



February 22, 2013

SENATE BILL No. 245

DIGEST OF SB 245 (Updated February 21, 2013 11:57 am - DI 58)

Citations Affected: IC 10-13; IC 33-37; IC 35-38.

Synopsis: Collection of DNA samples from certain arrestees and fees. Requires every person arrested after June 30, 2013, for burglary, residential entry, a crime of violence, or a sex offense to submit a DNA sample. Provides for the expungement of a DNA sample taken from the person if the person is acquitted of all felony charges, all burglary, residential entry, crime of violence, and sex offense charges are dismissed, or no charges have been filed after 30 days. Requires the officer who obtains a DNA sample from a person to inform the person of the right to DNA expungement and to provide the person with a form that may be used for DNA expungement, and permits the use of evidence other than a court order for expungement. Increases the DNA sample processing fee from \$2 to \$4. Allocates an additional \$500,000 semi-annually for distribution to the DNA processing fund.

Effective: July 1, 2013.

**Wyss, Zakas, Arnold J, Merritt,
Randolph, Broden**

January 7, 2013, read first time and referred to Committee on Judiciary.
February 7, 2013, amended, reported favorably — Do Pass.
February 11, 2013, pursuant to Senate Rule 68(b), reassigned to Committee on Appropriations.
February 21, 2013, read second time, amended — Do Pass.

SB 245—LS 6304/DI 69+



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February 22, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 245

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure and to make an appropriation.

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, 2013]: 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:**
7 **(A) burglary (IC 35-43-2-1);**
8 **(B) residential entry (IC 35-43-2-1.5);**
9 **(C) a crime of violence (as defined in IC 35-50-1-2); or**
10 **(D) a sex offense (as defined in IC 11-8-8-5.2);**
11 ~~(3)~~ **(3)** crime scene specimens;
12 ~~(4)~~ **(4)** unidentified missing persons; and
13 ~~(5)~~ **(5)** close biological relatives of missing persons.
14 (b) The superintendent shall maintain the Indiana DNA data base.
15 (c) The superintendent may contract for services to perform DNA
16 analysis of:
17 **(1) convicted offenders; and**

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(2) persons arrested for:**(A) burglary;****(B) residential entry;****(C) a crime of violence; or****(D) a sex offense;**

under section 10 of this chapter to assist federal, state, and local criminal justice and law enforcement agencies in the putative identification, detection, or exclusion of individuals who are subjects of an investigation or prosecution of a sex offense, a violent crime, or another crime in which biological evidence is recovered from the crime 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, 2013]: Sec. 10. (a) This section applies to the following:

(1) A person arrested after June 30, 2013, for burglary, residential entry, a crime of violence, or a sex offense, as described in section 8(a)(2) of this chapter.

(+) (2) 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) (3) 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:

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1 (A) after June 30, 1998, whether or not the person is sentenced
 2 to a term of imprisonment; or
 3 (B) before July 1, 1998, if the person is held in jail or prison
 4 on or after July 1, 1998.
 5 ~~(3)~~ **(4)** A person convicted of a felony, conspiracy to commit a
 6 felony, or attempt to commit a felony:
 7 (A) after June 30, 2005, whether or not the person is sentenced
 8 to a term of imprisonment; or
 9 (B) before July 1, 2005, if the person is held in jail or prison
 10 on or after July 1, 2005.
 11 (b) A person described in subsection (a) shall provide a DNA
 12 sample to the:
 13 (1) department of correction or the designee of the department of
 14 correction if the offender is committed to the department of
 15 correction;
 16 (2) county sheriff or the designee of the county sheriff if the
 17 offender is held in a county jail or other county penal facility,
 18 placed in a community corrections program (as defined in
 19 IC 35-38-2.6-2), ~~or~~ placed on probation, or **released on bond**;
 20 (3) agency that supervises the person, or the agency's designee, if
 21 the person is on conditional release in accordance with
 22 IC 35-38-1-27; or
 23 **(4) law enforcement agency that processes the person, in the**
 24 **case of a person arrested for burglary, residential entry, a**
 25 **crime of violence, or a sex offense.**
 26 A person is not required to submit a blood sample if doing so would
 27 present a substantial and an unreasonable risk to the person's health.
 28 (c) The detention, arrest, or conviction of a person based on a data
 29 base match or data base information is not invalidated if a court
 30 determines that the DNA sample was obtained or placed in the Indiana
 31 DNA data base by mistake.
 32 **(d) The officer, employee, or designee who obtains a DNA**
 33 **sample from a person under this section shall:**
 34 **(1) inform the person of the person's right to DNA**
 35 **expungement under section 18 of this chapter; and**
 36 **(2) provide the person with a form that may be used for DNA**
 37 **expungement.**
 38 SECTION 3. IC 10-13-6-18 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 18. (a) A person whose
 40 DNA profile has been included in the Indiana DNA data base may
 41 request expungement of the profile from the DNA data base on the
 42 grounds that:

