

IC 33-37-2 Chapter 2. General Court Costs Provisions for Criminal Actions

- 33-37-2-1 Application of chapter
- 33-37-2-2 Costs as separate from sentence; suspension of costs; liability for costs
- 33-37-2-3 Imposition of costs; suspension of costs; indigency hearing; time for payment; default
- 33-37-2-4 Prosecution for offense by inmate of state penal institution; state's liability for costs
- 33-37-2-5 Fees prescribed by IC 33-37-4-1; fine or penalty in addition to costs

IC 33-37-2-1 Application of chapter

Sec. 1. This chapter applies in criminal actions.

[Pre-2004 Recodification Citation: 33-19-2-1.]

As added by P.L.98-2004, SEC.16.

IC 33-37-2-2 Costs as separate from sentence; suspension of costs; liability for costs

Sec. 2. (a) Costs in a criminal action are not a part of the sentence and may be suspended only under section 3 of this chapter. However, if:

- (1) two (2) or more charges against a person are joined for trial; and
- (2) the person is convicted of two (2) or more offenses in the trial;

the court may waive the person's liability for costs for all but one (1) of the offenses.

(b) If a person is acquitted or an indictment or information is dismissed by order of the court, the person is not liable for costs.

[Pre-2004 Recodification Citation: 33-19-2-2.]

As added by P.L.98-2004, SEC.16. Amended by P.L.156-2007, SEC.1.

IC 33-37-2-3 Imposition of costs; suspension of costs; indigency hearing; time for payment; default

Sec. 3. (a) Except as provided in subsection (b), when the court imposes costs, it shall conduct a hearing to determine whether the convicted person is indigent. If the person is not indigent, the court shall order the person to pay:

- (1) the entire amount of the costs at the time sentence is pronounced;
- (2) the entire amount of the costs at some later date; or
- (3) specified parts of the costs at designated intervals.

(b) A court may impose costs and suspend payment of all or part of the costs until the convicted person has completed all or part of the sentence. If the court suspends payment of the costs, the court shall conduct a hearing at the time the costs are due to determine whether the convicted person is indigent. If the convicted person is not indigent, the court shall order the convicted person to pay the costs:

- (1) at the time the costs are due; or
- (2) in a manner set forth in subsection (a)(2) through (a)(3).

(c) If a court suspends payment of costs under subsection (b), the court retains jurisdiction over the convicted person until the convicted person has paid the entire amount of the costs.

(d) Upon any default in the payment of the costs:

- (1) an attorney representing the county may bring an action on a debt for the unpaid amount;
- (2) the court may direct that the person, if the person is not indigent, be committed to the county jail and credited toward payment at the rate of twenty dollars (\$20) for each twenty-four (24) hour period the person is confined, until the amount paid plus the amount credited equals the entire amount due; or
- (3) the court may institute contempt proceedings to enforce the court's order for payment of the costs.

(e) If, after a hearing under subsection (a) or (b), the court determines that a convicted

person is able to pay part of the costs of representation, the court shall order the person to pay an amount of not more than the cost of the defense services rendered on behalf of the person. The clerk shall deposit the amount paid by a convicted person under this subsection in the county's supplemental public defender services fund established under IC 33-40-3-1.

(f) A person ordered to pay part of the cost of representation under subsection (e) has the same rights and protections as those of other judgment debtors under the Constitution of the State of Indiana and Indiana law.

[Pre-2004 Recodification Citation: 33-19-2-3.]

As added by P.L. 98-2004, SEC.16. Amended by P.L. 156-2007, SEC.2.

**IC 33-37-2-4 Prosecution for offense by inmate of state penal institution;
state's liability for costs**

Sec. 4. (a) The state shall pay all costs of trial in a prosecution for an offense committed:

- (1) by an inmate of a state correctional facility; and
- (2) in the county in which the correctional facility is located.

(b) The costs of trial to be paid under this section include:

- (1) court fees; and
- (2) expenses incurred by the county sheriff in returning the defendant to the jurisdiction of the court and keeping the defendant in custody until trial.

[Pre-2004 Recodification Citation: 33-19-2-4.]

As added by P.L. 98-2004, SEC.16.

**IC 33-37-2-5 Fees prescribed by IC 33-37-4-1; fine or penalty in addition to
costs**

Sec. 5. The fees prescribed by IC 33-37-4-1 are costs and may be collected from a defendant against whom a conviction is entered. A fine or penalty imposed is in addition to costs.

[Pre-2004 Recodification Citation: 33-19-2-5.]

As added by P.L. 98-2004, SEC.16.

IC 33-40	ARTICLE 40. PUBLIC DEFENDERS
Ch. 1.	State Public Defender
Ch. 2.	Public Defenders
Ch. 3.	Supplemental Funding for Public Defender Services
Ch. 4.	Public Defender Council
Ch. 5.	Public Defender Commission
Ch. 6.	Public Defense Fund
Ch. 7.	County Public Defender Boards
Ch. 8.	Miscellaneous Legal Services for Indigents in Criminal Actions

IC 33-40-1	Chapter 1. State Public Defender
33-40-1-1	Appointment; qualifications
33-40-1-2	Representing penal institution inmates
33-40-1-3	Seal of office; powers of public defender
33-40-1-4	Salary; employees; office and supplies
33-40-1-5	Transcript of court proceedings
33-40-1-6	Claims for salary or expenses; appropriation

IC 33-40-1-1 Appointment; qualifications

- Sec. 1. (a) The office of state public defender is established.
- (b) The state public defender shall be appointed by the supreme court, to serve at the pleasure of the court, for a term of four (4) years.
- (c) The state public defender must be:
- (1) a resident of Indiana; and
 - (2) a practicing attorney in Indiana for at least three (3) years.
- (d) The supreme court may give any tests it considers proper to determine the fitness of an applicant for appointment.

[Pre-2004 Recodification Citation: 33-1-7-1.]

As added by P.L.98-2004, SEC.19.

IC 33-40-1-2 Representing penal institution inmates

- Sec. 2. (a) The state public defender shall represent a person who is:
- (1) confined in a penal facility in Indiana or committed to the department of correction due to a criminal conviction or delinquency adjudication; and
 - (2) financially unable to employ counsel;
- in a postconviction proceeding testing the legality of the person's conviction, commitment, or confinement, if the time for appeal has expired.
- (b) The state public defender shall also represent a person who is committed to the department of correction due to a criminal conviction or delinquency adjudication, and who is financially unable to employ counsel, in proceedings before the department of correction or parole board, if the right to legal representation is established by law.
- (c) This section does not require the state public defender to pursue a claim or defense that is not warranted under law and cannot be supported by a good faith argument for an extension, a modification, or a reversal of law, or that for any other reason is without merit.
- (d) This section does not prohibit an offender from proceeding on the offender's own behalf or otherwise refusing the services of the state public defender.

[Pre-2004 Recodification Citation: 33-1-7-2.]

As added by P.L.98-2004, SEC.19.

IC 33-40-1-3 Seal of office; powers of public defender

- Sec. 3. (a) The state public defender shall be provided with a seal of office on which appear the words "Public Defender, State of Indiana".
- (b) The state public defender may:
- (1) take acknowledgments;

- (2) administer oaths; and
- (3) do all other acts authorized by law for a notary public.

An act performed under this section must be attested by the public defender's official seal.

[Pre-2004 Recodification Citation: 33-1-7-3.]

As added by P.L.98-2004, SEC.19.

IC 33-40-1-4 Salary; employees; office and supplies

Sec. 4. (a) The state public defender shall be paid an annual salary to be fixed by the supreme court.

(b) The state public defender may, with the consent of the supreme court, appoint or employ, at compensation to be fixed by the supreme court, the deputies, stenographers, or other clerical help that may be required to discharge the public defender's duties.

(c) The state public defender shall be provided with an office at a place to be located and designated by the supreme court.

(d) The state public defender shall be paid the state public defender's actual necessary and reasonable traveling expenses, including cost of food and lodging when away from the municipality in which the public defender's office is located and while on business of the office of the public defender.

(e) The state public defender shall be provided with:

- (1) office furniture, fixtures, and equipment; and
- (2) books, stationery, printing services, postage, and supplies.

[Pre-2004 Recodification Citation: 33-1-7-4.]

As added by P.L.98-2004, SEC.19.

IC 33-40-1-5 Transcript of court proceedings

Sec. 5. The state public defender may order on behalf of a prisoner the public defender represents a transcript of any court proceeding, including evidence presented, had against the prisoner, and depositions, if necessary, at the expense of the state. However, the public defender may stipulate as to the facts contained in the record of any court, or as to the substance of testimony presented or evidence heard involving any issue to be presented on behalf of the prisoner, without the testimony or evidence being fully transcribed.

[Pre-2004 Recodification Citation: 33-1-7-5.]

As added by P.L.98-2004, SEC.19.

IC 33-40-1-6 Claims for salary or expenses; appropriation

Sec. 6. All claims for salary or other expenses authorized by this chapter shall be allowed and approved by the supreme court. There is appropriated annually out of funds of the state not otherwise appropriated a sufficient amount to pay salaries and expenses authorized by this chapter.

[Pre-2004 Recodification Citation: 33-1-7-6.]

As added by P.L.98-2004, SEC.19.

IC 33-40-2 Chapter 2. Public Defenders

33-40-2-1	Request to state public defender
33-40-2-2	Appointment
33-40-2-3	Schedule of fees
33-40-2-4	Fees; payment
33-40-2-5	Order for payment
33-40-2-6	Public defender investigators

IC 33-40-2-1 Request to state public defender

Sec. 1. (a) Upon a determination by the judge of any court having criminal jurisdiction that:

- (1) the court is unable within a reasonable time to appoint an available attorney, public defender or otherwise, who is competent in the practice of law in criminal cases as legal counsel for any person charged in the court with a criminal offense and who does not have sufficient means to employ an attorney; or
- (2) in the interest of justice an attorney from another judicial circuit, not regularly practicing in the court, should be appointed to defend the indigent defendant or appeal the defendant's case, but the judge is unable within a reasonable time to provide for the direct appointment of an attorney;

the judge may make written request to the state public defender to provide a qualified attorney for the defense of the indigent person.

(b) The judge shall attach to the written request a copy of the affidavit or indictment, and state in the request the amount of the applicable minimum fee to be paid for the legal services of defense counsel in the case, subject to:

- (1) any additional amount reasonable under all the circumstances of the case, to be determined and approved by the judge upon the final determination of the case; and
- (2) reasonable partial allowances as may be approved and ordered by the judge pending final determination.

[Pre-2004 Recodification Citation: 33-9-11-1.]

As added by P.L.98-2004, SEC.19.

IC 33-40-2-2 Appointment

Sec. 2. Upon receiving a written request under section 1 of this chapter, the state public defender shall:

- (1) accept appointment himself or herself;
- (2) appoint any of the state public defender's deputies; or
- (3) appoint any practicing attorney:
 - (A) admitted to the practice of law in Indiana; and
 - (B) who is competent to practice law in criminal cases;

subject to the concurring appointment, of record, by the requesting judge.

[Pre-2004 Recodification Citation: 33-9-11-2.]

As added by P.L.98-2004, SEC.19.

IC 33-40-2-3 Schedule of fees

Sec. 3. (a) The state public defender shall prepare and maintain a schedule of minimum attorney's fees for all general classifications of criminal trials, and proceedings on plea of guilty, subject to the approval of the supreme court. The schedule shall be furnished upon request to all criminal courts. A fee approved by any court for the services of:

- (1) the state public defender;
- (2) the state public defender's deputy; or
- (3) any attorney appointed by the state public defender and the judge under a request made to the state public defender;

may not be less than the approved minimum fee provided in the schedule.

(b) In cases where there has been a change of venue, the presiding judge may not approve a fee for a public defender from the office of the state public defender that exceeds one hundred twenty-five percent (125%) of the minimum fee schedule established under this chapter.

[Pre-2004 Recodification Citation: 33-9-11-3.]

As added by P.L. 98-2004, SEC. 19.

IC 33-40-2-4 Fees; payment

Sec. 4. All fees for services rendered by the state public defender or any of the state public defender's deputies under this chapter shall be paid directly to the state treasurer, to be expended for any necessary expenses of the office of the state public defender, including salaries of the necessary deputies, in addition to the state general funds otherwise appropriated by the general assembly for the payment of the expenses.

[Pre-2004 Recodification Citation: 33-9-11-4.]

As added by P.L. 98-2004, SEC. 19.

