



January 27, 2017

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## HOUSE BILL No. 1036

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DIGEST OF HB 1036 (Updated January 25, 2017 4:33 pm - DI 124)

**Citations Affected:** IC 3-10; IC 3-11; IC 3-13; IC 33-23; IC 33-33.

**Synopsis:** Marion County judicial selection. Provides for the selection of Marion superior court (court) judges. Establishes the 14 member Marion County judicial selection committee (committee). Provides that, when the committee learns of a vacancy on the court, the committee follows certain procedures that conclude in the committee sending the names of three nominees to the governor. Requires the governor to appoint one of the nominees as judge to fill the vacancy. Provides that, at the end of a judge's term on the court, the judge may have the question of the judge's retention on the court placed on the general election ballot. Provides that, before a judge may stand for retention, the judge must appear before the committee to allow the committee to issue a recommendation to voters concerning the judge's qualifications and suitability to continue to hold judicial office. Requires that the judge's retention on the court must be approved or rejected by the electorate of Marion County. Makes a technical correction.

**Effective:** Upon passage.

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**Steuerwald, Bosma, Frizzell,  
DeLaney**

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January 4, 2017, read first time and referred to Committee on Courts and Criminal Code.  
January 26, 2017, amended, reported — Do Pass.

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HB 1036—LS 6487/DI 106





January 27, 2017

First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## HOUSE BILL No. 1036

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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 3-10-1-16 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. At a primary  
3 election a voter may vote for as many candidates for each office as  
4 there are persons to be elected to that office at the general election.  
5 ~~except as provided in IC 33-33-49-13 for candidates for judge of the~~  
6 ~~Marion superior court.~~

7 SECTION 2. IC 3-11-2-10, AS AMENDED BY P.L.21-2016,  
8 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9 UPON PASSAGE]: Sec. 10. (a) Public questions shall be placed on the  
10 general election ballot in the following order after the statement  
11 described in section 7 of this chapter, and the instructions described in  
12 subsections (d) and (e) and section 8 of this chapter, if instructions are  
13 printed on the ballot:

- 14 (1) Ratification of a state constitutional amendment.  
15 (2) Local public questions.

16 **Subject to section 10.1 of this chapter**, each public question shall be  
17 placed in a separate column on the ballot.

**HB 1036—LS 6487/DI 106**



1 (b) The name or title of the political party or independent ticket  
 2 described in section 6 of this chapter shall be placed on the general  
 3 election ballot after the public questions described in subsection (a).  
 4 The device of the political party or independent ticket shall be placed  
 5 immediately under the name of the political party or independent ticket.  
 6 The instructions for voting a straight party ticket shall be placed to the  
 7 right of the device, if instructions are printed on the ballot.

8 (c) The instructions for voting a straight party ticket must conform  
 9 as nearly as possible to the following:

10 "(1) To vote a straight (insert political party name) ticket for all  
 11 (insert political party name) candidates on this ballot, except for  
 12 candidates described in (2) below, make a voting mark on or in  
 13 this circle and do not make any other marks on this ballot.

14 (2) To vote for any candidate for an at-large office (insert county  
 15 council, city common council, town council, or township board if  
 16 those offices appear on this ballot), you must make another voting  
 17 mark for each candidate you wish to vote for. Your straight party  
 18 vote will not count as a vote for any candidate for that office.

19 (3) If you wish to vote for a candidate seeking a nonpartisan office  
 20 or on a public question, you must make another voting mark on  
 21 the appropriate place on this ballot."

22 (d) Except as permitted under section 8(b) of this chapter, if the  
 23 ballot contains an independent ticket described in section 6 of this  
 24 chapter and at least one (1) other independent candidate, the ballot  
 25 must also contain a statement that reads substantially as follows: "A  
 26 vote cast for an independent ticket will only be counted for the  
 27 candidates for President and Vice President or governor and lieutenant  
 28 governor comprising that independent ticket. This vote will NOT be  
 29 counted for any OTHER independent candidate appearing on the  
 30 ballot."