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1 (1) the conviction on which the authority for inclusion in the
 2 Indiana DNA data base was founded has been reversed and the
 3 case has been dismissed; **or**

4 **(2) the person was arrested for burglary, residential entry, a**
 5 **crime of violence, or a sex offense, as described in section**
 6 **8(a)(2) of this chapter, and:**

7 **(A) the person was acquitted of all felony charges;**

8 **(B) all burglary, residential entry, crime of violence, or sex**
 9 **offense charges in the case have been dismissed; or**

10 **(C) thirty (30) days have passed since the person's arrest**
 11 **and no burglary, residential entry, crime of violence, or sex**
 12 **offense charges have been filed against the person.**

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

17 (1) ~~a written request for letter or form requesting~~ expungement
 18 under subsection (a);

19 (2) a certified copy of ~~the~~ a court order, **or other evidence**
 20 **sufficient to establish or permit the superintendent to**
 21 **establish that:**

22 **(A) reversing all of the person's felony convictions have**
 23 **been reversed and dismissing the conviction, or dismissed,**
 24 **as described in subsection (a)(1);**

25 **(B) the person has been acquitted of all felony charges, as**
 26 **described in subsection (a)(2)(A);**

27 **(C) all burglary, residential entry, crime of violence, or sex**
 28 **offense charges in the case have been dismissed, as**
 29 **described in subsection (a)(2)(B); or**

30 **(D) thirty (30) days have passed since the person's arrest**
 31 **and no burglary, residential entry, crime of violence, or sex**
 32 **offense charges have been filed against the person, as**
 33 **described in subsection (a)(2)(C); and**

34 (3) any other information necessary to ascertain the validity of the
 35 request.

36 (c) Upon expungement of a person's DNA profile from the Indiana
 37 DNA data base, the superintendent shall request expungement of the
 38 person's DNA profile from the national DNA data base.

39 SECTION 4. IC 33-37-5-26.2, AS AMENDED BY P.L.174-2006,
 40 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2013]: Sec. 26.2. **(a)** In each action in which a person is:

42 (1) convicted of an offense;

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1 (2) required to pay a pretrial diversion fee;
 2 (3) found to have committed an infraction; or
 3 (4) found to have violated an ordinance;
 4 the clerk shall collect a DNA sample processing fee of ~~two dollars (\$2).~~
 5 **four dollars (\$4).**

6 SECTION 5. IC 33-37-7-9, AS AMENDED BY P.L.229-2011,
 7 SECTION 262, IS AMENDED TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) On June 30 and on December
 9 31 of each year, the auditor of state shall transfer to the treasurer of
 10 state nine million ~~two seven~~ hundred seventy-seven thousand
 11 twenty-three dollars (~~\$9,277,023~~) (**\$9,777,023**) for distribution under
 12 subsection (b).

13 (b) On June 30 and on December 31 of each year, the treasurer of
 14 state shall deposit into:

15 (1) the family violence and victim assistance fund established by
 16 IC 5-2-6.8-3 an amount equal to ~~eight and three-hundredths seven~~
 17 **and sixty-two hundredths** percent (~~8.03%~~); (**7.62%**);

18 (2) the Indiana judges' retirement fund established by
 19 IC 33-38-6-12 an amount equal to ~~thirty-eight and fifty-five~~
 20 **hundredths thirty-six and fifty-eight hundredths** percent
 21 (~~38.55%~~); (**36.58%**);

