



February 11, 2011

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## SENATE BILL No. 431

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DIGEST OF SB 431 (Updated February 10, 2011 10:43 am - DI 117)

**Citations Affected:** IC 9-27; IC 9-30; IC 10-20; IC 21-45; noncode.

**Synopsis:** Department of toxicology. Creates the department of toxicology as a state agency. (Currently, the department of toxicology is part of Indiana University.) Makes conforming changes. Creates the toxicology department advisory council to aid in the transition to the new department. Repeals the law pertaining to the department of toxicology that is part of Indiana University.

**Effective:** Upon passage; July 1, 2011.

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**Wyss, Zakas, Bray, Landske, Merritt,  
Arnold**

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January 12, 2011, read first time and referred to Committee on Appointments and Claims.  
February 10, 2011, amended, reported favorably — Do Pass.

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February 11, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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## SENATE BILL No. 431



A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 9-27-5-1 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2011]: Sec. 1. (a) The state, in recognition of  
3 the need for and lack of adequate information regarding the role of  
4 alcohol, carbon monoxide, and certain drugs in fatalities occurring as  
5 a result of traffic accidents involving motor vehicles, requires specific  
6 information pertaining to Indiana. The information, to be of value in  
7 the evaluation of the traffic accident rate in Indiana, must be gathered,  
8 prepared, and interpreted on the basis of local conditions. It is  
9 recognized that the extrapolation of information gathered in other states  
10 will not provide accurate information in view of the variables  
11 introduced by demographic differences and a multitude of  
12 environmental factors that differ from state to state.

13 (b) In recognition of the need for the information described in  
14 subsection (a), the director of the state department of toxicology,  
15 ~~Indiana University School of Medicine~~, in conjunction with the office  
16 of traffic safety, shall conduct a study of the incidence and effect of  
17 alcohol, carbon monoxide, and certain drugs in all motor vehicle traffic

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1 accidents involving a fatality.

2 SECTION 2. IC 9-30-6-5 IS AMENDED TO READ AS FOLLOWS

3 [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) The director of the **state**

4 department of toxicology ~~of the Indiana University school of medicine~~

5 shall adopt rules under IC 4-22-2 concerning the following:

6 (1) Standards and regulations for the:

7 (A) selection;

8 (B) training; and

9 (C) certification;

10 of breath test operators.

11 (2) Standards and regulations for the:

12 (A) selection; and

13 (B) certification;

14 of breath test equipment and chemicals.

15 (3) The certification of the proper technique for administering a

16 breath test.

17 (b) Certificates issued in accordance with rules adopted under

18 subsection (a) shall be sent to the clerk of the circuit court in each

19 county where the breath test operator, equipment, or chemicals are used

20 to administer breath tests. However, failure to send a certificate does

21 not invalidate any test.

22 (c) Certified copies of certificates issued in accordance with rules

23 adopted under subsection (a):

24 (1) are admissible in a proceeding under this chapter, IC 9-30-5,

25 IC 9-30-9, or IC 9-30-15;

26 (2) constitute prima facie evidence that the equipment or

27 chemical:

28 (A) was inspected and approved by the department of

29 toxicology on the date specified on the certificate copy; and

30 (B) was in proper working condition on the date the breath test

31 was administered if the date of approval is not more than one

32 hundred eighty (180) days before the date of the breath test;

33 (3) constitute prima facie evidence of the approved technique for

34 administering a breath test; and

35 (4) constitute prima facie evidence that the breath test operator

36 was certified by the department of toxicology on the date

37 specified on the certificate.

38 (d) Results of chemical tests that involve an analysis of a person's

39 breath are not admissible in a proceeding under this chapter, IC 9-30-5,

40 IC 9-30-9, or IC 9-30-15 if:

41 (1) the test operator;

42 (2) the test equipment;

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1 (3) the chemicals used in the test, if any; or  
2 (4) the techniques used in the test;  
3 have not been approved in accordance with the rules adopted under  
4 subsection (a).

5 SECTION 3. IC 10-20 IS ADDED TO THE INDIANA CODE AS  
6 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
7 2011]:

8 **ARTICLE 20. STATE DEPARTMENT OF TOXICOLOGY**  
9 **Chapter 1. Definitions**

10 **Sec. 1. The definitions in this chapter apply throughout this**  
11 **article.**

12 **Sec. 2. "Department" refers to the state department of**  
13 **toxicology established by IC 10-20-2-1.**

14 **Sec. 3. "Director" refers to the director of the state department**  
15 **of toxicology appointed under IC 10-20-2-2.**

16 **Chapter 2. State Department of Toxicology**

17 **Sec. 1. The state department of toxicology is established as a**  
18 **department of state government.**

19 **Sec. 2. The governor shall appoint a director of the department.**  
20 **The director has the authority to carry out the responsibilities of**  
21 **the department. The director:**

- 22 (1) serves at the governor's pleasure; and
- 23 (2) is entitled to receive compensation in an amount set by the  
24 governor.

