

IC 34-28-5

Chapter 5. Infraction and Ordinance Violation Enforcement Proceedings

IC 34-28-5-0.2

Application of certain amendments to prior law

Sec. 0.2. The amendments made to IC 34-4-32-1 (before its repeal, now codified at section 1 of this chapter) by P.L.309-1985 do not apply to violations occurring before April 9, 1985.

As added by P.L.220-2011, SEC.562.

IC 34-28-5-1

Prosecution in name of state or municipality; rules; limitations; burden of proof; deferral programs; agreement for community restitution or service

Sec. 1. (a) As used in this section, "probationary license" refers to a license described in IC 9-24-11-3.3(b).

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

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

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

- (1) shall be conducted in accordance with the Indiana Rules of Trial Procedure; and
- (2) must be brought within two (2) years after the alleged conduct or violation occurred.

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

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

(g) Subsection (h) does not apply to an individual holding a probationary license who is alleged to have committed an infraction under any of the following when the individual was less than eighteen (18) years of age at the time of the alleged offense:

- IC 9-19
- IC 9-21
- IC 9-24
- IC 9-25
- IC 9-26
- IC 9-30-5
- IC 9-30-10

IC 9-30-15.

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

- (1) the defendant in the action agrees to conditions of a deferral program offered by the prosecuting attorney or the attorney for a municipal corporation;
- (2) the defendant in the action agrees to pay to the clerk of the court an initial user's fee and monthly user's fee set by the prosecuting attorney or the attorney for the municipal corporation in accordance with IC 33-37-4-2(e);
- (3) the terms of the agreement are recorded in an instrument signed by the defendant and the prosecuting attorney or the attorney for the municipal corporation;
- (4) the defendant in the action agrees to pay a fee of seventy dollars (\$70) to the clerk of court if the action involves a moving traffic offense (as defined in IC 9-13-2-110);
- (5) the agreement is filed in the court in which the action is brought; and
- (6) if the deferral program is offered by the prosecuting attorney, the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the withheld prosecution to the prosecuting attorneys council, in a manner and format designated by the prosecuting attorneys council.

When a defendant complies with the terms of an agreement filed under this subsection (or IC 34-4-32-1(f) before its repeal), the prosecuting attorney or the attorney for the municipal corporation shall request the court to dismiss the action. Upon receipt of a request to dismiss an action under this subsection, the court shall dismiss the action. An action dismissed under this subsection (or IC 34-4-32-1(f) before its repeal) may not be refiled.

(i) If a judgment is entered against a defendant in an action to enforce an ordinance, the defendant may perform community restitution or service (as defined in IC 35-31.5-2-50) instead of paying a monetary judgment for the ordinance violation as described in section 4(e) of this chapter if:

- (1) the:
 - (A) defendant; and
 - (B) attorney for the municipal corporation;agree to the defendant's performance of community restitution or service instead of the payment of a monetary judgment;
- (2) the terms of the agreement described in subdivision (1):
 - (A) include the amount of the judgment the municipal corporation requests that the defendant pay under section 4(e) of this chapter for the ordinance violation if the defendant fails to perform the community restitution or service provided for in the agreement as approved by the

- court; and
- (B) are recorded in a written instrument signed by the defendant and the attorney for the municipal corporation;
- (3) the agreement is filed in the court where the judgment was entered; and
- (4) the court approves the agreement.

If a defendant fails to comply with an agreement approved by a court under this subsection, the court shall require the defendant to pay up to the amount of the judgment requested in the action under section 4(e) of this chapter as if the defendant had not entered into an agreement under this subsection.

As added by P.L.1-1998, SEC.24. Amended by P.L.98-2000, SEC.12; P.L.98-2004, SEC.123; P.L.176-2005, SEC.24; P.L.200-2005, SEC.1; P.L.101-2009, SEC.17; P.L.114-2012, SEC.65; P.L.125-2012, SEC.412.

IC 34-28-5-2

Moving traffic violation; pleadings

Sec. 2. In an action for a moving traffic violation, the pleadings are as follows:

- (1) A summons and complaint.
- (2) Entry by a defendant of:
 - (A) an admission to the violation;
 - (B) a denial of the violation; or
 - (C) a declaration of nolo contendere in which the defendant consents to entry of judgment for the state without admitting to the violation.

