HOUSE BILL No. 1454

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-32; IC 31-34-4-6; IC 31-40; IC 33-40; IC 33-44-7-9; IC 34-10-1-2.

Synopsis: State plan for representation of indigent children. Establishes a statutory right to counsel for a child who is alleged or adjudicated to be a child in need of services or the subject of a parent-child termination proceeding. Establishes the office of the state juvenile public defender. Provides for representation of indigent children in cases filed in a juvenile court under a plan developed by the office of the state juvenile public defender and approved by the supreme court. Prohibits a child from waiving counsel unless certain criteria are met. Provides that if a child waives counsel, the court shall: (1) appoint standby counsel for the child; and (2) offer the child counsel at each later stage of a court proceeding. Provides for counties to distribute to the state the average net amount (after deducting certain reimbursements) that the counties spent for these services over a five year period. Makes an appropriation.

Effective: Upon passage; July 1, 2011; January 1, 2012.

Crawford

January 20, 2011, read first time and referred to Committee on Family, Children and Human Affairs.

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Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1454

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law and to make an appropriation.

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

SECTION 1. IC 31-32-2-2.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: **Sec. 2.3. In addition to the rights described in section 1 of this chapter, a child alleged to be a child in need of services is also entitled to be represented by counsel under IC 31-32-4.**

SECTION 2. IC 31-32-2-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: **Sec. 5.5. A child is entitled to representation by counsel in proceedings to terminate the parent-child relationship.**

SECTION 3. IC 31-32-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 1. The following persons are entitled to be represented by counsel:

(1) A child charged with a delinquent act, as provided by IC 31-32-2-2.

(2) A child alleged to be a child in need of services, as

provided in IC 31-32-2-2.3.

~~(2)~~ **(3)** A parent, in a proceeding to terminate the parent-child relationship, as provided by IC 31-32-2-5.

(4) A child, in a proceeding to terminate the parent-child relationship, as provided by IC 31-32-2-5.5.

~~(3)~~ **(5)** Any other person designated by law.

SECTION 4. IC 31-32-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 2. (a) If:

(1) a child alleged to be a delinquent child does not have an attorney who may represent the child without a conflict of interest; and

(2) the child has not lawfully waived the child's right to counsel under IC 31-32-5 (or IC 31-6-7-3 before its repeal);

the juvenile court shall appoint counsel for the child at the detention hearing or at the initial hearing, whichever occurs first, or at any earlier time **in accordance with the plan developed by the office of the state juvenile public defender and approved by the supreme court under IC 33-40-1.5-6.**

(b) The court may appoint counsel to represent any child in any other proceeding **in accordance with the plan developed by the office of the state juvenile public defender and approved by the supreme court under IC 33-40-1.5-6.**

SECTION 5. IC 31-32-4-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: **Sec. 2.5 (a) If:**

(1) a child alleged to be a child in need of services does not have an attorney who may represent the child without a conflict of interest; and

(2) the child has not lawfully waived the child's right to counsel under IC 31-32-5;

the juvenile court shall appoint counsel for the child at the initial hearing or at any earlier time in accordance with the plan developed by the office of the state juvenile public defender and approved by the supreme court under IC 33-40-1.5-6.

(b) The court may appoint counsel to represent any child in any other proceeding in accordance with the plan developed by the office of the state juvenile public defender and approved by the supreme court under IC 33-40-1.5-6.

SECTION 6. IC 31-32-4-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: **Sec. 3.5 (a) If:**

(1) a child in a proceeding to terminate the parent-child

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relationship does not have an attorney who may represent the child without a conflict of interest; and

(2) the child has not lawfully waived the child's right to counsel under IC 31-32-5;

the juvenile court shall appoint counsel for the child at the initial hearing or at any earlier time in accordance with the plan developed by the office of the state juvenile public defender and approved by the supreme court under IC 33-40-1.5-6.

(b) The court may appoint counsel to represent any child in any other proceeding in accordance with the plan developed by the office of the state juvenile public defender and approved by the supreme court under IC 33-40-1.5-6.

