



April 3, 2017

ENGROSSED
SENATE BILL No. 322

DIGEST OF SB 322 (Updated April 3, 2017 1:34 pm - DI 58)

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

Synopsis: DNA for felony arrestees and sheriff service fees. Requires every person arrested for a felony after December 31, 2017, to submit a DNA sample, and specifies that the sample may be obtained only by
(Continued next page)

Effective: July 1, 2017.

**Houchin, Zakas, Merritt, Sandlin,
Glick, Freeman, Niezgodski, Perfect,
Crider, Walker, Bohacek, Head,
Hershman, Ford, Eckerty, Zay,
Niemeyer, Charbonneau, Messmer,
Grooms, Buck, Becker, Boots,
Brown L, Ruckelshaus, Tallian,
Holdman**

(HOUSE SPONSORS — STEUERWALD, BAUER, SCHAIBLEY,
MCNAMARA)

January 9, 2017, read first time and referred to Committee on Judiciary.
February 16, 2017, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.
February 23, 2017, amended, reported favorably — Do Pass.
February 27, 2017, read second time, amended, ordered engrossed.
February 28, 2017, engrossed. Read third time, passed. Yeas 36, nays 13.
HOUSE ACTION
March 6, 2017, read first time and referred to Committee on Judiciary.
March 30, 2017, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.
April 3, 2017, amended, reported — Do Pass.

ES 322—LS 6728/DI 123



Digest Continued

buccal swab. Provides that the DNA sample may not be shipped for DNA identification unless the arrestee was arrested pursuant to a felony arrest warrant or a court has found probable cause for the felony arrest. Provides for removal of a DNA sample from the data base if: (1) the person is acquitted of all felony charges or the charges are converted to misdemeanors; (2) all felony charges against the person are dismissed; or (3) no felony charges are filed against the person within 365 days. Requires the officer who obtains a DNA sample from a person to inform the person of the right to DNA removal and to provide the person with instructions and a form that may be used for DNA removal. Provides that a person who knowingly or intentionally disseminates, receives, or otherwise uses information in the DNA data base for a purpose other than authorized by law commits a Level 6 felony. Increases the DNA sample processing fee from \$2 to \$3. Amends distribution percentages to hold harmless all funds and to provide an additional amount to the DNA processing fund. Specifies that the discovery of DNA evidence tending to show previously unknown crimes committed by a person on bail may lead to revocation of bail or an increase in the amount of bail. Provides that the service of process fee is \$38. (Under current law the fee is \$25.) Allows a sheriff to charge \$73 for service of process outside Indiana. (Under current law the fee is \$60.) Repeals the \$13 fee for a verified claim of service by a sheriff.



April 3, 2017

First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 322

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure and sheriff fees.

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, 2017]: 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 a felony;**
7 ~~(2) (3) crime scene specimens;~~
8 ~~(3) (4) unidentified missing persons; and~~
9 ~~(4) (5) close biological relatives of missing persons.~~
10 (b) The superintendent shall maintain the Indiana DNA data base.
11 (c) The superintendent may contract for services to perform DNA
12 analysis of:
13 **(1) convicted offenders; and**
14 **(2) persons arrested for a felony;**
15 under section 10 of this chapter to assist federal, state, and local
16 criminal justice and law enforcement agencies in the putative
17 identification, detection, or exclusion of individuals who are subjects

ES 322—LS 6728/DI 123



1 of an investigation or prosecution of a sex offense, a violent crime, or
 2 another crime in which biological evidence is recovered from the crime
 3 scene.

4 (d) The superintendent:

5 (1) may perform or contract for performance of testing, typing, or
 6 analysis of a DNA sample collected from a person described in
 7 section 10 of this chapter at any time; and

8 (2) shall perform or contract for the performance of testing,
 9 typing, or analysis of a DNA sample collected from a person
 10 described in section 10 of this chapter if federal funds become
 11 available for the performance of DNA testing, typing, or analysis.

12 (e) The superintendent shall adopt rules under IC 4-22-2 necessary
 13 to administer and enforce the provisions and intent of this chapter.

