

## SENATE BILL No. 245

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 10-13-6; IC 35-38.

**Synopsis:** Collection of DNA samples from felony arrestees. Requires all persons arrested for a felony after June 30, 2013, to submit a DNA sample for inclusion in the Indiana DNA data base. Provides for the expungement of a DNA sample taken from a person arrested for a felony if: (1) the person is acquitted of all charges; (2) the person's conviction is reversed; or (3) the case is dismissed. Makes technical corrections and conforming amendments.

**Effective:** July 1, 2013.

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**Wyss, Arnold J**

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January 7, 2013, read first time and referred to Committee on Judiciary.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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# SENATE BILL No. 245



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 10-13-6-8, AS AMENDED BY P.L.142-2005,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2013]: Sec. 8. (a) The superintendent may establish a data  
4 base of DNA identification records of:  
5 (1) convicted criminals;  
6 **(2) persons arrested for a felony;**  
7 ~~(2)~~ **(3)** crime scene specimens;  
8 ~~(3)~~ **(4)** unidentified missing persons; and  
9 ~~(4)~~ **(5)** close biological relatives of missing persons.  
10 (b) The superintendent shall maintain the Indiana DNA data base.  
11 (c) The superintendent may contract for services to perform DNA  
12 analysis of:  
13 **(1) convicted offenders; and**  
14 **(2) persons arrested for a felony;**  
15 under section 10 of this chapter to assist federal, state, and local  
16 criminal justice and law enforcement agencies in the putative  
17 identification, detection, or exclusion of individuals who are subjects



1 of an investigation or prosecution of a sex offense, a violent crime, or  
 2 another crime in which biological evidence is recovered from the crime  
 3 scene.

4 (d) The superintendent:

5 (1) may perform or contract for performance of testing, typing, or  
 6 analysis of a DNA sample collected from a person described in  
 7 section 10 of this chapter at any time; and

8 (2) shall perform or contract for the performance of testing,  
 9 typing, or analysis of a DNA sample collected from a person  
 10 described in section 10 of this chapter if federal funds become  
 11 available for the performance of DNA testing, typing, or analysis.

12 (e) The superintendent shall adopt rules under IC 4-22-2 necessary  
 13 to administer and enforce the provisions and intent of this chapter.

14 (f) The detention, arrest, or conviction of a person based on a data  
 15 base match or data base information is not invalidated if a court  
 16 determines that the DNA sample was obtained or placed in the Indiana  
 17 DNA data base by mistake.

18 SECTION 2. IC 10-13-6-10, AS AMENDED BY P.L.173-2006,  
 19 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2013]: Sec. 10. (a) This section applies to the following:

21 **(1) A person arrested for a felony after June 30, 2013.**

22 ~~(1)~~ **(2)** A person convicted of a felony under IC 35-42 (offenses  
 23 against the person) or IC 35-43-2-1 (burglary):

24 (A) after June 30, 1996, whether or not the person is sentenced  
 25 to a term of imprisonment; or

26 (B) before July 1, 1996, if the person is held in jail or prison  
 27 on or after July 1, 1996.

28 ~~(2)~~ **(3)** A person convicted of a criminal law in effect before  
 29 October 1, 1977, that penalized an act substantially similar to a  
 30 felony described in IC 35-42 or IC 35-43-2-1 or that would have  
 31 been an included offense of a felony described in IC 35-42 or  
 32 IC 35-43-2-1 if the felony had been in effect:

33 (A) after June 30, 1998, whether or not the person is sentenced  
 34 to a term of imprisonment; or

35 (B) before July 1, 1998, if the person is held in jail or prison  
 36 on or after July 1, 1998.

37 ~~(3)~~ **(4)** A person convicted of a felony, conspiracy to commit a  
 38 felony, or attempt to commit a felony:

39 (A) after June 30, 2005, whether or not the person is sentenced  
 40 to a term of imprisonment; or

41 (B) before July 1, 2005, if the person is held in jail or prison  
 42 on or after July 1, 2005.

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1 (b) A person described in subsection (a) shall provide a DNA  
2 sample to the:

3 (1) department of correction or the designee of the department of  
4 correction if the offender is committed to the department of  
5 correction;

6 (2) county sheriff or the designee of the county sheriff if the  
7 offender is held in a county jail or other county penal facility,  
8 placed in a community corrections program (as defined in  
9 IC 35-38-2.6-2), ~~or~~ placed on probation, or **released on bond;**

10 (3) agency that supervises the person, or the agency's designee, if  
11 the person is on conditional release in accordance with  
12 IC 35-38-1-27; **or**

13 **(4) law enforcement agency that processes the person arrested**  
14 **for a felony.**

15 A person is not required to submit a blood sample if doing so would  
16 present a substantial and an unreasonable risk to the person's health.

