

# HOUSE BILL No. 1155

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-37-5-17; IC 33-39-1-8; IC 35-33-4-1.

**Synopsis:** Summons to appear and pretrial matters. Adds additional conditions to an agreement to withhold prosecution including: (1) waiver of fees; (2) right to legal counsel; and (3) collecting and reporting of demographic information. Requires the court to collect demographic information as it relates to the withholding of prosecution and to report the information to the office of judicial administration (office). Requires the office to provide an annual report that includes demographic information and the withholding of prosecution to the governor, chief justice, and the legislative council before December 1 of each year. Provides that in lieu of arresting a person who has allegedly committed a misdemeanor (other than a traffic misdemeanor) in a law enforcement officer's presence, the officer shall issue a summons and promise to appear unless the person: (1) has committed a violent misdemeanor offense that involves a victim or a weapon or involves an offense related to the impaired operation of a motor vehicle; (2) poses a safety risk to the person, the officer, or the public; or (3) has falsely identified the person to the officer. Provides, however, that the law enforcement officer is not required to issue a summons if the person: (1) is subject to arrest for another offense; (2) has violated the terms of supervised release; or (3) has an outstanding warrant. Requires that the summons set forth substantially the nature of the offense and direct the person to appear before a court at a stated place and time not later than two business days after issuance of the summons.

**Effective:** July 1, 2022.

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January 6, 2022, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

# HOUSE BILL No. 1155

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

1 SECTION 1. IC 33-37-5-17, AS AMENDED BY P.L.24-2018,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2022]: Sec. 17. (a) This section applies to actions in which the  
4 court defers prosecution under IC 33-39-1-8.

5 (b) In each action in which prosecution is deferred, the clerk shall  
6 collect from the defendant:

7 (1) a deferred prosecution fee of one hundred twenty dollars  
8 (\$120) for court costs; and

9 (2) any applicable user or program fees described under  
10 IC 33-39-1-8(f) or ~~IC 33-39-1-8(h)~~; **IC 33-39-1-8(j)**.

11 SECTION 2. IC 33-39-1-8, AS AMENDED BY P.L.10-2019,  
12 SECTION 127, IS AMENDED TO READ AS FOLLOWS  
13 [EFFECTIVE JULY 1, 2022]: Sec. 8. (a) After June 30, 2005, this  
14 section does not apply to a person who:

15 (1) holds a commercial driver's license; and

16 (2) has been charged with an offense involving the operation of  
17 a motor vehicle in accordance with the federal Motor Carrier



- 1 Safety Improvement Act of 1999 (MCSIA) (Public Law  
2 106-159.113 Stat. 1748).
- 3 (b) This section does not apply to a person arrested for or charged  
4 with:
- 5 (1) an offense under IC 9-30-5-1 through IC 9-30-5-5; or  
6 (2) if a person was arrested or charged with an offense under  
7 IC 9-30-5-1 through IC 9-30-5-5, an offense involving:  
8 (A) intoxication; or  
9 (B) the operation of a vehicle;  
10 if the offense involving intoxication or the operation of a vehicle was  
11 part of the same episode of criminal conduct as the offense under  
12 IC 9-30-5-1 through IC 9-30-5-5.
- 13 (c) This section does not apply to a person:
- 14 (1) who is arrested for or charged with an offense under:  
15 (A) IC 7.1-5-7-7, if the alleged offense occurred while the  
16 person was operating a motor vehicle;  
17 (B) IC 9-30-4-8, if the alleged offense occurred while the  
18 person was operating a motor vehicle;  
19 (C) IC 35-44.1-2-13(b)(1); or  
20 (D) IC 35-43-1-2(a), if the alleged offense occurred while the  
21 person was operating a motor vehicle; and  
22 (2) who was less than eighteen (18) years of age at the time of the  
23 alleged offense.
- 24 (d) A prosecuting attorney may withhold prosecution against an  
25 accused person if:
- 26 (1) the person is charged with a misdemeanor, a Level 6 felony,  
27 or a Level 5 felony;  
28 (2) the person agrees to conditions of a pretrial diversion program  
29 offered by the prosecuting attorney;  
30 (3) the terms of the agreement are recorded in an instrument  
31 signed by the person and the prosecuting attorney and filed in the  
32 court in which the charge is pending; and  
33 (4) the prosecuting attorney electronically transmits information  
34 required by the prosecuting attorneys council concerning the  
35 withheld prosecution to the prosecuting attorneys council, in a  
36 manner and format designated by the prosecuting attorneys  
37 council.
- 38 (e) An agreement under subsection (d) may include conditions that  
39 the person:
- 40 (1) pay to the clerk of the court an initial user's fee and monthly  
41 user's fees in the amounts specified in IC 33-37-4-1;  
42 (2) work faithfully at a suitable employment or faithfully pursue



