

# HOUSE BILL No. 1453

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-40.

**Synopsis:** Appellate defender and misdemeanor reimbursement. Establishes the office of the state appellate defender and the juvenile defense office to provide direct appeals for indigent individuals. Provides that a county may be reimbursed for indigent services provided for misdemeanors in a superior or circuit court.

**Effective:** July 1, 2019.

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January 15, 2019, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

# HOUSE BILL No. 1453



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 33-40-2-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) Upon a  
3 determination by the judge of any court having criminal jurisdiction  
4 that:  
5 (1) the court is unable within a reasonable time to appoint an  
6 available attorney, public defender or otherwise, who is  
7 competent in the practice of law in criminal cases as legal counsel  
8 for any person charged in the court with a criminal offense and  
9 who does not have sufficient means to employ an attorney; or  
10 (2) in the interest of justice an attorney from another judicial  
11 circuit, not regularly practicing in the court, should be appointed  
12 to defend the indigent defendant or appeal the defendant's case,  
13 but the judge is unable within a reasonable time to provide for the  
14 direct appointment of an attorney;  
15 the judge may make written request to the state public defender to  
16 provide a qualified attorney for the defense of the indigent person **or**  
17 **to the state appellate defender for appellate services of the indigent**



1 **person.**

2 (b) The judge shall attach to the written request a copy of the  
3 affidavit or indictment, and state in the request the amount of the  
4 applicable minimum fee to be paid for the legal services of defense  
5 counsel in the case, subject to:

6 (1) any additional amount reasonable under all the circumstances  
7 of the case, to be determined and approved by the judge upon the  
8 final determination of the case; and

9 (2) reasonable partial allowances as may be approved and ordered  
10 by the judge pending final determination.

11 SECTION 2. IC 33-40-2-3 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) The state public  
13 defender shall prepare and maintain a schedule of minimum attorney's  
14 fees for all general classifications of criminal trials, and proceedings on  
15 plea of guilty, subject to the approval of the supreme court. The  
16 schedule shall be furnished upon request to all criminal courts. A fee  
17 approved by any court for the services of:

18 (1) the state public defender;

19 (2) the state public defender's deputy; or

20 (3) any attorney appointed by the state public defender and the  
21 judge under a request made to the state public defender;

22 may not be less than the approved minimum fee provided in the  
23 schedule.

24 (b) In cases where there has been a change of venue, the presiding  
25 judge may not approve a fee for a public defender from the office of the  
26 state public defender that exceeds one hundred twenty-five percent  
27 (125%) of the minimum fee schedule established under this chapter.

28 **(c) The state appellate defender shall prepare and maintain a**  
29 **schedule of minimum attorney's fees for all appellate cases. The**  
30 **schedule shall be furnished upon request to all criminal courts and**  
31 **appellate courts. A fee approved by any court for the services of**  
32 **the state appellate defender or any attorney appointed by the state**  
33 **appellate defender may not be less than the approved minimum fee**  
34 **provided in the schedule.**

35 SECTION 3. IC 33-40-2-4 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. All fees for services  
37 rendered by the state public defender, ~~or~~ any of the state public  
38 defender's deputies, **or the state appellate defender** under this chapter  
39 shall be paid directly to the state treasurer, to be expended for any  
40 necessary expenses of the office of the state public defender, including  
41 salaries of the necessary deputies, in addition to the state general funds  
42 otherwise appropriated by the general assembly for the payment of the



1 expenses.

2 SECTION 4. IC 33-40-4-5 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. The council shall:

4 (1) assist in the coordination of the duties of the attorneys  
5 engaged in the defense of indigents at public expense;

6 (2) prepare manuals of procedure;

7 (3) assist in the preparation of trial briefs, forms, and instructions;

8 (4) conduct research and studies of interest or value to all such  
9 attorneys; ~~and~~

10 (5) maintain liaison contact with study commissions,  
11 organizations, and agencies of all branches of local, state, and  
12 federal government that will benefit criminal defense as part of  
13 the fair administration of justice in Indiana; **and**

14 **(6) create training programs and material for the juvenile  
15 defense office of the state appellate defender under  
16 IC 33-40-5-13.**

17 SECTION 5. IC 33-40-5-6 IS ADDED TO THE INDIANA CODE  
18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
19 1, 2019]: **Sec. 6. The office of the state appellate defender is  
20 established within the commission.**

21 SECTION 6. IC 33-40-5-7 IS ADDED TO THE INDIANA CODE  
22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
23 1, 2019]: **Sec. 7. (a) When the state appellate defender position  
24 needs to be filled, an advisory committee consisting of the following  
25 seven (7) members shall be formed:**

