

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1049

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

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

SECTION 1. IC 4-2-7-6, AS ADDED BY P.L.222-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) This section applies if the inspector general finds evidence of misfeasance, malfeasance, nonfeasance, misappropriation, fraud, or other misconduct that has resulted in a financial loss to the state or in an unlawful benefit to an individual in the conduct of state business.

(b) If the inspector general finds evidence described in subsection (a), the inspector general shall certify a report of the matter to the attorney general and provide the attorney general with any relevant documents, transcripts, or written statements. Not later than one hundred eighty (180) days after receipt of the report from the inspector general, the attorney general shall do one (1) of the following:

- (1) File a civil action (including an action upon a state officer's official bond) to secure for the state the recovery of funds misappropriated, diverted, missing, or unlawfully gained. Upon request of the attorney general, the inspector general shall assist the attorney general in the investigation, preparation, and prosecution of the civil action.
- (2) Inform the inspector general that the attorney general does not intend to file a civil action for the recovery of funds

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misappropriated, diverted, missing, or unlawfully gained. If the attorney general elects not to file a civil action, the attorney general shall return to the inspector general all documents and files initially provided by the inspector general.

(3) Inform the inspector general that the attorney general is diligently investigating the matter and after further investigation may file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained. However, if more than three hundred sixty-five (365) days have passed since the inspector general certified the report to the attorney general, the attorney general loses the authority to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained and shall return to the inspector general all documents and files initially provided by the inspector general.

(c) If the inspector general has found evidence described in subsection (a) and reported to the attorney general under subsection (b) and:

(1) the attorney general has elected under subsection (b)(2) not to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained; or

(2) under subsection (b)(3) more than three hundred sixty-five (365) days have passed since the inspector general certified the report to the attorney general under subsection (b) and the attorney general has not filed a civil action;

the inspector general may file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained.

(d) If the inspector general has found evidence described in subsection (a), the inspector general may institute forfeiture proceedings under IC 34-24-2 in a court having jurisdiction in a county where property derived from or realized through the misappropriation, diversion, disappearance, or unlawful gain of state funds may be located, unless a prosecuting attorney has already instituted forfeiture proceedings against that property.

(e) The inspector general may directly institute civil proceedings against a person who has failed to pay civil penalties imposed by the ethics commission under IC 4-2-6-12.

SECTION 2. IC 4-6-3-2, AS AMENDED BY P.L.111-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) The attorney general shall have charge of and direct the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency.

(b) In no instance under this section shall the state or a state agency

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be required to file a bond.

(c) This section does not affect the authority of prosecuting attorneys to prosecute civil actions.

(d) This section does not affect the authority of the inspector general to prosecute a civil action under IC 4-2-7-6 for the recovery of **any of the following**:

(1) Funds misappropriated, diverted, missing, or unlawfully gained.

(2) **A civil penalty imposed by the state ethics commission under IC 4-2-6-12.**

(e) The attorney general may bring an action to collect unpaid registration fees owed by a commercial dog broker or a commercial dog breeder under IC 15-21.

SECTION 3. IC 5-11-5-1, AS AMENDED BY P.L.176-2009, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) Whenever an examination is made under this article, a report of the examination shall be made. The report must include a list of findings and shall be signed and verified by the examiner making the examination. A finding that is critical of an examined entity must be based upon one (1) of the following:

(1) Failure of the entity to observe a uniform compliance guideline established under IC 5-11-1-24(a).

(2) Failure of the entity to comply with a specific law.

A report that includes a finding that is critical of an examined entity must designate the uniform compliance guideline or the specific law upon which the finding is based. The reports shall immediately be filed with the state examiner, and, after inspection of the report, the state examiner shall immediately file one (1) copy with the officer or person examined, one (1) copy with the auditing department of the municipality examined and reported upon, and one (1) copy in an electronic format under IC 5-14-6 of the reports of examination of state agencies, instrumentalities of the state, and federal funds administered by the state with the legislative services agency, as staff to the general assembly. Upon filing, the report becomes a part of the public records of the office of the state examiner, of the office or the person examined, of the auditing department of the municipality examined and reported upon, and of the legislative services agency, as staff to the general assembly. A report is open to public inspection at all reasonable times after it is filed. If an examination discloses malfeasance, misfeasance, or nonfeasance in office or of any officer or employee, a copy of the report, signed and verified, shall be placed by the state examiner with the attorney general **and the inspector general**. The attorney general

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shall diligently institute and prosecute civil proceedings against the delinquent officer, or upon the officer's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(b) Before an examination report is signed, verified, and filed as required by subsection (a), the officer or the chief executive officer of the state office, municipality, or entity examined must have an opportunity to review the report and to file with the state examiner a written response to that report. If a written response is filed, it becomes a part of the examination report that is signed, verified, and filed as required by subsection (a).

