



IN THE  
**Indiana Supreme Court**

Supreme Court Case No. 22S-MI-64

Lake County Board of Commissioners, et al.,  
*Appellants*

—v—

State of Indiana, et al.,  
*Appellees*

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Argued: October 28, 2021 | Decided: February 22, 2022

Appeal from the Marion Superior Court  
No. 49D06-1906-MI-24203  
The Honorable Kurt Eisgruber, Judge

On Petition to Transfer from the Indiana Court of Appeals  
No. 20A-MI-1527

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**Opinion by Chief Justice Rush**

Justices David, Massa, Slaughter, and Goff concur.

## **Rush, Chief Justice.**

“Probation officers shall serve at the pleasure of the appointing court and are directly responsible to and subject to the orders of the court.” [Ind. Code § 11-13-1-1\(c\)](#). This legislative determination reflects trial courts’ inextricable link with probation officers. And because trial courts are units of the judicial branch of our state’s constitutional system and thus state entities, that link is also with the State. *See* [Ind. Const. art. 3, § 1](#); *id.* [art. 7, § 1](#).

Recognizing the connection between trial courts and probation officers, our General Assembly granted the judiciary primary authority over probation officers’ employment. *See* I.C. §§ [11-13-1-1](#), [-3](#), [-8](#), [-9](#). And our precedent has consistently recognized that these officials are court employees. But counties are responsible for paying probation officers’ salaries and certain expenses. *Id.* [§ -1\(c\)](#). This dual system of responsibility raises a question of first impression: for determining which entity is responsible for defending and indemnifying probation officers in a lawsuit, are these officials state or county employees?

Based on a close reading of the relevant statutes and caselaw, we hold that probation officers are state employees for purposes of [Indiana Code section 4-6-2-1.5](#) which requires the Attorney General to defend state employees. And because the legislature has not required a different entity to pay for their legal representation, we conclude that this statute applies to probation officers.

## **Facts and Procedure**

In 2015, a Lake County probationer filed a complaint in federal court against the State of Indiana; Lake County, Indiana; the Lake County Board of Commissioners; several Lake County Superior Court judges; Director and Chief Probation Officer of Lake County’s felony probation department Jan Parsons; and Lake County probation officer Miroslav Radiceski. The probationer alleged negligence, willful and wanton misconduct, and violations of her constitutional rights stemming from the misconduct of her probation officer, Radiceski.

The Lake County Board of Commissioners and the County Council (together “Lake County”) subsequently asked the Office of the Indiana Attorney General to appear for and defend the two probation officers in the federal litigation, which is currently stayed pending the result of this action. The Attorney General refused, asserting that Lake County is responsible for defending the probation officers and for paying any judgment entered against them.

Four years later, after “multiple” requests for the Attorney General to defend the probation officers, Lake County filed a complaint in state court for declaratory relief and damages against the State and the Attorney General (together “State Appellees”) as well as the Lake County judges, the Lake County Probation Department, and Parsons and Radiceski in their official capacities. Lake County sought a declaration that the trial court find, as a matter of law, that the probation officers are state employees, and thus, the State is required to defend them in the federal litigation, pay any resulting settlement or judgment, and reimburse Lake County for any costs and attorney fees incurred. The County then moved for partial summary judgment. The State Appellees’ cross-motion asserted that the officers are county employees, so Lake County is responsible for both their representation and payment of any judgment against them. The trial court ultimately agreed with the State Appellees and granted them summary judgment.

Lake County appealed, and the Court of Appeals affirmed. *Lake Cnty. Bd. of Comm’rs v. State*, 170 N.E.3d 1104, 1111 (Ind. Ct. App. 2021). Lake County then sought transfer, which we now grant, vacating the Court of Appeals opinion. *Ind. Appellate Rule 58(A)*.

