

---

---

# HOUSE BILL No. 1199

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-13; IC 33-2-1-1; IC 33-2.1; IC 33-5; IC 33-13-14-8.

**Synopsis:** Composition of courts. Requires judicial nominating commissions, the governor, and the chief justice of the supreme court in evaluating candidates for a judgeship to consider whether appointment of the candidate will allow the composition of circuit courts, superior courts, probate courts, county courts, the tax court, the court of appeals, and the supreme court to more adequately reflect the diversity of the citizens of Indiana. Requires the Indiana judicial center to annually prepare an analysis on the diversity in the judiciary. Adds two justices to the Indiana supreme court.

**Effective:** July 1, 2000; July 1, 2001.

---

---

## Crosby, Becker

---

---

January 10, 2000, read first time and referred to Committee on Judiciary.

---

---

C  
o  
p  
y



Introduced

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

## HOUSE BILL No. 1199

---

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

*Whereas, The General Assembly finds that respect for and confidence in the fairness of the judiciary is essential to the welfare of a free and democratic society;*

*Whereas, The General Assembly finds that respect for and confidence in the fairness of the judiciary is enhanced when the composition of the judiciary reflects the diversity of the people that the judiciary serves;*

*Whereas, The General Assembly finds that the Indiana judiciary has historically been less diverse than the composition of the general population of Indiana;*

*Whereas, Past actions of state government, as determined in various court cases, have contributed to discrimination against women and minorities;*

*Whereas, The General Assembly declares that it is the*

2000

IN 1199—LS 7003/DI 51



C  
O  
P  
Y

*public policy of the state to rectify this past discrimination by encouraging greater diversity in the judiciary;*

*Whereas, The General Assembly finds that there is an adequate and growing pool of qualified women and racial minorities who are eligible to serve as judges and justices in Indiana;*

*Whereas, The General Assembly finds that the least restrictive means of addressing past discrimination and promoting diversity in the judiciary is for the governor and judicial nominating commissions that assist the governor to consider the diversity of the candidates eligible to fill vacancies in the courts, Therefore;*

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

1 SECTION 1. IC 3-13-4-2 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) A vacancy in the office of  
3 justice of the supreme court, judge of the court of appeals, or judge of  
4 the tax court shall be filled as provided in IC 33-2.1-4.

5 (b) **The governor, in evaluating candidates for the office of**  
6 **judge of the tax court or the court of appeals, must consider**  
7 **whether appointment of a particular candidate to the court will**  
8 **allow the composition of the courts to more adequately reflect the**  
9 **diversity of the citizens of Indiana.**

10 (c) **The governor, in evaluating candidates for the office of**  
11 **justice of the supreme court, must consider whether appointment**  
12 **of a particular candidate to the court will allow the composition of**  
13 **the court to more accurately reflect the diversity of the citizens of**  
14 **Indiana.**

15 SECTION 2. IC 3-13-6-1 IS AMENDED TO READ AS FOLLOWS  
16 [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) A vacancy that occurs, other  
17 than by resignation, in the office of judge of a circuit, superior, probate,  
18 or county court shall be certified to the governor by the circuit court  
19 clerk of the county in which the judge resided.

20 (b) A vacancy in the office of judge of a circuit court shall be filled  
21 by the governor as provided by Article 5, Section 18 of the Constitution  
22 of the State of Indiana. The person who is appointed holds the office  
23 until:

24 (1) the end of the unexpired term; or



C  
O  
P  
Y

1 (2) a successor is elected at the next general election and  
 2 qualified;  
 3 whichever occurs first. The person elected at the general election  
 4 following an appointment to fill the vacancy, upon being qualified,  
 5 holds office for the six (6) year term prescribed by Article 7, Section 7  
 6 of the Constitution of the State of Indiana and until a successor is  
 7 elected and qualified.

8 (c) A vacancy in the office of judge of a superior, probate, or county  
 9 court shall be filled by the governor subject to the following:

- 10 (1) IC 33-5-5.1-37.1.  
 11 (2) IC 33-5-5.1-41.1.  
 12 (3) IC 33-5-29.5-39.  
 13 (4) IC 33-5-40-44.