(c) Except as required by subsections (b) and (d), it is unlawful for any deputy examiner, field examiner, or private examiner, before an examination report is made public as provided by this section, to make any disclosure of the result of any examination of any public account, except to the state examiner or if directed to give publicity to the examination report by the state examiner or by any court. If an examination report shows or discloses the commission of a crime by any person, it is the duty of the state examiner to transmit and present the examination report to the grand jury of the county in which the crime was committed at its first session after the making of the examination report and at any subsequent sessions that may be required. The state examiner shall furnish to the grand jury all evidence at the state examiner's command necessary in the investigation and prosecution of the crime.

(d) If, during an examination under this article, a deputy examiner, field examiner, or private examiner acting as an agent of the state examiner determines that the following conditions are satisfied, the examiner shall report the determination to the state examiner:

- (1) A substantial amount of public funds has been misappropriated or diverted.
- (2) The deputy examiner, field examiner, or private examiner acting as an agent of the state examiner has a reasonable belief that the malfeasance or misfeasance that resulted in the misappropriation or diversion of the public funds was committed by the officer or an employee of the office.

(e) After receiving a preliminary report under subsection (d), the state examiner may provide a copy of the report to the attorney general. The attorney general may institute and prosecute civil proceedings against the delinquent officer or employee, or upon the officer's or employee's official bond, or both, and against any other proper person

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that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(f) In an action under subsection (e), the attorney general may attach the defendant's property under IC 34-25-2.

(g) A preliminary report under subsection (d) is confidential until the final report under subsection (a) is issued, unless the attorney general institutes an action under subsection (e) on the basis of the preliminary report.

SECTION 4. IC 5-11-6-1, AS AMENDED BY P.L.176-2009, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) The state examiner, personally or through the deputy examiners, field examiners, or private examiners, upon the petition of twenty-five (25) interested taxpayers showing that effective local relief has not and cannot be obtained after due effort, shall make the inquiries, tests, examinations, and investigations that may be necessary to determine whether:

- (1) any public contract has been regularly and lawfully executed and performed; or
- (2) any public work, building, or structure has been or is being performed, built, or constructed in accordance with the terms and provisions of the contract, and in compliance with the plans and specifications, if any.

Upon a written petition of twenty-five (25) taxpayers, the state examiner may also require all plans, specifications, and estimates to be submitted to the state examiner for corrections and approval before a contract is awarded.

(b) The state examiner, deputy examiner, and any field examiner, when engaged in making an inquiry, test, examination, or investigation under subsection (a), is entitled to examine and inspect any public records, documents, data, contracts, plans, and specifications contained or found in any public office or other place pertaining or relating to the public contract or public work, building, or structure. In addition, subpoenas may be issued to witnesses to appear before the examiner in person or to produce books and papers for inspection and examination. The state examiner, deputy, field, and private examiner may administer oaths and examine witnesses under oath either orally or by interrogatories on all matters under examination and investigation. Under order of the state examiner, the examination may be transcribed, with the reasonable expense paid by the municipality in the same manner as the compensation of the field examiner is paid.

(c) The state examiner, the deputy examiner, and a field examiner may enforce attendance and answers to questions and interrogatories,

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as provided by law, with respect to examinations and investigations made by the state examiner, deputy examiner, field examiner, or private examiner of public offices.

(d) The state examiner, deputy examiner, any field examiner, and any private examiner, when making an examination or investigation under subsection (a), shall examine, inspect, and test the public works, buildings, or structures in the manner that the examiner sees fit to determine whether it is being performed, built, or constructed according to the contract and plans and specifications.

(e) The state examiner shall file a report covering any examination or investigation that discloses:

(1) fraud, collusion, misconduct, or negligence in the letting or the execution of any public contract or in the performance of any of the terms and conditions of any public contract; or

(2) any failure to comply with the terms or conditions of any public contract in the construction of any public work, building, or structure or to perform, build, or construct it according to the plans and specifications, if any, provided in the contract;

that causes loss, injury, waste, or damage to the state, the municipality, taxing or assessment district, other public entity, or to its citizens, if it is enforceable by assessment or taxation.

(f) The report must meet the following requirements:

(1) The report must be made, signed, and verified in quadruplicate by the examiner making the examination.

(2) The report shall be filed promptly with the state examiner.

After inspection of the report, the state examiner shall file a copy of the report promptly with the attorney general **and the inspector general**.

