

SENATE BILL No. 61

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-6; IC 31-37-19-1.

Synopsis: Juvenile DNA collection. Requires a juvenile court to order a child found to be a delinquent child for the commission of an act that, if committed by an adult, would be: (1) burglary; (2) residential entry; (3) a crime of violence; or (4) a sex offense; to provide a DNA sample to the agency having supervision of the child or to the county sheriff. Makes conforming amendments.

Effective: July 1, 2018.

Zakas

January 3, 2018, read first time and referred to Committee on Judiciary.



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. 61

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 10-13-6-8, AS AMENDED BY P.L.111-2017,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: 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 **(3) certain delinquent children;**
8 ~~(4)~~ **(4)** crime scene specimens;
9 ~~(5)~~ **(5)** unidentified missing persons; and
10 ~~(6)~~ **(6)** close biological relatives of missing persons.
11 (b) The superintendent shall maintain the Indiana DNA data base.
12 (c) The superintendent may contract for services to perform DNA
13 analysis of:
14 (1) convicted offenders; and
15 (2) persons arrested for a felony;
16 under section 10 of this chapter, **or certain delinquent children under**
17 **IC 31-37-19-1**, to assist federal, state, and local criminal justice and



1 law enforcement agencies in the putative identification, detection, or
 2 exclusion of individuals who are subjects of an investigation or
 3 prosecution of a sex offense, a violent crime, or another crime in which
 4 biological evidence is recovered from the crime scene.

5 (d) The superintendent:

6 (1) may perform or contract for performance of testing, typing, or
 7 analysis of a DNA sample collected from a person described in
 8 section 10 of this chapter **or certain delinquent children**
 9 **described in IC 31-37-19-1** at any time; and

10 (2) shall perform or contract for the performance of testing,
 11 typing, or analysis of a DNA sample collected from a person
 12 described in section 10 of this chapter **or certain delinquent**
 13 **children described in IC 31-37-19-1** if federal funds become
 14 available for the performance of DNA testing, typing, or analysis.

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

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

21 SECTION 2. IC 10-13-6-18, AS AMENDED BY P.L.111-2017,
 22 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2018]: Sec. 18. (a) A person whose DNA profile has been
 24 included in the Indiana DNA data base may request removal of the
 25 profile from the DNA data base on the grounds that:

26 (1) the conviction **or adjudication as a delinquent child** on
 27 which the authority for inclusion in the Indiana DNA data base
 28 was founded has been reversed and the case has been dismissed;
 29 or

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

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

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

37 (C) three hundred sixty-five (365) days have elapsed since the
 38 person's arrest and no felony charges have been filed against
 39 the person.

40 (b) All identifiable information in the Indiana DNA data base
 41 pertaining to a person requesting removal under subsection (a) shall be
 42 removed, and all samples from the person shall be destroyed, upon



- 1 receipt of:
- 2 (1) a letter or form requesting removal under subsection (a); and
- 3 (2) a certified copy of a court order establishing a basis for
- 4 removal described in this section;
- 5 as described in subsections (c) and (d).
- 6 (c) This subsection applies to a person if:
- 7 (1) the person's conviction **or adjudication as a delinquent child**
- 8 has been reversed and the case dismissed (as described in
- 9 subsection (a)(1));
- 10 (2) the person was acquitted of all felony charges or all felonies
- 11 against the person were converted to misdemeanors (as described
- 12 in subsection (a)(2)(A)); or
- 13 (3) all felony charges were dismissed (as described in subsection
- 14 (a)(2)(B)).
- 15 A person to whom this subsection applies may request DNA removal
- 16 by obtaining a certified copy of a court order evidencing a basis for
- 17 removal described in subdivisions (1) through (3) and transmitting the
- 18 certified copy of the order with a letter or form requesting DNA
- 19 removal to the superintendent.
- 20 (d) This subsection applies to a person if three hundred sixty-five
- 21 (365) days have elapsed since the person's arrest and no felony charges
- 22 have been filed against the person (as described in subsection
- 23 (a)(2)(C)). A person to whom this subsection applies may request DNA
- 24 removal by notifying the prosecuting attorney, in writing, that:
- 25 (1) three hundred sixty-five (365) days have elapsed since the
- 26 person's arrest;
- 27 (2) no felony charges have been filed against the person; and
- 28 (3) the person wishes to have the person's DNA removed from the
- 29 data base.
- 30 Not later than thirty (30) days after receipt of a request for removal
- 31 under this subsection, the prosecuting attorney shall consult the records
- 32 maintained by the prosecuting attorney. If the person's claim appears
- 33 to be meritorious, the prosecuting attorney shall file a request for
- 34 removal with a court with jurisdiction. Upon receipt of a court order
- 35 granting removal, the prosecuting attorney shall transmit a certified
- 36 copy of the court order and a copy of the person's letter requesting
- 37 DNA removal to the superintendent.
- 38 (e) Upon removal of a person's DNA profile from the Indiana DNA
- 39 data base, the superintendent shall request removal of the person's
- 40 DNA profile from the national DNA data base.
- 41 SECTION 3. IC 10-13-6-21, AS AMENDED BY P.L.158-2013,
- 42 SECTION 167, IS AMENDED TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2018]: Sec. 21. A person who knowingly or
 2 intentionally without lawful authority tampers with or attempts to
 3 tamper with any DNA sample or a container collected under section 10
 4 of this chapter **or IC 31-37-19-1** commits a Level 6 felony.