As added by P.L.1-1998, SEC.24.

IC 34-28-5-3

Detention; communications device information

Sec. 3. (a) Whenever a law enforcement officer believes in good faith that a person has committed an infraction or ordinance violation, the law enforcement officer may detain that person for a time sufficient to:

- (1) inform the person of the allegation;
- (2) obtain the person's:
 - (A) name, address, and date of birth; or
 - (B) driver's license, if in the person's possession; and
- (3) allow the person to execute a notice to appear.

(b) If a law enforcement officer detains a person because the law enforcement officer believes the person has committed an infraction or ordinance violation, the law enforcement officer may not, without the consent of the person, extract or otherwise download information from a cellular telephone or another wireless or cellular communications device possessed by the person at the time the person is detained unless:

- (1) the law enforcement officer has probable cause to believe that the:
 - (A) cellular telephone; or

- (B) other wireless or cellular communications device; has been used in the commission of a crime;
- (2) the information is extracted or otherwise downloaded under a valid search warrant; or
- (3) otherwise authorized by law.

As added by P.L.1-1998, SEC.24. Amended by P.L.191-2014, SEC.2.

IC 34-28-5-3.5

Refusal to identify self

Sec. 3.5. A person who knowingly or intentionally refuses to provide either the person's:

- (1) name, address, and date of birth; or
- (2) driver's license, if in the person's possession;

to a law enforcement officer who has stopped the person for an infraction or ordinance violation commits a Class C misdemeanor.

As added by P.L.1-1998, SEC.24.

IC 34-28-5-4

Costs; deposit of funds; findings required for judgment; special provisions for moving violations

Revisor's Note: P.L.106-2010, SEC.18, required this section to be printed as follows.

Sec. 4. (a) A judgment of up to ten thousand dollars (\$10,000) may be entered for a violation constituting a Class A infraction.

(b) A judgment of up to one thousand dollars (\$1,000) may be entered for a violation constituting a Class B infraction.

(c) Except as provided in subsection (f), a judgment of up to five hundred dollars (\$500) may be entered for a violation constituting a Class C infraction.

(d) A judgment of up to twenty-five dollars (\$25) may be entered for a violation constituting a Class D infraction.

(e) Subject to section 1(i) of this chapter, a judgment:

- (1) up to the amount requested in the complaint; and
- (2) not exceeding any limitation under IC 36-1-3-8;

may be entered for an ordinance violation.

(f) Except as provided in subsections (g) and (h), a person who has admitted to a moving violation constituting a Class C infraction, pleaded nolo contendere to a moving violation constituting a Class C infraction, or has been found by a court to have committed a moving violation constituting a Class C infraction may not be required to pay more than the following amounts for the violation:

(1) If, before the appearance date specified in the summons and complaint, the person mails or delivers an admission of the moving violation or a plea of nolo contendere to the moving violation, the person may not be required to pay any amount, except court costs and a judgment that does not exceed thirty-five dollars and fifty cents (\$35.50).

(2) If the person admits the moving violation or enters a plea of nolo contendere to the moving violation on the appearance date specified in the summons and complaint, the person may not be

required to pay any amount, except court costs and a judgment that does not exceed thirty-five dollars and fifty cents (\$35.50).

(3) If the person contests the moving violation in court and is found to have committed the moving violation, the person may not be required to pay any amount, except:

(A) court costs and a judgment that does not exceed thirty-five dollars and fifty cents (\$35.50) if, in the five (5) years before the appearance date specified in the summons and complaint, the person was not found by a court in the county to have committed a moving violation;

(B) court costs and a judgment that does not exceed two hundred fifty dollars and fifty cents (\$250.50) if, in the five (5) years before the appearance date specified in the summons and complaint, the person was found by a court in the county to have committed one (1) moving violation; and

(C) court costs and a judgment that does not exceed five hundred dollars (\$500) if, in the five (5) years before the appearance date specified in the summons and complaint, the person was found by a court in the county to have committed two (2) or more moving violations.

