

SENATE BILL No. 263

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-14-1.

Synopsis: Senior prosecuting attorneys. Provides that: (1) a senior prosecuting attorney may be appointed to serve as a special prosecutor; and (2) a person must have at least eight years of experience as a prosecuting attorney or deputy prosecuting attorney to be a senior prosecuting attorney. Provides that a senior prosecuting attorney may not be appointed as a special prosecutor in certain circumstances.

Effective: July 1, 2002.

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January 7, 2002, read first time and referred to Committee on Judiciary.

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Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

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SENATE BILL No. 263



A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

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

- 1 SECTION 1. IC 33-14-1-1.1 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2002]: **Sec. 1.1. (a) As used in this chapter, "senior prosecuting**
- 4 **attorney" means a person who:**
- 5 **(1) was employed for at least eight (8) years as a prosecuting**
- 6 **attorney or deputy prosecuting attorney; and**
- 7 **(2) files an affidavit requesting designation as a senior**
- 8 **prosecuting attorney in the circuit court in a county in which**
- 9 **the person served as a prosecuting attorney or deputy**
- 10 **prosecuting attorney.**
- 11 **(b) An affidavit filed under subsection (a) must contain the**
- 12 **following:**
- 13 **(1) The name of the person filing the affidavit.**
- 14 **(2) The person's attorney number issued by the Indiana**
- 15 **supreme court.**
- 16 **(3) The length of time the person served as a deputy**
- 17 **prosecuting attorney or prosecuting attorney.**



1 **(4) The name of any county in which the person served as a**
 2 **deputy prosecuting attorney or prosecuting attorney.**

3 SECTION 2. IC 33-14-1-6 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) Special
 5 prosecutors may be appointed only in accordance with this section.

6 (b) A circuit or superior court judge:

7 (1) shall appoint a special prosecutor if:

8 (A) any person other than the prosecuting attorney or the
 9 prosecuting attorney's deputy files a verified petition
 10 requesting the appointment of a special prosecutor; and

11 (B) the prosecuting attorney agrees that a special prosecutor is
 12 needed;

13 (2) may appoint a special prosecutor if:

14 (A) a person files a verified petition requesting the
 15 appointment of a special prosecutor; and

16 (B) the court, after:

17 (i) notice is given to the prosecuting attorney; and

18 (ii) an evidentiary hearing is conducted at which the
 19 prosecuting attorney is given an opportunity to be heard;
 20 finds by clear and convincing evidence that the appointment
 21 is necessary to avoid an actual conflict of interest or there is
 22 probable cause to believe that the prosecutor has committed a
 23 crime;

24 (3) may appoint a special prosecutor if:

25 (A) the prosecuting attorney files a petition requesting the
 26 court to appoint a special prosecutor; and

27 (B) the court finds that the appointment is necessary to avoid
 28 the appearance of impropriety; and

29 (4) may appoint a special prosecutor if:

30 (A) an elected public official, who is a defendant in a criminal
 31 proceeding, files a verified petition requesting a special
 32 prosecutor within ten (10) days after the date of the initial
 33 hearing; and

34 (B) the court finds that the appointment of a special prosecutor
 35 is in the best interests of justice.

36 (c) Each person appointed to serve as a special prosecutor:

37 (1) must consent to the appointment; and

38 (2) must be:

39 (A) the prosecuting attorney; **or**

40 (B) a deputy prosecuting attorney; **or**

41 **(C) except as provided in subsection (d), a senior**
 42 **prosecuting attorney;**

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1 in a county other than the county in which the person is to serve
2 as special prosecutor.

3 (d) **A senior prosecuting attorney may be appointed in the**
4 **county in which the senior prosecuting attorney previously served**
5 **if:**

6 (1) **at least five (5) years have elapsed from the last date the**
7 **senior prosecuting attorney was employed as a prosecuting**
8 **attorney or deputy prosecuting attorney; and**

9 (2) **the court finds that an appointment under this subsection**
10 **would not create the appearance of impropriety.**

11 (e) A person appointed to serve as a special prosecutor has the same
12 powers as the prosecuting attorney of the county. However, the scope
13 of the special prosecutor's duties shall be limited by the appointing
14 judge to include only the investigation or prosecution of a particular
15 case or particular grand jury investigation.

16 (f) (f) The court shall establish the length of the special prosecutor's
17 term. If the target of an investigation by the special prosecutor is a
18 public servant (as defined in IC 35-41-1-24), the court shall order the
19 special prosecutor to file a report of the investigation with the court at
20 the conclusion of the investigation. The report is a public record.

21 (g) (g) If the special prosecutor is not regularly employed as a
22 full-time prosecuting attorney or full-time deputy prosecuting attorney,
23 the compensation for the special prosecutor's services:

24 (1) shall be paid to the special prosecutor from the unappropriated
25 funds of the appointing county; and

26 (2) shall not exceed a per diem equal to the regular salary of a
27 full-time prosecuting attorney of the appointing circuit, and travel
28 expenses, and reasonable accommodation expenses actually
29 incurred.

30 (h) (h) If the special prosecutor is regularly employed as a full-time
31 prosecuting attorney or deputy prosecuting attorney, the compensation
32 for the special prosecutor's services:

33 (1) shall be paid out of the appointing county's unappropriated
34 funds to the treasurer of the county in which the special
35 prosecutor regularly serves; and

36 (2) must include a per diem equal to the regular salary of a
37 full-time prosecuting attorney of the appointing circuit, travel
38 expenses, and reasonable accommodation expenses actually
39 incurred.

40 SECTION 3. IC 33-14-1-6.5 IS ADDED TO THE INDIANA CODE
41 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
42 1, 2002]: **Sec. 6.5. A senior prosecuting attorney may not be**

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1 **appointed under section 6 of this chapter if the senior prosecuting**
2 **attorney:**
3 **(1) is not available for the minimum period of commitment**
4 **for service as a special prosecutor; or**
5 **(2) has had a disciplinary sanction imposed by the Indiana**
6 **supreme court disciplinary commission or a similar body in**
7 **another state.**

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