14 The person who is appointed holds office for the remainder of the  
 15 unexpired term.

16 **(d) The governor, in filling vacancies in the office of judge of a**  
 17 **circuit, superior, probate, or county court, must consider whether**  
 18 **appointment of a particular candidate to the court will allow the**  
 19 **composition of circuit, superior, probate, and county courts to**  
 20 **more accurately reflect the diversity of the citizens of Indiana.**

21 SECTION 3. IC 33-2-1-1 IS AMENDED TO READ AS FOLLOWS  
 22 [EFFECTIVE JULY 1, 2001]: Sec. 1. The supreme court shall consist  
 23 of ~~five (5)~~ **seven (7)** judges, any ~~three (3)~~ **four (4)** of whom shall form  
 24 a quorum, and shall have jurisdiction in appeals coextensive with the  
 25 state.

26 SECTION 4. IC 33-2.1-2-1 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. ~~Supreme Court:~~ The  
 28 supreme court shall consist of ~~five (5)~~ **seven (7)** judges, any ~~three (3)~~  
 29 **four (4)** of whom shall constitute a quorum and shall have jurisdiction  
 30 as provided by the Constitution of **the State of Indiana.**

31 SECTION 5. IC 33-2.1-4-7 IS AMENDED TO READ AS  
 32 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 7. (a) The judicial  
 33 nominating commission shall submit to the governor, from among all  
 34 those names the commission considers for a vacancy, the names of only  
 35 the three (3) most highly qualified candidates. In determining which  
 36 candidates are most highly qualified each commission member shall  
 37 evaluate each candidate, in writing, on the following considerations:

- 38 (1) Legal education, including law schools attended and postlaw  
 39 school education, and any academic honors and awards achieved.  
 40 (2) Legal writings, including but not limited to legislative  
 41 draftings, legal briefs, and contributions to legal journals and  
 42 publications.



C  
O  
P  
Y

1 (3) Reputation in the practice of law, as evaluated by attorneys  
 2 and judges with whom the candidate has had professional contact,  
 3 and the type of legal practice, including experience and reputation  
 4 as a trial lawyer or trial judge.

5 (4) Physical condition, including general health, stamina, vigor,  
 6 and age.

7 **(5) Whether appointment of the candidate to the court will**  
 8 **allow the composition of the tax court, the court of appeals,**  
 9 **and the supreme court to more accurately reflect the diversity**  
 10 **of the citizens of Indiana;**

11 ~~(5)~~ (6) Financial interests, including any such interest which  
 12 might conflict with the performance of judicial responsibilities.

13 ~~(6)~~ (7) Activities in public service, including writings and  
 14 speeches concerning public affairs and contemporary problems,  
 15 and efforts and achievements in improving the administration of  
 16 justice.

17 ~~(7)~~ (8) Any other pertinent information which the commission  
 18 feels is important in selecting the most highly qualified  
 19 individuals for judicial office.

20 (b) The commission shall not make an investigation to determine  
 21 these considerations until the individual states in writing that the  
 22 individual desires to hold a judicial office that has been or will be  
 23 created by a vacancy and that the individual consents to the public  
 24 disclosure of information under subsections (d) and (g).

25 (c) The commission shall inquire into the personal and legal  
 26 backgrounds of each candidate by investigations made independent  
 27 from the statements on an application of the candidate or in an  
 28 interview with the candidate. In completing these investigations the  
 29 commission, in its discretion, may use information provided by or the  
 30 assistance of:

31 (1) a law enforcement agency;

32 (2) any organization of lawyers, judges, or individual  
 33 practitioners; or

34 (3) any other person or association.

35 (d) The commission shall publicly disclose the names of all  
 36 candidates who have filed for judicial appointment after the  
 37 commission has received the consent required by subsection (b) but  
 38 before the commission has begun to evaluate any of the candidates. If  
 39 the commission's screening of the candidates for judicial appointment  
 40 occurs in an executive session conducted under IC 5-14-1.5-6.1(b)(9),  
 41 the screening may not reduce the number of candidates for further  
 42 consideration to fewer than ten (10) individuals unless there are fewer



C  
O  
P  
Y

1 than ten (10) individuals from which to choose before the screening.  
 2 When the commission's screening has reduced the number of  
 3 candidates for further consideration to not less than ten (10) or it has  
 4 less than ten (10) eligible candidates otherwise from which to choose,  
 5 the commission shall:

6 (1) publicly disclose the names of those individuals and their  
 7 applications before taking any further action; and

8 (2) give notice of any further action in the same manner that  
 9 notice is given under IC 5-14-1.5.

