

HOUSE BILL No. 1041

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-13-3-4; IC 35-38-2-2.3.

Synopsis: Parolees and probationers; surveillance equipment. Prohibits a parolee or probationer from installing or using surveillance equipment at the parolee's or probationer's residence that could be used to detect a law enforcement officer, probation officer, or parole officer who is at or approaching the parolee's or probationer's residence unless the parolee or probationer first obtains a waiver from the appropriate authority to install the equipment.

Effective: July 1, 2012.

Grubb, Foley

January 9, 2012, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1041



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, AS AMENDED BY P.L.229-2011,
- 2 SECTION 104, IS AMENDED TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) A condition to remaining on
- 4 parole is that the parolee not commit a crime during the period of
- 5 parole.
- 6 (b) The parole board may also adopt, under IC 4-22-2, additional
- 7 conditions to remaining on parole and require a parolee to satisfy one
- 8 (1) or more of these conditions. These conditions must be reasonably
- 9 related to the parolee's successful reintegration into the community and
- 10 not unduly restrictive of a fundamental right.
- 11 (c) If a person is released on parole, the parolee shall be given a
- 12 written statement of the conditions of parole. Signed copies of this
- 13 statement shall be:
- 14 (1) retained by the parolee;
- 15 (2) forwarded to any person charged with the parolee's
- 16 supervision; and
- 17 (3) placed in the parolee's master file.



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

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

9 (1) consider:

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

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

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

17 (f) As a condition of parole, the parole board may require the
 18 parolee to:

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

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

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

28 (g) As a condition of parole, the parole board:

29 (1) may require a parolee who is a sex offender (as defined in
 30 IC 11-8-8-4.5) to:

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

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

35 (i) receives the parole board's approval; or

36 (ii) successfully completes the treatment program referred to
 37 in clause (A); and

38 (2) shall:

39 (A) require a parolee who is a sex or violent offender (as
 40 defined in IC 11-8-8-5) to register with a local law
 41 enforcement authority under IC 11-8-8;

42 (B) prohibit a parolee who is a sex offender from residing

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1 within one thousand (1,000) feet of school property (as defined
2 in IC 35-41-1-24.7) for the period of parole, unless the sex
3 offender obtains written approval from the parole board;

4 (C) prohibit a parolee who is a sex offender convicted of a sex
5 offense (as defined in IC 35-38-2-2.5) from residing within
6 one (1) mile of the victim of the sex offender's sex offense
7 unless the sex offender obtains a waiver under IC 35-38-2-2.5;

8 (D) prohibit a parolee who is a sex offender from owning,
9 operating, managing, being employed by, or volunteering at
10 any attraction designed to be primarily enjoyed by children
11 less than sixteen (16) years of age;

12 (E) require a parolee who is a sex offender to consent:

13 (i) to the search of the sex offender's personal computer at
14 any time; and

15 (ii) to the installation on the sex offender's personal
16 computer or device with Internet capability, at the sex
17 offender's expense, of one (1) or more hardware or software
18 systems to monitor Internet usage; and

19 (F) prohibit the sex offender from:

20 (i) accessing or using certain web sites, chat rooms, or
21 instant messaging programs frequented by children; and

22 (ii) deleting, erasing, or tampering with information on the
23 sex offender's personal computer with intent to conceal an
24 activity prohibited by item (i).

25 The parole board may not grant a sexually violent predator (as defined
26 in IC 35-38-1-7.5) or a sex offender who is an offender against children
27 under IC 35-42-4-11 a waiver under subdivision (2)(B) or (2)(C). If the
28 parole board allows the sex offender to reside within one thousand
29 (1,000) feet of school property under subdivision (2)(B), the parole
30 board shall notify each school within one thousand (1,000) feet of the
31 sex offender's residence of the order.

32 (h) The address of the victim of a parolee who is a sex offender
33 convicted of a sex offense (as defined in IC 35-38-2-2.5) is
34 confidential, even if the sex offender obtains a waiver under
35 IC 35-38-2-2.5.