## Standard of Review

We review summary-judgment decisions de novo. *Perkins v. Mem’l Hosp. of South Bend*, 141 N.E.3d 1231, 1234 (Ind. 2020). “[S]ummary judgment is appropriate only when the designated evidence shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Rogers v. Martin*, 63 N.E.3d 316, 320 (Ind. 2016); *Ind. Trial Rule 56(C)*. The material facts here are not disputed.

## Discussion and Decision

The question before us today is whether, as a matter of law, the State or counties are responsible for a probation officer's legal representation. The answer to this question first turns on whether probation officers are state or county employees.

Lake County argues that probation officers are state employees and are therefore entitled to representation by the Attorney General under [Indiana Code section 4-6-2-1.5](#):

Whenever any state governmental official or employee, whether elected or appointed, is made a party to a suit, and the attorney general determines that said suit has arisen out of an act which such official or employee in good faith believed to be within the scope of the official's or employee's duties as prescribed by statute or duly adopted regulation, the attorney general shall defend such person throughout such action.

The State Appellees contend that probation officers are not covered by the statute because they are county employees, pointing to [Indiana Code subsection 11-13-1-1\(c\)](#), which requires counties to pay a probation officer's "salary" and "actual expenses necessarily incurred in the performance of their duties." And the State Appellees maintain that these expenses include legal expenses.

We agree with Lake County. Based on a review of relevant statutes and caselaw, we first hold that probation officers are state employees for purposes of [Indiana Code section 4-6-2-1.5](#). We then hold, based on a plain reading of [subsection 11-13-1-1\(c\)](#), that "legal expenses" are not "actual expenses necessarily incurred in the performance" of a probation officer's duties. Accordingly, the general statute requiring the Attorney General to defend state employees applies to probation officers. We therefore reverse the trial court's grant of summary judgment to the State Appellees.

## **I. Probation officers are state employees under Indiana Code section 4-6-2-1.5.**

Indiana’s judiciary is a branch of our state’s constitutional system. *See Ind. Const. art. 3, § 1; id. art. 7, § 1.* As units of the judicial branch, trial courts discharge their constitutional obligation to keep courts open for the administration of justice in part with the assistance of more than 1,500 probation officers statewide. *See In re Madison Cnty. Prob. Officers’ Salaries*, 682 N.E.2d 498, 501 (Ind. 1997) (citing *Ind. Const. art. 1, § 12*). Indeed, probation officers serve a vital role in our trial courts and are on the frontlines of ensuring public safety. They are the officials appointed to supervise, investigate, and report on the conduct of those assigned to probation. They also conduct prehearing and presentence investigations and help courts make pretrial-release decisions. In short, probation officers have an inseparable relationship with the judiciary—a state entity—which leads to our conclusion that probation officers are state employees. This conclusion is grounded in statutes and caselaw. We address each in turn.

### **A. A plain reading of the relevant statutes supports that probation officers are state employees.**

Many years ago, our General Assembly created a complex system in which counties finance the operation of our state courts. *J.A.W. v. State*, 650 N.E.2d 1142, 1150 (Ind. Ct. App. 1995), *aff’d in relevant part*, 687 N.E.2d 1202, 1203 n.3 (Ind. 1997). As part of this system, the legislature determined that the salaries and some expenses of probation officers—as an arm of the courts—should be paid by counties. *I.C. § 11-13-1-1(c)*. It also ordered counties to provide these officials with benefits and holidays. *Ind. Code § 36-2-16.5-5*. But despite this system of county funding, the legislature prescribed probation officers’ official duties and powers by statute, *I.C. §§ 11-13-1-3, -5*, and mandated that they “serve at the pleasure of the appointing court,” *id. § -1(c)*. It also made the Judicial Conference of

Indiana<sup>1</sup>—a statewide judicial entity—responsible for setting standards for the hiring, training, and supervision of probation officers, including setting their minimum compensation. *See id.* §§ -1, -8, -9.