10 (e) Information described in subsection (d)(1) is identifying  
 11 information for the purposes of IC 5-14-1.5-6.1(b)(9).

12 (f) The commission shall submit with the list of three (3) nominees  
 13 to the governor their written evaluation of each such nominee, based on  
 14 those considerations stated in subsection (a). The list of names  
 15 submitted to the governor and the written evaluation of each nominee  
 16 shall be publicly disclosed by the commission.

17 (g) Notwithstanding IC 5-14-3-4, all public records (as defined in  
 18 IC 5-14-3-2) of the judicial nominating commission are subject to  
 19 IC 5-14-3-3, including records described in IC 5-14-3-4(b)(12).  
 20 However, the following records are excepted from public inspection  
 21 and copying at the discretion of the judicial nominating commission:

22 (1) Personnel files of commission employees and files of  
 23 applicants for employment with the commission to the extent  
 24 permitted under IC 5-14-3-4(b)(8).

25 (2) Records specifically prepared for discussion or developed  
 26 during discussion in an executive session under IC 5-14-1.5-6.1,  
 27 unless the records are prepared for use in the consideration of a  
 28 candidate for judicial appointment.

29 (3) Investigatory records prepared for the commission under  
 30 subsection (c) until:

31 (A) the records are filed or introduced into evidence in  
 32 connection with the consideration of a candidate;

33 (B) the records are publicly discussed by the commission in  
 34 connection with the consideration of a candidate;

35 (C) a candidate elects to have the records released by the  
 36 commission; or

37 (D) the commission elects to release the records that the  
 38 commission considers appropriate in response to publicly  
 39 disseminated statements relating to the activities or actions of  
 40 the commission;

41 whichever occurs first.

42 (4) Applications of candidates for judicial appointment who are

C  
O  
P  
Y



1 not among the applicants eligible for further consideration  
 2 following the commission's screening under subsection (d).

3 (5) The work product of an attorney (as defined by IC 5-14-3-2)  
 4 representing the commission.

5 (h) When an event described by subsection (g)(3) occurs, the  
 6 investigatory record becomes available for public inspection and  
 7 copying under IC 5-14-3-3.

8 (i) As used in this subsection, "attributable communication" refers  
 9 to a communication containing the sender's name, address, and  
 10 telephone number. The commission shall provide a copy of all  
 11 attributable communications regarding a candidate for judicial  
 12 appointment to each member of the commission. An attributable  
 13 communication becomes available for public inspection and copying  
 14 under IC 5-14-3-3 after a copy has been provided to each member of  
 15 the commission. The commission may not consider a communication  
 16 other than an attributable communication in evaluating any candidate  
 17 for judicial appointment.

18 (j) The commission shall release the investigatory records prepared  
 19 for the commission under subsection (c) to the candidate for judicial  
 20 appointment described by the records.

21 SECTION 6. IC 33-2.1-4-10 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 10. (a) In the event of  
 23 the failure of the governor to make an appointment within the sixty (60)  
 24 days from the date the names of the nominees are submitted to him, the  
 25 chief justice of the state shall make the appointment from such  
 26 nominees.

27 **(b) The chief justice, in evaluating candidates for the office of**  
 28 **judge of the tax court or the court of appeals, must consider**  
 29 **whether appointment of a particular candidate to the court will**  
 30 **allow the composition of the courts to more accurately reflect the**  
 31 **diversity of the citizens of Indiana.**

32 **(c) The chief justice, in evaluating candidates for the office of**  
 33 **justice of the supreme court, must consider whether appointment**  
 34 **of a particular candidate to the court will allow the composition of**  
 35 **the court to more accurately reflect the diversity of the citizens of**  
 36 **Indiana.**

37 (d) Any change in a list submitted to the Governor pursuant to  
 38 section 9 of this chapter shall require a re-submission of the altered list  
 39 to the Governor and the sixty (60) day period in which the Governor  
 40 must make the appointment shall begin on the date of re-submission.

