

INDIANA OPERATING WHILE INTOXICATED STATUTES

IC 9-30-5

Chapter 5. Operating a Vehicle While Intoxicated

IC 9-30-5-1

Class C misdemeanor; defense

Sec. 1. (a) A person who operates a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol but less than fifteen-hundredths (0.15) gram of alcohol per:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath;

commits a Class C misdemeanor.

(b) A person who operates a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath;

commits a Class A misdemeanor.

(c) A person who operates a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body commits a Class C misdemeanor.

(d) It is a defense to subsection (c) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

As added by P.L.2-1991, SEC.18. Amended by P.L.33-1997, SEC.7; P.L.266-1999, SEC.2; P.L.1-2000, SEC.6; P.L.1-2000, SEC.7; P.L.175-2001, SEC.5.

IC 9-30-5-2

Class A misdemeanor

Sec. 2. (a) Except as provided in subsection (b), a person who operates a vehicle while intoxicated commits a Class C misdemeanor.

(b) An offense described in subsection (a) is a Class A misdemeanor if the person operates a vehicle in a manner that endangers a person.

As added by P.L.2-1991, SEC.18. Amended by P.L.175-2001, SEC.6.

IC 9-30-5-3

Class D felony; previous convictions; passenger less than 18 years of age

Sec. 3. A person who violates section 1 or 2 of this chapter commits a Class D felony if:

(1) the person has a previous conviction of operating while intoxicated that occurred within the five (5) years immediately preceding the occurrence of the violation of section 1 or 2 of this chapter; or

(2) the person:

- (A) is at least twenty-one (21) years of age;
- (B) violates section 1(b) or 2(b) of this chapter; and

(C) operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age.

As added by P.L.2-1991, SEC.18. Amended by P.L.175-2001, SEC.7, P.L.243-2001, SEC.1 and P.L.291-2001, SEC.222; P.L.82-2004, SEC.1.

IC 9-30-5-4

Classification of offense; serious bodily injury

Sec. 4. (a) A person who causes serious bodily injury to another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or

(3) while intoxicated;

commits a Class D felony. However, the offense is a Class C felony if the person has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense.

(b) A person who violates subsection (a) commits a separate offense for each person whose serious bodily injury is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.5; P.L.97-1996, SEC.3; P.L.96-1996, SEC.3; P.L.33-1997, SEC.8; P.L.1-2000, SEC.8; P.L.175-2001, SEC.8; P.L.76-2004, SEC.3.

IC 9-30-5-5

Classification of offense; death

Sec. 5. (a) A person who causes the death of another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or

(3) while intoxicated;

commits a Class C felony. However, the offense is a Class B felony if the person has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense, or if the person operated the motor vehicle when the person knew that the person's driver's license, driving privilege, or permit is suspended or revoked for a previous conviction for operating a vehicle while intoxicated.

(b) A person at least twenty-one (21) years of age who causes the death of another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath; or

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood;
commits a Class B felony.

(c) A person who violates subsection (a) or (b) commits a separate offense for each person whose death is caused by the violation of subsection (a) or (b).

(d) It is a defense under subsection (a)(2) or subsection (b)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice. As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.6; P.L.97-1996, SEC.4; P.L.96-1996, SEC.4; P.L.33-1997, SEC.9; P.L.1-2000, SEC.9; P.L.120-2000, SEC.1; P.L.175-2001, SEC.9; P.L.82-2004, SEC.2; P.L.76-2004, SEC.4; P.L.2-2005, SEC.36.

IC 9-30-5-6

Class C infraction; violation of probationary license

Sec. 6. (a) A person who operates a vehicle in violation of any term of a probationary license issued under this chapter, IC 9-30-6, or IC 9-30-9 commits a Class C infraction.

(b) In addition to any other penalty imposed under this section, the court may suspend the person's driving privileges for a period of not more than one (1) year.

(c) The bureau shall send notice of a judgment entered under this section to the court that granted the defendant probationary driving privileges.

As added by P.L.2-1991, SEC.18.