A plain reading of these statutes establishes that probation officers are inextricably linked to the judiciary. We begin with an overview of four statutes, located in the chapter detailing “Probation Administration,” that demonstrate this intricate connection.

First, [Indiana Code subsection 11-13-1-1\(c\)](#) unequivocally declares that probation officers serve at the pleasure of and are responsible to trial courts. The full statute elaborates on this relationship:

(a) A court or division of a court authorized to impose probation shall appoint one (1) or more probation officers, depending on the needs of the court, except that two (2) or more divisions within a court, two (2) or more courts within a county, or two (2) or more courts not in the same county may jointly appoint and employ one (1) or more probation officers for the purpose of meeting the requirements of this section.

(b) A person may be appointed as a probation officer after the effective date established by the judicial conference of Indiana only if that person meets the minimum employment qualifications adopted by the conference . . . .

(c) Probation officers shall serve at the pleasure of the appointing court and are directly responsible to and subject to the orders of the court. The amount and time of payment of salaries of probation officers shall be fixed by the county, city, or town fiscal body in accordance with the salary schedule adopted by the county, city, or town fiscal body under IC 36-2-16.5. The salary of a probation officer shall be paid out of the

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<sup>1</sup> The Judicial Conference consists of all active judges and certified senior judges of our trial courts, the judge of the Tax Court, the judges of the Court of Appeals, and the justices of the Supreme Court. [Ind. Code § 33-38-9-3](#).

county, city, or town treasury by the county auditor or city controller. Probation officers are entitled to their actual expenses necessarily incurred in the performance of their duties. Probation officers shall give a bond if the court so directs in a sum to be fixed by the court.

(d) A court, or two (2) or more courts acting jointly, may designate a probation officer to direct and supervise the work of the probation department.

I.C. § 11-13-1-1. This statute establishes that probation officers are appointed and employed by courts and are directly responsible to them and subject to their orders. *Id.* § -1(a), (c). And probation officers must also meet the “minimum employment qualifications” adopted by the Judicial Conference. *Id.* § -1(b).

Second is [section 11-13-1-3](#), which outlines probation officers’ mandatory duties—all of which are court-related functions. Specifically, the statute requires probation officers to:

- (1) conduct prehearing and presentence investigations and prepare reports as required by law;
- (2) assist the courts in making pretrial release decisions;
- (3) assist the courts, prosecuting attorneys, and other law enforcement officials in making decisions regarding the diversion of charged individuals to appropriate noncriminal alternatives;
- (4) furnish each person placed on probation under his supervision a written statement of the conditions of his probation and instruct him regarding those conditions;
- (5) supervise and assist persons on probation consistent with conditions of probation imposed by the court;
- (6) bring to the court’s attention any modification in the conditions of probation considered advisable;

- (7) notify the court when a violation of a condition of probation occurs;
- (8) cooperate with public and private agencies and other persons concerned with the treatment or welfare of persons on probation, and assist them in obtaining services from those agencies and persons;
- (9) keep accurate records of cases investigated by him and of all cases assigned to him by the court and make these records available to the court upon request;
- (10) collect and disburse money from persons under his supervision according to the order of the court, and keep accurate and complete accounts of those collections and disbursements;
- (11) assist the court in transferring supervision of a person on probation to a court in another jurisdiction; and
- (12) perform other duties required by law or as directed by the court.

I.C. § 11-13-1-3. Like [section 1](#), this statute demonstrates that the duty of probation officers—in every county across the state—is to serve at the direction of trial courts.

Third, various subsections of [section 11-13-1-8](#) detail the Judicial Conference’s role in prescribing probation officers’ minimum standards, making recommendations on their hiring and supervision, and providing training and technical assistance to courts and probation departments:

- (b) The board [of the Judicial Conference] shall adopt rules consistent with this chapter, prescribing minimum standards concerning:
  - (1) educational and occupational qualifications for employment as a probation officer;
  - (2) compensation of probation officers;



- (3) protection of probation records and disclosure of information contained in those records;
- (4) presentence investigation reports;
- (5) a schedule of progressive probation incentives and violation sanctions, including judicial review procedures; and
- (6) qualifications for probation officers to administer probation violation sanctions under IC 35-38-2-3(e).

