

SENATE BILL No. 293

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-12-3.7-11; IC 33-39-1-8; IC 35-33; IC 35-48-4.

Synopsis: Naloxone. Provides that probable cause to issue a warrant for a blood test exists if: (1) a person is revived after administration of an overdose intervention drug; and (2) certain other conditions are met. Specifies that a person revived by means of an overdose intervention drug and who meets certain other qualifications: (1) has the right to pretrial diversion and participation in an addiction treatment program; and (2) shall be issued a summons instead of being arrested (if there is no probable cause to believe that the person has committed an offense other than possession of a controlled substance or controlled substance paraphernalia). Specifies that a person who abuses a controlled substance: (1) commits a Class A misdemeanor; (2) has the right to receive a summons instead of arrest for the offense; and (3) has the right to participate in a treatment program without being charged with the offense. Provides that the court shall order all documents relating to the person's case and treatment to be sealed.

Effective: July 1, 2018.

Young M

January 4, 2018, read first time and referred to Committee on Corrections and Criminal Law.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 293

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 11-12-3.7-11, AS AMENDED BY P.L.209-2015,
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 11. (a) **Except as provided in subsection (b)**, a
4 person is eligible to participate in a pre-conviction forensic diversion
5 program only if the person meets the following criteria:
6 (1) The person has an intellectual disability, a developmental
7 disability, an autism spectrum disorder, a mental illness, a
8 addictive disorder, or a combination of those conditions.
9 (2) The person has been charged with an offense that is:
10 (A) not a violent offense; and
11 (B) a Class A, B, or C misdemeanor, or a Level 6 felony that
12 may be reduced to a Class A misdemeanor in accordance with
13 IC 35-50-2-7.
14 (3) The person does not have a conviction for a violent offense in
15 the previous ten (10) years.
16 (4) The court has determined that the person is an appropriate
17 candidate to participate in a pre-conviction forensic diversion



1 program.

2 (5) The person has been accepted into a pre-conviction forensic
3 diversion program.

4 **(b) A person described in IC 35-48-4-12.7 (a person revived
5 after administration of an overdose intervention drug) is eligible to
6 participate in a pre-conviction forensic diversion program.**

7 ~~(b)~~ (c) Before an eligible person is permitted to participate in a
8 pre-conviction forensic diversion program, the court shall advise the
9 person of the following:

10 (1) Before the individual is permitted to participate in the
11 program, the individual will be required to enter a guilty plea to
12 the offense with which the individual has been charged.

13 (2) The court will stay entry of the judgment of conviction during
14 the time in which the individual is successfully participating in
15 the program. If the individual stops successfully participating in
16 the program, or does not successfully complete the program, the
17 court will lift its stay, enter a judgment of conviction, and
18 sentence the individual accordingly.

19 (3) If the individual participates in the program, the individual
20 may be required to remain in the program for a period not to
21 exceed three (3) years.

22 (4) During treatment the individual may be confined in an
23 institution, be released for treatment in the community, receive
24 supervised aftercare in the community, or may be required to
25 receive a combination of these alternatives. Programs for
26 addictive disorders may include:

27 (A) addiction counseling;

28 (B) inpatient detoxification;

29 (C) case management;

30 (D) daily living skills; and

31 (E) medication assisted treatment, including a federal Food
32 and Drug Administration approved long acting, nonaddictive
33 medication for the treatment of opioid or alcohol dependence.

34 (5) If the individual successfully completes the forensic diversion
35 program, the court will waive entry of the judgment of conviction
36 and dismiss the charges.

37 (6) The court shall determine, after considering a report from the
38 forensic diversion program, whether the individual is successfully
39 participating in or has successfully completed the program.

40 ~~(c)~~ (d) Before an eligible person may participate in a pre-conviction
41 forensic diversion program, the person must plead guilty to the offense
42 with which the person is charged.



1 ~~(d)~~ (e) Before an eligible person may be admitted to a facility under
 2 the control of the division of mental health and addiction, the
 3 individual must be committed to the facility under IC 12-26.

4 ~~(e)~~ (f) After the person has pleaded guilty, the court shall stay entry
 5 of judgment of conviction and place the person in the pre-conviction
 6 forensic diversion program for not more than:

7 (1) two (2) years, if the person has been charged with a
 8 misdemeanor; or

9 (2) three (3) years, if the person has been charged with a felony.