SECTION 7. IC 31-32-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **(a) Except as provided in subsection (b),** any rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law may be waived only:

(1) by counsel retained or appointed to represent the child if the child knowingly and voluntarily joins with the waiver;

(2) by the child's custodial parent, guardian, custodian, or guardian ad litem if:

(A) that person knowingly and voluntarily waives the right;

(B) that person has no interest adverse to the child;

(C) meaningful consultation has occurred between that person and the child; and

(D) the child knowingly and voluntarily joins with the waiver; or

(3) by the child, without the presence of a custodial parent, guardian, or guardian ad litem, if:

(A) the child knowingly and voluntarily consents to the waiver; and

(B) the child has been emancipated under IC 31-34-20-6 or IC 31-37-19-27, by virtue of having married, or in accordance with the laws of another state or jurisdiction.

(b) A juvenile court shall deny a child's waiver of counsel unless all the following conditions are met:

(1) The waiver is made:

(A) knowingly;

(B) voluntarily;

(C) in the presence of the child's attorney; and

(D) after the child consults with the child's attorney.

(2) The waiver is executed on the record in open court.

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(3) The waiver is in writing and written in the language primarily spoken by the child.

(4) The court conducts an inquiry and determines that the child understands that the child is waiving the right to counsel.

(c) If a child's right to counsel is waived under subsection (b), the court shall:

(1) appoint standby counsel for the child; and

(2) offer the child counsel at each later stage of the court proceedings.

SECTION 8. IC 31-34-4-6, AS AMENDED BY P.L.145-2006, SECTION 291, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 6. (a) The department shall submit written information to a parent, custodian, or guardian of a child who is alleged to be abused or neglected regarding the following legal rights of the parent, custodian, or guardian:

(1) The right to have a detention hearing held by a court within forty-eight (48) hours after the child's removal from the home and to request return of the child at the hearing.

(2) The right to:

(A) be represented by an attorney;

(B) cross examine witnesses; and

(C) present evidence on the parent's, custodian's, or guardian's own behalf;

at each court proceeding on a petition alleging that the child is a child in need of services. The parent, guardian, or custodian has the right to be represented by a court appointed attorney under clause (A) upon the request of the parent, guardian, or custodian if the court finds that the parent, guardian, or custodian does not have sufficient financial means for obtaining representation as described in ~~IC 34-10-1.~~ **IC 31-40-1-8.**

(3) The right not to make statements that incriminate the parent, custodian, or guardian and that an incriminating statement may be used during a court proceeding on a petition alleging that the child is a child in need of services.

(4) The right to request to have the case reviewed by the child protection team under IC 31-33-3-6.

(5) The right to be advised that after July 1, 1999, a petition to terminate the parent-child relationship must be filed whenever a child has been removed from the child's parent and has been under the supervision of the department for at least fifteen (15) months of the most recent twenty-two (22) months.

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(b) The department shall submit the written information under subsection (a) to the child's parent, guardian, or custodian at the time:

(1) the child is taken into custody; or

(2) the department files a petition alleging that the child is a child in need of services;

whichever occurs earlier.

SECTION 9. IC 31-40-1-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: **Sec. 8. (a) A:**

(1) parent or guardian of the estate of a child; or

(2) child;

receiving legal services under IC 33-40-1.5 is financially responsible for the legal services.

(b) If at any stage of a proceeding or an appeal of an order described in IC 33-40-1.5, the court finds that:

(1) the:

(A) child; or

(B) parent or guardian of the estate of the person, in the case of representation of a child (or the guardian ad litem or the court appointed special advocate of the child);

has sufficient financial means to pay for representation; and

(2) justice would be served by ordering payment from the child, parent, custodian, or guardian;

the juvenile court shall require payment by the person or the parent or guardian of the estate of the person of the costs described in subsection (c) in addition to other costs assessed against the person, parent, or guardian of the estate of the person.

(c) The juvenile court may order payment of the following:

(1) Reasonable attorney's fees of the state juvenile public defender or another court appointed attorney.

