

HOUSE BILL No. 1176

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-30-2-147.5; IC 35-31.5-2; IC 35-33-15.

Synopsis: Medical provider immunity for body cavity search. Establishes a procedure authorizing licensed medical personnel to retrieve contraband from the bodily orifice of an individual as part of a criminal investigation, and grants immunity to the medical personnel.

Effective: July 1, 2019.

Ziemke, Barrett

January 8, 2019, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1176

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 34-30-2-147.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: **Sec. 147.5. IC 35-33-15-2 (Concerning**
4 **contraband retrieval).**

5 SECTION 2. IC 35-31.5-2-186.7 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2019]: **Sec. 186.7. "Licensed health care**
8 **professional", for purposes of IC 35-33-15, has the meaning set**
9 **forth in IC 35-33-15-1.**

10 SECTION 3. IC 35-31.5-2-235.5, AS ADDED BY P.L.113-2018,
11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2019]: Sec. 235.5. **(a)** "Physician", for purposes of
13 IC 35-46-5-3, has the meaning set forth in IC 35-46-5-3(b).

14 **(b) "Physician", for purposes of IC 35-33-15, has the meaning**
15 **set forth in IC 35-33-15-1.**

16 SECTION 4. IC 35-33-15 IS ADDED TO THE INDIANA CODE
17 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2019]:

2 **Chapter 15. Contraband Retrieval**

3 **Sec. 1. The following definitions apply throughout this chapter:**

- 4 (1) "Licensed health care professional" means a health care
5 professional licensed in Indiana.
6 (2) "Physician" means an individual who is licensed to
7 practice medicine in Indiana under IC 25-22.5.

8 **Sec. 2. (a) A physician or a licensed health care professional**
9 **acting within the professional's scope of practice and under the**
10 **direction of or under a protocol prepared by a physician who**
11 **searches for or retrieves contraband from the bodily orifice of an**
12 **individual shall deliver the contraband to a law enforcement**
13 **officer who requests the contraband as part of a criminal**
14 **investigation.**

15 (b) A licensed health care professional acting within the
16 professional's scope of practice, a physician, a hospital, or an agent
17 of a physician or hospital is not civilly or criminally liable for any
18 of the following:

- 19 (1) Searching for, retrieving, or attempting to retrieve
20 contraband concealed in a bodily orifice in accordance with
21 this section.
22 (2) Disclosing facts observed or opinions formed to the
23 prosecuting attorney or the deputy prosecuting attorney for
24 use at trial, or testifying at the criminal trial of the individual
25 from whom contraband is obtained as to facts observed or
26 opinions formed.
27 (3) Failing to treat an individual from whom contraband is
28 obtained at the request of a law enforcement officer if the
29 individual declines treatment.
30 (4) Injury to an individual from whom contraband is obtained
31 arising from the performance of duties in good faith under
32 this section.

33 **However, the immunity described in this section does not apply to**
34 **a person described in this section who commits gross negligence or**
35 **engages in willful or wanton misconduct.**

36 (c) For the purposes of this section:

- 37 (1) the privileges arising from a patient-physician relationship
38 do not apply to the contraband described in this section; and
39 (2) contraband and testimony may be admitted in a
40 proceeding in accordance with the applicable rules of
41 evidence.

42 (d) The exceptions to the patient-physician relationship specified



1 in subsection (c) do not affect those relationships in a proceeding
2 not covered by this section.

3 (e) The contraband obtained by a law enforcement officer under
4 subsection (a) may be disclosed only to a prosecuting attorney or
5 a deputy prosecuting attorney for use as evidence in a criminal
6 proceeding.

7 (f) A physician or a licensed health care professional acting
8 within the professional's scope of practice and under the direction
9 of or under a protocol prepared by a physician shall retrieve
10 contraband concealed in a bodily orifice of an individual if the
11 following circumstances exist:

12 (1) A law enforcement officer requests that the contraband be
13 retrieved.

14 (2) Not more than the use of reasonable force is necessary to
15 retrieve the contraband.

16 (g) If the individual:

17 (1) from whom the contraband is to be retrieved under this
18 section does not consent; and

19 (2) resists the retrieval of contraband;

20 the law enforcement officer may use reasonable force to assist a
21 person, who must be authorized under this section to retrieve
22 contraband, in the retrieval of the contraband.

23 (h) The person authorized under this section to retrieve
24 contraband shall retrieve the contraband or provide for the
25 removal of the contraband in a medically accepted manner.

26 (i) A law enforcement officer may transport the individual to a
27 place where the contraband may be retrieved by any of the
28 following health care professionals licensed to practice in Indiana,
29 acting within the person's scope of practice, and who have been
30 engaged to retrieve contraband under this section:

31 (1) A physician.

32 (2) A physician's assistant.

33 (3) A registered nurse.

34 (4) An advanced practice registered nurse.

35 (5) A licensed practical nurse.

36 (6) An advanced emergency medical technician.

37 (7) A paramedic.

38 (8) Any other licensed health care professional acting within
39 the professional's scope of practice.

40 (j) A law enforcement officer may not retrieve contraband
41 under this section if the contraband is to be retrieved from another
42 law enforcement officer employed within the same agency or



1 **department as a result of the other law enforcement officer's**
2 **involvement in an alleged criminal offense.**