In a proceeding under subdivision (3), the court may require the person to submit an affidavit or sworn testimony concerning whether, in the five (5) years before the appearance date specified in the summons and complaint, the person has been found by a court to have committed one (1) or more moving violations.

(g) The amounts described in subsection (f) are in addition to any amount that a person may be required to pay for attending a defensive driving school program.

(h) This subsection applies only to infraction judgments imposed in Marion County for traffic violations after December 31, 2010. Subsection (f) applies to an infraction judgment described in this subsection. However, a court shall impose a judgment of not less than thirty-five dollars (\$35) for an infraction judgment that is entered in Marion County. These funds shall be transferred to a dedicated fund in accordance with section 5 of this chapter.

As added by P.L.1-1998, SEC.24. Amended by P.L.200-2005, SEC.2; P.L.101-2009, SEC.18; P.L.71-2010, SEC.3; P.L.106-2010, SEC.7.

IC 34-28-5-5

Costs; deposit of funds; findings required for judgment

Sec. 5. (a) A defendant against whom a judgment is entered is liable for costs. Costs are part of the judgment and may not be suspended except under IC 9-30-3-12. Whenever a judgment is entered against a person for the commission of two (2) or more civil violations (infractions or ordinance violations), the court may waive the person's liability for costs for all but one (1) of the violations. This subsection does not apply to judgments entered for violations constituting:

(1) Class D infractions; or

(2) Class C infractions for unlawfully parking in a space

reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8.

(b) If a judgment is entered:

(1) for a violation constituting:

(A) a Class D infraction; or

(B) a Class C infraction for unlawfully parking in a space reserved for a person with a physical disability under IC 5-16-9-5 or IC 5-16-9-8; or

(2) in favor of the defendant in any case;

the defendant is not liable for costs.

(c) Except for costs, and except as provided in subsection (e) and IC 9-21-5-11(e), the funds collected as judgments for violations of statutes defining infractions shall be deposited in the state general fund.

(d) A judgment may be entered against a defendant under this section or section 4 of this chapter upon a finding by the court that the defendant:

(1) violated:

(A) a statute defining an infraction; or

(B) an ordinance; or

(2) consents to entry of judgment for the plaintiff upon a pleading of nolo contendere for a moving traffic violation.

(e) The funds collected for an infraction judgment described in section 4(h) of this chapter shall be transferred to a dedicated county fund. The money in the dedicated county fund does not revert to the county general fund or state general fund and may be used, after appropriation by the county fiscal body, only for the following purposes:

(1) To pay compensation of commissioners appointed under IC 33-33-49.

(2) To pay costs of the county's guardian ad litem program.

As added by P.L.1-1998, SEC.24. Amended by P.L.40-2007, SEC.7; P.L.71-2010, SEC.4; P.L.106-2010, SEC.8.

IC 34-28-5-6

Suspension of driver's license

Sec. 6. If a defendant fails to satisfy a judgment entered against the defendant for the violation of a traffic ordinance or for a traffic infraction by a date fixed by the court, the court may suspend the defendant's drivers license. When a court suspends a person's drivers license under this section, the court shall forward notice of the suspension to the bureau of motor vehicles.

As added by P.L.1-1998, SEC.24.

IC 34-28-5-7

Traffic violations bureau; clerk

Sec. 7. Any court may establish a traffic violations bureau and appoint a violations clerk who shall serve under the direction and control of the court.

As added by P.L.1-1998, SEC.24.

IC 34-28-5-8

Duties of clerk

Sec. 8. The violations clerk or deputy violations clerk shall:

- (1) accept:
 - (A) written appearances;
 - (B) waivers of trial;
 - (C) admissions of violation;
 - (D) declarations of nolo contendere for moving traffic violations;
 - (E) payments of judgments (including costs) in traffic violation cases;
 - (F) deferral agreements made under section 1(f) of this chapter (or IC 34-4-32-1(f) before its repeal) and deferral program fees prescribed under IC 33-37-4-2(e); and
 - (G) community restitution or service agreements made under section 1(g) of this chapter;
- (2) issue receipts and account for any judgments (including costs) collected; and
- (3) pay the judgments (including costs) collected to the appropriate unit of government as provided by law.