10 ~~(f)~~ (g) If, after considering the report of the forensic diversion
 11 program, the court determines that the person has:

12 (1) failed to successfully participate in the forensic diversion
 13 program, or failed to successfully complete the program, the court
 14 shall lift its stay, enter judgment of conviction, and sentence the
 15 person accordingly; or

16 (2) successfully completed the forensic diversion program, the
 17 court shall waive entry of the judgment of conviction and dismiss
 18 the charges.

19 SECTION 2. IC 33-39-1-8, AS AMENDED BY P.L.198-2016,
 20 SECTION 665, IS AMENDED TO READ AS FOLLOWS
 21 [EFFECTIVE JULY 1, 2018]: Sec. 8. (a) After June 30, 2005, this
 22 section does not apply to a person who:

23 (1) holds a commercial driver's license; and

24 (2) has been charged with an offense involving the operation of
 25 a motor vehicle in accordance with the federal Motor Carrier
 26 Safety Improvement Act of 1999 (MCSIA) (Public Law
 27 106-159.113 Stat. 1748).

28 (b) This section does not apply to a person arrested for or charged
 29 with:

30 (1) an offense under IC 9-30-5-1 through IC 9-30-5-5; or

31 (2) if a person was arrested or charged with an offense under
 32 IC 9-30-5-1 through IC 9-30-5-5, an offense involving:

33 (A) intoxication; or

34 (B) the operation of a vehicle;

35 if the offense involving intoxication or the operation of a vehicle was
 36 part of the same episode of criminal conduct as the offense under
 37 IC 9-30-5-1 through IC 9-30-5-5.

38 (c) This section does not apply to a person:

39 (1) who is arrested for or charged with an offense under:

40 (A) IC 7.1-5-7-7, if the alleged offense occurred while the
 41 person was operating a motor vehicle;

42 (B) IC 9-30-4-8(a), if the alleged offense occurred while the



- 1 person was operating a motor vehicle;
2 (C) IC 35-44.1-2-13(b)(1); or
3 (D) IC 35-43-1-2(a), if the alleged offense occurred while the
4 person was operating a motor vehicle; and
5 (2) who was less than eighteen (18) years of age at the time of the
6 alleged offense.
- 7 (d) A prosecuting attorney may withhold prosecution against an
8 accused person if:
- 9 (1) the person is charged with a misdemeanor, a Level 6 felony,
10 or a Level 5 felony, **or the person is a person described in**
11 **IC 35-48-4-12.7 (a person revived after administration of an**
12 **overdose intervention drug);**
13 (2) the person agrees to conditions of a pretrial diversion program
14 offered by the prosecuting attorney;
15 (3) the terms of the agreement are recorded in an instrument
16 signed by the person and the prosecuting attorney and filed in the
17 court in which the charge is pending; and
18 (4) the prosecuting attorney electronically transmits information
19 required by the prosecuting attorneys council concerning the
20 withheld prosecution to the prosecuting attorneys council, in a
21 manner and format designated by the prosecuting attorneys
22 council.
- 23 (e) An agreement under subsection (d) may include conditions that
24 the person:
- 25 (1) pay to the clerk of the court an initial user's fee and monthly
26 user's fees in the amounts specified in IC 33-37-4-1;
27 (2) work faithfully at a suitable employment or faithfully pursue
28 a course of study or career and technical education that will equip
29 the person for suitable employment;
30 (3) undergo available medical treatment or mental health
31 counseling and remain in a specified facility required for that
32 purpose, including:
33 (A) addiction counseling;
34 (B) inpatient detoxification; and
35 (C) medication assisted treatment, including a federal Food
36 and Drug Administration approved long acting, nonaddictive
37 medication for the treatment of opioid or alcohol dependence;
38 (4) receive evidence based mental health and addiction,
39 intellectual disability, developmental disability, autism, and
40 co-occurring autism and mental illness forensic treatment services
41 to reduce the risk of recidivism;
42 (5) support the person's dependents and meet other family