31 (e) Except as permitted under section 8(b) of this chapter, the ballot  
 32 must also contain a statement that reads substantially as follows: "A  
 33 write-in vote will NOT be counted unless the vote is for a DECLARED  
 34 write-in candidate. To vote for a write-in candidate, you must make a  
 35 voting mark on or in the square to the left of the name you have written  
 36 in or your vote will not be counted."

37 (f) **Subject to section 10.1 of this chapter**, the list of candidates of  
 38 the political party shall be placed immediately under the instructions  
 39 for voting a straight party ticket. The names of the candidates shall be  
 40 placed three-fourths (3/4) of an inch apart from center to center of the  
 41 name. The name of each candidate must have, immediately on its left,  
 42 a square three-eighths (3/8) of an inch on each side.



1 (g) The circuit court clerk may authorize the printing of ballots  
 2 containing a ballot variation code to ensure that the proper version of  
 3 a ballot is used within a precinct.

4 SECTION 3. IC 3-11-2-10.1 IS ADDED TO THE INDIANA CODE  
 5 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE**  
 6 **UPON PASSAGE]: Sec. 10.1. (a) This section applies only to a**  
 7 **public question concerning the retention in office of a judge of the**  
 8 **Marion superior court under IC 33-33-49.**

9 (b) **The question of the retention of the judge at the general**  
 10 **election shall be placed on the ballot at the same row or column**  
 11 **level of the ballot at which the question of other judges is placed on**  
 12 **the ballot but in a column or row in which independent candidates**  
 13 **are placed on the ballot.**

14 (c) **If the question of the retention of more than one (1) judge is**  
 15 **placed on a ballot, the judges shall be placed on the ballot in**  
 16 **alphabetical order according to surname.**

17 SECTION 4. IC 3-13-6-1, AS AMENDED BY P.L.194-2013,  
 18 SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 19 UPON PASSAGE]: Sec. 1. (a) As used in this section, "judge" refers  
 20 to a judge of a circuit, superior, or probate court.

21 (b) If a judge wants to resign from office, the judge must resign as  
 22 provided in IC 5-8-3.5.

23 (c) A vacancy that occurs because of the death of a judge may be  
 24 certified to the governor under IC 5-8-6.

25 (d) A vacancy that occurs, other than by resignation or death of a  
 26 judge, shall be certified to the governor by the circuit court clerk of the  
 27 county in which the judge resided.

28 (e) A vacancy in the office of judge of a circuit court shall be filled  
 29 by the governor as provided by Article 5, Section 18 of the Constitution  
 30 of the State of Indiana. However, the governor may not fill a vacancy  
 31 that occurs because of the death of a judge until the governor receives  
 32 notice of the death under IC 5-8-6.

33 (f) The person who is appointed holds the office until:

34 (1) the end of the unexpired term; or

35 (2) a successor is elected at the next general election for the  
 36 office, and qualified;

37 whichever occurs first.

38 (g) Except as provided in this subsection, the office of judge of the  
 39 circuit court shall be elected at the next general election following the  
 40 date any vacancy occurred. If a vacancy occurs in the office of judge of  
 41 the circuit court after noon seventy-four (74) days before a general  
 42 election, the office shall be elected at the second general election



1 following the date any vacancy occurred.

2 (h) The person elected at the general election following an  
3 appointment to fill the vacancy, upon being qualified, holds office for  
4 the six (6) year term prescribed by Article 7, Section 7 of the  
5 Constitution of the State of Indiana and until a successor is elected and  
6 qualified.

7 (i) A vacancy in the office of judge of a superior or probate court  
8 shall be filled by the governor subject to the following:

9 (1) IC 33-33-2-39.

10 (2) IC 33-33-2-43.

11 (3) IC 33-33-45-38.

12 (4) IC 33-33-71-40.

13 **(5) IC 33-33-49-13.4.**

14 However, the governor may not fill a vacancy that occurs because of  
15 the death of a judge until the governor receives notice of the death  
16 under IC 5-8-6. The person who is appointed holds office for the  
17 remainder of the unexpired term.