14 (f) The detention, arrest, or conviction of a person based on a data
 15 base match or data base information is not invalidated if a court
 16 determines that the DNA sample was obtained or placed in the Indiana
 17 DNA data base by mistake.

18 SECTION 2. IC 10-13-6-10, AS AMENDED BY P.L.173-2006,
 19 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2017]: Sec. 10. (a) This section applies to the following:

21 **(1) A person arrested for a felony after December 31, 2017.**

22 ~~(+)~~ **(2)** A person convicted of a felony under IC 35-42 (offenses
 23 against the person) or IC 35-43-2-1 (burglary):

24 (A) after June 30, 1996, whether or not the person is sentenced
 25 to a term of imprisonment; or

26 (B) before July 1, 1996, if the person is held in jail or prison
 27 on or after July 1, 1996.

28 ~~(2)~~ **(3)** A person convicted of a criminal law in effect before
 29 October 1, 1977, that penalized an act substantially similar to a
 30 felony described in IC 35-42 or IC 35-43-2-1 or that would have
 31 been an included offense of a felony described in IC 35-42 or
 32 IC 35-43-2-1 if the felony had been in effect:

33 (A) after June 30, 1998, whether or not the person is sentenced
 34 to a term of imprisonment; or

35 (B) before July 1, 1998, if the person is held in jail or prison
 36 on or after July 1, 1998.

37 ~~(3)~~ **(4)** A person convicted of a felony, conspiracy to commit a
 38 felony, or attempt to commit a felony:

39 (A) after June 30, 2005, whether or not the person is sentenced
 40 to a term of imprisonment; or

41 (B) before July 1, 2005, if the person is held in jail or prison
 42 on or after July 1, 2005.



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

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

6 (2) county sheriff or the designee of the county sheriff if the
7 offender is held in a county jail or other county penal facility,
8 placed in a community corrections program (as defined in
9 IC 35-38-2.6-2), ~~or~~ placed on probation, or **released on bond**;

10 (3) agency that supervises the person, or the agency's designee, if
11 the person is on conditional release in accordance with
12 IC 35-38-1-27; **or**

13 **(4) sheriff, in the case of a person arrested for a felony.**

14 **A DNA sample provided under subdivision (4) may be obtained**
15 **only by buccal swab.** A person is not required to submit a blood
16 sample if doing so would present a substantial and an unreasonable risk
17 to the person's health.

18 (c) The detention, arrest, or conviction of a person based on a data
19 base match or data base information is not invalidated if a court
20 determines that the DNA sample was obtained or placed in the Indiana
21 DNA data base by mistake.

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

24 **(1) inform the person of the person's right to DNA removal**
25 **under section 18 of this chapter; and**

26 **(2) provide the person with instructions and a form that may**
27 **be used for DNA removal.**

28 **(e) This subsection applies only to a DNA sample provided by a**
29 **person arrested for a felony. A person described in subsection**
30 **(b)(1), (b)(2), (b)(3), or (b)(4) may not ship a DNA sample collected**
31 **from a felony arrestee for DNA identification testing unless:**

32 **(1) the arrestee was arrested pursuant to a felony arrest**
33 **warrant; or**

34 **(2) a court has found probable cause for the felony arrest.**

35 SECTION 3. IC 10-13-6-18 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 18. (a) A person whose
37 DNA profile has been included in the Indiana DNA data base may
38 request ~~expungement~~ **removal** of the profile from the DNA data base
39 on the grounds that:

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



1 **(2) the person's DNA profile has been included in the Indiana**
 2 **DNA data base on the basis of the person's arrest for one (1)**
 3 **or more felonies, and:**

4 **(A) the person was acquitted of all the felony charges, or**
 5 **all of the felonies were converted to misdemeanors under**
 6 **IC 35-38-1-1.5 or IC 35-50-2-7;**

7 **(B) all felony charges against the person were dismissed; or**

8 **(C) three hundred sixty-five (365) days have elapsed since**
 9 **the person's arrest and no felony charges have been filed**
 10 **against the person.**