22 (3) the law enforcement academy building fund established by
 23 IC 5-2-1-13 an amount equal to ~~two and fifty-six hundredths two~~
 24 **and forty-three hundredths** percent (~~2.56%~~); (**2.43%**);

25 (4) the law enforcement training fund established by IC 5-2-1-13
 26 an amount equal to ~~ten and twenty-seven hundredths nine and~~
 27 **seven-four hundredths** percent (~~10.27%~~); (**9.74%**);

28 (5) the violent crime victims compensation fund established by
 29 IC 5-2-6.1-40 an amount equal to ~~eleven and ninety-three~~
 30 **hundredths eleven and thirty-two hundredths** percent (~~11.93%~~);
 31 (**11.32%**);

32 (6) the motor vehicle highway account an amount equal to
 33 ~~nineteen and forty-nine hundredths eighteen and forty-nine~~
 34 **hundredths** percent (~~19.49%~~); (**18.49%**);

35 (7) the fish and wildlife fund established by IC 14-22-3-2 an
 36 amount equal to ~~twenty-five hundredths twenty-four hundredths~~
 37 percent (~~0.25%~~); (**0.24%**);

38 (8) the Indiana judicial center drug and alcohol programs fund
 39 established by IC 12-23-14-17 for the administration,
 40 certification, and support of alcohol and drug services programs
 41 under IC 12-23-14 an amount equal to ~~one and sixty-three~~
 42 **hundredths one and fifty-five hundredths** percent (~~1.63%~~);



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1 **(1.55%); and**
 2 (9) the DNA sample processing fund established under
 3 IC 10-13-6-9.5 for the funding of the collection, shipment,
 4 analysis, and preservation of DNA samples and the conduct of a
 5 DNA data base program under IC 10-13-6 an amount equal to
 6 ~~seven and twenty-nine hundredths~~ **twelve and three hundredths**
 7 percent ~~(7.29%);~~ **(12.03%);**

8 of the amount transferred by the auditor of state under subsection (a).
 9 (c) On June 30 and on December 31 of each year, the auditor of
 10 state shall transfer to the treasurer of state for deposit into the public
 11 defense fund established under IC 33-40-6-1 three million seven
 12 hundred thousand dollars (\$3,700,000).

13 SECTION 6. IC 35-38-1-27, AS ADDED BY P.L.173-2006,
 14 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2013]: Sec. 27. (a) If a court imposes a sentence that does not
 16 involve a commitment to the department of correction, the court shall
 17 require a person:

- 18 (1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~
 19 **IC 10-13-6-10(a); and**
- 20 (2) who has not previously provided a DNA sample in accordance
 21 with IC 10-13-6;
 22 to provide a DNA sample as a condition of the sentence.

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

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

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

38 SECTION 7. IC 35-38-2-2.3, AS AMENDED BY P.L.40-2012,
 39 SECTION 20, AND AS AMENDED BY P.L.147-2012, SECTION 9,
 40 IS CORRECTED AND AMENDED TO READ AS FOLLOWS
 41 [EFFECTIVE JULY 1, 2013]: Sec. 2.3. (a) As a condition of probation,
 42 the court may require a person to do a combination of the following:

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

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1 of the human immunodeficiency virus (HIV) antigen or antibodies
2 to the human immunodeficiency virus (HIV), if:

3 (A) the person had been convicted of an offense relating to a
4 criminal sexual act and the offense created an
5 epidemiologically demonstrated risk of transmission of the
6 human immunodeficiency virus (HIV); or

7 (B) the person had been convicted of an offense relating to a
8 controlled substance and the offense involved:

9 (i) the delivery by any person to another person; or

10 (ii) the use by any person on another person;

11 of a contaminated sharp (as defined in IC 16-41-16-2) or other
12 paraphernalia that creates an epidemiologically demonstrated
13 risk of transmission of HIV by involving percutaneous contact.

14 ~~(17)~~ (18) Refrain from any direct or indirect contact with an
15 individual and, if convicted of an offense under IC 35-46-3, any
16 animal belonging to the individual.

17 ~~(18)~~ (19) Execute a repayment agreement with the appropriate
18 governmental entity or with a person for reasonable costs incurred
19 because of the taking, detention, or return of a missing child (as
20 defined in IC 10-13-5-4).

