

SENATE BILL No. 664

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-13-3; IC 35-38-2.

Synopsis: Random drug testing for probationers and parolees. Requires that whenever a person is placed on probation or parole, the person shall be ordered, as a condition of probation or parole, to: (1) refrain from consuming controlled substances; and (2) undergo periodic chemical testing to detect the presence of a controlled substance. Establishes minimum sanctions that a court or parole board must impose upon a person who violates a condition of the person's probation or parole as the result of undergoing a chemical test that reveals the presence of a controlled substance. Provides that the imposition of the sanctions is dependent upon the number of times the person tests positive for controlled substances while on probation or parole. Provides that the parolee or probationer is responsible for any charges resulting from undergoing the chemical test if the test reveals the presence of a controlled substance.

Effective: July 1, 1999.

Lubbers

January 22, 1999, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.



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First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

SENATE BILL No. 664

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 11-13-3-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) A condition to
3 remaining on parole is that the parolee not commit a crime during the
4 period of parole.
5 (b) The parole board may also adopt, under IC 4-22-2, additional
6 conditions to remaining on parole and require a parolee to satisfy one
7 (1) or more of these conditions. These conditions must be reasonably
8 related to the parolee's successful reintegration into the community and
9 not unduly restrictive of a fundamental right.
10 (c) If a person is released on parole the parolee shall be given a
11 written statement of the conditions of parole. Signed copies of this
12 statement shall be:
13 (1) retained by the parolee;
14 (2) forwarded to any person charged with the parolee's
15 supervision; and
16 (3) placed in the parolee's master file.
17 (d) The parole board may modify parole conditions if the parolee



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1 receives notice of that action and had ten (10) days after receipt of the
 2 notice to express the parolee's views on the proposed modification.
 3 This subsection does not apply to modification of parole conditions
 4 after a revocation proceeding under section 10 of this chapter.

5 (e) As a condition of parole, the parole board may require the
 6 parolee to reside in a particular parole area. In determining a parolee's
 7 residence requirement, the parole board shall:

8 (1) consider:

9 (A) the residence of the parolee prior to the parolee's
 10 incarceration; and

11 (B) the parolee's place of employment; and

12 (2) assign the parolee to reside in the county where the parolee
 13 resided prior to the parolee's incarceration unless assignment on
 14 this basis would be detrimental to the parolee's successful
 15 reintegration into the community.

16 (f) As a condition of parole, the parole board ~~may~~ **shall** require the
 17 parolee to:

18 (1) periodically undergo a laboratory chemical test (as defined in
 19 IC 14-15-8-1) or series of tests to detect and confirm the presence
 20 of a controlled substance (as defined in IC 35-48-1-9); and

21 (2) have the results of any test under this subsection reported to
 22 the parole board by the laboratory.

23 The parolee is responsible for any charges resulting from a test
 24 **required performed on the parolee** under this subsection **that reveals**
 25 **the presence of a controlled substance.** However, a person's parole
 26 may not be revoked on the basis of the person's inability to pay for a
 27 test under this subsection.

28 (g) As a condition of parole, the parole board may require a parolee
 29 who is an offender (as defined in IC 5-2-12-4) to:

30 (1) participate in a treatment program for sex offenders approved
 31 by the parole board; and

32 (2) avoid contact with any person who is less than sixteen (16)
 33 years of age unless the parolee:

34 (A) receives the parole board's approval; or

35 (B) successfully completes the treatment program referred to
 36 in subdivision (1).

37 SECTION 2. IC 11-13-3-8 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) If an employee
 39 of the department assigned to supervise and assist parolees believes
 40 that a parolee has violated a condition to remaining on parole, ~~he~~ **the**
 41 **employee** may submit a written report of the violation to the parole
 42 board. After considering the report and making any further



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1 investigation it considers appropriate, the parole board may:

- 2 (1) dismiss all further proceedings on the alleged violation;
 3 (2) instruct the employee to handle the matter informally;
 4 (3) request the parolee to meet informally with the parole board
 5 to review ~~his~~ **the parolee's** parole obligations; or
 6 (4) intensify parole supervision and reporting.

