

HOUSE BILL No. 1439

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-6.

Synopsis: DNA testing for arrestees. Provides that persons arrested for a felony are required to submit a DNA sample. Makes other changes and conforming amendments.

Effective: July 1, 2009.

Friend, Lawson L, Walorski

January 13, 2009, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1439



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, 2009]: 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 convicted offenders **and persons arrested for a felony**
13 under section 10 of this chapter to assist federal, state, and local
14 criminal justice and law enforcement agencies in the putative
15 identification, detection, or exclusion of individuals who are subjects
16 of an investigation or prosecution of a sex offense, a violent crime, or
17 another crime in which biological evidence is recovered from the crime



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scene.

(d) The superintendent:

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

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

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

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

SECTION 2. IC 10-13-6-10, AS AMENDED BY P.L.173-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) This section applies to the following:

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

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

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

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

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

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

(3) A person convicted of a felony, conspiracy to commit a felony, or attempt to commit a felony:

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

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

(4) A person arrested for a felony after June 30, 2009.

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

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- 1 (1) department of correction or the designee of the department of
- 2 correction if the offender is committed to the department of
- 3 correction;
- 4 (2) county sheriff or the designee of the county sheriff if the
- 5 offender is held in a county jail or other county penal facility,
- 6 placed in a community corrections program (as defined in
- 7 IC 35-38-2.6-2), or placed on probation; ~~or~~
- 8 (3) agency that supervises the person, or the agency's designee, if
- 9 the person is on conditional release in accordance with
- 10 IC 35-38-1-27; **or**
- 11 **(4) law enforcement agency that processes the person arrested**
- 12 **for a felony.**

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

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

19 SECTION 3. IC 10-13-6-18 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) A person whose
 21 DNA profile has been included in the Indiana DNA data base may
 22 request expungement of the profile from the DNA data base on the
 23 grounds that:

- 24 (1) the conviction on which the authority for inclusion in the
- 25 Indiana DNA data base was founded has been reversed and the
- 26 case has been dismissed; **or**
- 27 **(2) the person was arrested for a felony and:**
- 28 **(A) the person was acquitted of all felony charges and is**
- 29 **not otherwise required to submit a DNA sample;**
- 30 **(B) the person was convicted and the conviction has been**
- 31 **reversed and the case dismissed; or**
- 32 **(C) the case has been dismissed.**

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

- 37 (1) a written request for expungement under subsection (a);
- 38 (2) a certified copy of the court order reversing and dismissing the
- 39 conviction, **establishing an acquittal, or showing that the case**
- 40 **has been dismissed;** and
- 41 (3) any other information necessary to ascertain the validity of the
- 42 request.

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

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