17 (c) The detention, arrest, or conviction of a person based on a data  
18 base match or data base information is not invalidated if a court  
19 determines that the DNA sample was obtained or placed in the Indiana  
20 DNA data base by mistake.

21 SECTION 3. IC 10-13-6-18 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 18. (a) A person whose  
23 DNA profile has been included in the Indiana DNA data base may  
24 request expungement of the profile from the DNA data base on the  
25 grounds that:

26 **(1) the conviction on which the authority for inclusion in the**  
27 **Indiana DNA data base was founded has been reversed and the**  
28 **case has been dismissed; or**

29 **(2) the person was arrested for a felony and:**

30 **(A) the person was acquitted of all charges and is not**  
31 **otherwise required to submit a DNA sample;**

32 **(B) the person was convicted and the conviction has been**  
33 **reversed and the case dismissed; or**

34 **(C) the case has been dismissed.**

35 (b) All identifiable information in the Indiana DNA data base  
36 pertaining to a person requesting expungement under subsection (a)  
37 shall be expunged, and all samples from the person shall be destroyed  
38 upon receipt of:

39 (1) a written request for expungement under subsection (a);

40 (2) a certified copy of the court order reversing and dismissing the  
41 conviction, **establishing an acquittal, or showing that the case**  
42 **has been dismissed;** and

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1 (3) any other information necessary to ascertain the validity of the  
2 request.

3 (c) Upon expungement of a person's DNA profile from the Indiana  
4 DNA data base, the superintendent shall request expungement of the  
5 person's DNA profile from the national DNA data base.

6 SECTION 4. IC 35-38-1-27, AS ADDED BY P.L.173-2006,  
7 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2013]: Sec. 27. (a) If a court imposes a sentence that does not  
9 involve a commitment to the department of correction, the court shall  
10 require a person:

11 (1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~  
12 **IC 10-13-6-10(a)**; and

13 (2) who has not previously provided a DNA sample in accordance  
14 with IC 10-13-6;

15 to provide a DNA sample as a condition of the sentence.

16 (b) If a person described in subsection (a) is confined at the time of  
17 sentencing, the court shall order the person to provide a DNA sample  
18 immediately after sentencing.

19 (c) If a person described in subsection (a) is not confined at the time  
20 of sentencing, the agency supervising the person after sentencing shall  
21 establish the date, time, and location for the person to provide a DNA  
22 sample. However, the supervising agency must require that the DNA  
23 sample be provided not more than seven (7) days after sentencing. A  
24 supervising agency's failure to obtain a DNA sample not more than  
25 seven (7) days after sentencing does not permit a person required to  
26 provide a DNA sample to challenge the requirement that the person  
27 provide a DNA sample at a later date.

28 (d) A person's failure to provide a DNA sample is grounds for  
29 revocation of the person's probation, community corrections placement,  
30 or other conditional release.

31 SECTION 5. IC 35-38-2-2.3, AS AMENDED BY P.L.40-2012,  
32 SECTION 20, AND AS AMENDED BY P.L.147-2012, SECTION 9,  
33 IS CORRECTED AND AMENDED TO READ AS FOLLOWS  
34 [EFFECTIVE JULY 1, 2013]: Sec. 2.3. (a) As a condition of probation,  
35 the court may require a person to do a combination of the following:

36 (1) Work faithfully at suitable employment or faithfully pursue a  
37 course of study or career and technical education that will equip  
38 the person for suitable employment.

39 (2) Undergo available medical or psychiatric treatment and  
40 remain in a specified institution if required for that purpose.

41 (3) Attend or reside in a facility established for the instruction,  
42 recreation, or residence of persons on probation.

