

# SENATE BILL No. 410

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-2-9; IC 33-39.

**Synopsis:** Special prosecutor to investigate deadly force. Requires the attorney general to randomly select a special prosecutor from a statewide special prosecuting attorney pool to prosecute a case involving a law enforcement officer who kills or causes serious bodily injury to another person through the use of deadly force.

**Effective:** July 1, 2021.

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## Ford J.D.

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January 19, 2021, read first time and referred to Committee on Corrections and Criminal Law.

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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. 410

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

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

1 SECTION 1. IC 4-2-9 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2021]:

4 **Chapter 9. Appointment of Special Prosecuting Attorney for**  
5 **Officer Involved Incidents**

6 **Sec. 1. As used in this chapter, "deadly force" has the meaning**  
7 **set forth in IC 35-31.5-2-85.**

8 **Sec. 2. As used in this chapter, "law enforcement officer"**  
9 **means:**

- 10 (1) a city or town police officer;
- 11 (2) a town marshal or town marshal deputy;
- 12 (3) a sheriff or county police officer;
- 13 (4) a school corporation police officer or charter school police
- 14 officer under IC 20-26-16;
- 15 (5) a school resource officer under IC 20-26-18.2;
- 16 (6) a police officer of a public or private postsecondary
- 17 educational institution under IC 21-17-5-2 or IC 21-39-4;



- 1 (7) a hospital police officer under IC 16-18-4;  
 2 (8) a police officer employed under IC 8-22-3-34 by:  
 3 (A) a local airport authority; or  
 4 (B) an operator that enters into an operating agreement  
 5 under IC 5-23 for the operation of a public use airport;  
 6 (9) a reserve officer under IC 36-8-3-20;  
 7 (10) a special officer whose powers and duties are described  
 8 in IC 36-8-3-7 or a special deputy whose powers and duties  
 9 are described in IC 36-8-10-10.6;  
 10 (11) a conservation officer;  
 11 (12) an enforcement officer of the alcohol and tobacco  
 12 commission;  
 13 (13) an enforcement officer of the securities division of the  
 14 office of the secretary of state;  
 15 (14) a gaming agent employed under IC 4-33-4.5 or a gaming  
 16 control officer employed by the gaming control division under  
 17 IC 4-33-20; or  
 18 (15) an alcoholic beverage enforcement officer, as set forth in  
 19 IC 35-42-2-1(a)(1).

20 Sec. 3. As used in this chapter, "officer involved incident"  
 21 means an incident in which a law enforcement officer:

- 22 (1) kills; or  
 23 (2) causes serious bodily injury to;  
 24 another person through the use of deadly force.

25 Sec. 4. As used in this chapter, "pool" means the special  
 26 prosecuting attorney pool established by section 10 of this chapter.

27 Sec. 5. As used in this chapter, "qualified prosecuting attorney"  
 28 means an attorney licensed to practice law in Indiana who is:

- 29 (1) a senior prosecuting attorney; or  
 30 (2) currently employed as a prosecuting attorney or deputy  
 31 prosecuting attorney.

32 Sec. 6. As used in this chapter, "serious bodily injury" has the  
 33 meaning set forth in IC 35-31.5-2-292.

34 Sec. 7. (a) The chief executive of the law enforcement agency  
 35 having jurisdiction shall notify the attorney general of the  
 36 occurrence of an incident:

- 37 (1) in which a person died or suffered serious bodily injury as  
 38 a result of the use of force by a law enforcement officer; and  
 39 (2) not later than ten (10) days after the incident occurred.

40 (b) If a notification is not made under subsection (a) within the  
 41 time required, notification of an incident described in subsection  
 42 (a)(1) may be made to the attorney general:



1 (1) by:

2 (A) a person who suffered serious bodily injury; or

3 (B) the spouse, brother, sister, parent, guardian, or legal  
4 representative of a person who died or suffered serious  
5 bodily injury;

6 in an incident under subsection (a)(1); and

7 (2) not later than twenty (20) days after the incident occurred.

8 **Sec. 8. (a) If the attorney general determines that an incident**  
9 **that the attorney general is notified of under section 7 of this**  
10 **chapter requires investigation as an officer involved incident,**  
11 **jurisdiction over the investigation and any prosecution of the law**  
12 **enforcement officer is:**

13 (1) divested of the prosecuting attorney of the judicial district  
14 in which the incident occurred; and

15 (2) vested in the attorney general.

