

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6304

BILL NUMBER: SB 245

NOTE PREPARED: Feb 25, 2013

BILL AMENDED: Feb 25, 2013

SUBJECT: Collection of DNA Samples from Felony Arrestees.

FIRST AUTHOR: Sen. Wyss

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. It requires every person arrested after June 30, 2013, for burglary, residential entry, a crime of violence, or a sex offense to submit a DNA sample.
- B. It provides for the expungement of a DNA sample taken from the person if the person is acquitted of all felony charges, all burglary, residential entry, crime of violence, and sex offense charges are dismissed, or no charges have been filed after 30 days.
- C. It requires the officer who obtains a DNA sample from a person to inform the person of the right to DNA expungement and to provide the person with a form that may be used for DNA expungement, and permits the use of evidence other than a court order for expungement.
- D. It increases the DNA sample processing fee from \$2 to \$4.
- E. It allocates an additional \$500,000 semi-annually to the DNA processing fund.

Effective Date: July 1, 2013.

Summary of NET State Impact: (Revised) Increasing the DNA Sample Processing Fee is estimated to yield new revenue of \$1.6 M that would be deposited into the state General Fund. The bill specifies that an additional \$1 M will be transferred from the state General Fund to fund nine dedicated funds under IC 33-37-7-9. This will result in a net increase of \$160,000 in the state General Fund.

Of this \$1 M transfer, \$995,851 (\$497,925.48 x 2) is estimated to be deposited into the DNA Sample

Processing Fund to cover the additional expenditures (\$232,550) that the Indiana State Police will incur for processing the DNA samples for arrestees. The remaining balance will be deposited into the other eight dedicated funds.

Summary of Fiscal Effects of SB 245				
	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
Transfer- State GF to DNA Sample Processing Fund	\$995,851	\$995,851	\$995,851	\$995,851
Added Costs for State Police	<u>\$232,550</u>	<u>\$232,550</u>	<u>\$232,550</u>	<u>\$232,550</u>
Net Effect on Indiana State Police	\$763,301	\$763,301	\$763,301	\$763,301

Explanation of State Expenditures: *Summary- DNA Sampling:* Current law requires offenders convicted of a felony after June 30, 2005, to provide a DNA sample to the Department of Correction (DOC), the county sheriff, or the agency supervising the individual. This bill requires any person arrested for committing certain violent felonies after June 30, 2013, to provide a DNA sample.

LSA assumes that the new samples will be analyzed in-house by the Indiana State Police (ISP). Consequently, the following additional expenditures are estimated for ISP for FY 2014 through FY 2017.

Cost Components (in \$M)				
	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
Processing and Analysis	\$232,550	\$232,550	\$232,550	\$232,550

Additional Information-

Materials and Kits for Processing and Analysis – Under current practice, ISP receives DNA samples from both county jails and DOC facilities. The felony offenders who are in county jails will be either placed on probation or in community corrections programs. ISP currently contracts with Work Comp Management Services to collect the samples at some of the county sites. The State Police work with the staff at DOC's intake units to obtain the samples for processing. LSA assumes that ISP will collect and analyze this new set of arrestee samples in-house.

Cost Components		
<u>Component</u>	<u>Comments:</u>	<u>In-House</u>
Specimen Kits and Shipping	Kits are used to collect specimens from all persons arrested and shipped to laboratory	\$6
Analysis	At the laboratory, staff examine and discard duplicates, and analyze and type new specimens	\$20

The following table presents the costs for ISP to collect, ship, and analyze these added samples. The low and high projections are based on an estimate that the number of new DNA samples may range between 30% and 50% more than the annual average of samples received between 2008 and 2012.

Cost Range for Processing New Samples for Persons Who Are Arrested in First Year If NEW Work Is Performed In-House									
Estimate	DNA Samples Received		DNA Kits and Shipping		Samples Processed		Analysis		Cost
Low	9,421	x	\$6.00	+	5,894	x	\$20.00	=	\$174,406
High	15,701	x	\$6.00	+	9,824	x	\$20.00	=	\$290,686
Average of Low and High									\$232,550
Note: See Background for difference in high and low range of increases									

An average of \$232,550 was used for the costs of processing and analysis.

Expungement – Besides the costs for collection and analysis, the cost to expunge the record of DNA samples of persons who were arrested and whose case was either acquitted or dismissed would likely increase. LSA anticipates that the records and DNA samples can be expunged with current resources. ISP reports that very few DNA samples are currently expunged because most convictions are not overturned on appeal. Since arrests are not as likely to lead to a conviction, it is likely that ISP will need to spend more time expunging the paperwork and destroying the samples.