7 **However, the employee shall submit a written report to the parole**
 8 **board if the alleged violation involves a chemical test performed on**
 9 **the parolee that revealed the presence of a controlled substance**
 10 **and the circumstances require the parole board to proceed under**
 11 **section 10(d) of this chapter.**

12 (b) Upon a showing of probable cause to believe the parolee
 13 violated a condition to remaining on parole, the chairman (or a member
 14 of the parole board designated by the chairman to act in the absence of
 15 the chairman) may issue an order for the parolee to appear for a
 16 revocation hearing on the alleged violation. **However, the chairman**
 17 **or the chairman's designee shall issue an order for the parolee to**
 18 **appear for a revocation hearing if the alleged violation involves a**
 19 **chemical test performed on the parolee that reveals the presence**
 20 **of a controlled substance and the circumstances require the parole**
 21 **board to proceed under section 10(d) of this chapter.**

22 (c) Upon a showing of probable cause to believe the parolee
 23 violated a condition to remaining on parole, the chairman (or a member
 24 of the parole board designated by the chairman to act in the absence of
 25 the chairman) may issue a warrant for the arrest and confinement of the
 26 parolee pending a preliminary hearing. An employee of the department
 27 or any person authorized to execute warrants may execute the warrant.

28 (d) Upon a showing of probable cause to believe that an alleged
 29 parole violator has fled the state, the chairman (or a member of the
 30 parole board who is designated by the chairman to act in the absence
 31 of the chairman) may:

- 32 (1) issue a warrant for the arrest and confinement of the parolee;
 33 and
 34 (2) order that the parolee be returned to the state;

35 to ensure the appearance of the parolee at a parole revocation hearing.

36 (e) If the parole board issues an order, under subsection (b), for the
 37 parolee to appear for a revocation hearing, the parolee shall be given
 38 written notice of:

- 39 (1) the date, time, and place of the hearing;
 40 (2) the condition alleged to have been violated;
 41 (3) the procedures and rights applicable to that hearing; and
 42 (4) the possible sanctions if a violation is found.



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1 (f) If the parole board issues a warrant, under subsection (c), for the
 2 arrest and confinement of the parolee pending a preliminary hearing,
 3 the parolee shall be given written notice of:

- 4 (1) the date, time, and place of the hearing;
 5 (2) the condition alleged to have been violated;
 6 (3) the procedures and rights applicable to the hearing;
 7 (4) ~~his~~ the right to a revocation hearing and the procedures and
 8 rights applicable to that hearing if probable cause is found to
 9 exist; and
 10 (5) the possible sanctions if a violation is found at a revocation
 11 hearing.

12 (g) The issuance of an order to appear or arrest warrant under this
 13 section tolls the period of parole until the parole board's final
 14 determination of the charge. However, the tolled period shall be
 15 restored if there is a finding of no violation, if a finding of a violation
 16 is later overturned, or if the parole violation charge is dismissed.

17 SECTION 3. IC 11-13-3-10 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) Parole
 19 revocation hearings shall be conducted as follows:

20 (1) A parolee who is confined due to an alleged violation of
 21 parole shall be afforded a parole revocation hearing within sixty
 22 (60) days after the parolee is made available to the department by
 23 a jail or state correctional facility, if:

24 (A) there has been a final determination of any criminal
 25 charges against the parolee; or

26 (B) there has been a final resolution of any other detainers
 27 filed by any other jurisdiction against the parolee.

28 (2) A parolee who is not confined and against whom is pending
 29 a charge of parole violation shall be afforded a parole revocation
 30 hearing within one hundred eighty (180) days after the earlier of:

31 (A) the date an order was issued for the parolee's appearance
 32 at a parole revocation hearing; or

33 (B) the date of the parolee's arrest on the parole violation
 34 warrant.