(g) The attorney general shall diligently institute and prosecute civil proceedings against any or all officers, individuals, and persons in the form and manner that the attorney general determines will secure a proper recovery to the state, municipality, taxing or assessment district, or other public entity injured, defrauded, or damaged by the matters in the report. These prosecutions may be made by the attorney general and the recovery may be had, either upon public official bonds, contractors' bonds, surety or other bonds, or upon individual liability, either upon contract or in tort, as the attorney general determines is wise. No action or recovery in any form or manner, or against any party or parties, precludes further or additional action or recovery in any other form or manner or against another party, either concurrently with or later found necessary, to secure complete recovery and restitution with respect to all matters exhibited, set out, or described in the report. The suits may be brought in the name of the state on the relation of the attorney

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general for the benefit of the state, or the municipality, taxing or assessment district, or other public entity that may be proper. The actions brought against any defendants may be joined, as to parties, form, and causes of action, in the manner that the attorney general decides.

(h) Any report described in this section or a copy duly certified by the state examiner shall be taken and received in any and all courts of this state as prima facie evidence of the facts stated and contained in the reports.

(i) If an examination, investigation, or test is made without a petition being first filed and the examination, investigation, or test shows that the terms of the contract are being complied with, then the expense of the examination, investigation, or test shall be paid by the state upon vouchers approved by the state examiner from funds available for contractual service of the state board of accounts. If such a report shows misfeasance, malfeasance, or nonfeasance in public office or shows that the terms of the plans and specifications under which a contract has been awarded are not being complied with, it is unlawful to make the report public until the report has been certified to the attorney general.

(j) If, during an examination under this article, a deputy examiner, field examiner, or private examiner acting as an agent of the state examiner determines that all of the following conditions are satisfied, the examiner shall report the determination to the state examiner:

- (1) A substantial amount of public funds has been misappropriated or diverted.
- (2) The deputy examiner, field examiner, or private examiner acting as an agent of the state examiner has a reasonable belief that the malfeasance or misfeasance that resulted in the misappropriation or diversion of public funds was committed by the officer or an employee of the office.

(k) After receiving a preliminary report under subsection (j), the state examiner may provide a copy of the report to the attorney general. The attorney general may institute and prosecute civil proceedings against the delinquent officer or employee, or upon the officer's or employee's official bond, or both, and against any other proper person that will secure to the state or to the proper municipality the recovery of any funds misappropriated, diverted, or unaccounted for.

(l) In an action under subsection (k), the attorney general may attach the defendant's property under IC 34-25-2.

(m) A preliminary report under subsection (j) is confidential until the final report under subsection (e) is issued, unless the attorney

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general institutes an action under subsection (k) on the basis of the preliminary report.

SECTION 5. IC 5-11-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. If any examination or investigation made by the state examiner personally or through a deputy examiner, field examiner, or private examiner under ~~of~~ this chapter or ~~of~~ **under** any other statute discloses:

- (1) malfeasance, misfeasance, or nonfeasance in office or of any officer or employee;
- (2) that any public money has been:
 - (A) unlawfully expended, either by having been expended for a purpose not authorized by law in an amount exceeding that authorized by law, or by having been paid to a person not lawfully entitled to receive it; or
 - (B) obtained by fraud or in any unlawful manner; or
- (3) that any money has been wrongfully withheld from the public treasury;

a duly verified copy of the report shall be submitted by the state examiner to the attorney general, who shall institute and prosecute civil proceedings as provided in section 1 of this chapter, **and to the inspector general.**

SECTION 6. IC 12-23-14-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 16. (a) The court may require an eligible individual to pay a fee for a service of a program.

(b) If a fee is required, the court shall adopt by court rule a schedule of fees to be assessed for program services.

(c) The fee for program services, **excluding reasonable fees for education or treatment and rehabilitation services**, may not exceed four hundred dollars (\$400).

(d) A fee collected **under this chapter** shall be deposited in the city or county user fee fund.

SECTION 7. IC 33-23-16-13, AS ADDED BY P.L.108-2010, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13. An individual is eligible to participate in a problem solving court program only if:

- (1) the individual meets all of the eligibility criteria established by the board under section 12 of this chapter;
- (2) the judge of the problem solving court approves the admission of the individual to the problem solving court program; and
- (3) the individual is referred to the problem solving court as a result of at least one (1) of the following:
 - (A) A condition of a pretrial diversion program authorized by

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statute or authorized by the judge of the problem solving court and the prosecuting attorney.

(B) The procedure described in section 14 of this chapter.

(C) The procedure described in section 15 of this chapter.

(D) A condition of probation.

(E) A condition of participation in a community corrections program under IC 11-12-1.

(F) A condition of participation in a forensic diversion program under IC 11-12-3.7.

(G) A condition of a community transition program under IC 11-10-11.5.

(H) A condition of parole.

(I) An order in a dispositional decree under IC 31-34-20 to participate in a family dependency drug court if the individual is a parent, guardian, or another household member of a child adjudicated a child in need of services.

(J) A condition of an informal adjustment program under IC 31-37-9.

(K) Involvement in:

(i) a child support proceeding;

(ii) a mental health commitment; or

(iii) a civil protection proceeding.

