

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 35, 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:

- 1 A BILL FOR AN ACT to amend the Indiana Code concerning
2 corrections.
3 Delete everything after the enacting clause and insert the
4 following:
5 SECTION 1. IC 10-13-6-8, AS AMENDED BY P.L.142-2005,
6 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2011]: Sec. 8. (a) The superintendent may establish a data
8 base of DNA identification records of:
9 (1) convicted criminals;
10 **(2) persons arrested for:**
11 **(A) burglary (IC 35-43-2-1);**
12 **(B) residential entry (IC 35-43-2-1.5);**
13 **(C) a crime of violence (as defined in IC 35-50-1-2); or**
14 **(D) a sex offense (as defined in IC 11-8-8-5.2);**
15 ~~(2)~~ **(3) crime scene specimens;**
16 ~~(3)~~ **(4) unidentified missing persons; and**
17 ~~(4)~~ **(5) close biological relatives of missing persons.**
18 (b) The superintendent shall maintain the Indiana DNA data base.
19 (c) The superintendent may contract for services to perform DNA
20 analysis of:
21 **(1) convicted offenders; and**
22 **(2) persons arrested for:**
23 **(A) burglary;**
24 **(B) residential entry;**
25 **(C) a crime of violence; or**
26 **(D) a sex offense;**

1 under section 10 of this chapter to assist federal, state, and local
 2 criminal justice and law enforcement agencies in the putative
 3 identification, detection, or exclusion of individuals who are subjects
 4 of an investigation or prosecution of a sex offense, a violent crime, or
 5 another crime in which biological evidence is recovered from the crime
 6 scene.

7 (d) The superintendent:

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

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

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

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

22 SECTION 2. IC 10-13-6-10, AS AMENDED BY P.L.173-2006,
 23 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2011]: Sec. 10. (a) This section applies to the following:

25 **(1) A person arrested after June 30, 2011, for burglary,**
 26 **residential entry, a crime of violence, or a sex offense, as**
 27 **described in section 8(a)(2) of this chapter.**

28 ~~(1)~~ **(2)** A person convicted of a felony under IC 35-42 (offenses
 29 against the person) or IC 35-43-2-1 (burglary):

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

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

34 ~~(2)~~ **(3)** A person convicted of a criminal law in effect before
 35 October 1, 1977, that penalized an act substantially similar to a
 36 felony described in IC 35-42 or IC 35-43-2-1 or that would have
 37 been an included offense of a felony described in IC 35-42 or
 38 IC 35-43-2-1 if the felony had been in effect:

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

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

43 ~~(3)~~ **(4)** A person convicted of a felony, conspiracy to commit a
 44 felony, or attempt to commit a felony:

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

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

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

- 1 (1) department of correction or the designee of the department
 2 of 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 **released on bond**;
 8 (3) agency that supervises the person, or the agency's designee,
 9 if 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**
 12 **arrested for burglary, residential entry, a crime of violence,**
 13 **or a sex offense.**

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

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

20 SECTION 3. IC 10-13-6-18 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 18. (a) A person whose
 22 DNA profile has been included in the Indiana DNA data base may
 23 request expungement of the profile from the DNA data base on the
 24 grounds that:

- 25 (1) the conviction on which the authority for inclusion in the
 26 Indiana DNA data base was founded has been reversed and the
 27 case has been dismissed; **or**
 28 **(2) the person was arrested for burglary, residential entry, a**
 29 **crime of violence, or a sex offense, as described in section**
 30 **8(a)(2) of this chapter, and:**
 31 **(A) the person was acquitted of all charges and is not**
 32 **otherwise required to submit a DNA sample;**
 33 **(B) the person was convicted and the conviction has**
 34 **been reversed and the case dismissed; or**
 35 **(C) the case has been dismissed.**

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

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

46 (c) Upon expungement of a person's DNA profile from the Indiana
 47 DNA data base, the superintendent shall request expungement of the
 48 person's DNA profile from the national DNA data base.