(2) Other costs incurred by the state juvenile public defender or the county as a direct result of the representation.

(d) The clerk of the court shall:

(1) transfer costs collected for services provided under a plan developed by the office of the state juvenile public defender and approved by the supreme court under IC 33-40-1.5-6 to the state juvenile public defender; and

(2) deposit other costs collected under this section in the supplemental public defender services fund.

(e) A person ordered to pay any part of the costs of representation under this section has the same rights and protections as those of other judgment debtors under the

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Constitution of the State of Indiana and under Indiana law.

SECTION 10. IC 31-40-1-9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: **Sec. 9. (a) For purposes of determining under section 8 of this chapter whether a person has sufficient financial means to pay for representation, the juvenile court shall consider:**

(1) the person's independently held assets and assets available to:

(A) the spouse of the person, if the person is an emancipated adult; or

(B) the person's parents and estate of the person, if the person is unemancipated;

(2) the person's income and income available to:

(A) the spouse of the person, if the person is an emancipated adult; or

(B) the person's parents and estate of the person, if the person is unemancipated;

(3) the person's liabilities and liabilities of:

(A) the spouse of the person, if the person is an emancipated adult; or

(B) the person's parents and estate of the person, if the person is unemancipated; and

(4) the extent of the burden that payment of costs assessed under section 8 of this chapter would impose on the person and the dependents of the person.

(b) If, after considering the factors described in subsection (a), the juvenile court determines that:

(1) the person is able to pay the costs of representation; and

(2) justice would be served by ordering payment from the child, parent, custodian, or guardian;

the court shall enter a finding that the person is able to pay those additional costs.

SECTION 11. IC 31-40-1-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: **Sec. 10. An order for costs assessed under section 8 of this chapter is a civil judgment subject to the exemptions allowed debtors under IC 34-55-10-2. At any time after entry of the order, the defendant may petition the court that has entered the order for relief from payment. The court may release the defendant from payment of all or a part of the payment required by the order if the court finds that payment would impose a hardship upon the defendant or dependents of the defendant.**

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SECTION 12. IC 31-40-1-11 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: **Sec. 11. Collected fees described in section 8(d)(1) of this chapter shall be deposited in the state general fund.**

SECTION 13. IC 33-40-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 2. (a) The state public defender shall represent a person who is:

(1) confined in a penal facility in Indiana or committed to the department of correction due to a criminal conviction; ~~or delinquency adjudication,~~ and

(2) financially unable to employ counsel;

in a postconviction proceeding testing the legality of the person's conviction, commitment, or confinement, if the time for appeal has expired.

(b) The state public defender shall also represent a person who is committed to the department of correction due to a criminal conviction ~~or delinquency adjudication,~~ and who is financially unable to employ counsel, in proceedings before the department of correction or parole board, if the right to legal representation is established by law.

(c) This section does not require the state public defender to pursue a claim or defense that is not warranted under law and cannot be supported by a good faith argument for an extension, a modification, or a reversal of law, or that for any other reason is without merit.

(d) This section does not prohibit an offender from proceeding on the offender's own behalf or otherwise refusing the services of the state public defender.

(e) A state public defender's representation of a delinquent offender in:

(1) a postconviction proceeding; or

(2) a proceeding before the department of correction or parole board;

that is pending on January 1, 2012, does not terminate on January 1, 2012. The state public defender may continue to represent the delinquent offender or petition the court or department hearing the proceeding to transfer representation to the office of the state juvenile public defender established under IC 33-40-1.5. Payment for legal services provided before January 1, 2012, or after December 31, 2011, (to the extent representation is not transferred to the state juvenile public defender) shall be made under the arrangement with the state public defender in effect on December 31, 2011.

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SECTION 14. IC 33-40-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 1.5. Plan for Representation of Indigent Children; Office of the State Juvenile Public Defender

Sec. 1. (a) The office of state juvenile public defender is established.

(b) The state juvenile public defender shall be appointed by the supreme court, to serve at the pleasure of the court, for a term of four (4) years.

