

# SENATE BILL No. 121

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-9-1-12.5; IC 5-8-1-38; IC 12-21-5.

**Synopsis:** Transfer of campaign funds after conviction. Provides that upon removal from office of a public officer by operation of law after June 30, 2016, because of the public officer's conviction of a felony, the public officer's candidate's committee is disbanded by operation of law. Provides that upon conviction of the public officer, the court must file a certified copy of the sentencing order with: (1) the election commission, in the case of a public officer removed from a state office or a legislative office; or (2) the appropriate county election board, in the case of a public officer removed from a local office or a school board office. Provides that upon receipt of the sentencing order, the commission or county election board shall issue an order dissolving the public officer's candidate's committee and ordering the treasurer of the committee to: (1) pay any outstanding debts or judgments of the committee; and (2) transfer any surplus of contributions less expenditures to the division of mental health and addiction (division) to be held in trust and used for the provision of mental health services for residents of Indiana, pending final disposition in the criminal case that resulted in the conviction of the public officer. Specifies duties of the division with respect to surplus funds held in trust. Establishes the public officer mental health trust fund for the purpose of providing mental health services for residents of Indiana. Provides that the fund: (1) shall be administered by the division; and (2) consists of surplus funds transferred to the division by candidates' committees of public officers removed from office by operation of law because of felony convictions. Makes an appropriation.

**Effective:** July 1, 2016.

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## Randolph Lonnie M

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January 5, 2016, read first time and referred to Committee on Elections.

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Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

# SENATE BILL No. 121

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

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

1 SECTION 1. IC 3-9-1-12.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2016]: **Sec. 12.5. (a) This section applies to a public officer who**  
4 **is removed from office by operation of law under IC 5-8-1-38 after**  
5 **June 30, 2016.**

6 **(b) Upon removal from office of a public officer by operation of**  
7 **law under IC 5-8-1-38 because of the public officer's conviction of**  
8 **a felony, the public officer's candidate's committee is disbanded by**  
9 **operation of law.**

10 **(c) Whenever a public officer is removed from office by**  
11 **operation of law under IC 5-8-1-38 because of the public officer's**  
12 **conviction of a felony, the court in which the public officer is**  
13 **convicted under IC 5-8-1-38(b)(1) must file a certified copy of the**  
14 **sentencing order with:**

- 15 **(1) the commission, in the case of a public officer removed**
- 16 **from a state office or a legislative office; or**
- 17 **(2) the appropriate county election board, in the case of a**



- 1           public officer removed from a local office or a school board  
2           office.
- 3           (d) Upon receipt of a sentencing order under subsection (c), the  
4           commission or county election board shall issue an order dissolving  
5           the public officer's candidate's committee and ordering the  
6           treasurer of the public officer's candidate's committee to:
- 7               (1) pay any outstanding debts or judgments of the committee;  
8               and  
9               (2) notwithstanding section 12(f) of this chapter, and subject  
10              to section 12(g) of this chapter, transfer any surplus of  
11              contributions less expenditures to the division of mental  
12              health and addiction established by IC 12-21-1-1 to be  
13              deposited and held in trust in the public officer mental health  
14              trust fund established by IC 12-21-5-5.5, as specified in  
15              IC 12-21-5-5, and used for the provision of mental health  
16              services for residents of Indiana, pending final disposition in  
17              the criminal case that resulted in the conviction of the public  
18              officer. If:
- 19                   (A) a surplus of contributions less expenditures exists after  
20                   the payment of any outstanding debts or judgments under  
21                   subdivision (1); and  
22                   (B) an appeal is taken in the criminal case that resulted in  
23                   the conviction of the public officer;
- 24              the public officer or the public officer's attorney shall serve  
25              written notice of the appeal on the division of mental health  
26              and addiction at the time of the filing of the appeal or upon  
27              the transfer of funds to the division under this subdivision,  
28              whichever is later.
- 29           (e) The election division or county election board shall send the  
30           order described in subsection (d) by certified mail to the last  
31           known address of the chairman and treasurer of the candidate's  
32           committee.
- 33           (f) Notwithstanding subsection (d)(1), if the commission or  
34           county election board finds that the prudent use of public resources  
35           makes further efforts to collect any outstanding civil penalty  
36           imposed against the candidate's committee wasteful or unjust, the  
37           commission or board may waive the outstanding civil penalty  
38           previously imposed by the commission or board against the  
39           committee.
- 40           (g) The election division shall arrange for the publication in the  
41           Indiana Register of an order issued under subsection (d). A county  
42           election board shall publish a notice under IC 5-3-1 stating that the



1 public officer's candidate's committee has been disbanded under  
 2 this section. The notice must state the date of the order and the  
 3 name of the committee, but the board is not required to publish the  
 4 text of the order.