49 SECTION 4. IC 33-37-5-26.2, AS AMENDED BY P.L.174-2006,
 50 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

1 JULY 1, 2011]: Sec. 26.2. In each action in which a person is:

- 2 (1) convicted of an offense;
 3 (2) required to pay a pretrial diversion fee;
 4 (3) found to have committed an infraction; or
 5 (4) found to have violated an ordinance;

6 the clerk shall collect a DNA sample processing fee of ~~two~~ **four** dollars
 7 (~~\$2~~): (**\$4**).

8 SECTION 5. IC 35-38-1-27, AS ADDED BY P.L.173-2006,
 9 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2011]: Sec. 27. (a) If a court imposes a sentence that does not
 11 involve a commitment to the department of correction, the court shall
 12 require a person:

- 13 (1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~
 14 **IC 10-13-6-10(a)**; and
 15 (2) who has not previously provided a DNA sample in
 16 accordance with IC 10-13-6;

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

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

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

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

33 SECTION 6. IC 35-38-2-2.3, AS AMENDED BY P.L.111-2009,
 34 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2011]: Sec. 2.3. (a) As a condition of probation, the court may
 36 require a person to do a combination of the following:

- 37 (1) Work faithfully at suitable employment or faithfully pursue
 38 a course of study or career and technical education that will
 39 equip the person for suitable employment.
 40 (2) Undergo available medical or psychiatric treatment and
 41 remain in a specified institution if required for that purpose.
 42 (3) Attend or reside in a facility established for the instruction,
 43 recreation, or residence of persons on probation.
 44 (4) Support the person's dependents and meet other family
 45 responsibilities.
 46 (5) Make restitution or reparation to the victim of the crime for
 47 damage or injury that was sustained by the victim. When
 48 restitution or reparation is a condition of probation, the court
 49 shall fix the amount, which may not exceed an amount the
 50 person can or will be able to pay, and shall fix the manner of

- 1 performance.
- 2 (6) Execute a repayment agreement with the appropriate
- 3 governmental entity to repay the full amount of public relief or
- 4 assistance wrongfully received, and make repayments according
- 5 to a repayment schedule set out in the agreement.
- 6 (7) Pay a fine authorized by IC 35-50.
- 7 (8) Refrain from possessing a firearm or other deadly weapon
- 8 unless granted written permission by the court or the person's
- 9 probation officer.
- 10 (9) Report to a probation officer at reasonable times as directed
- 11 by the court or the probation officer.
- 12 (10) Permit the person's probation officer to visit the person at
- 13 reasonable times at the person's home or elsewhere.
- 14 (11) Remain within the jurisdiction of the court, unless granted
- 15 permission to leave by the court or by the person's probation
- 16 officer.
- 17 (12) Answer all reasonable inquiries by the court or the person's
- 18 probation officer and promptly notify the court or probation
- 19 officer of any change in address or employment.
- 20 (13) Perform uncompensated work that benefits the community.
- 21 (14) Satisfy other conditions reasonably related to the person's
- 22 rehabilitation.
- 23 (15) Undergo home detention under IC 35-38-2.5.
- 24 (16) Undergo a laboratory test or series of tests approved by the
- 25 state department of health to detect and confirm the presence of
- 26 the human immunodeficiency virus (HIV) antigen or antibodies
- 27 to the human immunodeficiency virus (HIV), if:
- 28 (A) the person had been convicted of an offense relating to
- 29 a criminal sexual act and the offense created an
- 30 epidemiologically demonstrated risk of transmission of the
- 31 human immunodeficiency virus (HIV); or
- 32 (B) the person had been convicted of an offense relating to
- 33 a controlled substance and the offense involved:
- 34 (i) the delivery by any person to another person; or
- 35 (ii) the use by any person on another person;
- 36 of a contaminated sharp (as defined in IC 16-41-16-2) or
- 37 other paraphernalia that creates an epidemiologically
- 38 demonstrated risk of transmission of HIV by involving
- 39 percutaneous contact.
- 40 (17) Refrain from any direct or indirect contact with an
- 41 individual and, if convicted of an offense under IC 35-46-3, any
- 42 animal belonging to the individual.
- 43 (18) Execute a repayment agreement with the appropriate
- 44 governmental entity or with a person for reasonable costs
- 45 incurred because of the taking, detention, or return of a missing
- 46 child (as defined in IC 10-13-5-4).
- 47 (19) Periodically undergo a laboratory chemical test (as defined
- 48 in IC 14-15-8-1) or series of chemical tests as specified by the
- 49 court to detect and confirm the presence of a controlled
- 50 substance (as defined in IC 35-48-1-9). The person on probation