11 (b) All identifiable information in the Indiana DNA data base
 12 pertaining to a person requesting ~~expungement~~ **removal** under
 13 subsection (a) shall be ~~expunged;~~ **removed**, and all samples from the
 14 person shall be destroyed, upon receipt of:

15 (1) a ~~written request for letter or form requesting expungement~~
 16 **removal** under subsection (a); **and**

17 (2) a certified copy of ~~the a court order reversing and dismissing~~
 18 ~~the conviction;~~ **establishing a basis for removal described in**
 19 **this section;**

20 **as described in subsections (c) and (d). and**

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

23 **(c) This subsection applies to a person if:**

24 (1) the person's conviction has been reversed and the case
 25 dismissed (as described in subsection (a)(1));

26 (2) the person was acquitted of all felony charges or all
 27 felonies against the person were converted to misdemeanors
 28 (as described in subsection (a)(2)(A)); or

29 (3) all felony charges were dismissed (as described in
 30 subsection (a)(2)(B)).

31 A person to whom this subsection applies may request DNA
 32 removal by obtaining a certified copy of a court order evidencing
 33 a basis for removal described in subdivisions (1) through (3) and
 34 transmitting the certified copy of the order with a letter or form
 35 requesting DNA removal to the superintendent.

36 **(d) This subsection applies to a person if three hundred**
 37 **sixty-five (365) days have elapsed since the person's arrest and no**
 38 **felony charges have been filed against the person (as described in**
 39 **subsection (a)(2)(C)). A person to whom this subsection applies**
 40 **may request DNA removal by notifying the prosecuting attorney,**
 41 **in writing, that:**

42 (1) three hundred sixty-five (365) days have elapsed since the



1 **person's arrest;**

2 **(2) no felony charges have been filed against the person; and**

3 **(3) the person wishes to have the person's DNA removed from**
 4 **the data base.**

5 **Not later than thirty (30) days after receipt of a request for**
 6 **removal under this subsection, the prosecuting attorney shall**
 7 **consult the records maintained by the prosecuting attorney. If the**
 8 **person's claim appears to be meritorious, the prosecuting attorney**
 9 **shall file a request for removal with a court with jurisdiction. Upon**
 10 **receipt of a court order granting removal, the prosecuting attorney**
 11 **shall transmit a certified copy of the court order and a copy of the**
 12 **person's letter requesting DNA removal to the superintendent.**

13 ~~(c)~~ **(e)** Upon ~~expungement removal~~ of a person's DNA profile from
 14 the Indiana DNA data base, the superintendent shall request
 15 ~~expungement removal~~ of the person's DNA profile from the national
 16 DNA data base.

17 SECTION 4. IC 10-13-6-19 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 19. (a) **The DNA data**
 19 **base is confidential.** Access to the Indiana DNA data base is limited
 20 to federal, state, and local law enforcement agencies through their
 21 servicing forensic DNA laboratories.

22 (b) The superintendent shall take appropriate measures to ensure
 23 that the Indiana DNA data base is protected against unauthorized
 24 access.

25 SECTION 5. IC 10-13-6-22 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 22. A person who
 27 knowingly or intentionally disseminates, receives, or otherwise uses or
 28 attempts to use information in the Indiana DNA data base or DNA
 29 samples used in DNA analyses, knowing that such dissemination,
 30 receipt, or use is for a purpose other than authorized by law, commits
 31 a ~~Class A misdemeanor~~. **Level 6 felony.**

32 SECTION 6. IC 33-37-5-15, AS AMENDED BY P.L.165-2015,
 33 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2017]: Sec. 15. (a) The sheriff shall collect a service of
 35 process fee of ~~twenty-five dollars (\$25)~~ **thirty-eight dollars (\$38)** from
 36 a party requesting service of a writ, an order, a process, a notice, a tax
 37 warrant, or any other paper completed by the sheriff. A service of
 38 process fee collected under this subsection may be collected only one
 39 (1) time per case for the duration of the case. However, a sheriff may
 40 collect an additional service of process fee of twenty-five dollars (\$25)
 41 per case for any postjudgment service.