IC 9-30-5-7

Ignition interlock device offenses; violation of court order

Sec. 7. (a) A person who violates a court order issued under section 16 of this chapter commits a Class A misdemeanor.

(b) Except as provided in subsection (c), a person who knowingly assists another person who is restricted to the use of an ignition interlock device to violate a court order issued under this chapter commits a Class A misdemeanor.

(c) Subsection (b) does not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device:

(1) is done for the purpose of safety or mechanical repair of the device or the vehicle; and

(2) the restricted person does not operate the vehicle.

(d) A person who, except in an emergency, knowingly rents, leases, or loans a motor vehicle that is not equipped with a functioning ignition interlock device to a person who is restricted under a court order to the use of a vehicle with an ignition interlock device commits a Class A infraction.

(e) A person who is subject to an ignition interlock device restriction and drives another vehicle in an emergency situation must notify the court of the emergency within

twenty-four (24) hours.

As added by P.L.2-1991, SEC.18. Amended by P.L.131-1993, SEC.1.

IC 9-30-5-8

Ignition interlock device offenses; tampering

Sec. 8. (a) A person who knowingly or intentionally tampers with an ignition interlock device for the purpose of:

- (1) circumventing the ignition interlock device; or
- (2) rendering the ignition interlock device inaccurate or inoperative;

commits a Class B misdemeanor.

(b) A person who solicits another person to:

- (1) blow into an ignition interlock device; or
- (2) start a motor vehicle equipped with an ignition interlock device;

for the purpose of providing an operable vehicle to a person who is restricted to driving a vehicle with the ignition interlock device commits a Class C infraction.

As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.5.

IC 9-30-5-8.5

Class C infraction; person less than 21 years of age driving under the influence

Sec. 8.5. (a) A person who:

- (1) is less than twenty-one (21) years of age; and
- (2) operates a vehicle with an alcohol concentration equivalent to at least two-hundredths (0.02) gram but less than eight-hundredths (0.08) gram of alcohol per:
 - (A) one hundred (100) milliliters of the person's blood; or
 - (B) two hundred ten (210) liters of the person's breath;

commits a Class C infraction.

(b) In addition to the penalty imposed under this section, the court may recommend the suspension of the driving privileges of the operator of the vehicle for not more than one (1) year.

As added by P.L.96-1996, SEC.5. Amended by P.L.33-1997, SEC.10; P.L.1-2000, SEC.10; P.L.175-2001, SEC.10.

IC 9-30-5-9

Operation of vehicle in place other than public highway

Sec. 9. It is not a defense in an action under this chapter that the accused person was operating a vehicle in a place other than on a highway.

As added by P.L.2-1991, SEC.18.

IC 9-30-5-9.5

Probationary driving privileges; inapplicability to holder of a commercial driver's license

Sec. 9.5. After June 30, 2005, probationary driving privileges under this chapter do not apply to a person who holds a commercial driver's license in accordance with the federal Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159.113 Stat. 1748).

As added by P.L.219-2003, SEC.7.

IC 9-30-5-10

Suspension of driving privileges; probationary driving privileges

Sec. 10. (a) In addition to a criminal penalty imposed for an offense under this chapter or IC 14-15-8, the court shall, after reviewing the person's bureau driving record and other relevant evidence, recommend the suspension of the person's driving privileges for the fixed period of time specified under this section.

(b) If the court finds that the person:

(1) does not have a previous conviction of operating a vehicle or a motorboat while intoxicated; or

(2) has a previous conviction of operating a vehicle or a motorboat while intoxicated that occurred at least ten (10) years before the conviction under consideration by the court;

the court shall recommend the suspension of the person's driving privileges for at least ninety (90) days but not more than two (2) years.

(c) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred more than five (5) years but less than ten (10) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(d) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(e) If the conviction under consideration by the court is for an offense under:

(1) section 4 of this chapter;

(2) section 5 of this chapter;

(3) IC 14-15-8-8(b); or

(4) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

(f) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, in which a vehicle was used in the offense, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

As added by P.L.2-1991, SEC.18. Amended by P.L.131-1993, SEC.2; P.L.64-1994, SEC.3; P.L.57-1995, SEC.3; P.L.76-2004, SEC.6.