18 SECTION 5. IC 33-23-11-2 IS AMENDED TO READ AS  
19 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this  
20 chapter, "close relative" means a person: ~~related to:~~

21 (1) related to another person filing a statement of economic  
22 interest; or

23 (2) related to the other person's spouse;

24 as a son, a daughter, a grandson, a granddaughter, a great-grandson, a  
25 great-granddaughter, a father, a mother, a grandfather, a grandmother,  
26 a great-grandfather, a great-grandmother, a brother, a sister, a nephew,  
27 a niece, an uncle, or an aunt. For purposes of this section, relatives by  
28 adoption, half-blood, marriage, or remarriage are treated as relatives of  
29 whole kinship.

30 SECTION 6. IC 33-33-49-6, AS AMENDED BY P.L.80-2006,  
31 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
32 UPON PASSAGE]: Sec. 6. (a) There is established a superior court in  
33 Marion County. The court consists of:

34 (1) thirty-five (35) judges beginning January 1, 2007, and ending  
35 December 31, 2008; and

36 (2) thirty-six (36) judges beginning January 1, 2009.

37 (b) To be qualified to serve as a judge of the court, a person must  
38 be, at the time a ~~declaration of candidacy or a petition of nomination~~  
39 ~~under IC 3-8-6 is filed the person applies to fill a vacancy or files for~~  
40 **retention:**

41 (1) a resident of Marion County; and

42 (2) an attorney who has been admitted to the bar of Indiana for at



1 least five (5) years.

2 (c) During the term of office, a judge of the court must remain a  
3 resident of Marion County.

4 SECTION 7. IC 33-33-49-13 IS REPEALED [EFFECTIVE UPON  
5 PASSAGE]. Sec. 13: (a) Each judge of the court shall be elected for a  
6 term of six (6) years that begins January 1 after the year of the judge's  
7 election and continues through December 31 in the sixth year. The  
8 judge shall hold office for the six (6) year term or until the judge's  
9 successor is elected and qualified. A candidate for judge shall run at  
10 large for the office of judge of the court and not as a candidate for  
11 judge of a particular room or division of the court.

12 (b) At the primary election held in 2008 and every six (6) years  
13 thereafter, a political party may nominate not more than eight (8)  
14 candidates for judge of the court. At the primary election held in 2006  
15 and every six (6) years thereafter, a political party may nominate not  
16 more than ten (10) candidates for judge of the court. The candidates  
17 shall be voted on at the general election. Other candidates may qualify  
18 under IC 3-8-6 to be voted on at the general election.

19 (c) The names of the party candidates nominated and properly  
20 certified to the Marion County election board, along with the names of  
21 other candidates who have qualified, shall be placed on the ballot at the  
22 general election in the form prescribed by IC 3-11. At the 2008 general  
23 election and every six (6) years thereafter, persons eligible to vote at  
24 the general election may vote for sixteen (16) candidates for judge of  
25 the court. Beginning with the 2006 general election and every six (6)  
26 years thereafter, persons eligible to vote at the general election may  
27 vote for twenty (20) candidates for judge of the court.

28 (d) The candidates for judge of the court receiving the highest  
29 number of votes shall be elected to the vacancies. The names of the  
30 candidates elected as judges of the court shall be certified to the county  
31 election board as provided by law.

32 SECTION 8. IC 33-33-49-13.1 IS ADDED TO THE INDIANA  
33 CODE AS A NEW SECTION TO READ AS FOLLOWS  
34 [EFFECTIVE UPON PASSAGE]: Sec. 13.1. (a) As used in this  
35 chapter:

36 (1) "close relative" has the meaning set forth in  
37 IC 33-23-11-2; and

38 (2) "committee" refers to the Marion County judicial  
39 selection committee established by subsection (b).

