

SENATE BILL No. 333

DIGEST OF INTRODUCED BILL

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

Synopsis: Orifice searches and blood draws. Establishes a procedure authorizing licensed medical personnel to obtain a bodily fluid sample or to retrieve contraband from the bodily orifice of an individual as part of a criminal investigation, and grants immunity to the medical personnel.

Effective: July 1, 2019.

Grooms

January 7, 2019, read first time and referred to Committee on Judiciary.



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

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 333

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

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-30-2-147.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: **Sec. 147.5. IC 35-33-15 (Concerning**
4 **bodily fluid collection and contraband retrieval).**
- 5 SECTION 2. IC 35-31.5-2-186.7 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2019]: **Sec. 186.7. "Licensed health care**
8 **professional", for purposes of IC 35-33-15, has the meaning set**
9 **forth in IC 35-33-15-1.**
- 10 SECTION 3. IC 35-31.5-2-235.5, AS ADDED BY P.L.113-2018,
11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2019]: Sec. 235.5. **(a)** "Physician", for purposes of
13 IC 35-46-5-3, has the meaning set forth in IC 35-46-5-3(b).
- 14 **(b) "Physician", for purposes of IC 35-33-15, has the meaning**
15 **set forth in IC 35-33-15-1.**
- 16 SECTION 4. IC 35-33-15 IS ADDED TO THE INDIANA CODE
17 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2019]:

2 **Chapter 15. Bodily Fluid Collection and Contraband Retrieval**

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

4 (1) "Licensed health care professional" means a health care
5 professional licensed in Indiana.

6 (2) "Physician" means an individual who is licensed to
7 practice medicine in Indiana under IC 25-22.5.

8 **Sec. 2. (a) A physician, or a licensed health care professional**
9 **acting within the professional's scope of practice and under the**
10 **direction of or under a protocol prepared by a physician, who:**

11 (1) obtains a blood, urine, or other bodily substance sample
12 from an individual, regardless of whether the sample is taken
13 for diagnostic purposes or at the request of a law enforcement
14 officer under this section;

15 (2) performs a chemical test on blood, urine, or other bodily
16 substance obtained from an individual; or

17 (3) searches for or retrieves contraband from the bodily
18 orifice of an individual;

19 shall deliver the contraband or sample or disclose the results of the
20 test to a law enforcement officer who requests the contraband,
21 sample, or results as a part of a criminal investigation.
22 Contraband, samples, and test results shall be provided to a law
23 enforcement officer even if the individual has not consented to or
24 otherwise authorized the release.

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

29 (1) Disclosing test results in accordance with this section.

30 (2) Obtaining a blood, urine, or other bodily substance sample
31 in accordance with this section.

32 (3) Delivering a blood, urine, or other bodily substance sample
33 in accordance with this section.

34 (4) Searching for, retrieving, or attempting to retrieve
35 contraband concealed in a bodily orifice in accordance with
36 this section.

37 (5) Disclosing facts observed or opinions formed to the
38 prosecuting attorney or the deputy prosecuting attorney for
39 use at trial, or testifying at the criminal trial of the individual
40 as to facts observed or opinions formed.

41 (6) Failing to treat an individual from whom contraband or a
42 blood, urine, or other bodily substance sample is obtained at



- 1 the request of a law enforcement officer if the individual
2 declines treatment.
- 3 **(7) Injury to an individual arising from the performance of**
4 **duties in good faith under this section.**
- 5 **(c) For the purposes of this section:**
- 6 **(1) the privileges arising from a patient-physician relationship**
7 **do not apply to the contraband, samples, test results, or**
8 **testimony described in this section; and**
- 9 **(2) contraband, samples, test results, and testimony may be**
10 **admitted in a proceeding in accordance with the applicable**
11 **rules of evidence.**
- 12 **(d) The exceptions to the patient-physician relationship specified**
13 **in subsection (c) do not affect those relationships in a proceeding**
14 **not covered by this section.**
- 15 **(e) The contraband, samples, and test results obtained by a law**
16 **enforcement officer under subsection (a) may be disclosed only to**
17 **a prosecuting attorney or a deputy prosecuting attorney for use as**
18 **evidence in a criminal proceeding.**
- 19 **(f) This section does not require a physician, a person under the**
20 **direction of a physician, or a licensed health care professional**
21 **acting within the professional's scope of practice to perform a**
22 **chemical test.**
- 23 **(g) A physician or a licensed health care professional acting**
24 **within the professional's scope of practice and under the direction**
25 **of or under a protocol prepared by a physician shall retrieve**
26 **contraband concealed in a bodily orifice, or obtain a blood, urine,**
27 **or other bodily substance sample, if the following exist:**
- 28 **(1) A law enforcement officer requests that the contraband be**
29 **retrieved or the sample be obtained.**
- 30 **(2) The law enforcement officer has certified in writing that**
31 **the officer has probable cause to believe the individual from**
32 **whom the sample is to be obtained has committed a criminal**
33 **offense.**
- 34 **(3) Not more than the use of reasonable force is necessary to**
35 **retrieve the contraband or obtain the sample.**
- 36 **(h) If the individual:**
- 37 **(1) from whom the contraband is to be retrieved or the bodily**
38 **substance sample is to be obtained under this section does not**
39 **consent; and**
- 40 **(2) resists the retrieval of contraband or the taking of a**
41 **sample;**
- 42 **the law enforcement officer may use reasonable force to assist a**



1 person, who must be authorized under this section to retrieve
 2 contraband or obtain a sample, in the retrieval of the contraband
 3 or the taking of the sample.

4 (i) The person authorized under this section to retrieve
 5 contraband or obtain a bodily substance sample shall retrieve the
 6 contraband or take the sample in a medically accepted manner.

7 (j) This subsection does not apply to contraband retrieved at, or
 8 a bodily substance sample taken at, a licensed hospital. A law
 9 enforcement officer may transport the individual to a place where
 10 the contraband may be retrieved or a sample may be obtained by
 11 any of the following licensed health care professionals, acting
 12 within their scope of practice, and who have been engaged to
 13 retrieve contraband or obtain samples under this section:

14 (1) A physician.

15 (2) A physician's assistant.

16 (3) A registered nurse.

17 (4) An advanced practice registered nurse.

18 (5) A licensed practical nurse.

19 (6) An advanced emergency medical technician.

20 (7) A paramedic.

21 (8) Except as provided in subsections (k) through (l), any
 22 other licensed health care professional acting within the
 23 professional's scope of practice.

24 (k) A law enforcement officer may not retrieve contraband or
 25 obtain a bodily substance sample under this section if the
 26 contraband is to be retrieved from, or the sample is to be obtained
 27 from, another law enforcement officer as a result of the other law
 28 enforcement officer's involvement in an accident or alleged
 29 criminal offense.

30 (l) A law enforcement officer who is otherwise qualified to
 31 obtain a bodily substance sample under this section may obtain a
 32 bodily substance sample from an individual involved in an accident
 33 or alleged crime who is not a law enforcement officer only if:

34 (1) before January 1, 2013, the officer obtained a bodily
 35 substance sample from an individual as part of the officer's
 36 official duties as a law enforcement officer; and

37 (2) the:

38 (A) individual consents to the officer obtaining a bodily
 39 substance sample; or

40 (B) obtaining of the bodily substance sample is authorized
 41 by a search warrant.