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- 1           (4) *Participate in a treatment program, educational class, or*  
 2           *rehabilitative service provided by a probation department or by*  
 3           *referral to an agency.*  
 4           ~~(4)~~ (5) Support the person's dependents and meet other family  
 5           responsibilities.  
 6           ~~(5)~~ (6) Make restitution or reparation to the victim of the crime for  
 7           damage or injury that was sustained by the victim. When  
 8           restitution or reparation is a condition of probation, the court shall  
 9           fix the amount, which may not exceed an amount the person can  
 10          or will be able to pay, and shall fix the manner of performance.  
 11          ~~(6)~~ (7) Execute a repayment agreement with the appropriate  
 12          governmental entity to repay the full amount of public relief or  
 13          assistance wrongfully received, and make repayments according  
 14          to a repayment schedule set out in the agreement.  
 15          ~~(7)~~ (8) Pay a fine authorized by IC 35-50.  
 16          ~~(8)~~ (9) Refrain from possessing a firearm or other deadly weapon  
 17          unless granted written permission by the court or the person's  
 18          probation officer.  
 19          ~~(9)~~ (10) Report to a probation officer at reasonable times as  
 20          directed by the court or the probation officer.  
 21          ~~(10)~~ (11) Permit the person's probation officer to visit the person  
 22          at reasonable times at the person's home or elsewhere.  
 23          ~~(11)~~ (12) Remain within the jurisdiction of the court, unless  
 24          granted permission to leave by the court or by the person's  
 25          probation officer.  
 26          ~~(12)~~ (13) Answer all reasonable inquiries by the court or the  
 27          person's probation officer and promptly notify the court or  
 28          probation officer of any change in address or employment.  
 29          ~~(13)~~ (14) Perform uncompensated work that benefits the  
 30          community.  
 31          ~~(14)~~ (15) Satisfy other conditions reasonably related to the  
 32          person's rehabilitation.  
 33          ~~(15)~~ (16) Undergo home detention under IC 35-38-2.5.  
 34          ~~(16)~~ (17) Undergo a laboratory test or series of tests approved by  
 35          the state department of health to detect and confirm the presence  
 36          of the human immunodeficiency virus (HIV) antigen or antibodies  
 37          to the human immunodeficiency virus (HIV), if:  
 38                  (A) the person had been convicted of an offense relating to a  
 39                  criminal sexual act and the offense created an  
 40                  epidemiologically demonstrated risk of transmission of the  
 41                  human immunodeficiency virus (HIV); or  
 42                  (B) the person had been convicted of an offense relating to a

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1 controlled substance and the offense involved:

2 (i) the delivery by any person to another person; or

3 (ii) the use by any person on another person;

4 of a contaminated sharp (as defined in IC 16-41-16-2) or other  
5 paraphernalia that creates an epidemiologically demonstrated  
6 risk of transmission of HIV by involving percutaneous contact.

7 ~~(17)~~ (18) Refrain from any direct or indirect contact with an  
8 individual and, if convicted of an offense under IC 35-46-3, any  
9 animal belonging to the individual.

10 ~~(18)~~ (19) Execute a repayment agreement with the appropriate  
11 governmental entity or with a person for reasonable costs incurred  
12 because of the taking, detention, or return of a missing child (as  
13 defined in IC 10-13-5-4).

14 ~~(19)~~ (20) Periodically undergo a laboratory chemical test (as  
15 defined in ~~IC 14-15-8-1~~ IC 9-13-2-22) or series of chemical tests  
16 as specified by the court to detect and confirm the presence of a  
17 controlled substance (as defined in IC 35-48-1-9). The person on  
18 probation is responsible for any charges resulting from a test and  
19 shall have the results of any test under this subdivision reported  
20 to the person's probation officer by the laboratory.

21 ~~(20)~~ (21) If the person was confined in a penal facility, execute a  
22 reimbursement plan as directed by the court and make repayments  
23 under the plan to the authority that operates the penal facility for  
24 all or part of the costs of the person's confinement in the penal  
25 facility. The court shall fix an amount that:

26 (A) may not exceed an amount the person can or will be able  
27 to pay;

28 (B) does not harm the person's ability to reasonably be self  
29 supporting or to reasonably support any dependent of the  
30 person; and

31 (C) takes into consideration and gives priority to any other  
32 restitution, reparation, repayment, or fine the person is  
33 required to pay under this section.

34 ~~(21)~~ (22) Refrain from owning, harboring, or training an animal.

35 ~~(22)~~ (23) Participate in a reentry court program.

36 (b) When a person is placed on probation, the person shall be given  
37 a written statement specifying:

38 (1) the conditions of probation; and

39 (2) that if the person violates a condition of probation during the  
40 probationary period, a petition to revoke probation may be filed  
41 before the earlier of the following:

42 (A) One (1) year after the termination of probation.