26 **(1) A public defender from each of the three (3) court of  
27 appeals districts described in IC 33-25-1-2(1) through  
28 IC 33-25-1-2(3), who has practiced criminal appellate work  
29 for at least five (5) years, appointed by the public defender  
30 council of Indiana.**

31 **(2) An appellate attorney practicing in Indiana, appointed by  
32 the president pro tempore of the senate.**

33 **(3) A justice of the Indiana supreme court or a judge of the  
34 Indiana court of appeals, appointed by the chief justice of  
35 Indiana.**

36 **(4) A full-time professor of law who teaches at a law school in  
37 Indiana, appointed by the speaker of the house of  
38 representatives.**

39 **(5) A leader from a nonprofit organization specializing in the  
40 reentry of formerly incarcerated individuals into society,  
41 appointed by Indiana Legal Services, Inc.**

42 **(b) A member of the advisory committee may not be a**



1 practicing prosecutor, law enforcement officer, or employee of the  
2 attorney general's office.

3 (c) The justice of the Indiana supreme court or the judge of the  
4 Indiana court of appeals appointed under subsection (a)(3) shall be  
5 the chairperson of the advisory committee.

6 (d) The advisory committee shall recommend three (3)  
7 individuals to the commission to consider for the state appellate  
8 defender.

9 (e) The individuals recommended under subsection (d) must:

10 (1) be residents of Indiana; and

11 (2) have practiced criminal appellate law in Indiana for at  
12 least three (3) years.

13 (f) The commission shall provide staff support to the advisory  
14 committee.

15 (g) Each advisory committee shall expire upon the appointment  
16 of a new state appellate defender by the commission.

17 SECTION 7. IC 33-40-5-8 IS ADDED TO THE INDIANA CODE  
18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
19 1, 2019]: Sec. 8. (a) The commission may appoint the state appellate  
20 defender:

21 (1) from the three (3) individuals recommended by the  
22 advisory committee under section 7 of this chapter; or

23 (2) another individual who the commission has determined is  
24 qualified;

25 for a term of four (4) years.

26 (b) The commission may renew the appointment of the state  
27 appellate defender for additional four (4) year terms.

28 (c) The commission may terminate a state appellate defender  
29 appointment only for good cause.

30 SECTION 8. IC 33-40-5-9 IS ADDED TO THE INDIANA CODE  
31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
32 1, 2019]: Sec. 9. (a) This section does not apply to an individual who  
33 is a resident of Marion County.

34 (b) The state appellate defender shall:

35 (1) represent all individuals, in appellate cases, who:

36 (A) have a right to counsel under federal or state law; and

37 (B) are not financially able to employ appellate counsel;

38 (2) provide trial level appellate support, if sufficient resources  
39 are available;

40 (3) initiate original appellate actions; and

41 (4) except as provided in subsection (c), pay for appellate  
42 expenses that the state appellate defender litigates.



1 (c) The state appellate defender shall not pay for transcript  
2 expenses that are county expenses under IC 33-40-6.

3 (d) A circuit or superior judge, the Indiana court of appeals, and  
4 the Indiana supreme court may refer clients to the state appellate  
5 defender after indigency is determined.

6 (e) This section does not:

7 (1) prohibit a person from pursuing an appellate proceeding  
8 on the person's own behalf;

9 (2) prohibit a person from refusing the services of the state  
10 appellate defender; or

11 (3) require the state appellate defender to pursue an appeal if:

12 (A) the commission lacks sufficient resources to effectively  
13 represent the client; or

14 (B) an attorney has been appointed under IC 34-10-1.

15 SECTION 9. IC 33-40-5-10 IS ADDED TO THE INDIANA CODE  
16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
17 1, 2019]: **Sec. 10. (a) The state appellate defender:**

18 (1) may employ staff in order to discharge the state appellate  
19 defender's duties; and

20 (2) may enter into a contract for additional staff support that  
21 the commission determines is necessary.

22 (b) The state appellate defender may, with the consent of the  
23 commission, appoint or employ, at compensation to be fixed by the  
24 commission, deputies and other staff that may be required to  
25 discharge the state appellate defender's duties.

26 (c) The commission shall provide the state appellate defender  
27 with office space, furniture, and necessary supplies and equipment.

28 SECTION 10. IC 33-40-5-11 IS ADDED TO THE INDIANA  
29 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 11. (a) The state appellate  
30 defender may contract with an attorney, a group of attorneys, a  
31 private organization, or a county office to provide legal services to  
32 the state appellate defender's clients.**

33 (b) The state appellate defender shall establish minimum  
34 standards for contracts described in subsection (a).