21 ~~(19)~~ (20) Periodically undergo a laboratory chemical test (as
22 defined in ~~IC 14-15-8-1~~ IC 9-13-2-22) or series of chemical tests
23 as specified by the court to detect and confirm the presence of a
24 controlled substance (as defined in IC 35-48-1-9). The person on
25 probation is responsible for any charges resulting from a test and
26 shall have the results of any test under this subdivision reported
27 to the person's probation officer by the laboratory.

28 ~~(20)~~ (21) If the person was confined in a penal facility, execute a
29 reimbursement plan as directed by the court and make repayments
30 under the plan to the authority that operates the penal facility for
31 all or part of the costs of the person's confinement in the penal
32 facility. The court shall fix an amount that:

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

35 (B) does not harm the person's ability to reasonably be self
36 supporting or to reasonably support any dependent of the
37 person; and

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

41 ~~(21)~~ (22) Refrain from owning, harboring, or training an animal.

42 ~~(22)~~ (23) Participate in a reentry court program.

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

3 (1) the conditions of probation; and

4 (2) that if the person violates a condition of probation during the
5 probationary period, a petition to revoke probation may be filed
6 before the earlier of the following:

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

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

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

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

21 (1) the term of imprisonment;

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

24 (3) the conditions.

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

30 (f) When a court imposes a condition of probation described in
31 subsection ~~(a)(17)~~: (a)(18):

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

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

36 (g) As a condition of probation, a court shall require a person:

37 (1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~
38 **IC 10-13-6-10(a);**

39 (2) who has not previously provided a DNA sample in accordance
40 with IC 10-13-6; and

41 (3) whose sentence does not involve a commitment to the
42 department of correction;

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to provide a DNA sample as a condition of probation.

(h) If a court imposes a condition of probation described in subsection (a)(4), the person on probation is responsible for any costs resulting from the participation in a program, class, or service. Any costs collected for services provided by the probation department shall be deposited in the county or local supplemental adult services fund.

SECTION 8. IC 35-38-2.5-6, AS AMENDED BY P.L.126-2012, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. An order for home detention of an offender under section 5 of this chapter must include the following:

(1) A requirement that the offender be confined to the offender's home at all times except when the offender is:

- (A) working at employment approved by the court or traveling to or from approved employment;
- (B) unemployed and seeking employment approved for the offender by the court;
- (C) undergoing medical, psychiatric, mental health treatment, counseling, or other treatment programs approved for the offender by the court;
- (D) attending an educational institution or a program approved for the offender by the court;
- (E) attending a regularly scheduled religious service at a place of worship; or
- (F) participating in a community work release or community restitution or service program approved for the offender by the court.

(2) Notice to the offender that violation of the order for home detention may subject the offender to prosecution for the crime of escape under IC 35-44.1-3-4.

(3) A requirement that the offender abide by a schedule prepared by the probation department, or by a community corrections program ordered to provide supervision of the offender's home detention, specifically setting forth the times when the offender may be absent from the offender's home and the locations the offender is allowed to be during the scheduled absences.

(4) A requirement that the offender is not to commit another crime during the period of home detention ordered by the court.

(5) A requirement that the offender obtain approval from the probation department or from a community corrections program ordered to provide supervision of the offender's home detention before the offender changes residence or the schedule described in subdivision (3).

