

IC 33-39

ARTICLE 39. PROSECUTING ATTORNEYS

IC 33-39-1

Chapter 1. Bond; Eligibility Requirements for Prosecuting Attorneys; Duty to Prosecute; Special Prosecutors; Pretrial Diversion

IC 33-39-1-1

Repealed

(Repealed by P.L.57-2014, SEC.3.)

IC 33-39-1-2

Prosecuting attorney; eligibility

Sec. 2. (a) This section does not apply to a deputy prosecuting attorney appointed by a prosecuting attorney or to a special prosecutor.

(b) To be eligible to hold office as a prosecuting attorney, a person must be a resident of the judicial circuit that the person serves.

As added by P.L.98-2004, SEC.18. Amended by P.L.222-2005, SEC.37.

IC 33-39-1-3

Bond of prosecuting attorney

Sec. 3. A person elected to the office of prosecuting attorney, before entering upon the duties of the office, shall execute a bond in the manner prescribed by IC 5-4-1.

As added by P.L.98-2004, SEC.18.

IC 33-39-1-4

Duties on receiving information of felony or misdemeanor

Sec. 4. (a) When a prosecuting attorney receives information of the commission of a felony or misdemeanor, the prosecuting attorney shall cause process to issue from a court (except the circuit court) having jurisdiction to issue the process to the proper officer, directing the officer to subpoena the persons named in the process who are likely to have information concerning the commission of the felony or misdemeanor. The prosecuting attorney shall examine a person subpoenaed before the court that issued the process concerning the offense.

(b) If the facts elicited under subsection (a) are sufficient to establish a reasonable presumption of guilt against the party charged, the court shall:

(1) cause the testimony that amounts to a charge of a felony or misdemeanor to be reduced to writing and subscribed and sworn to by the witness; and

(2) issue process for the apprehension of the accused, as in other cases.

As added by P.L.98-2004, SEC.18.

IC 33-39-1-5**Felony, misdemeanor, or infraction prosecutions; other duties required by law**

Sec. 5. Except as provided in IC 12-15-23-6(d), the prosecuting attorneys, within their respective jurisdictions, shall:

- (1) conduct all prosecutions for felonies, misdemeanors, or infractions and all suits on forfeited recognizances;
- (2) superintend, on behalf of counties or any of the trust funds, all suits in which the the counties or trust funds may be interested or involved; and
- (3) perform all other duties required by law.

As added by P.L.98-2004, SEC.18.

IC 33-39-1-6**Repealed**

(Repealed by P.L.57-2014, SEC.4.)

IC 33-39-1-7**Repealed**

(Repealed by P.L.57-2014, SEC.5.)

IC 33-39-1-8**Withholding of prosecution; applicability grounds; conditions; notification**

Sec. 8. (a) After June 30, 2005, this section does not apply to a person who:

- (1) holds a commercial driver's license; and
- (2) has been charged with an offense involving the operation of a motor vehicle in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

(b) This section does not apply to a person arrested for or charged with:

- (1) an offense under IC 9-30-5-1 through IC 9-30-5-5; or
- (2) if a person was arrested or charged with an offense under IC 9-30-5-1 through IC 9-30-5-5, an offense involving:

- (A) intoxication; or
- (B) the operation of a vehicle;

if the offense involving intoxication or the operation of a vehicle was part of the same episode of criminal conduct as the offense under IC 9-30-5-1 through IC 9-30-5-5.

(c) This section does not apply to a person:

- (1) who is arrested for or charged with an offense under:
 - (A) IC 7.1-5-7-7, if the alleged offense occurred while the person was operating a motor vehicle;
 - (B) IC 9-30-4-8(a), if the alleged offense occurred while the person was operating a motor vehicle;
 - (C) IC 35-44.1-2-13(b)(1); or
 - (D) IC 35-43-1-2(a), if the alleged offense occurred while the person was operating a motor vehicle; and

(2) who held a probationary license (as defined in IC 9-24-11-3.3(b)) and was less than eighteen (18) years of age at the time of the alleged offense.

(d) A prosecuting attorney may withhold prosecution against an accused person if:

- (1) the person is charged with a misdemeanor, a Level 6 felony, or a Level 5 felony;
- (2) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney;
- (3) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending; and
- (4) the prosecuting attorney electronically transmits information required by the prosecuting attorneys council concerning the withheld prosecution to the prosecuting attorneys council, in a manner and format designated by the prosecuting attorneys council.

(e) An agreement under subsection (d) may include conditions that the person:

- (1) pay to the clerk of the court an initial user's fee and monthly user's fees in the amounts specified in IC 33-37-4-1;
- (2) work faithfully at a suitable employment or faithfully pursue a course of study or career and technical education that will equip the person for suitable employment;
- (3) undergo available medical treatment or counseling and remain in a specified facility required for that purpose;
- (4) support the person's dependents and meet other family responsibilities;
- (5) make restitution or reparation to the victim of the crime for the damage or injury that was sustained;
- (6) refrain from harassing, intimidating, threatening, or having any direct or indirect contact with the victim or a witness;
- (7) report to the prosecuting attorney at reasonable times;
- (8) answer all reasonable inquiries by the prosecuting attorney and promptly notify the prosecuting attorney of any change in address or employment; and
- (9) participate in dispute resolution either under IC 34-57-3 or a program established by the prosecuting attorney.

(f) An agreement under subsection (d)(2) may include other provisions reasonably related to the defendant's rehabilitation, if approved by the court.

(g) The prosecuting attorney shall notify the victim when prosecution is withheld under this section.

(h) All money collected by the clerk as user's fees under this section shall be deposited in the appropriate user fee fund under IC 33-37-8.

(i) If a court withholds prosecution under this section and the terms of the agreement contain conditions described in subsection (e)(6):

- (1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

As added by P.L.98-2004, SEC.18. Amended by P.L.176-2005, SEC.21; P.L.234-2007, SEC.168; P.L.101-2009, SEC.16; P.L.125-2012, SEC.410; P.L.158-2013, SEC.342; P.L.217-2014, SEC.186; P.L.168-2014, SEC.47.

IC 33-39-1-9

Criminal charges against persons working with children; notification of employers

Sec. 9. A prosecuting attorney who charges a person with committing any of the following shall inform the person's employer of the charge, unless the prosecuting attorney determines that the person charged does not work with children:

- (1) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
- (2) Criminal deviate conduct (IC 35-42-4-2) (repealed), if the victim is less than eighteen (18) years of age.
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4(b)).
- (5) Vicarious sexual gratification (IC 35-42-4-5).
- (6) Child solicitation (IC 35-42-4-6).
- (7) Child seduction (IC 35-42-4-7).
- (8) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

As added by P.L.98-2004, SEC.18. Amended by P.L.158-2013, SEC.343; P.L.214-2013, SEC.31.

IC 33-39-2

Chapter 2. Powers and Duties

IC 33-39-2-1

Powers and duties

Sec. 1. A prosecuting attorney or deputy prosecuting attorney may:

- (1) take acknowledgments of deeds or other instruments in writing;
- (2) administer oaths;
- (3) protest notes and checks;
- (4) take the deposition of a witness;
- (5) take and certify affidavits and depositions; and
- (6) perform any duty now conferred upon a notary public by a statute.

An acknowledgment of a deed or another instrument taken by a prosecuting attorney or deputy prosecuting attorney may be recorded in the same manner as though a deed or another instrument were acknowledged before a notary public.

As added by P.L.98-2004, SEC.18.