42 (b) The sheriff shall collect from the person who filed the civil



1 action a service of process fee of ~~sixty dollars (\$60)~~; **seventy-three**
 2 **dollars (\$73)** in addition to any other fee for service of process, if:

- 3 (1) a person files a civil action outside Indiana; and
 4 (2) a sheriff in Indiana is requested to perform a service of
 5 process associated with the civil action in Indiana.

6 (c) A sheriff shall transfer fees collected under this section to the
 7 county auditor of the county in which the sheriff has jurisdiction.

8 (d) The county auditor shall deposit fees collected under this
 9 section:

- 10 (1) in the pension trust established by the county under
 11 IC 36-8-10-12; or
 12 (2) if the county has not established a pension trust under
 13 IC 36-8-10-12, in the county general fund.

14 SECTION 7. IC 33-37-5-26.2, AS AMENDED BY P.L.174-2006,
 15 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2017]: Sec. 26.2. In each action in which a person is:

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

21 the clerk shall collect a DNA sample processing fee of ~~two three~~
 22 ~~dollars (\$2)~~; **(\$3)**.

23 SECTION 8. IC 33-37-7-9, AS AMENDED BY P.L.229-2011,
 24 SECTION 262, IS AMENDED TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2017]: Sec. 9. (a) On June 30 and on December
 26 31 of each year, the auditor of state shall transfer to the treasurer of
 27 state nine million ~~two hundred seventy-seven thousand twenty-three~~
 28 ~~dollars (\$9,277,023)~~ **four hundred ninety-two thousand**
 29 **twenty-three dollars (\$9,492,023)** for distribution under subsection
 30 (b).

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

- 33 (1) the family violence and victim assistance fund established by
 34 IC 5-2-6.8-3 an amount equal to ~~eight and three-hundredths~~
 35 ~~percent (8.03%)~~; **seven and eighty-five hundredths percent**
 36 **(7.85%)**;
 37 (2) the Indiana judges' retirement fund established by
 38 IC 33-38-6-12 an amount equal to ~~thirty-eight and fifty-five~~
 39 ~~hundredths percent (38.55%)~~; **thirty-seven and sixty-eight**
 40 **hundredths percent (37.68%)**;
 41 (3) the law enforcement academy building fund established by
 42 IC 5-2-1-13 an amount equal to two and ~~fifty-six hundredths~~



- 1 percent (~~2.56%~~); **fifty-one hundredths percent (2.51%);**
 2 (4) the law enforcement training fund established by IC 5-2-1-13
 3 an amount equal to ten and ~~twenty-seven hundredths percent~~
 4 (~~10.27%~~); **four hundredths percent (10.04%);**
 5 (5) the violent crime victims compensation fund established by
 6 IC 5-2-6.1-40 an amount equal to eleven and ~~ninety-three~~
 7 ~~hundredths percent (11.93%);~~ **sixty-six hundredths percent**
 8 **(11.66%);**
 9 (6) the motor vehicle highway account an amount equal to
 10 nineteen and ~~forty-nine hundredths percent (19.49%);~~ **five**
 11 **hundredths percent (19.05%);**
 12 (7) the fish and wildlife fund established by IC 14-22-3-2 an
 13 amount equal to twenty-five hundredths percent (0.25%);
 14 (8) the Indiana judicial center drug and alcohol programs fund
 15 established by IC 12-23-14-17 for the administration,
 16 certification, and support of alcohol and drug services programs
 17 under IC 12-23-14 an amount equal to one and ~~sixty-three~~
 18 ~~hundredths percent (1.63%);~~ **six-tenths percent (1.6%);** and
 19 (9) the DNA sample processing fund established under
 20 IC 10-13-6-9.5 for the funding of the collection, shipment,
 21 analysis, and preservation of DNA samples and the conduct of a
 22 DNA data base program under IC 10-13-6 an amount equal to
 23 seven and ~~twenty-nine hundredths percent (7.29%);~~ **nine and**
 24 **thirty-six hundredths percent (9.36%);**
 25 of the amount transferred by the auditor of state under subsection (a).
 26 (c) On June 30 and on December 31 of each year, the auditor of
 27 state shall transfer to the treasurer of state for deposit into the public
 28 defense fund established under IC 33-40-6-1 three million seven
 29 hundred thousand dollars (\$3,700,000).
 30 SECTION 9. IC 33-37-7-11 IS REPEALED [EFFECTIVE JULY 1,
 31 2017]. Sec. 11: (a) This section applies to a county in which there is
 32 established a pension trust under IC 36-8-10-12:
 33 (b) For each service of a writ, an order, a process, a notice, a tax
 34 warrant, or other paper completed by the sheriff of a county described
 35 in subsection (a), the sheriff shall submit to the county fiscal body a
 36 verified claim of service.
 37 (c) From the county share distributed under section 4 of this chapter
 38 and deposited into the county general fund, the county fiscal body shall
 39 appropriate thirteen dollars (\$13) for each verified claim submitted by
 40 the sheriff under subsection (b). Amounts appropriated under this
 41 subsection shall be deposited by the county auditor into the pension
 42 trust established under IC 36-8-10-12.