(L) A condition of an informal adjustment program under IC 31-34-8.

SECTION 8. IC 33-23-16-15, AS AMENDED BY P.L.187-2011, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 15. (a) A problem solving court may place an individual in a problem solving court program under this section ~~only~~ if

~~(1)~~ the individual is convicted of an offense that is nonsuspendible and the individual meets the conditions for eligibility set forth in section 13(1) and 13(2) of this chapter. ~~and~~

~~(2) the individual agrees to the conditions of participation in the problem solving court program.~~

(b) If the requirements of subsection (a) are met, ~~in the case of an individual,~~ the court may:

(1) order the execution of the individual's nonsuspendible sentence and stay execution of all or part of the nonsuspendible part of the individual's sentence pending the individual's successful completion of a problem solving court program; and

(2) suspend all or part of the suspendible part of the individual's nonsuspendible sentence, place the individual on probation for

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the suspended part of the sentence, and require as a condition of probation that the person successfully complete a problem solving court program.

(c) If an individual has been terminated from a problem solving court program under this section as provided in section 14.5 of this chapter, the ~~problem solving~~ court may:

(1) if the person is serving the nonsuspendible part of the person's sentence:

(A) lift the stay of execution of the nonsuspendible part of the individual's sentence and order the individual to serve all or a part of the nonsuspendible sentence; or

(B) otherwise dispose of the case; or

(2) if the individual is serving the suspendible part of the individual's sentence:

(A) order all or a part of the individual's suspendible sentence to be executed; or

(B) otherwise dispose of the case.

(d) If an individual successfully completes a problem solving court program under this section, the ~~problem solving~~ court may:

(1) waive execution of the nonsuspendible part of the individual's sentence; or

(2) otherwise dispose of the case.

SECTION 9. IC 34-6-2-44.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 44.8. (a) An individual is a "family or household member" of another person if the individual:

(1) is a current or former spouse of the other person;

(2) is dating or has dated the other person;

(3) is engaged or was engaged in a sexual relationship with the other person;

(4) is related by blood or adoption to the other person;

(5) is or was related by marriage to the other person;

(6) has or previously had an established legal relationship:

(A) as a guardian of the other person;

(B) as a ward of the other person;

(C) as a custodian of the other person;

(D) as a foster parent of the other person; or

(E) in a capacity with respect to the other person similar to those listed in clauses (A) through (D); **or**

(7) has a child in common with the other person; **or**

(8) has adopted a child of the other person.

(b) An individual is a "family or household member" of both persons to whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6),

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~~or~~ (a)(7), **or (a)(8)** applies if the individual is a minor child of one (1) of the persons.

SECTION 10. IC 33-23-16-23, AS ADDED BY P.L.108-2010, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 23. (a) The board shall adopt rules establishing a range of fees that may be assessed to an eligible individual to receive problem solving court services under this chapter.

(b) A court that has established a problem solving court under this chapter may require eligible individuals to pay a fee for problem solving court services.

(c) If a fee is required under subsection (b), the court shall adopt by local court rule a schedule of fees, consistent with the rules adopted by the board under subsection (a), to be assessed for problem solving court services.

(d) The **problem solving court or the** clerk of the court shall collect fees under this section. **If the problem solving court collects fees under this section, the problem solving court shall transfer all collected fees to the clerk of the court not later than fourteen (14) days after the fees are collected.** The clerk of the court shall ~~transmit~~ **transfer** the fees within thirty (30) days after the fees are collected, for deposit by the auditor or fiscal officer in the appropriate user fee fund established under IC 33-37-8.

(e) Fees collected under this section must be used only to fund problem solving court services under this chapter.

SECTION 11. IC 33-23-16-23.5, AS ADDED BY P.L.187-2011, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 23.5. (a) A parent or guardian of a child:

(1) who is:

(A) adjudicated a delinquent child; or

(B) in a program of informal adjustment approved by a juvenile court under IC 31-37-9; and

(2) who is accepted into a problem solving court program; is financially responsible for the problem solving court services fee and chemical testing expenses assessed against the child by the problem solving court under this chapter.

(b) A parent or guardian of a child described in subsection (a) shall, before a hearing under subsection (c) concerning payment of fees and expenses assessed against the child, provide financial information to the problem solving court as ordered by the problem solving court.

(c) The problem solving court shall hold a hearing and may order the parent or guardian to pay fees and expenses assessed against a child described in subsection (a) unless the problem solving court makes a

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specific finding that:

- (1) the parent or guardian is unable to pay the fees or expenses;
or
- (2) justice would not be served by ordering the parent or guardian to pay the fees or expenses.