40 (b) The Marion County judicial selection committee is  
41 established to:

42 (1) select nominees for the court; and



- 1           (2) make recommendations to the voters concerning the  
2           retention of a judge on the court.
- 3           (c) The committee consists of the following fourteen (14)  
4           members:
- 5           (1) Four (4) members who reside in Marion County,  
6           appointed as follows:
- 7           (A) One (1) member appointed by the speaker of the house  
8           of representatives.
- 9           (B) One (1) member appointed by the minority leader of  
10          the house of representatives.
- 11          (C) One (1) member appointed by the president pro  
12          tempore of the senate.
- 13          (D) One (1) member appointed by the minority leader of  
14          the senate.
- 15          A person appointed under this subdivision may not be a  
16          member of the general assembly.
- 17          (2) An attorney who resides in Marion County and practices  
18          primarily in the area of criminal law, appointed by the  
19          president of the Indianapolis bar association.
- 20          (3) An attorney who resides in Marion County and practices  
21          primarily in the area of criminal law, appointed by the  
22          president of the Marion County bar association.
- 23          (4) An attorney who resides in Marion County, appointed by  
24          the president of the Indiana Trial Lawyers Association.
- 25          (5) An attorney who resides in Marion County, appointed by  
26          the president of the Defense Trial Counsel of Indiana.
- 27          (6) Two (2) members appointed by the chairperson of each  
28          major political party (as defined by IC 3-5-2-30(2)) in Marion  
29          County. Each of the four (4) members appointed under this  
30          subdivision must reside in Marion County, and at least one (1)  
31          member appointed by each major political party should be a  
32          woman or a minority (as defined in IC 16-46-6-2), or both.
- 33          (7) The chief judge of the Indiana Court of Appeals or a  
34          designee of the chief judge who is a judge of the Indiana Court  
35          of Appeals. The chief judge or chief judge's designee serves as  
36          the vice chairperson of the committee ex officio.
- 37          (8) The chief justice of Indiana or a designee of the chief  
38          justice who is a justice of the Indiana Supreme Court. The  
39          chief justice or chief justice's designee serves as the  
40          chairperson of the committee ex officio.
- 41          (d) If a member of the committee is employed by a law firm, no  
42          other person employed by the same law firm may be appointed to





- 1 the committee.
- 2 (e) A member of the committee may not be:
- 3 (1) a current or former judge of the Marion superior or
- 4 circuit court;
- 5 (2) a current or former judicial officer appointed by the
- 6 Marion superior or circuit court;
- 7 (3) a current or former employee of the Marion superior or
- 8 circuit court; or
- 9 (4) a close relative of anyone described in subdivision (1), (2),
- 10 or (3).
- 11 This subsection does not apply to a member appointed under
- 12 subsection (c)(7) or (c)(8).
- 13 (f) All attorney members of the committee must be in active and
- 14 good standing with the Indiana Supreme Court.
- 15 (g) Each member of the committee who is not an ex officio
- 16 member serves a four (4) year term, beginning on July 1, 2017, and
- 17 ending on June 30, 2021. A member of the committee may be
- 18 reappointed for one (1) or more additional four (4) year terms. If
- 19 a member is appointed to fill a vacancy, the member serves during
- 20 the unexpired term of the member's predecessor and may be
- 21 reappointed for one (1) or more additional four (4) year terms.
- 22 (h) If a vacancy exists on the committee, the appointing
- 23 authority who appointed the former member whose position has
- 24 become vacant shall appoint an individual to fill the vacancy.
- 25 (i) An ex officio member of the committee ceases to be a member
- 26 of the committee at the time the person no longer holds the office
- 27 that entitles the person to be a member of the committee.
- 28 (j) A member of the committee described in subsection (c)(1)
- 29 through (c)(6) who no longer resides in Marion County is
- 30 considered to have resigned from the committee. A member of the
- 31 committee who no longer resides in Marion County shall notify the
- 32 chairperson in writing of the member's change in residence.
- 33 (k) Each member of the committee is entitled to receive the
- 34 same per diem, mileage, and travel allowances paid to individuals
- 35 who serve as legislative members of interim study committees
- 36 established by the legislative council.
- 37 (l) A quorum consists of nine (9) members of the committee.
- 38 (m) The affirmative votes of nine (9) members of the committee
- 39 are required for the committee to take official action with respect
- 40 to any candidate for judicial office.
- 41 (n) The committee shall:
- 42 (1) nominate judicial candidates for the court in accordance



1 with section 13.4 of this chapter; and

2 (2) make recommendations concerning retention in  
3 accordance with section 13.7 of this chapter.

4 (o) The committee meets upon the call of the chairperson.