1 SECTION 10. IC 35-33-8-5 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) Upon a showing
 3 of good cause, the state or the defendant may be granted an alteration
 4 or revocation of bail by application to the court before which the
 5 proceeding is pending. In reviewing a motion for alteration or
 6 revocation of bail, credible hearsay evidence is admissible to establish
 7 good cause.

8 (b) When the state presents additional:

9 (1) evidence relevant to a high risk of nonappearance, based on
 10 the factors set forth in section 4(b) of this chapter; or

11 (2) clear and convincing evidence:

12 (A) of the factors described in IC 35-40-6-6(1)(A) and
 13 IC 35-40-6-6(1)(B); or

14 (B) that the defendant otherwise poses a risk to the physical
 15 safety of another person or the community;

16 the court may increase bail. **If the additional evidence presented by**
 17 **the state is DNA evidence tending to show that the defendant**
 18 **committed additional crimes that were not considered at the time**
 19 **the defendant was admitted to bail, the court may increase or**
 20 **revoke bail.**

21 (c) When the defendant presents additional evidence of substantial
 22 mitigating factors, based on the factors set forth in section 4(b) of this
 23 chapter, which reasonably suggests that the defendant recognizes the
 24 court's authority to bring the defendant to trial, the court may reduce
 25 bail. However, the court may not reduce bail if the court finds by clear
 26 and convincing evidence that the factors described in
 27 IC 35-40-6-6(1)(A) and IC 35-40-6-6(1)(B) exist or that the defendant
 28 otherwise poses a risk to the physical safety of another person or the
 29 community.

30 (d) The court may revoke bail or an order for release on personal
 31 recognizance upon clear and convincing proof by the state that:

32 (1) while admitted to bail the defendant:

33 (A) or the defendant's agent threatened or intimidated a victim,
 34 prospective witnesses, or jurors concerning the pending
 35 criminal proceeding or any other matter;

36 (B) or the defendant's agent attempted to conceal or destroy
 37 evidence relating to the pending criminal proceeding;

38 (C) violated any condition of the defendant's current release
 39 order;

40 (D) failed to appear before the court as ordered at any critical
 41 stage of the proceedings; or

42 (E) committed a felony or a Class A misdemeanor that



1 demonstrates instability and a disdain for the court's authority
2 to bring the defendant to trial;

3 (2) the factors described in IC 35-40-6-6(1)(A) and
4 IC 35-40-6-6(1)(B) exist or that the defendant otherwise poses a
5 risk to the physical safety of another person or the community; or
6 (3) a combination of the factors described in subdivisions (1) and
7 (2) exists.

8 SECTION 11. IC 35-38-1-27, AS ADDED BY P.L.173-2006,
9 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2017]: Sec. 27. (a) If a court imposes a sentence that does not
11 involve a commitment to the department of correction, the court shall
12 require a person:

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

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

17 to provide a DNA sample as a condition of the sentence.

