



January 31, 2020

SENATE BILL No. 436

DIGEST OF SB 436 (Updated January 28, 2020 2:52 pm - DI 106)

Citations Affected: IC 4-6; IC 33-39; IC 36-2.

Synopsis: Authority of the attorney general to appoint a special prosecutor. Grants the attorney general authority to appoint a special prosecutor to prosecute certain crimes if the county prosecuting attorney refuses as a matter of policy to prosecute those crimes. Establishes a procedure for the attorney general to appoint a special prosecutor, and requires the county to reimburse the attorney general for expenses incurred in the appointment. Provides that the state is not required to reimburse a prosecuting attorney for expenses incurred in a connection with the appointment of a special prosecutor.

Effective: July 1, 2020.

Young M, Sandlin

January 15, 2020, read first time and referred to Committee on Corrections and Criminal Law.
January 30, 2020, amended, reported favorably — Do Pass.

SB 436—LS 6574/DI 106



January 31, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

SENATE BILL No. 436

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-6-2-1.1, AS AMENDED BY P.L.205-2013,
2 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 1.1. **(a)** The attorney general has concurrent
4 jurisdiction with the prosecuting attorney in the prosecution of the
5 following:
6 (1) Actions in which a person is accused of committing, while a
7 member of an unlawful assembly as defined in IC 35-45-1-1, a
8 homicide (IC 35-42-1).
9 (2) Actions in which a person is accused of assisting a criminal
10 (IC 35-44.1-2-5), if the person alleged to have been assisted is a
11 person described in subdivision (1).
12 (3) Actions in which a sheriff is accused of any offense that
13 involves a failure to protect the life of a prisoner in the sheriff's
14 custody.
15 (4) Actions in which a violation of IC 2-8.2-4-6 (concerning
16 constitutional convention delegates) has occurred.
17 **(b) When the attorney general exercises prosecutorial power**

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1 under this section, the attorney general has the same powers as the
 2 prosecuting attorney of the county. However, the attorney
 3 general's prosecutorial power extends only to those cases which the
 4 attorney general is statutorily authorized to prosecute.

5 (c) The attorney general has jurisdiction to appoint a special
 6 prosecutor in an action in which a prosecuting attorney refuses
 7 categorically to enforce a criminal law enacted by the general
 8 assembly, as described in section 1.2 of this chapter.

9 SECTION 2. IC 4-6-2-1.2, IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2020]: Sec. 1.2. (a) After complying with the procedure described
 12 in subsection (b), and except as provided in subsection (c), the
 13 attorney general may appoint a special prosecutor to prosecute a
 14 criminal case involving the commission of one (1) or more specified
 15 offenses, if:

16 (1) a prosecuting attorney has announced as a matter of policy
 17 that the prosecuting attorney will not enforce all or part of a
 18 criminal statute enacted by the general assembly; or

19 (2) the attorney general has determined that a prosecuting
 20 attorney has categorically elected not to enforce all or part of
 21 a criminal statute enacted by the general assembly.

22 The jurisdiction of the special prosecutor extends only to the
 23 prosecution of those offenses that the prosecuting attorney is
 24 refusing to enforce.

25 (b) If the attorney general reasonably believes that a
 26 prosecuting attorney is refusing to enforce all or part of a criminal
 27 statute as described in subsection (a), the attorney general shall
 28 notify the prosecuting attorney in writing that the attorney general
 29 intends to appoint a special prosecutor to enforce that criminal
 30 statute, and shall briefly describe the basis for the attorney
 31 general's belief that the prosecuting attorney is refusing to enforce
 32 the criminal statute as described in subsection (a). The attorney
 33 general shall serve a copy of the notice on the presiding judge or
 34 judges of the county and on the chief justice of Indiana. If the
 35 prosecuting attorney:

36 (1) does not file a criminal information within thirty (30) days
 37 of receipt of the notice;

38 (2) expressly declines to enforce the statute; or

39 (3) does not offer a satisfactory reason, in the opinion of the
 40 attorney general, for the refusal to enforce the statute;

41 the attorney general has jurisdiction to appoint a special
 42 prosecutor to enforce the criminal statute.



1 (c) The attorney general does not have jurisdiction to appoint a
2 special prosecutor to enforce a criminal statute if the prosecuting
3 attorney's refusal to enforce the statute is based on:

4 (1) a reasonable, good faith belief that the statute is
5 unconstitutional, or that prosecution would violate a court
6 order or a federal law; or

7 (2) prosecutorial discretion, if the exercise of discretion
8 reflects an individualized decision not to prosecute a specific
9 case, based on a consideration of the unique facts and
10 circumstances of that case.