IC 33-39-2-2

Seal

Sec. 2. A prosecuting attorney or deputy prosecuting attorney may not perform a duty set forth in section 1 of this chapter until the prosecuting attorney or deputy prosecuting attorney obtains a seal that stamps upon paper a distinct impression:

- (1) in words or letters sufficiently indicating the official character of the prosecuting attorney or deputy prosecuting attorney; and
- (2) that may include any other device chosen by the prosecuting attorney or deputy prosecuting attorney.

All acts not attested by a seal are void.

As added by P.L.98-2004, SEC.18.

IC 33-39-2-3

Statement of date of expiration of commission; appending to certificates

Sec. 3. A prosecuting attorney or deputy prosecuting attorney who performs any of the acts set forth in section 1 of this chapter shall, at the time of signing a certificate of acknowledgment of a deed, mortgage, other instrument, jurat, or other official document, append to the certificate a true statement of the date of the expiration of the commission of the prosecuting attorney or deputy prosecuting attorney. A prosecuting attorney or deputy prosecuting attorney has jurisdiction to perform the duties set forth in this chapter anywhere in Indiana.

As added by P.L.98-2004, SEC.18.

IC 33-39-2-4

Fees; violations of law

Sec. 4. A prosecuting attorney or deputy prosecuting attorney who performs an act under this chapter is entitled to the same fees as those charged by notaries public. If an act committed by a notary public would be a violation of the law, the act is a violation of the law if committed by a prosecuting attorney or deputy prosecuting attorney in the performance of an act authorized under this chapter.

As added by P.L.98-2004, SEC.18.

IC 33-39-2-5**Discharge of official duties**

Sec. 5. A prosecuting attorney or a deputy prosecuting attorney may administer all oaths that are convenient and necessary to be administered in the discharge of their official duties. An oath under this section shall be administered without any charge or expense.

As added by P.L.98-2004, SEC.18.

IC 33-39-2-6**Repealed**

(Repealed by P.L.57-2014, SEC.6.)

IC 33-39-2-7**Youth mentoring program**

Sec. 7. (a) A prosecuting attorney may establish and administer a youth mentoring program.

(b) To establish or administer a youth mentoring program described in subsection (a), a prosecuting attorney may:

- (1) establish and administer an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;
- (2) provide staff and material support to the organization; and
- (3) receive and expend charitable contributions, appropriations, and federal, state, local, or private grants.

(c) The prosecuting attorney shall provide an annual report to the county fiscal body concerning the youth mentoring program established under subsection (a). The youth mentoring program is subject to audit by the state board of accounts.

As added by P.L.119-2007, SEC.4.

IC 33-39-3

Chapter 3. Travel Expenses Reimbursed for Taking Depositions in Criminal Actions

IC 33-39-3-1

Depositions

Sec. 1. Except as provided in section 2 of this chapter and upon the order of a judge trying a criminal case, the county auditor shall pay to a prosecuting attorney, from funds in the county treasury not otherwise appropriated and as a part of the costs of the trial, an amount equal to the expenses necessarily incurred by a prosecuting attorney in traveling to attend the taking of any deposition in connection with the criminal action.

As added by P.L.98-2004, SEC.18.

IC 33-39-3-2

Depositions; change of venue

Sec. 2. If a prosecuting attorney incurred expenses described in section 1 of this chapter for a criminal case from another county being heard on a change of venue, the expenses shall be collected from the other county as other costs are collected in the case.

As added by P.L.98-2004, SEC.18.

IC 33-39-3-3

Filing of statement

Sec. 3. The court shall provide a prosecuting attorney an allowance for reasonable expenses after the prosecuting attorney files with the clerk of the court an itemized and verified statement of expenses.

As added by P.L.98-2004, SEC.18.

IC 33-39-4

Chapter 4. Appointment of Investigators and Jurisdiction to Investigate

IC 33-39-4-1

Duties; bond; salary

Sec. 1. (a) The prosecuting attorney of any judicial circuit of Indiana may appoint one (1) or more investigators with the approval of the county council or councils. An investigator appointed under this section:

- (1) works under the direction of the prosecuting attorney; and
- (2) may conduct investigations and assist in collecting and assembling evidence that, in the judgment of the prosecuting attorney, may be necessary for the successful prosecution of any of the criminal offenders of the judicial circuit.

(b) An investigator appointed under this section shall give bond in the sum of five thousand dollars (\$5,000) and has the same police powers within the county authorized by law to all police officers.

(c) In each judicial circuit the salary or other compensation to be paid an investigator appointed under this section shall be set by the county council or councils. A county council or councils may not reduce the number of investigators or compensation of any investigator without approval of the prosecuting attorney.

As added by P.L.98-2004, SEC.18.

IC 33-39-4-2

Jurisdiction to investigate; county where offense discovered; modified by agreement

Sec. 2. (a) If the place of trial for commission of an offense, as determined under IC 35-32-2-1, would potentially require a choice between or among counties, the coroner and law enforcement officers of the county where the offense is discovered have jurisdiction to investigate the offense.

(b) This section may be modified by agreement between or among the prosecuting attorneys of the counties involved.

As added by P.L.98-2004, SEC.18.

IC 33-39-5

Chapter 5. Assistance Procuring a Liquor License Prohibited

IC 33-39-5-1

Violations

Sec. 1. A:

- (1) prosecuting attorney;
- (2) deputy prosecuting attorney; or
- (3) judge of a city court;

who recklessly acts as attorney, agent, or counsel for an applicant in a proceeding to procure a license to retail or wholesale intoxicating liquors under IC 7.1, or aids or assists in any manner in the procuring of a license commits a Class B misdemeanor.

As added by P.L.98-2004, SEC.18.

IC 33-39-6

Chapter 6. Compensation of Prosecuting Attorneys, Deputies, and Investigators

IC 33-39-6-1

Payment of compensation; conferences for coordinated law enforcement plans

Sec. 1. (a) Prosecuting attorneys and deputy prosecuting attorneys are entitled to receive the compensation provided in this chapter. The minimum compensation of the prosecuting attorneys shall be paid in the manner prescribed in section 5 of this chapter. The compensation of the deputy prosecuting attorneys shall be paid in the manner prescribed in section 2 of this chapter.

(b) Upon the allowance of an itemized and verified claim by the board of county commissioners, the auditor of the county shall issue a warrant to a prosecuting attorney or deputy prosecuting attorney who filed the claim to pay any part of the compensation of a prosecuting attorney or a deputy prosecuting attorney that exceeds the amount that the state is to pay.

(c) A deputy prosecuting attorney who knowingly divides compensation with the prosecuting attorney or any other officer or person in connection with employment commits a Class B misdemeanor.

(d) A prosecuting attorney or any other officer or person who knowingly accepts any division of compensation described in subsection (c) commits a Class B misdemeanor.

(e) The attorney general shall call at least one (1) and not more than two (2) conferences of the prosecuting attorneys, each year, to consider, discuss, and develop coordinated plans for the enforcement of the laws of Indiana. The date or dates upon which the conferences are held shall be fixed by the attorney general. The expenses necessarily incurred by a prosecuting attorney in attending a conference, including the actual expense of transportation to and from the place where the conference is held, together with meals and lodging, shall be paid from the general fund of the county upon the presentation of an itemized and verified claim, filed as required by law, and by warrant issued by the county auditor. If there is more than one (1) county in any judicial circuit, the expenses of the prosecuting attorneys incurred by virtue of this subsection shall be paid from the general fund of the respective counties constituting the circuit in the same proportion that the classification factor of each county bears to the classification factor of the judicial circuit as determined according to law by the state board of accounts.