(d) If a parent or guardian is ordered to pay fees or expenses under this section, the parent or guardian shall pay the fees or expenses to **the problem solving court or** the clerk of the court. The problem solving court shall keep a record of all payments made under this section by each parent or guardian. When a child is discharged from a problem solving court program, the problem solving court shall determine the amount of any unpaid fees or expenses a parent or guardian owes under this section. The problem solving court may reduce the unpaid balance to a final judgment that may be enforced in any court that has appropriate jurisdiction.

SECTION 12. IC 33-34-8-1, AS AMENDED BY P.L.176-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. (a) The following fees and costs apply to cases in the small claims court:

- (1) A township docket fee of five dollars (\$5) plus forty-five percent (45%) of the infraction or ordinance violation costs fee under IC 33-37-4-2.
- (2) The bailiff's service of process by registered or certified mail fee of thirteen dollars (\$13) for each service.
- (3) The cost for the personal service of process by the bailiff or other process server of thirteen dollars (\$13) for each service.
- (4) Witness fees, if any, in the amount provided by IC 33-37-10-3 to be taxed and charged in the circuit court.
- (5) A redocketing fee, if any, of five dollars (\$5).
- (6) A document storage fee under IC 33-37-5-20.
- (7) An automated record keeping fee under IC 33-37-5-21.
- (8) A late fee, if any, under IC 33-37-5-22.
- (9) A public defense administration fee under IC 33-37-5-21.2.
- (10) A judicial insurance adjustment fee under IC 33-37-5-25.
- (11) A judicial salaries fee under IC 33-37-5-26.
- (12) A court administration fee under IC 33-37-5-27.
- (13) Before July 1, 2017, a pro bono legal services fee under IC 33-37-5-31.**

The docket fee and the cost for the initial service of process shall be paid at the institution of a case. The cost of service after the initial service shall be assessed and paid after service has been made. The cost of witness fees shall be paid before the witnesses are called.

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(b) If the amount of the township docket fee computed under subsection (a)(1) is not equal to a whole number, the amount shall be rounded to the next highest whole number.

SECTION 13. IC 33-34-8-3, AS AMENDED BY P.L. 182-2009(ss), SECTION 391, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 3. (a) Payment for all costs made as a result of proceedings in a small claims court shall be to the _____ Township of Marion County Small Claims Court (with the name of the township inserted). The court shall issue a receipt for all money received on a form numbered serially in duplicate. All township docket fees and late fees received by the court shall be paid to the township trustee at the close of each month.

(b) The court shall:

(1) semiannually distribute to the auditor of state:

(A) all automated record keeping fees (IC 33-37-5-21) received by the court for deposit in the homeowner protection unit account established by IC 4-6-12-9 and the state user fee fund established under IC 33-37-9;

(B) all public defense administration fees collected by the court under IC 33-37-5-21.2 for deposit in the state general fund;

(C) sixty percent (60%) of all court administration fees collected by the court under IC 33-37-5-27 for deposit in the state general fund;

(D) all judicial insurance adjustment fees collected by the court under IC 33-37-5-25 for deposit in the judicial branch insurance adjustment account established by IC 33-38-5-8.2; ~~and~~

(E) seventy-five percent (75%) of all judicial salaries fees collected by the court under IC 33-37-5-26 for deposit in the state general fund; ~~and~~

(F) one hundred percent (100%) of the pro bono legal services fees collected before July 1, 2017, by the court under IC 33-37-5-31; and

(2) distribute monthly to the county auditor all document storage fees received by the court.

The remaining twenty-five percent (25%) of the judicial salaries fees described in subdivision (1)(E) shall be deposited monthly in the township general fund of the township in which the court is located. The county auditor shall deposit fees distributed under subdivision (2) into the clerk's record perpetuation fund under IC 33-37-5-2.

(c) The court semiannually shall pay to the township trustee of the

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township in which the court is located the remaining forty percent (40%) of the court administration fees described under subsection (b)(1)(C) to fund the operations of the small claims court in the trustee's township.

SECTION 14. IC 33-37-4-4, AS AMENDED BY P.L.105-2009, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) The clerk shall collect a civil costs fee of one hundred dollars (\$100) from a party filing a civil action. This subsection does not apply to the following civil actions:

- (1) Proceedings to enforce a statute defining an infraction under IC 34-28-5 (or IC 34-4-32 before its repeal).
- (2) Proceedings to enforce an ordinance under IC 34-28-5 (or IC 34-4-32 before its repeal).
- (3) Proceedings in juvenile court under IC 31-34 or IC 31-37.
- (4) Proceedings in paternity under IC 31-14.
- (5) Proceedings in small claims court under IC 33-34.
- (6) Proceedings in actions described in section 7 of this chapter.