IC 9-30-5-11

Probationary driving privileges; restrictions; commencement date

Sec. 11. (a) If a court grants a person probationary driving privileges under section 12 of this chapter, the person may operate a vehicle only as follows:

- (1) To and from the person's place of employment.
- (2) For specific purposes in exceptional circumstances.
- (3) To and from a court-ordered treatment program.

(b) If the court grants the person probationary driving privileges under section 12(a) of this chapter, that part of the court's order granting probationary driving privileges does not take effect until the person's driving privileges have been suspended for at least thirty (30) days under IC 9-30-6-9.

(c) The court shall notify a person who is granted probationary driving privileges of the following:

(1) That the probationary driving period commences when the bureau issues the probationary license.

(2) That the bureau may not issue a probationary license until the bureau receives a reinstatement fee from the person, if applicable, and the person otherwise qualifies for a license.

As added by P.L.2-1991, SEC.18. Amended by P.L.153-2005, SEC.3.

IC 9-30-5-12

Probationary driving privileges; grounds

Sec. 12. (a) If:

(1) a court recommends suspension of a person's driving privileges under section 10(b) of this chapter for an offense committed under this chapter; and

(2) the person did not refuse to submit to a chemical test offered under IC 9-30-6-2 during the investigation of the offense;

the court may stay the execution of the suspension of the person's driving privileges and grant the person probationary driving privileges for one hundred eighty (180) days.

(b) An order for probationary privileges must be issued in accordance with sections 11 and 13 of this chapter.

(c) If:

(1) a court recommends suspension of a person's driving privileges under section 10(c), 10(d), or 10(e) of this chapter for an offense committed under this chapter; and

(2) the period of suspension recommended by the court exceeds the minimum permissible fixed period of suspension specified under section 10 of this chapter; the court may stay the execution of that part of the suspension that exceeds the minimum fixed period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(d) In addition to the other requirements of this section, if a person's driving privileges are suspended or revoked under section 10(f) of this chapter, a court must find that compelling circumstances warrant the issuance of probationary driving privileges.

(e) Before a court may grant probationary driving privileges under this section, the person to whom the probationary driving privileges will be granted must meet the burden of proving eligibility to receive probationary driving privileges.

As added by P.L.2-1991, SEC.18. Amended by P.L.64-1994, SEC.4.

IC 9-30-5-13

Order for probationary driving privileges; contents; violation of terms of order

Sec. 13. (a) An order for probationary driving privileges granted under this chapter must include the following:

(1) A requirement that the person may not violate a traffic law.

(2) A restriction of a person's driving privileges providing for automatic execution of the suspension of driving privileges if an order is issued under subsection (b).

(3) A written finding by the court that the court has reviewed the person's driving record and other relevant evidence and found that the person qualifies for a probationary license under this chapter.

(4) Other reasonable terms of probation.

(b) If the court finds that the person has violated the terms of the order granting probationary driving privileges, the court shall order execution of that part of the sentence concerning the suspension of the person's driving privileges.

As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.7.

IC 9-30-5-14

Suspension of driving privileges; credit; period; termination

Sec. 14. (a) A person whose driving privileges are suspended under section 10 of this chapter:

(1) is entitled to credit for any days during which the license was suspended under IC 9-30-6-9(c); and

(2) may not receive any credit for days during which the person's driving privileges were suspended under IC 9-30-6-9(b).

(b) A period of suspension of driving privileges imposed under section 10 of this chapter must be consecutive to any period of suspension imposed under IC 9-30-6-9(b). However, if the court finds in the sentencing order that it is in the best interest of society, the court may terminate all or any part of the remaining suspension under IC 9-30-6-9(b). As added by P.L.2-1991, SEC.18. Amended by P.L.2-2005, SEC.37.

IC 9-30-5-15

Imprisonment; community restitution or service; alcohol or drug abuse treatment

Sec. 15. (a) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

(A) that the person be imprisoned for at least five (5) days; or

(B) the person to perform at least one hundred eighty (180) hours of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;

if the person has one (1) previous conviction of operating while intoxicated.