5 SECTION 4. IC 31-37-19-1, AS AMENDED BY P.L.85-2017,
 6 SECTION 105, IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) Subject to section 6.5 of this
 8 chapter, if a child is a delinquent child under IC 31-37-2, the juvenile
 9 court may enter one (1) or more of the following dispositional decrees:

- 10 (1) Order supervision of the child by the probation department.
 11 (2) Order the child to receive outpatient treatment:
 12 (A) at a social service agency or a psychological, a psychiatric,
 13 a medical, or an educational facility; or
 14 (B) from an individual practitioner.
 15 (3) Remove the child from the child's home and place the child in
 16 another home or a shelter care facility, child caring institution,
 17 group home, or secure private facility. Placement under this
 18 subdivision includes authorization to control and discipline the
 19 child.
 20 (4) Award wardship to a:
 21 (A) person, other than the department; or
 22 (B) shelter care facility.
 23 (5) Partially or completely emancipate the child under section 27
 24 of this chapter.
 25 (6) Order:
 26 (A) the child; or
 27 (B) the child's parent, guardian, or custodian;
 28 to receive family services.
 29 (7) Order a person who is a party to refrain from direct or indirect
 30 contact with the child.

31 (b) If the child is removed from the child's home and placed in a
 32 foster family home or another facility, the juvenile court shall:

- 33 (1) approve a permanency plan for the child;
 34 (2) find whether or not reasonable efforts were made to prevent
 35 or eliminate the need for the removal;
 36 (3) designate responsibility for the placement and care of the child
 37 with the probation department; and
 38 (4) find whether it:
 39 (A) serves the best interests of the child to be removed; and
 40 (B) would be contrary to the health and welfare of the child for
 41 the child to remain in the home.

42 (c) If a dispositional decree under this section:



1 (1) orders or approves removal of a child from the child's home or
 2 awards wardship of the child to a:

- 3 (A) person other than the department; or
 4 (B) shelter care facility; and

5 (2) is the first court order in the delinquent child proceeding that
 6 authorizes or approves removal of the child from the child's
 7 parent, guardian, or custodian;

8 the court shall include in the decree the appropriate findings and
 9 conclusions described in IC 31-37-6-6(f) and IC 31-37-6-6(g).

10 (d) If the juvenile court orders supervision of the child by the
 11 probation department under subsection (a)(1), the child or the child's
 12 parent, guardian, or custodian is responsible for any costs resulting
 13 from the participation in a rehabilitative service or educational class
 14 provided by the probation department. Any costs collected for services
 15 provided by the probation department shall be deposited in the county
 16 supplemental juvenile probation services fund.

17 **(e) If a child is adjudicated to be a delinquent child under**
 18 **IC 31-37-2 for the commission of an act that, if committed by an**
 19 **adult, would be:**

- 20 (1) burglary (IC 35-43-2-1);
 21 (2) residential entry (IC 35-43-2-1.5);
 22 (3) a crime of violence (as defined in IC 35-50-1-2); or
 23 (4) a sex offense (as defined in IC 11-8-8-5.2);

24 **the juvenile court shall order the child to provide a DNA sample to**
 25 **the agency having supervision of the child or to the county sheriff.**

26 **(f) If a juvenile court orders the agency having supervision of a**
 27 **child or the county sheriff to collect a DNA sample from the child**
 28 **under subsection (e), the agency or sheriff shall comply with:**

- 29 (1) IC 10-13-6-12; and
 30 (2) the guidelines issued by the superintendent of the state
 31 police department under IC 10-13-6-11.

32 **(g) If a juvenile court orders the agency having supervision of**
 33 **a child or the county sheriff to collect a DNA sample from the child**
 34 **under subsection (e), the officer, employee, or designee who obtains**
 35 **a DNA sample from the child shall:**

- 36 (1) inform the child and the child's parent, guardian, or
 37 custodian of the child's right to DNA removal under
 38 IC 10-13-6-18; and
 39 (2) provide the child and the child's parent, guardian, or
 40 custodian with instructions and a form that may be used for
 41 DNA removal.