25 **Sec. 3. The director may appoint employees in the manner**  
26 **provided by IC 4-15-2 and fix their compensation, subject to the**  
27 **approval of the budget agency under IC 4-12-1-13.**

28 **Sec. 4. (a) The department shall do the following:**

29 (1) **Conduct analyses for poisons, drugs, and alcohols upon**  
30 **human tissues and fluids submitted by:**

- 31 (A) **Indiana coroners, prosecuting attorneys, and sheriffs;**
- 32 (B) **authorized officials of the Indiana state police and**  
33 **Indiana city police departments; and**
- 34 (C) **officials of hospitals;**

35 **in cases of suspected poisoning or intoxication of human**  
36 **beings.**

37 (2) **Report the analytical findings of the department to the**  
38 **official requesting the analyses.**

39 (3) **Consult with Indiana coroners and coroner's physicians**  
40 **regarding the interpretation of the analytical findings.**

41 (b) **The personnel of the department shall furnish expert**  
42 **testimony regarding the department's analytical findings in all**

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1 legal hearings, including criminal prosecutions related to the  
2 findings.

3 **Sec. 5. The department has the following duties:**

4 (1) Provide instruction in toxicology to law enforcement  
5 officers and certify law enforcement officers as required by  
6 the statutes for the administration of breath and other  
7 chemical tests.

8 (2) Provide instruction and technical assistance as needed to  
9 prosecutors and defense counsel for the proper administration  
10 or exclusion of test results into evidence.

11 (3) Provide instruction to judges concerning toxicology and  
12 the science of alcohol and drug testing as needed to improve  
13 the administration of justice.

14 (4) Provide information to the public concerning chemical  
15 testing and the science of toxicology to advance a better  
16 understanding of the system of justice in the state.

17 **Sec. 6. The department shall conduct research on the following:**

18 (1) The detection of toxic compounds that may be components  
19 of drugs or medicines or may be present in pesticides used for  
20 agricultural or other purposes.

21 (2) The treatment of poisoning from toxic substances.

22 **Sec. 7. (a) After June 30, 2011, a reference in any law, rule,  
23 contract, or other document or record to the state department of  
24 toxicology established under IC 21-45-3 shall be treated as a  
25 reference to the department.**

26 **(b) On July 1, 2011, the property and obligations of the state  
27 department of toxicology established under IC 21-45-3 are  
28 transferred to the department.**

29 **(c) Money that is in any fund or account administered by the  
30 state department of toxicology established under IC 21-45-3 on  
31 June 30, 2011, shall be transferred to the department.**

32 **(d) This section expires July 1, 2012.**

33 **SECTION 4. [EFFECTIVE UPON PASSAGE] (a) The toxicology  
34 department advisory council is established to provide oversight  
35 and guidance for the development of the toxicology department.**

36 **(b) The council consists of the following members:**

37 (1) The governor, or the governor's designee, who must be the  
38 same person as the person who serves as the governor's  
39 designee as a member of the trustees of the criminal justice  
40 institute under IC 5-2-6-4. The governor or the governor's  
41 designee shall be the chairperson of the council.

42 (2) The executive director of the Indiana judicial center, or

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the executive director's designee, who must be the same person as the person who serves as the executive director's designee as a member of the trustees of the criminal justice institute under IC 5-2-6-4(a)(6).

(3) The executive director of the Indiana prosecuting attorneys council, or the executive director's designee, who must be the same person as the person who serves as the executive director's designee as a member of the trustees of the criminal justice institute under IC 5-2-6-4(a)(5).

(4) The executive director of the public defender council, or the executive director's designee, who must be the same person as the person who serves as the executive director's designee as a member of the trustees of the criminal justice institute under IC 5-2-6-4 (a)(7).

(5) The superintendent of state police, or the superintendent's designee, who must be the same person as the person who serves as the superintendent's designee as a member of the trustees of the criminal justice institute under IC 5-2-6-4 (a)(3).

(6) A member of the Indiana state senate who shall be appointed by the president pro tempore of the senate, and who must be the same person as the advisory member to the trustees of the criminal justice institute appointed under IC 5-2-6-4(b).

