



February 19, 2021

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## SENATE BILL No. 200

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DIGEST OF SB 200 (Updated February 16, 2021 2:58 pm - DI 106)

**Citations Affected:** IC 4-6; IC 33-39.

**Synopsis:** Noncompliant prosecuting attorney. Permits the attorney general to request the appointment of a special prosecuting attorney if a prosecuting attorney is categorically refusing to prosecute certain crimes, and establishes a procedure for the appointment of a person to serve as a special prosecuting attorney to prosecute cases that the county prosecuting attorney is refusing to prosecute.

**Effective:** July 1, 2021.

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**Young M, Zay, Freeman, Sandlin**

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January 12, 2021, read first time and referred to Committee on Corrections and Criminal Law.  
February 18, 2021, amended, reported favorably — Do Pass.

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SB 200—LS 7101/DI 106





February 19, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## SENATE BILL No. 200

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

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

1 SECTION 1. IC 4-6-2-13 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2021]: **Sec. 13. (a) The following definitions apply throughout**  
4 **this section:**

5 (1) "Categorically refusing to enforce a criminal law" means  
6 a blanket refusal to enforce a criminal law. The term includes  
7 the refusal to enforce a criminal law unless certain conditions  
8 are met. The term does not include the refusal to enforce a  
9 criminal law:

10 (A) based on a reasonable, good faith belief that the law is  
11 unconstitutional, or that enforcement would violate federal  
12 law or an order issued by a state or federal court; or

13 (B) in one (1) or more specific instances, if the  
14 determination not to enforce the law is based on an  
15 individual investigation of the facts and circumstances of  
16 each particular case.

17 (2) "Noncompliant prosecuting attorney" means a

SB 200—LS 7101/DI 106



- 1 prosecuting attorney who has implemented a policy of  
2 categorically refusing to enforce a criminal law enacted by the  
3 general assembly.
- 4 (b) If the attorney general receives credible information that a  
5 prosecuting attorney is categorically refusing to enforce a criminal  
6 law enacted by the general assembly, the attorney general shall  
7 conduct an investigation to determine whether the prosecuting  
8 attorney is a noncompliant prosecuting attorney.
- 9 (c) If the attorney general, after conducting the investigation  
10 described in subsection (b), determines that a prosecuting attorney  
11 is a noncompliant prosecuting attorney, the attorney general may  
12 file a notice with the chief justice of Indiana, stating:
- 13 (1) that the attorney general has determined that the  
14 prosecuting attorney is a noncompliant prosecuting attorney;  
15 (2) the name of the county in which the prosecuting attorney  
16 exercises jurisdiction; and  
17 (3) that the attorney general requests that the chief justice  
18 assign a circuit or superior court judge to determine whether  
19 a person should be appointed as a special prosecuting  
20 attorney.
- 21 Upon receipt of the notice, the chief justice shall randomly select a  
22 circuit or superior court judge to determine whether a special  
23 prosecuting attorney should be appointed. The chief justice shall  
24 exclude from the random selection a judge who resides in the court  
25 of appeals district in which the prosecuting attorney exercises  
26 jurisdiction.
- 27 (d) The attorney general shall file a verified petition for  
28 appointment of a special prosecuting attorney with the judge  
29 assigned under subsection (c). In the verified petition, the attorney  
30 general shall set forth why:
- 31 (1) the attorney general believes that the prosecuting attorney  
32 is a noncompliant prosecuting attorney; and  
33 (2) the attorney general believes that appointment of a special  
34 prosecuting attorney would serve the interests of justice.
- 35 The attorney general may support the verified petition by  
36 including relevant documents, transcripts, or written statements in  
37 support of the attorney general's position. The attorney general  
38 shall serve a copy of the verified petition, along with any  
39 supporting evidence, on the prosecuting attorney.
- 40 (e) The prosecuting attorney may file a verified answer to the  
41 attorney general's petition for appointment of a special prosecuting  
42 attorney not later than fifteen (15) days after receipt of the



1 attorney general's petition.