36 (i) As a condition of parole, the parole board may require a parolee
37 to participate in a reentry court program.

38 (j) As a condition of parole, the parole board:

39 (1) shall require a parolee who is a sexually violent predator
40 under IC 35-38-1-7.5; and

41 (2) may require a parolee who is a sex or violent offender (as
42 defined in IC 11-8-8-5);

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1 to wear a monitoring device (as described in IC 35-38-2.5-3) that can
 2 transmit information twenty-four (24) hours each day regarding a
 3 person's precise location, subject to the amount appropriated to the
 4 department for a monitoring program as a condition of parole.

5 (k) As a condition of parole, the parole board may prohibit, in
 6 accordance with IC 35-38-2-2.6, a parolee who has been convicted of
 7 stalking from residing within one thousand (1,000) feet of the residence
 8 of the victim of the stalking for a period that does not exceed five (5)
 9 years.

10 (l) As a condition of parole, the parole board may prohibit a parolee
 11 convicted of an offense under IC 35-46-3 from owning, harboring, or
 12 training an animal, and, if the parole board prohibits a parolee
 13 convicted of an offense under IC 35-46-3 from having direct or indirect
 14 contact with an individual, the parole board may also prohibit the
 15 parolee from having direct or indirect contact with any animal
 16 belonging to the individual.

17 **(m) As a condition of parole, the parole board shall prohibit a**
 18 **parolee from installing or using surveillance equipment at the**
 19 **parolee's residence that could be used to detect a law enforcement**
 20 **officer, probation officer, or parole officer who is at or**
 21 **approaching the parolee's residence unless the parolee first obtains**
 22 **a waiver from the parole board. The parole board may waive the**
 23 **requirement set forth in this subsection only if the parole board, at**
 24 **a hearing at which the parolee is present and of which the**
 25 **prosecuting attorney has been notified, determines that:**

26 **(1) the parolee is in compliance with all terms of the parolee's**
 27 **parole; and**

28 **(2) good cause exists to allow the parolee to install or use the**
 29 **surveillance equipment at the parolee's residence.**

30 ~~(m)~~ **(n)** A parolee may be responsible for the reasonable expenses,
 31 as determined by the department, of the parolee's participation in a
 32 treatment or other program required as a condition of parole under this
 33 section. However, a person's parole may not be revoked solely on the
 34 basis of the person's inability to pay for a program required as a
 35 condition of parole under this section.

36 SECTION 2. IC 35-38-2-2.3, AS AMENDED BY P.L.111-2009,
 37 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2012]: Sec. 2.3. (a) As a condition of probation, the court may
 39 require a person to do a combination of the following:

40 (1) Work faithfully at suitable employment or faithfully pursue a
 41 course of study or career and technical education that will equip
 42 the person 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 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) Refrain from any direct or indirect contact with an individual
8 and, if convicted of an offense under IC 35-46-3, any animal
9 belonging to the individual.

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

21 (20) 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) Refrain from owning, harboring, or training an animal.

35 (22) 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):
- 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 described in IC 10-13-6-10;
31 (2) who has not previously provided a DNA sample in accordance
32 with IC 10-13-6; and
33 (3) whose sentence does not involve a commitment to the
34 department of correction;
35 to provide a DNA sample as a condition of probation.
- 36 **(h) As a condition of probation, the court shall prohibit a person**
37 **from installing or using surveillance equipment at the person's**
38 **residence that could be used to detect a law enforcement officer,**
39 **probation officer, or parole officer who is at or approaching the**
40 **person's residence unless the person first obtains a waiver from the**
41 **court. The court may waive the requirement set forth in this**
42 **subsection only if the court, at a hearing at which the person is**

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1 present and of which the prosecuting attorney has been notified,
2 determines that:
3 (1) the person is in compliance with all terms of the person's
4 probation; and
5 (2) good cause exists to allow the person to install or use the
6 surveillance equipment at the person's residence.

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