....

(e) The conference shall provide probation departments with training and technical assistance for:

- (1) the implementation and management of probation case classification; and
- (2) the development and use of workload information.

The staff of the office of judicial administration may include a probation case management coordinator and probation case management assistant.

(f) The conference shall, in cooperation with the department of child services and the department of education, provide probation departments with training and technical assistance relating to special education services and programs that may be available for delinquent children or children in need of services.

....

(g) The conference shall, in cooperation with the division of mental health and addiction (IC 12-21) and the division of disability and rehabilitative services (IC 12-9-1), provide probation departments with training and technical assistance concerning mental illness, addictive disorders, intellectual disabilities, and developmental disabilities, including evidence

based treatment programs for mental illness and addictive disorders and cognitive behavior treatment.

(h) The conference shall make recommendations to courts and probation departments concerning:

- (1) selection, training, distribution, and removal of probation officers;
- (2) methods and procedure for the administration of probation, including investigation, supervision, workloads, record keeping, and reporting; and
- (3) use of citizen volunteers and public and private agencies.

I.C. § 11-13-1-8. In short, the Judicial Conference plays a predominant role in hiring, training, supervising, and compensating probation officers.

And finally, [section 11-13-1-9](#) requires the Judicial Conference to monitor and oversee probation departments:

(a) The judicial conference of Indiana shall:

- (1) keep informed of the work of all probation departments;
- (2) compile and publish statistical and other information that may be of value to the probation service;
- (3) inform courts and probation departments of legislation concerning probation and of other developments in probation;
- (4) submit to the general assembly before January 15 of each year a report in an electronic format under IC 5-14-6 compiling the statistics provided to the judicial conference by probation departments under section 4(b) of this chapter; and
- (5) require probation departments to submit a community supervision collaboration plan as described in IC 11-12-2-4.

In concert with this mandatory judicial oversight, the legislature also requires probation departments to compile and “make available” to the Judicial Conference “accurate statistical information pertaining to its operation.” I.C. § 11-13-1-4. Simply put, our legislature has vested the State—through the judiciary—with primary authority over probation departments and their operation.

At the same time, the legislature has directed counties to pay probation officers’ salaries and some expenses as well as provide them benefits and holidays. I.C. §§ 11-13-1-1(c), 36-2-16.5-3, -4, -5. But these directives do not undercut the inextricable link between probation officers and our state judiciary for three reasons.

First, counties cannot independently set probation officers’ salaries. Instead, counties “must comply with the minimum compensation requirements” adopted by the Judicial Conference and must consult with “at least one (1) judge of a court or division of a court authorized to impose probation” before setting the officers’ compensation. I.C. § 36-2-16.5-3. Second, there are several sources of state funding a county can draw from to pay probation officers. For example, state financial aid programs are available to fund and support probation departments. I.C. §§ 11-12-2-1, -13-2-1, -2. Similarly, our state’s Justice Reinvestment Advisory Council, in conjunction with the Department of Correction, makes grants available to counties to assist in funding probation officers.<sup>2</sup> And finally, while we acknowledge that section 36-2-16.5-1 briefly references counties “employ[ing]” probation officers, this statement is made only in reference to their salary schedule—which is consistent with

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<sup>2</sup> The statutorily created Justice Reinvestment Advisory Council, which consists of leaders from both the executive and judicial branches of state and local government, is charged with conducting state-level review of criminal justice systems and corrections programs, including probation. I.C. § 33-38-9.5-2. The Council provides numerous grants to counties and probation departments across the state. *See, e.g.*, Community Corrections Justice Reinvestment 2020 Grant Funding Awards, <https://www.in.gov/idoc/files/2020-0528-Probation-Awarded-Funding-2020.pdf> [<https://perma.cc/3UC7-KMTA>]; 2021 Justice Reinvestment Grant Funded Entities, <https://www.in.gov/idoc/files/IDOC-CC-CY21-Grant-Funded-Entities-2Pg.pdf> [<https://perma.cc/GJP5-A43Q>].