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

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

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

33 SECTION 12. IC 35-38-2-2.3, AS AMENDED BY P.L.209-2015,
34 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2017]: Sec. 2.3. (a) As a condition of probation, the court may
36 require a person to do a combination of the following:

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

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

42 (3) Attend or reside in a facility established for the instruction,



- 1 recreation, or residence of persons on probation.
- 2 (4) Participate in a treatment program, educational class, or
- 3 rehabilitative service provided by a probation department or by
- 4 referral to an agency.
- 5 (5) Support the person's dependents and meet other family
- 6 responsibilities.
- 7 (6) 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 (7) 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 (8) Pay a fine authorized by IC 35-50.
- 17 (9) 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 (10) Report to a probation officer at reasonable times as directed
- 21 by the court or the probation officer.
- 22 (11) Permit the person's probation officer to visit the person at
- 23 reasonable times at the person's home or elsewhere.
- 24 (12) 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 (13) 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 (14) Perform uncompensated work that benefits the community.
- 31 (15) Satisfy other conditions reasonably related to the person's
- 32 rehabilitation.
- 33 (16) Undergo home detention under IC 35-38-2.5.
- 34 (17) 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



- 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 (18) 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 (19) 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 (20) Periodically undergo a laboratory chemical test (as defined
- 15 in IC 9-13-2-22) 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 (21) 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 (22) Refrain from owning, harboring, or training an animal.
- 35 (23) Participate in a reentry court program.
- 36 (24) Receive:
- 37 (A) addiction counseling;
- 38 (B) mental health counseling;
- 39 (C) inpatient detoxification; and
- 40 (D) medication assisted treatment, including a federal Food
- 41 and Drug Administration approved long acting, nonaddictive
- 42 medication for the treatment of opioid or alcohol dependence.



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 good time credit while serving an intermittent
19 term 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)(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;



1 to provide a DNA sample as a condition of probation.

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

7 SECTION 13. IC 35-38-2.5-6, AS AMENDED BY P.L.126-2012,
8 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2017]: Sec. 6. An order for home detention of an offender
10 under section 5 of this chapter must include the following:

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

13 (A) working at employment approved by the court or traveling
14 to or from approved employment;

15 (B) unemployed and seeking employment approved for the
16 offender by the court;

17 (C) undergoing medical, psychiatric, mental health treatment,
18 counseling, or other treatment programs approved for the
19 offender by the court;

20 (D) attending an educational institution or a program approved
21 for the offender by the court;

22 (E) attending a regularly scheduled religious service at a place
23 of worship; or

24 (F) participating in a community work release or community
25 restitution or service program approved for the offender by the
26 court.

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

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

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

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



- 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 14. IC 35-38-2.6-3, AS AMENDED BY P.L.179-2015,
- 21 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 22 JULY 1, 2017]: 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 placement
- 26 or require the director of the community corrections program to impose
- 27 reasonable terms on the placement. A court shall require a person:
- 28 (1) ~~convicted of an offense who is~~ described in ~~IC 10-13-6-10;~~
- 29 **IC 10-13-6-10(a);**
- 30 (2) who has not previously provided a DNA sample in accordance
- 31 with IC 10-13-6; and
- 32 (3) whose sentence does not involve a commitment to the
- 33 department of correction;
- 34 to provide a DNA sample as a term of placement.
- 35 (b) Placement in a community corrections program under this
- 36 chapter is subject to the availability of residential beds or home
- 37 detention units in a community corrections program.
- 38 (c) A person placed under this chapter is responsible for the person's
- 39 own medical care while in the placement program.
- 40 (d) Placement under this chapter is subject to the community
- 41 corrections program receiving a written presentence report or
- 42 memorandum from a county probation agency.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 322, 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 2, line 21, delete "June 30, 2017." and insert "**December 31, 2017.**".

Page 3, line 38, after "and" insert ":

(A)".

Page 3, line 39, delete "." and insert ", **or all of the felonies were converted to misdemeanors under IC 35-38-1-1.5 or IC 35-50-2-7; (B) all felony charges against the person were dismissed; or (C) three hundred sixty-five (365) days have elapsed since the person's arrest and no felony charges have been filed against the person.**".