As added by P.L.98-2004, SEC.18. Amended by P.L.65-2004, SEC.19.

IC 33-39-6-2

Chief deputy and additional deputy; appointment; salaries

Sec. 2. (a) A prosecuting attorney may appoint one (1) chief deputy prosecuting attorney. The maximum annual salary paid by the

state of a chief deputy prosecuting attorney appointed under this subsection is as follows:

(1) If the prosecuting attorney is a full-time prosecuting attorney appointing a full-time chief deputy prosecuting attorney, the annual salary of the chief deputy prosecuting attorney is equal to seventy-five percent (75%) of the salary paid by the state to a full-time prosecuting attorney.

(2) If the prosecuting attorney is a full-time prosecuting attorney appointing a part-time chief deputy prosecuting attorney, the annual salary of the chief deputy prosecuting attorney is equal to seventy-five percent (75%) of the salary paid by the state to a part-time prosecuting attorney serving the judicial district served by the chief deputy prosecuting attorney.

(3) If the prosecuting attorney is a part-time prosecuting attorney appointing a full-time chief deputy prosecuting attorney, the annual salary of the chief deputy prosecuting attorney is equal to seventy-five percent (75%) of the salary paid by the state to a full-time prosecuting attorney.

(4) If the prosecuting attorney is a part-time prosecuting attorney appointing a part-time chief deputy prosecuting attorney, the annual salary of the chief deputy prosecuting attorney is equal to seventy-five percent (75%) of the salary paid by the state to a part-time prosecuting attorney.

(b) The prosecuting attorney in a county in which is located at least one (1) institution operated by the department of correction that houses at least one thousand five hundred (1,500) offenders may appoint two (2) additional deputy prosecuting attorneys. In a county having two (2) institutions, each of which houses at least one thousand five hundred (1,500) offenders, the prosecuting attorney may appoint a third deputy prosecuting attorney.

(c) The prosecuting attorney in a county in which is located an institution operated by the department of correction that houses at least one hundred (100) but less than one thousand five hundred (1,500) adult offenders may appoint one (1) additional deputy prosecuting attorney.

(d) The prosecuting attorney in a county in which is located a state institution (as defined in IC 12-7-2-184) that has a daily population of at least three hundred fifty (350) patients may appoint one (1) additional deputy prosecuting attorney.

(e) The prosecuting attorney of Cass County may appoint one (1) additional deputy prosecuting attorney.

(f) The annual salary of a deputy prosecuting attorney appointed under subsections (b) through (e) may not be less than seventy-five percent (75%) of the annual salary of the appointing prosecuting attorney, as determined under section 5 of this chapter as though the prosecuting attorney had not elected full-time status.

(g) The salaries provided in this section shall be paid by the state once every two (2) weeks from the state general fund. There is appropriated annually out of the general fund of the state sufficient funds to pay any amount necessary. However, the salaries fixed in

this chapter are determined to be maximum salaries to be paid by the state. This chapter does not limit the power of counties comprising the respective judicial circuits to pay additional salaries upon proper action by the appropriate county officials.

(h) The various county councils shall appropriate annually for other deputy prosecuting attorneys, investigators, clerical assistance, witness fees, out-of-state travel, postage, telephone tolls and telegraph, repairs to equipment, office supplies, other operating expenses, and equipment an amount necessary for the proper discharge of the duties imposed by law upon the office of the prosecuting attorney of each judicial circuit.

As added by P.L.98-2004, SEC.18. Amended by P.L.127-2008, SEC.20; P.L.112-2009, SEC.1; P.L.78-2011, SEC.1.

IC 33-39-6-3

Grading judicial circuits for compensation purposes

Sec. 3. For purposes of fixing the salaries of the various prosecuting attorneys under this chapter, each judicial circuit of the state is:

- (1) graded on the basis of population and gross assessed valuation; and
- (2) set up on the percentage ratio it bears to the state, the whole state being considered as one hundred percent (100%).

As added by P.L.98-2004, SEC.18.

IC 33-39-6-4

Classes of judicial circuits; classification factors

Sec. 4. (a) The nine (9) classes of the several judicial circuits of the state as set out in this chapter are based on a unit factor system. The factors are determined by the relations of the judicial circuit to the state as established and certified to each county auditor by the state board of accounts not later than June 20 of any calendar year. They are as follows:

- (1) Population.
- (2) Gross assessed valuation as shown by the last preceding gross assessed valuation as certified by the various counties to the auditor of the state in the calendar year in which the calculation is made.

(b) The factors for each of the nine (9) classes set out in this chapter shall be obtained as follows:

- (1) The population of each judicial circuit shall be divided by the population of the entire state.
- (2) The gross assessed valuation of each judicial circuit shall be divided by the gross assessed valuation of the entire state.
- (3) The two (2) results thus obtained shall be added together and the sum thus obtained for each judicial circuit shall be divided by two (2).
- (4) The final result so obtained, multiplied by one hundred (100), shall determine the classification of each judicial circuit according to the following schedule:

CLASSIFICATION FACTORS

	HIGH	LOW	CLASS
NO LIMIT		8.00	1
ALL UNDER	8.00	2.25	2
ALL UNDER	2.25	1.25	3
ALL UNDER	1.25	.85	4
ALL UNDER	.85	.70	5
ALL UNDER	.70	.60	6
ALL UNDER	.60	.50	7
ALL UNDER	.50	.35	8
ALL UNDER	.35	No limit	9

As added by P.L.98-2004, SEC.18.

IC 33-39-6-5

Minimum annual salary; full-time or part-time prosecutors

Sec. 5. (a) The annual minimum salary paid by the state to a full-time prosecuting attorney described in section 6 of this chapter is equal to the minimum salary of the circuit court judge of the same judicial circuit as the prosecuting attorney.

(b) A prosecuting attorney of a judicial circuit, other than a full-time prosecuting attorney described in section 6 of this chapter is entitled to a minimum annual salary in an amount equal to sixty percent (60%) of the salary provided in subsection (a), except as provided by subsection (c).

(c) A prosecuting attorney, other than a full-time prosecuting attorney described in section 6 of this chapter, of a judicial circuit:

(1) that has a population of less than eighty-five thousand (85,000) and that adjoins any county having a population of more than one hundred sixty thousand (160,000); or

(2) in which is located:

(A) the Indiana state prison, the Pendleton Correctional Facility, the Plainfield Correctional Facility, the Branchville Correctional Facility, the Wabash Valley Correctional Facility, or the Putnamville Correctional Facility; or

(B) a state institution (as defined in IC 12-7-2-184) that has a daily population of at least three hundred fifty (350) patients; is entitled to a minimum annual salary in an amount equal to sixty-six percent (66%) of the salary provided in subsection (a).

(d) The state shall pay, from the state general fund, the minimum annual salary of a prosecuting attorney. The state shall pay the minimum annual salary in equal installments with payments being made once every two (2) weeks.

As added by P.L.98-2004, SEC.18.

IC 33-39-6-6

Election to devote full time to duties of office of prosecuting attorney

Sec. 6. (a) Except as provided in section 7 of this chapter, a prosecuting attorney may elect to devote the prosecuting attorney's full professional time to the duties of the office of prosecuting

attorney by filing a written notice with the circuit court of the prosecuting attorney's judicial circuit and the auditor of state. The election may be made annually during the prosecuting attorney's term. However, the notice of election must be made before June 30 of the applicable year. An election is effective for each successive year of the term unless it is revoked before June 30 of the year during which the prosecuting attorney wants to change the prosecuting attorney's status. However, only one (1) change in status may be made during the term. A revocation is made by the prosecuting attorney by filing a written notice with the circuit court of the prosecuting attorney's judicial circuit and the auditor of state.