35 The revocation hearing shall be conducted by at least one (1) member
 36 of the parole board, and the purpose of the hearing is to determine
 37 whether a violation of a condition to remaining on parole has occurred
 38 and, if so, the appropriate action. In connection with the hearing, the
 39 parolee is entitled to those procedural safeguards enumerated in section
 40 9(a) of this chapter. The parolee may offer evidence in mitigation of the
 41 alleged violation.

42 (b) If it is determined from the evidence presented that the parolee

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1 did not commit a parole violation, the charge shall be dismissed.

2 (c) **Except as provided in subsection (d)**, if it is determined that
3 the parolee did violate parole, the parole board may continue parole,
4 with or without modifying the conditions, or revoke the parole and
5 order the parolee imprisoned on either a continuous or intermittent
6 basis. If, however, the violation is the commission of a new felony, the
7 parole board shall revoke the parole and order continuous
8 imprisonment.

9 (d) **This section applies to a parolee who violates a condition of**
10 **parole as the result of a chemical test performed on the person that**
11 **revealed the presence of a controlled substance. The parole board**
12 **shall proceed in accordance with the following minimum sanctions:**

13 (1) **Continue the parole and require the parolee to participate**
14 **in substance abuse counseling if it is the first time a chemical**
15 **test performed on the parolee reveals the presence of a**
16 **controlled substance during the period of parole.**

17 (2) **Revoke the parole and order the parolee to be imprisoned**
18 **for:**

19 (A) **at least thirty (30) days; or**

20 (B) **the remainder of the parolee's fixed term of**
21 **imprisonment;**

22 **whichever is less, if two (2) previous chemical tests performed**
23 **on the parolee revealed the presence of a controlled substance**
24 **during the period of parole.**

25 (3) **Revoke the parole and order the parolee to be imprisoned**
26 **for the remainder of the parolee's fixed term of imprisonment**
27 **if three (3) previous chemical tests performed on the person**
28 **revealed the presence of a controlled substance during the**
29 **period of parole.**

30 ~~(d)~~ (e) The parolee shall be provided with a written statement of the
31 reasons for the action taken under subsection (c).

32 ~~(e)~~ (f) Unless good cause for the delay is established in the record
33 of the proceeding, the parole revocation charge shall be dismissed if the
34 revocation hearing is not held within the time established by subsection
35 (a).

36 SECTION 4. IC 35-38-2-2.3 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2.3. (a) As a condition
38 of probation, the court may require a person to do a combination of the
39 following:

40 (1) Work faithfully at suitable employment or faithfully pursue a
41 course of study or vocational training that will equip the person
42 for suitable employment.



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- 1 (2) Undergo available medical or psychiatric treatment and
2 remain in a specified institution if required for that purpose.
- 3 (3) Attend or reside in a facility established for the instruction,
4 recreation, or residence of persons on probation.
- 5 (4) Support the person's dependents and meet other family
6 responsibilities.
- 7 (5) Make restitution or reparation to the victim of the crime for
8 damage or injury that was sustained by the victim. When
9 restitution or reparation is a condition of probation, the court shall
10 fix the amount, which may not exceed an amount the person can
11 or will be able to pay, and shall fix the manner of performance.
- 12 (6) Execute a repayment agreement with the appropriate
13 governmental entity to repay the full amount of public relief or
14 assistance wrongfully received, and make repayments according
15 to a repayment schedule set out in the agreement.
- 16 (7) Pay a fine authorized by IC 35-50.
- 17 (8) Refrain from possessing a firearm or other deadly weapon
18 unless granted written permission by the court or the person's
19 probation officer.
- 20 (9) Report to a probation officer at reasonable times as directed
21 by the court or the probation officer.
- 22 (10) Permit the person's probation officer to visit the person at
23 reasonable times at the person's home or elsewhere.
- 24 (11) Remain within the jurisdiction of the court, unless granted
25 permission to leave by the court or by the person's probation
26 officer.
- 27 (12) Answer all reasonable inquiries by the court or the person's
28 probation officer and promptly notify the court or probation
29 officer of any change in address or employment.
- 30 (13) Perform uncompensated work that benefits the community.
- 31 (14) Satisfy other conditions reasonably related to the person's
32 rehabilitation.
- 33 (15) Undergo home detention under IC 35-38-2.5.
- 34 (16) Undergo a laboratory test or series of tests approved by the
35 state department of health to detect and confirm the presence of
36 the human immunodeficiency virus (HIV) antigen or antibodies
37 to the human immunodeficiency virus (HIV), if:
- 38 (A) the person had been convicted of a sex crime listed in
39 IC 35-38-1-7.1(e) and the crime created an epidemiologically
40 demonstrated risk of transmission of the human
41 immunodeficiency virus (HIV) as described in
42 IC 35-38-1-7.1(b)(8); or