5 (p) The committee shall meet in the Indiana statehouse, or in  
6 any other appropriate location in Marion County, as determined  
7 by the chairperson.

8 (q) Except as otherwise provided in subsection (r) or otherwise  
9 provided in this chapter, the committee may adopt its own policies  
10 and operating procedures. The policies and procedures must  
11 comply with IC 5-14-1.5 (the open door law) and this chapter, and  
12 must include procedures by which eligible candidates for a vacancy  
13 on the court may submit their names to the committee. The policies  
14 and procedures are public records, and the meetings of the  
15 committee at which the policies and procedures are considered for  
16 initial adoption or amendment must be publicly announced and  
17 open to the public.

18 (r) Notwithstanding IC 5-14-1.5-2, the committee is a public  
19 agency for the purposes of IC 5-14-1.5. The committee may meet  
20 in executive session under IC 5-14-1.5-6.1 for the consideration of  
21 a candidate for appointment to or retention on the court if:

22 (1) notice of the executive session is given in the manner  
23 prescribed by IC 5-14-1.5-5; and

24 (2) all interviews of candidates are conducted at meetings  
25 open to the public.

26 (s) Notwithstanding IC 5-14-3-4, all public records (as defined  
27 in IC 5-14-3-2) of the committee are subject to IC 5-14-3-3,  
28 including records described in IC 5-14-3-4(b)(12). However, the  
29 following records are excepted from public inspection and copying  
30 at the discretion of the committee:

31 (1) Personnel files of committee employees and members and  
32 files of applicants for employment with the committee to the  
33 extent permitted under IC 5-14-3-4(b)(8).

34 (2) Records specifically prepared for discussion or developed  
35 during discussion in an executive session under  
36 IC 5-14-1.5-6.1, unless the records are prepared for use in the  
37 consideration of a candidate for retention or judicial  
38 appointment.

39 (3) Investigatory records prepared for the committee until:

40 (A) the records are filed and considered in connection with  
41 the consideration of a candidate;

42 (B) the records are publicly discussed by the committee in



- 1 connection with the consideration of a candidate;  
 2 (C) a candidate elects to have the records released by the  
 3 committee; or  
 4 (D) the committee elects to release the records that the  
 5 committee considers appropriate in response to publicly  
 6 disseminated statements relating to the activities or actions  
 7 of the committee;  
 8 whichever occurs first.
- 9 (4) Applications of candidates for judicial appointment who  
 10 are not among the applicants eligible for further  
 11 consideration following action by the committee.
- 12 (5) The work product of an attorney (as defined in  
 13 IC 5-14-3-2) representing the committee.
- 14 (t) When an event described by subsection (s)(3) occurs, the  
 15 investigatory record becomes available for public inspection and  
 16 copying under IC 5-14-3-3.
- 17 (u) A former member of the committee may not be nominated  
 18 as a judge of the court if the person has served as a member of the  
 19 committee within the previous five (5) years.
- 20 SECTION 9. IC 33-33-49-13.2 IS ADDED TO THE INDIANA  
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 22 [EFFECTIVE UPON PASSAGE]: Sec. 13.2. (a) Except for the  
 23 transitional period described in subsection (h), each judge of the  
 24 court shall serve a term of six (6) years. The judge shall hold office  
 25 for the six (6) year term or until the judge's successor is appointed  
 26 and qualified. A judge shall be appointed at large for the office of  
 27 judge of the court and not as the judge of a particular room or  
 28 division of the court.
- 29 (b) The thirty-six (36) judges of the court shall be divided into  
 30 three (3) retention classes. Each retention class consists of twelve  
 31 (12) judges.
- 32 (c) Retention class A consists of twelve (12) of the twenty (20)  
 33 judges:  
 34 (1) whose terms expire on December 31, 2018 (not including  
 35 the transitional period described in subsection (h)); and  
 36 (2) who have the most seniority as judges.  
 37 If two (2) or more judges have equal seniority such that the  
 38 assignment of only twelve (12) judges to retention class A cannot  
 39 be made, those judges having the lowest bar number (not including  
 40 the county identifier) have the highest seniority.
- 41 (d) Retention class B consists of:  
 42 (1) four (4) of the sixteen (16) judges who have the most



1 seniority as judges and whose terms expire on December 31,  
 2 2020 (not including the transitional period described in  
 3 subsection (h)); and

4 (2) the eight (8) judges not assigned to retention class A whose  
 5 terms would have expired on December 31, 2018 (not  
 6 including the transitional period described in subsection (h)).