(b) A prosecuting attorney who elects to be a full-time prosecuting attorney:

(1) shall devote the prosecuting attorney's full professional time to the prosecuting attorney's office; and

(2) may not engage in the private practice of law.

(c) If a prosecuting attorney of a judicial circuit of the sixth through ninth class elects to become a full-time prosecuting attorney and the majority of the county council consents to the election, a copy of the consent must be filed with the notice of election to full-time status with the circuit court of the prosecuting attorney's judicial circuit and with the auditor of state.

As added by P.L.98-2004, SEC.18.

IC 33-39-6-7

Full-time offices in certain second class judicial circuits; salary

Sec. 7. The prosecuting attorney of each judicial circuit of the second class within a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000) shall devote the prosecuting attorney's full professional time to the duties of the prosecuting attorney's office. The prosecuting attorney may not engage in the private practice of law for the term for which the prosecuting attorney was elected or appointed, and the prosecuting attorney is entitled to a minimum annual salary that is not less than the salary of the judge of the circuit court of the same judicial circuit.

As added by P.L.98-2004, SEC.18. Amended by P.L.119-2012, SEC.164.

IC 33-39-6-8

Compensation; appearance; travel expenses

Sec. 8. (a) The compensation provided in this chapter for prosecuting attorneys and their deputies is in full for all services required by law. Prosecuting attorneys shall appear in all courts and in all cases where the law provides that they shall appear.

(b) Prosecuting attorneys, deputy prosecuting attorneys, and investigators are entitled to a sum for mileage for the miles necessarily traveled in the discharge of their duties. The sum for mileage provided by this subsection must:

(1) equal the sum per mile paid to state officers and employees,

with the rate changing each time the state government changes its rate per mile;

(2) be allowed by the board of county commissioners on a claim duly filed monthly by the prosecutor, deputy prosecuting attorneys, and investigators itemizing the specific mileage traveled; and

(3) be paid by the county in which the duty arose that necessitated the travel.

(c) This chapter does not prohibit the payment of other expenses as may be allowed by law.

(d) If a board of county commissioners does not furnish the prosecuting attorney with office space, the county council shall appropriate a reasonable amount of money per year to the prosecuting attorney for office space.

As added by P.L.98-2004, SEC.18.

IC 33-39-6-9

Lowering of classification; limitation

Sec. 9. The classification of salary schedules for prosecuting attorneys may not be lowered below the classification first fixed by the state board of accounts under IC 33-14-7 (before its repeal).

As added by P.L.98-2004, SEC.18.

IC 33-39-7

Chapter 7. Retirement Fund

IC 33-39-7-0.1

Applicability of P.L.33-2006 amendments

Sec. 0.1. The amendments made to sections 15, 16, and 19 of this chapter by P.L.33-2006 apply to a participant in the fund who:

- (1) is serving on July 1, 2006; or
- (2) serves after July 1, 2006;

in a position described in section 8 of this chapter.

As added by P.L.13-2011, SEC.11; P.L.220-2011, SEC.543.

Amended by P.L.160-2013, SEC.1.

IC 33-39-7-1

Application of chapter

Sec. 1. This chapter applies only to:

- (1) an individual who serves as a prosecuting attorney or chief deputy prosecuting attorney on or after January 1, 1990; and
- (2) a participant employed in a position described in section 8(a)(2) or 8(a)(3) of this chapter who serves in the position after June 30, 1995.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-2

Americans with Disabilities Act

Sec. 2. As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the Act.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-3

"Board"

Sec. 3. As used in this chapter, "board" refers to the board of trustees of the Indiana public retirement system established by IC 5-10.5-3-1.

As added by P.L.98-2004, SEC.18. Amended by P.L.23-2011, SEC.26.

IC 33-39-7-4

"Fiscal year"

Sec. 4. As used in this chapter, "fiscal year" means the period beginning on July 1 in any year and ending on June 30 of the following year.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-5

Fund

Sec. 5. As used in this chapter, "fund" refers to the prosecuting attorneys retirement fund established by this chapter.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-6**"Participant"**

Sec. 6. As used in this chapter, "participant" means a person serving in a position described in section 8 of this chapter who is participating in the fund.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-7**"Salary"**

Sec. 7. As used in this chapter, "salary" means the salary paid to a participant by the state, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code. The term does not include an amount paid to a participant by a county or counties.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-8**"Services"**

Sec. 8. (a) As used in this chapter, "services" means the sum of all periods in which a person is employed as:

- (1) a prosecuting attorney or chief deputy prosecuting attorney;
- (2) any other deputy prosecuting attorney who is:
 - (A) appointed under IC 33-39-6-2; and
 - (B) paid by the state from the state general fund; or
- (3) the executive director or the assistant executive director of the prosecuting attorneys council of Indiana.

If an individual is elected or appointed to a position described in subdivisions (1) through (3) and serves one (1) or more terms or part of a term, then retires from office or otherwise separates from service, but at a later period or periods is appointed or elected and serves in a position described in subdivisions (1) through (3), the individual shall pay into the fund during all the periods that the individual serves in that position, except as otherwise provided in this chapter, whether the periods are connected or disconnected.

(b) A senior prosecuting attorney appointed under IC 33-39-10-1 is not required to pay into the fund during any period of service as a senior prosecuting attorney.

As added by P.L.98-2004, SEC.18. Amended by P.L.160-2013, SEC.2; P.L.57-2014, SEC.7.

IC 33-39-7-9**Establishment of fund; contents**

Sec. 9. The prosecuting attorneys retirement fund is established. The fund consists of the following:

- (1) Each participant's contributions to the fund.
- (2) All gifts, grants, devises, and bequests in money, property, or other form made to the fund.
- (3) All interest on investments or on deposits of the funds.
- (4) A contribution or payment to the fund made in a manner provided by the general assembly.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-10

Fund construed as trust; purpose

Sec. 10. The fund shall be construed to be a trust, separate and distinct from all other entities, maintained to:

- (1) secure payment of benefits to the participants and their beneficiaries; and
- (2) pay the costs of administering this chapter.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-11

Administration; commingling; duties of board; appeals; confidentiality of fund records

Sec. 11. (a) The board shall administer the fund, which may be commingled with any public pension and retirement fund administered by the Indiana public retirement system for investment purposes.

(b) The board shall do the following:

- (1) Determine eligibility for and make payments of benefits under this chapter.
- (2) In accordance with the powers and duties granted the board in IC 5-10.3-3-7.1, IC 5-10.3-5-3 through IC 5-10.3-5-6, IC 5-10.5-4, and IC 5-10.5-6, administer the fund.
- (3) Provide by rule for the implementation of this chapter.
- (4) Authorize deposits.

(c) A determination by the board may be appealed under IC 4-21.5.

(d) The powers and duties of:

- (1) the director and the actuary of the board; and
- (2) the attorney general;

with respect to the fund are those specified in IC 5-10.3-3, IC 5-10.3-4, IC 5-10.5-4, and IC 5-10.5-6.

(e) The board may hire additional personnel, including hearing officers, to assist in the implementation of this chapter.