IC 33-40-2-5 Order for payment

Sec. 5. The judge of a court having criminal jurisdiction shall make all orders necessary to mandate payment of fees approved by the presiding judge for payment for legal services rendered for indigent defendants in any cause in:

(1) the court; or

(2) another court following change of venue from the court;

whether or not the legal services are arranged under this chapter or by direct appointment of counsel in the first instance by the judge.

[Pre-2004 Recodification Citation: 33-9-11-5.]

As added by P.L. 98-2004, SEC. 19.

IC 33-40-2-6 Public defender investigators

Sec. 6. (a) A public defender may use a public defender investigator who is qualified under subsection (b) to assist the public defender in preparing for the criminal defense of indigent persons.

(b) To practice as a public defender investigator, an individual must:

(1) be at least twenty-one (21) years of age; and

(2) not have a conviction for a crime that has a direct bearing on the individual's ability to competently perform the duties of a public defender investigator.

(c) A public defender investigator may not perform any duties for the public defender that constitute the unauthorized practice of law.

[Pre-2004 Recodification Citation: 33-9-11-6.]

As added by P.L. 98-2004, SEC. 19.

IC 33-40-3	Chapter 3. Supplemental Funding for Public Defender Services
33-40-3-1	Supplemental public defender services fund; establishment
33-40-3-2	Appropriation
33-40-3-3	Use of fund
33-40-3-4	Reversion of money in fund
33-40-3-5	Multiple court appointed legal service programs
33-40-3-6	Payment of costs by person or parent of delinquent child; maximum costs
33-40-3-7	Determination of ordering payment of costs
33-40-3-8	Order for costs as a civil judgment; relief from payment
33-40-3-9	Collection and deposit of fees
33-40-3-10	Establishment of fund in counties where public defender services not provided

IC 33-40-3-1 Supplemental public defender services fund; establishment

Sec. 1. A supplemental public defender services fund is established in each county. The fund consists of amounts deposited under:

- (1) section 9 of this chapter; and
- (2) IC 35-33-8-3.3.

[Pre-2004 Recodification Citation: 33-9-11.5-1.]

As added by P.L.98-2004, SEC.19. Amended by P.L.173-2006, SEC.41.

IC 33-40-3-2 Appropriation

Sec. 2. The fiscal body of the county shall appropriate money from the fund to supplement and provide court appointed legal services to qualified defendants.

[Pre-2004 Recodification Citation: 33-9-11.5-2.]

As added by P.L.98-2004, SEC.19.

IC 33-40-3-3 Use of fund

Sec. 3. The supplemental public defender services fund may be used only to supplement the provision for court appointed legal services and may not be used to replace other funding of court appointed legal services.

[Pre-2004 Recodification Citation: 33-9-11.5-3.]

As added by P.L.98-2004, SEC.19.

IC 33-40-3-4 Reversion of money in fund

Sec. 4. Any money remaining in the fund at the end of the calendar year does not revert to any other fund but continues in the supplemental public defender services fund.

[Pre-2004 Recodification Citation: 33-9-11.5-4.]

As added by P.L.98-2004, SEC.19.

IC 33-40-3-5 Multiple court appointed legal service programs

Sec. 5. A county may not have more than one (1) program providing court appointed legal services in the county, unless the fiscal body of the county agrees to allow additional court appointed legal services programs in the county.

[Pre-2004 Recodification Citation: 33-9-11.5-5.]

As added by P.L.98-2004, SEC.19.

IC 33-40-3-6 Payment of costs by person or parent of delinquent child; maximum costs

Sec. 6. (a) If at any stage of a prosecution for a felony or a misdemeanor the court makes a finding of ability to pay the costs of representation under section 7 of this chapter, the court shall require payment by the person or the person's parent, if the person is a child alleged to be a delinquent child, of the following costs in addition to other costs assessed against the person:

- (1) Reasonable attorney's fees if an attorney has been appointed for the person by the

court.

(2) Costs incurred by the county as a result of court appointed legal services rendered to the person.

(b) The clerk of the court shall deposit costs collected under this section into the supplemental public defender services fund established under section 1 of this chapter.

(c) A person ordered to pay any part of the costs of representation under subsection (a) has the same rights and protections as those of other judgment debtors under the Constitution of the State of Indiana and under Indiana law.

(d) The sum of:

(1) the fee collected under IC 35-33-7-6;

(2) any amount assessed by the court under this section; and

(3) any amount ordered to be paid under IC 33-37-2-3;

may not exceed the cost of defense services rendered to the person.

[Pre-2004 Recodification Citation: 33-9-11.5-6.]

As added by P.L.98-2004, SEC.19.

IC 33-40-3-7 Determination of ordering payment of costs

Sec. 7. (a) If a defendant or a child alleged to be a delinquent child is receiving publicly paid representation, the court shall consider:

(1) the person's independently held assets and assets available to the spouse of the person or the person's parent if the person is unemancipated;

(2) the person's income;

(3) the person's liabilities; and

(4) the extent of the burden that payment of costs assessed under section 6 of this chapter would impose on the person and the dependents of the person.

(b) If, after considering the factors described in subsection (a), the court determines that the person is able to pay the costs of representation, the court shall enter a finding that the person is able to pay those additional costs.

[Pre-2004 Recodification Citation: 33-9-11.5-7.]

As added by P.L.98-2004, SEC.19.

IC 33-40-3-8 Order for costs as a civil judgment; relief from payment

Sec. 8. An order for costs assessed under section 6 of this chapter is a civil judgment subject to the exemptions allowed debtors under IC 34-55-10-2. At any time after entry of the order, the defendant may petition the court that has entered the order for relief from payment. The court may release the defendant from payment of all or a part of the payment required by the order if the court finds that payment would impose a hardship upon the defendant or dependents of the defendant.

[Pre-2004 Recodification Citation: 33-9-11.5-8.]

As added by P.L.98-2004, SEC.19.

IC 33-40-3-9 Collection and deposit of fees

Sec. 9. Fees assessed under section 6 of this chapter shall be collected by the program providing court appointed legal services in the county. These fees shall be deposited in the supplemental public defender services fund established under section 1 of this chapter.

[Pre-2004 Recodification Citation: 33-9-11.5-9.]

As added by P.L.98-2004, SEC.19.

IC 33-40-3-10 Establishment of fund in counties where public defender services not provided

Sec. 10. (a) In a county with a population of more than four hundred thousand (400,000) and less than seven hundred thousand (700,000) in which a county public defender service is not provided, a supplemental public defender services fund must be established in each city

for providing funding for a public defender to represent indigent defendants in a city court.

(b) Sections 2 through 9 of this chapter apply to the locally established supplemental public defender services fund established under subsection (a). However, funds otherwise required to be delivered to the county fiscal officer for maintaining a supplemental public defender services fund under this chapter shall be deposited with the local fiscal officer.

[Pre-2004 Recodification Citation: 33-9-11.5-10.]

As added by P.L.98-2004, SEC.19.

IC 33-40-4 Chapter 4. Public Defender Council

33-40-4-1	"Council" defined
33-40-4-2	Establishment
33-40-4-3	Board of directors; members
33-40-4-4	Executive director; staff
33-40-4-5	Duties

IC 33-40-4-1 "Council" defined

Sec. 1. As used in this chapter, "council" refers to the public defender council of Indiana established by section 2 of this chapter.

[2004 Recodification Citation: New.]

As added by P.L.98-2004, SEC.19.

IC 33-40-4-2 Establishment

Sec. 2. (a) There is established a public defender council of Indiana.

(b) The council's membership consists of all:

- (1) public defenders;
- (2) contractual pauper counsel; and
- (3) other court appointed attorneys regularly appointed to represent indigent defendants.

[Pre-2004 Recodification Citation: 33-9-12-1.]

As added by P.L.98-2004, SEC.19.

IC 33-40-4-3 Board of directors; members

Sec. 3. The activities of the council shall be directed by an eleven (11) member board of directors, ten (10) of whom shall be elected by the entire membership of the council, and the state public defender.

[Pre-2004 Recodification Citation: 33-9-12-2.]

As added by P.L.98-2004, SEC.19.

IC 33-40-4-4 Executive director; staff

Sec. 4. The council may employ an executive director, staff, and clerical personnel as necessary to carry out the council's purposes.

[Pre-2004 Recodification Citation: 33-9-12-3.]

As added by P.L.98-2004, SEC.19.

IC 33-40-4-5 Duties

Sec. 5. The council shall:

- (1) assist in the coordination of the duties of the attorneys engaged in the defense of indigents at public expense;
- (2) prepare manuals of procedure;
- (3) assist in the preparation of trial briefs, forms, and instructions;
- (4) conduct research and studies of interest or value to all such attorneys; and
- (5) maintain liaison contact with study commissions, organizations, and agencies of all branches of local, state, and federal government that will benefit criminal defense as part of the fair administration of justice in Indiana.

[Pre-2004 Recodification Citation: 33-9-12-4.]

As added by P.L.98-2004, SEC.19.

IC 33-40-5 Chapter 5. Public Defender Commission

33-40-5-1	"Commission" defined
33-40-5-2	Establishment; composition
33-40-5-3	Chairperson; term of office; vacancies; reimbursement of expenses; salary; meetings
33-40-5-4	Duties
33-40-5-5	Staff support

IC 33-40-5-1 "Commission" defined

Sec. 1. As used in this chapter, "commission" refers to the Indiana public defender commission established by section 2 of this chapter.

As added by P.L.98-2004, SEC.19.

IC 33-40-5-2 Establishment; composition

Sec. 2. (a) The Indiana public defender commission is established.

(b) The commission is composed of the following eleven (11) members, none of whom may be a law enforcement officer or a court employee:

(1) Three (3) members appointed by the governor, with not more than two (2) of these individuals belonging to the same political party.

(2) Three (3) members appointed by the chief justice of the supreme court, with not more than two (2) of these individuals belonging to the same political party.

(3) One (1) member appointed by the board of trustees of the Indiana criminal justice institute, who is an attorney admitted to practice law in Indiana.

(4) Two (2) members of the house of representatives to be appointed by the speaker of the house of representatives. The members appointed under this subdivision may not be from the same political party.

(5) Two (2) members of the senate, to be appointed by the president pro tempore of the senate. The members appointed under this subdivision may not be from the same political party.

[Pre-2004 Recodification Citation: 33-9-13-1.]

As added by P.L.98-2004, SEC.19.

IC 33-40-5-3 Chairperson; term of office; vacancies; reimbursement of expenses; salary; meetings

Sec. 3. (a) The members of the commission shall designate one (1) member of the commission as chairperson.

(b) The term of office of each member of the commission is four (4) years. A vacancy occurring among the members of the commission before the expiration of a term shall be filled in the same manner as the original appointment. An appointment to fill a vacancy occurring before the expiration of a term is for the remainder of the unexpired term.

(c) Each member of the commission who is a state employee is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(d) A member of the commission who is not a state employee is entitled to:

(1) the minimum salary per diem provided by IC 4-10-11-2.1(b); and

(2) reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(e) The commission shall meet at least quarterly and at times called by the chairperson or at the request of three (3) commission members.

[Pre-2004 Recodification Citation: 33-9-13-2.]

As added by P.L.98-2004, SEC.19.

IC 33-40-5-4 Duties

Sec. 4. The commission shall do the following:

- (1) Make recommendations to the supreme court concerning standards for indigent defense services provided for defendants against whom the state has sought the death sentence under IC 35-50-2-9, including the following:
 - (A) Determining indigency and eligibility for legal representation.
 - (B) Selection and qualifications of attorneys to represent indigent defendants at public expense.
 - (C) Determining conflicts of interest.
 - (D) Investigative, clerical, and other support services necessary to provide adequate legal representation.
- (2) Adopt guidelines and standards for indigent defense services under which the counties will be eligible for reimbursement under IC 33-40-6, including the following:
 - (A) Determining indigency and the eligibility for legal representation.
 - (B) The issuance and enforcement of orders requiring the defendant to pay for the costs of court appointed legal representation under IC 33-40-3.
 - (C) The use and expenditure of funds in the county supplemental public defender services fund established under IC 33-40-3-1.
 - (D) Qualifications of attorneys to represent indigent defendants at public expense.
 - (E) Compensation rates for salaried, contractual, and assigned counsel.
 - (F) Minimum and maximum caseloads of public defender offices and contract attorneys.
- (3) Make recommendations concerning the delivery of indigent defense services in Indiana, including the funding and delivery of indigent defense services for juveniles.
- (4) Make an annual report to the governor, the general assembly, and the supreme court on the operation of the public defense fund.

The report to the general assembly under subdivision (4) must be in an electronic format under IC 5-14-6.

[Pre-2004 Recodification Citation: 33-9-13-3.]