7 If two (2) or more judges have equal seniority such that the  
 8 assignment of only four (4) judges described in subdivision (1) to  
 9 retention class B cannot be made, those judges having the lowest  
 10 bar number (not including the county identifier) have the highest  
 11 seniority.

12 (e) Retention class C consists of the twelve (12) judges:

13 (1) whose terms would have otherwise expired on December  
 14 31, 2020 (not including the transitional period described in  
 15 subsection (h)); and

16 (2) who are not assigned to retention class B.

17 (f) The term of a judge assigned to:

18 (1) retention class A begins January 1, 2021, and every six (6)  
 19 years thereafter, and continues through December 31, 2027,  
 20 and every six (6) years thereafter;

21 (2) retention class B begins January 1, 2023, and every six (6)  
 22 years thereafter, and continues through December 31, 2029,  
 23 and every six (6) years thereafter; and

24 (3) retention class C begins January 1, 2025, and every six (6)  
 25 years thereafter, and continues through December 31, 2031,  
 26 and every six (6) years thereafter.

27 (g) A newly appointed judge is assigned the retention class of the  
 28 judge's predecessor.

29 (h) Notwithstanding any other law, the term of a judge  
 30 described in:

31 (1) subsection (c) expires December 31, 2020;

32 (2) subsection (d) expires December 31, 2022; and

33 (3) subsection (e) expires December 31, 2024.

34 This subsection expires on January 1, 2025.

35 SECTION 10. IC 33-33-49-13.3 IS ADDED TO THE INDIANA  
 36 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 37 [EFFECTIVE UPON PASSAGE]: Sec. 13.3. (a) The retention in  
 38 office of a sitting judge of the court shall be approved or rejected  
 39 by the electorate of Marion County in accordance with this section.

40 (b) A judge who wishes to be retained in office shall file a  
 41 statement with the clerk during the period described in IC 3-8-2-4  
 42 during which a declaration of candidacy must be filed in the year



1 in which the judge's term expires. The judge's statement must  
2 include the following information:

3 (1) A statement indicating that the judge wishes to have the  
4 question of the judge's retention placed on the ballot.

5 (2) A statement of the judge's name as:

6 (A) the judge wants the judge's name to appear on the  
7 ballot; and

8 (B) a candidate's name is permitted to appear on the ballot  
9 under IC 3-5-7.

10 (3) If the judge is affiliated with a political party, the name of  
11 that political party. The judge may indicate in the statement  
12 that the judge is not affiliated with a political party. For  
13 purposes of this subdivision, a judge's affiliation with a  
14 political party is determined as provided in IC 3-8-2-7(a)(4).

15 (4) A statement that the judge requests that the name on the  
16 judge's voter registration record be the same as the name the  
17 judge uses on the statement. If there is a difference between  
18 the name on the judge's statement and the name on the  
19 judge's voter registration record, the clerk shall change the  
20 name on the judge's voter registration record to be the same  
21 as the name on the judge's statement.

22 If a judge does not file a statement under this subsection, the clerk  
23 shall, not later than March 1, notify the Marion County judicial  
24 selection committee in writing that the judge does not wish to  
25 continue in office after the end of the judge's term of office.

26 (c) The term of a judge:

27 (1) who does not file a statement under subsection (b); and

28 (2) whose term expires during the year in which the question  
29 of the retention of the judge would have been placed on the  
30 general election ballot;

31 expires December 31 of the year in which the question of the  
32 judge's retention would have been placed on the ballot.

33 (d) If the question of a judge's retention is required to be on the  
34 ballot at a general election, the question of approval or rejection of  
35 the judge's retention shall be placed on the general election ballot  
36 in the form prescribed by IC 3-11-2 and must state:

37 "Shall Judge (insert here the name of the judge as stated  
38 under subsection (b)(2)) be retained in office?"