the legislature making counties responsible for paying those salaries. Cf. *Carver v. Sheriff of LaSalle Cnty.*, 243 F.3d 379, 382 (7th Cir. 2001) (observing that “the source of funds need not coincide with the identity of the employer”).

In sum, the statutory framework indicates that probation officers are state employees under the general statute requiring the Attorney General to defend state employees. They are directly responsible to the appointing trial court—a state entity. The Judicial Conference—another state entity—sets the standards for hiring, provides probation-related resources and training, oversees probation programs, and sets officers’ minimum compensation. By contrast, counties have no control over the performance of a probation officer’s duties. And though counties are responsible for probation officers’ salaries and some expenses, they must consult with the court to determine how much to pay and can access several state funding sources to help pay those salaries. We now turn to caselaw, where we find additional support for our conclusion.

**B. Indiana courts have previously determined that probation officers are court employees and that probation departments are state entities.**

Drawing on the above statutory authority, our state appellate courts have long recognized that probation officers are employees of trial courts. See, e.g., *In re Madison Cnty.*, 682 N.E.2d at 501; *Kramer v. Hancock Cnty. Ct.*, 448 N.E.2d 1190, 1191 (Ind. 1983); *Hendricks Cnty. v. Green*, 120 N.E.3d 1118, 1124 (Ind. Ct. App. 2019), *trans. denied*; *Orange v. Morris*, 23 N.E.3d 787, 790 (Ind. Ct. App. 2014); *Smith v. State*, 829 N.E.2d 1021, 1025 (Ind. Ct. App. 2005), *trans. denied*. And both Indiana federal district courts have reached the same conclusion. *Scott v. Indiana*, No. 4:14-CV-15-JVB-CAN, 2014 WL 1831175, at \*1 (N.D. Ind. May 7, 2014) (applying Indiana law); *O’Reilly v. Montgomery Cnty.*, No. 102CV1242-DFH, 2003 WL 23101795, at \*5 (S.D. Ind. Feb. 24, 2003) (same). Because our trial courts are state entities, these decisions further support a finding that probation officers are state employees.

Additionally, we have found that probation departments are state entities for purposes of a claim brought under [42 U.S.C. § 1983](#). *J.A.W.*, 650 N.E.2d at 1150, *aff'd in relevant part*, 687 N.E.2d at 1203 n.3. While that decision is not controlling here, we find its reasoning persuasive:

[T]he fact that Probation receives funding from the county is not indicative of county status. Indiana law has long required that county government directly finance the operation of the state trial court system. . . . Despite this system of funding, it is without question that Indiana’s circuit, superior and county courts are exclusively units of the judicial branch of the state’s constitutional system and as such are not units of county government. The funding of Probation by the county is thus merely reflective of the longstanding policy of funding state courts through county revenues. Because Probation is an arm of the court, it like the court itself is a state entity . . . .

*Id.* (citations omitted). In finding probation departments are a state entity, *J.A.W.*’s analysis lends further support that probation officers are state employees. *Cf. Blackwell v. Cook*, 570 F. Supp. 474, 478 (N.D. Ind. 1983) (noting that judicial immunity from damages is extended to probation officers because “the duties of the probation officer are essentially and inextricably bound up with those of the court itself”).

Ultimately, we hold that probation officers are state employees for purposes of the general statute requiring the Attorney General to defend state employees. This holding does not extend, however, to all trial court employees. Probation officers are unique: they serve at the pleasure of trial courts; they are required to carry out court orders; and the judiciary is responsible for their hiring, training, and supervision as well as setting their minimum compensation. But the same is not true for other trial court employees.