- 1 responsibilities;
- 2 (6) make restitution or reparation to the victim of the crime for the
- 3 damage or injury that was sustained;
- 4 (7) refrain from harassing, intimidating, threatening, or having
- 5 any direct or indirect contact with the victim or a witness;
- 6 (8) report to the prosecuting attorney at reasonable times;
- 7 (9) answer all reasonable inquiries by the prosecuting attorney
- 8 and promptly notify the prosecuting attorney of any change in
- 9 address or employment; and
- 10 (10) participate in dispute resolution either under IC 34-57-3 or
- 11 a program established by the prosecuting attorney.
- 12 (f) An agreement under subsection (d)(2) may include other
- 13 provisions reasonably related to the defendant's rehabilitation, if
- 14 approved by the court.
- 15 (g) The prosecuting attorney shall notify the victim when
- 16 prosecution is withheld under this section.
- 17 (h) All money collected by the clerk as user's fees under this section
- 18 shall be deposited in the appropriate user fee fund under IC 33-37-8.
- 19 (i) If a court withholds prosecution under this section and the terms
- 20 of the agreement contain conditions described in subsection (e)(7):
- 21 (1) the clerk of the court shall comply with IC 5-2-9; and
- 22 (2) the prosecuting attorney shall file a confidential form
- 23 prescribed or approved by the division of state court
- 24 administration with the clerk.
- 25 SECTION 3. IC 35-33-4-1, AS AMENDED BY P.L.2-2005,
- 26 SECTION 116, IS AMENDED TO READ AS FOLLOWS
- 27 [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) When an indictment or
- 28 information is filed against a person charging him with a misdemeanor,
- 29 the court may, in lieu of issuing an arrest warrant under IC 35-33-2,
- 30 issue a summons. The summons must set forth substantially the nature
- 31 of the offense, and command the accused person to appear before the
- 32 court at a stated time and place. However, the date set by the court
- 33 must be at least seven (7) days after the issuance of the summons. The
- 34 summons may be served in the same manner as the summons in a civil
- 35 action.
- 36 (b) If the person summoned fails, without good cause, to appear as
- 37 commanded by the summons and the court has determined that there
- 38 is probable cause to believe that a crime (other than failure to appear)
- 39 has been committed, the court shall issue a warrant of arrest.
- 40 (c) If after issuing a summons the court:
- 41 (1) is satisfied that the person will not appear as commanded by
- 42 the summons; and



1 (2) has determined that there is probable cause that a crime (other
2 than failure to appear) has been committed;
3 it may at once issue a warrant of arrest.

4 (d) The summons may be in substantially the following form:
5 STATE OF INDIANA) IN THE _____ COURT
6)
7 vs.) OF _____ COUNTY
8)
9)
10 _____)
11 Defendant) CAUSE NO. _____

12 SUMMONS
13 THE STATE OF INDIANA TO
14 THE ABOVE NAMED DEFENDANT:
15 YOU ARE HEREBY SUMMONED, to appear before the above
16 designated Court at _____, _____, _____ at _____ .m. on (day)
17 _____, _____, 20____, with respect to an (information or indictment)
18 for _____.

19 If you do not so appear, an application may be made for the Issuance
20 of a Warrant for your arrest.

21 ISSUED: _____, 20____
22 in
23 (City or County) _____, _____
24 BY THE CLERK OF SAID COURT:
25 _____
26 CLERK

27 (e) When any law enforcement officer in the state serves a summons
28 on a person, ~~he~~ **the law enforcement officer** shall file a return of
29 service with the court issuing the summons. The return shall be in
30 substantially the following form:

31 RETURN OF SERVICE
32 I hereby certify that I served this summons upon the above named
33 defendant by delivering a copy of it and of the Information to the
34 defendant personally or by certified mail return receipt requested, on
35 _____, 20____, at _____, _____.
36 DATED: _____, 20____.
37 (Signature) _____

38 _____
39 LAW ENFORCEMENT AGENCY

40 (f) In lieu of arresting a person who has allegedly committed a
41 misdemeanor (other than a traffic misdemeanor) in ~~his~~ **the officer's**
42 presence, a law enforcement officer may issue a summons and promise
to appear. The summons must set forth substantially the nature of the



1 offense and direct the person to appear before a court at a stated place
2 and time.