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- 1 (B) Forty-five (45) days after the state receives notice of the  
2 violation.
- 3 (c) As a condition of probation, the court may require that the  
4 person serve a term of imprisonment in an appropriate facility at the  
5 time or intervals (consecutive or intermittent) within the period of  
6 probation the court determines.
- 7 (d) Intermittent service may be required only for a term of not more  
8 than sixty (60) days and must be served in the county or local penal  
9 facility. The intermittent term is computed on the basis of the actual  
10 days spent in confinement and shall be completed within one (1) year.  
11 A person does not earn credit time while serving an intermittent term  
12 of imprisonment under this subsection. When the court orders  
13 intermittent service, the court shall state:
- 14 (1) the term of imprisonment;  
15 (2) the days or parts of days during which a person is to be  
16 confined; and  
17 (3) the conditions.
- 18 (e) Supervision of a person may be transferred from the court that  
19 placed the person on probation to a court of another jurisdiction, with  
20 the concurrence of both courts. Retransfers of supervision may occur  
21 in the same manner. This subsection does not apply to transfers made  
22 under IC 11-13-4 or IC 11-13-5.
- 23 (f) When a court imposes a condition of probation described in  
24 subsection ~~(a)(17): (a)(18):~~
- 25 (1) the clerk of the court shall comply with IC 5-2-9; and  
26 (2) the prosecuting attorney shall file a confidential form  
27 prescribed or approved by the division of state court  
28 administration with the clerk.
- 29 (g) As a condition of probation, a court shall require a person:  
30 (1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~  
31 **IC 10-13-6-10(a);**  
32 (2) who has not previously provided a DNA sample in accordance  
33 with IC 10-13-6; and  
34 (3) whose sentence does not involve a commitment to the  
35 department of correction;  
36 to provide a DNA sample as a condition of probation.
- 37 (h) *If a court imposes a condition of probation described in*  
38 *subsection (a)(4), the person on probation is responsible for any costs*  
39 *resulting from the participation in a program, class, or service. Any*  
40 *costs collected for services provided by the probation department shall*  
41 *be deposited in the county or local supplemental adult services fund.*  
42 SECTION 6. IC 35-38-2.5-6, AS AMENDED BY P.L.126-2012,

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1 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
2 JULY 1, 2013]: Sec. 6. An order for home detention of an offender  
3 under section 5 of this chapter must include the following:

4 (1) A requirement that the offender be confined to the offender's  
5 home at all times except when the offender is:

6 (A) working at employment approved by the court or traveling  
7 to or from approved employment;

8 (B) unemployed and seeking employment approved for the  
9 offender by the court;

10 (C) undergoing medical, psychiatric, mental health treatment,  
11 counseling, or other treatment programs approved for the  
12 offender by the court;

13 (D) attending an educational institution or a program approved  
14 for the offender by the court;

15 (E) attending a regularly scheduled religious service at a place  
16 of worship; or

17 (F) participating in a community work release or community  
18 restitution or service program approved for the offender by the  
19 court.

20 (2) Notice to the offender that violation of the order for home  
21 detention may subject the offender to prosecution for the crime of  
22 escape under IC 35-44.1-3-4.

23 (3) A requirement that the offender abide by a schedule prepared  
24 by the probation department, or by a community corrections  
25 program ordered to provide supervision of the offender's home  
26 detention, specifically setting forth the times when the offender  
27 may be absent from the offender's home and the locations the  
28 offender is allowed to be during the scheduled absences.

29 (4) A requirement that the offender is not to commit another  
30 crime during the period of home detention ordered by the court.

31 (5) A requirement that the offender obtain approval from the  
32 probation department or from a community corrections program  
33 ordered to provide supervision of the offender's home detention  
34 before the offender changes residence or the schedule described  
35 in subdivision (3).

36 (6) A requirement that the offender maintain:

37 (A) a working telephone in the offender's home; and

38 (B) if ordered by the court, a monitoring device in the  
39 offender's home or on the offender's person, or both.

40 (7) A requirement that the offender pay a home detention fee set  
41 by the court in addition to the probation user's fee required under  
42 IC 35-38-2-1 or IC 31-40. However, the fee set under this

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1 subdivision may not exceed the maximum fee specified by the  
2 department of correction under IC 11-12-2-12.

3 (8) A requirement that the offender abide by other conditions of  
4 probation set by the court under IC 35-38-2-2.3.

5 (9) A requirement that an offender:

6 (A) who is ~~convicted of an offense~~ described in ~~IC 10-13-6-10;~~  
7 **IC 10-13-6-10(a);**

8 (B) who has not previously provided a DNA sample in  
9 accordance with IC 10-13-6; and

10 (C) whose sentence does not involve a commitment to the  
11 department of correction;

12 provide a DNA sample.

13 SECTION 7. IC 35-38-2.6-3, AS AMENDED BY P.L.173-2006,  
14 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2013]: Sec. 3. (a) The court may, at the time of sentencing,  
16 suspend the sentence and order a person to be placed in a community  
17 corrections program as an alternative to commitment to the department  
18 of correction. The court may impose reasonable terms on the  
19 placement. A court shall require a person:

20 (1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~  
21 **IC 10-13-6-10(a);**

22 (2) who has not previously provided a DNA sample in accordance  
23 with IC 10-13-6; and

24 (3) whose sentence does not involve a commitment to the  
25 department of correction;

26 to provide a DNA sample as a term of placement.

27 (b) Placement in a community corrections program under this  
28 chapter is subject to the availability of residential beds or home  
29 detention units in a community corrections program.

30 (c) A person placed under this chapter is responsible for the person's  
31 own medical care while in the placement program.

32 (d) Placement under this chapter is subject to the community  
33 corrections program receiving a written presentence report or  
34 memorandum from a county probation agency.

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