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.

HOUSE ENROLLED ACT No. 1153

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

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

SECTION 1. IC 2-5-31.4 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 31.4. Criminal Law and Sentencing Policy Study Committee

Sec. 1. The criminal law and sentencing policy study committee is established.

Sec. 2. The committee consists of fourteen (14) members appointed as follows:

(1) Four (4) members of the senate, not more than two (2) of whom may be affiliated with the same political party, appointed by the president pro tempore of the senate.

(2) Four (4) members of the house of representatives, not more than two (2) of whom may be affiliated with the same political party, appointed by the speaker of the house of representatives.

(3) The executive director of the prosecuting attorneys council of Indiana or the executive director's designee.

(4) The executive director of the public defender council of Indiana or the executive director's designee.

(5) One (1) person appointed by the members of the Probation Officers' Professional Association who:

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(A) has experience in administering probation programs; and

(B) is a member of the Probation Officers' Professional Association of Indiana.

(6) One (1) circuit or superior court judge who exercises criminal or juvenile jurisdiction, appointed by the chief justice of the supreme court.

(7) The commissioner of the department of correction.

(8) The chairman of the parole board.

Sec. 3. The chairman of the legislative council shall appoint a legislative member of the committee to serve as chair of the committee. Whenever there is a new chairman of the legislative council, the new chairman may remove the chair of the committee and appoint another chair.

Sec. 4. If a legislative member of the committee ceases to be a member of the chamber from which the member was appointed, the member also ceases to be a member of the committee.

Sec. 5. A legislative member of the committee may be removed at any time by the appointing authority who appointed the legislative member.

Sec. 6. If a vacancy exists on the committee, the appointing authority who appointed the former member whose position is vacant shall appoint an individual to fill the vacancy.

Sec. 7. The committee shall submit a final report of the results of the committee's study to the legislative council before November 1 of even-numbered years. The report must be in an electronic format under IC 5-14-6.

Sec. 8. The Indiana criminal justice institute shall provide staff support to the committee to prepare:

(1) minutes of each meeting; and

(2) the final report.

Sec. 9. The legislative services agency shall provide staff support to the committee to:

(1) advise the committee on legal matters, criminal procedures, and legal research; and

(2) draft potential legislation.

Sec. 10. Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative and lay members, respectively, of interim study committees established by the legislative council.

Sec. 11. The affirmative votes of a majority of the members appointed to the committee are required for the committee to take

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action on any measure, including the final report.

Sec. 12. Except as otherwise specifically provided by this chapter, the committee shall operate under the rules of the legislative council. All funds necessary to carry out this chapter shall be paid from appropriations to the legislative council and the legislative services agency.

Sec. 13. (a) The committee is established to evaluate criminal laws, sentencing laws, and policies as they relate to:

(1) the purposes of the criminal justice and corrections systems;

(2) the availability of sentencing options; and

(3) the inmate population in department of correction facilities.

If, based on the committee's evaluation under this subsection, the committee determines that changes are necessary or appropriate, the committee shall make recommendations to the general assembly for the modification of sentencing laws and policies and for the addition, deletion, or expansion of sentencing options.

(b) The committee shall do the following:

(1) Conduct a continuing study of the laws relating to:

(A) the investigation of crimes;

(B) the prosecution of crimes;

(C) criminal procedures;

(D) alternative sentencing programs;

(E) the department of correction;

(F) parole;

(G) probation;

(H) community corrections;

(I) home detention programs;

(J) criminal registries;

(K) victim rights;

(L) the classification of criminal offenses into felony and misdemeanor categories;

(M) sex offenders; and

(N) juvenile offenders.

(2) Study federal requirements or incentives for states to pass certain laws or establish specific programs.

(3) Determine the long range needs of the criminal justice and corrections systems and recommend policy priorities for those systems.

(4) Identify critical problems in the criminal justice and corrections systems and recommend strategies to solve the

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problems.

(5) Assess the cost effectiveness of the use of state and local funds in the criminal justice and corrections systems.

(6) Propose plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems.

(c) The committee may study other topics assigned by the legislative council or as directed by the committee chair. The committee may meet as often as necessary.

SECTION 2. IC 12-7-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. "Alcohol and drug services program", for purposes of IC 12-23, means a service for a person:

(1) **arrested for,** charged with, or convicted of a misdemeanor or felony; ~~or~~

(2) against whom a:

(A) complaint for an infraction is filed; or

(B) judgment for an infraction is entered; **or**

(3) who is referred to a program under IC 12-23-14-5;

which provides intervention, education, referral, treatment, or rehabilitation, under the operation of a court or under private contract.