11 (d) A person appointed to serve as a special prosecutor:

12 (1) must consent to the appointment; and

13 (2) must be:

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

17 (B) a senior prosecuting attorney as described in
18 IC 33-39-10-1. A senior prosecuting attorney may be
19 appointed to serve as a special prosecutor in a county in
20 which the senior prosecuting attorney previously served if
21 the attorney general determines that there is no conflict of
22 interest.

23 (e) The county in which the attorney general appoints a special
24 prosecutor to prosecute a case under this section shall reimburse
25 the attorney general for the expenses of prosecuting the case.

26 (f) The attorney general shall submit an itemized statement of
27 expenses to the county auditor, who shall pay the expenses from the
28 county general fund, without appropriation, within thirty (30)
29 days. The attorney general may submit an itemized statement for
30 expenses as the expenses are incurred. The attorney general shall
31 provide the county fiscal body and the county executive with a copy
32 of the itemized statement of expenses.

33 (g) Reimbursement to the attorney general may not exceed
34 actual expenses incurred in prosecuting the action, including the
35 amount necessary to compensate the special prosecutor and any
36 special investigator or special prosecuting attorney. The attorney
37 general shall deposit reimbursement received under this subsection
38 in the attorney general prosecution fund established by section 13
39 of this chapter.

40 (h) The attorney general shall compensate the special
41 prosecutor from the attorney general prosecution fund. If a special
42 prosecutor is not regularly employed as a full-time prosecuting



1 attorney or full-time deputy prosecuting attorney, the
2 compensation for the special prosecutor's services may not exceed:

- 3 (1) an hourly rate based upon the regular salary of a full-time
4 prosecuting attorney of the appointing circuit;
5 (2) travel expenses and reasonable accommodation expenses
6 actually incurred; and
7 (3) other reasonable expenses actually incurred, including the
8 costs of investigation, trial and discovery preparation, and
9 other trial expenses.

10 The amount of compensation a special prosecutor receives for
11 services performed during a calendar day under subdivision (1)
12 may not exceed the amount of compensation a full-time
13 prosecuting attorney would receive in salary for the calendar day.

14 (i) If the special prosecutor is regularly employed as a full-time
15 prosecuting attorney or deputy prosecuting attorney, the
16 compensation for the special prosecutor's services must include a
17 per diem equal to the regular salary of a full-time prosecuting
18 attorney of the appointing circuit, travel expenses, and reasonable
19 accommodation expenses actually incurred.

20 (j) With the consent of the attorney general, a prosecuting
21 attorney may appoint an investigator employed by the attorney
22 general or a deputy attorney general who is licensed to practice law
23 in Indiana as a special investigator or special deputy prosecuting
24 attorney to assist in the investigation or prosecution of the case. A
25 special investigator or special deputy prosecuting attorney shall
26 continue to receive the person's regular salary that the person
27 receives as an employee of the attorney general. The attorney
28 general is entitled to reimbursement for the special investigator's
29 or special deputy prosecuting attorney's services in an amount that
30 does not exceed:

- 31 (1) an hourly rate based upon the regular salary of the
32 investigator or deputy attorney general;
33 (2) travel expenses and reasonable accommodation expenses
34 actually incurred; and
35 (3) other reasonable expenses actually incurred, including the
36 costs of investigation, trial and discovery preparation, and
37 other trial expenses.

38 SECTION 3. IC 4-6-2-13 IS ADDED TO THE INDIANA CODE
39 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
40 1, 2020]: Sec. 13. (a) The attorney general prosecution fund is
41 established for the purpose of reimbursing the attorney general for
42 expenses incurred in appointing a special prosecutor as authorized



1 under section 1.2 of this chapter. The fund shall be administered by
2 the attorney general.

3 (b) The fund consists of reimbursements paid to the attorney
4 general under section 1.2 of this chapter.

5 (c) The treasurer of state shall invest the money in the fund not
6 currently needed to meet the obligations of the fund in the same
7 manner as other public money may be invested. Interest that
8 accrues from these investments shall be deposited in the fund.