Thus, [Indiana Code section 4-6-2-1.5](#) applies to probation officers. And that statute dictates the outcome here—that is, unless the legislature has elsewhere made a different entity responsible for defending and indemnifying probation officers.

## II. “Actual expenses necessarily incurred” in the performance of probation officers’ duties do not include legal expenses.

Since we’ve determined that probation officers are state employees, the general statute requiring the Attorney General to defend state employees should apply. However, the legislature could override this requirement by enacting a more specific statute that orders a different entity to either defend or pay the legal expenses of probation officers. The State Appellees say the legislature did just that, pointing to [Indiana Code subsection 11-13-1-1\(c\)](#). That statute, besides requiring counties to pay probation officers’ salaries, further entitles the officers “to their actual expenses necessarily incurred in the performance of their duties.” [I.C. § 11-13-1-1\(c\)](#). The State Appellees argue that this language covers legal expenses “incurred as a result of” the officers being sued “in the performance of their duties.” We disagree. Based on a plain reading of the relevant statutes, legal expenses are fundamentally different from expenses “necessarily incurred” in the everyday performance of a probation officer’s duties as outlined in [section 11-13-1-3](#).

Our goal when interpreting a statute is to determine and further the legislature’s intent. [West v. Off. of Ind. Sec’y of State](#), 54 N.E.3d 349, 353 (Ind. 2016). The “best evidence” of this intent “is the language of the statute itself, and all words must be given their plain and ordinary meaning unless otherwise indicated by statute.” [Guy v. State](#), 823 N.E.2d 274, 276 (Ind. 2005). Notably, we must consider the statute’s structure as a whole, reconciling each word or part with the rest. [West](#), 54 N.E.3d at 353.

A plain reading of the relevant statutes demonstrates that legal expenses are not necessarily incurred in the performance of a probation officer’s duties. We initially note that [subsection 11-13-1-1\(c\)](#)’s reference to “actual expenses” is constrained by the phrase that follows: “necessarily incurred in the performance of their duties.” Thus, the statute includes two important limitations. First, the legislature did not make counties responsible for **all** expenses. *Cf.* [Mears v. Lake Cnty. Council](#), 709 N.E.2d 747, 749 (Ind. Ct. App. 1999) (interpreting a statute that required a county to

pay “[a]ll expenses”); *Delaware Cnty. Cir. Ct. v. Ind. C.R. Comm’n*, 719 N.E.2d 417, 419–20 (Ind. Ct. App. 1999) (same). Second, the covered expenses are only those stemming from a probation officer’s duties, which are listed in [section 11-13-1-3](#). Our task then is to determine whether legal expenses are necessarily incurred when performing any of the listed duties.

The list of a probation officer’s duties in [section 11-13-1-3](#) is not exhaustive, but each duty relates to the daily performance of assisting the trial court and carrying out the court’s orders. More specifically, probation officers must conduct prehearing and presentence investigations, assist the courts in making decisions, provide and instruct probationers on the terms of their probation, supervise probationers’ compliance with those terms, recommend modifications of the terms of probation, notify courts when violations occur, cooperate with and assist agencies in providing services to probationers, keep accurate records, collect money and keep proper accounts, and assist courts in transferring probationers to other jurisdictions. [I.C. § 11-13-1-3](#). In carrying out these mandatory duties, probation officers may incur costs like fuel, meals, parking, tolls, supplies, printing, and postage. These incidental, recurring costs are qualitatively different from legal expenses. And thus, legal expenses are not “actual expenses necessarily incurred in the performance of [a probation officer’s] duties.” *Id.* § -1(c).