As added by P.L.98-2004, SEC.19. Amended by P.L.187-2015, SEC.41.

IC 33-40-5-5 Staff support

Sec. 5. The commission shall hire staff to support the commission. The commission may enter into contracts for any additional staff support that the commission determines is necessary to implement this section.

[Pre-2004 Recodification Citation: 33-9-13-4.]

As added by P.L.98-2004, SEC.19. Amended by P.L.84-2016, SEC.153.

IC 33-40-6	Chapter 6. Public Defense Fund
33-40-6-1	Purpose; administration
33-40-6-2	Investment of funds
33-40-6-3	Reversion of money to state general fund
33-40-6-4	Certified request for reimbursement for indigent defense services
33-40-6-5	Amount of reimbursement for indigent defense services; disbursement
33-40-6-6	Certified claims in capital cases given priority

IC 33-40-6-1 Purpose; administration

Sec. 1. The public defense fund is established to receive court costs or other revenues for county reimbursement and administrative expenses. The fund shall be administered by the division of state court administration of the supreme court.

[Pre-2004 Recodification Citation: 33-9-14-1.]

As added by P.L.98-2004, SEC.19.

IC 33-40-6-2 Investment of funds

Sec. 2. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

[Pre-2004 Recodification Citation: 33-9-14-2.]

As added by P.L.98-2004, SEC.19.

IC 33-40-6-3 Reversion of money to state general fund

Sec. 3. Money in the fund at the end of a fiscal year does not revert to the state general fund.

[Pre-2004 Recodification Citation: 33-9-14-3.]

As added by P.L.98-2004, SEC.19.

IC 33-40-6-4 Certified request for reimbursement for indigent defense services

Sec. 4. (a) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the public defense fund for an amount equal to fifty percent (50%) of the county's expenditures for indigent defense services provided to a defendant against whom the death sentence is sought under IC 35-50-2-9.

(b) A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the public defense fund for an amount equal to forty percent (40%) of the county's expenditures for indigent defense services provided in all noncapital cases except misdemeanors.

(c) A request under this section from a county described in IC 33-40-7-1(3) may be limited to expenditures for indigent defense services provided by a particular division of a court.

[Pre-2004 Recodification Citation: 33-9-14-4.]

As added by P.L.98-2004, SEC.19.

IC 33-40-6-5 Amount of reimbursement for indigent defense services; disbursement

Sec. 5. (a) Except as provided under section 6 of this chapter, upon certification by a county auditor and a determination by the public defender commission that the request is in compliance with the guidelines and standards set by the commission, the commission shall quarterly authorize an amount of reimbursement due the county:

(1) that is equal to fifty percent (50%) of the county's certified expenditures for indigent defense services provided for a defendant against whom the death sentence is sought under IC 35-50-2-9; and

(2) that is equal to forty percent (40%) of the county's certified expenditures for defense

services provided in noncapital cases except misdemeanors.

The division of state court administration shall then certify to the auditor of state the amount of reimbursement owed to a county under this chapter.

(b) Upon receiving certification from the division of state court administration, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of the amount certified.

[Pre-2004 Recodification Citation: 33-9-14-5.]

As added by P.L. 98-2004, SEC.19.

IC 33-40-6-6 Certified claims in capital cases given priority

Sec. 6. The commission shall give priority to certified claims for reimbursement in capital cases. If the balance in the public defense fund is not adequate to fully reimburse all certified claims in noncapital cases, the commission shall prorate reimbursement of certified claims in noncapital cases.

[Pre-2004 Recodification Citation: 33-9-14-6.]

As added by P.L. 98-2004, SEC.19. Amended by P.L. 85-2004, SEC.29.

IC 33-40-7**Chapter 7. County Public Defender Boards**

33-40-7-1	Applicability of chapter
33-40-7-2	"Board" defined
33-40-7-3	Establishment of board; members; terms; chairperson; meetings; termination
33-40-7-4	Reimbursement for expenses
33-40-7-5	Comprehensive plan
33-40-7-6	Duties of board; term, removal, and qualifications of county public defender
33-40-7-7	Duties of county public defender
33-40-7-8	Contracts to provide legal representation
33-40-7-9	Assigned counsel system
33-40-7-10	Court appointment of counsel or co-counsel
33-40-7-11	Expenditures; reimbursement
33-40-7-12	Conflict of interest

IC 33-40-7-1**Applicability of chapter**

Sec. 1. This chapter does not apply to a county that:

- (1) contains a consolidated city;
- (2) has a population of:
 - (A) more than three hundred thousand (300,000) but less than four hundred thousand (400,000);
 - (B) more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000); or
 - (C) more than one hundred seventy-five thousand (175,000) but less than one hundred eighty-five thousand (185,000); or
- (3) has a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), except as provided in sections 5 and 11 of this chapter.

[Pre-2004 Recodification Citation: 33-9-15-1.]

As added by P.L.98-2004, SEC.19. Amended by P.L.13-2013, SEC.82.

IC 33-40-7-2**"Board" defined**

Sec. 2. As used in this chapter, "board" refers to a board established in an ordinance under section 3 of this chapter.

[Pre-2004 Recodification Citation: 33-9-15-2.]

As added by P.L.98-2004, SEC.19.

IC 33-40-7-3**Establishment of board; members; terms; chairperson; meetings; termination**

Sec. 3. (a) A county executive may adopt an ordinance establishing a county public defender board consisting of three (3) members. The county executive shall appoint one (1) member. The judges who exercise felony or juvenile jurisdiction in the county shall appoint by majority vote the other two (2) members.

(b) The members appointed by the judges may not be from the same political party. The members must be persons who have demonstrated an interest in high quality legal representation for indigent persons. However, a member may not be a city, town, or county attorney, a law enforcement officer, a judge, or a court employee.

(c) Each member of the board serves a three (3) year term beginning with the date of the member's appointment. A member appointed to fill a vacancy holds office for the remainder of the previous member's term. If a successor has not been appointed by the end of a member's three (3) year term, the member continues in office until the member's successor takes office.

(d) The members shall, by a majority vote, elect one (1) member to serve as chairperson.

(e) Meetings shall be held at least quarterly and may be held at other times during the year at the call of the:

- (1) chairperson; or

(2) other two (2) members.

(f) A county executive may terminate the board by giving at least ninety (90) days written notice to the judges described in subsection (a).

[Pre-2004 Recodification Citation: 33-9-15-3.]

As added by P.L.98-2004, SEC.19.

IC 33-40-7-4 Reimbursement for expenses

Sec. 4. A member is entitled to reimbursement from the county for traveling expenses and other expenses actually incurred in connection with the member's duties to the same extent as is provided to a state employee for traveling expenses and other expenses under the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

[Pre-2004 Recodification Citation: 33-9-15-4.]

As added by P.L.98-2004, SEC.19.

IC 33-40-7-5 Comprehensive plan

Sec. 5. (a) The board shall prepare a comprehensive plan that must include at least one (1) of the following methods of providing legal defense services to indigent persons:

- (1) Establishing a county public defender's office.
- (2) Contracting with an attorney, a group of attorneys, or a private organization.
- (3) Using an assigned counsel system of panel attorneys for case by case appointments under section 9 of this chapter.
- (4) In a county described in section 1(3) of this chapter, establishing a public defender's office for the criminal division of the superior court.

(b) The plan prepared under subsection (a) shall be submitted to the Indiana public defender commission.

[Pre-2004 Recodification Citation: 33-9-15-5.]

As added by P.L.98-2004, SEC.19.

IC 33-40-7-6 Duties of board; term, removal, and qualifications of county public defender

Sec. 6. (a) If a county public defender's office is established under this chapter, the board shall do the following:

- (1) Recommend to the county fiscal body an annual operating budget for the county public defender's office.
- (2) Appoint a county public defender.
- (3) Submit an annual report to the county executive, the county fiscal body, and the judges described in section 3 of this chapter regarding the operation of the county public defender's office, including information relating to caseloads and expenditures.

(b) A county public defender shall be appointed for a term not to exceed four (4) years and may be reappointed. The county public defender may be removed from office only upon a showing of good cause. An attorney must be admitted to the practice of law in Indiana for at least two (2) years before the attorney is eligible for appointment as a county public defender.

[Pre-2004 Recodification Citation: 33-9-15-6.]

As added by P.L.98-2004, SEC.19.

IC 33-40-7-7 Duties of county public defender

Sec. 7. A county public defender shall do the following:

- (1) Maintain an office as approved by the board.
- (2) Hire and supervise staff necessary to perform the services of the office after the staff positions are recommended by the board and approved by the county executive and the fiscal body.

- (3) Keep and maintain records of all cases handled by the office and report at least annually to the board and the Indiana public defender commission concerning the operation of the office, costs, and projected needs.

[Pre-2004 Recodification Citation: 33-9-15-7.]

As added by P.L.98-2004, SEC.19.

IC 33-40-7-8 Contracts to provide legal representation

Sec. 8. (a) A county public defender may contract with an attorney, a group of attorneys, or a private organization to provide legal representation under this chapter.

- (b) The board shall establish the provisions of the contract under this section.

(c) The county fiscal body shall appropriate an amount sufficient to meet the obligations of the contract.

[Pre-2004 Recodification Citation: 33-9-15-8.]

As added by P.L.98-2004, SEC.19.

IC 33-40-7-9 Assigned counsel system

Sec. 9. The board may establish an assigned counsel system of panel attorneys to provide legal representation under this chapter that shall operate as follows:

- (1) The board shall gather and maintain a list of attorneys qualified to represent indigent defendants.
- (2) Upon the determination by a court that a person is indigent and entitled to legal representation at public expense, the court shall appoint an attorney to provide the representation from the list maintained by the board.
- (3) An attorney appointed to provide representation under this section may request authorization from the judge hearing the case for expenditures for investigative services, expert witnesses, or other services necessary to provide adequate legal representation.
- (4) An attorney appointed to provide representation under this section is entitled to receive compensation and reimbursement for budgeted expenses by submitting a voucher to the court. Upon approval of the voucher by the appropriate judge, the voucher shall be presented to the county auditor who shall process the claim as other claims against county funds are processed.
- (5) An attorney appointed to provide representation under this section shall, upon completion of representation, report to the board information regarding the case disposition.

[Pre-2004 Recodification Citation: 33-9-15-9.]

As added by P.L.98-2004, SEC.19.

IC 33-40-7-10 Court appointment of counsel or co-counsel

Sec. 10. (a) This chapter does not prevent a court from appointing counsel other than counsel provided for under the board's plan for providing defense services to an indigent person when the interests of justice require. A court may also appoint counsel to assist counsel provided for under the board's plan as co-counsel when the interests of justice require. Expenditures by a county for defense services not provided under the county public defender board's plan are not subject to reimbursement from the public defense fund under IC 33-40-6.

(b) A judge of a court having criminal jurisdiction may make a written request to the state public defender to provide a qualified attorney for the defense of a person charged in the court with a criminal offense and eligible for representation at public expense if the judge determines:

- (1) that an attorney provided under the county public defender board's plan is not qualified or available to represent the person; or
- (2) that in the interests of justice an attorney other than the attorney provided for by the

county defender board's plan should be appointed.

The judge shall attach to the request a copy of the information or indictment. Expenditures for representation under this subsection shall be paid by the county according to a fee schedule approved by the commission. These expenditures are eligible for reimbursement from the public defense fund.

[Pre-2004 Recodification Citation: 33-9-15-10.]

As added by P.L.98-2004, SEC.19.

IC 33-40-7-11 Expenditures; reimbursement

Sec. 11. (a) A county public defender board shall submit a written request for reimbursement to the county auditor. The request must set forth the total of the county's expenditures for indigent defense services to the county auditor and may be limited in a county described in section 1(3) of this chapter to expenditures for indigent defense services provided by a particular division of a court. The county auditor shall review the request and certify the total of the county's expenditures for indigent defense services to the Indiana public defender commission.

(b) Upon certification by the Indiana public defender commission that the county's indigent defense services meet the commission's standards, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county of a sum equal to forty percent (40%) of the county's certified expenditures for indigent defense services provided in noncapital cases except misdemeanors.

(c) If a county's indigent defense services fail to meet the standards adopted by the Indiana public defender commission, the public defender commission shall notify the county public defender board and the county fiscal body of the failure to comply with the Indiana public defender commission's standards. Unless the county public defender board corrects the deficiencies to comply with the standards not more than ninety (90) days after the date of the notice, the county's eligibility for reimbursement from the public defense fund terminates at the close of that fiscal year.

[Pre-2004 Recodification Citation: 33-9-15-10.5.]

As added by P.L.98-2004, SEC.19.