41 SECTION 7. IC 33-5-5.1-38.1 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 38.1. In selecting the

C  
O  
P  
Y



1 three (3) nominees to be submitted to the governor, the commission  
2 shall comply with the following requirements:

3 (a) The commission shall submit only the names of the three (3)  
4 most highly qualified candidates from among all those eligible  
5 individuals considered. To be eligible for nomination as a judge of the  
6 Allen superior court, a person must meet the qualifications listed in  
7 section 29.3 of this chapter.

8 (b) As an aid in choosing the three (3) most qualified candidates, the  
9 commission shall in writing evaluate each eligible individual it  
10 considers on the following factors:

11 (1) Law school record, including any academic honors and  
12 achievements.

13 (2) Contributions to scholarly journals and publications,  
14 legislative draftings, and legal briefs.

15 (3) Activities in public service, including:

16 (A) writings and speeches concerning public or civic affairs  
17 which are on public record, including campaign speeches or  
18 writing, letters to newspapers, and testimony before public  
19 agencies;

20 (B) government service;

21 (C) efforts and achievements in improving the administration  
22 of justice; and

23 (D) other conduct relating to his profession.

24 (4) Legal experience, including the number of years of practicing  
25 law, the kind of practice involved, and reputation as a trial lawyer  
26 or judge.

27 (5) Probable judicial temperament.

28 (6) Physical condition, including age, stamina, and possible  
29 habitual intemperance.

30 (7) Personality traits, including the exercise of sound judgment,  
31 ability to compromise and conciliate, patience, decisiveness and  
32 dedication.

33 **(8) Whether appointment of the candidate to the court will**  
34 **allow the composition of circuit, superior, probate, and county**  
35 **courts to more accurately reflect the diversity of the citizens**  
36 **of Indiana;**

37 ~~(8)~~ (9) Membership on boards of directors, financial interest, and  
38 any other consideration which might create conflict of interest  
39 with a judicial office.

40 ~~(9)~~ (10) Any other pertinent information that the commission feels  
41 is important in selecting the best qualified individuals for judicial  
42 office.

C  
O  
P  
Y



1 (c) An individual may not be evaluated before he states in writing  
2 that he desires to hold a judicial office that is or will be created by a  
3 vacancy.

4 (d) The political affiliations of a candidate may not be considered.

5 SECTION 8. IC 33-5-29.5-36 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 36. In selecting the  
7 three (3) nominees to be submitted to the governor, the commission  
8 shall comply with the following requirements:

9 (a) The commission shall submit only the names of the three (3)  
10 most highly qualified candidates from among all those eligible  
11 individuals considered. To be eligible for nomination as a judge of the  
12 superior court of Lake County, a person must be domiciled in the  
13 county of Lake, a citizen of the United States and admitted to the  
14 practice of law in the courts of Indiana.

15 (b) In abiding by the mandate in subsection (a) of this section, the  
16 commission shall evaluate in writing each eligible individual on the  
17 following factors:

18 (1) Law school record, including any academic honors and  
19 achievements;

20 (2) Contribution to scholarly journals and publications, legislative  
21 drafting, and legal briefs;

22 (3) Activities in public service, including:

23 (i) (A) writings and speeches concerning public or civic affairs  
24 which are on public record, including but not limited to  
25 campaign speeches or writings, letters to newspapers, and  
26 testimony before public agencies;

27 (ii) (B) government service;

28 (iii) (C) efforts and achievements in improving the  
29 administration of justice; **and**

30 (iv) (D) other conduct relating to the individual's profession.

31 (4) Legal experience, including the number of years of practicing  
32 law, the kind of practice involved, and reputation as a trial lawyer  
33 or judge;

34 (5) Probable judicial temperament;

35 (6) Physical condition, including age, stamina, and possible  
36 habitual intemperance;

37 (7) Personality traits, including the exercise of sound judgment,  
38 ability to compromise and conciliate, patience, decisiveness and  
39 dedication;

40 **(8) Whether appointment of the candidate to the court will**  
41 **allow the composition of circuit, superior, probate, and county**  
42 **courts to more accurately reflect the diversity of the citizens**

C  
O  
P  
Y



1 **of Indiana;**

2 ~~(8)~~ **(9)** Membership on boards of directors, financial interest, and  
 3 any other consideration which might create conflict of interest  
 4 with a judicial office;

5 ~~(9)~~ **(10)** Any other pertinent information which the commission  
 6 feels is important in selecting the best qualified individuals for  
 7 judicial office.