As added by P.L.1-1998, SEC.24. Amended by P.L.98-2004, SEC.124; P.L.200-2005, SEC.3.

IC 34-28-5-9

Duties of court

Sec. 9. The court shall:

- (1) designate the traffic violations within the authority of the violations clerk, but these violations may not include misdemeanors or felonies;
- (2) establish schedules, within limits prescribed by law, of the judgments to be imposed for first violations, designating each violation specifically;
- (3) order that the schedule of judgments be prominently posted in the place where the fines are paid;
- (4) establish a procedure under which any violations clerk or deputy violations clerk shall accept, receipt, and account for all money tendered for designated traffic violations; and
- (5) dismiss deferred actions if a dismissal request is made under section 1(f) of this chapter (or IC 34-4-32-1(f) before its repeal).

As added by P.L.1-1998, SEC.24.

IC 34-28-5-10

Repealed

(Repealed by P.L.201-2011, SEC.115.)

IC 34-28-5-11

Admission of violation; nolo contendere plea; payment of judgment

Sec. 11. Any person charged with a traffic violation that is within the authority of the violations clerk may mail or deliver:

- (1) the amount of the judgment (including costs) indicated on

- the ticket; and
- (2) a signed:
- (A) admission of the violation; or
 - (B) pleading of nolo contendere, if the action is for a moving traffic violation.

As added by P.L.1-1998, SEC.24.

IC 34-28-5-12

Notice requirements for acceptance of admission or nolo contendere plea

Sec. 12. Before accepting a pleading admitting to a violation or entering a declaration of nolo contendere to a violation, the violations clerk or the officer writing the ticket shall inform the person that:

- (1) the person's signature to:
 - (A) an admission of the violation; or
 - (B) a pleading of nolo contendere;will have the same effect as a judgment of a court; and
- (2) the record of judgment will be sent to the commissioner of motor vehicles of Indiana or the state where the person received a license to drive.

As added by P.L.1-1998, SEC.24.

IC 34-28-5-13

Payment by credit card

Sec. 13. A court may permit a person to use a credit card issued by a financial institution for the purpose of paying a court cost and judgment with respect to a traffic violation that is enforced under this chapter. The state board of accounts shall allow a county to pay any applicable credit card service charge on behalf of a court that permits the use of a credit card under this section. The county fiscal body must appropriate funds to cover the costs of applicable credit card service charges before a court may permit the use of a credit card under this section.

As added by P.L.1-1998, SEC.24.

IC 34-28-5-14

Written appearance instead of personal appearance before court

Sec. 14. If a person named as a defendant in a summons and complaint issued under IC 5-16-9-10, before the appearance date specified in the summons and complaint, mails or delivers the following to the court having jurisdiction over the action:

- (1) an admission of the violation or a plea of nolo contendere to the violation; and
- (2) a fifty dollar (\$50) civil judgment;

the court shall enter a judgment against the defendant for the violation. An admission or plea of nolo contendere received by the court under this section (or IC 34-4-32-6 before its repeal) constitutes a written appearance and the defendant is not required to personally appear before the court.

As added by P.L.1-1998, SEC.24.

IC 34-28-5-15

Disclosure of information related to an infraction; restrictions; petition to restrict disclosure

Sec. 15. (a) This subsection does not apply to a person whose prosecution for an infraction is deferred under section 1 of this chapter. If a person alleged to have violated a statute defining an infraction:

- (1) is not prosecuted or if the action against the person is dismissed;
- (2) is adjudged not to have committed the infraction; or
- (3) is adjudged to have committed the infraction and the adjudication is subsequently vacated;

the court in which the action was filed shall order the clerk and the operator of any state, regional, or local case management system not to disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or an individual.