39 If a majority of the ballots cast by the electors voting on the  
40 question is "Yes", the judge whose name appears on the question  
41 shall be approved for a six (6) year term beginning January 1  
42 following the general election as provided in section 13.2 of this



1 chapter. If a majority of the ballots cast by the electors voting on  
2 the question is not "Yes", the following apply:

3 (1) Retention of the judge whose name appears on the  
4 question is rejected.

5 (2) The office of the rejected judge becomes vacant on  
6 January 1 following the rejection.

7 (3) The vacancy shall be filled in accordance with this chapter.

8 SECTION 11. IC 33-33-49-13.4 IS ADDED TO THE INDIANA  
9 CODE AS A NEW SECTION TO READ AS FOLLOWS  
10 [EFFECTIVE UPON PASSAGE]: Sec. 13.4. (a) When the committee  
11 learns that a vacancy exists or will exist on the court, the  
12 committee shall nominate three (3) candidates to the governor to  
13 fill the vacancy in accordance with this section.

14 (b) In making a nomination under this section or a  
15 recommendation concerning retention under section 13.7 of this  
16 chapter, the committee shall consider the following factors with  
17 respect to a candidate:

18 (1) Law school record, including any academic honors and  
19 achievements.

20 (2) Contribution to scholarly journals and publications,  
21 legislative drafting, and legal briefs.

22 (3) Activities in public service, including:

23 (A) writings and speeches concerning public or civic affairs  
24 that are on public record, including but not limited to  
25 campaign speeches or writing, letters to newspapers, and  
26 testimony before public agencies;

27 (B) efforts and achievements in improving the  
28 administration of justice; and

29 (C) other conduct relating to the individual's profession.

30 (4) Whether the candidate reflects the diversity and makeup  
31 of Marion County.

32 (5) Legal experience, including the number of years of  
33 practicing law, the kind of practice involved, and reputation  
34 as a trial lawyer or judge.

35 (6) Probable judicial temperament.

36 (7) Personality traits, including the exercise of sound  
37 judgment, ability to compromise and conciliate, patience,  
38 decisiveness, and dedication.

39 (8) Membership on boards of directors, financial interest, and  
40 any other consideration that might create conflict of interest  
41 with a judicial office.

42 (9) Any other pertinent information that the committee feels



- 1 is important in selecting the best qualified individuals for  
 2 judicial office.
- 3 (c) As soon as practicable after the committee learns of a  
 4 vacancy, the committee shall publicly announce that it is accepting  
 5 applications from persons wishing to fill the vacancy. The  
 6 committee shall determine the form and content of the application,  
 7 establish a timetable for nominations, and schedule one (1) or more  
 8 hearings to interview qualified applicants and select nominees to  
 9 fill the vacancy. To the extent practicable, the committee shall  
 10 endeavor to interview as many qualified applicants as possible.  
 11 However, if a large number of applicants have applied to fill a  
 12 vacancy, the committee may limit itself to interviewing only the  
 13 most qualified applicants. The committee may conduct multiple  
 14 interviews. At the conclusion of the interview process, the  
 15 committee shall nominate the three (3) most qualified candidates  
 16 and forward their names to the governor, who shall appoint one (1)  
 17 of the nominees as judge.
- 18 (d) In no event may more than fifty-two percent (52%) of the  
 19 judges serving on the Marion superior court be members of the  
 20 same political party.
- 21 SECTION 12. IC 33-33-49-13.7 IS ADDED TO THE INDIANA  
 22 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 23 [EFFECTIVE UPON PASSAGE]: Sec. 13.7. (a) This section applies  
 24 to each sitting judge who will stand for retention under section 13.3  
 25 of this chapter, including a person who served as a judge of the  
 26 Marion superior court on December 31, 2016. However, an  
 27 incumbent judge must appear only one (1) time before the  
 28 committee for purposes of this section.
- 29 (b) The following definitions apply throughout this section:  
 30 (1) "News media" includes:  
 31 (A) a newspaper of general circulation in Marion County;  
 32 (B) one (1) or more broadcasters serving Marion County;  
 33 (C) any person who uses a blog or similar Internet web site  
 34 to provide information or commentary concerning the  
 35 judiciary or political matters of interest to residents of  
 36 Marion County; and  
 37 (D) any other appropriate source of news or information  
 38 for Marion County residents.
- 39 (2) "Voter outreach organization" includes any organization  
 40 that has the goal of informing voters in Marion County about  
 41 issues and candidates in upcoming elections.
- 42 (c) This subsection does not apply to an incumbent judge who