IC 33-40-7-12 Conflict of interest

Sec. 12. A county public defender, a contract attorney, or counsel appointed by the court to provide legal defense services to indigent persons may not be a partner or an employee at the same law firm that employs the county's prosecuting attorney or a deputy prosecuting attorney in a private capacity.

[Pre-2004 Recodification Citation: 33-9-15-11.]

As added by P.L.98-2004, SEC.19.

IC 33-40-8	Chapter 8. Miscellaneous Legal Services for Indigents in Criminal Actions
33-40-8-1	Contracts
33-40-8-2	Fees
33-40-8-3	Contracts; duration
33-40-8-4	Appropriations; fees
33-40-8-5	Transcription of notes of evidence

IC 33-40-8-1 Contracts

Sec. 1. The judge of any court having criminal jurisdiction, except in those counties with a population of at least four hundred thousand (400,000), may contract with any attorney or group of attorneys admitted to practice law in Indiana to provide legal counsel for all or some of the poor persons coming before the court charged with the commission of a crime and not having sufficient means to employ an attorney to defend themselves.

[Pre-2004 Recodification Citation: 33-9-10-1.]

As added by P.L.98-2004, SEC.19.

IC 33-40-8-2 Fees

Sec. 2. A judge shall establish the fee to be paid to an attorney or attorneys for providing service to poor people.

[Pre-2004 Recodification Citation: 33-9-10-2.]

As added by P.L.98-2004, SEC.19.

IC 33-40-8-3 Contracts; duration

Sec. 3. A contract entered into under section 1 of this chapter may be from year to year or for any length of time determined by the judge.

[Pre-2004 Recodification Citation: 33-9-10-3.]

As added by P.L.98-2004, SEC.19.

IC 33-40-8-4 Appropriations; fees

Sec. 4. The county council of every county where the judge of any court having criminal jurisdiction has contracted with an attorney for legal services to the poor shall appropriate an amount sufficient to meet the contract obligations of a court or courts for services to the poor.

[Pre-2004 Recodification Citation: 33-9-10-4.]

As added by P.L.98-2004, SEC.19.

IC 33-40-8-5 Transcription of notes of evidence

Sec. 5. (a) Subject to subsection (b), if an indigent person:

- (1) desires to appeal to the supreme court or the court of appeals the decision of a trial court in a criminal case; and
- (2) does not have sufficient means to procure the typed or printed manuscript or transcript of the evidence taken by the court reporter;

the court shall direct the court reporter to transcribe the notes of evidence into a typed or printed manuscript or transcript as soon as practicable and deliver the manuscript or transcript to the indigent person.

(b) Notwithstanding subsection (a):

- (1) the court must be satisfied that the indigent person lacks sufficient means to pay the court reporter for making the manuscript or transcript of evidence; and
- (2) the court reporter may charge the compensation allowed by law in cases for making and furnishing a manuscript or transcript. The reporter shall be paid by the court from the proper county treasury.

[Pre-2004 Recodification Citation: 33-1-4-1.]

As added by P.L. 98-2004, SEC.19. Amended by P.L. 65-2004, SEC.20.

IC 35-33-7	Chapter 7. Probable Cause; Initial Hearing
35-33-7-1	Arrest without warrant; initial hearing; venue
35-33-7-2	Probable cause; affidavit or oral presentation under oath; record; determination; detention or release
35-33-7-3	Filing of indictment or information; recess or continuation of initial hearing; informing accused of rights
35-33-7-3.5	Conformity of initial hearing to summons; probable cause
35-33-7-4	Arrest under warrant; jurisdiction; time of initial hearing
35-33-7-5	Informing of accused
35-33-7-6	Indigent defendant; assignment of counsel; payment to supplemental public defender services fund
35-33-7-7	Order of release not to bar further proceedings

IC 35-33-7-1 Arrest without warrant; initial hearing; venue

Sec. 1. (a) A person arrested without a warrant for a crime shall be taken promptly before a judicial officer:

- (1) in the county in which the arrest is made; or
- (2) of any county believed to have venue over the offense committed; for an initial hearing in court.

(b) Except as provided in subsection (c), if the person arrested makes bail before the person's initial hearing before a judicial officer, the initial hearing shall occur at any time within twenty (20) calendar days after the person's arrest.

(c) If a person arrested under IC 9-30-5 makes bail before the person's initial hearing before a judicial officer, the initial hearing must occur within ten (10) calendar days after the person's arrest.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.126-1989, SEC.27; P.L.2-1991, SEC.103.

IC 35-33-7-2 Probable cause; affidavit or oral presentation under oath; record; determination; detention or release

Sec. 2. (a) At or before the initial hearing of a person arrested without a warrant for a crime, the facts upon which the arrest was made shall be submitted to the judicial officer, ex parte, in a probable cause affidavit. In lieu of the affidavit or in addition to it, the facts may be submitted orally under oath to the judicial officer. If facts upon which the arrest was made are submitted orally, the proceeding shall be recorded by a court reporter, and, upon request of any party in the case or upon order of the court, the record of the proceeding shall be transcribed.

(b) If the judicial officer determines that there is probable cause to believe that any crime was committed and that the arrested person committed it, the judicial officer shall order that the arrested person be held to answer in the proper court. If the facts submitted do not establish probable cause or if the prosecuting attorney informs the judicial officer on the record that no charge will be filed against the arrested person, the judicial officer shall order that the arrested person be released immediately.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.12.

IC 35-33-7-3 Filing of indictment or information; recess or continuation of initial hearing; informing accused of rights

Sec. 3. (a) When a person is arrested for a crime before a formal charge has been filed, an information or indictment shall be filed or be prepared to be filed at or before the initial hearing, unless the prosecuting attorney has informed the court that there will be no charges filed in the case.

(b) If the prosecuting attorney states that more time is required to evaluate the case and determine whether a charge should be filed, or if it is necessary to transfer the person to another court, then the court shall recess or continue the initial hearing for up to seventy-two

(72) hours, excluding intervening Saturdays, Sundays, and legal holidays.

(c) Before recessing the initial hearing and after the ex parte probable cause determination has been made, the court shall inform a defendant charged with a felony of the rights specified in subdivisions (1), (2), (3), (4), and (5) of section 5 of this chapter.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.13; P.L.320-1983, SEC.8.

IC 35-33-7-3.5 Conformity of initial hearing to summons; probable cause

Sec. 3.5. The initial hearing of a person issued a:

- (1) summons; or
- (2) summons and promise to appear;

must take place according to the terms of the summons. At such an initial hearing, a determination of probable cause is not required unless the prosecuting attorney requests on the record that the person be held in custody before his trial.

As added by P.L.320-1983, SEC.9.

IC 35-33-7-4 Arrest under warrant; jurisdiction; time of initial hearing

Sec. 4. A person arrested in accordance with the provisions of a warrant shall be taken promptly for an initial hearing before the court issuing the warrant or before a judicial officer having jurisdiction over the defendant. If the arrested person has been released in accordance with the provisions for release stated on the warrant, the initial hearing shall occur at any time within twenty (20) days after his arrest.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-7-5 Informing of accused

Sec. 5. At the initial hearing of a person, the judicial officer shall inform him orally or in writing:

- (1) that he has a right to retain counsel and if he intends to retain counsel he must do so within:
 - (A) twenty (20) days if the person is charged with a felony; or
 - (B) ten (10) days if the person is charged only with one (1) or more misdemeanors; after this initial hearing because there are deadlines for filing motions and raising defenses, and if those deadlines are missed, the legal issues and defenses that could have been raised will be waived;
- (2) that he has a right to assigned counsel at no expense to him if he is indigent;
- (3) that he has a right to a speedy trial;
- (4) of the amount and conditions of bail;
- (5) of his privilege against self-incrimination;
- (6) of the nature of the charge against him; and
- (7) that a preliminary plea of not guilty is being entered for him and the preliminary plea of not guilty will become a formal plea of not guilty:
 - (A) twenty (20) days after the completion of the initial hearing; or
 - (B) ten (10) days after the completion of the initial hearing if the person is charged only with one (1) or more misdemeanors;unless the defendant enters a different plea.

In addition, the judge shall direct the prosecuting attorney to give the defendant or his attorney a copy of any formal felony charges filed or ready to be filed. The judge shall, upon request of the defendant, direct the prosecuting attorney to give the defendant or his attorney a copy of any formal misdemeanor charges filed or ready to be filed.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.14; P.L.320-1983, SEC.10.

IC 35-33-7-6 Indigent defendant; assignment of counsel; payment to

Indiana Code 2017

supplemental public defender services fund

Sec. 6. (a) Prior to the completion of the initial hearing, the judicial officer shall determine whether a person who requests assigned counsel is indigent. If the person is found to be indigent, the judicial officer shall assign counsel to the person.

(b) If jurisdiction over an indigent defendant is transferred to another court, the receiving court shall assign counsel immediately upon acquiring jurisdiction over the defendant.

(c) If the court finds that the person is able to pay part of the cost of representation by the assigned counsel, the court shall order the person to pay the following:

(1) For a felony action, a fee of one hundred dollars (\$100).

(2) For a misdemeanor action, a fee of fifty dollars (\$50).

The clerk of the court shall deposit fees collected under this subsection in the county's supplemental public defender services fund established under IC 33-40-3-1.

(d) The court may review the finding of indigency at any time during the proceedings.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.216-1996, SEC.11; P.L.98-2004, SEC.139.

IC 35-33-7-7 Order of release not to bar further proceedings

Sec. 7. An order releasing a person under this chapter does not bar further proceedings in the case.

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.15.

IC 35-33-8**Chapter 8. Bail and Bail Procedure**

35-33-8-0.1	Application of certain amendments to chapter
35-33-8-0.5	Pretrial risk assessment; rules; system
35-33-8-1	"Bail bond" defined
35-33-8-1.5	"Publicly paid costs of representation" defined
35-33-8-2	Murder; other offenses
35-33-8-3	Repealed
35-33-8-3.1	Repealed
35-33-8-3.2	Pretrial risk assessment; conditions to assure appearance; remittance of deposit; collection of fees
35-33-8-3.3	Pretrial services fee
35-33-8-3.5	Bail procedures for a sexually violent predator defendant
35-33-8-3.6	Automatic no contact order for certain defendants placed on bail; time limits; modification
35-33-8-3.8	Bail following pretrial risk assessment
35-33-8-3.9	Money bail; conditions; agreement
35-33-8-4	Amount of bail; order; indorsement; facts taken into account
35-33-8-4.5	Foreign national unlawfully present; bail; insurer released from liability
35-33-8-5	Alteration or revocation of bail
35-33-8-6	Probationers and parolees; detention; notice to appropriate authority; revocation proceedings
35-33-8-6.5	Eight hour holding period before person arrested for domestic violence may be released on bail
35-33-8-7	Failure to appear; pending civil action or unsatisfied judgment; same transaction or occurrence; forfeiture; order for payment; judgment; transfer of funds
35-33-8-8	Failure to appear; pending civil action or unsatisfied judgment; same transaction or occurrence; forfeiture; order for payment
35-33-8-9	Repealed
35-33-8-10	Credit card service fee
35-33-8-11	Authority to require that persons charged with a crime of domestic violence to wear a GPS device; liability for costs

IC 35-33-8-0.1**Application of certain amendments to chapter**

Sec. 0.1. The following amendments to this chapter apply as follows:

- (1) The addition of section 8 of this chapter by P.L.36-1990 does not apply to any bail deposit made under section 3(a)(1) of this chapter (before its repeal) or section 3.1(a)(1) of this chapter (before its repeal) that is made before March 20, 1990.
- (2) The amendments made to section 3.1(d) of this chapter (before its repeal) by P.L.156-1994 apply only to the retention or collection of a fee for a bond executed or deposit made after March 11, 1994.

As added by P.L.220-2011, SEC.585.

IC 35-33-8-0.5**Pretrial risk assessment; rules; system**

Sec. 0.5. (a) The following definitions apply throughout this chapter:

- (1) "Evidence based risk assessment" means an assessment:
 - (A) that identifies factors relevant to determine whether an arrestee is likely to:
 - (i) commit a new criminal offense; or
 - (ii) fail to appear;
 if released on bail or pretrial supervision; and
 - (B) that is based on empirical data derived through validated criminal justice scientific research.
- (2) "Indiana pretrial risk assessment system" means the statewide evidence based risk assessment system described in subsection (b).

(b) Before January 1, 2020, the supreme court should adopt rules to establish a statewide evidence based risk assessment system to assist courts in selecting the appropriate level of bail or other pretrial supervision for arrestees eligible for pretrial release. The system must

consist of:

- (1) an evidence based risk assessment tool; and
- (2) other rules as adopted by the supreme court.