Page 4, line 6, delete ":" and insert "**the conditions described in subsection (a)(1) or (a)(2) have been satisfied;**".

Page 4, delete lines 7 through 10.

Page 4, line 11, delete "described in subsection (a)(2);".

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 322 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 1.

COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 322, 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 3, between lines 27 and 28, begin a new paragraph and insert:

"(e) This subsection applies only to a DNA sample provided by a person arrested for a felony. A person described in subsection (b)(1), (b)(2), (b)(3), or (b)(4) may not ship a DNA sample collected from a felony arrestee for DNA identification testing unless:

(1) the arrestee was arrested pursuant to a felony arrest warrant; or

ES 322—LS 6728/DI 123



(2) a court has found probable cause for the felony arrest."

Page 4, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 5. IC 10-13-6-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 22. A person who knowingly or intentionally disseminates, receives, or otherwise uses or attempts to use information in the Indiana DNA data base or DNA samples used in DNA analyses, knowing that such dissemination, receipt, or use is for a purpose other than authorized by law, commits a ~~Class A misdemeanor.~~ **Level 6 felony.**"

Page 4, line 34, delete "four" and insert "**three**".

Page 4, line 35, delete "\$4." and insert "**(\$3).**".

Page 4, delete lines 36 through 42, begin a new paragraph and insert:

"SECTION 6. IC 33-37-7-9, AS AMENDED BY P.L.229-2011, SECTION 262, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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 hundred seventy-seven thousand twenty-three dollars (\$9,277,023)~~ **four hundred ninety-two thousand twenty-three dollars (\$9,492,023)** 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 percent (8.03%);~~ **seven and eighty-five hundredths percent (7.85%);**

(2) the Indiana judges' retirement fund established by IC 33-38-6-12 an amount equal to ~~thirty-eight and fifty-five hundredths percent (38.55%);~~ **thirty-seven and sixty-eight hundredths percent (37.68%);**

(3) the law enforcement academy building fund established by IC 5-2-1-13 an amount equal to two and ~~fifty-six hundredths percent (2.56%);~~ **fifty-one hundredths percent (2.51%);**

(4) the law enforcement training fund established by IC 5-2-1-13 an amount equal to ten and ~~twenty-seven hundredths percent (10.27%);~~ **four hundredths percent (10.04%);**

(5) the violent crime victims compensation fund established by IC 5-2-6.1-40 an amount equal to eleven and ~~ninety-three hundredths percent (11.93%);~~ **sixty-six hundredths percent (11.66%);**

(6) the motor vehicle highway account an amount equal to



nineteen and ~~forty-nine hundredths percent (19.49%);~~ **five hundredths percent (19.05%);**

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

(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 percent (1.63%);~~ **six-tenths percent (1.6%);** 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 percent (7.29%);~~ **nine and thirty-six hundredths percent (9.36%);**

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)."

Page 5, delete lines 1 through 40.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 322 as printed February 17, 2017.)

KENLEY, Chairperson

Committee Vote: Yeas 13, Nays 0.

SENATE MOTION

Madam President: I move that Senate Bill 322 be amended to read as follows:

Page 3, line 25, delete "expungement" and insert "**removal**".

Page 3, line 26, after "with" insert "**instructions and**".

Page 3, line 27, delete "expungement." and insert "**removal**".

Page 3, line 38, strike "expungement" and insert "**removal**".

Page 4, line 12, strike "expungement" and insert "**removal**".

Page 4, line 13, strike "expunged," and insert "**removed**".

Page 4, line 15, strike "expungement" and insert "**removal**".

ES 322—LS 6728/DI 123



Page 4, line 16, after "(a);" insert "**and**".

Page 4, line 18, delete "or other evidence sufficient to establish or" and insert "**establishing a basis for removal described in this section;**

as described in subsections (c) and (d).".

Page 4, delete line 19.

Page 4, line 20, delete "described in subsection (a)(1) or (a)(2) have been satisfied;".

Page 4, line 20, strike "and".

