

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.

## SENATE ENROLLED ACT No. 263

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

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

SECTION 1. IC 33-2.1-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) As used in this chapter, "judge" has the meaning set forth in IC 33-13-17-3.

(b) **As used in this chapter, "prosecuting attorney" includes a senior prosecuting attorney appointed under IC 33-14-1.**

(c) If a judge or prosecuting attorney is sued for civil damages or equitable relief and the suit would be construed, under notice pleading, as arising out of an act performed within the scope of the duties of the judge or prosecuting attorney, the attorney general shall:

- (1) defend the judge or prosecuting attorney in the suit; or
- (2) authorize the executive director of the division of state court administration to hire private counsel to provide the defense.

SECTION 2. IC 33-14-1-1.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 1.1. (a) As used in this chapter, "senior prosecuting attorney" means a person who:**

- (1) was employed for at least eight (8) years as a prosecuting attorney or chief deputy prosecuting attorney; and
- (2) files an affidavit requesting designation as a senior prosecuting attorney in the circuit court in a county in which the person is willing to serve as a senior prosecuting attorney.

(b) An affidavit filed under subsection (a) must contain the

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following:

- (1) The name of the person filing the affidavit.
  - (2) The person's attorney number issued by the Indiana supreme court.
  - (3) The length of time the person served as a chief deputy prosecuting attorney or prosecuting attorney.
  - (4) The name of any county in which the person served as a chief deputy prosecuting attorney or prosecuting attorney.
- (c) The circuit court shall promptly forward each affidavit received under this section to the prosecuting attorneys council of Indiana.

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

(b) A circuit or superior court judge:

- (1) shall appoint a special prosecutor if:
  - (A) any person other than the prosecuting attorney or the prosecuting attorney's deputy files a verified petition requesting the appointment of a special prosecutor; and
  - (B) the prosecuting attorney agrees that a special prosecutor is needed;
- (2) may appoint a special prosecutor if:
  - (A) a person files a verified petition requesting the appointment of a special prosecutor; and
  - (B) the court, after:
    - (i) notice is given to the prosecuting attorney; and
    - (ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard; finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecutor has committed a crime;
- (3) may appoint a special prosecutor if:
  - (A) the prosecuting attorney files a petition requesting the court to appoint a special prosecutor; and
  - (B) the court finds that the appointment is necessary to avoid the appearance of impropriety; and
- (4) may appoint a special prosecutor if:
  - (A) an elected public official, who is a defendant in a criminal proceeding, files a verified petition requesting a special prosecutor within ten (10) days after the date of the initial hearing; and

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

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

(1) must consent to the appointment; and

(2) must be:

(A) the prosecuting attorney; ~~or~~

(B) a deputy prosecuting attorney;

in a county other than the county in which the person is to serve as special prosecutor; **or**

**(C) except as provided in subsection (d), a senior prosecuting attorney.**

**(d) A senior prosecuting attorney may be appointed in the county in which the senior prosecuting attorney previously served if the court finds that an appointment under this subsection would not create the appearance of impropriety.**

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

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

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

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

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

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

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

(2) must include a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, travel

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expenses, and reasonable accommodation expenses actually incurred.

**(i) The combination of:**

**(1) the compensation paid to a senior prosecuting attorney under this chapter; and**

**(2) retirement benefits that the person appointed as a senior prosecuting attorney is receiving or entitled to receive;**

**may not exceed the minimum compensation to which a full-time prosecuting attorney is entitled under IC 33-14-7-5.**

**(j) A senior prosecuting attorney appointed under this chapter may not be compensated as senior prosecuting attorney for more than one hundred (100) calendar days in the aggregate during a calendar year.**

SECTION 4. IC 33-14-1-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 6.5. A person may not be appointed a senior prosecuting attorney under section 6 of this chapter if the person:**

**(1) is not available for the minimum period of commitment for service as a special prosecutor; or**

**(2) has had a disciplinary sanction imposed by the Indiana supreme court disciplinary commission or a similar body in another state that restricts the person's ability to practice law.**

SECTION 5. IC 33-14-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 7. (a)** As used in this chapter, "services" means the period beginning on the first day upon which a person first became:

(1) a prosecuting attorney or chief deputy prosecuting attorney;

(2) any other deputy prosecuting attorney who is:

(A) appointed under IC 33-14-7-2; and

(B) paid by the state from the state general fund; or

(3) the executive director or the assistant executive director of the prosecuting attorneys council of Indiana;

whether that date is before, on, or after January 1, 1990, and ending on the date under consideration, including all intervening employment in a position described in subdivisions (1) through (3). If an individual is elected or appointed to a position described in subdivisions (1) through (3) and serves one (1) or more terms or part of a term, then retires from office, but at a later period or periods is appointed or elected and serves in a position described in subdivisions (1) through (3), the individual shall pay into the fund during all the periods that the individual serves in that position, except as otherwise provided in this chapter, whether the periods are connected or disconnected.

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**(b) A senior prosecuting attorney appointed under IC 33-14-1 may not be required to pay into the fund during any period of service as a senior prosecuting attorney.**

SECTION 6. IC 33-14-9-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. A participant whose employment in a position described in section 7 of this chapter is terminated is entitled to a retirement benefit computed under section 14 or 16 of this chapter, beginning on the date specified by the participant in a written application, if all of the following conditions are met:

- (1) The application for retirement benefits and the choice of the retirement date is filed on a form provided by the board and the retirement date is:
  - (A) after the cessation of the participant's service;
  - (B) on the first day of a month; and
  - (C) not more than six (6) months before the date the application is received by the board.

However, if the board determines that a participant is incompetent to file for benefits and choose a retirement date, the retirement date may be any date that is the first of the month after the time the participant became incompetent.

- (2) The participant:
  - (A) is at least sixty-two (62) years of age and has at least ten (10) years of service credit; or
  - (B) meets the requirements for disability benefits under section 15 of this chapter.
- (3) The participant is not receiving and is not entitled to receive any salary for services currently performed, **except for services rendered as a senior prosecuting attorney under IC 33-14-1.**

SECTION 7. IC 33-14-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. As used in the chapter, "prosecuting attorney" means a prosecuting attorney, **or a deputy prosecuting attorney, or a senior prosecuting attorney appointed under IC 33-14-1.**

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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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SEA 263 — Concur+