- 1 is responsible for any charges resulting from a test and shall have
 2 the results of any test under this subdivision reported to the
 3 person's probation officer by the laboratory.
- 4 (20) If the person was confined in a penal facility, execute a
 5 reimbursement plan as directed by the court and make
 6 repayments under the plan to the authority that operates the
 7 penal facility for all or part of the costs of the person's
 8 confinement in the penal facility. The court shall fix an amount
 9 that:
- 10 (A) may not exceed an amount the person can or will be
 11 able to pay;
- 12 (B) does not harm the person's ability to reasonably be self
 13 supporting or to reasonably support any dependent of the
 14 person; and
- 15 (C) takes into consideration and gives priority to any other
 16 restitution, reparation, repayment, or fine the person is
 17 required to pay under this section.
- 18 (21) Refrain from owning, harboring, or training an animal.
- 19 (22) Participate in a reentry court program.
- 20 (b) When a person is placed on probation, the person shall be
 21 given a written statement specifying:
- 22 (1) the conditions of probation; and
- 23 (2) that if the person violates a condition of probation during the
 24 probationary period, a petition to revoke probation may be filed
 25 before the earlier of the following:
- 26 (A) One (1) year after the termination of probation.
- 27 (B) Forty-five (45) days after the state receives notice of the
 28 violation.
- 29 (c) As a condition of probation, the court may require that the
 30 person serve a term of imprisonment in an appropriate facility at the
 31 time or intervals (consecutive or intermittent) within the period of
 32 probation the court determines.
- 33 (d) Intermittent service may be required only for a term of not
 34 more than sixty (60) days and must be served in the county or local
 35 penal facility. The intermittent term is computed on the basis of the
 36 actual days spent in confinement and shall be completed within one (1)
 37 year. A person does not earn credit time while serving an intermittent
 38 term of imprisonment under this subsection. When the court orders
 39 intermittent service, the court shall state:
- 40 (1) the term of imprisonment;
- 41 (2) the days or parts of days during which a person is to be
 42 confined; and
- 43 (3) the conditions.
- 44 (e) Supervision of a person may be transferred from the court that
 45 placed the person on probation to a court of another jurisdiction, with
 46 the concurrence of both courts. Retransfers of supervision may occur
 47 in the same manner. This subsection does not apply to transfers made
 48 under IC 11-13-4 or IC 11-13-5.
- 49 (f) When a court imposes a condition of probation described in
 50 subsection (a)(17):