8 (c) These written evaluations shall not be made on an individual  
 9 until the individual states in writing that the individual desires to hold  
 10 a judicial office that is or will be created by vacancy.

11 (d) The political affiliations of any candidate shall not be considered  
 12 by the commission in evaluating and determining which eligible  
 13 candidates shall be recommended to the governor for a vacancy on the  
 14 superior court of Lake County.

15 ~~(e) In determining which eligible candidates shall be recommended~~  
 16 ~~to the governor, the commission shall consider that racial and gender~~  
 17 ~~diversity enhances the quality of the judiciary.~~

18 SECTION 9. IC 33-5-40-41 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 41. (a) The commission  
 20 shall submit only the names of the five (5) most highly qualified  
 21 candidates from among all those eligible individuals considered. To be  
 22 eligible for nomination as a judge of the St. Joseph superior court, a  
 23 person must be domiciled in the county of St. Joseph, a citizen of the  
 24 United States, and admitted to the practice of law in the courts of this  
 25 state.

26 (b) In abiding by the mandate in subsection (a) of this section, the  
 27 commission shall evaluate in writing each eligible individual on the  
 28 following factors:

29 (1) Law school record, including any academic honors and  
 30 achievements;

31 (2) Contribution to scholarly journals and publications, legislative  
 32 draftings, and legal briefs;

33 (3) Activities in public service, including:

34 ~~(i)~~ **(A)** writings and speeches concerning public or civic affairs  
 35 which are on public record, including but not limited to  
 36 campaign speeches or writing, letters to newspapers, testimony  
 37 before public agencies;

38 ~~(ii)~~ **(B)** efforts and achievements in improving the  
 39 administration of justice; **and**

40 ~~(iii)~~ **(C)** other conduct relating to his profession.

41 (4) Legal experience, including the number of years of practicing  
 42 law, the kind of practice involved, and reputation as a trial lawyer

C  
O  
P  
Y



- 1 or judge;
- 2 (5) Probable Judicial temperament;
- 3 (6) Physical condition, including age, stamina, and possible
- 4 habitual intemperance;
- 5 (7) Personality traits, including the exercise of sound judgment,
- 6 ability to compromise and conciliate patience, decisiveness and
- 7 dedication;
- 8 **(8) Whether appointment of the candidate to the court will**
- 9 **allow the composition of circuit, superior, probate, and county**
- 10 **courts to more accurately reflect the diversity of the citizens**
- 11 **of Indiana;**
- 12 ~~(8)~~ **(9)** Membership on boards of directors, financial interest, and
- 13 any other consideration which might create conflict of interest
- 14 with a judicial office;
- 15 ~~(9)~~ **(10)** Any other pertinent information which the commission
- 16 feels is important in selecting the best qualified individuals for
- 17 judicial office.
- 18 (c) These written evaluations shall not be made on an individual
- 19 until he states in writing that he desires to hold a judicial office that is
- 20 or will be created by vacancy.
- 21 (d) The political affiliations of any candidate shall not be considered
- 22 by the commission in evaluating and determining which eligible
- 23 candidates shall be recommended to the governor for a vacancy on the
- 24 St. Joseph superior court.
- 25 SECTION 10. IC 33-13-14-8 IS ADDED TO THE INDIANA
- 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 27 [EFFECTIVE JULY 1, 2000]: Sec. 8. **The Indiana judicial center**
- 28 **shall annually prepare a report or include as part of a general**
- 29 **annual report an analysis that compares the diversity of the judges**
- 30 **serving in the circuit, superior, probate, and county courts, the tax**
- 31 **court, the court of appeals, and the supreme court to the diversity**
- 32 **of the general population in Indiana. The Indiana judicial center**
- 33 **shall distribute a copy of the analysis to the governor, the supreme**
- 34 **court, and the executive director of the legislative services agency.**
- 35 SECTION 11. [EFFECTIVE JULY 1, 2000] (a) **The judicial**
- 36 **nominating commission may not submit names to the governor to**
- 37 **fill a judicial vacancy created by the amendment by this act of**
- 38 **IC 33-2-1-1 and IC 33-2.1-2-1 until after May 1, 2001.**
- 39 (b) **This SECTION expires December 31, 2001.**

COPY