Though this conclusion is based on the plain and ordinary meaning of the statutes, even if there were conflicting reasonable interpretations, our settled canons of statutory construction would lead us to the same outcome. Most applicable is the *ejusdem generis* canon, which applies when there is a list of more than one item followed by a catch-all phrase at the end. *O’Bryant v. Adams*, 123 N.E.3d 689, 693 (Ind. 2019). Here, the list of a probation officers’ duties is followed by the catch-all phrase that they must “perform other duties required by law or as directed by the court.” [I.C. § 11-13-1-3\(12\)](#). In reviewing the list as a whole, legal expenses do not belong to “the same general kind or class” of day-to-day expenses a probation officer may necessarily incur when carrying out the enumerated duties. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 199 (2012).

Further, looking at [subsection 11-13-1-1\(c\)](#) in its entirety, we note that the “actual expenses necessarily incurred” requirement directly follows two sentences relating only to probation officers’ salaries. Applying the *noscitur a sociis* canon—which instructs us to determine the meaning of words by reference to their relationship with associated words and phrases—the two sentences about salaries narrow our understanding of the sentence about expenses. See *600 Land, Inc. v. Metro. Bd. of Zoning Appeals of Marion Cnty.*, 889 N.E.2d 305, 311 (Ind. 2008) (citing 2A Norman J. Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* 347–48 (7th ed. 2007)). Thus, the actual expenses covered by the statute relate to those necessarily incurred in the day-to-day performance of the job that would otherwise eat into an officer’s salary—not legal expenses.

Finally, we find additional support for our conclusion by looking at other statutes that demonstrate the legislature generally treats legal expenses differently than other expenses. For example, there are statutes specifically requiring the State to cover legal expenses for judges and prosecutors. I.C. §§ [33-38-12-4](#), [-23-13-3](#). Yet different statutes cover judges’ and prosecutors’ travel and other necessary expenses. See I.C. §§ [33-38-1-2](#), [-39-6-8](#). This disparate treatment lends additional support to our determination that the legislature did not intend for probation officers’ legal expenses to fall within “actual expenses necessarily incurred.”

Simply put, [subsection 11-13-1-1\(c\)](#) does not require counties to pay probation officers’ legal expenses. And thus, the general statute requiring the Attorney General to defend state employees—[Indiana Code section 4-6-2-1.5](#)—applies to probation officers. Though our conclusion is based on relevant statutes and caselaw, we also observe that it is the more efficient outcome. The Attorney General has a robust system in place to defend state employees and the resources to do so. Providing these resources to probation officers ensures uniform and cost-efficient representation for employees who undertake a vital, specialized job for our courts. On the other hand, if counties were responsible for defending probation officers, unequal and limited county budgets could restrict the efficacy of representation. So, besides being consistent with our legislature’s statutory scheme and our precedent, applying the general statute is also the more efficient and equitable path.



We note in closing that, based on the underlying claims in the pending federal litigation, with a duty to defend comes a duty to indemnify. *See* Ind. Code §§ 34-13-3-5, -4-1. But we also point out that finding a general statutory duty on the part of the Attorney General to represent probation officers still allows the Attorney General to decline representation where circumstances warrant. Indeed, representation is required only if the Attorney General “determines that [the lawsuit] has arisen out of an act which such official or employee in good faith believed to be within the scope of the official’s or employee’s duties as prescribed by statute or duly adopted regulation.” I.C. § 4-6-2-1.5(a). That determination is not ours to make.

## Conclusion

Based on our statutes and caselaw that establish probation officers’ unique and inextricable link with the judiciary — a state entity — we hold that probation officers are state employees for purposes of the general statute requiring the Attorney General to defend state employees. And since no other statute requires another entity to pay their legal expenses, that statute applies to probation officers. We thus reverse the trial court’s grant of summary judgment to the State Appellees and remand for proceedings consistent with this opinion.<sup>3</sup>

David, Massa, Slaughter, and Goff, JJ., concur.

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<sup>3</sup> We thank all amici for their helpful briefs: Probation Officers Professional Association of Indiana, Association of Indiana Counties, Indiana Association of County Commissioners, and Indiana County Councils Association.

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