
HOUSE BILL No. 1826

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-1-9-17; IC 35-38-7.

Synopsis: DNA evidence and death sentences. Allows a person who has been convicted of murder and sentenced to death to petition the court that convicted the person to require the forensic DNA testing of any biological material that: (1) is related to the investigation or prosecution that resulted in the person's conviction; (2) is in the possession of the court, the state, or a political subdivision of the state; and (3) was not previously subjected to DNA testing or may be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results. Provides that if the results of DNA testing are favorable to the person, the court must: (1) order a hearing; and (2) enter any order that serves the interests of justice, including an order that vacates and sets aside the judgment against the person, discharges the person if the person is imprisoned, resentsences the person, or grants the person a new trial. Requires the state and all political subdivisions of the state to preserve any biological material secured in connection with a prosecution for murder for the time that any person remains sentenced to death in connection with the case. Provides for exceptions.

Effective: July 1, 2001.

Weinzapfel

January 17, 2001, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 112th General Assembly (2001)

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 2000 General Assembly.

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HOUSE BILL No. 1826



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 10-1-9-17 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 17. A laboratory
3 conducting forensic DNA analysis in Indiana may disclose or allow
4 access to collected DNA samples and DNA analysis results only under
5 the following circumstances:

- 6 (1) To criminal justice agencies for law enforcement
7 identification purposes.
- 8 (2) To defense counsel for criminal defense purposes.
- 9 (3) Upon authorization by a court or statute.
- 10 (4) For a population statistics data base, identification research
11 and protocol development, or quality control purposes, but only
12 if personal identifying information is removed.
- 13 **(5) For purposes of postconviction DNA testing under**
14 **IC 35-38-7.**

15 SECTION 2. IC 35-38-7 IS ADDED TO THE INDIANA CODE AS
16 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
17 1, 2001]:



Chapter 7. DNA Testing; Preservation of Biological Evidence

Sec. 1. As used in this chapter, "DNA" has the meaning set forth in IC 10-1-9-2.

Sec. 2. A person who has been convicted of murder and sentenced to death following conviction may petition the court that convicted the person to require the forensic DNA testing of any biological material that:

(1) is related to the investigation or prosecution that resulted in the person's conviction;

(2) is:

(A) in the actual or constructive possession of the court, the state, or a political subdivision of the state; or

(B) otherwise contained in the Indiana DNA data base established under IC 10-1-9; and

(3) was not previously subjected to DNA testing or may be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.

Sec. 3. (a) After receiving a person's petition filed under section 2 of this chapter, the court shall:

(1) notify the appropriate prosecuting attorney of the petition; and

(2) afford the prosecuting attorney an opportunity to respond.

(b) Upon receiving notice of a petition under subsection (a), the prosecuting attorney shall take any action that is necessary to ensure that any remaining biological material that was secured in connection with the person's case is preserved pending the completion of proceedings under this chapter.

Sec. 4. The court shall order DNA testing under a petition filed under this chapter if the court finds that testing may produce noncumulative, exculpatory evidence:

(1) relevant to the claim of the person who filed the petition; and

(2) that shows that the person was wrongfully convicted or sentenced.

Sec. 5. (a) The court shall order:

(1) the state; or

(2) the person who filed the petition under this chapter, if it is shown that the person possesses the means to pay and is not indigent;

to pay the costs associated with DNA testing ordered under section 4 of this chapter.

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1 **(b) The court may appoint defense counsel for a person who files**
 2 **a petition under this chapter at any time during any proceedings**
 3 **under this chapter if the court finds that the person is indigent.**

4 **Sec. 6. If the results of DNA testing conducted under this**
 5 **chapter are unfavorable to the person who filed the petition, the**
 6 **court:**

7 **(1) shall dismiss the petition; and**

8 **(2) if the person is not indigent, may assess the person for the**
 9 **costs associated with the DNA testing as provided in section**
 10 **5 of this chapter.**

11 **Sec. 7. If the results of DNA testing conducted under this**
 12 **chapter are favorable to the person who filed the petition, the court**
 13 **shall:**

14 **(1) order a hearing, notwithstanding any law that would bar**
 15 **a hearing; and**

16 **(2) enter any order that serves the interests of justice,**
 17 **including an order that:**

18 **(A) vacates and sets aside the judgment against the person;**

19 **(B) discharges the person if the person is imprisoned;**

20 **(C) resents the person; or**

21 **(D) grants the person a new trial.**

22 **Sec. 8. (a) The state and all political subdivisions of the state**
 23 **shall preserve any biological material secured in connection with**
 24 **a prosecution for murder for the time that any person remains**
 25 **sentenced to death in connection with the case.**

26 **(b) Notwithstanding subsection (a), the state and political**
 27 **subdivisions of the state may destroy biological material before the**
 28 **expiration of the time period described in subsection (a) if:**

29 **(1) the state or a political subdivision of the state notifies any**
 30 **person who remains sentenced to death in connection with the**
 31 **prosecution for murder and any defense counsel who**
 32 **represents the person of:**

33 **(A) the intention of the state or political subdivision to**
 34 **destroy the biological material; and**

35 **(B) the provisions of this chapter;**

36 **(2) a person who receives a notice under subdivision (1) does**
 37 **not file a petition under section 2 of this chapter within ninety**
 38 **(90) days after the date the person receives the notice; and**

39 **(3) another law does not require the biological material to be**
 40 **preserved.**

41 **Sec. 9. This chapter may not be construed to limit the**
 42 **circumstances under which a person may obtain DNA testing or**

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1 **other postconviction relief under any other law.**

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