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

11 SECTION 4. IC 33-39-9-4 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. (a) **This section
13 does not apply to expenses incurred in connection with the attorney
14 general's appointment of a special prosecutor under IC 4-6-2-1.2.**

15 (b) The state shall pay the expenses incurred by a prosecuting
16 attorney from a threatened, pending, or completed action or proceeding
17 that arises from:

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

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

23 SECTION 5. IC 33-39-10-2, AS ADDED BY P.L.57-2014,
24 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2020]: Sec. 2. (a) A person may be appointed as a special
26 prosecutor:

- 27 (1) as provided under this section; ~~or~~
- 28 (2) in accordance with IC 4-2-7-7; ~~or~~
- 29 **(3) in accordance with IC 4-6-2-1.2.**

30 (b) A circuit court or superior court judge:

- 31 (1) shall appoint a special prosecutor if:
 - 32 (A) any person, other than a prosecuting attorney or the
 - 33 prosecuting attorney's deputy, files a verified petition
 - 34 requesting the appointment of a special prosecutor; and
 - 35 (B) the prosecuting attorney agrees that a special prosecutor is
 - 36 needed;
- 37 (2) may appoint a special prosecutor if:
 - 38 (A) a person files a verified petition requesting the
 - 39 appointment of a special prosecutor; and
 - 40 (B) the court, after:
 - 41 (i) notice is given to the prosecuting attorney; and
 - 42 (ii) an evidentiary hearing is conducted at which the



- 1 prosecuting attorney is given an opportunity to be heard;
 2 finds by clear and convincing evidence that the appointment
 3 is necessary to avoid an actual conflict of interest or there is
 4 probable cause to believe that the prosecuting attorney has
 5 committed a crime;
- 6 (3) may appoint a special prosecutor if:
 7 (A) the prosecuting attorney files a petition requesting the
 8 court to appoint a special prosecutor; and
 9 (B) the court finds that the appointment is necessary to avoid
 10 the appearance of impropriety;
- 11 (4) may appoint a special prosecutor if:
 12 (A) an elected public official who is a defendant in a criminal
 13 proceeding files a verified petition requesting a special
 14 prosecutor within ten (10) days after the date of the initial
 15 hearing; and
 16 (B) the court finds that the appointment of a special prosecutor
 17 is in the best interests of justice; and
- 18 (5) shall appoint a special prosecutor if:
 19 (A) a previously appointed special prosecutor:
 20 (i) files a motion to withdraw as special prosecutor; or
 21 (ii) has become incapable of continuing to represent the
 22 interests of the state; and
 23 (B) the court finds that the facts that established the basis for
 24 the initial appointment of a special prosecutor still exist.
 25 The elected prosecuting attorney who serves in the jurisdiction of
 26 the appointing court shall receive notice of all pleadings filed and
 27 orders issued under this subdivision.
- 28 (c) A person appointed to serve as a special prosecutor:
 29 (1) must consent to the appointment; and
 30 (2) must be:
 31 (A) the prosecuting attorney or a deputy prosecuting attorney
 32 in a county other than the county in which the person is to
 33 serve as special prosecutor; or
 34 (B) a senior prosecuting attorney as described in section 1 of
 35 this chapter. A senior prosecuting attorney may be appointed
 36 to serve as a special prosecutor in a county in which the senior
 37 prosecuting attorney previously served if the court finds that
 38 the appointment would not create the appearance of
 39 impropriety.
- 40 (d) A person appointed to serve as a special prosecutor in a county
 41 has the same powers as the prosecuting attorney of the county.
 42 However, the appointing judge shall limit the scope of the special



1 prosecutor's duties to include only the investigation or prosecution of
2 a particular case or particular grand jury investigation.

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

8 (1) must inform the court of the:

9 (A) status of the investigation; and

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

12 (2) may not:

13 (A) include substantive facts or legal issues; or

14 (B) offer preliminary conclusions.

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

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

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

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

30 (2) may not exceed:

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

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

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

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

42 (h) If the special prosecutor is regularly employed as a full-time



1 prosecuting attorney or deputy prosecuting attorney, the compensation
2 for the special prosecutor's services:

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

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

10 SECTION 6. IC 36-2-9-14, AS AMENDED BY P.L.73-2005,
11 SECTION 172, IS AMENDED TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2020]: Sec. 14. (a) This section does not apply
13 to funds received from the state or the federal government for township
14 assistance, unemployment relief, or old age pensions or other funds that
15 are available under the federal Social Security Act or a federal statute
16 providing for civil and public works projects.

17 (b) Except for monies that by statute are due and payable from a
18 county treasury to the state or to a township or municipality of the
19 county, money may be paid from a county treasury only upon a warrant
20 drawn by the auditor.

21 (c) A warrant may be drawn on a county treasury only if the county
22 fiscal body has made an appropriation for the money for the calendar
23 year in which the warrant is drawn and that appropriation has not been
24 exhausted.