(f) Fund records of individual participants and participants' information are confidential, except for the name and years of service of a fund participant.

As added by P.L.98-2004, SEC.18. Amended by P.L.94-2004, SEC.7; P.L.99-2010, SEC.10; P.L.13-2011, SEC.12; P.L.35-2012, SEC.105.

IC 33-39-7-12

Contributions

Sec. 12. (a) Except as otherwise provided in this section, each participant shall make contributions to the fund as follows:

- (1) A participant described in section 8(a)(1) of this chapter shall make contributions of six percent (6%) of each payment of salary received for services after December 31, 1989.
- (2) A participant described in section 8(a)(2) or 8(a)(3) of this chapter shall make contributions of six percent (6%) of each

payment of salary received for services after June 30, 1994. A participant's contributions shall be deducted from the participant's monthly salary by the auditor of state and credited to the fund.

(b) The state may pay the contributions for a participant. The state may elect to pay the contribution for the participant as a pickup under Section 414(h) of the Internal Revenue Code.

(c) After a participant has contributed to the fund as provided in subsection (a) for twenty-two (22) years, the participant is not required to make additional contributions to the fund.

(d) After December 31, 2011, the auditor of state shall submit the contributions paid by or on behalf of a participant under this section by electronic funds transfer in accordance with section 12.5 of this chapter.

As added by P.L.98-2004, SEC.18. Amended by P.L.13-2011, SEC.13; P.L.160-2013, SEC.3.

IC 33-39-7-12.5

Submission of contributions, reports, and records electronically

Sec. 12.5. (a) This section applies to reports, records, and contributions submitted after December 31, 2011, under this chapter.

(b) As used in this section, "electronic funds transfer" has the meaning set forth in IC 4-8.1-2-7(f).

(c) The state shall submit through the use of electronic funds transfer contributions paid by or on behalf of a participant under section 12 of this chapter.

(d) The state shall submit in a uniform format through a secure connection over the Internet or through other electronic means specified by the board the reports and records required by the board under this chapter.

(e) The board shall establish by rule the due dates for all reports, records, and contributions required under this chapter.

As added by P.L.13-2011, SEC.14.

IC 33-39-7-13

Withdrawals; rejoining fund if participant returns to service

Sec. 13. (a) A participant who:

- (1) ceases service in a position described in section 8 of this chapter, other than by death or disability; and
- (2) is not eligible for a retirement benefit under this chapter;

is entitled to withdraw from the fund, beginning on the date specified by the participant in a written application. The date upon which the withdrawal begins may not be before the date of final termination of employment or the date thirty (30) days before the receipt of the application by the board. Upon withdrawal the participant is entitled to receive the total sum contributed plus interest at a rate specified by rule by the board, payable not later than sixty (60) days from the date of the withdrawal application.

(b) Notwithstanding section 8 of this chapter, a participant who withdraws from the fund under subsection (a) and becomes a participant again at a later date is not entitled to service credit for

years of service before the withdrawal, unless the participant pays into the fund the full amount received by the participant when the participant withdrew from the fund, plus interest at a rate specified by rule by the board. The board shall grant a participant service credit for years of service by the participant before the participant's withdrawal from the fund if the participant makes the repayment required by this subsection in a lump sum or a series of payments determined by the board, not exceeding five (5) annual installments. *As added by P.L.98-2004, SEC.18. Amended by P.L.16-2011, SEC.9; P.L.54-2013, SEC.3.*

IC 33-39-7-14

Interest credits

Sec. 14. (a) Interest shall be credited annually on June 30 at a rate specified by rule by the board on all amounts credited to the member as of June 30 of the preceding year.

(b) Contributions begin to accumulate interest at the beginning of the fiscal year after the year in which the contributions are due.

(c) When a member retires or withdraws, a proportional interest credit determined under this chapter shall be paid for the period elapsed since the last date on which interest was credited.

As added by P.L.98-2004, SEC.18. Amended by P.L.16-2011, SEC.10.

IC 33-39-7-15

Eligibility for retirement benefits

Sec. 15. A participant whose employment in a position described in section 8 of this chapter is terminated is entitled to a retirement benefit computed under section 16 or 18 of this chapter, beginning on the date specified by the participant in a written application, if all of the following conditions are met:

(1) The application for retirement benefits and the choice of the retirement date is filed on a form provided by the board, and the retirement date is:

(A) after the cessation of the participant's service;

(B) on the first day of a month; and

(C) not more than six (6) months before the date the application is received by the board.

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

(2) The participant:

(A) is at least sixty-two (62) years of age and has at least eight (8) years of service credit;

(B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or

(C) has become permanently disabled.

(3) The participant is not receiving and is not entitled to receive

any salary for services currently performed, except for services rendered as a senior prosecuting attorney under IC 33-39-10-1. *As added by P.L.98-2004, SEC.18. Amended by P.L.33-2006, SEC.1; P.L.160-2013, SEC.4; P.L.57-2014, SEC.8.*

IC 33-39-7-16

Computation of retirement benefits

Sec. 16. (a) This section does not apply to a participant who becomes permanently disabled, as described in section 17 of this chapter.

(b) A participant who:

(1) applies for a retirement benefit; and

(2) is at least:

(A) sixty-five (65) years of age; or

(B) fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85);

is entitled to an annual retirement benefit as calculated in subsection (c).

(c) Except as provided in subsections (d), (e), and (f), the amount of the annual retirement benefit to which a participant described in subsection (b) is entitled equals the product of:

(1) the highest annual salary that was paid to the participant before separation from service; multiplied by

(2) the percentage prescribed in the following table:

Participant's Years of Service	Percentage
Less than 8	0
8	24%
9	27%
10	30%
11	33%
12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage is calculated under this subsection by prorating between the applicable percentages, based on the number of months in the partial year of service.

(d) Except as provided in subsections (e) and (f), and section 19(c)(2)(B) of this chapter, a participant who:

(1) applies for a retirement benefit; and

(2) is not described in subsection (b); is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were sixty-five (65) years of age reduced by one-fourth percent (0.25%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday.

(e) Except as provided in subsection (f), benefits payable to a participant under this section are reduced by the pension, if any, that would be payable to the participant from the public employees' retirement fund if the participant had retired from the public employees' retirement fund on the date of the participant's retirement from the prosecuting attorneys retirement fund. Benefits payable to a participant under this section are not reduced by annuity payments made to the participant from the public employees' retirement fund.

(f) This subsection applies to a participant who is a member of the public employees' defined contribution (annuity savings account only) plan established by IC 5-10.3-12-18. Benefits payable to a participant under this section are reduced by the pension portion of the retirement benefit, if any, that would be payable to the participant from the public employees' retirement fund if the participant:

(1) had not made an election under IC 5-10.3-12-20 to become a member of the public employees' defined contribution (annuity savings account only) plan; and

(2) had retired from the public employees' retirement fund on the date of the participant's retirement from the prosecuting attorneys retirement fund.

(g) If benefits payable from the public employees' retirement fund exceed the benefits payable from the prosecuting attorneys retirement fund, the participant is entitled at retirement to withdraw from the prosecuting attorneys retirement fund the total sum contributed plus interest at a rate specified by rule by the board.

As added by P.L.98-2004, SEC.18. Amended by P.L.33-2006, SEC.2; P.L.16-2011, SEC.11; P.L.54-2013, SEC.4; P.L.160-2013, SEC.5.

