

SENATE BILL No. 9

DIGEST OF INTRODUCED BILL

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

Synopsis: Searches of probationers and parolees. Provides that a probationer or parolee may be subject to search or seizure by a law enforcement officer at any time, as long as the search or seizure is not arbitrary, capricious, or conducted solely for the purpose of harassment.

Effective: July 1, 2015.

Steele

January 6, 2015, read first time and referred to Committee on Corrections & Criminal Law.



First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 9



A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

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.114-2012,
- 2 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2015]: Sec. 4. (a) A condition to remaining on parole is that
- 4 the parolee not commit a crime during the period of parole.
- 5 (b) The parole board may also adopt, under IC 4-22-2, additional
- 6 conditions to remaining on parole and require a parolee to satisfy one
- 7 (1) or more of these conditions. These conditions must be reasonably
- 8 related to the parolee's successful reintegration into the community and
- 9 not unduly restrictive of a fundamental right.
- 10 (c) If a person is released on parole, the parolee shall be given a
- 11 written statement of the conditions of parole. Signed copies of this
- 12 statement shall be:
- 13 (1) retained by the parolee;
- 14 (2) forwarded to any person charged with the parolee's
- 15 supervision; and
- 16 (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 9-13-2-22) 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



- 1 within one thousand (1,000) feet of school property (as defined
 2 in IC 35-31.5-2-285) 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);



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 may require a**
 18 **parolee to execute an agreement subjecting the parolee to search**
 19 **or seizure by a law enforcement officer at any time:**

20 **(1) with or without a warrant; and**

21 **(2) with or without cause.**

22 **A search or seizure conducted under this subsection may not be**
 23 **arbitrary, capricious, or conducted solely for the purpose of**
 24 **harassment.**

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

31 SECTION 2. IC 11-13-3-7, AS AMENDED BY P.L.114-2012,
 32 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2015]: Sec. 7. (a) An employee of the department assigned to
 34 supervise and assist parolees may:

35 (1) execute warrants issued by the parole board;

36 (2) serve orders, subpoenas, and notices issued by the parole
 37 board;

38 (3) conduct investigations necessary to the performance of the
 39 employee's duties;

40 (4) visit and confer with any person under the employee's
 41 supervision, even when that person is in custody;

42 (5) act as a probation officer if requested by the appropriate court



1 and if that request is approved by the department;

2 (6) search a parolee's person or property:

3 **(A) in accordance with a condition of parole; or**

4 **(B)** if the employee has reasonable cause to believe that the
5 parolee is violating or is in imminent danger of violating a
6 condition to remaining on parole;

7 (7) arrest a parolee without a warrant if the employee has
8 reasonable cause to believe that the parolee has violated or is
9 about to violate a condition to remaining on parole and that an
10 emergency situation exists, so that awaiting action by the parole
11 board under section 8 of this chapter would create an undue risk
12 to the public or to the parolee; and

13 (8) exercise any other power reasonably necessary in discharging
14 the employee's duties and powers.

15 (b) An employee of the department assigned to supervise and assist
16 parolees is not considered a law enforcement officer under IC 5-2-1 or
17 IC 35-31.5-2-185.

18 SECTION 3. IC 11-13-6-6, AS AMENDED BY P.L.114-2012,
19 SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2015]: Sec. 6. (a) An employee of the department assigned to
21 supervise and assist parolees may:

22 (1) execute warrants issued by the department;

23 (2) serve orders, subpoenas, and notices issued by the department;

24 (3) conduct investigations necessary to the performance of the
25 employee's duties;

26 (4) visit and confer with any person under the employee's
27 supervision, even when that person is in custody;

28 (5) act as a probation officer if requested by the appropriate court
29 and if that request is approved by the department;

30 (6) search a parolee's person or property:

31 **(A) in accordance with a condition of parole; or**

32 **(B)** if the employee has reasonable cause to believe that the
33 parolee is violating or is in imminent danger of violating a
34 condition of parole;

35 (7) arrest a parolee without a warrant if the employee has
36 reasonable cause to believe that the parolee has violated or is
37 about to violate a condition of the parolee's parole and that an
38 emergency situation exists, so that awaiting action under section
39 7 of this chapter would create an undue risk to the public or to the
40 parolee; and

41 (8) exercise any other power reasonably necessary in discharging
42 the employee's duties and powers.



1 (b) An employee of the department assigned to supervise and assist
2 parolees is not considered a law enforcement officer under IC 5-2-1 or
3 IC 35-31.5-2-185.

4 SECTION 4. IC 35-38-2-2.3, AS AMENDED BY P.L.13-2013,
5 SECTION 138, IS AMENDED TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2015]: Sec. 2.3. (a) As a condition of probation,
7 the court may require a person to do a combination of the following:

8 (1) Work faithfully at suitable employment or faithfully pursue a
9 course of study or career and technical education that will equip
10 the person for suitable employment.

11 (2) Undergo available medical or psychiatric treatment and
12 remain in a specified institution if required for that purpose.

13 (3) Attend or reside in a facility established for the instruction,
14 recreation, or residence of persons on probation.

15 (4) Participate in a treatment program, educational class, or
16 rehabilitative service provided by a probation department or by
17 referral to an agency.

18 (5) Support the person's dependents and meet other family
19 responsibilities.

20 (6) Make restitution or reparation to the victim of the crime for
21 damage or injury that was sustained by the victim. When
22 restitution or reparation is a condition of probation, the court shall
23 fix the amount, which may not exceed an amount the person can
24 or will be able to pay, and shall fix the manner of performance.

25 (7) Execute a repayment agreement with the appropriate
26 governmental entity to repay the full amount of public relief or
27 assistance wrongfully received, and make repayments according
28 to a repayment schedule set out in the agreement.