5 (h) An order issued under subsection (d) takes effect  
 6 immediately upon its adoption.

7 (i) If the public officer's conviction is:

8 (1) reversed;

9 (2) vacated;

10 (3) set aside;

11 (4) for a felony other than a felony arising out of an action  
 12 taken in the public officer's official capacity, reduced to a  
 13 Class A misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5;  
 14 or

15 (5) not entered because the trial court did not accept the guilty  
 16 plea;

17 and a surplus of contributions less expenditures has been  
 18 transferred to the division of mental health and addiction under  
 19 subsection (d)(2) following the public officer's removal from office,  
 20 the division of mental health and addiction shall return to the  
 21 public officer the surplus held in trust under subsection (d)(2),  
 22 along with any interest earned on the surplus, upon receipt by the  
 23 division from the public officer or the public officer's attorney of  
 24 a certified copy of the order reversing, vacating, setting aside, or  
 25 reducing the conviction. Money returned to a public officer under  
 26 this section shall be used by the public officer only as permitted by  
 27 section 12(f) of this chapter.

28 (j) If:

29 (1) the treasurer of a candidate's committee transfers a  
 30 surplus of contributions less expenditures to the division of  
 31 mental health and addiction under subsection (d)(2); and

32 (2) the division of mental health and addiction does not  
 33 receive, within one (1) year of the transfer described in  
 34 subdivision (1), notice under subsection (d)(2) that an appeal  
 35 has been taken in the criminal case that resulted in the  
 36 conviction of the public officer with respect to whom the  
 37 surplus was transferred;

38 the division of mental health and addiction shall use the surplus  
 39 transferred, plus any interest earned on the surplus, for the  
 40 provision of mental health services for residents of Indiana.

41 (k) If:

42 (1) the treasurer of a candidate's committee transfers a



1 surplus of contributions less expenditures to the division of  
2 mental health and addiction under subsection (d)(2);

3 (2) the division receives notice under subsection (d)(2) that an  
4 appeal has been taken in the criminal case that resulted in the  
5 conviction of the public officer with respect to whom the  
6 surplus was transferred; and

7 (3) five (5) years have elapsed since the date of:

8 (A) the filing of the appeal, in the case of the first notice  
9 sent under this subsection; or

10 (B) the most recent notice sent under this subsection, in the  
11 case of a subsequent notice sent under this subsection; and  
12 the division has not received under subsection (i) a certified  
13 copy of an order reversing, vacating, setting aside, or  
14 reducing the public officer's conviction;

15 the division shall send written notice to the public officer or the  
16 public officer's attorney, as appropriate, at the address specified in  
17 the notice of the appeal received by the division under subsection  
18 (d)(2), inquiring as to whether there has been a final disposition of  
19 the appeal. If the public officer or the public officer's attorney does  
20 not respond to the division's notice within thirty (30) days after the  
21 mailing of the notice, the division may use the surplus transferred  
22 under subsection (d)(2), plus any interest earned on the surplus, for  
23 the provision of mental health services for residents of Indiana. If  
24 the public officer or the public officer's attorney responds to the  
25 division's written inquiry within the thirty (30) day period  
26 described in this subsection and indicates that there has been a  
27 final disposition of the appeal and that subsection (i) does not  
28 apply, the division shall use the surplus transferred, plus any  
29 interest earned on the surplus, for the provision of mental health  
30 services for residents of Indiana. If the public officer or the public  
31 officer's attorney responds to the division's written inquiry within  
32 the thirty (30) day period described in this subsection and indicates  
33 that there has not been a final disposition of the appeal, the division  
34 may not use the surplus transferred, or any interest earned on the  
35 surplus, for the provision of mental health services for residents of  
36 Indiana until the division receives notice from the public officer or  
37 the public officer's attorney that there has been a final disposition  
38 of the appeal and that subsection (i) does not apply. The division is  
39 not required to send more than three (3) notices under this  
40 subsection every five (5) years, beginning with the date that is five  
41 (5) years after the filing of the appeal. However, the division may  
42 not use the surplus transferred, or any interest earned on the