(b) In addition to the civil costs fee collected under this section, the clerk shall collect the following fees, if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A support and maintenance fee (IC 33-37-5-6).
- (3) A document storage fee (IC 33-37-5-20).
- (4) An automated record keeping fee (IC 33-37-5-21).
- (5) A public defense administration fee (IC 33-37-5-21.2).
- (6) A judicial insurance adjustment fee (IC 33-37-5-25).
- (7) A judicial salaries fee (IC 33-37-5-26).
- (8) A court administration fee (IC 33-37-5-27).
- (9) A service fee (IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2)).
- (10) A garnishee service fee (IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4)).
- (11) For a mortgage foreclosure action filed after June 30, 2009, and before January 1, 2013, a mortgage foreclosure counseling and education fee (IC 33-37-5-30 (before its expiration on January 1, 2013)).
- (12) Before July 1, 2017, a pro bono legal services fee (IC 33-37-5-31).**

SECTION 15. IC 33-37-4-6, AS AMENDED BY P.L.174-2006, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 6. (a) For each small claims action, the clerk shall collect the following fees:



- (1) From the party filing the action:
 - (A) a small claims costs fee of thirty-five dollars (\$35);
 - (B) a small claims service fee of ten dollars (\$10) for each named defendant that is not a garnishee defendant; and
 - (C) if the party has named more than three (3) garnishees or garnishee defendants, a small claims garnishee service fee of ten dollars (\$10) for each garnishee or garnishee defendant in excess of three (3).
- (2) From any party adding a defendant that is not a garnishee defendant, a small claims service fee of ten dollars (\$10) for each defendant that is not a garnishee defendant added in the action.
- (3) From any party adding a garnishee or garnishee defendant, a small claims garnishee service fee of ten dollars (\$10) for each garnishee or garnishee defendant added to the action. However, a clerk may not collect a small claims garnishee service fee for the first three (3) garnishees named in the action.

However, a clerk may not collect a small claims costs fee, small claims service fee, or small claims garnishee service fee for a small claims action filed by or on behalf of the attorney general.

(b) In addition to a small claims costs fee, small claims service fee, and small claims garnishee service fee collected under this section, the clerk shall collect the following fees, if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A document storage fee (IC 33-37-5-20).
- (3) An automated record keeping fee (IC 33-37-5-21).
- (4) A public defense administration fee (IC 33-37-5-21.2).
- (5) A judicial insurance adjustment fee (IC 33-37-5-25).
- (6) A judicial salaries fee (IC 33-37-5-26).
- (7) A court administration fee (IC 33-37-5-27).
- (8) Before July 1, 2017, a pro bono legal services fee (IC 33-37-5-31).**

SECTION 16. IC 33-37-4-7, AS AMENDED BY P.L.176-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. (a) Except as provided under subsection (c), the clerk shall collect from the party filing the action a probate costs fee of one hundred twenty dollars (\$120) for each action filed under any of the following:

- (1) IC 6-4.1-5 (determination of inheritance tax).
- (2) IC 29 (probate).
- (3) IC 30 (trusts and fiduciaries).



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(b) In addition to the probate costs fee collected under subsection (a), the clerk shall collect from the party filing the action the following fees, if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A document storage fee (IC 33-37-5-20).
- (3) An automated record keeping fee (IC 33-37-5-21).
- (4) A public defense administration fee (IC 33-37-5-21.2).
- (5) A judicial insurance adjustment fee (IC 33-37-5-25).
- (6) A judicial salaries fee (IC 33-37-5-26).
- (7) A court administration fee (IC 33-37-5-27).
- (8) Before July 1, 2017, a pro bono legal services fee (IC 33-37-5-31).**

(c) A clerk may not collect a court costs fee for the filing of the following exempted actions:

- (1) Petition to open a safety deposit box.
- (2) Filing an inheritance tax return, unless proceedings other than the court's approval of the return become necessary.
- (3) Offering a will for probate under IC 29-1-7, unless proceedings other than admitting the will to probate become necessary.

SECTION 17. IC 33-37-5-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 31. In each:**

- (1) civil action in which the clerk is required to collect a civil costs fee under IC 33-37-4-4(a);**
- (2) small claims action in which:**
 - (A) a party is required to pay a township docket fee under IC 33-34-8-1(a)(1); or**
 - (B) the clerk is required to collect a small claims costs fee under IC 33-37-4-6; or**
- (3) probate action in which the clerk is required to collect a probate costs fee under IC 33-37-4-7(a);**

the clerk shall, before July 1, 2017, collect a pro bono legal services fee of one dollar (\$1).