1 a course of study or career and technical education that will equip  
2 the person for suitable employment;

3 (3) undergo available medical treatment or mental health  
4 counseling and remain in a specified facility required for that  
5 purpose, including:

6 (A) addiction counseling;

7 (B) inpatient detoxification; and

8 (C) medication assisted treatment, including a federal Food  
9 and Drug Administration approved long acting, nonaddictive  
10 medication for the treatment of opioid or alcohol dependence;

11 (4) receive evidence based mental health and addiction,  
12 intellectual disability, developmental disability, autism, and  
13 co-occurring autism and mental illness forensic treatment services  
14 to reduce the risk of recidivism;

15 (5) support the person's dependents and meet other family  
16 responsibilities;

17 (6) make restitution or reparation to the victim of the crime for the  
18 damage or injury that was sustained;

19 (7) refrain from harassing, intimidating, threatening, or having  
20 any direct or indirect contact with the victim or a witness;

21 (8) report to the prosecuting attorney at reasonable times;

22 (9) answer all reasonable inquiries by the prosecuting attorney  
23 and promptly notify the prosecuting attorney of any change in  
24 address or employment; and

25 (10) participate in dispute resolution either under IC 34-57-3 or  
26 a program established by the prosecuting attorney.

27 (f) An agreement under subsection (d)(2) may include other  
28 provisions, including program fees and costs, reasonably related to the  
29 defendant's rehabilitation, if approved by the court.

30 **(g) If a person is unable to afford to pay any amount of the**  
31 **associated program fees and costs under subsection (d)(2), a full or**  
32 **partial waiver of fees, reasonable payment plan, or non-financial**  
33 **requirements (such as community service) may be offered in lieu**  
34 **of full payment of fees.**

35 **(h) If a person would like to consult with an attorney prior to**  
36 **accepting the terms of the agreement described in this section but**  
37 **cannot afford to hire an attorney, the court shall appoint an**  
38 **attorney to consult with the person at no cost.**

39 ~~(g)~~ (i) The prosecuting attorney shall notify the victim when  
40 prosecution is withheld under this section.

41 ~~(h)~~ (j) All money collected by the clerk as user's fees or program  
42 fees and costs under this section shall be deposited in the appropriate



1 user fee fund under IC 33-37-8.

2 (j) (k) If a court withholds prosecution under this section and the  
3 terms of the agreement contain conditions described in subsection  
4 (e)(7):

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

6 (2) the prosecuting attorney shall file a confidential form  
7 prescribed or approved by the office of judicial administration  
8 with the clerk.

9 (l) **A court shall collect individual data on any person in which  
10 the court withholds prosecution under this section, including:**

11 (1) **demographics;**

12 (2) **offense;**

13 (3) **program participation; and**

14 (4) **outcome and completion data;**

15 **and report the information to the office of judicial administration**  
16 **on an annual basis. The office of judicial administration shall**  
17 **provide an annual report that includes the information described**  
18 **in this subsection to the governor, chief justice, and the legislative**  
19 **council before December 1 of each year. The report provided to the**  
20 **legislative council must be in an electronic format under IC 5-14-6.**

21 SECTION 3. IC 35-33-4-1, AS AMENDED BY P.L.2-2005,  
22 SECTION 116, IS AMENDED TO READ AS FOLLOWS  
23 [EFFECTIVE JULY 1, 2022]: Sec. 1. (a) When an indictment or  
24 information is filed against a person charging ~~him~~ **the person** with a  
25 misdemeanor, the court may, in lieu of issuing an arrest warrant under  
26 IC 35-33-2, issue a summons. The summons must set forth  
27 substantially the nature of the offense, and command the accused  
28 person to appear before the court at a stated time and place. However,  
29 the date set by the court must be at least seven (7) days after the  
30 issuance of the summons. The summons may be served in the same  
31 manner as the summons in a civil action.

32 (b) If the person summoned fails, without good cause, to appear as  
33 commanded by the summons and the court has determined that there  
34 is probable cause to believe that a crime (other than failure to appear)  
35 has been committed, the court shall issue a warrant of arrest.

36 (c) If after issuing a summons the court:

37 (1) is satisfied that the person will not appear as commanded by  
38 the summons; and

39 (2) has determined that there is probable cause that a crime (other  
40 than failure to appear) has been committed;

41 it may at once issue a warrant of arrest.

