

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.

SENATE ENROLLED ACT No. 488

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 33-40-5-4, AS AMENDED BY P.L.187-2015, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. The commission shall do the following:

- (1) Make recommendations to the supreme court concerning standards for indigent defense services provided for defendants against whom the state has sought the death sentence under IC 35-50-2-9, including the following:
 - (A) Determining indigency and eligibility for legal representation.
 - (B) Selection and qualifications of attorneys to represent indigent defendants at public expense.
 - (C) Determining conflicts of interest.
 - (D) Investigative, clerical, and other support services necessary to provide adequate legal representation.
- (2) Adopt guidelines and standards for indigent defense services under which the counties will be eligible for reimbursement under IC 33-40-6, including the following:
 - (A) Determining indigency and the eligibility for legal representation.
 - (B) The issuance and enforcement of orders requiring the defendant to pay for the costs of court appointed legal

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representation under IC 33-40-3.

(C) The use and expenditure of funds in the county supplemental public defender services fund established under IC 33-40-3-1.

(D) Qualifications of attorneys to represent indigent defendants at public expense.

(E) Compensation rates for salaried, contractual, and assigned counsel.

(F) Minimum and maximum caseloads of public defender offices and contract attorneys.

(G) Requirements concerning the creation and operation of a multicounty public defender's office created under an interlocal agreement as described in IC 33-40-7-3.5.

(3) Make recommendations concerning the delivery of indigent defense services in Indiana, including the funding and delivery of indigent defense services for juveniles.

(4) Make an annual report to the governor, the general assembly, and the supreme court on the operation of the public defense fund.

The report to the general assembly under subdivision (4) must be in an electronic format under IC 5-14-6.

SECTION 2. IC 33-40-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. **(a) For purposes of this section, the term "county auditor" includes a person who:**

(1) is the auditor of a county that is a member of a multicounty public defender's office; and

(2) is responsible for the receipt, disbursement, and accounting of all monies distributed to the multicounty public defender's office.

~~(a)~~ **(b)** A county auditor may submit on a quarterly basis a certified request to the public defender commission for reimbursement from the public defense fund for an amount equal to fifty percent (50%) of the county's expenditures for indigent defense services provided to a defendant against whom the death sentence is sought under IC 35-50-2-9.

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

~~(c)~~ **(d)** A request under this section from a county described in IC 33-40-7-1(3) may be limited to expenditures for indigent defense



services provided by a particular division of a court.

SECTION 3. IC 33-40-6-5, AS AMENDED BY P.L.161-2018, SECTION 106, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) As used in this section, "commission" means the Indiana public defender commission established by IC 33-40-5-2.

(b) Except as provided under section 6 of this chapter, upon certification by a county auditor and a determination by the commission that the request is in compliance with the guidelines and standards set by the commission, the commission shall quarterly authorize an amount of reimbursement due the county **or multicounty public defender's office:**

- (1) that is equal to fifty percent (50%) of the county's **or multicounty public defender's office's** certified expenditures for indigent defense services provided for a defendant against whom the death sentence is sought under IC 35-50-2-9; and
- (2) that is equal to forty percent (40%) of the county's **or multicounty public defender's office's** certified expenditures for defense services provided in noncapital cases except misdemeanors.

The commission shall then certify to the auditor of state the amount of reimbursement owed to a county **or multicounty public defender's office** under this chapter.

(c) Upon receiving certification from the commission, the auditor of state shall issue a warrant to the treasurer of state for disbursement to the county **or multicounty public defender's office** of the amount certified.

SECTION 4. IC 33-40-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 3. (a) A county executive may adopt an ordinance establishing a county public defender board consisting of three (3) members. The county executive shall appoint one (1) member. The judges who exercise felony or juvenile jurisdiction in the county shall appoint by majority vote ~~the other two (2) members:~~ **one (1) member. The Indiana public defender commission shall appoint one (1) member who must be a resident of the county or region managing the public defender's office.**

(b) ~~The members appointed by the judges may not be from the same political party.~~ The members must be persons who have demonstrated an interest in high quality legal representation for indigent persons. However, a member may not be:

- (1) a city, town, or county attorney;

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- (2) a law enforcement officer;
- (3) a judge; or
- (4) a court employee;
- (5) an attorney who provides representation to indigent persons in the county or region managed by the public defender board;**
- (6) an employee of the department of child services; or**
- (7) an employee of any individuals described in subdivisions (1) through (6).**

(c) Each member of the board serves a three (3) year term beginning with the date of the member's appointment. A member appointed to fill a vacancy holds office for the remainder of the previous member's term. If a successor has not been appointed by the end of a member's three (3) year term, the member continues in office until the member's successor takes office. **In the case of a county public defender board established before July 1, 2019, the appointment by the Indiana public defender commission shall begin upon the first expiration of a current term of a member appointed by the judges who exercise felony or juvenile jurisdiction in the county.**

(d) The members shall, by a majority vote, elect one (1) member to serve as chairperson.

(e) Meetings shall be held at least quarterly and may be held at other times during the year at the call of the:

- (1) chairperson; or
- (2) other two (2) members.

(f) A county executive may terminate the board by giving at least ninety (90) days written notice to the judges described in subsection (a).

SECTION 5. IC 33-40-7-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 3.5. (a) A county executive may adopt an ordinance allowing the county to enter into an interlocal agreement (as described in IC 36-1-7-3) with one (1) or more counties for the purpose of:**

- (1) creating a multicounty public defender's office; and**
- (2) providing legal defense services to indigent persons located in the counties served by the multicounty public defender's office.**

(b) An agreement described in subsection (a) shall:

- (1) require any created multicounty public defender's office to be administered by a joint board (as described in IC 36-1-7-3(a)(5)(B)); and**



(2) delegate, to an auditor of one (1) of the constituent counties comprising the multicounty public defender's office, the duty to receive, disburse, and account for all monies distributed to the multicounty public defender's office.