25 (d) Notwithstanding subsection (c), appropriations by a county fiscal
26 body are not necessary to authorize the drawing of a warrant on and
27 payment from a county treasury for:

28 (1) money that belongs to the state and is required by statute to be
29 paid into the state treasury;

30 (2) money that belongs to a school fund, whether principal or
31 interest;

32 (3) money that belongs to a township or municipality of the
33 county and is required by statute to be paid to the township or
34 municipality;

35 (4) money that:

36 (A) is due a person;

37 (B) has been paid into the county treasury under an assessment
38 on persons or property of the county in territory less than that
39 of the whole county; and

40 (C) has been paid for construction, maintenance, or purchase
41 of a public improvement;

42 (5) money that is due a person and has been paid into the county



1 treasury to redeem property from a tax sale or other forced sale;
 2 (6) money that is due a person and has been paid to the county
 3 under law as a tender or payment to the person;
 4 (7) taxes erroneously paid;
 5 (8) money paid to a cemetery board under IC 23-14-65-22;
 6 (9) money distributed under IC 23-14-70-3; ~~or~~
 7 **(10) money paid to the attorney general to reimburse**
 8 **prosecutorial expenses under IC 4-6-2-1.2; or**
 9 ~~(10)~~ **(11) payments under a statute that expressly provides for**
 10 **payments from the county treasury without appropriations by the**
 11 **county fiscal body.**

12 (e) An auditor who knowingly violates this section commits a Class
 13 A misdemeanor.

14 SECTION 7. IC 36-2-9.5-9, AS ADDED BY P.L.227-2005,
 15 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2020]: Sec. 9. (a) This section does not apply to:

17 (1) funds received from the state or the federal government for:
 18 (A) township assistance;
 19 (B) unemployment relief; or
 20 (C) old age pensions; or
 21 (2) other funds available under:
 22 (A) the federal Social Security Act; or
 23 (B) another federal statute providing for civil and public works
 24 projects.

25 (b) Except for money that by statute is due and payable from the
 26 county or city treasury to:

27 (1) the state; or
 28 (2) a township or municipality in the county;
 29 money may be paid from the county or city treasury only upon a
 30 warrant drawn by the county auditor.

31 (c) A warrant may be drawn on the county or city treasury only if:
 32 (1) the legislative body of the consolidated city made an
 33 appropriation of the money for the calendar year in which the
 34 warrant is drawn; and
 35 (2) the appropriation is not exhausted.

36 (d) Notwithstanding subsection (c), an appropriation by the
 37 legislative body is not necessary to authorize the drawing of a warrant
 38 on and payment from the county or city treasury for:

39 (1) money that:
 40 (A) belongs to the state; and
 41 (B) is required by statute to be paid into the state treasury;
 42 (2) money that belongs to a school fund, whether principal or



- 1 interest;
- 2 (3) money that:
- 3 (A) belongs to a township or municipality in the county; and
- 4 (B) is required by statute to be paid to the township or
- 5 municipality;
- 6 (4) money that:
- 7 (A) is due a person;
- 8 (B) is paid into the county or city treasury under an assessment
- 9 on persons or property of the county in territory less than that
- 10 of the whole county; and
- 11 (C) is paid for construction, maintenance, or purchase of a
- 12 public improvement;
- 13 (5) money that is due a person and is paid into the county treasury
- 14 to redeem property from a tax sale or other forced sale;
- 15 (6) money that is due a person and is paid to the county or city
- 16 under law as a tender or payment to the person;
- 17 (7) taxes erroneously paid;
- 18 (8) money paid to a cemetery board under IC 23-14-65-22;
- 19 (9) money distributed under IC 23-14-70-3; ~~or~~
- 20 **(10) money paid to the attorney general to reimburse**
- 21 **prosecutorial expenses under IC 4-6-2-1.2; or**
- 22 ~~(11)~~ **(11) payments under a statute that expressly provides for**
- 23 **payments from the county or city treasury without appropriation**
- 24 **by the legislative body.**
- 25 (e) A county auditor who knowingly violates this section commits
- 26 a Class A misdemeanor.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 436, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete line 17.

Page 2, delete lines 1 through 2.

Page 2, delete lines 8 through 42, begin a new paragraph and insert:

"(c) The attorney general has jurisdiction to appoint a special prosecutor in an action in which a prosecuting attorney refuses categorically to enforce a criminal law enacted by the general assembly, as described in section 1.2 of this chapter."