1 **surplus, for the provision of mental health services for residents of**  
 2 **Indiana until the division receives notice from the public officer or**  
 3 **the public officer's attorney that there has been a final disposition**  
 4 **of the appeal and that subsection (i) does not apply.**

5 SECTION 2. IC 5-8-1-38, AS AMENDED BY P.L.57-2015,  
 6 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2016]: Sec. 38. (a) The following definitions apply throughout  
 8 this section:

9 (1) "Felony" has the meaning set forth in IC 3-8-1-5.

10 (2) "Public officer" means either of the following:

11 (A) An individual who holds an elected office (as defined in  
 12 IC 3-5-2-17), other than a federal office.

13 (B) An individual who holds an appointed office of the state  
 14 or a political subdivision (as defined in IC 36-1-2-13).

15 (b) Any public officer convicted of a felony during the public  
 16 officer's term of office shall:

17 (1) be removed from office by operation of law when:

18 (A) in a jury trial, a jury publicly announces a verdict against  
 19 the person for a felony;

20 (B) in a bench trial, the court publicly announces a verdict  
 21 against the person for a felony; or

22 (C) in a guilty plea hearing, the person pleads guilty or nolo  
 23 contendere to a felony; ~~and~~

24 (2) not receive any salary or remuneration from the time the  
 25 public officer is removed from office under subdivision (1); **and**

26 **(3) if the removal from office under subdivision (1) occurs**  
 27 **after June 30, 2016, have the public officer's candidate's**  
 28 **committee disbanded by operation of law under IC 3-9-1-12.5.**

29 **Whenever a public officer is removed from office under**  
 30 **subdivision (1) after June 30, 2016, the court in which the**  
 31 **public officer is convicted under subdivision (1) must file a**  
 32 **certified copy of the sentencing order with the election**  
 33 **commission or the appropriate county election board, as set**  
 34 **forth in IC 3-9-1-12.5(c).**

35 (c) The subsequent reduction of a felony to a Class A misdemeanor  
 36 under IC 35-50-2-7 or IC 35-38-1-1.5 after the:

37 (1) jury has announced its verdict against the person for a felony;

38 (2) court has announced its verdict against the person for a felony;

39 or

40 (3) person has pleaded guilty or nolo contendere to a felony;

41 does not affect the operation of subsection (b).

42 (d) If the conviction is:



- 1 (1) reversed;  
 2 (2) vacated;  
 3 (3) set aside;  
 4 (4) for a felony other than a felony arising out of an action taken  
 5 in the public officer's official capacity, reduced to a Class A  
 6 misdemeanor under IC 35-50-2-7 or IC 35-38-1-1.5; or  
 7 (5) not entered because the trial court did not accept the guilty  
 8 plea;
- 9 and the public officer's term has not expired, the public officer shall be  
 10 reinstated in office, ~~and~~ receive any salary or other remuneration that  
 11 the public officer would have received had the public officer not been  
 12 removed from office, **and, in the case of a removal from office under**  
 13 **subsection (b)(1) that occurs after June 30, 2016, receive any**  
 14 **surplus held in trust by the division of mental health and addiction**  
 15 **under IC 3-9-1-12.5(d)(2), along with any interest earned on the**  
 16 **surplus, upon receipt by the division of mental health and addiction**  
 17 **from the public officer or the public officer's attorney of a certified**  
 18 **copy of the order reversing, vacating, setting aside, or reducing the**  
 19 **conviction, as set forth in IC 3-9-1-12.5(i).**
- 20 (e) If the conviction is reversed, vacated, or set aside and the public  
 21 officer's term has expired, the public officer shall receive any:
- 22 (1) salary or other remuneration that the public officer would have  
 23 received had the public officer not been removed from office; **and**  
 24 **(2) in the case of a removal from office under subsection (b)(1)**  
 25 **that occurs after June 30, 2016, surplus held in trust by the**  
 26 **division of mental health and addiction under**  
 27 **IC 3-9-1-12.5(d)(2), along with any interest earned on the**  
 28 **surplus, upon receipt by the division of mental health and**  
 29 **addiction from the public officer or the public officer's**  
 30 **attorney of a certified copy of the order reversing, vacating,**  
 31 **setting aside, or reducing the conviction, as set forth in**  
 32 **IC 3-9-1-12.5(i).**
- 33 (f) A vacancy in a public office caused by the removal of a public  
 34 officer under this section shall be filled as provided by law. If a  
 35 convicted public officer is reinstated, the person filling the office  
 36 during the appeal shall cease to hold the office.
- 37 (g) This subsection applies whenever:
- 38 (1) a public officer is removed from office by operation of law  
 39 under subsection (b); and  
 40 (2) a vacancy occurs in a state, county, township, city, or town  
 41 office as the result of the removal from office.
- 42 The court must file a certified copy of the sentencing order with the