29 (8) Pay a fine authorized by IC 35-50.

30 (9) Refrain from possessing a firearm or other deadly weapon
31 unless granted written permission by the court or the person's
32 probation officer.

33 (10) Report to a probation officer at reasonable times as directed
34 by the court or the probation officer.

35 (11) Permit the person's probation officer to visit the person at
36 reasonable times at the person's home or elsewhere.

37 (12) Remain within the jurisdiction of the court, unless granted
38 permission to leave by the court or by the person's probation
39 officer.

40 (13) Answer all reasonable inquiries by the court or the person's
41 probation officer and promptly notify the court or probation
42 officer of any change in address or employment.



- 1 (14) Perform uncompensated work that benefits the community.
2 (15) Satisfy other conditions reasonably related to the person's
3 rehabilitation.
4 (16) Undergo home detention under IC 35-38-2.5.
5 (17) Undergo a laboratory test or series of tests approved by the
6 state department of health to detect and confirm the presence of
7 the human immunodeficiency virus (HIV) antigen or antibodies
8 to the human immunodeficiency virus (HIV), if:
9 (A) the person had been convicted of an offense relating to a
10 criminal sexual act and the offense created an
11 epidemiologically demonstrated risk of transmission of the
12 human immunodeficiency virus (HIV); or
13 (B) the person had been convicted of an offense relating to a
14 controlled substance and the offense involved:
15 (i) the delivery by any person to another person; or
16 (ii) the use by any person on another person;
17 of a contaminated sharp (as defined in IC 16-41-16-2) or other
18 paraphernalia that creates an epidemiologically demonstrated
19 risk of transmission of HIV by involving percutaneous contact.
20 (18) Refrain from any direct or indirect contact with an individual
21 and, if convicted of an offense under IC 35-46-3, any animal
22 belonging to the individual.
23 (19) Execute a repayment agreement with the appropriate
24 governmental entity or with a person for reasonable costs incurred
25 because of the taking, detention, or return of a missing child (as
26 defined in IC 10-13-5-4).
27 (20) Periodically undergo a laboratory chemical test (as defined
28 in IC 9-13-2-22) or series of chemical tests as specified by the
29 court to detect and confirm the presence of a controlled substance
30 (as defined in IC 35-48-1-9). The person on probation is
31 responsible for any charges resulting from a test and shall have
32 the results of any test under this subdivision reported to the
33 person's probation officer by the laboratory.
34 (21) If the person was confined in a penal facility, execute a
35 reimbursement plan as directed by the court and make repayments
36 under the plan to the authority that operates the penal facility for
37 all or part of the costs of the person's confinement in the penal
38 facility. The court shall fix an amount that:
39 (A) may not exceed an amount the person can or will be able
40 to pay;
41 (B) does not harm the person's ability to reasonably be self
42 supporting or to reasonably support any dependent of the



- 1 person; and
 2 (C) takes into consideration and gives priority to any other
 3 restitution, reparation, repayment, or fine the person is
 4 required to pay under this section.
 5 (22) Refrain from owning, harboring, or training an animal.
 6 (23) Participate in a reentry court program.
 7 **(24) Execute an agreement subjecting the probationer to**
 8 **search or seizure by a law enforcement officer at any time:**
 9 **(A) with or without a warrant; and**
 10 **(B) with or without cause.**
 11 **A search or seizure conducted under this subdivision may not**
 12 **be arbitrary, capricious, or conducted solely for the purpose**
 13 **of harassment.**
 14 (b) When a person is placed on probation, the person shall be given
 15 a written statement specifying:
 16 (1) the conditions of probation; and
 17 (2) that if the person violates a condition of probation during the
 18 probationary period, a petition to revoke probation may be filed
 19 before the earlier of the following:
 20 (A) One (1) year after the termination of probation.
 21 (B) Forty-five (45) days after the state receives notice of the
 22 violation.
 23 (c) As a condition of probation, the court may require that the
 24 person serve a term of imprisonment in an appropriate facility at the
 25 time or intervals (consecutive or intermittent) within the period of
 26 probation the court determines.
 27 (d) Intermittent service may be required only for a term of not more
 28 than sixty (60) days and must be served in the county or local penal
 29 facility. The intermittent term is computed on the basis of the actual
 30 days spent in confinement and shall be completed within one (1) year.
 31 A person does not earn credit time while serving an intermittent term
 32 of imprisonment under this subsection. When the court orders
 33 intermittent service, the court shall state:
 34 (1) the term of imprisonment;
 35 (2) the days or parts of days during which a person is to be
 36 confined; and
 37 (3) the conditions.
 38 (e) Supervision of a person may be transferred from the court that
 39 placed the person on probation to a court of another jurisdiction, with
 40 the concurrence of both courts. Retransfers of supervision may occur
 41 in the same manner. This subsection does not apply to transfers made
 42 under IC 11-13-4 or IC 11-13-5.



- 1 (f) When a court imposes a condition of probation described in
2 subsection (a)(18):
3 (1) the clerk of the court shall comply with IC 5-2-9; and
4 (2) the prosecuting attorney shall file a confidential form
5 prescribed or approved by the division of state court
6 administration with the clerk.
- 7 (g) As a condition of probation, a court shall require a person:
8 (1) convicted of an offense described in IC 10-13-6-10;
9 (2) who has not previously provided a DNA sample in accordance
10 with IC 10-13-6; and
11 (3) whose sentence does not involve a commitment to the
12 department of correction;
13 to provide a DNA sample as a condition of probation.
- 14 (h) If a court imposes a condition of probation described in
15 subsection (a)(4), the person on probation is responsible for any costs
16 resulting from the participation in a program, class, or service. Any
17 costs collected for services provided by the probation department shall
18 be deposited in the county or local supplemental adult services fund.

