

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 ENROLLED ACT No. 1036

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

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

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

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

(b) The name or title of the political party or independent ticket described in section 6 of this chapter shall be placed on the general election ballot after the public questions described in subsection (a). The device of the political party or independent ticket shall be placed

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immediately under the name of the political party or independent ticket. The instructions for voting a straight party ticket shall be placed to the right of the device, if instructions are printed on the ballot.

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

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

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

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

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

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

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

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

SECTION 3. IC 3-11-2-10.1 IS ADDED TO THE INDIANA CODE



AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 10.1. (a) This section applies only to a public question concerning the retention in office of a judge of the Marion superior court under IC 33-33-49.**

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

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

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

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

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

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

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

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

- (1) the end of the unexpired term; or
- (2) a successor is elected at the next general election for the office, and qualified;

whichever occurs first.

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

(h) The person elected at the general election following an appointment to fill the vacancy, upon being qualified, holds office for the six (6) year term prescribed by Article 7, Section 7 of the



Constitution of the State of Indiana and until a successor is elected and qualified.

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

- (1) IC 33-33-2-39.
- (2) IC 33-33-2-43.
- (3) IC 33-33-45-38.
- (4) IC 33-33-71-40.
- (5) IC 33-33-49-13.4.**

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

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

- (1) **related to** another person filing a statement of economic interest; or
 - (2) **related to** the other person's spouse;
- as a son, a daughter, a grandson, a granddaughter, a great-grandson, a great-granddaughter, a father, a mother, a grandfather, a grandmother, a great-grandfather, a great-grandmother, a brother, a sister, a nephew, a niece, an uncle, or an aunt. For purposes of this section, relatives by adoption, half-blood, marriage, or remarriage are treated as relatives of whole kinship.

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

- (1) thirty-five (35) judges beginning January 1, 2007, and ending December 31, 2008; and
- (2) thirty-six (36) judges beginning January 1, 2009.

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

- (1) a resident of Marion County; and
- (2) an attorney who has been admitted to the bar of Indiana for at least five (5) years.

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

SECTION 7. IC 33-33-49-13 IS REPEALED [EFFECTIVE UPON



PASSAGE]. Sec. 13: (a) Each judge of the court shall be elected for a term of six (6) years that begins January 1 after the year of the judge's election and continues through December 31 in the sixth year. The judge shall hold office for the six (6) year term or until the judge's successor is elected and qualified. A candidate for judge shall run at large for the office of judge of the court and not as a candidate for judge of a particular room or division of the court.

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

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

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

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

- (1) "close relative" has the meaning set forth in IC 33-23-11-2; and
- (2) "committee" refers to the Marion County judicial selection committee established by subsection (b).

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

- (1) select nominees for the court; and
- (2) make recommendations to the voters concerning the retention of a judge on the court.

(c) The committee consists of the following fourteen (14) members:



(1) Four (4) members who reside in Marion County, appointed as follows:

(A) One (1) member appointed by the speaker of the house of representatives.

(B) One (1) member appointed by the minority leader of the house of representatives.

(C) One (1) member appointed by the president pro tempore of the senate.

(D) One (1) member appointed by the minority leader of the senate.

A person appointed under this subdivision may not be a member of the general assembly.

(2) An attorney who resides in Marion County and practices primarily in the area of criminal law, appointed by the president of the Indianapolis bar association.

(3) An attorney who resides in Marion County and practices primarily in the area of criminal law, appointed by the president of the Marion County bar association.

(4) An attorney who resides in Marion County, appointed by the president of the Indiana Trial Lawyers Association.

(5) An attorney who resides in Marion County, appointed by the president of the Defense Trial Counsel of Indiana.

(6) Two (2) members appointed by the chairperson of each major political party (as defined by IC 3-5-2-30(2)) in Marion County. Each of the four (4) members appointed under this subdivision must reside in Marion County and must reflect the diversity and makeup of Marion County.

(7) The chief judge of the Indiana Court of Appeals or a designee of the chief judge who is a judge of the Indiana Court of Appeals. The chief judge or chief judge's designee serves as the vice chairperson of the committee ex officio.

(8) The chief justice of Indiana or a designee of the chief justice who is a justice of the Indiana Supreme Court. The chief justice or chief justice's designee serves as the chairperson of the committee ex officio.

(d) If a member of the committee is employed by a law firm, no other person employed by the same law firm may be appointed to the committee.

(e) A member of the committee may not be:

(1) a current or former judge of the Marion superior or circuit court;

(2) a current or former judicial officer appointed by the



Marion superior or circuit court;

(3) a current or former employee of the Marion superior or circuit court; or

(4) a close relative of anyone described in subdivision (1), (2), or (3).

This subsection does not apply to a member appointed under subsection (c)(7) or (c)(8).