SECTION 18. IC 33-37-7-2, AS AMENDED BY SEA 287-2012, SECTION 182, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2. (a)** The clerk of a circuit court shall distribute semiannually to the auditor of state as the state share for deposit in the homeowner protection unit account established by IC 4-6-12-9 one hundred percent (100%) of the automated record keeping fees collected under IC 33-37-5-21 with respect to actions

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resulting in the accused person entering into a pretrial diversion program agreement under IC 33-39-1-8 or a deferral program agreement under IC 34-28-5-1 and for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-3(a) (juvenile costs fees).
- (4) IC 33-37-4-4(a) (civil costs fees).
- (5) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- (6) IC 33-37-4-7(a) (probate costs fees).
- (7) IC 33-37-5-17 (deferred prosecution fees).

(b) The clerk of a circuit court shall distribute semiannually to the auditor of state for deposit in the state user fee fund established in IC 33-37-9-2 the following:

- (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).
- (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- (3) One hundred percent (100%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7).
- (4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-37-4-1(b)(8).
- (5) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- (6) One hundred percent (100%) of the safe schools fee collected under IC 33-37-5-18.
- (7) The following:
 - (A) For a county operating under the state's automated judicial system, one hundred percent (100%) of the automated record keeping fee (IC 33-37-5-21) not distributed under subsection (a).
 - (B) For a county not operating under the state's automated judicial system, eighty percent (80%) of the automated record keeping fee (IC 33-37-5-21) not distributed under subsection (a).

(c) The clerk of a circuit court shall distribute monthly to the county auditor the following:

- (1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under

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IC 33-37-4-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-37-5-2 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance described in subdivision (1), the county auditor shall deposit all the fees in the county general fund.

(e) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the sexual assault victims assistance account established by IC 5-2-6-23(h) one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-37-5-23.

(f) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) One hundred percent (100%) of the support and maintenance fees for cases designated as non-Title IV-D child support cases in the Indiana support enforcement tracking system (ISETS) or the successor statewide automated support enforcement system collected under IC 33-37-5-6.

(2) The percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS or the successor statewide automated support enforcement system collected under IC 33-37-5-6 that is reimbursable to the county at the federal financial participation rate.

The county clerk shall distribute monthly to the department of child services the percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS, or the successor statewide automated support enforcement system, collected under IC 33-37-5-6 that is not reimbursable to the county at the applicable federal financial participation rate.

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(g) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) One hundred percent (100%) of the small claims service fee under IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2) for deposit in the county general fund.

(2) One hundred percent (100%) of the small claims garnishee service fee under IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3) for deposit in the county general fund.

(h) This subsection does not apply to court administration fees collected in small claims actions filed in a court described in IC 33-34. The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the following:

(1) The public defense administration fee collected under IC 33-37-5-21.2.

(2) The judicial salaries fees collected under IC 33-37-5-26.

(3) The DNA sample processing fees collected under IC 33-37-5-26.2.

(4) The court administration fees collected under IC 33-37-5-27.

(i) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the judicial branch insurance adjustment account established by IC 33-38-5-8.2 one hundred percent (100%) of the judicial insurance adjustment fee collected under IC 33-37-5-25.

(j) The proceeds of the service fee collected under IC 33-37-5-28(b)(1) or IC 33-37-5-28(b)(2) shall be distributed as follows:

(1) The clerk shall distribute one hundred percent (100%) of the service fees collected in a circuit, superior, county, or probate court to the county auditor for deposit in the county general fund.

(2) The clerk shall distribute one hundred percent (100%) of the service fees collected in a city or town court to the city or town fiscal officer for deposit in the city or town general fund.

(k) The proceeds of the garnishee service fee collected under IC 33-37-5-28(b)(3) or IC 33-37-5-28(b)(4) shall be distributed as follows:

(1) The clerk shall distribute one hundred percent (100%) of the garnishee service fees collected in a circuit, superior, county, or probate court to the county auditor for deposit in the county general fund.

(2) The clerk shall distribute one hundred percent (100%) of the garnishee service fees collected in a city or town court to the city or town fiscal officer for deposit in the city or town general fund.

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(l) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the home ownership education account established by IC 5-20-1-27 one hundred percent (100%) of the following:

(1) The mortgage foreclosure counseling and education fees collected under IC 33-37-5-30 (before its expiration on January 1, 2013).

(2) Any civil penalties imposed and collected by a court for a violation of a court order in a foreclosure action under IC 32-30-10.5.

(m) This subsection applies to a county that is not operating under the state's automated judicial system. The clerk of a circuit court shall distribute monthly to the county auditor twenty percent (20%) of the automated record keeping fee (IC 33-37-5-21) not distributed under subsection (a) for deposit in the clerk's record perpetuation fund.