(7) A member of the Indiana house of representatives who shall be appointed by the speaker of the house of representatives, and who must be the same person as the advisory member to the trustees of the criminal justice institute appointed under IC 5-2-6-4(b).

(8) The following two (2) persons appointed by the governor:

(A) One (1) sheriff, who shall be the same person as the member of the board of trustees of the criminal justice institute appointed under IC 5-2-6-4(a)(9)(A).

(B) One (1) chief of police, who shall be the same person as a member of the board of trustees of the criminal justice institute appointed under IC 5-2-6-4(a)(9)(B).

(9) One (1) member appointed by the governor who has training and experience as a forensic scientist.

(10) One (1) member appointed by the governor who has experience, through volunteer activities or advocacy, in the issue of impaired driving.

(c) Service on the council does not constitute holding a public

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office.

(d) Each member of the council who is not a member of the general assembly is not entitled to the minium salary per diem provided by IC 4-10-11-2.1(b). A member who is not a member of the general assembly is also not entitled to reimbursement for traveling expanses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the department of administration and approved by the budget agency.

(e) Each member of the council who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative service agency.

(f) The affirmative votes of a majority of the members appointed to the council are required for the council to take action on any measure, including final reports.

(g) This SECTION expires June 30, 2012.

SECTION 5. IC 21-45-3 IS REPEALED [EFFECTIVE JULY 1, 2011].

SECTION 6. An emergency is declared for this act.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Appointments and Claims, to which was referred Senate Bill No. 431, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, delete lines 22 through 34.

Page 4, line 35, delete "8" and insert "7".

Page 5, between lines 3 and 4, begin a new paragraph and insert:

**"SECTION 4. [EFFECTIVE UPON PASSAGE] (a) "The toxicology department advisory council is established to provide oversight and guidance for the development of the toxicology department.**

**(b) The council consists of the following members:**

**(1) The governor, or the governor's designee, who must be the same person as the person who serves as the governor's designee as a member of the trustees of the criminal justice institute under IC 5-2-6-4. The governor or the governor's designee shall be the chairperson of the council.**

**(2) The executive director of the Indiana judicial center, or the executive director's designee, who must be the same person as the person who serves as the executive director's designee as a member of the trustees of the criminal justice institute under IC 5-2-6-4(a)(6).**

**(3) The executive director of the Indiana prosecuting attorneys council, or the executive director's designee, who must be the same person as the person who serves as the executive director's designee as a member of the trustees of the criminal justice institute under IC 5-2-6-4(a)(5).**

**(4) The executive director of the public defender council, or the executive director's designee, who must be the same person as the person who serves as the executive director's designee as a member of the trustees of the criminal justice institute under IC 5-2-6-4 (a)(7).**

**(5) The superintendent of state police, or the superintendent's designee, who must be the same person as the person who serves as the superintendent's designee as a member of the trustees of the criminal justice institute under IC 5-2-6-4 (a)(3).**

**(6) A member of the Indiana state senate who shall be appointed by the president pro tempore of the senate, and who must be the same person as the advisory member to the**

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trustees of the criminal justice institute appointed under IC 5-2-6-4(b).

(7) A member of the Indiana house of representatives who shall be appointed by the speaker of the house of representatives, and who must be the same person as the advisory member to the trustees of the criminal justice institute appointed under IC 5-2-6-4(b).

(8) The following two (2) persons appointed by the governor:

(A) One (1) sheriff, who shall be the same person as the member of the board of trustees of the criminal justice institute appointed under IC 5-2-6-4(a)(9)(A).

(B) One (1) chief of police, who shall be the same person as a member of the board of trustees of the criminal justice institute appointed under IC 5-2-6-4(a)(9)(B).

(9) One (1) member appointed by the governor who has training and experience as a forensic scientist.

(10) One (1) member appointed by the governor who has experience, through volunteer activities or advocacy, in the issue of impaired driving.

(c) Service on the council does not constitute holding a public office.

(d) Each member of the council who is not a member of the general assembly is not entitled to the minium salary per diem provided by IC 4-10-11-2.1(b). A member who is not a member of the general assembly is also not entitled to reimbursement for traveling expanses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the department of administration and approved by the budget agency.

(e) Each member of the council who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative service agency.

(f) The affirmative votes of a majority of the members appointed to the council are required for the council to take action on any measure, including final reports.

(g) This SECTION expires June 30, 2012."

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Page 5, after line 5, begin a new paragraph and insert:  
"SECTION 5. **An emergency is declared for this act.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 431 as introduced.)

ZAKAS, Chairperson

Committee Vote: Yeas 5, Nays 0.

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