

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 ENROLLED ACT No. 333

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

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

SECTION 1. IC 9-13-2-93.1 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 93.1. "Licensed health care professional", for purposes of IC 9-30-6-6, means a health care professional licensed in Indiana.**

SECTION 2. IC 9-13-2-125.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 125.7. "Physician", for purposes of IC 9-30-6-6, means an individual who is licensed to practice medicine in Indiana under IC 25-22.5.**

SECTION 3. IC 9-30-6-6, AS AMENDED BY P.L.237-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 6. (a) A physician, ~~or~~ a person trained in **retrieving contraband or** obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician, **or a licensed health care professional acting within the professional's scope of practice and under the direction of or under a protocol prepared by a physician**, who:

- (1) obtains a blood, urine, or other bodily substance sample from a person, regardless of whether the sample is taken for diagnostic purposes or at the request of a law enforcement officer under this

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section; ~~or~~

(2) performs a chemical test on blood, urine, or other bodily substance obtained from a person; ~~or~~

**(3) searches for or retrieves contraband from the body cavity of an individual;**

shall deliver the sample ~~or contraband~~ or disclose the results of the test to a law enforcement officer who requests the sample, **contraband**, or results as a part of a criminal investigation. Samples, **contraband**, and test results shall be provided to a law enforcement officer even if the person has not consented to or otherwise authorized their release.

(b) A physician, **a licensed health care professional**, a hospital, or an agent of a physician or hospital is not civilly or criminally liable for any of the following:

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

(2) Delivering **contraband**, ~~or~~ a blood, urine, or other bodily substance sample in accordance with this section.

(3) **Searching for or retrieving contraband or** obtaining a blood, urine, or other bodily substance sample in accordance with this section.

(4) Disclosing to the prosecuting attorney or the deputy prosecuting attorney for use at or testifying at the criminal trial of the person as to facts observed or opinions formed.

(5) Failing to treat a person from whom **contraband is retrieved or** a blood, urine, or other bodily substance sample is obtained at the request of a law enforcement officer if the person declines treatment.

(6) Injury to a person arising from the performance of duties in good faith under this section. **However, immunity does not apply if the physician, licensed health care professional, hospital, or agent of a physician or hospital acts with gross negligence or willful or wanton misconduct.**

(c) For the purposes of ~~this chapter, IC 9-30-5, or IC 9-30-9:~~ **a criminal proceeding:**

(1) the privileges arising from a patient-physician relationship do not apply to the **contraband**, samples, test results, or testimony described in this section; and

(2) **contraband**, samples, test results, and testimony may be admitted in a proceeding in accordance with the applicable rules of evidence.

(d) The exceptions to the patient-physician relationship specified in subsection (c) do not affect those relationships in a proceeding ~~not covered by this chapter, IC 9-30-5, or IC 9-30-9:~~ **that is not a criminal**



**proceeding.**

(e) The **contraband**, test results, and samples obtained by a law enforcement officer under subsection (a) may be disclosed only to a prosecuting attorney or a deputy prosecuting attorney for use as evidence in a criminal proceeding. ~~under this chapter, IC 9-30-5; or IC 9-30-9.~~

(f) This section does not require a physician or a person under the direction of a physician to perform a chemical test **or to retrieve contraband.**

(g) A physician or a person trained in obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician shall obtain a blood, urine, or other bodily substance sample if the following exist:

(1) A law enforcement officer requests that the sample be obtained:

(2) The law enforcement officer has certified in writing the following:

(A) That the officer has probable cause to believe the person from whom the sample is to be obtained has violated IC 9-30-5.

(B) That the person from whom the sample is to be obtained has been involved in a motor vehicle accident that resulted in the serious bodily injury or death of another.

(C) That the accident that caused the serious bodily injury or death of another occurred not more than three (3) hours before the time the sample is requested.

(3) Not more than the use of reasonable force is necessary to obtain the sample.

(h) (g) If the person:

(1) from whom the **contraband is to be retrieved or the** bodily substance sample is to be obtained under this section does not consent; and

(2) resists the **retrieval of the contraband or the** taking of a sample;

the law enforcement officer may use reasonable force to assist an individual, who must be authorized under this section to **retrieve contraband or** obtain a sample, in the **retrieval of the contraband or the** taking of the sample.