SECTION 3. 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).

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

(1) the individual meets the conditions for eligibility set forth in section 13(1) and 13(2) of this chapter;

(2) the individual pleads guilty and consents to the referral; and

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(3) the judge of the problem solving court, the prosecuting attorney, and the individual all agree upon certain conditions for the individual's participation in the problem solving court program and on the duration of those conditions.

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

~~(1) an individual participating in a problem solving court program under this section violated a condition established under subsection (a)(3); or~~

~~(2) the period during which the conditions established under subsection (a)(3) were in effect expired before the individual successfully completed each condition established by the problem solving court;~~

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

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

(1) enter a judgment of conviction against the individual;

(2) refer the individual's case back to the court that referred the case to the problem solving court to allow the referring court to enter a judgment of conviction against the individual; or

(3) otherwise dispose of the case.

~~(d)~~ **(c)** If an individual fulfills the conditions established by a problem solving court under subsection (a), the problem solving court shall:

(1) dismiss the charges against the individual;

(2) refer the individual's case back to the court that referred the case to the problem solving court to allow the referring court to dismiss the charges against the individual; or

(3) otherwise dispose of the case.

SECTION 5. IC 33-23-16-14.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 14.5. (a) A problem solving court may terminate an individual's participation in a problem solving court program if the individual has violated at least one (1) of the conditions of the individual's:**

(1) participation agreement; or

(2) case management plan.

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

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court may:

(1) remand the individual into custody;

(2) order a summons to be issued to the individual to appear; or

(3) order a warrant for the individual's arrest if there is a risk that the individual may:

(A) flee the jurisdiction; or

(B) cause harm to the individual or another individual.

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

(1) The state must prove the violation by a preponderance of the evidence.

(2) The evidence must be presented in open court.

(3) The individual who is alleged to have committed the violation is entitled to:

(A) receive written notice of the alleged violation;

(B) obtain the disclosure of evidence against the individual;

(C) confront and cross-examine witnesses; and

(D) be represented by counsel.

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

(1) problem solving court program service fee; or

(2) chemical testing fee;

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 6. 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

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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:

(A) lift the stay of execution of the nonsuspendible part of the individual's sentence and order the individual to serve all or a part of the nonsuspendible sentence; or

(B) otherwise dispose of the case; or

(2) if the individual is serving the suspendible part of the individual's sentence:

(A) order all or a part of the individual's suspendible sentence to be executed; or

(B) otherwise dispose of the case.

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

(1) waive execution of the nonsuspendible part of the individual's sentence; or

(2) otherwise dispose of the case.

SECTION 7. IC 33-23-16-23.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 23.5. (a) A parent or guardian of**

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a child:

(1) who is:

(A) adjudicated a delinquent child; or

(B) in a program of informal adjustment approved by a juvenile court under IC 31-37-9; and

(2) who is accepted into a problem solving court program;

is financially responsible for the problem solving court services fee and chemical testing expenses assessed against the child by the problem solving court under this chapter.

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

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

(1) the parent or guardian is unable to pay the fees or expenses; or

(2) justice would not be served by ordering the parent or guardian to pay the fees or expenses.

(d) If a parent or guardian is ordered to pay fees or expenses under this section, the parent or guardian shall pay the fees or expenses to the clerk of the court. The problem solving court shall keep a record of all payments made under this section by each parent or guardian. When a child is discharged from a problem solving court program, the problem solving court shall determine the amount of any unpaid fees or expenses a parent or guardian owes under this section. The problem solving court may reduce the unpaid balance to a final judgment that may be enforced in any court that has appropriate jurisdiction.

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

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

(1) The pretrial diversion program fee.

(2) The alcohol and drug services fee.

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(3) The law enforcement continuing education program fee.

(4) The deferral program fee.

(5) The ~~drug~~ **problem solving** court fee.

~~(6) The reentry court fee.~~

SECTION 9. IC 33-37-8-5, AS AMENDED BY P.L.146-2008, SECTION 676, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) A county user fee fund is established in each county to finance various program services. The county fund is administered by the county auditor.

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

(1) The pretrial diversion program fee.

(2) The informal adjustment program fee.

(3) The marijuana eradication program fee.

(4) The alcohol and drug services program fee.

(5) The law enforcement continuing education program fee.

(6) The deferral program fee.

(7) The jury fee.

(8) The ~~drug~~ **problem solving** court fee.

~~(9) The reentry court fee.~~

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

SECTION 10. IC 2-5.5-5 IS REPEALED [EFFECTIVE JULY 1, 2011].

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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