

HOUSE BILL No. 1538

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-33-7.

Synopsis: Representation of the indigent at initial hearing. Provides that an indigent defendant has the right to consult with and be represented by counsel at the initial hearing. Provides that prior to conducting the initial hearing, if the judicial officer determines that a person is indigent, the judicial officer shall provide the person with sufficient time to consult with counsel prior to conducting the initial hearing.

Effective: July 1, 2019.

Hatcher

January 17, 2019, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1538

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 35-33-7-5, AS AMENDED BY P.L.46-2018,
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 5. At the initial hearing of a person, the judicial
4 officer shall inform the person orally or in writing:
5 (1) that the person has a right to retain counsel and if the person
6 intends to retain counsel the person must do so within:
7 (A) twenty (20) days if the person is charged with a felony; or
8 (B) ten (10) days if the person is charged only with one (1) or
9 more misdemeanors;
10 after this initial hearing because there are deadlines for filing
11 motions and raising defenses, and if those deadlines are missed,
12 the legal issues and defenses that could have been raised will be
13 waived;
14 (2) that the person has a right to:
15 (A) assigned counsel at no expense to the person if the person
16 is indigent; **and**
17 (B) **consult with and be represented by counsel at the**



- 1 **initial hearing under section 6 of this chapter;**
 2 (3) that the person has a right to a speedy trial;
 3 (4) of the amount and conditions of bail;
 4 (5) of the person's privilege against self-incrimination;
 5 (6) of the nature of the charge against the person;
 6 (7) that a preliminary plea of not guilty is being entered for the
 7 person and the preliminary plea of not guilty will become a formal
 8 plea of not guilty:
 9 (A) twenty (20) days after the completion of the initial
 10 hearing; or
 11 (B) ten (10) days after the completion of the initial hearing if
 12 the person is charged only with one (1) or more
 13 misdemeanors;
 14 unless the defendant enters a different plea; and
 15 (8) that the person may request to petition for a specialized
 16 driving privileges hearing if the person is charged with:
 17 (A) any offense in which the operation of a motor vehicle is an
 18 element of the offense;
 19 (B) any offense under IC 9-30-5, IC 35-46-9, or IC 14-15-8
 20 (before its repeal); or
 21 (C) any offense under IC 35-42-1, IC 35-42-2, or
 22 IC 35-44.1-3-1 that involves the use of a vehicle.
 23 In addition, the judge shall direct the prosecuting attorney to give the
 24 defendant or the defendant's attorney a copy of any formal felony
 25 charges filed or ready to be filed. The judge shall, upon request of the
 26 defendant, direct the prosecuting attorney to give the defendant or the
 27 defendant's attorney a copy of any formal misdemeanor charges filed
 28 or ready to be filed.
 29 SECTION 2. IC 35-33-7-6 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) Prior to ~~the~~
 31 ~~completion of~~ **conducting** the initial hearing, the judicial officer shall
 32 determine whether a person ~~who requests assigned counsel~~ is indigent.
 33 If the person is found to be indigent, the judicial officer shall assign
 34 counsel to the person. **The judicial officer shall provide the person**
 35 **with sufficient time to consult with counsel prior to conducting the**
 36 **initial hearing.**
 37 **(b) Assigned counsel shall be present at the time of the**
 38 **appointment to provide consultation and representation to a**
 39 **person assigned counsel under subsection (a).**
 40 **(c)** If jurisdiction over an indigent defendant is transferred to
 41 another court, the receiving court shall assign counsel immediately
 42 upon acquiring jurisdiction over the defendant.



1 ~~(c)~~ **(d)** If the court finds that the person is able to pay part of the cost
2 of representation by the assigned counsel, the court shall order the
3 person to pay the following:
4 (1) For a felony action, a fee of one hundred dollars (\$100).
5 (2) For a misdemeanor action, a fee of fifty dollars (\$50).
6 The clerk of the court shall deposit fees collected under this subsection
7 in the county's supplemental public defender services fund established
8 under IC 33-40-3-1.
9 ~~(d)~~ **(e)** The court may review the finding of indigency at any time
10 during the proceedings.