3 **(g) Instead of arresting a person described in IC 35-48-4-7.5**
4 **(abuse of a controlled substance) or IC 35-48-4-12.7 (a person**
5 **revived after administration of an overdose intervention drug), a**
6 **law enforcement officer shall issue a summons and promise to**
7 **appear. The summons must set forth substantially the nature of the**
8 **offense and direct the person to appear before a court at a stated**
9 **place and time.**

10 (g) (h) The summons and promise to appear may be in substantially
11 the following form:

12 STATE OF INDIANA) IN THE _____ COURT
13)
14 vs.) OF _____ COUNTY
15)
16 _____)
17 Defendant)

18 SUMMONS AND PROMISE TO APPEAR

19 YOU ARE HEREBY SUMMONED, to appear before the above
20 designated Court at _____
21 (Address)
22 at _____ .m. on _____,
23 Month Day
24 20__, in respect to the charge of _____
25 _____.

26 If you do not so appear, an application may be made for the issuance
27 of a warrant for your arrest.

28 ISSUED: _____, 20 _____,
29 in
30 _____, Indiana
31 (City or County)
32 BY THE UNDERSIGNED LAW
33 ENFORCEMENT OFFICER:
34 _____
35 Officer's Signature
36 I.D. No. _____
37 Div. Dist. _____
38 Police Agency _____

39 COURT APPEARANCE

40 I promise to appear in court at the time and place designated above,
41 or be subject to arrest.
42 Signature _____



1 YOUR SIGNATURE IS NOT AN ADMISSION OF GUILT.

2 ~~(h)~~ **(i)** When any law enforcement officer issues a summons and
3 promise to appear, ~~he~~ **the officer** shall:

4 (1) promptly file the summons and promise to appear and the
5 certificate of service with the court designated in the summons
6 and promise to appear; and

7 (2) provide the prosecuting attorney with a copy thereof.

8 SECTION 4. IC 35-33-5-1, AS AMENDED BY P.L.1-2006,
9 SECTION 526, IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) A court may issue warrants
11 only upon probable cause, supported by oath or affirmation, to search
12 any place for any of the following:

13 (1) Property which is obtained unlawfully.

14 (2) Property, the possession of which is unlawful.

15 (3) Property used or possessed with intent to be used as the means
16 of committing an offense or concealed to prevent an offense from
17 being discovered.

18 (4) Property constituting evidence of an offense or tending to
19 show that a particular person committed an offense.

20 (5) Any person.

21 (6) Evidence necessary to enforce statutes enacted to prevent
22 cruelty to or neglect of children.

23 (7) A firearm possessed by a person who is dangerous (as defined
24 in IC 35-47-14-1).

25 **(b) Probable cause to support a warrant authorizing a test of a**
26 **person's blood for controlled substances exists if a court finds all**
27 **of the following:**

28 **(1) A person suffered respiratory or central nervous system**
29 **depression consistent with an acute opioid overdose.**

30 **(2) The person's symptoms were significantly alleviated not**
31 **later than fifteen (15) minutes after the person was**
32 **administered an overdose intervention drug (as defined in**
33 **IC 16-18-2-263.9).**

34 **(3) That there is no reason to believe that the person's**
35 **respiratory or central nervous system depression resulted**
36 **from:**

37 **(A) a cause other than opioid overdose; or**

38 **(B) the person's lawful use of opioids.**

39 ~~(b)~~ **(c)** As used in this section, "place" includes any location where
40 property might be secreted or hidden, including buildings, persons, or
41 vehicles.

42 SECTION 5. IC 35-48-4-7.5 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2018]: **Sec. 7.5. (a) A person who, without a valid prescription or
3 order of a practitioner acting in the course of the practitioner's
4 professional practice, knowingly, intentionally, or recklessly uses
5 a controlled substance (pure or adulterated) classified in schedule
6 I, II, III, IV, or V commits abuse of a controlled substance.**

7 **(b) The offense described in subsection (a) is a Class A
8 misdemeanor if:**

9 **(1) the person suffered respiratory or central nervous system
10 depression consistent with an acute opioid overdose; and**

11 **(2) the person's symptoms were significantly alleviated not
12 later than fifteen (15) minutes after the person was
13 administered an overdose intervention drug (as defined in
14 IC 16-18-2-263.9).**

15 **(c) Evidence that:**

16 **(1) metabolites of a controlled substance classified in schedule
17 I, II, III, IV, or V were found in the person's blood; and**

18 **(2) the person showed symptoms consistent with the use of the
19 controlled substance classified in schedule I, II, III, IV, or V;**