42 (d) The summons may be in substantially the following form:



1 STATE OF INDIANA ) IN THE \_\_\_\_\_ COURT  
 2 )  
 3 vs. ) OF \_\_\_\_\_ COUNTY  
 4 )  
 5 )  
 6 Defendant ) CAUSE NO. \_\_\_\_\_  
 7 SUMMONS  
 8 THE STATE OF INDIANA TO  
 9 THE ABOVE NAMED DEFENDANT:  
 10 YOU ARE HEREBY SUMMONED, to appear before the above  
 11 designated Court at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ .m. on (day)  
 12 \_\_\_\_\_, \_\_\_\_\_, 20\_\_\_\_, with respect to an (information or indictment)  
 13 for \_\_\_\_\_.

14 If you do not so appear, an application may be made for the Issuance  
 15 of a Warrant for your arrest.

16 ISSUED: \_\_\_\_\_, 20\_\_\_\_

17 in

18 (City or County) \_\_\_\_\_, \_\_\_\_\_

19 BY THE CLERK OF SAID COURT:  
 20 \_\_\_\_\_

21 CLERK

22 (e) When any law enforcement officer in the state serves a summons  
 23 on a person, ~~he~~ **the officer** shall file a return of service with the court  
 24 issuing the summons. The return shall be in substantially the following  
 25 form:

26 RETURN OF SERVICE

27 I hereby certify that I served this summons upon the above named  
 28 defendant by delivering a copy of it and of the Information to the  
 29 defendant personally or by certified mail return receipt requested, on  
 30 \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.

31 DATED: \_\_\_\_\_, 20\_\_\_\_.

32 (Signature) \_\_\_\_\_  
 33 \_\_\_\_\_

34 LAW ENFORCEMENT AGENCY

35 (f) **Except as provided in subsection (g),** in lieu of arresting a  
 36 person who has allegedly committed a misdemeanor (other than a  
 37 traffic misdemeanor) **in his the officer's** presence, a law enforcement  
 38 officer ~~may~~ **shall** issue a summons and promise to appear **as described**  
 39 **in subsection (i).** The summons must set forth substantially the nature  
 40 of the offense and direct the person to appear before a court at a stated  
 41 place and time **not later than two (2) business days after issuance of**  
 42 **the summons. However, a law enforcement officer may not issue a**



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**summons if the person:**

**(1) has committed:**

**(A) a violent misdemeanor offense that involves a victim or a weapon; or**

**(B) an offense involving the impaired operation of a motor vehicle;**

**(2) poses a safety risk to the person, the officer, or the public;**

**or**

**(3) has falsely identified the person to the officer.**

**(g) Notwithstanding subsection (f), a law enforcement officer is not required to issue a summons to a person described in subsection (f), and may arrest the person, if the person:**

**(1) is subject to arrest for another offense;**

**(2) has violated the terms of supervised release; or**

**(3) has an outstanding warrant.**

**(g) (h)** The summons and promise to appear may be in substantially the following form:

STATE OF INDIANA ) IN THE \_\_\_\_\_ COURT  
 )  
 vs. ) OF \_\_\_\_\_ COUNTY  
 )  
 \_\_\_\_\_ )  
 Defendant )

**SUMMONS AND PROMISE TO APPEAR**

**YOU ARE HEREBY SUMMONED,** to appear before the above designated Court at \_\_\_\_\_

(Address)

at \_\_\_\_\_ .m. on \_\_\_\_\_,  
 Month Day

20\_\_\_\_, in respect to the charge of \_\_\_\_\_.

If you do not so appear, an application may be made for the issuance of a warrant for your arrest.

ISSUED: \_\_\_\_\_, 20 \_\_\_\_\_,

in

\_\_\_\_\_, Indiana

(City or County)

**BY THE UNDERSIGNED LAW ENFORCEMENT OFFICER:**

\_\_\_\_\_  
 Officer's Signature

I.D. No. \_\_\_\_\_



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Div. Dist. \_\_\_\_\_

Police Agency \_\_\_\_\_

COURT APPEARANCE

I promise to appear in court at the time and place designated above,  
or be subject to arrest.

Signature \_\_\_\_\_

YOUR SIGNATURE IS NOT AN ADMISSION OF GUILT.

~~(h)~~ **(i)** When any law enforcement officer issues a summons and  
promise to appear, ~~he~~ **the officer** shall:

(1) promptly file the summons and promise to appear and the  
certificate of service with the court designated in the summons  
and promise to appear; and

(2) provide the prosecuting attorney with a copy thereof.