(c) The Indiana pretrial risk assessment system shall be designed to assist the courts in assessing an arrestee's likelihood of:

- (1) committing a new criminal offense; or
- (2) failing to appear.

As added by P.L.187-2017, SEC.4.

IC 35-33-8-1 "Bail bond" defined

Sec. 1. As used in this chapter, "bail bond" means a bond executed by a person who has been arrested for the commission of an offense, for the purpose of ensuring:

- (1) the person's appearance at the appropriate legal proceeding;
- (2) another person's physical safety; or
- (3) the safety of the community.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.221-1996, SEC.1.

IC 35-33-8-1.5 "Publicly paid costs of representation" defined

Sec. 1.5. As used in this chapter, "publicly paid costs of representation" means the portion of all attorney's fees, expenses, or wages incurred by the county that are:

- (1) directly attributable to the defendant's defense; and
- (2) not overhead expenditures made in connection with the maintenance or operation of a governmental agency.

As added by P.L.167-1987, SEC.8.

IC 35-33-8-2 Murder; other offenses

Sec. 2. (a) Murder is not bailable when the proof is evident or the presumption strong. In all other cases, offenses are bailable.

(b) A person charged with murder has the burden of proof that he should be admitted to bail.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-8-3 Repealed

As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.16; P.L.24-1986, SEC.35; P.L.167-1987, SEC.9; P.L.44-1988, SEC.2; P.L.53-1989, SEC.7; P.L.355-1989(ss), SEC.14; P.L.284-1989, SEC.8. Repealed by P.L.1-1990, SEC.341.

IC 35-33-8-3.1 Repealed

As added by P.L.1-1990, SEC.342. Amended by P.L.156-1994, SEC.1; P.L.23-1994, SEC.15; P.L.221-1996, SEC.2; P.L.6-1997, SEC.201. Repealed by P.L.107-1998, SEC.6.

IC 35-33-8-3.2 Pretrial risk assessment; conditions to assure appearance; remittance of deposit; collection of fees

Sec. 3.2. (a) After considering the results of the Indiana pretrial risk assessment system (if available), other relevant factors, and bail guidelines described in section 3.8 of this chapter, a court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

- (1) Require the defendant to:
 - (A) execute a bail bond with sufficient solvent sureties;
 - (B) deposit cash or securities in an amount equal to the bail;
 - (C) execute a bond secured by real estate in the county, where thirty-three hundredths

- (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail;
- (D) post a real estate bond; or
- (E) perform any combination of the requirements described in clauses (A) through (D).

If the court requires the defendant to deposit cash or cash and another form of security as bail, the court may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or a part of the cash to pay publicly paid costs of representation and fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted. The defendant must also pay the fee required by subsection (d).

(2) Require the defendant to execute:

- (A) a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail; and
- (B) an agreement that allows the court to retain all or a part of the cash or securities to pay fines, costs, fees, and restitution that the court may order the defendant to pay if the defendant is convicted.

A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision fines, costs, fees, and restitution as ordered by the court, publicly paid costs of representation that shall be disposed of in accordance with subsection (b), and the fee required by subsection (d). In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution. The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Except as provided in section 3.6 of this chapter, require the defendant to refrain from any direct or indirect contact with an individual and, if the defendant has been charged with an offense under IC 35-46-3, any animal belonging to the individual, including if the defendant has not been released from lawful detention.

(5) Place the defendant under the reasonable supervision of a probation officer, pretrial services agency, or other appropriate public official. If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:

- (A) the state presents evidence relevant to a risk by the defendant:
 - (i) of nonappearance; or
 - (ii) to the physical safety of the public; and
- (B) the court finds by a preponderance of the evidence that the risk exists.

(8) Require a defendant charged with an offense under IC 35-46-3 to refrain from owning, harboring, or training an animal.

(9) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) from each bond or deposit required under subsection (a)(1); and

(2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the Indiana public retirement system for deposit in the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2).

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

As added by P.L.107-1998, SEC.2. Amended by P.L.1-2001, SEC.36; P.L.1-2003, SEC.91; P.L.98-2004, SEC.140; P.L.10-2005, SEC.4; P.L.1-2006, SEC.528; P.L.97-2006, SEC.1; P.L.173-2006, SEC.42; P.L.1-2007, SEC.226; P.L.104-2008, SEC.6; P.L.111-2009, SEC.7; P.L.94-2010, SEC.9; P.L.35-2012, SEC.107; P.L.187-2017, SEC.5.

IC 35-33-8-3.3 Pretrial services fee

Sec. 3.3. (a) This section does not apply to a defendant charged in a city or town court.

(b) If a defendant who has a prior unrelated conviction for any offense is charged with a new offense and placed under the supervision of a probation officer or pretrial services agency, the court may order the defendant to pay the pretrial services fee prescribed under subsection (e) if:

(1) the defendant has the financial ability to pay the fee; and

(2) the court finds by clear and convincing evidence that supervision by a probation officer or pretrial services agency is necessary to ensure the:

(A) defendant's appearance in court; or

(B) physical safety of the community or of another person.

(c) If a clerk of a court collects a pretrial services fee, the clerk may retain not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee. The clerk shall deposit amounts retained under this subsection in the clerk's record perpetuation fund established under IC 33-37-5-2.

(d) If a clerk of a court collects a pretrial services fee from a defendant, upon request of the county auditor, the clerk shall transfer not more than three percent (3%) of the fee to the county auditor for deposit in the county general fund.

(e) The court may order a defendant who is supervised by a probation officer or pretrial services agency and charged with an offense to pay:

(1) an initial pretrial services fee of at least twenty-five dollars (\$25) and not more than one hundred dollars (\$100);

(2) a monthly pretrial services fee of at least fifteen dollars (\$15) and not more than

thirty dollars (\$30) for each month the defendant remains on bail and under the supervision of a probation officer or pretrial services agency; and

(3) an administrative fee of one hundred dollars (\$100);

to the probation department, pretrial services agency, or clerk of the court if the defendant meets the conditions set forth in subsection (b).

(f) The probation department, pretrial services agency, or clerk of the court shall collect the administrative fee under subsection (e)(3) before collecting any other fee under subsection (e). Except for the money described in subsections (c) and (d), all money collected by the probation department, pretrial services agency, or clerk of the court under this section shall be transferred to the county treasurer, who shall deposit fifty percent (50%) of the money into the county supplemental adult probation services fund and fifty percent (50%) of the money into the county supplemental public defender services fund (IC 33-40-3-1). The fiscal body of the county shall appropriate money from the county supplemental adult probation services fund:

(1) to the county, superior, or circuit court of the county that provides probation services or pretrial services to adults to supplement adult probation services or pretrial services; and

(2) to supplement the salary of:

(A) an employee of a pretrial services agency; or

(B) a probation officer in accordance with the schedule adopted by the county fiscal body under IC 36-2-16.5.

(g) The county supplemental adult probation services fund may be used only to supplement adult probation services or pretrial services and to supplement salaries for probation officers or employees of a pretrial services agency. A supplemental probation services fund may not be used to replace other probation services or pretrial services funding. Any money remaining in the fund at the end of a fiscal year does not revert to any other fund but continues in the county supplemental adult probation services fund.

(h) A defendant who is charged with more than one (1) offense and who is supervised by the probation department or pretrial services agency as a condition of bail may not be required to pay more than:

(1) one (1) initial pretrial services fee; and

(2) one (1) monthly pretrial services fee per month.

(i) A probation department or pretrial services agency may petition a court to:

(1) impose a pretrial services fee on a defendant; or

(2) increase a defendant's pretrial services fee;

if the financial ability of the defendant to pay a pretrial services fee changes while the defendant is on bail and supervised by a probation officer or pretrial services agency.

(j) An order to pay a pretrial services fee under this section:

(1) is a judgment lien that, upon the defendant's conviction:

(A) attaches to the property of the defendant;

(B) may be perfected;

(C) may be enforced to satisfy any payment that is delinquent under this section; and

(D) expires;

in the same manner as a judgment lien created in a civil proceeding;

(2) is not discharged by the disposition of charges against the defendant or by the completion of a sentence, if any, imposed on the defendant;

(3) is not discharged by the liquidation of a defendant's estate by a receiver under IC 32-30-5; and

(4) is immediately terminated if a defendant is acquitted or if charges against the defendant are dropped.

(k) If a court orders a defendant to pay a pretrial services fee, the court may, upon the defendant's conviction, enforce the order by garnishing the wages, salary, and other income earned by the defendant.

(l) In addition to other methods of payment allowed by law, a probation department or pretrial services agency may accept payment of a pretrial services fee by credit card (as defined in IC 14-11-1-7(a)). The liability for payment is not discharged until the probation department or pretrial services agency receives payment or credit from the institution responsible for making the payment or credit.

(m) The probation department or pretrial services agency may contract with a bank or credit card vendor for acceptance of a bank or credit card. However, if there is a vendor transaction charge or discount fee, whether billed to the probation department or pretrial services agency, or charged directly to the account of the probation department or pretrial services agency, the probation department or pretrial services agency may collect a credit card service fee from the person using the bank or credit card. The fee collected under this subsection is a permitted additional charge to the fee or fees the defendant may be required to pay under subsection (e).

(n) The probation department or pretrial services agency shall forward a credit card service fee collected under subsection (m) to the county treasurer in accordance with subsection (f). These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or credit card vendor.

As added by P.L.173-2006, SEC.43. Amended by P.L.217-2014, SEC.189.

IC 35-33-8-3.5 Bail procedures for a sexually violent predator defendant

Sec. 3.5. (a) This section applies only to a sexually violent predator defendant.

(b) As used in this section, "sexually violent predator defendant" means a person who:

- (1) is a sexually violent predator under IC 35-38-1-7.5; and
- (2) is arrested for or charged with the commission of an offense that would classify the person as a sex or violent offender (as defined in IC 11-8-8-5).

(c) A court may not admit a:

- (1) sexually violent predator defendant;
- (2) person charged with child molesting (IC 35-42-4-3); or
- (3) person charged with child solicitation (IC 35-42-4-6);

to bail until the court has conducted a bail hearing in open court. Except as provided in section 6 of this chapter, the court shall conduct a bail hearing not later than forty-eight (48) hours after the person has been arrested, unless exigent circumstances prevent holding the hearing within forty-eight (48) hours.

(d) At the conclusion of the hearing described in subsection (c) and after consideration of the bail guidelines described in section 3.8 of this chapter, the court shall consider whether the factors described in section 4 of this chapter warrant the imposition of a bail amount that exceeds court or county guidelines, if applicable.

As added by P.L.74-2008, SEC.1. Amended by P.L.187-2017, SEC.6.

IC 35-33-8-3.6 Automatic no contact order for certain defendants placed on bail; time limits; modification

Sec. 3.6. (a) This section applies only to a defendant who is charged with committing a violent crime (as defined in IC 5-2-6.1-8) that results in bodily injury to a person.

(b) If a court releases a defendant described in subsection (a) to bail without holding a bail hearing in open court, the court shall include as a condition of bail the requirement that the defendant refrain from any direct or indirect contact with the victim:

- (1) for ten (10) days after release; or
- (2) until the initial hearing;

whichever occurs first.

(c) At the initial hearing, the court may reinstate or modify the condition that the defendant refrain from direct or indirect contact with the victim.

As added by P.L.94-2010, SEC.10.

IC 35-33-8-3.8 Bail following pretrial risk assessment

Sec. 3.8. (a) A court shall consider the results of the Indiana pretrial risk assessment system (if available) before setting or modifying bail for an arrestee.

(b) If the court finds, based on the results of the Indiana pretrial risk assessment system (if available) and other relevant factors, that an arrestee does not present a substantial risk of flight or danger to the arrestee or others, the court shall consider releasing the arrestee without money bail or surety, subject to restrictions and conditions as determined by the court, unless one (1) or more of the following apply:

- (1) The arrestee is charged with murder or treason.
- (2) The arrestee is on pretrial release not related to the incident that is the basis for the present arrest.
- (3) The arrestee is on probation, parole, or other community supervision.

The court is not required to administer an assessment before releasing an arrestee if administering the assessment will delay the arrestee's release.

As added by P.L.187-2017, SEC.7.

IC 35-33-8-3.9 Money bail; conditions; agreement

Sec. 3.9. (a) If the court determines that an arrestee is to be held subject to money bail, the court is authorized to determine the amount of bail and whether the bail may be satisfied by surety bond or cash deposit.