(f) All attorney members of the committee must be in active and good standing with the Indiana Supreme Court.

(g) Each member of the committee who is not an ex officio member serves a four (4) year term, beginning on July 1, 2017, and ending on June 30, 2021. A member of the committee may be reappointed for one (1) or more additional four (4) year terms. If a member is appointed to fill a vacancy, the member serves during the unexpired term of the member's predecessor and may be reappointed for one (1) or more additional four (4) year terms.

(h) If a vacancy exists on the committee, the appointing authority who appointed the former member whose position has become vacant shall appoint an individual to fill the vacancy.

(i) An ex officio member of the committee ceases to be a member of the committee at the time the person no longer holds the office that entitles the person to be a member of the committee.

(j) A member of the committee described in subsection (c)(1) through (c)(6) who no longer resides in Marion County is considered to have resigned from the committee. A member of the committee who no longer resides in Marion County shall notify the chairperson in writing of the member's change in residence.

(k) A quorum consists of nine (9) members of the committee.

(l) The affirmative votes of nine (9) members of the committee are required for the committee to take official action with respect to any candidate for judicial office.

(m) The committee shall:

(1) nominate judicial candidates for the court in accordance with section 13.4 of this chapter; and

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

(n) The committee meets upon the call of the chairperson.

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

(p) Except as otherwise provided in subsection (q) or otherwise provided in this chapter, the committee may adopt its own policies



and operating procedures. The policies and procedures must comply with IC 5-14-1.5 (the open door law) and this chapter, and must include procedures by which eligible candidates for a vacancy on the court may submit their names to the committee. The policies and procedures are public records, and the meetings of the committee at which the policies and procedures are considered for initial adoption or amendment must be publicly announced and open to the public. Applications of candidates for judicial appointment are public records.

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

- (1) notice of the executive session is given in the manner prescribed by IC 5-14-1.5-5; and
- (2) all interviews of candidates are conducted at meetings open to the public.

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

- (1) Personnel files of committee employees and members and files of applicants for employment with the committee to the extent permitted under IC 5-14-3-4(b)(8).
- (2) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1, unless the records are prepared for use in the consideration of a candidate for retention or judicial appointment.
- (3) Investigatory records prepared for the committee until:
 - (A) the records are considered in connection with the consideration of a candidate;
 - (B) the records are publicly discussed by the committee in connection with the consideration of a candidate;
 - (C) a candidate elects to have the records released by the committee; or
 - (D) the committee elects to release the records that the committee considers appropriate in response to publicly disseminated statements relating to the activities or actions of the committee;
 whichever occurs first.



(4) The work product of an attorney (as defined in IC 5-14-3-2) representing the committee.

(s) When an event described by subsection (r)(3) occurs, the investigatory record becomes available for public inspection and copying under IC 5-14-3-3.

(t) A former member of the committee may not be nominated as a judge of the court if the person has served as a member of the committee within the previous five (5) years.

SECTION 9. IC 33-33-49-13.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.2. (a) Each judge of the court shall serve a term of six (6) years. The judge shall hold office for the six (6) year term or until the judge's successor is appointed and qualified. A judge shall be appointed at large for the office of judge of the court and not as the judge of a particular room or division of the court.

(b) The thirty-six (36) judges of the court shall be divided into two (2) retention classes.

(c) Retention class A consists of the twenty (20) judges whose terms expire on December 31, 2018.

(d) Retention class B consists of the sixteen (16) judges whose terms expire on December 31, 2020.

(e) A newly appointed judge is assigned to the retention class of the judge's predecessor.

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

(b) A judge who wishes to be retained in office shall file a statement with the clerk and secretary of state during the period described in IC 3-8-2-4 during which a declaration of candidacy must be filed in the year in which the judge's term expires. The judge's statement must include the following information:

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

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

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

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

(3) If the judge is affiliated with a political party, the name of



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

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

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

(c) The term of a judge:

- (1) who does not file statements under subsection (b); and
- (2) whose term expires during the year in which the question of the retention of the judge would have been placed on the general election ballot;

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

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

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

If a majority of the ballots cast by the electors voting on the question is "Yes", the judge whose name appears on the question shall be approved for a six (6) year term beginning January 1 following the general election as provided in section 13.2 of this chapter. If a majority of the ballots cast by the electors voting on the question is not "Yes", the following apply:

- (1) Retention of the judge whose name appears on the question is rejected.
- (2) The office of the rejected judge becomes vacant on January 1 following the rejection.
- (3) The vacancy shall be filled in accordance with this chapter.