(n) The clerk of a circuit court shall distribute semiannually to the auditor of state one hundred percent (100%) of the pro bono legal services fees collected before July 1, 2017, under IC 33-37-5-31. The auditor of state shall transfer semiannually the pro bono legal services fees to the Indiana Bar Foundation (or a successor entity) as the entity designated to organize and administer the interest on lawyers trust accounts (IOLTA) program under Rule 1.15 of the Rules of Professional Conduct of the Indiana supreme court. The Indiana Bar Foundation shall:

(1) deposit in an appropriate account and otherwise manage the fees the Indiana Bar Foundation receives under this subsection in the same manner the Indiana Bar Foundation deposits and manages the net earnings the Indiana Bar Foundation receives from IOLTA accounts; and

(2) use the fees the Indiana Bar Foundation receives under this subsection to assist or establish approved pro bono legal services programs.

The handling and expenditure of the pro bono legal services fees received under this section by the Indiana Bar Foundation (or its successor entity) are subject to audit by the state board of accounts. The amounts necessary to make the transfers required by this subsection are appropriated from the state general fund.

SECTION 19. IC 33-37-7-8, AS AMENDED BY P.L. 182-2009(ss), SECTION 396, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 8. (a) The clerk of a city or town court shall distribute semiannually to the auditor of state as the state share for deposit in the homeowner protection unit account established

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by IC 4-6-12-9 one hundred percent (100%) of the automated record keeping fees collected under IC 33-37-5-21 with respect to actions resulting in the accused person entering into a pretrial diversion program agreement under IC 33-39-1-8 or a deferral program agreement under IC 34-28-5-1 and for deposit in the state general fund fifty-five percent (55%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-4(a) (civil costs fees).
- (4) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- (5) IC 33-37-5-17 (deferred prosecution fees).

(b) The city or town fiscal officer shall distribute monthly to the county auditor as the county share twenty percent (20%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-4(a) (civil costs fees).
- (4) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- (5) IC 33-37-5-17 (deferred prosecution fees).

(c) The city or town fiscal officer shall retain twenty-five percent (25%) as the city or town share of the fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-4(a) (civil costs fees).
- (4) IC 33-37-4-6(a)(1)(A) (small claims costs fees).
- (5) IC 33-37-5-17 (deferred prosecution fees).

(d) The clerk of a city or town court shall distribute semiannually to the auditor of state for deposit in the state user fee fund established in IC 33-37-9 the following:

- (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).
- (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- (3) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- (4) One hundred percent (100%) of the safe schools fee collected under IC 33-37-5-18.
- (5) One hundred percent (100%) of the automated record keeping

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fee (IC 33-37-5-21) not distributed under subsection (a).

(e) The clerk of a city or town court shall distribute monthly to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-37-4-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(f) The clerk of a city or town court shall distribute monthly to the city or town fiscal officer (as defined in IC 36-1-2-7) one hundred percent (100%) of the following:

(1) The late payment fees collected under IC 33-37-5-22.

(2) The small claims service fee collected under IC 33-37-4-6(a)(1)(B) or IC 33-37-4-6(a)(2).

(3) The small claims garnishee service fee collected under IC 33-37-4-6(a)(1)(C) or IC 33-37-4-6(a)(3).

The city or town fiscal officer (as defined in IC 36-1-2-7) shall deposit fees distributed by a clerk under this subsection in the city or town general fund.

(g) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the following:

(1) The public defense administration fee collected under IC 33-37-5-21.2.

(2) The DNA sample processing fees collected under IC 33-37-5-26.2.

(3) The court administration fees collected under IC 33-37-5-27.

(h) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the judicial branch insurance adjustment account established by IC 33-38-5-8.2 one hundred percent (100%) of the judicial insurance adjustment fee collected under IC 33-37-5-25.

(i) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the state general fund seventy-five percent (75%) of the judicial salaries fee collected under IC 33-37-5-26. The city or town fiscal officer shall retain twenty-five percent (25%) of the judicial salaries fee collected under IC 33-37-5-26. The funds retained by the city or town shall be

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prioritized to fund city or town court operations.

(j) The clerk of a city or town court shall distribute semiannually to the auditor of state one hundred percent (100%) of the pro bono legal services fees collected before July 1, 2017, under IC 33-37-5-31. The auditor of state shall transfer semiannually the pro bono legal services fees to the Indiana Bar Foundation (or a successor entity) as the entity designated to organize and administer the interest on lawyers trust accounts (IOLTA) program under Rule 1.15 of the Rules of Professional Conduct of the Indiana supreme court. The Indiana Bar Foundation shall:

- (1) deposit in an appropriate account and otherwise manage the fees the Indiana Bar Foundation receives under this subsection in the same manner the Indiana Bar Foundation deposits and manages the net earnings the Indiana Bar Foundation receives from IOLTA accounts; and**
- (2) use the fees the Indiana Bar Foundation receives under this subsection to assist or establish approved pro bono legal services programs.**

The handling and expenditure of the pro bono legal services fees received under this section by the Indiana Bar Foundation (or its successor entity) are subject to audit by the state board of accounts. The amounts necessary to make the transfers required by this subsection are appropriated from the state general fund.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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