(b) The court may set and accept a partial cash payment of the bail upon conditions set by the court, including the arrestee's agreement (and the agreement of a person who makes a cash payment on behalf of an arrestee, if applicable) that all court costs, fees, and expenses associated with the proceeding shall be paid from the partial payment.

(c) If the court authorizes the acceptance of a cash partial payment to satisfy bail, the court shall first secure the arrestee's agreement (and the agreement of a person who makes a cash payment on behalf of an arrestee, if applicable) that, in the event of failure to appear as scheduled, the deposit shall be forfeited and the arrestee must also pay any additional amounts needed to satisfy the full amount of bail plus associated court costs, fees, and expenses.

As added by P.L.187-2017, SEC.8.

IC 35-33-8-4 Amount of bail; order; indorsement; facts taken into account

Sec. 4. (a) The court shall order the amount in which a person charged by an indictment or information is to be held to bail, and the clerk shall enter the order on the order book and indorse the amount on each warrant when issued. If no order fixing the amount of bail has been made, the sheriff shall present the warrant to the judge of an appropriate court of criminal jurisdiction, and the judge shall indorse on the warrant the amount of bail.

(b) Bail may not be set higher than that amount reasonably required to assure the defendant's appearance in court or to assure the physical safety of another person or the community if the court finds by clear and convincing evidence that the defendant poses a risk to the physical safety of another person or the community. In setting and accepting an amount of bail, the judicial officer shall consider the bail guidelines described in section 3.8 of this chapter and take into account all facts relevant to the risk of nonappearance, including:

- (1) the length and character of the defendant's residence in the community;
- (2) the defendant's employment status and history and the defendant's ability to give bail;
- (3) the defendant's family ties and relationships;
- (4) the defendant's character, reputation, habits, and mental condition;
- (5) the defendant's criminal or juvenile record, insofar as it demonstrates instability and a disdain for the court's authority to bring the defendant to trial;
- (6) the defendant's previous record in not responding to court appearances when required or with respect to flight to avoid criminal prosecution;

- (7) the nature and gravity of the offense and the potential penalty faced, insofar as these factors are relevant to the risk of nonappearance;
- (8) the source of funds or property to be used to post bail or to pay a premium, insofar as it affects the risk of nonappearance;
- (9) that the defendant is a foreign national who is unlawfully present in the United States under federal immigration law; and
- (10) any other factors, including any evidence of instability and a disdain for authority, which might indicate that the defendant might not recognize and adhere to the authority of the court to bring the defendant to trial.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.221-1996, SEC.3; P.L.171-2011, SEC.21; P.L.187-2017, SEC.9.

IC 35-33-8-4.5 Foreign national unlawfully present; bail; insurer released from liability

Sec. 4.5. (a) If bail is set for a defendant who is a foreign national who is unlawfully present in the United States under federal immigration law, after considering the results of the Indiana pretrial risk assessment system (if available) and other relevant factors, and the bail guidelines described in section 3.8 of this chapter, the court shall consider requiring as bail a:

- (1) cash bond in an amount equal to the bail;
- (2) real estate bond in which the net equity in the real estate is at least two (2) times the amount of the bail; or
- (3) surety bond in the full amount of the bail that is written by a licensed and appointed agent of an insurer (as defined in IC 27-10-1-7).

(b) If the defendant for whom bail has been posted under this section does not appear before the court as ordered because the defendant has been:

- (1) taken into custody or deported by a federal agency; or
- (2) arrested and incarcerated for another offense;

the bond posted under this section may not be declared forfeited by the court and the insurer (as defined in IC 27-10-1-7) that issued the bond is released from any liability regarding the defendant's failure to appear.

As added by P.L.171-2011, SEC.22. Amended by P.L.187-2017, SEC.10.

IC 35-33-8-5 Alteration or revocation of bail

Sec. 5. (a) Upon a showing of good cause, the state or the defendant may be granted an alteration or revocation of bail by application to the court before which the proceeding is pending. In reviewing a motion for alteration or revocation of bail, credible hearsay evidence is admissible to establish good cause.

(b) When the state presents additional:

- (1) evidence relevant to a high risk of nonappearance, based on the factors set forth in section 4(b) of this chapter; or
- (2) clear and convincing evidence:
 - (A) of the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B); or
 - (B) that the defendant otherwise poses a risk to the physical safety of another person or the community;

the court may increase bail. If the additional evidence presented by the state is DNA evidence tending to show that the defendant committed additional crimes that were not considered at the time the defendant was admitted to bail, the court may increase or revoke bail.

(c) When the defendant presents additional evidence of substantial mitigating factors, based on the factors set forth in section 4(b) of this chapter, which reasonably suggests that the defendant recognizes the court's authority to bring the defendant to trial, the court may reduce bail. However, the court may not reduce bail if the court finds by clear and convincing evidence that the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B) exist or

that the defendant otherwise poses a risk to the physical safety of another person or the community.

(d) The court may revoke bail or an order for release on personal recognizance upon clear and convincing proof by the state that:

(1) while admitted to bail the defendant:

(A) or the defendant's agent threatened or intimidated a victim, prospective witnesses, or jurors concerning the pending criminal proceeding or any other matter;

(B) or the defendant's agent attempted to conceal or destroy evidence relating to the pending criminal proceeding;

(C) violated any condition of the defendant's current release order;

(D) failed to appear before the court as ordered at any critical stage of the proceedings; or

(E) committed a felony or a Class A misdemeanor that demonstrates instability and a disdain for the court's authority to bring the defendant to trial;

(2) the factors described in IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B) exist or that the defendant otherwise poses a risk to the physical safety of another person or the community; or

(3) a combination of the factors described in subdivisions (1) and (2) exists.

As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.36-1990, SEC.6; P.L.107-1998, SEC.3; P.L.98-2004, SEC.141; P.L.111-2017, SEC.8.

IC 35-33-8-6 Probationers and parolees; detention; notice to appropriate authority; revocation proceedings

Sec. 6. The court may detain, for a maximum period of fifteen (15) calendar days, a person charged with any offense who comes before it for a bail determination, if the person is on probation or parole. During the fifteen (15) day period, the prosecuting attorney shall notify the appropriate parole or probation authority. If that authority fails to initiate probation or parole revocation proceedings during the fifteen (15) day period, the person shall be treated in accordance with the other sections of this chapter.

As added by Acts 1981, P.L.298, SEC.2.

IC 35-33-8-6.5 Eight hour holding period before person arrested for domestic violence may be released on bail

Sec. 6.5. The court may not release a person arrested for a crime of domestic violence (as described in IC 35-31.5-2-78) on bail until at least eight (8) hours from the time of the person's arrest.

As added by P.L.44-2008, SEC.2. Amended by P.L.114-2012, SEC.70.

IC 35-33-8-7 Failure to appear; pending civil action or unsatisfied judgment; same transaction or occurrence; forfeiture; order for payment; judgment; transfer of funds

Sec. 7. (a) If a defendant:

(1) was admitted to bail under section 3.2(a)(2) of this chapter; and

(2) has failed to appear before the court as ordered;

the court shall, except as provided in subsection (b) or section 8(b) of this chapter, declare the bond forfeited not earlier than one hundred twenty (120) days or more than three hundred sixty-five (365) days after the defendant's failure to appear and issue a warrant for the defendant's arrest.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 3.2(a)(2) of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the

clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit and the bond are subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, and the bond forfeited.

(c) Any proceedings concerning the bond, or its forfeiture, judgment, or execution of judgment, shall be held in the court that admitted the defendant to bail.

(d) After a bond has been forfeited under subsection (a) or (b), the clerk shall mail notice of forfeiture to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear, the court shall immediately enter judgment, without pleadings and without change of judge or change of venue, against the defendant for the amount of the bail bond, and the clerk shall record the judgment.

(e) If a bond is forfeited and the court has entered a judgment under subsection (d), the clerk shall transfer to the state common school fund:

(1) any amount remaining on deposit with the court (less the fees retained by the clerk); and

(2) any amount collected in satisfaction of the judgment.

(f) The clerk shall return a deposit, less the administrative fee, made under section 3.2(a)(2) of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.

As added by Acts 1982, P.L.204, SEC.17. Amended by P.L.167-1987, SEC.10; P.L.44-1988, SEC.3; P.L.1-1990, SEC.343; P.L.36-1990, SEC.7; P.L.107-1998, SEC.4; P.L.105-2010, SEC.9; P.L.187-2017, SEC.11.

IC 35-33-8-8 Failure to appear; pending civil action or unsatisfied judgment; same transaction or occurrence; forfeiture; order for payment

Sec. 8. (a) If a defendant was admitted to bail under section 3.2(a) of this chapter and the defendant has knowingly and intentionally failed to appear before the court as ordered, the court:

(1) shall issue a warrant for the defendant's arrest;

(2) may not release the defendant on personal recognizance; and

(3) may not set bail for the rearrest of the defendant on the warrant at an amount that is less than the greater of:

(A) the amount of the original bail; or

(B) two thousand five hundred dollars (\$2,500);

in the form of a bond issued by an entity defined in IC 27-10-1-7 or the full amount of the bond in cash.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section 3.2(a)(2) of this chapter may not be declared forfeited by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit is subject to forfeiture, the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order the remainder of the deposit, if any, forfeited.

As added by P.L.36-1990, SEC.8. Amended by P.L.224-1993, SEC.31; P.L.107-1998, SEC.5.

IC 35-33-8-9 Repealed

As added by P.L.173-2003, SEC.16; added by P.L.277-2003, SEC.9. Repealed by P.L.65-2004, SEC.23.

IC 35-33-8-10 Credit card service fee

Sec. 10. In addition to any other condition of bail imposed under this chapter, a defendant who posts bail by means of a credit card shall pay the credit card service fee under IC 33-37-6.

As added by P.L. 65-2004, SEC.11.

IC 35-33-8-11 Authority to require that persons charged with a crime of domestic violence to wear a GPS device; liability for costs

Sec. 11. (a) A court may require a person who has been charged with a crime of domestic violence (as described in IC 35-31.5-2-78) to wear a GPS tracking device as a condition of bail.

(b) A court may order a person who is required to wear a GPS tracking device under subsection (a) to pay any costs associated with the GPS tracking device.

As added by P.L. 94-2010, SEC.11. Amended by P.L. 114-2012, SEC.71.

IC 35-38-2**Chapter 2. Probation**

35-38-2-0.1	Repealed
35-38-2-0.2	Application of certain statutes to individuals placed on probation after June 30, 2003
35-38-2-1	Conditions of probation; advice on violation specification in record; administrative costs; transfer of three percent of probation user's fee; administrative fee; user's fee; collection of administrative fee; disposition of money collected; supplemental adult probation services fund; payment by credit card; credit card service fee
35-38-2-1.5	Increased probation user's fee
35-38-2-1.7	Early payment of probation user's fee; recalculation of probation user's fee; discharge; wage garnishment
35-38-2-1.8	New probation hearings allowed at any time; modification of conditions; deadlines
35-38-2-2	Repealed
35-38-2-2.1	Conditions of probation; payment of alcohol and drug countermeasures fee
35-38-2-2.2	Conditions of probation; registration with local law enforcement authority; consent to search of computer
35-38-2-2.3	Conditions of probation; statement of conditions; term of imprisonment; intermittent service; transfers and retransfers of supervision
35-38-2-2.4	Conditions of probation for sex offenders
35-38-2-2.5	Residency requirements for certain offenders
35-38-2-2.6	Conditions of probation or parole for persons convicted of stalking
35-38-2-2.7	Prohibition on use of social media, instant messaging, or chat rooms
35-38-2-3	Violation of conditions of probation

IC 35-38-2-0.1**Repealed**

As added by P.L.220-2011, SEC.587. Repealed by P.L.63-2012, SEC.43.

IC 35-38-2-0.2**Application of certain statutes to individuals placed on probation after June 30, 2003**

Sec. 0.2. The following statutes, as added or amended by P.L.277-2003, apply only to individuals who are placed on probation after June 30, 2003:

- (1) IC 31-40-1-1.7(b) (before its repeal).
- (2) IC 31-40-1-1.7(d) (before its repeal).
- (3) IC 31-40-2-1(a).
- (4) IC 31-40-2-1(b).
- (5) IC 31-40-2-1.5.
- (6) Section 1(c), 1(d), 1(e), and 1(i) of this chapter.
- (7) Section 1.5 of this chapter.
- (8) Section 1.7 of this chapter.

As added by P.L.220-2011, SEC.588.