(c) Notwithstanding any guidelines and standards adopted by the Indiana public defender commission under IC 33-40-5-4, the members of a joint board shall be persons who have demonstrated an interest in high quality legal representation for indigent persons.

(d) Notwithstanding any other law or provision, a member of the joint board may not be:

- (1) a city, town, or county attorney;
- (2) a law enforcement officer;
- (3) a judge;
- (4) a court employee;
- (5) an employee of the department of child services;
- (6) an attorney who provides representation to indigent persons in one (1) or more of the counties served by the multicounty public defender's office being administered by the joint board; or
- (7) an employee of any individuals described in subdivisions (1) through (6).

(e) Each member of the joint board shall serve a three (3) year term that begins on the date of the member's appointment to the joint board.

(f) A member appointed to the joint board for the purpose of filling a vacancy shall serve a term limited to the duration of the previous member's term.

(g) If a successor has not been appointed before the end of a member's three (3) year term, the current member of the joint board shall continue the member's service until the member's successor:

- (1) has been appointed; and
- (2) is able to begin the member's term.

(h) The members shall, by a majority vote, elect one (1) member to serve as a chairperson.

(i) The joint board shall meet on a quarterly basis. The joint board may convene additional meetings upon the request of:

- (1) the chairperson; or
- (2) two (2) serving members of the joint board.

SECTION 6. IC 33-40-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) The board, or



joint board of a multicounty public defender's office created under section 3.5 of this chapter, shall prepare a comprehensive plan that must include at least one (1) of the following methods of providing legal defense services to indigent persons:

- (1) Establishing a county **or multicounty** public defender's office.
- (2) Contracting with an attorney, a group of attorneys, or a private organization.
- (3) Using an assigned counsel system of panel attorneys for case by case appointments under section 9 of this chapter.
- (4) In a county described in section 1(3) of this chapter, establishing a public defender's office for the criminal division of the superior court.

(b) The plan prepared under subsection (a) shall be submitted to the Indiana public defender commission.

(c) If a multicounty public defender's joint board is established under section 3.5 of this chapter, the comprehensive plan shall establish a multicounty public defender's office.

SECTION 7. IC 33-40-7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. **(a) For purposes of this section, the term "board" includes a joint board created by an interlocal agreement under section 3.5 of this chapter.**

~~(a)~~ **(b)** If a county **or multicounty** public defender's office is established under this chapter, the board shall do the following:

- (1) Recommend to the county fiscal body **or (in the case of a multicounty public defender's office) the fiscal body of each county that is a participant in the interlocal agreement under section 3.5 of this chapter** an annual operating budget for the county **or multicounty** public defender's office.
- (2) Appoint a county **or multicounty** public defender.
- (3) Submit an annual report to the county executive, the county fiscal body, and the judges described in section 3 of this chapter regarding the operation of the county **or multicounty** public defender's office, including information relating to caseloads and expenditures.

~~(b)~~ **(c)** A county **or multicounty** public defender shall be appointed for a term not ~~to exceed~~ **less than** four (4) years and may be reappointed. The county **or multicounty** public defender may be removed from office only upon a showing of good cause. An attorney must be admitted to the practice of law in Indiana for at least two (2) years before the attorney is eligible for appointment as a county **or multicounty** public defender.

SECTION 8. IC 33-40-7-7 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. A county **or multicounty** public defender shall do the following:

- (1) Maintain an office as approved by the board.
- (2) Hire and supervise staff necessary to perform the services of the office after the staff positions are recommended by the board and approved by the county executive and the fiscal body **or by the joint board of a multicounty office.**
- (3) Keep and maintain records of all cases handled by the office and report at least annually to the board and the Indiana public defender commission concerning the operation of the office, costs, and projected needs.

SECTION 9. IC 33-40-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 11. **(a) For purposes of this section, the term "county auditor" includes a person who:**

- (1) is the auditor of a county that is a member of a multicounty public defender's office described in section 3.5 of this chapter; and**
- (2) is responsible for the receipt, disbursement, and accounting of all monies distributed to the multicounty public defender's office.**

~~(a)~~ **(b)** A county public defender board, **or the joint board of a multicounty public defender's office** shall submit a written request for reimbursement to the county auditor. The request must set forth the total of the county's **or multicounty public defender's office's** expenditures for indigent defense services to the county auditor and may be limited in a county described in section 1(3) of this chapter to expenditures for indigent defense services provided by a particular division of a court. The county auditor shall review the request and certify the total of the county's **or multicounty's** expenditures for indigent defense services to the Indiana public defender commission.

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

~~(c)~~ **(d)** If a county's indigent defense services fail to meet the standards adopted by the Indiana public defender commission, the public defender commission shall notify the county public defender board **or the joint board of a multicounty public defender's office**

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and the county fiscal body of the failure to comply with the Indiana public defender commission's standards. Unless the county **or multicounty** public defender board corrects the deficiencies to comply with the standards not more than ninety (90) days after the date of the notice, the county's **or multicounty's** eligibility for reimbursement from the public defense fund terminates at the close of that fiscal year.

SECTION 10. IC 33-40-7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 12. A county **or multicounty** public defender, a contract attorney, or counsel appointed by the court to provide legal defense services to indigent persons may not be a partner or an employee at the same law firm that employs the county's prosecuting attorney or a deputy prosecuting attorney in a private capacity.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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