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1 (B) the person had been convicted of an offense related to a
 2 controlled substance listed in IC 35-38-1-7.1(f) and the offense
 3 involved the conditions described in IC 35-38-1-7.1(b)(9)(A).

4 (17) Refrain from any direct or indirect contact with an
 5 individual.

6 (18) Execute a repayment agreement with the appropriate
 7 governmental entity or with a person for reasonable costs incurred
 8 because of the taking, detention, or return of a missing child (as
 9 defined in IC 10-1-7-2).

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

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

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

24 (B) does not harm the person's ability to reasonably be self
 25 supporting or to reasonably support any dependent of the
 26 person; and

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

30 **In addition, the court shall require that each person who is placed**
 31 **on probation refrain from consuming a controlled substance (as**
 32 **defined in IC 35-48-1-9) and that the person periodically undergo**
 33 **a laboratory chemical test (as defined in IC 14-15-8-1) or series of**
 34 **chemical tests as specified by the court to detect and confirm the**
 35 **presence of a controlled substance. The person on probation is**
 36 **responsible for any charges resulting from a test performed on the**
 37 **person that reveals the presence of a controlled substance.**
 38 **Whenever a laboratory analyzes the results of the chemical test,**
 39 **the laboratory shall report the results of the test to the person's**
 40 **probation officer.**

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

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1 (1) the conditions of probation; and
 2 (2) that if the person violates a condition of probation during the
 3 probationary period, a petition to revoke probation may be filed
 4 before the earlier of the following:

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

6 (B) Forty-five (45) days after the state receives notice of the
 7 violation.

8 (c) As a condition of probation, the court may require that the
 9 person serve a term of imprisonment in an appropriate facility at the
 10 time or intervals (consecutive or intermittent) within the period of
 11 probation the court determines.

12 (d) Intermittent service may be required only for a term of not more
 13 than sixty (60) days and must be served in the county or local penal
 14 facility. The intermittent term is computed on the basis of the actual
 15 days spent in confinement and shall be completed within one (1) year.
 16 A person does not earn credit time while serving an intermittent term
 17 of imprisonment under this subsection. When the court orders
 18 intermittent service, the court shall state:

19 (1) the term of imprisonment;

20 (2) the days or parts of days during which a person is to be
 21 confined; and

22 (3) the conditions.

23 (e) Supervision of a person may be transferred from the court that
 24 placed the person on probation to a court of another jurisdiction, with
 25 the concurrence of both courts. Retransfers of supervision may occur
 26 in the same manner. This subsection does not apply to transfers made
 27 under IC 11-13-4 or IC 11-13-5.

28 (f) When a court imposes a condition of probation described in
 29 subsection (a)(17):

30 (1) the clerk of the court shall comply with IC 5-2-9; and

31 (2) the prosecuting attorney shall file a confidential form
 32 prescribed or approved by the division of state court
 33 administration with the clerk.