(c) The state juvenile public defender must be:

(1) a resident of Indiana;

(2) a practicing attorney in Indiana for at least three (3) years; and

(3) meet any other qualifications:

(A) established by the public defender commission under IC 33-40-5-4; and

(B) approved by the supreme court in the plan prepared under section 6 of this chapter.

(d) The supreme court may give any tests it considers proper to determine the fitness of an applicant for appointment.

Sec. 2. (a) Subject to this section, after December 31, 2011, the state juvenile public defender shall provide for legal representation through a plan approved under section 6 of this chapter of a child in a proceeding described in subsection (b) if a juvenile court finds under IC 31-40-1-8 that:

(1) the:

(A) child; or

(B) parent, guardian, or custodian of the child;

has insufficient financial means to obtain representation; or

(2) justice would not be served by ordering payment from the child, parent, custodian, or guardian.

(b) The state juvenile public defender shall represent the following children in accordance with the plan adopted under section 6 of this chapter:

(1) A child charged with a delinquent act or adjudicated by a juvenile court to have committed a delinquent act in:

(A) a proceeding to which the child has a right to counsel under IC 31-32-2-2, IC 31-32-4-1, or IC 31-32-4-2; or

(B) another proceeding for which a juvenile court appoints counsel under IC 31-32-4-2(b).

(2) A child alleged to be a child in need of services or

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adjudicated to be a child in need of services in:

(A) a proceeding to which the child has a right to counsel under IC 31-32-2-2.3, IC 31-32-4-1, or IC 31-32-4-2.5(a); or

(B) another proceeding for which a juvenile court appoints counsel under IC 31-32-4-2.5(b).

(3) A child:

(A) in a proceeding to terminate the parent-child relationship to which the child has a right to counsel under IC 31-32-2-5.5, IC 31-32-4-1, or IC 31-32-4-3.5(a); or

(B) another proceeding for which a juvenile court appoints counsel under IC 31-32-4-3.5(b).

(4) A delinquent offender made a ward of the department of correction due to a delinquency adjudication in a postadjudication proceeding testing the legality of the person's wardship or confinement, if the time for appeal has expired.

(5) A delinquent offender made a ward of the department of correction due to a delinquency adjudication in proceedings before the department of correction or parole board, if the right to legal representation is established by law.

(6) A child, in any other proceeding in a juvenile court or on appeal from the juvenile court, as provided in the plan developed by the office of the state juvenile defender and approved by the supreme court under section 6 of this chapter.

(c) Representation of an indigent person in a proceeding described in subsection (b) that is pending on January 1, 2012, does not terminate on January 1, 2012. An attorney or group of attorneys appointed to represent the indigent person may continue to represent the person or petition the court or department hearing the proceeding to transfer representation to the office of the state juvenile public defender. Payment for legal services provided before January 1, 2012, or after December 31, 2011, (to the extent representation is not transferred to the state juvenile public defender) shall be made under the arrangement with the attorney in effect on December 31, 2011.

(d) This section does not require the state juvenile public defender to pursue a claim or defense that is not warranted under law and cannot be supported by a good faith argument for an extension, a modification, or a reversal of law, or that for any other reason is without merit.

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(e) This section does not prohibit a person from proceeding on the person's own behalf or otherwise refusing the services of the state juvenile public defender. If a person described in subsection (b) has not waived counsel in compliance with IC 31-32-5-1 and either the person refuses the services of the state juvenile public defender or the state juvenile public defender declines to act or withdraws as a person's attorney in accordance with subsection (f) or (g), the juvenile court shall appoint an attorney for the person as:

(1) provided in the standards adopted by the public defender commission under IC 33-40-5-4; and

(2) approved by the supreme court in the plan prepared under section 6 of this chapter.

(f) The state juvenile public defender may decline to represent a person described in subsection (b) or act as guardian ad litem or court appointed special advocate only as:

(1) provided in the standards adopted by the public defender commission under IC 33-40-5-4; and

(2) approved by the supreme court in the plan prepared under section 6 of this chapter.