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

(j) (i) This subsection does not apply to **contraband retrieved or**



a bodily substance sample taken at a licensed hospital (as defined in IC 16-18-2-179(a) and IC 16-18-2-179(b)). A law enforcement officer may transport the person to a place where the **contraband may be retrieved or the** sample may be obtained by any of the following persons who are trained in **retrieving contraband or** obtaining bodily substance samples and who have been engaged to **retrieve contraband or** obtain samples under this section:

- (1) A physician holding an unlimited license to practice medicine or osteopathy.
- (2) A registered nurse.
- (3) A licensed practical nurse.
- (4) An advanced emergency medical technician (as defined in IC 16-18-2-6.5).
- (5) A paramedic (as defined in IC 16-18-2-266).
- (6) Except as provided in subsections ~~(k)~~ (j) through ~~(i)~~ (k), any other person qualified through training, experience, or education to **retrieve contraband or** obtain a bodily substance sample.

~~(k)~~ (j) A law enforcement officer may not **retrieve contraband or** obtain a bodily substance sample under this section if the **contraband is to be retrieved or the** sample is to be obtained from another law enforcement officer as a result of the other law enforcement officer's involvement in an accident or alleged crime.

~~(i)~~ (k) A law enforcement officer who is otherwise qualified to obtain a bodily substance sample under this section may obtain a bodily substance sample from a person involved in an accident or alleged crime who is not a law enforcement officer only if:

- (1) before January 1, 2013, the officer obtained a bodily substance sample from an individual as part of the officer's official duties as a law enforcement officer; and
- (2) the:
  - (A) person consents to the officer obtaining a bodily substance sample; or
  - (B) obtaining of the bodily substance sample is authorized by a search warrant.

SECTION 4. IC 16-41-10-2.5, AS AMENDED BY P.L.131-2018, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2.5. (a) A patient (including a patient who is unable to consent due to physical or mental incapacity) to whose blood or body fluids an emergency medical services provider or a law enforcement officer is exposed as described in section 2 of this chapter is considered to have consented to:

- (1) testing for the presence of a dangerous communicable disease



of a type that has been epidemiologically demonstrated to be transmittable by an exposure of the kind experienced by the emergency medical services provider or law enforcement officer; and

(2) release of the testing results to a medical director or physician described in section 3 of this chapter.

The medical director or physician shall notify the emergency medical services provider or law enforcement officer of the test results.

(b) If a patient described in subsection (a) refuses to provide a blood or body fluid specimen for testing for a dangerous communicable disease, the exposed emergency medical services provider or law enforcement officer, the exposed emergency medical services provider's or law enforcement officer's employer, or the state department may petition the circuit or superior court having jurisdiction in the county:

(1) of the patient's residence; or

(2) where the employer of the exposed emergency medical services provider or law enforcement officer has the employer's principal office;

for an order requiring that the patient provide a blood or body fluid specimen, **including an emergency order for a blood or body fluid specimen under section 2.6 of this chapter.**

**(c) If a patient described in subsection (a) refuses to provide a blood or body fluid specimen for testing for a dangerous communicable disease, and that patient is a witness, bystander, or victim of alleged criminal activity (IC 35-31.5-2-73), the exposed emergency medical services provider or law enforcement officer, the exposed emergency medical services provider's or law enforcement officer's employer, or the state department may submit the form described in section 2 of this chapter to the medical director or physician of a hospital licensed under IC 16-21-2, IC 16-22-2, or IC 16-23-1. The medical director or physician described in this section shall notify the emergency medical services provider or law enforcement officer of the test results not more than forty-eight (48) hours after the medical director or physician receives the test results.**

SECTION 5. IC 16-41-10-2.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 2.6. (a) This section applies to:**

**(1) an emergency medical services provider; and**

**(2) a law enforcement officer;**

**who has been exposed to blood or body fluids as described in**



section 2(a) of this chapter.

(b) A person to whom this chapter applies may submit an emergency application for a blood or body fluid specimen to a circuit or superior court having jurisdiction to issue a warrant.

(c) An emergency application for a blood or body fluid specimen must be verified and include the following information:

- (1) The name and employing agency of the person exposed to the blood or body fluids.
- (2) The name of the patient to whose blood or body fluids the person has been exposed.
- (3) A concise description of the circumstances under which the exposure occurred.
- (4) A concise explanation of why immediate testing is necessary.
- (5) Any other information required by the court.

(d) If it appears from the emergency application for a blood or body fluid specimen that:

- (1) the person exposed to the blood or body fluid is a person to whom this section applies; and
- (2) immediate testing is necessary;

the court shall approve the emergency application for a blood or body fluid specimen ex parte, without notice or a hearing, and issue an emergency order requiring the patient to whose blood or body fluid the emergency medical services provider or law enforcement officer has been exposed to provide a blood or body fluid specimen for testing.

SECTION 6. IC 34-30-2-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 33. IC 9-30-6-6 (Concerning physicians, **licensed health care professionals**, hospitals, and their agents for matters related to obtaining, testing, and releasing samples and information regarding blood, urine, or other bodily substances).



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