- 1 (1) the clerk of the court shall comply with IC 5-2-9; and
 2 (2) the prosecuting attorney shall file a confidential form
 3 prescribed or approved by the division of state court
 4 administration with the clerk.
- 5 (g) As a condition of probation, a court shall require a person:
 6 (1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~
 7 **IC 10-13-6-10(a);**
 8 (2) who has not previously provided a DNA sample in
 9 accordance with IC 10-13-6; and
 10 (3) whose sentence does not involve a commitment to the
 11 department of correction;
 12 to provide a DNA sample as a condition of probation.
- 13 SECTION 7. IC 35-38-2.5-6, AS AMENDED BY P.L.1-2007,
 14 SECTION 228, IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2011]: Sec. 6. An order for home detention of
 16 an offender under section 5 of this chapter must include the following:
- 17 (1) A requirement that the offender be confined to the offender's
 18 home at all times except when the offender is:
 19 (A) working at employment approved by the court or
 20 traveling to or from approved employment;
 21 (B) unemployed and seeking employment approved for the
 22 offender by the court;
 23 (C) undergoing medical, psychiatric, mental health
 24 treatment, counseling, or other treatment programs
 25 approved for the offender by the court;
 26 (D) attending an educational institution or a program
 27 approved for the offender by the court;
 28 (E) attending a regularly scheduled religious service at a
 29 place of worship; or
 30 (F) participating in a community work release or
 31 community restitution or service program approved for the
 32 offender by the court.
- 33 (2) Notice to the offender that violation of the order for home
 34 detention may subject the offender to prosecution for the crime
 35 of escape under IC 35-44-3-5.
- 36 (3) A requirement that the offender abide by a schedule prepared
 37 by the probation department, or by a community corrections
 38 program ordered to provide supervision of the offender's home
 39 detention, specifically setting forth the times when the offender
 40 may be absent from the offender's home and the locations the
 41 offender is allowed to be during the scheduled absences.
- 42 (4) A requirement that the offender is not to commit another
 43 crime during the period of home detention ordered by the court.
- 44 (5) A requirement that the offender obtain approval from the
 45 probation department or from a community corrections program
 46 ordered to provide supervision of the offender's home detention
 47 before the offender changes residence or the schedule described
 48 in subdivision (3).
- 49 (6) A requirement that the offender maintain:
 50 (A) a working telephone in the offender's home; and

- 1 (B) if ordered by the court, a monitoring device in the
 2 offender's home or on the offender's person, or both.
- 3 (7) A requirement that the offender pay a home detention fee set
 4 by the court in addition to the probation user's fee required under
 5 IC 35-38-2-1 or IC 31-40. However, the fee set under this
 6 subdivision may not exceed the maximum fee specified by the
 7 department of correction under IC 11-12-2-12.
- 8 (8) A requirement that the offender abide by other conditions of
 9 probation set by the court under IC 35-38-2-2.3.
- 10 (9) A requirement that an offender:
- 11 (A) who is ~~convicted of an offense~~ described in
 12 ~~IC 10-13-6-10~~; **IC 10-13-6-10(a)**;
- 13 (B) who has not previously provided a DNA sample in
 14 accordance with IC 10-13-6; and
- 15 (C) whose sentence does not involve a commitment to the
 16 department of correction;
 17 provide a DNA sample.
- 18 SECTION 8. IC 35-38-2.6-3, AS AMENDED BY P.L.173-2006,
 19 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2011]: Sec. 3. (a) The court may, at the time of sentencing,
 21 suspend the sentence and order a person to be placed in a community
 22 corrections program as an alternative to commitment to the department
 23 of correction. The court may impose reasonable terms on the
 24 placement. A court shall require a person:
- 25 (1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10~~;
 26 **IC 10-13-6-10(a)**;
- 27 (2) who has not previously provided a DNA sample in
 28 accordance with IC 10-13-6; and
- 29 (3) whose sentence does not involve a commitment to the
 30 department of correction;
 31 to provide a DNA sample as a term of placement.
- 32 (b) Placement in a community corrections program under this
 33 chapter is subject to the availability of residential beds or home
 34 detention units in a community corrections program.
- 35 (c) A person placed under this chapter is responsible for the
 36 person's own medical care while in the placement program.
- 37 (d) Placement under this chapter is subject to the community
 38 corrections program receiving a written presentence report or
 39 memorandum from a county probation agency.
 (Reference is to SB 35 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on the Judiciary.

LONG, Chairperson