To estimate the percentage of cases that might be expunged, LSA used (1) the percentage of all felony cases that were filed in the state court system in CY 2011 and later dismissed and (2) acquittal rates published by the Bureau of Justice Statistics for felony cases in the 75 most populous counties in the United States. An estimated 20% of all arrests are assumed to be either dismissed or acquitted. The total number of DNA samples that would need to be expunged could be between 5 and 8 each day.

Under current law, ISP would only expunge cases if the person who has been arrested requests expungement. The person could only request that the samples be expunged if the arrested person is not charged, the person is acquitted of all charges, the conviction on which the authority for inclusion is based has been reversed, the case is dismissed, or no charges have been filed against the person within 30 days.

Annual Number of New DNA Arrestee Samples Expunged									
	New Samples		Percent of Cases Expunged		New Arrestee Samples Expunged		Working Days Per Year		Expunge- ments Per Day
Low (30% increase)	5,894	x	20%	=	1,179	÷	250	=	5
High (50% increase)	9,824	x	20%	=	1,965	÷	250	=	8
*Note: See Background for Explanation of High and Low Increase									

Effect on the Department of Correction- DOC currently collects DNA samples of first-time offenders when they are committed to DOC facilities. Men are committed to the Reception Diagnostic Center, while women are committed to the Rockville Correctional Facility Intake Unit. Since DNA samples will now be collected

at the time of a felony arrest, this bill would reduce the responsibilities for staff at these two facilities.

Background Information: Estimating the Added Samples: LSA used the average number of DNA samples that ISP received and processed between CY 2008 and CY 2012 to project the new samples that would need to be typed and processed.

DNA Samples Received and Processed by Calendar Year						
DNA Samples That Are:	2008	2009	2010	2011	2012 (est)*	Average
Received	35,342	32,644	32,037	28,732	28,254	31,402
Processed	22,475	20,509	19,544	18,198	17,510	19,647
*Based on Jan 1 through Oct 31						

At LSA's request, the Indiana State Police surveyed nine states that have added DNA arrestee language to their statutes since 2003. Seven of these states, Alaska, Arizona, Louisiana, New Mexico, Tennessee, Texas, and Virginia, now require any person arrested for violent felonies to submit a DNA specimen. Based on their experience, LSA projects that the number of DNA samples that the ISP will receive and be required to process will increase between 30% and 50%. The 30% increase would be the low range of the increase and 50% would be the high range of the new samples that would need to be analyzed and processed.

Based on the five-year average shown in the previous table, the following table shows projections of the percentage increase in samples that will be received and processed with a high and low range.

<u>New</u> DNA Samples to be Received and Processed			
DNA Samples That Are:	5-Year Average	Percentage Increase in Samples	
		30% (low range)	50% (high range)
Received	31,402	9,421	15,701
Processed	19,647	5,894	9,824

Crimes covered under this bill include the following.

Crimes Covered Under This Bill
Aggravated battery (IC 35-42-2-1.5)
Attempted murder (IC 35-41-5-1)
Burglary as a Class A felony or a Class B felony (IC 35-43-2-1)
Child exploitation (IC 35-42-4-4(b))
Child molesting (IC 35-42-4-3)
Child seduction (IC 35-42-4-7)
Child solicitation (IC 35-42-4-6)
Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age, and the person who

confined or removed the victim is not the victim's parent or guardian
Criminal deviate conduct (IC 35-42-4-2)
Human trafficking (IC 35-42-3.5-1(c)(3)) if the victim is less than eighteen (18) years of age
Incest (IC 35-46-1-3)
Involuntary manslaughter (IC 35-42-1-4)
Kidnapping (IC 35-42-3-2)
Murder (IC 35-42-1-1)
Operating a motor vehicle while intoxicated causing death (IC 9-30-5-5)
Operating a motor vehicle while intoxicated causing serious bodily injury to another person (IC 9-30-5-4)
Possession of child pornography (IC 35-42-4-4(c))
Promoting prostitution (IC 35-45-4-4) as a Class B felony
Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less than eighteen (18) years of age
Rape (IC 35-42-4-1)
Reckless homicide (IC 35-42-1-5)
Resisting law enforcement as a felony (IC 35-44-3-3)
Robbery as a Class A felony or a Class B felony (IC 35-42-5-1)
Sexual battery (IC 35-42-4-8)
Sexual misconduct with a minor as a Class A felony under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2)
Sexual trafficking of a minor (IC 35-42-3.5-1(b))
Vicarious sexual gratification (including performing sexual conduct in the presence of a minor) (IC 35-42-4-5)
Voluntary manslaughter (IC 35-42-1-3)

Explanation of State Revenues: DNA Sample Processing Fee- The bill is estimated to result in a net increase to the state General Fund of \$160,000. The DNA Sample Processing Fee is increased from \$2 to \$4 by the bill, and the revenue is projected to increase by \$1.16 M, which is to be deposited into the state General Fund. An additional \$1 M would be transferred from the state General Fund to nine programs twice each year.