Page 4, strike lines 21 through 22, begin a new paragraph and insert:

"(c) This subsection applies to a person if:

- (1) the person's conviction has been reversed and the case dismissed (as described in subsection (a)(1));**
- (2) the person was acquitted of all felony charges or all felonies against the person were converted to misdemeanors (as described in subsection (a)(2)(A)); or**
- (3) all felony charges were dismissed (as described in subsection (a)(2)(B)).**

A person to whom this subsection applies may request DNA removal by obtaining a certified copy of a court order evidencing a basis for removal described in subdivisions (1) through (3) and transmitting the certified copy of the order with a letter or form requesting DNA removal to the superintendent.

(d) This subsection applies to a person if three hundred sixty-five (365) days have elapsed since the person's arrest and no felony charges have been filed against the person (as described in subsection (a)(2)(C)). A person to whom this subsection applies may request DNA removal by notifying the prosecuting attorney, in writing, that:

- (1) three hundred sixty-five (365) days have elapsed since the person's arrest;**
- (2) no felony charges have been filed against the person; and**
- (3) the person wishes to have the person's DNA removed from the data base.**

Not later than thirty (30) days after receipt of a request for removal under this subsection, the prosecuting attorney shall consult the records maintained by the prosecuting attorney. If the person's claim appears to be meritorious, the prosecuting attorney shall file a request for removal with a court with jurisdiction. Upon receipt of a court order granting removal, the prosecuting attorney shall transmit a certified copy of the court order and a copy of the person's letter requesting DNA removal to the superintendent."



Page 4, line 23, strike "(c)" and insert "(e)".

Page 4, line 23, strike "expungement" and insert "**removal**".

Page 4, line 24, strike "expungement" and insert "**removal**".

(Reference is to SB 322 as printed February 24, 2017.)

HOUCHIN

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 322, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 322 as reprinted February 28, 2017.)

STEUERWALD

Committee Vote: Yeas 10, Nays 1

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 322, has had the same under consideration and begs leave to report the same back to the House 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 sheriff fees.

Page 5, between lines 31 and 32, begin a new paragraph and insert:

"SECTION 6. IC 33-37-5-15, AS AMENDED BY P.L.165-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 15. (a) The sheriff shall collect a service of process fee of ~~twenty-five dollars (\$25)~~ **thirty-eight dollars (\$38)** from a party requesting service of a writ, an order, a process, a notice, a tax warrant, or any other paper completed by the sheriff. A service of process fee collected under this subsection may be collected only one (1) time per case for the duration of the case. However, a sheriff may collect an additional service of process fee of twenty-five dollars (\$25) per case for any postjudgment service.

(b) The sheriff shall collect from the person who filed the civil



action a service of process fee of ~~sixty dollars (\$60)~~; **seventy-three dollars (\$73)** in addition to any other fee for service of process, if:

- (1) a person files a civil action outside Indiana; and
- (2) a sheriff in Indiana is requested to perform a service of process associated with the civil action in Indiana.

(c) A sheriff shall transfer fees collected under this section to the county auditor of the county in which the sheriff has jurisdiction.

(d) The county auditor shall deposit fees collected under this section:

- (1) in the pension trust established by the county under IC 36-8-10-12; or
- (2) if the county has not established a pension trust under IC 36-8-10-12, in the county general fund."

Page 7, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 9. IC 33-37-7-11 IS REPEALED [EFFECTIVE JULY 1, 2017]. Sec. 11. (a) This section applies to a county in which there is established a pension trust under ~~IC 36-8-10-12~~:

(b) For each service of a writ, an order, a process, a notice, a tax warrant, or other paper completed by the sheriff of a county described in subsection (a); the sheriff shall submit to the county fiscal body a verified claim of service:

(c) From the county share distributed under section 4 of this chapter and deposited into the county general fund; the county fiscal body shall appropriate thirteen dollars (\$13) for each verified claim submitted by the sheriff under subsection (b). Amounts appropriated under this subsection shall be deposited by the county auditor into the pension trust established under ~~IC 36-8-10-12~~."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to ESB 322 as printed March 31, 2017.)

BROWN T

Committee Vote: yeas 17, nays 3.

