

## SENATE BILL No. 153

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 10-13-3; IC 16-18-2; IC 16-28-14.7; IC 34-30-2-67.7; IC 35-52-16-16.5.

**Synopsis:** Health facility employee criminal background check. Requires a health facility to obtain a national criminal history background check or an expanded criminal history check for the health facility's employees. Provides immunity to persons: (1) for denying or terminating employment because of another person's criminal history; or (2) for reporting to or participating in the proceedings of the state department of health or the registry of nurse aides.

**Effective:** July 1, 2019.

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## Randolph Lonnie M

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January 3, 2019, read first time and referred to Committee on Judiciary.

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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. 153

A BILL FOR AN ACT to amend the Indiana Code concerning health.

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

1 SECTION 1. IC 10-13-3-16, AS AMENDED BY P.L.197-2007,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2019]: Sec. 16. (a) As used in this chapter, "qualified entity"  
4 means a business or an organization, whether public, private, for-profit,  
5 nonprofit, or voluntary, that provides care or care placement services.  
6 (b) The term includes the following:  
7 (1) A business or an organization that licenses or certifies others  
8 to provide care or care placement services.  
9 (2) A home health agency licensed under IC 16-27-1.  
10 (3) A personal services agency licensed under IC 16-27-4.  
11 **(4) A health facility licensed under IC 16-28-2.**  
12 SECTION 2. IC 10-13-3-39, AS AMENDED BY P.L.183-2017,  
13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
14 JULY 1, 2019]: Sec. 39. (a) The department is designated as the  
15 authorized agency to receive requests for, process, and disseminate the  
16 results of national criminal history background checks that comply with  
17 this section and 42 U.S.C. 5119a.



1 (b) A qualified entity may contact the department to request a  
2 national criminal history background check on any of the following  
3 persons:

4 (1) A person who seeks to be or is employed with the qualified  
5 entity. A request under this subdivision must be made not later  
6 than three (3) months after the person is initially employed by the  
7 qualified entity.

8 (2) A person who seeks to volunteer or is a volunteer with the  
9 qualified entity. A request under this subdivision must be made  
10 not later than three (3) months after the person initially volunteers  
11 with the qualified entity.

12 (3) A person for whom a national criminal history background  
13 check is required under any law relating to the licensing of a  
14 home, center, or other facility for purposes of day care or  
15 residential care of children.

16 (4) A person for whom a national criminal history background  
17 check is permitted for purposes of:

18 (A) placement of a child in a foster family home, a prospective  
19 adoptive home, or the home of a relative, legal guardian to  
20 whom IC 29-3-8-9 applies, or other caretaker under section  
21 27.5 of this chapter or IC 31-34;

22 (B) a report concerning an adoption as required by IC 31-19-8;

23 (C) collaborative care host homes and supervised independent  
24 living arrangements as provided in IC 31-28-5.8-5.5; or

25 (D) reunification of a child with a parent, guardian, or  
26 custodian as provided in IC 31-34-21-5.5.

27 (5) A person for whom a national criminal history background  
28 check is required for the licensing of a group home, child caring  
29 institution, child placing agency, or foster home under IC 31-27.

30 (6) A person for whom a national criminal history background  
31 check is required for determining the individual's suitability as an  
32 employee of a contractor of the state under section 38.5(a)(1) of  
33 this chapter.

34 (c) A qualified entity must submit a request under subsection (b) in  
35 the form required by the department and provide a set of the person's  
36 fingerprints and any required fees with the request.

37 (d) If a qualified entity makes a request in conformity with  
38 subsection (b), the department shall submit the set of fingerprints  
39 provided with the request to the Federal Bureau of Investigation for a  
40 national criminal history background check. The department shall  
41 respond to the request in conformity with:

42 (1) the requirements of 42 U.S.C. 5119a; and



- 1 (2) the regulations prescribed by the Attorney General of the  
 2 United States under 42 U.S.C. 5119a.
- 3 (e) Subsection (f):
- 4 (1) applies to a qualified entity that:
- 5 (A) is not a school corporation or a special education  
 6 cooperative; or
- 7 (B) is a school corporation or a special education cooperative  
 8 and seeks a national criminal history background check for a  
 9 volunteer; and
- 10 (2) does not apply to a qualified entity that is a:
- 11 (A) home health agency licensed under IC 16-27-1; ~~or~~  
 12 (B) personal services agency licensed under IC 16-27-4; ~~or~~  
 13 **(C) health facility licensed under IC 16-28-2.**
- 14 (f) After receiving the results of a national criminal history  
 15 background check from the Federal Bureau of Investigation, the  
 16 department shall make a determination whether the person who is the  
 17 subject of a request has been convicted of:
- 18 (1) an offense described in IC 20-26-5-11;
- 19 (2) in the case of a foster family home, a nonwaivable offense as  
 20 defined in IC 31-9-2-84.8;
- 21 (3) in the case of a prospective adoptive home, an offense  
 22 described in IC 31-19-11-1(c);
- 23 (4) any other felony; or
- 24 (5) any misdemeanor;
- 25 and convey the determination to the requesting qualified entity.
- 26 (g) This subsection applies to a qualified entity that:
- 27 (1) is a school corporation or a special education cooperative; and
- 28 (2) seeks a national criminal history background check to  
 29 determine whether to employ or continue the employment of a  
 30 certificated employee or a noncertificated employee of a school  
 31 corporation or an equivalent position with a special education  
 32 cooperative.
- 33 After receiving the results of a national criminal history background  
 34 check from the Federal Bureau of Investigation, the department may  
 35 exchange identification records concerning convictions for offenses  
 36 described in IC 20-26-5-11 with the school corporation or special  
 37 education cooperative solely for purposes of making an employment  
 38 determination. The exchange may be made only for the official use of  
 39 the officials with authority to make the employment determination. The  
 40 exchange is subject to the restrictions on dissemination imposed under  
 41 P.L.92-544, (86 Stat. 1115) (1972).
- 42 (h) This subsection applies to a qualified entity (as defined in



1 IC 10-13-3-16) that is a public agency under IC 5-14-1.5-2(a)(1). After  
 2 receiving the results of a national criminal history background check  
 3 from the Federal Bureau of Investigation, the department shall provide  
 4 a copy to the public agency. Except as permitted by federal law, the  
 5 public agency may not share the information contained in the national  
 6 criminal history background check with a private agency.

7 (i) This subsection applies to a qualified entity that is a:

8 (1) home health agency licensed under IC 16-27-1; or

9 (2) personal services agency licensed under IC 16-27-4.

10 After receiving the results of a national criminal history background  
 11 check from the Federal Bureau of Investigation, the department shall  
 12 make a determination whether the applicant has been convicted of an  
 13 offense described in IC 16-27-2-5(a) and convey the determination to  
 14 the requesting qualified entity.

15 **(j) This subsection applies to a qualified entity that is a health**  
 16 **facility licensed under IC 16-28-2. After receiving the results of a**  
 17 **national criminal history background check from the Federal**  
 18 **Bureau of Investigation, the department shall make a**  
 19 **determination whether the applicant has been convicted of an**  
 20 **offense described in IC 16-28-14.7-3 and convey the determination**  
 21 **to the requesting qualified entity.**

22 (j) **(k)** The department:

23 (1) may permanently retain an applicant's fingerprints submitted  
 24 under this section; and

25 (2) shall retain the applicant's fingerprints separately from  
 26 fingerprints collected under section 24 of this chapter.

27 SECTION 3. IC 16-18-2-121.3, AS ADDED BY P.L.42-2011,  
 28 SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 29 JULY 1, 2019]: Sec. 121.3. "Expanded criminal history check" **means**  
 30 **the following:**

31 **(1)** For purposes of IC 16-27-2, ~~has~~ the meaning set forth in  
 32 IC 16-27-2-0.5.

33 **(2)** For purposes of IC 16-28-14.7, the meaning set forth in  
 34 **IC 16-28-14.7-1.**

35 SECTION 4. IC 16-18-2-244.5, AS ADDED BY P.L.197-2007,  
 36 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2019]: Sec. 244.5. "National criminal history background  
 38 check" **means the following:**

39 **(1)** For purposes of IC 16-27-2, ~~has~~ the meaning set forth in  
 40 IC 16-27-2-2.1.

41 **(2)** For purposes of IC 16-28-14.7, the meaning set forth in  
 42 **IC 16-28-14.7-2.**



1 SECTION 5. IC 16-28-14.7 IS ADDED TO THE INDIANA CODE  
 2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 3 JULY 1, 2019]:

4 **Chapter 14.7. Criminal Background Checks of Employees**

5 **Sec. 1. As used in this chapter, "expanded criminal history**  
 6 **check" means a criminal history check of an individual, obtained**  
 7 **through a private agency, that includes the following:**

8 (1) A search of the records maintained by all counties in  
 9 Indiana in which the individual who is the subject of the  
 10 background check resided.

11 (2) A search of the records maintained by all counties or  
 12 similar governmental units in another state, if the individual  
 13 who is the subject of the background check resided or worked  
 14 in another state.

15 **Sec. 2. As used in this chapter, "national criminal history**  
 16 **background check" means the determination provided by the state**  
 17 **police department under IC 10-13-3-39(j).**

18 **Sec. 3. (a) A person may not operate a health facility if the**  
 19 **person has been convicted of any of the following:**

20 (1) Rape (IC 35-42-4-1).

21 (2) Criminal deviate conduct (IC 35-42-4-2) (repealed) or a  
 22 crime involving other sexual conduct (IC 35-31.5-2-221.5).