34 SECTION 5. IC 35-38-2-3 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) **Except as**
 36 **provided in subsection (b)**, the court may revoke a person's probation
 37 if:

38 (1) the person has violated a condition of probation during the
 39 probationary period; and

40 (2) the petition to revoke probation is filed during the
 41 probationary period or 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 (b) **This section applies to a person who violates a condition of**
4 **probation as the result of a chemical test performed on the person**
5 **that revealed the presence of a controlled substance. The court**
6 **shall proceed in accordance with the following minimum sanctions:**

7 (1) **Continue the probation and require the person to**
8 **participate in substance abuse counseling if it is the first time**
9 **a chemical test performed on the person reveals the presence**
10 **of a controlled substance during the person's probationary**
11 **period.**

12 (2) **Revoke the probation and order execution of:**

13 (A) **at least thirty (30) days of the person's sentence that**
14 **was suspended at the time of the initial sentencing; or**

15 (B) **the amount of time remaining on the person's**
16 **suspended sentence;**

17 **whichever is less, if two (2) previous chemical tests performed**
18 **on the person revealed the presence of a controlled substance**
19 **during the person's probationary period.**

20 (3) **Revoke the probation and order execution of any**
21 **remaining time on the person's suspended sentence if three (3)**
22 **previous chemical tests performed on the person revealed the**
23 **presence of a controlled substance during the person's**
24 **probationary period.**

25 (b) (c) **When a petition is filed charging a violation of a condition**
26 **of probation, the court may:**

27 (1) **order a summons to be issued to the person to appear; or**

28 (2) **order a warrant for the person's arrest if there is a risk of the**
29 **person's fleeing the jurisdiction or causing harm to others.**

30 (c) (d) **The issuance of a summons or warrant tolls the period of**
31 **probation until the final determination of the charge.**

32 (c) (e) **The court shall conduct a hearing concerning the alleged**
33 **violation. The court may admit the person to bail pending the hearing.**

34 (c) (f) **The state must prove the violation by a preponderance of the**
35 **evidence. The evidence shall be presented in open court. The person is**
36 **entitled to confrontation, cross-examination, and representation by**
37 **counsel.**

38 (c) (g) **Probation may not be revoked for failure to comply with**
39 **conditions of a sentence that imposes financial obligations on the**
40 **person unless the person recklessly, knowingly, or intentionally fails to**
41 **pay.**

42 (c) (h) **If the court finds that the person has violated a condition at**



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1 any time before termination of the period, and the petition to revoke is
 2 filed within the probationary period, the court may:

3 (1) continue the person on probation, with or without modifying
 4 or enlarging the conditions;

5 (2) extend the person's probationary period for not more than one
 6 (1) year beyond the original probationary period; or

7 (3) order execution of the sentence that was suspended at the time
 8 of initial sentencing.

9 ~~(h)~~ (i) If the court finds that the person has violated a condition
 10 during any time before the termination of the period, and the petition
 11 is filed under subsection (a) after the probationary period has expired,
 12 the court may:

13 (1) reinstate the person's probationary period, with or without
 14 enlarging the conditions, if the sum of the length of the original
 15 probationary period and the reinstated probationary period does
 16 not exceed the length of the maximum sentence allowable for the
 17 offense that is the basis of the probation; or

18 (2) order execution of the sentence that was suspended at the time
 19 of the initial sentencing.

20 ~~(i)~~ (j) A judgment revoking probation is a final appealable order.

21 ~~(j)~~ (k) Failure to pay fines or costs required as a condition of
 22 probation may not be the sole basis for commitment to the department
 23 of correction.

24 ~~(k)~~ (l) Failure to pay fees or costs assessed against a person under
 25 IC 33-9-11.5-6, IC 33-19-2-3(c), or IC 35-33-7-6 is not grounds for
 26 revocation of probation.

27 SECTION 6. IC 35-38-2-4 IS ADDED TO THE INDIANA CODE
 28 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 29 1, 1999]: **Sec. 4. Whenever a person who has been placed on
 30 probation undergoes a chemical test that reveals the presence of a
 31 controlled substance and the circumstances require a court to
 32 proceed under section 3(b) of this chapter, the person's probation
 33 officer shall notify the prosecuting attorney who is then required
 34 to file a petition to revoke the person's probation.**

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