2 (f) After considering the petition and answer, if any, the judge  
3 may appoint a person described in IC 33-39-10-2(c) to serve as a  
4 special prosecuting attorney if the judge finds that:

5 (1) the prosecuting attorney is a noncompliant prosecuting  
6 attorney; and

7 (2) appointment of a special prosecuting attorney is in the best  
8 interests of justice.

9 In making a determination under this subsection, the judge shall  
10 consider only the arguments and evidence contained in the petition  
11 and answer.

12 (g) A special prosecuting attorney appointed under this section  
13 has the same powers as the prosecuting attorney of the county.  
14 However, the judge shall:

15 (1) limit the scope of the special prosecuting attorney's duties  
16 as a special prosecuting attorney to include only the  
17 investigation or prosecution of the cases or category of cases  
18 that the noncompliant prosecuting attorney refused to  
19 prosecute, including any matter that reasonably results from  
20 the investigation or prosecuting; and

21 (2) establish for a time certain the length of the special  
22 prosecuting attorney's term.

23 For good cause shown, the judge may at any time increase the  
24 scope of the special prosecuting attorney's duties or establish a  
25 longer term for the special prosecuting attorney. The judge may  
26 require the special prosecuting attorney to submit periodic reports.

27 (h) If a special prosecuting attorney is not regularly employed  
28 as a full-time prosecuting attorney or full-time deputy prosecuting  
29 attorney, the compensation for the special prosecuting attorney's  
30 services:

31 (1) shall be paid, as incurred, to the special prosecuting  
32 attorney, following an application to the county auditor, from  
33 the unappropriated funds of the appointing county; and

34 (2) may not exceed:

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

37 (B) travel expenses and reasonable accommodation  
38 expenses actually incurred; and

39 (C) other reasonable expenses actually incurred, including  
40 the costs of investigation, trial and discovery preparation,  
41 and other trial expenses.

42 The amount of compensation a special prosecuting attorney



1 receives for services performed during a calendar day under  
 2 subdivision (2)(A) may not exceed the amount of compensation a  
 3 full-time prosecuting attorney would receive in salary for the  
 4 calendar day.

5 (i) If the special prosecuting attorney is regularly employed as  
 6 a full-time prosecuting attorney or full-time deputy prosecuting  
 7 attorney, the compensation for the special prosecuting attorney's  
 8 services:

9 (1) shall be paid out of the appointing county's  
 10 unappropriated funds to the treasurer of the county in which  
 11 the special prosecuting attorney regularly serves; and

12 (2) must include a per diem equal to the regular salary of a  
 13 full-time prosecuting attorney of the appointing circuit, travel  
 14 expenses, and reasonable accommodation expenses actually  
 15 incurred.

16 SECTION 2. IC 33-39-10-2, AS ADDED BY P.L.57-2014,  
 17 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 18 JULY 1, 2021]: Sec. 2. (a) A person may be appointed as a special  
 19 prosecutor:

20 (1) as provided under this section; or

21 (2) in accordance with IC 4-2-7-7; or

22 (3) in accordance with IC 4-6-2-13.

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

24 (1) shall appoint a special prosecutor if:

25 (A) any person, other than a prosecuting attorney or the  
 26 prosecuting attorney's deputy, files a verified petition  
 27 requesting the appointment of a special prosecutor; and

28 (B) the prosecuting attorney agrees that a special prosecutor is  
 29 needed;

30 (2) may appoint a special prosecutor if:

31 (A) a person files a verified petition requesting the  
 32 appointment of a special prosecutor; and

33 (B) the court, after:

34 (i) notice is given to the prosecuting attorney; and

35 (ii) an evidentiary hearing is conducted at which the  
 36 prosecuting attorney is given an opportunity to be heard;

37 finds by clear and convincing evidence that the appointment  
 38 is necessary to avoid an actual conflict of interest or there is  
 39 probable cause to believe that the prosecuting attorney has  
 40 committed a crime;

41 (3) may appoint a special prosecutor if:

42 (A) the prosecuting attorney files a petition requesting the



- 1 court to appoint a special prosecutor; and  
 2 (B) the court finds that the appointment is necessary to avoid  
 3 the appearance of impropriety;  
 4 (4) may appoint a special prosecutor if:  
 5 (A) an elected public official who is a defendant in a criminal  
 6 proceeding files a verified petition requesting a special  
 7 prosecutor within ten (10) days after the date of the initial  
 8 hearing; and  
 9 (B) the court finds that the appointment of a special prosecutor  
 10 is in the best interests of justice; and  
 11 (5) shall appoint a special prosecutor if:  
 12 (A) a previously appointed special prosecutor:  
 13 (i) files a motion to withdraw as special prosecutor; or  
 14 (ii) has become incapable of continuing to represent the  
 15 interests of the state; and  
 16 (B) the court finds that the facts that established the basis for  
 17 the initial appointment of a special prosecutor still exist.  
 18 The elected prosecuting attorney who serves in the jurisdiction of  
 19 the appointing court shall receive notice of all pleadings filed and  
 20 orders issued under this subdivision.  
 21 (c) A person appointed to serve as a special prosecutor:  
 22 (1) must consent to the appointment; and  
 23 (2) must be:  
 24 (A) the prosecuting attorney or a deputy prosecuting attorney  
 25 in a county other than the county in which the person is to  
 26 serve as special prosecutor; or  
 27 (B) a senior prosecuting attorney as described in section 1 of  
 28 this chapter. A senior prosecuting attorney may be appointed  
 29 to serve as a special prosecutor in a county in which the senior  
 30 prosecuting attorney previously served if the court finds that  
 31 the appointment would not create the appearance of  
 32 impropriety.  
 33 (d) A person appointed to serve as a special prosecutor in a county  
 34 has the same powers as the prosecuting attorney of the county.  
 35 However, the appointing judge shall limit the scope of the special  
 36 prosecutor's duties to include only the investigation or prosecution of  
 37 a particular case or particular grand jury investigation.  
 38 (e) Upon making an appointment under this section, the court shall  
 39 establish the length of the special prosecutor's term. At least one (1)  
 40 time every six (6) months throughout the appointed term, a special  
 41 prosecutor shall file a progress report with the appointing court. A  
 42 progress report:



- 1 (1) must inform the court of the:  
 2 (A) status of the investigation; and  
 3 (B) estimated time for completion of the special prosecutor's  
 4 duties; and  
 5 (2) may not:  
 6 (A) include substantive facts or legal issues; or  
 7 (B) offer preliminary conclusions.

8 The court may extend the term of appointment upon the request of the  
 9 special prosecutor or terminate any appointment if the special  
 10 prosecutor has failed to file reports or a request for an extended term  
 11 under this subsection.

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

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

- 20 (1) shall be paid, as incurred, to the special prosecutor, following  
 21 an application to the county auditor, from the unappropriated  
 22 funds of the appointing county; and  
 23 (2) may not exceed:  
 24 (A) an hourly rate based upon the regular salary of a full-time  
 25 prosecuting attorney of the appointing circuit;  
 26 (B) travel expenses and reasonable accommodation expenses  
 27 actually incurred; and  
 28 (C) other reasonable expenses actually incurred, including the  
 29 costs of investigation, trial and discovery preparation, and  
 30 other trial expenses.

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

35 (h) If the special prosecutor is regularly employed as a full-time  
 36 prosecuting attorney or deputy prosecuting attorney, the compensation  
 37 for the special prosecutor's services:

- 38 (1) shall be paid out of the appointing county's unappropriated  
 39 funds to the treasurer of the county in which the special  
 40 prosecutor regularly serves; and  
 41 (2) must include a per diem equal to the regular salary of a  
 42 full-time prosecuting attorney of the appointing circuit, travel





1 expenses, and reasonable accommodation expenses actually  
2 incurred.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 200, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 40, delete "shall" and insert "**may**".

Page 3, line 2, after "answer," insert "**if any**".

and when so amended that said bill do pass.

(Reference is to SB 200 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 5, Nays 3.