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- 1 (6) A requirement that the offender maintain:
- 2 (A) a working telephone in the offender's home; and
- 3 (B) if ordered by the court, a monitoring device in the
- 4 offender's home or on the offender's person, or both.
- 5 (7) A requirement that the offender pay a home detention fee set
- 6 by the court in addition to the probation user's fee required under
- 7 IC 35-38-2-1 or IC 31-40. However, the fee set under this
- 8 subdivision may not exceed the maximum fee specified by the
- 9 department of correction under IC 11-12-2-12.
- 10 (8) A requirement that the offender abide by other conditions of
- 11 probation set by the court under IC 35-38-2-2.3.
- 12 (9) A requirement that an offender:
- 13 (A) who is ~~convicted of an offense~~ described in ~~IC 10-13-6-10;~~
- 14 **IC 10-13-6-10(a);**
- 15 (B) who has not previously provided a DNA sample in
- 16 accordance with IC 10-13-6; and
- 17 (C) whose sentence does not involve a commitment to the
- 18 department of correction;
- 19 provide a DNA sample.
- 20 SECTION 9. IC 35-38-2.6-3, AS AMENDED BY P.L.173-2006,
- 21 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 JULY 1, 2013]: Sec. 3. (a) The court may, at the time of sentencing,
- 23 suspend the sentence and order a person to be placed in a community
- 24 corrections program as an alternative to commitment to the department
- 25 of correction. The court may impose reasonable terms on the
- 26 placement. A court shall require a person:
- 27 (1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~
- 28 **IC 10-13-6-10(a);**
- 29 (2) who has not previously provided a DNA sample in accordance
- 30 with IC 10-13-6; and
- 31 (3) whose sentence does not involve a commitment to the
- 32 department of correction;
- 33 to provide a DNA sample as a term of placement.
- 34 (b) Placement in a community corrections program under this
- 35 chapter is subject to the availability of residential beds or home
- 36 detention units in a community corrections program.
- 37 (c) A person placed under this chapter is responsible for the person's
- 38 own medical care while in the placement program.
- 39 (d) Placement under this chapter is subject to the community
- 40 corrections program receiving a written presentence report or
- 41 memorandum from a county probation agency.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 245, 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 1, delete lines 1 through 17.

Delete pages 2 through 3, begin a new paragraph and insert:

"SECTION 1. IC 10-13-6-8, AS AMENDED BY P.L.142-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. (a) The superintendent may establish a data base of DNA identification records of:

(1) convicted criminals;

(2) persons arrested for:

(A) burglary (IC 35-43-2-1);

(B) residential entry (IC 35-43-2-1.5);

(C) a crime of violence (as defined in IC 35-50-1-2); or

(D) a sex offense (as defined in IC 11-8-8-5.2);

~~(2)~~ **(3) crime scene specimens;**

~~(3)~~ **(4) unidentified missing persons; and**

~~(4)~~ **(5) close biological relatives of missing persons.**

(b) The superintendent shall maintain the Indiana DNA data base.

(c) The superintendent may contract for services to perform DNA analysis of:

(1) convicted offenders; and

(2) persons arrested for:

(A) burglary;

(B) residential entry;

(C) a crime of violence; or

(D) a sex offense;

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

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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, 2013]: Sec. 10. (a) This section applies to the following:

(1) A person arrested after June 30, 2013, for burglary, residential entry, a crime of violence, or a sex offense, as described in section 8(a)(2) of this chapter.

(+) **(2)** 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.

(-) **(3)** 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.

(-) **(4)** 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.

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

(1) department of correction or the designee of the department of correction if the offender is committed to the department of correction;

(2) county sheriff or the designee of the county sheriff if the offender is held in a county jail or other county penal facility, placed in a community corrections program (as defined in

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- IC 35-38-2.6-2), ~~or~~ placed on probation, or **released on bond;**
 (3) agency that supervises the person, or the agency's designee, if the person is on conditional release in accordance with IC 35-38-1-27; **or**
 (4) **law enforcement agency that processes the person, in the case of a person arrested for burglary, residential entry, a crime of violence, or a sex offense.**

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

(c) 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.

(d) The officer, employee, or designee who obtains a DNA sample from a person under this section shall:

- (1) inform the person of the person's right to DNA expungement under section 18 of this chapter; and**
(2) provide the person with a form that may be used for DNA expungement.

SECTION 3. IC 10-13-6-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 18. (a) A person whose DNA profile has been included in the Indiana DNA data base may request expungement of the profile from the DNA data base on the grounds that:

- (1) the conviction on which the authority for inclusion in the Indiana DNA data base was founded has been reversed and the case has been dismissed; or**
(2) the person was arrested for burglary, residential entry, a crime of violence, or a sex offense, as described in section 8(a)(2) of this chapter, and:

- (A) the person was acquitted of all felony charges;**
(B) all burglary, residential entry, crime of violence, or sex offense charges in the case have been dismissed; or
(C) thirty (30) days have passed since the person's arrest and no burglary, residential entry, crime of violence, or sex offense charges have been filed against the person.