SECTION 11. IC 33-33-49-13.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



[EFFECTIVE UPON PASSAGE]: **Sec. 13.4. (a) When the committee learns that a vacancy exists or will exist on the court, the committee shall nominate three (3) candidates to the governor to fill the vacancy in accordance with this section.**

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

- (1) Law school record, including any academic honors and achievements.**
- (2) Contribution to scholarly journals and publications, legislative drafting, and legal briefs.**
- (3) Activities in public service, including:**
 - (A) writings and speeches concerning public or civic affairs that are on public record, including but not limited to campaign speeches or writing, letters to newspapers, and testimony before public agencies;**
 - (B) efforts and achievements in improving the administration of justice; and**
 - (C) other conduct relating to the individual's profession.**
- (4) Whether the candidate reflects the diversity and makeup of Marion County.**
- (5) Legal experience, including the number of years of practicing law, the kind of practice involved, and reputation as a trial lawyer or judge.**
- (6) Probable judicial temperament.**
- (7) Personality traits, including the exercise of sound judgment, ability to compromise and conciliate, patience, decisiveness, and dedication.**
- (8) Membership on boards of directors, financial interest, and any other consideration that might create conflict of interest with a judicial office.**
- (9) Any other pertinent information that the committee feels is important in selecting the best qualified individuals for judicial office.**

(c) As soon as practicable after the committee learns of a vacancy, the committee shall publicly announce that it is accepting applications from persons wishing to fill the vacancy. The committee shall determine the form and content of the application, establish a timetable for nominations, and schedule one (1) or more hearings to interview qualified applicants and select nominees to fill the vacancy. To the extent practicable, the committee shall



endeavor to interview as many qualified applicants as possible. However, if a large number of applicants have applied to fill a vacancy, the committee may limit itself to interviewing only the most qualified applicants. The committee may conduct multiple interviews. At the conclusion of the interview process, the committee shall nominate the three (3) most qualified candidates and forward their names to the governor, who shall, not later than sixty (60) days after the names of the candidates have been forwarded, appoint one (1) of the nominees as judge. If the governor does not make an appointment within the sixty (60) day period described in this subsection, the chairperson of the committee shall appoint one (1) of the nominees as judge.

(d) In no event may more than fifty-two percent (52%) of the judges serving on the Marion superior court be members of the same political party.

SECTION 12. IC 33-33-49-13.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.7. (a) This section applies to each sitting judge who will stand for retention under section 13.3 of this chapter, including a person who served as a judge of the Marion superior court on December 31, 2016. However, an incumbent judge must appear only one (1) time before the committee for purposes of this section.

(b) The following definitions apply throughout this section:

(1) "News media" includes:

- (A) a newspaper of general circulation in Marion County;
- (B) one (1) or more broadcasters serving Marion County;
- (C) any person who uses a blog or similar Internet web site to provide information or commentary concerning the judiciary or political matters of interest to residents of Marion County; and
- (D) any other appropriate source of news or information for Marion County residents.

(2) "Voter outreach organization" includes any organization that has the goal of informing voters in Marion County about issues and candidates in upcoming elections.

(c) This subsection does not apply to an incumbent judge who has previously appeared before the committee for purposes of this section at least one (1) time. Before a judge may stand for retention under section 13.3 of this chapter, the judge must appear before the committee to permit the committee to issue a recommendation to the voters concerning the judge's qualifications and suitability



to continue to hold judicial office.

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

- (1) notify the committee that the judge wishes to be retained in office; and
- (2) provide the committee with a written statement describing the judge's qualifications, with particular emphasis on the matters described in section 13.4(b) of this chapter.

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

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

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

- (1) Through the chairperson, place on the appropriate Internet web site of the Indiana supreme court the following statement: "After considering Judge (insert name here)'s qualifications and Judge (insert name here)'s performance in office, the Marion County Judicial Selection Committee finds that Judge (insert name here) IS NOT qualified and SHOULD NOT BE retained in office.".
- (2) Issue the following statement to news media and voter outreach organizations: "After considering Judge (insert name here)'s qualifications and Judge (insert name here)'s performance in office, the Marion County Judicial Selection Committee finds that Judge (insert name here) IS NOT qualified and SHOULD NOT BE retained in office.".
- (3) Take any other steps reasonably calculated to inform the general public in Marion County of the committee's determination.

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

- (1) Through the chairperson, place on the appropriate Internet web site of the Indiana supreme court the following statement: "After considering Judge (insert name here)'s qualifications and Judge (insert name here)'s performance in office, the Marion County Judicial Selection Committee finds



that Judge (insert name here) IS qualified and SHOULD BE retained in office."

(2) Issue the following statement to news media and voter outreach organizations: "After considering Judge (insert name here)'s qualifications and Judge (insert name here)'s performance in office, the Marion County Judicial Selection Committee finds that Judge (insert name here) IS qualified and SHOULD BE retained in office."

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

(i) Subject to section 13.1 of this chapter, the committee may adopt policies and operating procedures to implement this section.

SECTION 13. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