SECTION 2. IC 4-6-2-1.2, IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 1.2. (a) After complying with the procedure described in subsection (b), and except as provided in subsection (c), the attorney general may appoint a special prosecutor to prosecute a criminal case involving the commission of one (1) or more specified offenses, if:**

(1) a prosecuting attorney has announced as a matter of policy that the prosecuting attorney will not enforce all or part of a criminal statute enacted by the general assembly; or

(2) the attorney general has determined that a prosecuting attorney has categorically elected not to enforce all or part of a criminal statute enacted by the general assembly.

The jurisdiction of the special prosecutor extends only to the prosecution of those offenses that the prosecuting attorney is refusing to enforce.

(b) If the attorney general reasonably believes that a prosecuting attorney is refusing to enforce all or part of a criminal statute as described in subsection (a), the attorney general shall notify the prosecuting attorney in writing that the attorney general intends to appoint a special prosecutor to enforce that criminal statute, and shall briefly describe the basis for the attorney general's belief that the prosecuting attorney is refusing to enforce the criminal statute as described in subsection (a). The attorney general shall serve a copy of the notice on the presiding judge or judges of the county and on the chief justice of Indiana. If the prosecuting attorney:

(1) does not file a criminal information within thirty (30) days of receipt of the notice;

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(2) expressly declines to enforce the statute; or
(3) does not offer a satisfactory reason, in the opinion of the attorney general, for the refusal to enforce the statute;
the attorney general has jurisdiction to appoint a special prosecutor to enforce the criminal statute.

(c) The attorney general does not have jurisdiction to appoint a special prosecutor to enforce a criminal statute if the prosecuting attorney's refusal to enforce the statute is based on:

(1) a reasonable, good faith belief that the statute is unconstitutional, or that prosecution would violate a court order or a federal law; or

(2) prosecutorial discretion, if the exercise of discretion reflects an individualized decision not to prosecute a specific case, based on a consideration of the unique facts and circumstances of that case.

(d) 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 IC 33-39-10-1. 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 attorney general determines that there is no conflict of interest.

(e) The county in which the attorney general appoints a special prosecutor to prosecute a case under this section shall reimburse the attorney general for the expenses of prosecuting the case.

(f) The attorney general shall submit an itemized statement of expenses to the county auditor, who shall pay the expenses from the county general fund, without appropriation, within thirty (30) days. The attorney general may submit an itemized statement for expenses as the expenses are incurred. The attorney general shall provide the county fiscal body and the county executive with a copy of the itemized statement of expenses.

(g) Reimbursement to the attorney general may not exceed actual expenses incurred in prosecuting the action, including the amount necessary to compensate the special prosecutor and any special investigator or special prosecuting attorney. The attorney general shall deposit reimbursement received under this subsection



in the attorney general prosecution fund established by section 13 of this chapter.

(h) The attorney general shall compensate the special prosecutor from the attorney general prosecution fund. 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 may not exceed:

- (1) an hourly rate based upon the regular salary of a full-time prosecuting attorney of the appointing circuit;
- (2) travel expenses and reasonable accommodation expenses actually incurred; and
- (3) 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 (1) may not exceed the amount of compensation a full-time prosecuting attorney would receive in salary for the calendar day.

(i) 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 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.

(j) With the consent of the attorney general, a prosecuting attorney may appoint an investigator employed by the attorney general or a deputy attorney general who is licensed to practice law in Indiana as a special investigator or special deputy prosecuting attorney to assist in the investigation or prosecution of the case. A special investigator or special deputy prosecuting attorney shall continue to receive the person's regular salary that the person receives as an employee of the attorney general. The attorney general is entitled to reimbursement for the special investigator's or special deputy prosecuting attorney's services in an amount that does not exceed:

- (1) an hourly rate based upon the regular salary of the investigator or deputy attorney general;
- (2) travel expenses and reasonable accommodation expenses actually incurred; and
- (3) other reasonable expenses actually incurred, including the costs of investigation, trial and discovery preparation, and other trial expenses."



Page 3, delete lines 1 through 31.

Page 3, line 36, delete "bringing a criminal prosecution" and insert **"appointing a special prosecutor"**.

Page 4, line 8, delete "assumption of jurisdiction under IC 4-6-2-1.1 and" and insert **"appointment of a special prosecutor under"**.

Page 4, between lines 17 and 18, begin a new paragraph and insert:
 "SECTION 5. IC 33-39-10-2, AS ADDED BY P.L.57-2014, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: 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; **or**
- (3) in accordance with IC 4-6-2-1.2.**

(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."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.



(Reference is to SB 436 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 6, Nays 3.