IC 33-39-7-17

Eligibility for disability benefits; certification by physician; segregation of records

Sec. 17. (a) A participant is considered to have a permanent disability if the board has received written certifications by at least two (2) licensed and practicing physicians, appointed by the board, that:

(1) the participant is totally incapacitated, by reason of physical or mental infirmities, from earning a livelihood; and

(2) the condition is likely to be permanent.

(b) A participant found to have a permanent disability under subsection (a) must be reexamined by at least two (2) physicians appointed by the board, at the times the board designates but at intervals not to exceed one (1) year. If, in the opinion of these physicians, the participant has recovered from the participant's disability, benefits cease to be payable as of the date of the

examination, unless on that date the participant is:

- (1) at least sixty-five (65) years of age; or
- (2) at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85).

(c) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated to prove that an individual is qualified for disability benefits under this section must be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

As added by P.L.98-2004, SEC.18. Amended by P.L.160-2013, SEC.6.

IC 33-39-7-18

Computation of disability benefits

Sec. 18. (a) Except as provided in subsections (b) and (c), a participant who becomes permanently disabled, as described in section 17 of this chapter, is entitled to an annual benefit equal to the product of:

- (1) the annual salary that was paid to the participant at the time of separation from service; multiplied by
- (2) the percentage prescribed in the following table:

Participant's Years of Service	Percentage
0-12	50%
13	51%
14	52%
15	53%
16	54%
17	55%
18	56%
19	57%
20	58%
21	59%
22 or more	60%

If a participant has a partial year of service in addition to at least ten (10) years of service, an additional percentage is calculated under this subsection by prorating between the applicable percentages, based on the number of months in the partial year of service.

(b) Except as provided in subsection (c), benefits payable to a participant under this section are reduced by the amounts, if any, that are payable to the participant from the public employees' retirement fund.

(c) This subsection applies to a participant who is a member of the public employees' defined contribution (annuity savings account only) plan established by IC 5-10.3-12-18. Benefits payable to a participant under this section are reduced by the pension portion of the retirement benefit, if any, that would be payable to the participant from the public employees' retirement fund if the participant had not

made an election under IC 5-10.3-12-20 to become a member of the public employees' defined contribution (annuity savings account only) plan.

As added by P.L.98-2004, SEC.18. Amended by P.L.54-2013, SEC.5; P.L.160-2013, SEC.7.

IC 33-39-7-19

Benefits payable to surviving spouse; eligibility; computation

Sec. 19. (a) A participant may designate the participant's surviving spouse or one (1) or more of the participant's surviving dependent children to receive the benefit provided by this section upon the death of the participant. A participant may designate a trust or a custodian account under IC 30-2-8.5 that is established for one (1) or more of the participant's surviving dependent children to receive the benefit provided by this section instead of designating one (1) or more of the participant's surviving dependent children to receive the benefit directly.

(b) If a participant:

(1) dies; and

(2) on the date of death:

(A) was receiving benefits under this chapter;

(B) was in service in a position described in section 8 of this chapter and had completed at least eight (8) years of service in a position described in section 8 of this chapter;

(C) had a permanent disability as described in section 17 of this chapter; or

(D) was not in service in a position described in section 8 of this chapter, had completed at least eight (8) years of service in a position described in section 8 of this chapter, and was entitled to a future benefit;

the participant's beneficiary designated under subsection (a) is entitled, regardless of the participant's age, to the benefit prescribed by subsection (c), (e), or (f).

(c) The amount of the annual benefit payable to a beneficiary to whom subsection (b) applies is equal to the greater of:

(1) twelve thousand dollars (\$12,000); or

(2) fifty percent (50%) of the amount of retirement benefit:

(A) the participant was drawing at the time of death; or

(B) to which the participant would have been entitled had the participant retired and begun receiving retirement benefits on the date of death. However, the reduction described in section 16(d) of this chapter does not apply to the calculation of a survivor benefit under this clause.

(d) A benefit payable under this section is subject to the following:

(1) A surviving spouse designated as the beneficiary under subsection (a) is entitled to receive the benefit for life.

(2) The total monthly benefit payable to a surviving child or children is equal to the same monthly benefit that was to have been payable to the surviving spouse.

(3) If there is more than one (1) child designated by the

participant, the children are entitled to share the benefit in equal monthly amounts.

(4) A child entitled to a benefit shall receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.

(5) Upon the cessation of benefits to one (1) designated child, if there are one (1) or more other children then surviving and still entitled to benefits, the remaining children shall share the benefit equally. If the surviving spouse of the participant is surviving upon the cessation of benefits to all designated children, the surviving spouse shall then receive the benefit for the remainder of the spouse's life.

(6) The benefit is payable to the participant's surviving spouse if any of the following occur:

(A) No child or children named as a beneficiary by the participant survives or survive the participant.

(B) No child or children designated by the participant is or are entitled to a benefit due to the age of the child or children at the time of death of the participant.

(C) A designation is not made.

(e) Except as provided in subsection (f), benefits payable to a designated beneficiary under this section are reduced by the amount, if any, that is payable to the surviving spouse or the surviving dependent children from the public employees' retirement fund as a result of the participant's death after subtracting the participant's contributions and earnings attributable to the participant's contributions in the participant's annuity savings account.

(f) This subsection applies to a surviving spouse of a participant who is a member of the public employees' defined contribution (annuity savings account only) plan established by IC 5-10.3-12-18. Benefits payable to a surviving spouse of a participant under this section are reduced by the pension portion of the retirement benefit, if any, that would be payable to the spouse from the public employees' retirement fund under the joint and survivor option under IC 5-10.2-4-7, computed at fifty percent (50%) of the participant's decreased retirement benefit, if the participant had not made an election under IC 5-10.3-12-20 to become a member of the public employees' defined contribution (annuity savings account only) plan. *As added by P.L.98-2004, SEC.18. Amended by P.L.33-2006, SEC.3; P.L.54-2013, SEC.6; P.L.160-2013, SEC.8.*

IC 33-39-7-20

Benefits payable to dependent children; eligibility; computation; distribution

Sec. 20. (a) If:

- (1) a participant's spouse does not survive the participant; and
- (2) the participant did not designate one (1) or more of the participant's surviving dependent children to receive the benefit provided by section 19 of this chapter;

the participant's surviving dependent children are, upon the death of the participant, entitled to a benefit equal to the benefit the participant's spouse would have received under section 19 of this chapter.

(b) If a surviving spouse of a decedent participant dies and a dependent child of the surviving spouse and the decedent participant survives them, that dependent child is entitled to receive a benefit equal to the benefit the spouse was receiving or would have received under section 19 of this chapter.

(c) If there is more than one (1) dependent child, the dependent children are entitled to share the benefit equally.

(d) Each dependent child is entitled to receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.

(e) Except as provided in subsection (f), benefits payable to a dependent child are reduced by the amount, if any, that is payable to the dependent child from the public employees' retirement fund after subtracting the participant's contributions and earnings attributable to the participant's contributions in the participant's annuity savings account.

(f) This subsection applies to a dependent child of a participant who is a member of the public employees' defined contribution (annuity savings account only) plan established by IC 5-10.3-12-18. Benefits payable to a dependent child of a participant under this section are reduced by the actuarial equivalent of the pension portion of the retirement benefit, if any, that would be payable to the spouse (assuming the spouse would have had the same birth date as the participant) from the public employees' retirement fund under the joint and survivor option under IC 5-10.2-4-7, computed at fifty percent (50%) of the participant's decreased retirement benefit, if the participant had not made an election under IC 5-10.3-12-20 to become a member of the public employees' defined contribution (annuity savings account only) plan.