35 SECTION 11. IC 33-40-5-12 IS ADDED TO THE INDIANA  
36 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 12. The state appellate defender  
37 shall not accept postconviction relief cases.**

38 SECTION 12. IC 33-40-5-13 IS ADDED TO THE INDIANA  
39 CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 13. (a) This section does not apply**  
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1 to an individual who is a resident of Marion County.

2 (b) The state appellate defender shall establish a juvenile  
3 defense office.

4 (c) The juvenile defense office may accept juvenile delinquency  
5 appeals referred to the state appellate defender.

6 (d) The juvenile defense office may initiate appeals, writs, and  
7 collateral challenges on behalf of a juvenile.

8 (e) The juvenile defense office may provide information  
9 concerning legal rights of juveniles, including the right to appeal,  
10 to juveniles in the department of correction and in juvenile  
11 detention centers in Indiana.

12 (f) The juvenile defense office may provide information to  
13 juvenile delinquency defendants in other circumstances.

14 (g) The juvenile defense office may provide technical assistance  
15 to county trial level defenders in juvenile cases.

16 SECTION 13. IC 33-40-6-4 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) A county auditor  
18 may submit on a quarterly basis a certified request to the public  
19 defender commission for reimbursement from the public defense fund  
20 for an amount equal to fifty percent (50%) of the county's expenditures  
21 for indigent defense services provided to a defendant against whom the  
22 death sentence is sought under IC 35-50-2-9.

23 (b) A county auditor may submit on a quarterly basis a certified  
24 request to the public defender commission for reimbursement from the  
25 public defense fund for an amount equal to forty percent (40%) of the  
26 county's expenditures for indigent defense services provided in all  
27 noncapital cases ~~except~~ **including** misdemeanors.

28 (c) A request under this section from a county described in  
29 IC 33-40-7-1(3) may be limited to expenditures for indigent defense  
30 services provided by a particular division of a court.

31 SECTION 14. IC 33-40-6-5, AS AMENDED BY P.L.161-2018,  
32 SECTION 106, IS AMENDED TO READ AS FOLLOWS  
33 [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) As used in this section,  
34 "commission" means the Indiana public defender commission  
35 established by IC 33-40-5-2.

36 (b) Except as provided under section 6 of this chapter, upon  
37 certification by a county auditor and a determination by the  
38 commission that the request is in compliance with the guidelines and  
39 standards set by the commission, the commission shall quarterly  
40 authorize an amount of reimbursement due the county:

41 (1) that is equal to fifty percent (50%) of the county's certified  
42 expenditures for indigent defense services provided for a



1 defendant against whom the death sentence is sought under  
2 IC 35-50-2-9; and

3 (2) that is equal to forty percent (40%) of the county's certified  
4 expenditures for defense services provided in noncapital cases,  
5 **except including** misdemeanors.

6 The commission shall then certify to the auditor of state the amount of  
7 reimbursement owed to a county under this chapter.

8 (c) Upon receiving certification from the commission, the auditor of  
9 state shall issue a warrant to the treasurer of state for disbursement to  
10 the county of the amount certified.

11 SECTION 15. IC 33-40-7-11 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 11. (a) A county public  
13 defender board shall submit a written request for reimbursement to the  
14 county auditor. The request must set forth the total of the county's  
15 expenditures for indigent defense services to the county auditor and  
16 may be limited in a county described in section 1(3) of this chapter to  
17 expenditures for indigent defense services provided by a particular  
18 division of a court. The county auditor shall review the request and  
19 certify the total of the county's expenditures for indigent defense  
20 services to the Indiana public defender commission.

21 (b) Upon certification by the Indiana public defender commission  
22 that the county's indigent defense services meet the commission's  
23 standards, the auditor of state shall issue a warrant to the treasurer of  
24 state for disbursement to the county of a sum equal to forty percent  
25 (40%) of the county's certified expenditures for indigent defense  
26 services provided in noncapital cases, **except including** misdemeanors.

27 (c) If a county's indigent defense services fail to meet the standards  
28 adopted by the Indiana public defender commission, the public  
29 defender commission shall notify the county public defender board and  
30 the county fiscal body of the failure to comply with the Indiana public  
31 defender commission's standards. Unless the county public defender  
32 board corrects the deficiencies to comply with the standards not more  
33 than ninety (90) days after the date of the notice, the county's eligibility  
34 for reimbursement from the public defense fund terminates at the close  
35 of that fiscal year.