(b) Not earlier than five (5) years after a person:

- (1) whose prosecution for an infraction has been deferred; or
- (2) who was found to have violated a statute defining an infraction;

has satisfied the conditions of the deferral program or the judgment imposed for the violation, the person may petition the court to prohibit disclosure of information related to the infraction to a noncriminal justice organization or an individual. The court shall order the clerk and the operator of any state, regional, or local case management system not to disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or an individual if the court finds that:

- (1) the person satisfied the judgment or conditions of the deferral program; and
- (2) at least five (5) years have passed since the date the person satisfied the judgment or conditions of the program.

(c) If a court fails to order the clerk and the operator of any state, regional, or local case management system to restrict disclosure of information related to the infraction under subsection (a), the person may petition the court to restrict disclosure of the records related to the infraction to a noncriminal justice organization or an individual.

(d) A petition under subsection (b) or (c) must be verified and filed in:

- (1) the court in which the action was filed, for a person described in subsection (a)(1);
- (2) the court in which the trial was held, for a person described in subsection (a)(2) or (a)(3); or
- (3) the court finding or having jurisdiction over the violation, for a person described in subsection (b).

(e) A petition under subsection (b) or (c) must be filed not earlier than:

- (1) if the person is adjudged not to have committed the infraction, thirty (30) days after the date of judgment;
- (2) if the person's adjudication is vacated, three hundred

sixty-five (365) days after:

(A) the order vacating the adjudication is final, if there is no appeal or the appeal is terminated before entry of an opinion or memorandum decision; or

(B) the opinion or memorandum decision vacating the adjudication is certified;

(3) if the person is not prosecuted or the action is dismissed, thirty (30) days after the action is dismissed, if a new action is not filed; or

(4) if the person participated in a deferral program or is found to have violated the statute defining the infraction, not earlier than five (5) years after the date the judgment for the violation is satisfied or the conditions of the deferral program are met.

(f) A petition under subsection (b) or (c) must set forth:

(1) the date of the alleged violation;

(2) the violation or alleged violation;

(3) the date the action was dismissed, if applicable;

(4) the date of judgment, if applicable;

(5) the date the adjudication was vacated, if applicable;

(6) the basis on which the adjudication was vacated, if applicable;

(7) the date the judgment is satisfied or the conditions of the deferral program were met, if applicable;

(8) the law enforcement agency employing the officer who issued the complaint, if applicable;

(9) any other known identifying information, such as the name of the officer, case number, or court cause number;

(10) the date of the petitioner's birth; and

(11) at the option of the petitioner, the:

(A) petitioner's driver's license or state identification card number; or

(B) last four (4) digits of the petitioner's Social Security number.

(g) A copy of a petition filed under subsection (b) or (c) shall be served on the prosecuting attorney.

(h) If the prosecuting attorney wishes to oppose a petition filed under subsection (b) or (c), the prosecuting attorney shall, not later than thirty (30) days after the petition is filed, file a notice of opposition with the court setting forth reasons for opposing the petition. The prosecuting attorney shall attach to the notice of opposition a certified copy of any documentary evidence showing that the petitioner is not entitled to relief. A copy of the notice of opposition and copies of any documentary evidence shall be served on the petitioner in accordance with the Indiana Rules of Trial Procedure.

(i) The court may, with respect to a petition filed under subsection (b) or (c):

(1) summarily grant the petition;

(2) set the matter for hearing; or

(3) summarily deny the petition, if the court determines that:

- (A) the petition is insufficient; or
- (B) based on documentary evidence submitted to the court, the petitioner is not entitled to have access to the petitioner's records restricted.

(j) If a notice of opposition is filed under subsection (h) and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

(k) After a hearing is held under subsection (j), the court shall grant the petition filed under:

- (1) subsection (b) if the person is entitled to relief under that subsection; or
- (2) subsection (c) if the person is entitled to relief under subsection (a).

(l) If the court grants a petition filed under subsection (b) or (c), the court shall order the clerk and the operator of any state, regional, or local case management system not to disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or an individual.

As added by P.L. 69-2012, SEC.2. Amended by P.L. 13-2013, SEC.83; P.L.112-2013, SEC.7.

IC 34-28-5-16

Repealed

(Repealed by P.L.112-2013, SEC.8; P.L.205-2013, SEC.356.)