IC 35-38-2-1**Conditions of probation; advice on violation specification in record; administrative costs; transfer of three percent of probation user's fee; administrative fee; user's fee; collection of administrative fee; disposition of money collected; supplemental adult probation services fund; payment by credit card; credit card service fee**

Sec. 1. (a) Whenever it places a person on probation, the court shall:

- (1) specify in the record the conditions of the probation; and
- (2) advise the person that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:
 - (A) One (1) year after the termination of probation.
 - (B) Forty-five (45) days after the state receives notice of the violation.

(b) In addition, if the person was convicted of a felony and is placed on probation, the court shall order the person to pay to the probation department the user's fee prescribed under subsection (d). If the person was convicted of a misdemeanor, the court may order the person to pay the user's fee prescribed under subsection (e). The court may:

- (1) modify the conditions (except a fee payment may only be modified as provided in section 1.7(b) of this chapter); or
- (2) terminate the probation;

at any time. If the person commits an additional crime, the court may revoke the probation.

(c) If a clerk of a court collects a probation user's fee, the clerk:

- (1) may keep not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee and shall deposit any fee kept under this subsection in the clerk's record perpetuation fund established under IC 33-37-5-2; and
- (2) if requested to do so by the county auditor, city fiscal officer, or town fiscal officer under clause (A), (B), or (C), may transfer not more than three percent (3%) of the fee to the:
 - (A) county auditor, who shall deposit the money transferred under this subdivision into the county general fund;
 - (B) city general fund when requested by the city fiscal officer; or
 - (C) town general fund when requested by the town fiscal officer.

(d) In addition to any other conditions of probation, the court shall order each person convicted of a felony to pay:

- (1) not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) as an initial probation user's fee;
- (2) a monthly probation user's fee of not less than fifteen dollars (\$15) nor more than thirty dollars (\$30) for each month that the person remains on probation;
- (3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter;
- (4) an alcohol abuse deterrent fee and a medical fee set by the court under IC 9-30-9-8, if the court has referred the defendant to an alcohol abuse deterrent program; and
- (5) an administrative fee of one hundred dollars (\$100);

to either the probation department or the clerk.

(e) In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay:

- (1) not more than a fifty dollar (\$50) initial probation user's fee;
- (2) a monthly probation user's fee of not less than ten dollars (\$10) nor more than twenty dollars (\$20) for each month that the person remains on probation;
- (3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter; and
- (4) an administrative fee of fifty dollars (\$50);

to either the probation department or the clerk.

(f) The probation department or clerk shall collect the administrative fees under subsections (d)(5) and (e)(4) before collecting any other fee under subsection (d) or (e). All money collected by the probation department or the clerk under this section shall be transferred to the county treasurer, who shall deposit the money into the county supplemental adult probation services fund. The fiscal body of the county shall appropriate money from the county supplemental adult probation services fund:

- (1) to the county, superior, circuit, or municipal court of the county that provides probation services to adults to supplement adult probation services; and
- (2) to supplement the salaries of probation officers in accordance with the schedule

adopted by the county fiscal body under IC 36-2-16.5.

(g) The probation department or clerk shall collect the administrative fee under subsection (e)(4) before collecting any other fee under subsection (e). All money collected by the probation department or the clerk of a city or town court under this section shall be transferred to the fiscal officer of the city or town for deposit into the local supplemental adult probation services fund. The fiscal body of the city or town shall appropriate money from the local supplemental adult probation services fund to the city or town court of the city or town for the court's use in providing probation services to adults or for the court's use for other purposes as may be appropriated by the fiscal body. Money may be appropriated under this subsection only to those city or town courts that have an adult probation services program. If a city or town court does not have such a program, the money collected by the probation department must be transferred and appropriated as provided under subsection (f).

(h) Except as provided in subsection (j), the county or local supplemental adult probation services fund may be used only to supplement probation services and to supplement salaries for probation officers. A supplemental probation services fund may not be used to replace other funding of probation services. Any money remaining in the fund at the end of the year does not revert to any other fund but continues in the county or local supplemental adult probation services fund.

(i) A person placed on probation for more than one (1) crime:

(1) may be required to pay more than one (1) initial probation user's fee; and

(2) may not be required to pay more than one (1) monthly probation user's fee per month;

to the probation department or the clerk.

(j) This subsection applies to a city or town located in a county having a population of more than one hundred eighty-five thousand (185,000) but less than two hundred fifty thousand (250,000). Any money remaining in the local supplemental adult probation services fund at the end of the local fiscal year may be appropriated by the city or town fiscal body to the city or town court for use by the court for purposes determined by the fiscal body.

(k) In addition to other methods of payment allowed by law, a probation department may accept payment of fees required under this section and section 1.5 of this chapter by credit card (as defined in IC 14-11-1-7). The liability for payment is not discharged until the probation department receives payment or credit from the institution responsible for making the payment or credit.

(l) The probation department may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the probation department or charged directly to the probation department's account, the probation department may collect a credit card service fee from the person using the bank or credit card. The fee collected under this subsection is a permitted additional charge to the money the probation department is required to collect under subsection (d) or (e).

(m) The probation department shall forward the credit card service fees collected under subsection (l) to the county treasurer or city or town fiscal officer in accordance with subsection (f) or (g). These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or credit card vendor.

As added by P.L.311-1983, SEC.3. Amended by P.L.182-1984, SEC.1; P.L.296-1985, SEC.2; P.L.178-1986, SEC.2; P.L.305-1987, SEC.36; P.L.123-1988, SEC.28; P.L.67-1990, SEC.10; P.L.1-1991, SEC.196; P.L.18-1995, SEC.112; P.L.216-1996, SEC.14; P.L.117-1996, SEC.4; P.L.117-1996, SEC.6; P.L.170-2002, SEC.132; P.L.277-2003, SEC.11; P.L.98-2004, SEC.150; P.L.1-2006, SEC.529; P.L.119-2012, SEC.166.

IC 35-38-2-1.5 Increased probation user's fee

Sec. 1.5. Notwithstanding the probation user's fee amounts established under section 1 of this chapter, a court may order a person to pay a probation user's fee that exceeds the

maximum amount allowed under section 1 of this chapter if:

- (1) the person was placed on probation in another state and moved or was transferred to Indiana;
- (2) the other state allows a higher probation user's fee than the maximum amount allowed under section 1 of this chapter; and
- (3) the probation user's fee the court orders the person to pay does not exceed the maximum amount allowed in the other state.

As added by P.L.277-2003, SEC.12.

IC 35-38-2-1.7 Early payment of probation user's fee; recalculation of probation user's fee; discharge; wage garnishment

Sec. 1.7. (a) A person may pay a monthly probation user's fee under section 1 or 1.5 of this chapter before the date the payment is required to be made without obtaining the prior approval of a court or a probation department. However, if the person is discharged from probation before the date the person was scheduled to be released from probation, any monthly probation user's fee paid in advance by the person may not be refunded.

(b) A probation department may petition a court to:

- (1) impose a probation user's fee on a person; or
- (2) increase a person's probation user's fee;

under section 1 or 1.5 of this chapter if the financial ability of the person to pay a probation user's fee changes while the person is on probation.

(c) An order to pay a probation user's fee under section 1 or 1.5 of this chapter:

- (1) is a judgment lien that:
 - (A) attaches to the property of the person subject to the order;
 - (B) may be perfected;
 - (C) may be enforced to satisfy any payment that is delinquent under section 1 or 1.5 of this chapter; and
 - (D) expires;
- in the same manner as a judgment lien created in a civil proceeding;
- (2) is not discharged by the completion of the person's probationary period or other sentence imposed on the person; and
- (3) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5.

(d) If a court orders a person to pay a probation user's fee under section 1 or 1.5 of this chapter, the court may garnish the wages, salary, and other income earned by the person to enforce the order.

As added by P.L.277-2003, SEC.13. Amended by P.L.217-2014, SEC.191.

IC 35-38-2-1.8 New probation hearings allowed at any time; modification of conditions; deadlines

Sec. 1.8. (a) This section does not apply to the modification of a user's fee payment under section 1.7(b) of this chapter.

(b) The court may hold a new probation hearing at any time during a probationer's probationary period:

- (1) upon motion of the probation department or upon the court's motion; and
- (2) after giving notice to the probationer.

(c) At a probation hearing described in subsection (b), the court may modify the probationer's conditions of probation. If the court modifies the probationer's conditions of probation, the court shall:

- (1) specify in the record the conditions of probation; and
- (2) advise the probationer that if the probationer violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

- (A) One (1) year after the termination of probation.
- (B) Forty-five (45) days after the state receives notice of the violation.
- (d) The court may hold a new probation hearing under this section even if:
 - (1) the probationer has not violated the conditions of probation; or
 - (2) the probation department has not filed a petition to revoke probation.

As added by P.L.14-2005, SEC.1.

IC 35-38-2-2 Repealed

As added by P.L.311-1983, SEC.3. Amended by P.L.182-1984, SEC.2; P.L.98-1988, SEC.5; P.L.123-1988, SEC.29; P.L.53-1989, SEC.8; P.L.184-1989, SEC.26; P.L.49-1989, SEC.20; P.L.67-1990, SEC.11; P.L.1-1990, SEC.349. Repealed by P.L.1-1991, SEC.197.

IC 35-38-2-2.1 Conditions of probation; payment of alcohol and drug countermeasures fee

Sec. 2.1. As a condition of probation for a person who is found to have:

- (1) committed an offense under IC 9-30-5; or
- (2) been adjudicated a delinquent for an act that would be an offense under IC 9-30-5, if committed by an adult;

the court shall require the person to pay the alcohol and drug countermeasures fee under IC 33-37.

As added by P.L.126-1989, SEC.28. Amended by P.L.2-1991, SEC.104; P.L.98-2004, SEC.151.

IC 35-38-2-2.2 Conditions of probation; registration with local law enforcement authority; consent to search of computer

Sec. 2.2. As a condition of probation for a sex offender (as defined in IC 11-8-8-4.5), the court shall:

- (1) require the sex offender to register with the local law enforcement authority under IC 11-8-8;
- (2) prohibit the sex offender from residing within one thousand (1,000) feet of school property (as defined in IC 35-31.5-2-285), as measured from the property line of the sex offender's residence to the property line of the school property, for the period of probation, unless the sex offender obtains written approval from the court;
- (3) require the sex offender to consent:
 - (A) to the search of the sex offender's personal computer at any time; and
 - (B) to the installation on the sex offender's personal computer or device with Internet capability, at the sex offender's expense, of one (1) or more hardware or software systems to monitor Internet usage; and
- (4) prohibit the sex offender from:
 - (A) accessing or using certain web sites, chat rooms, or instant messaging programs frequented by children; and
 - (B) deleting, erasing, or tampering with information on the sex offender's personal computer with intent to conceal an activity prohibited by clause (A).

If the court allows the sex offender to reside within one thousand (1,000) feet of school property under subdivision (2), the court shall notify each school within one thousand (1,000) feet of the sex offender's residence of the order. However, a court may not allow a sex offender who is a sexually violent predator (as defined in IC 35-38-1-7.5) or an offender against children under IC 35-42-4-11 to reside within one thousand (1,000) feet of school property.

As added by P.L.11-1994, SEC.14. Amended by P.L.214-1999, SEC.3; P.L.238-2001, SEC.19; P.L.116-2002, SEC.21; P.L.140-2006, SEC.23 and P.L.173-2006, SEC.23; P.L.216-2007, SEC.40; P.L.119-2008, SEC.16; P.L.114-2012, SEC.79.

IC 35-38-2-2.3 Conditions of probation; statement of conditions; term of imprisonment; intermittent service; transfers and retransfers of supervision

Sec. 2.3. (a) As a condition of probation, the court may require a person to do a combination of the following:

- (1) Work faithfully at suitable employment or faithfully pursue a course of study or career and technical education that will equip the person for suitable employment.
- (2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (3) Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
- (4) Participate in a treatment program, educational class, or rehabilitative service provided by a probation department or by referral to an agency.
- (5) Support the person's dependents and meet other family responsibilities.
- (6) Make restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.
- (7) Execute a repayment agreement with the appropriate governmental entity to repay the full amount of public relief or assistance wrongfully received, and make repayments according to a repayment schedule set out in the agreement.
- (8) Pay a fine authorized by IC 35-50.
- (9) Refrain from possessing a firearm or other deadly weapon unless granted written permission by the court or the person's probation officer.
- (10) Report to a probation officer at reasonable times as directed by the court or the probation officer.
- (11) Permit the person's probation officer to visit the person at reasonable times at the person's home or elsewhere.
- (12) Remain within the jurisdiction of the court, unless granted permission to leave by the court or by the person's probation officer.
- (13) Answer all reasonable inquiries by the court or the person's probation officer and promptly notify the court or probation officer of any change in address or employment.
- (14) Perform uncompensated work that benefits the community.
- (15) Satisfy other conditions reasonably related to the person's rehabilitation.
- (16) Undergo home detention under IC 35-38-2.5.
- (17) Undergo a laboratory test or series of tests approved by the state department of health to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV), if:
 - (A) the person had been convicted of an offense relating to a criminal sexual act and the offense created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV); or
 - (B) the person had been convicted of an offense relating to a controlled substance and the offense involved:
 - (i) the delivery by any person to another person; or
 - (ii) the use by any person on another person;of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact.
- (18) Refrain from any direct or indirect contact with an individual and, if convicted of an offense under IC 35-46-3, any animal belonging to the individual.
- (19) Execute a repayment agreement with the appropriate governmental entity or with a person for reasonable costs incurred because of the taking, detention, or return of a missing child (as defined in IC 10-13-5-4).