23 (3) Exploitation of an endangered adult (IC 35-46-1-12).

24 (4) Failure to report battery, neglect, or exploitation of an  
 25 endangered adult (IC 35-46-1-13).

26 (5) Theft (IC 35-43-4-2), if the person's conviction for theft  
 27 occurred less than ten (10) years before the date of submission  
 28 by the person of an application for licensure as a health  
 29 facility.

30 (6) A felony that is substantially equivalent to a felony listed  
 31 in:

32 (A) subdivisions (1) through (4); or

33 (B) subdivision (5), if the conviction for theft occurred less  
 34 than ten (10) years before the person's operation of the  
 35 health facility;

36 for which the conviction was entered in another state.

37 (b) A person who knowingly or intentionally violates this section  
 38 commits a Class A misdemeanor.

39 **Sec. 4. (a) A person who operates a health facility shall apply,**  
 40 **not more than three (3) business days after the date that an**  
 41 **employee who will have direct contact with a patient begins**  
 42 **employment, for a copy of the employee's national criminal history**



1 background check or an expanded criminal history check.

2 (b) A health facility may not employ a person for more than  
3 three (3) business days without applying for a national criminal  
4 history background check or an expanded criminal history check.

5 Sec. 5. (a) Except as provided in subsection (b), a person who  
6 operates a health facility may not employ a person who has direct  
7 contact with a patient if that person's national criminal history  
8 background check or expanded criminal history check indicates  
9 that the person has been convicted of any of the following:

10 (1) Rape (IC 35-42-4-1).

11 (2) Criminal deviate conduct (IC 35-42-4-2) (repealed) or a  
12 crime involving other sexual conduct (IC 35-31.5-2-221.5).

13 (3) Exploitation of an endangered adult (IC 35-46-1-12).

14 (4) Failure to report battery, neglect, or exploitation of an  
15 endangered adult (IC 35-46-1-13).

16 (5) Theft (IC 35-43-4-2), if the conviction for theft occurred  
17 less than ten (10) years before the person's employment  
18 application date.

19 (6) A felony that is substantially equivalent to a felony listed  
20 in:

21 (A) subdivisions (1) through (4); or

22 (B) subdivision (5), if the conviction for theft occurred less  
23 than ten (10) years before the person's employment  
24 application date;

25 for which the conviction was entered in another state.

26 (b) A health facility may not employ a person who has direct  
27 contact with a patient for more than twenty-one (21) calendar days  
28 without receipt of that person's national criminal history  
29 background check or expanded criminal history check unless the  
30 state police department, the Federal Bureau of Investigation under  
31 IC 10-13-3-39, or the private agency providing the national  
32 background check or expanded criminal history check is  
33 responsible for failing to provide the person's national criminal  
34 history background check or expanded criminal history check to  
35 the health facility within the time required under this subsection.

36 Sec. 6. (a) A person who operates a health facility is responsible  
37 for the payment of fees under IC 10-13-3-39(c) and other fees  
38 required under this chapter.

39 (b) A health facility may require a person who applies to the  
40 health facility for employment that involves direct contact with a  
41 patient:

42 (1) to pay the cost of fees described in subsection (a) to the



1 health facility at the time the person submits an application  
 2 for employment; or  
 3 (2) to reimburse the health facility for the cost of fees  
 4 described in subsection (a).

5 **Sec. 7. A person who:**

6 (1) operates a health facility; and  
 7 (2) violates section 4 or 5 of this chapter;  
 8 **commits a Class A infraction.**

9 **Sec. 8. A person (other than a person denied employment or**  
 10 **dismissed under this chapter or against whom a finding is made for**  
 11 **the registry of nurse aides under 42 CFR 483.156) who in good**  
 12 **faith:**

13 (1) denies employment to an individual or dismisses an  
 14 individual from employment under this chapter;  
 15 (2) testifies or participates in an investigation or an  
 16 administrative or a judicial proceeding arising from:  
 17 (A) this chapter; or  
 18 (B) 42 CFR 483 regarding the registry of nurse aides; or  
 19 (3) makes a report to the state department or the registry of  
 20 nurse aides;

21 **is immune from both civil and criminal liability arising from those**  
 22 **actions.**

23 SECTION 6. IC 34-30-2-67.7 IS ADDED TO THE INDIANA  
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 25 [EFFECTIVE JULY 1, 2019]: **Sec. 67.7. IC 16-28-14.7-8 (Concerning**  
 26 **persons for denying or terminating employment of an individual**  
 27 **with a criminal history, or reporting to or participating in the**  
 28 **proceedings of the state department of health or the registry of**  
 29 **nurse aides).**

30 SECTION 7. IC 35-52-16-16.5 IS ADDED TO THE INDIANA  
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 32 [EFFECTIVE JULY 1, 2019]: **Sec. 16.5. IC 16-28-14.7-3 defines a**  
 33 **crime concerning health facilities.**