16 (b) Not later than ten (10) days after jurisdiction vests with the  
17 attorney general, the attorney general shall appoint a special  
18 prosecuting attorney by randomly selecting a prosecuting attorney  
19 from the pool described in section 10 of this chapter.

20 **Sec. 9. Upon appointment by the attorney general, the special**  
21 **prosecuting attorney is vested with:**

22 (1) exclusive jurisdiction; and

23 (2) the same powers as the prosecuting attorney of the county  
24 where the incident occurred;

25 with regard to the investigation and any prosecution of the law  
26 enforcement officer.

27 **Sec. 10. (a) The special prosecuting attorney pool is established.**

28 (b) The governor shall appoint at least ten (10) qualified  
29 prosecuting attorneys to the pool. In selecting qualified prosecuting  
30 attorneys for the pool, the governor shall ensure:

31 (1) that each qualified prosecuting attorney appointed to the  
32 pool has the high level of experience and expertise required to  
33 prosecute a case involving the death or serious bodily injury  
34 of a person; and

35 (2) that qualified prosecuting attorneys are appointed from  
36 geographically diverse counties to minimize the opportunity  
37 for disqualifications to arise under section 12 of this chapter.

38 (c) Except as provided in section 11 of this chapter, a qualified  
39 prosecuting attorney is appointed to the pool for a four (4) year  
40 term.

41 **Sec. 11. (a) The term of a qualified prosecuting attorney ends if**  
42 **the person ceases to be a qualified prosecuting attorney.**



1           **(b) The governor may remove a qualified prosecuting attorney**  
 2 **from the pool only for misconduct, including imposition of a**  
 3 **disciplinary sanction by the supreme court.**

4           **Sec. 12. If the prosecuting attorney selected:**

- 5           **(1) serves the judicial district where the incident occurred;**  
 6           **(2) has or has had a professional relationship with a law**  
 7 **enforcement officer involved in the incident; or**  
 8           **(3) has a conflict of interest;**

9           **the attorney general shall randomly select another prosecuting**  
 10 **attorney. If necessary, the attorney general may continue to**  
 11 **randomly select a prosecuting attorney until the attorney general**  
 12 **selects a prosecuting attorney who is not disqualified under this**  
 13 **section.**

14           **Sec. 13. The state police department shall assign a forensic and**  
 15 **investigative team to assist the special prosecuting attorney**  
 16 **appointed under this chapter in the investigation of the officer**  
 17 **involved incident. However, if it appears that the law enforcement**  
 18 **officer who is the subject of the officer involved incident is a**  
 19 **member of the state police department, the governor shall appoint**  
 20 **another law enforcement agency to assist the special prosecutor.**  
 21 **The state shall reimburse the other law enforcement agency for its**  
 22 **expenses in assisting the special prosecuting attorney.**

23           **Sec. 14. Expenses incurred in prosecuting a case under this**  
 24 **chapter shall be paid from appropriations from the state general**  
 25 **fund.**

26           SECTION 2. IC 33-39-1-5 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 5. Except as provided  
 28 in **IC 4-2-9 (special prosecuting attorney for officer involved**  
 29 **incidents) or IC 12-15-23-6(d)**, the prosecuting attorneys, within their  
 30 respective jurisdictions, shall:

- 31           (1) conduct all prosecutions for felonies, misdemeanors, or  
 32           infractions and all suits on forfeited recognizances;  
 33           (2) superintend, on behalf of counties or any of the trust funds, all  
 34           suits in which the ~~the~~ counties or trust funds may be interested or  
 35           involved; and  
 36           (3) perform all other duties required by law.

37           SECTION 3. IC 33-39-10-2, AS ADDED BY P.L.57-2014,  
 38 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 JULY 1, 2021]: Sec. 2. (a) A person may be appointed as a special  
 40 prosecutor:

- 41           (1) as provided under this section; ~~or~~  
 42           (2) in accordance with IC 4-2-7-7; ~~or~~



**(3) in accordance with IC 4-2-9.**

(b) A circuit court or superior court judge:

(1) shall appoint a special prosecutor if:

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

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

(2) may appoint a special prosecutor if:

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

(B) the court, after:

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

(ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard; finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecuting attorney has committed a crime;

(3) may appoint a special prosecutor if:

(A) the prosecuting attorney files a petition requesting the court to appoint a special prosecutor; and

(B) the court finds that the appointment is necessary to avoid the appearance of impropriety;

(4) may appoint a special prosecutor if:

(A) an elected public official who is a defendant in a criminal proceeding files a verified petition requesting a special prosecutor within ten (10) days after the date of the initial hearing; and

(B) the court finds that the appointment of a special prosecutor is in the best interests of justice; and

(5) shall appoint a special prosecutor if:

(A) a previously appointed special prosecutor:

(i) files a motion to withdraw as special prosecutor; or

(ii) has become incapable of continuing to represent the interests of the state; and

(B) the court finds that the facts that established the basis for the initial appointment of a special prosecutor still exist.

The elected prosecuting attorney who serves in the jurisdiction of the appointing court shall receive notice of all pleadings filed and orders issued under this subdivision.

(c) A person appointed to serve as a special prosecutor:



- 1 (1) must consent to the appointment; and  
 2 (2) must be:  
 3 (A) the prosecuting attorney or a deputy prosecuting attorney  
 4 in a county other than the county in which the person is to  
 5 serve as special prosecutor; or  
 6 (B) a senior prosecuting attorney as described in section 1 of  
 7 this chapter. A senior prosecuting attorney may be appointed  
 8 to serve as a special prosecutor in a county in which the senior  
 9 prosecuting attorney previously served if the court finds that  
 10 the appointment would not create the appearance of  
 11 impropriety.
- 12 (d) A person appointed to serve as a special prosecutor in a county  
 13 has the same powers as the prosecuting attorney of the county.  
 14 However, the appointing judge shall limit the scope of the special  
 15 prosecutor's duties to include only the investigation or prosecution of  
 16 a particular case or particular grand jury investigation.
- 17 (e) Upon making an appointment under this section, the court shall  
 18 establish the length of the special prosecutor's term. At least one (1)  
 19 time every six (6) months throughout the appointed term, a special  
 20 prosecutor shall file a progress report with the appointing court. A  
 21 progress report:  
 22 (1) must inform the court of the:  
 23 (A) status of the investigation; and  
 24 (B) estimated time for completion of the special prosecutor's  
 25 duties; and  
 26 (2) may not:  
 27 (A) include substantive facts or legal issues; or  
 28 (B) offer preliminary conclusions.
- 29 The court may extend the term of appointment upon the request of the  
 30 special prosecutor or terminate any appointment if the special  
 31 prosecutor has failed to file reports or a request for an extended term  
 32 under this subsection.
- 33 (f) If the target of an investigation by the special prosecutor is a  
 34 public servant (as defined in IC 35-31.5-2-261), the court shall order  
 35 the special prosecutor to file a report of the investigation with the court  
 36 at the conclusion of the investigation. A report filed under this  
 37 subsection is a public record under IC 5-14-3.
- 38 (g) If a special prosecutor is not regularly employed as a full-time  
 39 prosecuting attorney or full-time deputy prosecuting attorney, the  
 40 compensation for the special prosecutor's services:  
 41 (1) shall be paid, as incurred, to the special prosecutor, following  
 42 an application to the county auditor, from the unappropriated



- 1 funds of the appointing county; and  
2 (2) may not exceed:  
3 (A) an hourly rate based upon the regular salary of a full-time  
4 prosecuting attorney of the appointing circuit;  
5 (B) travel expenses and reasonable accommodation expenses  
6 actually incurred; and  
7 (C) other reasonable expenses actually incurred, including the  
8 costs of investigation, trial and discovery preparation, and  
9 other trial expenses.
- 10 The amount of compensation a special prosecutor receives for services  
11 performed during a calendar day under subdivision (2)(A) may not  
12 exceed the amount of compensation a full-time prosecuting attorney  
13 would receive in salary for the calendar day.
- 14 (h) If the special prosecutor is regularly employed as a full-time  
15 prosecuting attorney or deputy prosecuting attorney, the compensation  
16 for the special prosecutor's services:  
17 (1) shall be paid out of the appointing county's unappropriated  
18 funds to the treasurer of the county in which the special  
19 prosecutor regularly serves; and  
20 (2) must include a per diem equal to the regular salary of a  
21 full-time prosecuting attorney of the appointing circuit, travel  
22 expenses, and reasonable accommodation expenses actually  
23 incurred.