1 person who is entitled under IC 5-8-6 to receive notice of the death of  
 2 an individual holding the office. The person receiving a copy of the  
 3 sentencing order must give notice of the vacancy in the same manner  
 4 as if the person had received a notice under IC 5-8-6. The person who  
 5 is required or permitted to fill the vacancy must comply with IC 3-13.

6 (h) This subsection applies if a public officer is reinstated in office  
 7 under subsection (d). The court must file a certified copy of the order  
 8 reversing, vacating, reducing, or setting aside the conviction with the  
 9 person who is entitled under IC 5-8-6 to receive notice of the death of  
 10 an individual holding the office. The person receiving a copy of the  
 11 order must give notice of the reinstatement in the same manner as  
 12 notice of a vacancy would be given under IC 5-8-6. The person  
 13 receiving a copy of the order must also give notice to the person who  
 14 was selected to fill the vacancy before the reinstatement occurred.

15 SECTION 3. IC 12-21-5-5 IS ADDED TO THE INDIANA CODE  
 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 17 1, 2016]: **Sec. 5. (a) As used in this section, "fund" refers to the  
 18 public officer mental health trust fund established by section 5.5 of  
 19 this chapter.**

20 **(b) The division shall:**

21 **(1) deposit into the fund money transferred to the division by  
 22 a public officer's candidate's committee under  
 23 IC 3-9-1-12.5(d)(2); and**

24 **(2) distribute money held in trust in the fund in accordance  
 25 with:**

26 **(A) IC 3-9-1-12.5(i);**

27 **(B) IC 3-9-1-12.5(j); or**

28 **(C) IC 3-9-1-12.5(k);**

29 **as appropriate.**

30 SECTION 4. IC 12-21-5-5.5 IS ADDED TO THE INDIANA CODE  
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 32 1, 2016]: **Sec. 5.5. (a) The public officer mental health trust fund is  
 33 established for the purpose of providing mental health services for  
 34 residents of Indiana, as set forth in IC 3-1-9-12.5(d)(2). The fund  
 35 shall be administered by the division.**

36 **(b) The fund consists of surplus funds transferred to the division  
 37 under IC 3-9-1-12.5(d)(2).**

38 **(c) The expenses of administering the fund shall be paid from  
 39 money in the fund.**

40 **(d) The treasurer of state shall invest money in the fund not  
 41 currently needed to meet the obligations of the fund in the same  
 42 manner as other public money may be invested. Interest that**





- 1     **accrues from these investments shall be deposited in the fund.**
- 2         **(e) Money in the fund at the end of a state fiscal year does not**
- 3     **revert to the state general fund.**
- 4         **(f) Money in the fund is continuously appropriated for the**
- 5     **purposes set forth in:**
- 6         **(1) IC 3-9-1-12.5(i);**
- 7         **(2) IC 3-9-1-12.5(j); and**
- 8         **(3) IC 3-9-1-12.5(k).**