20 **is sufficient for the trier of fact to determine that the person
21 knowingly, intentionally, or recklessly used the controlled
22 substance.**

23 SECTION 6. IC 35-48-4-12.7 IS ADDED TO THE INDIANA
24 CODE AS A NEW SECTION TO READ AS FOLLOWS
25 [EFFECTIVE JULY 1, 2018]: **Sec. 12.7. (a) This section applies to a
26 person:**

27 **(1) who suffered respiratory or central nervous system
28 depression consistent with an acute opioid overdose;**

29 **(2) whose symptoms were significantly alleviated not later
30 than fifteen (15) minutes after the person was administered an
31 overdose intervention drug (as defined in IC 16-18-2-263.9);
32 and**

33 **(3) with respect to whom there is no probable cause to believe
34 that the person has committed a misdemeanor or felony
35 offense other than the following:**

36 **(A) Possession of paraphernalia (IC 35-48-4-8.3).**

37 **(B) Possession of a legend drug smoking device
38 (IC 16-42-19-17).**

39 **(C) Possession of a legend drug injection device
40 (IC 16-42-19-18).**

41 **(D) Possession of a controlled substance under:**

42 **(i) IC 35-48-4-6 (possession of cocaine or a narcotic drug);**



- 1 (ii) IC 35-48-4-6.1 (possession of methamphetamine);
 2 (iii) IC 35-48-4-7 (possession of a controlled substance in
 3 schedule I through V);
 4 (iv) IC 35-48-4-11 (possession of marijuana, hash oil,
 5 hashish, or salvia); or
 6 (v) IC 35-48-4-11.5 (possession of a synthetic drug or
 7 synthetic drug lookalike substance).

8 (b) If a person to whom this section applies is charged with an
 9 offense, the person has the right to enroll in:

- 10 (1) a pre-conviction forensic diversion program (as described
 11 in IC 11-12-3.7) providing a treatment plan for a person with
 12 an addictive disorder;
 13 (2) a pretrial diversion program offered by the prosecuting
 14 attorney that mandates treatment for addictive disorders; or
 15 (3) another county program, including a drug court program,
 16 that provides treatment for persons suffering from addictive
 17 disorders who have been charged with or convicted of a drug
 18 offense.

19 (c) A conviction on the charges giving rise to the person's
 20 enrollment in a program described in subsection (b) may not be
 21 entered against the person:

- 22 (1) while the person is awaiting enrollment in the program;
 23 (2) while the person is participating in the program; or
 24 (3) if the person successfully completes the program.

25 (d) The court may order a program to enroll a person to whom
 26 this section applies.

27 SECTION 7. IC 35-48-4-12.8 IS ADDED TO THE INDIANA
 28 CODE AS A NEW SECTION TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2018]: **Sec. 12.8. (a) This section applies only**
 30 **to a person described in section 7.5 of this chapter (abuse of a**
 31 **controlled substance).**

32 (b) A person to whom this section applies may not be charged
 33 with an offense under section 7.5 of this chapter if the person
 34 wishes to enter a treatment program.

35 (c) Notwithstanding any other law, if the person wishes to enter
 36 a treatment program, the person has the right to enroll in:

- 37 (1) a pre-conviction forensic diversion program (as described
 38 in IC 11-12-3.7) providing a treatment plan for a person with
 39 an addictive disorder;
 40 (2) a pretrial diversion program offered by the prosecuting
 41 attorney that mandates treatment for addictive disorders;
 42 (3) another county program, including a drug court program,



1 **that provides treatment for persons suffering from addictive**
2 **disorders who have been charged with or convicted of a drug**
3 **offense; or**
4 **(4) another program, as approved by the court;**
5 **without being charged or pleading guilty, even if the treatment**
6 **program otherwise requires that a person be charged with an**
7 **offense or plead guilty to an offense as a condition of participation.**
8 **(d) The person may not be charged with the offense:**
9 **(1) while the person is awaiting enrollment in the program;**
10 **(2) while the person is participating in the program; or**
11 **(3) if the person successfully completes the program.**
12 **(e) The court may order a program to enroll a person to whom**
13 **this section applies.**
14 **(f) If the person successfully completes the treatment program,**
15 **the court shall order sealed all documents relating to the person's:**
16 **(1) case (including a summons in lieu of arrest); and**
17 **(2) treatment.**