(g) The state juvenile public defender may withdraw from representation of a person described in subsection (b) only as:

(1) provided in the standards adopted by the public defender commission under IC 33-40-5-4; and

(2) approved by the supreme court in the plan prepared under section 6 of this chapter.

Sec. 3. (a) The state juvenile public defender shall be provided with a seal of office on which appear the words "Juvenile Public Defender, State of Indiana".

(b) The state juvenile public defender may:

(1) take acknowledgments;

(2) administer oaths; and

(3) do all other acts authorized by law for a notary public.

An act performed under this section must be attested by the public defender's official seal.

Sec. 4. (a) The state juvenile public defender shall be paid an annual salary to be fixed by the supreme court.

(b) The state juvenile public defender shall be paid the state juvenile public defender's actual necessary and reasonable traveling expenses, including cost of food and lodging when away from the municipality in which the public defender's office is located and while on business of the office of the public defender.

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(c) The state juvenile public defender shall be provided with:

(1) office furniture, fixtures, and equipment; and

(2) books, stationery, printing services, postage, and supplies.

(d) The state juvenile public defender shall be provided with offices at the places located and designated by the supreme court.

Sec. 5. The state juvenile public defender may, with the consent of the supreme court, appoint or employ, at compensation to be fixed by the supreme court, the deputies, attorneys, stenographers, or other clerical help that may be required to discharge the public defender's duties.

Sec. 6. (a) The office of the state juvenile public defender shall prepare a comprehensive plan that must include at least one (1) of the following methods of providing legal defense services to indigent children described in section 2 of this chapter:

(1) Establish a county juvenile public defender's office in a county for the juvenile court in that county.

(2) Establish a multicounty juvenile public defender's office in a county for the juvenile court in two (2) or more contiguous counties.

(3) Contract with an attorney, a group of attorneys, or a private organization for a county or a group of two (2) or more contiguous counties.

(4) Using an assigned counsel system of panel attorneys for case by case appointments under section 7 of this chapter for a county or a group of two (2) or more contiguous counties.

(b) The plan under subsection (a) must be approved by the supreme court.

Sec. 7. The state juvenile public defender may establish an assigned counsel system of panel attorneys to provide legal representation under this chapter in one (1) or more counties that must operate as follows:

(1) The state juvenile public defender shall gather and maintain a list of attorneys qualified to represent indigent defendants.

(2) Upon the determination by a court that a person is indigent and entitled to legal representation at public expense, the court shall appoint an attorney to provide the representation from the list maintained by the state juvenile public defender.

(3) An attorney appointed to provide representation under this section may request authorization from the judge hearing the case for expenditures for investigative services, expert

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witnesses, or other services necessary to provide adequate legal representation.

(4) An attorney appointed to provide representation under this section is entitled to receive compensation and reimbursement for budgeted expenses by submitting a voucher to the court. Upon approval of the voucher by the appropriate judge, the voucher shall be presented to the county auditor, who shall process the claim as other claims against county funds are processed.

(5) An attorney appointed to provide representation under this section shall, upon completion of representation, report to the state juvenile public defender information regarding the case disposition.

Sec. 8. The state juvenile public defender may order on behalf of a person the state juvenile public defender represents a transcript of any court proceeding, including evidence presented, had against the person, and depositions, if necessary, at the expense of the state. However, the state juvenile public defender may stipulate as to the facts contained in the record of any court, or as to the substance of testimony presented or evidence heard involving any issue to be presented on behalf of the state juvenile public defender, without the testimony or evidence being fully transcribed.

Sec. 9. On January 1, 2012, the responsibility of paying the costs of the legal services described in section 2 of this chapter is transferred from the counties to the state. All claims for salary or other expenses authorized by this chapter shall be allowed and approved by the supreme court. There is appropriated annually out of funds of the state not otherwise appropriated a sufficient amount to pay salaries and expenses authorized by this chapter.