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

- (1) a ~~written request for~~ **letter or form requesting** expungement under subsection (a);



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(2) a certified copy of ~~the~~ a court order, or other evidence sufficient to establish or permit the superintendent to establish that:

(A) ~~reversing~~ all of the person's felony convictions have been reversed and dismissing the conviction, or dismissed, as described in subsection (a)(1);

(B) the person has been acquitted of all felony charges, as described in subsection (a)(2)(A);

(C) all burglary, residential entry, crime of violence, or sex offense charges in the case have been dismissed, as described in subsection (a)(2)(B); or

(D) thirty (30) days have passed since the person's arrest and no burglary, residential entry, crime of violence, or sex offense charges have been filed against the person, as described in subsection (a)(2)(C); and

(3) any other information necessary to ascertain the validity of the request.

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

Page 4, delete lines 1 through 5.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 245 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 5, Nays 2.

Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that Senate Bill 245, which is eligible for second reading, has been reassigned to the Committee on Appropriations.

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COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 245, 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:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure and to make an appropriation.

Page 4, between lines 38 and 39, begin a new paragraph and insert: "SECTION 4. IC 33-37-5-26.2, AS AMENDED BY P.L.174-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 26.2. (a) In each action in which a person is:

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

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

SECTION 5. IC 33-37-7-9, AS AMENDED BY P.L.229-2011, SECTION 262, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 9. (a) On June 30 and on December 31 of each year, the auditor of state shall transfer to the treasurer of state nine million ~~two seven~~ hundred seventy-seven thousand twenty-three dollars (~~\$9,277,023~~) (**\$9,777,023**) for distribution under subsection (b).

(b) On June 30 and on December 31 of each year, the treasurer of state shall deposit into:

- (1) the family violence and victim assistance fund established by IC 5-2-6.8-3 an amount equal to ~~eight and three-hundredths seven and sixty-two hundredths~~ percent (~~8.03%~~); (**7.62%**);
- (2) the Indiana judges' retirement fund established by IC 33-38-6-12 an amount equal to ~~thirty-eight and fifty-five hundredths~~ **thirty-six and fifty-eight hundredths** percent (~~38.55%~~); (**36.58%**);
- (3) the law enforcement academy building fund established by IC 5-2-1-13 an amount equal to ~~two and fifty-six hundredths two and forty-three hundredths~~ percent (~~2.56%~~); (**2.43%**);
- (4) the law enforcement training fund established by IC 5-2-1-13 an amount equal to ~~ten and twenty-seven hundredths nine and seven-four hundredths~~ percent (~~10.27%~~); (**9.74%**);
- (5) the violent crime victims compensation fund established by

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IC 5-2-6.1-40 an amount equal to ~~eleven and ninety-three hundredths~~ **eleven and thirty-two hundredths** percent (~~11.93%~~); **(11.32%)**;

(6) the motor vehicle highway account an amount equal to ~~nineteen and forty-nine hundredths~~ **eighteen and forty-nine hundredths** percent (~~19.49%~~); **(18.49%)**;

(7) the fish and wildlife fund established by IC 14-22-3-2 an amount equal to ~~twenty-five hundredths~~ **twenty-four hundredths** percent (~~0.25%~~); **(0.24%)**;

(8) the Indiana judicial center drug and alcohol programs fund established by IC 12-23-14-17 for the administration, certification, and support of alcohol and drug services programs under IC 12-23-14 an amount equal to ~~one and sixty-three hundredths~~ **one and fifty-five hundredths** percent (~~1.63%~~); **(1.55%)**; and

(9) the DNA sample processing fund established under IC 10-13-6-9.5 for the funding of the collection, shipment, analysis, and preservation of DNA samples and the conduct of a DNA data base program under IC 10-13-6 an amount equal to ~~seven and twenty-nine hundredths~~ **twelve and three hundredths** percent (~~7.29%~~); **(12.03%)**;

of the amount transferred by the auditor of state under subsection (a).

(c) On June 30 and on December 31 of each year, the auditor of state shall transfer to the treasurer of state for deposit into the public defense fund established under IC 33-40-6-1 three million seven hundred thousand dollars (\$3,700,000)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 245 as printed February 8, 2013.)

KENLEY, Chairperson

Committee Vote: Yeas 7, Nays 4.

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