As added by P.L. 98-2004, SEC. 18. Amended by P.L. 54-2013, SEC. 7; P.L. 160-2013, SEC. 9.

IC 33-39-7-21

Withdrawal of funds after participant dies; surviving spouse; children; estate

Sec. 21. (a) If benefits are not payable to the survivors of a participant who dies, and if a withdrawal application is filed with the board by the survivors or the participant's estate, the total of the participant's contributions, plus interest at a rate specified by rule by the board and minus any payments made to the participant, shall be paid to:

- (1) the surviving spouse of the participant or the children of the participant, as designated by the participant;
- (2) any dependents of the participant, if a spouse or designated child does not survive; or

(3) the participant's estate, if a spouse, designated child, or other dependent does not survive.

(b) The amount owed a spouse, designated children, other dependents, or estate under subsection (a) is payable not later than sixty (60) days after the date of receipt of the withdrawal application, or in monthly installments, as the recipient elects.

As added by P.L.98-2004, SEC.18. Amended by P.L.16-2011, SEC.12; P.L.160-2013, SEC.10.

IC 33-39-7-22

Satisfaction of Section 401 of the Internal Revenue Code requirements

Sec. 22. The fund shall satisfy the qualification requirements in Section 401 of the Internal Revenue Code as applicable to the fund. In order to meet those requirements, the fund is subject to the following provisions, notwithstanding any other provision of this chapter:

(1) The board shall distribute the corpus and income of the fund to participants and their beneficiaries in accordance with this chapter.

(2) A part of the corpus or income of the fund may not be used for or diverted to any purpose other than the exclusive benefit of the participants and their beneficiaries.

(3) Forfeitures arising from severance of employment or death, or for any other reason, may not be applied to increase the benefits a participant would otherwise receive under the retirement fund law.

(4) If the fund is terminated, or if all contributions to the fund are completely discontinued, the rights of each affected participant to the benefits accrued at the date of the termination or discontinuance, to the extent then funded, are nonforfeitable.

(5) All benefits paid from the fund shall be distributed in accordance with the requirements of Section 401(a)(9) of the Internal Revenue Code and the regulations under that section. In order to meet those requirements, the fund is subject to the following provisions:

(A) The life expectancy of a participant, the participant's spouse, or the participant's beneficiary shall not be recalculated after the initial determination for purposes of determining any benefits.

(B) If a participant dies before the distribution of the participant's benefits has begun, distributions to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died.

(6) The board may not:

(A) determine eligibility for benefits;

(B) compute rates of contribution; or

(C) compute benefits of participant's beneficiaries;

in a manner that discriminates in favor of participants who are

considered officers, supervisors, or highly compensated, as prohibited under Section 401(a)(4) of the Internal Revenue Code.

(7) Benefits paid under this chapter may not exceed the maximum benefits specified by Section 415 of the Internal Revenue Code. If a participant's benefits under this chapter would exceed that maximum benefit, the benefit payable under this chapter shall be reduced as necessary.

(8) The salary taken into account under this chapter may not exceed the applicable amount under Section 401(a)(17) of the Internal Revenue Code.

(9) The board may not engage in a transaction prohibited by Section 503(b) of the Internal Revenue Code.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-23

Appropriations

Sec. 23. (a) For purposes of this chapter, the following amounts are appropriated for each biennium:

(1) From the state general fund, the amount required to actuarially fund participants' retirement benefits, as determined by the board on recommendation of an actuary.

(2) From the fund, the amount required for administration purposes.

(b) The biennial appropriations provided in this section shall be credited to the board annually in equal installments in the month of July of each year of the biennium.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-24

Rollover to eligible retirement plan

Sec. 24. Notwithstanding any other provision of this chapter, to the extent required by Internal Revenue Code Section 401(a)(31), as added by the Unemployment Compensation Amendments of 1992 (P.L.102-318), and any amendments and regulations related to Section 401(a)(31), the fund shall allow participants and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

As added by P.L.98-2004, SEC.18.

IC 33-39-7-25

Administration; service credit

Sec. 25. (a) Notwithstanding any other provision of this chapter, the fund must be administered in a manner consistent with the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A member on a leave of absence that qualifies for the benefits and protections afforded by the Family and Medical Leave Act is entitled to receive credit for vesting and eligibility purposes to the extent required by the Family and Medical Leave Act, but is not entitled to receive credit for service for benefit purposes.

(b) Notwithstanding any other provision of this chapter, a participant is entitled to service credit and benefits in the amount and to the extent required by the Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301 et seq.).

As added by P.L.98-2004, SEC.18.

IC 33-39-8

Chapter 8. Prosecuting Attorneys Council

IC 33-39-8-1

Council defined

Sec. 1. As used in this chapter, "council" refers to the prosecuting attorneys council of Indiana established by section 2 of this chapter.
As added by P.L.98-2004, SEC.18.

IC 33-39-8-2

Creation; membership

Sec. 2. (a) The prosecuting attorneys council of Indiana is established.

(b) The membership of the council consists of all the prosecuting attorneys and their chief deputies acting in Indiana.

As added by P.L.98-2004, SEC.18.

IC 33-39-8-3

Board of directors

Sec. 3. The activities of the council shall be directed by a ten (10) member board of directors elected by the entire membership of the council.

As added by P.L.98-2004, SEC.18.

IC 33-39-8-4

Executive director; staff and clerical assistants

Sec. 4. The council may employ an executive director, staff, and clerical assistants necessary to fulfill the purposes of the council.

As added by P.L.98-2004, SEC.18.

IC 33-39-8-5

Duties of council

Sec. 5. The council shall do the following:

- (1) Assist in the coordination of the duties of the prosecuting attorneys of the state and their staffs.
- (2) Prepare manuals of procedure.
- (3) Give assistance in preparation of the trial briefs, forms, and instructions.
- (4) Conduct research and studies that would be of interest and value to all prosecuting attorneys and their staffs.
- (5) Maintain liaison contact with study commissions and agencies of all branches of local, state, and federal government that will be of benefit to law enforcement and the fair administration of justice in Indiana.
- (6) Adopt guidelines for the expenditure of funds derived from a deferral program or a pretrial diversion program.

As added by P.L.98-2004, SEC.18. Amended by P.L.176-2005, SEC.22.

IC 33-39-8-6

Drug prosecution fund

Sec. 6. (a) The drug prosecution fund is established. The council shall administer the fund. Expenditures from the fund may be made only in accordance with appropriations made by the general assembly.

(b) The council may use money from the fund to provide assistance to prosecuting attorneys to:

- (1) investigate and prosecute violations of IC 35-48;
- (2) bring actions for forfeiture, law enforcement costs, and correction costs under IC 34-24-1;
- (3) bring actions for civil and criminal remedies for a violation of IC 35-45-6; and
- (4) obtain training, equipment, and technical assistance that would enhance the ability of prosecuting attorneys to reduce illegal drug activity.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) Money in the fund at the end of a fiscal year does not revert to the state general fund.

As added by P.L.98-2004, SEC.18.

IC 33-39-9

Chapter 9. Defense and Indemnification of Prosecuting Attorneys

IC 33-39-9-1

Application of chapter

Sec. 1. This chapter does not apply to a threatened, pending, or completed action or a proceeding that:

- (1) results in the criminal conviction of; or
- (2) is a disciplinary action or proceeding against;

a prosecuting attorney.

As added by P.L.98-2004, SEC.18.