Sec. 10. (a) Before January 1, 2012, the department of local government finance shall determine an average annual expenditure for the uniform statewide five (5) year period determined by the department of local government finance of the amount expended by each county for legal services described in section 2 of this chapter after deducting the amount of reimbursement:

(1) received or which the county is likely to receive (as of the date determined by the department of local government finance) for the legal services from the supplemental public defender services fund under IC 33-40-3;

(2) collected or in the process of collection (as of the date determined by the department of local government finance)

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for the legal services from parents, custodians, or guardians; or

(3) received or which the county is likely to receive (as of the date determined by the department of local government finance) for the legal services from the federal government or an instrumentality of the federal government.

The department of local government finance shall certify the amount determined under this subsection to the county auditor of the affected county, the budget agency, the treasurer of state, and the state juvenile public defender.

(b) After December 31, 2011, each year, on each June and December settlement date under IC 6-1.1-27-1, a county shall distribute to the treasurer of state for deposit in the state general fund fifty percent (50%) of the amount determined for that county under subsection (a).

(c) If a county fails to make a transfer required under subsection (b), the treasurer of state shall notify the auditor of state and the budget agency. The budget agency may direct the auditor of state to withhold an amount from any funds otherwise distributable to the county for use by the county. The amount to be withheld may not exceed the amount that the county failed to transfer to the treasurer of state under this section. The amount shall be withheld on the schedule specified by the budget agency. The amount withheld under this subsection shall be deposited in the state general fund and is available for the purposes of the state general fund.

SECTION 15. IC 33-40-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 6. (a) If at any stage of a prosecution for a felony or a misdemeanor the court makes a finding of ability to pay the costs of representation under section 7 of this chapter, the court shall require payment by the person ~~or the person's parent, if the person is a child alleged to be a delinquent child,~~ of the following costs in addition to other costs assessed against the person:

(1) Reasonable attorney's fees if an attorney has been appointed for the person by the court.

(2) Costs incurred by the county as a result of court appointed legal services rendered to the person.

(b) The clerk of the court shall deposit costs collected under this section into the supplemental public defender services fund established under section 1 of this chapter.

(c) A person ordered to pay any part of the costs of representation

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under subsection (a) has the same rights and protections as those of other judgment debtors under the Constitution of the State of Indiana and under Indiana law.

(d) The sum of:

(1) the fee collected under IC 35-33-7-6;

(2) any amount assessed by the court under this section; and

(3) any amount ordered to be paid under IC 33-37-2-3;

may not exceed the cost of defense services rendered to the person.

SECTION 16. IC 33-40-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 7. (a) If a defendant ~~or a child alleged to be a delinquent child~~ is receiving publicly paid representation, the court shall consider:

(1) the person's independently held assets and assets available to the spouse of the person or the person's parent if the person is unemancipated;

(2) the person's income;

(3) the person's liabilities; and

(4) the extent of the burden that payment of costs assessed under section 6 of this chapter would impose on the person and the dependents of the person.

(b) If, after considering the factors described in subsection (a), the court determines that the person is able to pay the costs of representation, the court shall enter a finding that the person is able to pay those additional costs.

SECTION 17. IC 33-40-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 2. (a) There is established a public defender council of Indiana.

(b) The council's membership consists of all:

(1) public defenders;

(2) juvenile public defenders;

~~(2)~~ **(3)** contractual pauper counsel; and

~~(3)~~ **(4)** other court appointed attorneys regularly appointed to represent indigent defendants.

SECTION 18. IC 33-40-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. The commission shall do the following:

(1) Make recommendations to the supreme court concerning standards for indigent defense services provided for defendants against whom the state has sought the death sentence under IC 35-50-2-9, including the following:

(A) Determining indigency and eligibility for legal representation.

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(B) Selection and qualifications of attorneys to represent indigent defendants at public expense.

(C) Determining conflicts of interest.

(D) Investigative, clerical, and other support services necessary to provide adequate legal representation.

