) **justice would not be served by ordering the parent or**
- 39 **guardian to pay the fees or expenses.**

40 (d) **If a parent or guardian is ordered to pay fees or expenses**
 41 **under this section, the parent or guardian shall pay the fees or**
 42 **expenses to the clerk of the court. The problem solving court shall**

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1 keep a record of all payments made under this section by each
2 parent or guardian. When a child is discharged from a problem
3 solving court program, the problem solving court shall determine
4 the amount of any unpaid fees or expenses a parent or guardian
5 owes under this section. The problem solving court may reduce the
6 unpaid balance to a final judgment that may be enforced in any
7 court that has appropriate jurisdiction.

8 SECTION 7. IC 33-37-8-3, AS AMENDED BY P.L.60-2006,
9 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2011]: Sec. 3. (a) A city or town user fee fund is established
11 in each city or town having a city or town court for the purpose of
12 supplementing the cost of various program services. The city or town
13 fund is administered by the fiscal officer of the city or town.

14 (b) The city or town fund consists of the following fees collected by
15 a clerk under this article:

- 16 (1) The pretrial diversion program fee.
- 17 (2) The alcohol and drug services fee.
- 18 (3) The law enforcement continuing education program fee.
- 19 (4) The deferral program fee.
- 20 (5) The ~~drug~~ **problem solving** court fee.
- 21 (6) ~~The reentry court fee.~~

22 SECTION 8. IC 33-37-8-5, AS AMENDED BY P.L.146-2008,
23 SECTION 676, IS AMENDED TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) A county user fee fund is
25 established in each county to finance various program services. The
26 county fund is administered by the county auditor.

27 (b) The county fund consists of the following fees collected by a
28 clerk under this article and by the probation department for the juvenile
29 court under IC 31-37-9-9:

- 30 (1) The pretrial diversion program fee.
- 31 (2) The informal adjustment program fee.
- 32 (3) The marijuana eradication program fee.
- 33 (4) The alcohol and drug services program fee.
- 34 (5) The law enforcement continuing education program fee.
- 35 (6) The deferral program fee.
- 36 (7) The jury fee.
- 37 (8) The ~~drug~~ **problem solving** court fee.
- 38 (9) ~~The reentry court fee.~~

39 (c) All of the jury fee and two dollars (\$2) of a deferral program fee
40 collected under IC 33-37-4-2(e) shall be deposited by the county
41 auditor in the jury pay fund established under IC 33-37-11.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1153, 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 3, line 31, delete "recklessly, knowingly, or intentionally fails" and insert "**recklessly fails or willfully refuses**".

Page 6, delete lines 29 through 42.

Delete pages 7 through 8.

and when so amended that said bill do pass.

(Reference is to HB 1153 as introduced.)

FOLEY, Chair

Committee Vote: yeas 10, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1153, 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 1, between lines 12 and 13, begin a new paragraph and insert:
"SECTION 2. IC 33-23-16-2, AS ADDED BY P.L.108-2010, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. As used in this chapter, "chemical test" means an analysis of an individual's:

- (1) blood;
- (2) breath;
- (3) hair;
- (4) sweat;
- (5) saliva;
- (6) urine; or
- (7) other bodily substance;

to determine the presence of alcohol, **a drug**, or a controlled substance (as defined in IC 35-48-1-9).".

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Page 1, line 15, strike "problem solving".
Renummer all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1153 as printed January 21, 2011.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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