IC 33-39-9-2

Expenses

Sec. 2. As used in this chapter, "expenses" includes the following:

- (1) Reasonable attorney's fees, if the attorney general has authorized the prosecuting attorney to hire private counsel to provide the defense.
- (2) A judgment.
- (3) A settlement.
- (4) Court costs.
- (5) Discovery costs.
- (6) Expert witness fees.
- (7) Any other expense incurred as a result of an action or a proceeding.

As added by P.L.98-2004, SEC.18.

IC 33-39-9-3

Prosecuting attorney

Sec. 3. As used in the chapter, "prosecuting attorney" means:

- (1) a prosecuting attorney;
- (2) a deputy prosecuting attorney; or
- (3) a senior prosecuting attorney appointed under IC 33-39-10-1.

As added by P.L.98-2004, SEC.18. Amended by P.L.57-2014, SEC.9.

IC 33-39-9-4

Payment of expenses

Sec. 4. The state shall pay the expenses incurred by a prosecuting attorney from a threatened, pending, or completed action or proceeding that arises from:

- (1) making;
- (2) performing; or
- (3) failing to make or perform;

a decision, a duty, an obligation, a privilege, or a responsibility of the prosecuting attorney's office.

As added by P.L.98-2004, SEC.18.

IC 33-39-10

Chapter 10. Senior Prosecuting Attorneys, Special Prosecutors, and Special Deputy Prosecuting Attorneys

IC 33-39-10-1

Senior prosecuting attorney; appointment

Sec. 1. (a) A person may be appointed as a senior prosecuting attorney if the person:

- (1) was employed for at least eight (8) years as a:
 - (A) prosecuting attorney;
 - (B) chief deputy prosecuting attorney;
 - (C) deputy prosecuting attorney appointed under IC 33-39-6-2; or
 - (D) deputy prosecuting attorney employed full time to perform activities described in IC 31-25-4-13.1(b), subject to subsection (d); and
- (2) files an affidavit requesting designation as a senior prosecuting attorney in:
 - (A) the circuit court; and
 - (B) each superior court;in a county in which the person is willing to serve as a senior prosecuting attorney.

A person who files an affidavit under this subsection shall file a request to withdraw from being appointed as a senior prosecuting attorney when the person is no longer willing to serve as a senior prosecuting attorney.

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

- (1) The name of the person filing the affidavit.
 - (2) The person's attorney number issued by the supreme court.
 - (3) The length of time the person served, as described in subsection (a)(1).
 - (4) The name of any county in which the person served, as described in subsection (a)(1).
- (c) A circuit court or superior court promptly shall forward each:
- (1) affidavit; and
 - (2) request to withdraw;

received under subsection (a) to the prosecuting attorneys council of Indiana. The prosecuting attorneys council of Indiana shall maintain and publish a list of persons who are eligible to be appointed under this section as senior prosecuting attorneys.

(d) A deputy prosecuting attorney who was employed full time to perform activities described in IC 31-25-4-13.1(b) may be appointed to serve as a senior prosecuting attorney only to perform activities described in IC 31-25-4-13.1(b).

(e) A person may not be appointed as a senior prosecuting attorney under this section if a disciplinary sanction has been imposed on the person by:

- (1) the Indiana supreme court disciplinary commission; or
- (2) a similar body in another state;

that restricts the person's ability to practice law.
As added by P.L.57-2014, SEC.10.

IC 33-39-10-2

Special prosecutor; appointment

Sec. 2. (a) A person may be appointed as a special prosecutor:

- (1) as provided under this section; or
 - (2) in accordance with IC 4-2-7-7.
- (b) A circuit court or superior court judge:
- (1) shall appoint a special prosecutor if:
 - (A) any person, other than a prosecuting attorney or the prosecuting attorney's deputy, files a verified petition requesting the appointment of a special prosecutor; and
 - (B) the prosecuting attorney agrees that a special prosecutor is needed;
 - (2) may appoint a special prosecutor if:
 - (A) a person files a verified petition requesting the appointment of a special prosecutor; and
 - (B) the court, after:
 - (i) notice is given to the prosecuting attorney; and
 - (ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard; finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecuting attorney has committed a crime;
 - (3) may appoint a special prosecutor if:
 - (A) the prosecuting attorney files a petition requesting the court to appoint a special prosecutor; and
 - (B) the court finds that the appointment is necessary to avoid the appearance of impropriety;
 - (4) may appoint a special prosecutor if:
 - (A) an elected public official who is a defendant in a criminal proceeding files a verified petition requesting a special prosecutor within ten (10) days after the date of the initial hearing; and
 - (B) the court finds that the appointment of a special prosecutor is in the best interests of justice; and
 - (5) shall appoint a special prosecutor if:
 - (A) a previously appointed special prosecutor:
 - (i) files a motion to withdraw as special prosecutor; or
 - (ii) has become incapable of continuing to represent the interests of the state; and
 - (B) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist.

The elected prosecuting attorney who serves in the jurisdiction of the appointing court shall receive notice of all pleadings filed and orders issued under this subdivision.
- (c) A person appointed to serve as a special prosecutor:
- (1) must consent to the appointment; and

(2) must be:

(A) the prosecuting attorney or a deputy prosecuting attorney in a county other than the county in which the person is to serve as special prosecutor; or

(B) a senior prosecuting attorney as described in section 1 of this chapter. A senior prosecuting attorney may be appointed to serve as a special prosecutor in a county in which the senior prosecuting attorney previously served if the court finds that the appointment would not create the appearance of impropriety.

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

(e) Upon making an appointment under this section, the court shall establish the length of the special prosecutor's term. At least one (1) time every six (6) months throughout the appointed term, a special prosecutor shall file a progress report with the appointing court. A progress report:

(1) must inform the court of the:

(A) status of the investigation; and

(B) estimated time for completion of the special prosecutor's duties; and

(2) may not:

(A) include substantive facts or legal issues; or

(B) offer preliminary conclusions.

The court may extend the term of appointment upon the request of the special prosecutor or terminate any appointment if the special prosecutor has failed to file reports or a request for an extended term under this subsection.

(f) If the target of an investigation by the special prosecutor is a public servant (as defined in IC 35-31.5-2-261), the court shall order the special prosecutor to file a report of the investigation with the court at the conclusion of the investigation. A report filed under this subsection is a public record under IC 5-14-3.

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

(1) shall be paid, as incurred, to the special prosecutor, following an application to the county auditor, from the unappropriated funds of the appointing county; and

(2) may not exceed:

(A) an hourly rate based upon the regular salary of a full-time prosecuting attorney of the appointing circuit;

(B) travel expenses and reasonable accommodation expenses actually incurred; and

(C) other reasonable expenses actually incurred, including the costs of investigation, trial and discovery preparation, and other trial expenses.

The amount of compensation a special prosecutor receives for services performed during a calendar day under subdivision (2)(A) may not exceed the amount of compensation a full-time prosecuting attorney would receive in salary for the calendar day.

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

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

(2) must include a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, travel expenses, and reasonable accommodation expenses actually incurred.

As added by P.L.57-2014, SEC.10.

IC 33-39-10-3

Inspector general or attorney general assistance in criminal proceedings

Sec. 3. (a) With the consent of the inspector general, a prosecuting attorney may appoint the inspector general or a deputy inspector general who is licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving public misconduct.

(b) With the consent of the attorney general, a prosecuting attorney may appoint the attorney general or a deputy attorney general who is licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving environmental law.

As added by P.L.57-2014, SEC.10.