1 has previously appeared before the committee for purposes of this  
 2 section at least one (1) time. Before a judge may stand for retention  
 3 under section 13.3 of this chapter, the judge must appear before  
 4 the committee to permit the committee to issue a recommendation  
 5 to the voters concerning the judge's qualifications and suitability  
 6 to continue to hold judicial office.

7 (d) At the time a judge files a statement under section 13.3 of  
 8 this chapter that the judge wishes to be retained in office, the judge  
 9 shall:

10 (1) notify the committee that the judge wishes to be retained  
 11 in office; and

12 (2) provide the committee with a written statement describing  
 13 the judge's qualifications, with particular emphasis on the  
 14 matters described in section 13.4(b) of this chapter.

15 (e) After receiving the materials described in subsection (d), the  
 16 committee shall promptly schedule a hearing to consider the  
 17 materials submitted by the judge and interview the judge. Each  
 18 judge is entitled to a hearing before the committee. The hearings  
 19 shall be held in executive session.

20 (f) A judge is presumed qualified. The affirmative votes of at  
 21 least nine (9) committee members are required to find that a judge  
 22 is not qualified.

23 (g) If the committee finds that a judge is not qualified, the  
 24 committee shall do the following:

25 (1) Through the chairperson, place on the appropriate  
 26 Internet web site of the Indiana supreme court the following  
 27 statement: "After considering Judge (insert name here)'s  
 28 qualifications and Judge (insert name here)'s performance in  
 29 office, the Marion County Judicial Selection Committee finds  
 30 that Judge (insert name here) IS NOT qualified and SHOULD  
 31 NOT BE retained in office."

32 (2) Issue the following statement to news media and voter  
 33 outreach organizations: "After considering Judge (insert  
 34 name here)'s qualifications and Judge (insert name here)'s  
 35 performance in office, the Marion County Judicial Selection  
 36 Committee finds that Judge (insert name here) IS NOT  
 37 qualified and SHOULD NOT BE retained in office."

38 (3) Take any other steps reasonably calculated to inform the  
 39 general public in Marion County of the committee's  
 40 determination.

41 (h) If the committee does not find that a judge is unqualified, the  
 42 committee shall do the following:





- 1           **(1) Through the chairperson, place on the appropriate**  
2 **Internet web site of the Indiana supreme court the following**  
3 **statement: "After considering Judge (insert name here)'s**  
4 **qualifications and Judge (insert name here)'s performance in**  
5 **office, the Marion County Judicial Selection Committee finds**  
6 **that Judge (insert name here) IS qualified and SHOULD BE**  
7 **retained in office."**
- 8           **(2) Issue the following statement to news media and voter**  
9 **outreach organizations: "After considering Judge (insert**  
10 **name here)'s qualifications and Judge (insert name here)'s**  
11 **performance in office, the Marion County Judicial Selection**  
12 **Committee finds that Judge (insert name here) IS qualified**  
13 **and SHOULD BE retained in office."**
- 14           **(3) Take any other steps reasonably calculated to inform the**  
15 **general public in Marion County of the committee's**  
16 **determination.**
- 17           **(i) Subject to section 13.1 of this chapter, the committee may**  
18 **adopt policies and operating procedures to implement this section.**  
19 **SECTION 13. An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1036, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 6, line 36, after "committee" insert "**ex officio**".

Page 6, line 40, after "committee" insert "**ex officio**".

Page 8, line 40, delete "or introduced into evidence" and insert "**and considered**".

Page 10, line 32, delete "subsection (d)(2)" and insert "**subsection (d)**".

and when so amended that said bill do pass.

(Reference is to HB 1036 as introduced.)

WASHBURN

Committee Vote: yeas 10, nays 3.

