

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Repealed

(Repealed by P.L.57-2014, SEC.3.)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