(20) Periodically undergo a laboratory chemical test (as defined in IC 9-13-2-22) or series of chemical tests as specified by the court to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9). The person on probation is responsible for any charges resulting from a test and shall have the results of any test under this subdivision reported to the person's probation officer by the laboratory.

(21) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

- (A) may not exceed an amount the person can or will be able to pay;
- (B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the person; and
- (C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is required to pay under this section.

(22) Refrain from owning, harboring, or training an animal.

(23) Participate in a reentry court program.

(24) Receive:

- (A) addiction counseling;
- (B) mental health counseling;
- (C) inpatient detoxification; and
- (D) medication assisted treatment, including a federal Food and Drug Administration approved long acting, nonaddictive medication for the treatment of opioid or alcohol dependence.

(b) When a person is placed on probation, the person shall be given a written statement specifying:

(1) the conditions of probation; and

(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(c) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of probation the court determines.

(d) Intermittent service may be required only for a term of not more than sixty (60) days and must be served in the county or local penal facility. The intermittent term is computed on the basis of the actual days spent in confinement and shall be completed within one (1) year. A person does not earn good time credit while serving an intermittent term of imprisonment under this subsection. When the court orders intermittent service, the court shall state:

(1) the term of imprisonment;

(2) the days or parts of days during which a person is to be confined; and

(3) the conditions.

(e) Supervision of a person may be transferred from the court that placed the person on probation to a court of another jurisdiction, with the concurrence of both courts. Retransfers of supervision may occur in the same manner. This subsection does not apply to transfers made under IC 11-13-4 or IC 11-13-5.

(f) When a court imposes a condition of probation described in subsection (a)(18):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

(g) As a condition of probation, a court shall require a person:

(1) who is described in IC 10-13-6-10(a);

(2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and

(3) whose sentence does not involve a commitment to the department of correction; to provide a DNA sample as a condition of probation.

(h) If a court imposes a condition of probation described in subsection (a)(4), the person on probation is responsible for any costs resulting from the participation in a program, class, or service. Any costs collected for services provided by the probation department shall be deposited in the county or local supplemental adult services fund.

As added by P.L.1-1991, SEC.198. Amended by P.L.2-1992, SEC.879; P.L.23-1994, SEC.16; P.L.1-1995, SEC.75; P.L.293-1995, SEC.1; P.L.76-2002, SEC.1; P.L.2-2003, SEC.91; P.L.60-2006, SEC.9; P.L.140-2006, SEC.24 and P.L.173-2006, SEC.24; P.L.1-2007, SEC.227; P.L.125-2007, SEC.8; P.L.234-2007, SEC.170; P.L.3-2008, SEC.249; P.L.111-2009, SEC.8; P.L.40-2012, SEC.20; P.L.147-2012, SEC.9; P.L.13-2013, SEC.138; P.L.74-2015, SEC.20; P.L.187-2015, SEC.47; P.L.209-2015, SEC.23; P.L.111-2017, SEC.10.

IC 35-38-2-2.4 Conditions of probation for sex offenders

Sec. 2.4. As a condition of probation, the court may require a sex offender (as defined in IC 11-8-8-4.5) to:

- (1) participate in a treatment program for sex offenders approved by the court; and
- (2) avoid contact with any person who is less than sixteen (16) years of age unless the probationer:
 - (A) receives the court's approval; or
 - (B) successfully completes the treatment program referred to in subdivision (1).

As added by P.L.11-1994, SEC.15. Amended by P.L.238-2001, SEC.20; P.L.116-2002, SEC.22; P.L.140-2006, SEC.25 and P.L.173-2006, SEC.25; P.L.1-2010, SEC.142.

IC 35-38-2-2.5 Residency requirements for certain offenders

Sec. 2.5. (a) As used in this section, "offender" means an individual convicted of a sex offense.

(b) As used in this section, "sex offense" means any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2) (repealed).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c)).
- (5) Vicarious sexual gratification (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Sexual battery (IC 35-42-4-8).
- (9) Sexual misconduct with a minor as a felony (IC 35-42-4-9).
- (10) Incest (IC 35-46-1-3).

(c) A condition of remaining on probation or parole after conviction for a sex offense is that the offender not reside within one (1) mile of the residence of the victim of the offender's sex offense.

(d) An offender:

- (1) who will be placed on probation shall provide the sentencing court and the probation department with the address where the offender intends to reside during the period of probation:
 - (A) at the time of sentencing if the offender will be placed on probation without first being incarcerated; or
 - (B) before the offender's release from incarceration if the offender will be placed on probation after completing a term of incarceration; or
- (2) who will be placed on parole shall provide the parole board with the address where the offender intends to reside during the period of parole.

(e) An offender, while on probation or parole, may not establish a new residence within

one (1) mile of the residence of the victim of the offender's sex offense unless the offender first obtains a waiver from the:

- (1) court, if the offender is placed on probation; or
- (2) parole board, if the offender is placed on parole;

for the change of address under subsection (f).

(f) The court or parole board may waive the requirement set forth in subsection (c) only if the court or parole board, at a hearing at which the offender is present and of which the prosecuting attorney has been notified, determines that:

- (1) the offender has successfully completed a sex offender treatment program during the period of probation or parole;
- (2) the offender is in compliance with all terms of the offender's probation or parole; and
- (3) good cause exists to allow the offender to reside within one (1) mile of the residence of the victim of the offender's sex offense.

However, the court or parole board may not grant a waiver under this subsection if the offender is a sexually violent predator under IC 35-38-1-7.5 or if the offender is an offender against children under IC 35-42-4-11.

(g) If the court or parole board grants a waiver under subsection (f), the court or parole board shall state in writing the reasons for granting the waiver. The court's written statement of its reasons shall be incorporated into the record.

(h) The address of the victim of the offender's sex offense is confidential even if the court or parole board grants a waiver under subsection (f).

As added by P.L.116-2002, SEC.23. Amended by P.L.6-2006, SEC.6; P.L.139-2006, SEC.4, P.L.140-2006, SEC.26, and P.L.173-2006, SEC.26; P.L.216-2007, SEC.41; P.L.158-2013, SEC.399; P.L.214-2013, SEC.34; P.L.13-2016, SEC.13.

IC 35-38-2-2.6 Conditions of probation or parole for persons convicted of stalking

Sec. 2.6. (a) As a condition of remaining on probation or parole after a conviction for stalking (IC 35-45-10-5), a court may prohibit a person from residing within one thousand (1,000) feet of the residence of the victim of the stalking for a period that does not exceed five (5) years.

(b) A person:

- (1) who will be placed on probation shall provide the sentencing court and the probation department with the address where the person intends to reside during the period of probation:

(A) at the time of sentencing if the person will be placed on probation without first being incarcerated; or

(B) before the person's release from incarceration if the person will be placed on probation after completing a term of incarceration; or

- (2) who will be placed on parole shall provide the parole board with the address where the person intends to reside during the period of parole.

(c) A person, while on probation or parole, may not reside within one thousand (1,000) feet of the residence of the victim of the stalking unless the person first obtains a waiver under subsection (d) from the:

- (1) court, if the person is placed on probation; or
- (2) parole board, if the person is placed on parole.

(d) The court or parole board may waive the requirement set forth in subsection (c) only if the court or parole board, at a hearing at which the person is present and of which the prosecuting attorney has been notified, determines that:

- (1) the person is in compliance with all terms of the person's probation or parole; and
- (2) good cause exists to allow the person to reside within one thousand (1,000) feet of the residence of the victim of the stalking.

(e) If the court or parole board grants a waiver under subsection (d), the court or parole board shall state in writing the reasons for granting the waiver. The court's written statement of its reasons shall be incorporated into the record.

(f) The address of the victim of the stalking is confidential even if the court or parole board grants a waiver under subsection (d).

As added by P.L.140-2006, SEC.27 and P.L.173-2006, SEC.27.

IC 35-38-2-2.7 Prohibition on use of social media, instant messaging, or chat rooms

Sec. 2.7. As a condition of probation or parole after conviction for a sex offense (as defined in IC 11-8-8-5.2), the court shall prohibit the convicted person from using a social networking web site or an instant messaging or chat room program to communicate, directly or through an intermediary, with a child less than sixteen (16) years of age. However, the court may permit the offender to communicate using a social networking web site or an instant messaging or chat room program with:

- (1) the offender's own child, stepchild, or sibling; or
- (2) another relative of the offender specifically named in the court's order.

As added by P.L.247-2013, SEC.4.

IC 35-38-2-3 Violation of conditions of probation

Sec. 3. (a) The court may revoke a person's probation if:

- (1) the person has violated a condition of probation during the probationary period; and
- (2) the petition to revoke probation is filed during the probationary period or before the earlier of the following:

- (A) One (1) year after the termination of probation.
- (B) Forty-five (45) days after the state receives notice of the violation.

(b) When a petition is filed charging a violation of a condition of probation, the court may:

- (1) order a summons to be issued to the person to appear; or
- (2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.

(c) The issuance of a summons or warrant tolls the period of probation until the final determination of the charge.

(d) Except as provided in subsection (e), the court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing. A person who is not admitted to bail pending the hearing may not be held in jail for more than fifteen (15) days without a hearing on the alleged violation of probation.

(e) A person may admit to a violation of probation and waive the right to a probation violation hearing after being offered the opportunity to consult with an attorney. If the person admits to a violation and requests to waive the probation violation hearing, the probation officer shall advise the person that by waiving the right to a probation violation hearing the person forfeits the rights provided in subsection (f). The sanction administered must follow the schedule of progressive probation violation sanctions adopted by the judicial conference of Indiana under IC 11-13-1-8.

(f) Except as provided in subsection (e), the state must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by counsel.

(g) Probation may not be revoked for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.

(h) If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) or more of the following sanctions:

- (1) Continue the person on probation, with or without modifying or enlarging the conditions.
 - (2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period.
 - (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.
- (i) If the court finds that the person has violated a condition of home detention at any time before termination of the period, and the petition to revoke probation is filed within the probationary period, the court shall:
- (1) order one (1) or more sanctions as set forth in subsection (h); and
 - (2) provide accrued time and good time credit, if applicable, as set forth under IC 35-38-2.5-5.
- (j) If the court finds that the person has violated a condition during any time before the termination of the period, and the petition is filed under subsection (a) after the probationary period has expired, the court may:
- (1) reinstate the person's probationary period, with or without enlarging the conditions, if the sum of the length of the original probationary period and the reinstated probationary period does not exceed the length of the maximum sentence allowable for the offense that is the basis of the probation; or
 - (2) order execution of all or part of the sentence that was suspended at the time of the initial sentencing.
- (k) If the court finds that the person has violated a condition of home detention during any time before termination of the period, and the petition is filed under subsection (a) after the probation period has expired, the court shall:
- (1) order a sanction as set forth in subsection (j); and
 - (2) provide accrued time and good time credit, if applicable, as set forth under IC 35-38-2.5-5.
- (l) A judgment revoking probation is a final appealable order.
- (m) Failure to pay fines or costs (including fees) required as a condition of probation may not be the sole basis for commitment to the department of correction.
- (n) Failure to pay fees or costs assessed against a person under IC 33-40-3-6, IC 33-37-2-3(e), or IC 35-33-7-6 is not grounds for revocation of probation.
- As added by P.L.311-1983, SEC.3. Amended by P.L.67-1990, SEC.12; P.L.214-1991, SEC.1; P.L.240-1991(ss2), SEC.94; P.L.1-1992, SEC.179; P.L.216-1996, SEC.15; P.L.166-2001, SEC.1; P.L.98-2004, SEC.152; P.L.13-2005, SEC.1; P.L.156-2007, SEC.5; P.L.48-2008, SEC.1; P.L.106-2010, SEC.11; P.L.147-2012, SEC.10; P.L.74-2015, SEC.21.*