Increased DNA Sample Process Fee Revenue Deposited into State General Fund		Transfer from State General Fund under IC 33-37-7-9		Net Change for State General Fund
\$1,160,000	-	\$1,000,000	=	\$160,000

This fee is assessed on any person who is found guilty of a crime (felony or misdemeanor), an infraction, or an ordinance violation. LSA projects that this revenue will increase in the first year because this fee applies to any person who is convicted or ordered to pay the fee beginning July 1, 2013, based on the fee's revenue history between FY 2008 and 2012.

Revenue Collected from DNA Sample Processing Fee			
FY	Revenue	Fee Amount	Average Revenue (In \$ Millions)
2008	\$1,109,818	\$2.00	\$1.16
2009	\$1,251,797	\$2.00	
2010	\$1,338,113	\$2.00	
2011	\$1,090,692	\$2.00	
2012	\$1,019,552	\$2.00	

(Revised) *Allocation from State General Fund* -- The additional DNA Sample Processing Fee revenue resulting from the bill is estimated to be \$1.16 M annually. Currently, the fee is deposited into the state General Fund, and twice a year \$9,277,023 is transferred to nine state funds according to a percentage defined in statute. The bill provides that \$9,777,023 will now be transferred (which includes an additional distribution amount of \$500,000 twice a year). Each of these funds would receive a new percentage of this distribution as shown in the following table.

Semi-Annual Transfers from the State General Fund under IC 33-37-7-9					
	Current Law		Proposed by SB 245		Semi-Annual Change
Transfer from State General Fund	transfer:	\$9,277,023	transfer:	\$9,777,023	\$500,000.00
Family Violence and Victim Assistance Fund IC 5-2-6.8-3	8.03%	\$744,944.95	7.62%	\$745,009.15	\$64.20
Indiana Judges' Retirement Fund IC 33-38-6-12	38.55%	\$3,576,292.37	36.58%	\$3,576,435.01	\$142.64
Law Enforcement Academy Building Fund IC 5-2-1-13	2.56%	\$237,491.79	2.43%	\$237,581.66	\$89.87
Law Enforcement Training Fund IC 5-2-1-13	10.27%	\$952,750.26	9.75%	\$953,259.74	\$509.48
Violent Crime Victims Compensation Fund IC 5-2-6.1-40	11.93%	\$1,106,748.84	11.32%	\$1,106,759.00	\$10.16
Motor Vehicle Highway Account	19.49%	\$1,808,091.78	18.5%	\$1,808,749.26	\$657.48
Fish and Wildlife Fund IC 14-22-3-2	0.25%	\$23,192.56	0.24%	\$23,464.86	\$272.30
Indiana Judicial Center Drug and Alcohol Programs Fund IC 12-23-14-17	1.63%	\$151,215.47	1.55%	\$151,543.86	\$328.39
DNA Sample Processing Fund IC 10-13-6-9.5	7.29%	\$676,294.98	12.01%	\$1,174,220.46	\$497,925.48
Totals	100.00%	\$9,277,023.00	100.00%	\$9,777,023.00	\$500,000.00

Explanation of Local Expenditures: *Added Collection Costs for County Sheriffs* – County sheriffs collecting the samples would incur additional costs to train staff to collect samples and ensure that the chain of evidence is not broken. Sheriff staff collect saliva from an arrested person by placing a cotton swab in the arrested person's mouth.

The officer, employee, or person who obtains a DNA sample from a person is to inform the person of the person's right to DNA expungement and provide the person with a form that may be used for DNA expungement.

Explanation of Local Revenues:

State Agencies Affected: Indiana State Police; Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Kristine Crouch, CODIS Administrator, ISP; *Indiana Judicial Report, 2011*; *Indiana Handbook of Taxes, Revenues, and Appropriations, 2012*;

Fiscal Analyst: Mark Goodpaster, 317-232-9852.