(2) Adopt guidelines and standards for indigent defense services under which the counties will be eligible for reimbursement under IC 33-40-6, including the following:

(A) Determining indigency and the eligibility for legal representation.

(B) The issuance and enforcement of orders requiring the defendant to pay for the costs of court appointed legal representation under IC 33-40-3.

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

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

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

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

(3) Adopt guidelines and standards for indigent defense services under IC 33-40-1.5.

(4) Adopt any qualifications determined necessary for a state juvenile public defender, deputy state juvenile public defender, or other attorney providing juvenile public defender services described in IC 33-40-1.5-2.

~~(3)~~ **(5)** Make recommendations concerning the delivery of indigent defense services in Indiana.

~~(4)~~ **(6)** Make an annual report to the governor, the general assembly, and the supreme court on the operation of the public defense fund.

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

SECTION 19. IC 33-40-7-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: **Sec. 1.5. Subject to IC 33-40-1.5-2, this chapter does not apply to the delivery of legal defense services to a person who is eligible to receive legal services under IC 33-40-1.5-2.**

SECTION 20. IC 33-44-7-9 IS AMENDED TO READ AS

C o p y

FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 9. During each year, the board shall disburse money from the fund for the payment of administrative costs to the extent permitted under section 14 of this chapter. After the payment of administrative costs, any money disbursed by the board from the fund during that year shall be disbursed as follows:

(1) Ninety percent (90%) of the funds shall be disbursed to provide legal assistance to eligible clients by:

(A) qualified legal services providers; or

(B) law school clinics in Indiana that provide free civil legal assistance to eligible clients.

(2) Ten percent (10%) of the funds shall be disbursed for programs or projects in the public interest that assist in the improvement of the administration of justice, including the following:

(A) Guardian ad litem and court appointed special advocate programs that provide guardians ad litem or court appointed special advocates for appointment by the court:

(i) under IC 31-17-2-12 to conduct an investigation and prepare a report in a custody proceeding; or

(ii) under IC 31-33-15-1, IC 31-34-10, or IC 31-40.

(B) Lawyer referral services in Indiana that provide:

(i) a referral to an attorney in private practice without a charge for the referral; and

(ii) an initial consultation with an attorney in private practice without a charge for the consultation;

in a fee generating case.

(C) The state juvenile public defender program.

SECTION 21. IC 34-10-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2012]: Sec. 2. (a) This section may not be construed to prohibit a court from participating in a pro bono legal services program or other program that provides legal services to litigants:

(1) without charge; or

(2) at a reduced fee.

(b) If the court is satisfied that a person who makes an application described in section 1 of this chapter does not have sufficient means to prosecute or defend the action, the court:

(1) shall admit the applicant to prosecute or defend as an indigent person; and

(2) may, under exceptional circumstances, assign an attorney to defend or prosecute the cause.

C o p y

If IC 33-40-1.5 provides for representation of a child under the plan developed by the state juvenile public defender and approved by the supreme court, an attorney appointed under subdivision (2) after December 31, 2011, must be appointed in conformity with the state juvenile public defender plan approved by the supreme court under IC 33-40-1.5-6.

(c) The factors that a court may consider under subsection (b)(2) include the following:

(1) The likelihood of the applicant prevailing on the merits of the applicant's claim or defense.

(2) The applicant's ability to investigate and present the applicant's claims or defenses without an attorney, given the type and complexity of the facts and legal issues in the action.

(d) The court shall deny an application made under section 1 of this chapter if the court determines any of the following:

(1) The applicant failed to make a diligent effort to obtain an attorney before filing the application.

(2) The applicant is unlikely to prevail on the applicant's claim or defense.

(e) All officers required to prosecute or defend the action shall do their duty in the case without taking any fee or reward from the indigent person.

(f) The reasonable attorney's fees and expenses of an attorney appointed to represent an applicant under section 1 of this chapter shall be paid from the money appropriated to the court:

(1) appointing the attorney, if the action was not transferred to another county; or

(2) from which the action was transferred, if the action was transferred to another county.

SECTION 22. **An emergency is declared for this act.**

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