
HOUSE BILL No. 1400

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-33-49-32; IC 34-28-5-1.

Synopsis: Marion County courts. Allows the judges of the Marion superior court to appoint 12 full-time magistrates after December 31, 2013. Provides that, if an action brought in Marion County for a traffic violation infraction is deferred under a deferral program, the defendant must pay a fee of \$35 in addition to any other fee the defendant is required to pay under the deferral program. Requires these fees to be transferred to the Marion County dedicated fund that is used to pay for compensation of commissioners and the costs of the county's guardian ad litem program.

Effective: July 1, 2013.

Pryor

January 22, 2013, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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HOUSE BILL No. 1400



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 33-33-49-32, AS AMENDED BY P.L.80-2006,
- 2 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2013]: Sec. 32. (a) In addition to the magistrate appointed
- 4 under section 31 of this chapter, the judges of the superior court may,
- 5 by a vote of a majority of the judges, appoint:
- 6 ~~(1) four (4) full-time magistrates under IC 33-23-5 until January~~
- 7 ~~1, 2008; not more than two (2) of whom may be from the same~~
- 8 ~~political party; and~~
- 9 ~~(2) (1) eight (8) full-time magistrates under IC 33-23-5 after~~
- 10 ~~December 31, 2007, and until January 1, 2014, not more than~~
- 11 ~~four (4) of whom may be from the same political party; and~~
- 12 ~~(2) twelve (12) full-time magistrates under IC 33-23-5 after~~
- 13 ~~December 31, 2013, not more than six (6) of whom may be~~
- 14 ~~from the same political party.~~
- 15 (b) The magistrates continue in office until removed by the vote of
- 16 a majority of the judges of the court.
- 17 (c) A party to a superior court proceeding that has been assigned to



1 a magistrate appointed under this section may request that an elected
 2 judge of the superior court preside over the proceeding instead of the
 3 magistrate to whom the proceeding has been assigned. A request under
 4 this subsection must be in writing and must be filed with the court:

5 (1) in a civil case, not later than:

6 (A) ten (10) days after the pleadings are closed; or

7 (B) thirty (30) days after the case is entered on the
 8 chronological case summary, in a case in which the defendant
 9 is not required to answer; or

10 (2) in a criminal case, not later than ten (10) days after the
 11 omnibus date.

12 Upon a timely request made under this subsection by either party, the
 13 magistrate to whom the proceeding has been assigned shall transfer the
 14 proceeding back to the superior court judge.

15 SECTION 2. IC 34-28-5-1, AS AMENDED BY P.L.125-2012,
 16 SECTION 412, IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) As used in this section,
 18 "probationary license" refers to a license described in
 19 IC 9-24-11-3.3(b).

20 (b) An action to enforce a statute defining an infraction shall be
 21 brought in the name of the state of Indiana by the prosecuting attorney
 22 for the judicial circuit in which the infraction allegedly took place.
 23 However, if the infraction allegedly took place on a public highway (as
 24 defined in IC 9-25-2-4) that runs on and along a common boundary
 25 shared by two (2) or more judicial circuits, a prosecuting attorney for
 26 any judicial circuit sharing the common boundary may bring the action.

27 (c) An action to enforce an ordinance shall be brought in the name
 28 of the municipal corporation. The municipal corporation need not
 29 prove that it or the ordinance is valid unless validity is controverted by
 30 affidavit.

31 (d) Actions under this chapter (or IC 34-4-32 before its repeal):

32 (1) shall be conducted in accordance with the Indiana Rules of
 33 Trial Procedure; and

34 (2) must be brought within two (2) years after the alleged conduct
 35 or violation occurred.

36 (e) The plaintiff in an action under this chapter must prove the
 37 commission of an infraction or ordinance violation by a preponderance
 38 of the evidence.

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

41 (g) Subsection (h) does not apply to an individual holding a
 42 probationary license who is alleged to have committed an infraction

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1 under any of the following when the individual was less than eighteen
2 (18) years of age at the time of the alleged offense:

- 3 IC 9-19
4 IC 9-21
5 IC 9-24
6 IC 9-25
7 IC 9-26
8 IC 9-30-5
9 IC 9-30-10
10 IC 9-30-15.

11 (h) This subsection does not apply to an offense or violation under
12 IC 9-24-6 involving the operation of a commercial motor vehicle. The
13 prosecuting attorney or the attorney for a municipal corporation may
14 establish a deferral program for deferring actions brought under this
15 section. Actions may be deferred under this section if:

- 16 (1) the defendant in the action agrees to conditions of a deferral
17 program offered by the prosecuting attorney or the attorney for a
18 municipal corporation;
19 (2) the defendant in the action agrees to pay to the clerk of the
20 court an initial user's fee and monthly user's fee set by the
21 prosecuting attorney or the attorney for the municipal corporation
22 in accordance with IC 33-37-4-2(e);
23 (3) the terms of the agreement are recorded in an instrument
24 signed by the defendant and the prosecuting attorney or the
25 attorney for the municipal corporation;
26 (4) the defendant in the action agrees:
27 (A) to pay a fee of seventy dollars (\$70) to the clerk of court
28 if the action involves a moving traffic offense (as defined in
29 IC 9-13-2-110); and
30 (B) **in an action brought in Marion County for a traffic**
31 **violation constituting an infraction, to pay to the clerk of**
32 **court in Marion County, in addition to any other fee the**
33 **defendant is required to pay under this section, a fee of**
34 **thirty-five dollars (\$35), which the clerk of court shall**
35 **transfer to the dedicated county fund established under**
36 **section 5(e) of this chapter;**
37 (5) the agreement is filed in the court in which the action is
38 brought; and
39 (6) if the deferral program is offered by the prosecuting attorney,
40 the prosecuting attorney electronically transmits information
41 required by the prosecuting attorneys council concerning the
42 withheld prosecution to the prosecuting attorneys council, in a

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1 manner and format designated by the prosecuting attorneys
 2 council.
 3 When a defendant complies with the terms of an agreement filed under
 4 this subsection (or IC 34-4-32-1(f) before its repeal), the prosecuting
 5 attorney or the attorney for the municipal corporation shall request the
 6 court to dismiss the action. Upon receipt of a request to dismiss an
 7 action under this subsection, the court shall dismiss the action. An
 8 action dismissed under this subsection (or IC 34-4-32-1(f) before its
 9 repeal) may not be refiled.
 10 (i) If a judgment is entered against a defendant in an action to
 11 enforce an ordinance, the defendant may perform community
 12 restitution or service (as defined in IC 35-31.5-2-50) instead of paying
 13 a monetary judgment for the ordinance violation as described in section
 14 4(e) of this chapter if:
 15 (1) the:
 16 (A) defendant; and
 17 (B) attorney for the municipal corporation;
 18 agree to the defendant's performance of community restitution or
 19 service instead of the payment of a monetary judgment;
 20 (2) the terms of the agreement described in subdivision (1):
 21 (A) include the amount of the judgment the municipal
 22 corporation requests that the defendant pay under section 4(e)
 23 of this chapter for the ordinance violation if the defendant fails
 24 to perform the community restitution or service provided for
 25 in the agreement as approved by the court; and
 26 (B) are recorded in a written instrument signed by the
 27 defendant and the attorney for the municipal corporation;
 28 (3) the agreement is filed in the court where the judgment was
 29 entered; and
 30 (4) the court approves the agreement.
 31 If a defendant fails to comply with an agreement approved by a court
 32 under this subsection, the court shall require the defendant to pay up to
 33 the amount of the judgment requested in the action under section 4(e)
 34 of this chapter as if the defendant had not entered into an agreement
 35 under this subsection.

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