(b) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

(A) that the person be imprisoned for at least ten (10) days; or
(B) the person to perform at least three hundred sixty (360) hours of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;

if the person has at least two (2) previous convictions of operating while intoxicated.

(c) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence imposed under this section may not be suspended. The court may require that the person serve the term of imprisonment in an appropriate facility at whatever time or intervals (consecutive or intermittent) determined appropriate by the court. However:

(1) at least forty-eight (48) hours of the sentence must be served consecutively; and

(2) the entire sentence must be served within six (6) months after the date of sentencing.

(d) Notwithstanding IC 35-50-6, a person does not earn credit time while serving a sentence imposed under this section.

As added by P.L.2-1991, SEC.18. Amended by P.L.266-1999, SEC.3; P.L.32-2000, SEC.2; P.L.85-2004, SEC.48.

IC 9-30-5-16

Probationary driving privileges; ignition interlock device; alcohol treatment program

Sec. 16. (a) Except as provided in subsections (b) and (c), the court may, in granting probationary driving privileges under this chapter, also order that the probationary driving privileges include the requirement that a person may not operate a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(b) An order granting probationary driving privileges:

(1) under:

(A) section 12(a) of this chapter, if the person has a previous conviction that occurred at least ten (10) years before the conviction under consideration by the court; or

(B) section 12(c) of this chapter; or

(2) to a person who has a prior unrelated conviction for an offense under this chapter of which the consumption of alcohol is an element; must prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. However, a court is not required to order the installation of an ignition interlock device for a person described in subdivision (1) or (2) if the person is successfully participating in a court supervised alcohol treatment program in which the person is taking disulfiram or a similar substance that the court determines is effective in treating alcohol abuse.

(c) A court may not order the installation of an ignition interlock device on a vehicle operated by an employee to whom any of the following apply:

(1) Has been convicted of violating section 1 or 2 of this chapter.

(2) Is employed as the operator of a vehicle owned, leased, or provided by the employee's employer.

(3) Is subject to a labor agreement that prohibits an employee who is convicted of an

alcohol related offense from operating the employer's vehicle.
As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.8.

IC 9-30-5-17

Restitution to emergency medical services restitution fund

Sec. 17. (a) In addition to:

- (1) a sentence imposed under this chapter for a felony or misdemeanor; and
- (2) an order for restitution to a victim;

the court shall, without placing the individual on probation, or as a condition of probation, order the individual to make restitution to the emergency medical services restitution fund under IC 16-31-8 for emergency medical services necessitated because of the offense committed by the individual.

(b) An order for restitution under this section may not be for more than one thousand dollars (\$1,000).

(c) In making an order for restitution under this section, the court shall consider the following:

- (1) The schedule of costs submitted to the court under IC 16-31-8-5.

(2) The amount of restitution that the individual is or will be able to pay.

(d) The court shall immediately forward a copy of an order for restitution made under this section to the Indiana emergency medical services commission under IC 16-31-8.

As added by P.L.2-1991, SEC.18. Amended by P.L.2-1993, SEC.68.

9-30-6

Chapter 6. Implied Consent; Administrative and Evidentiary Matters

IC 9-30-6-1

Chemical test for intoxication; implied consent

Sec. 1. A person who operates a vehicle impliedly consents to submit to the chemical test provisions of this chapter as a condition of operating a vehicle in Indiana.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-2

Probable cause; offer of test; alternative tests; requirement to submit

Sec. 2. (a) A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter, IC 9-30-5, or IC 9-30-9, or a violation under IC 9-30-15 shall offer the person the opportunity to submit to a chemical test.

(b) A law enforcement officer:

- (1) is not required to offer a chemical test to an unconscious person; and
- (2) may offer a person more than one (1) chemical test under this chapter.

(c) A test administered under this chapter must be administered within three (3) hours after the law enforcement officer had probable cause to believe the person committed an offense under IC 9-30-5 or a violation under IC 9-30-15.

(d) A person must submit to each chemical test offered by a law enforcement officer in order to comply with the implied consent provisions of this chapter.

As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.7.

IC 9-30-6-3

Arrest; probable cause; evidence of intoxication; refusal to submit to test; admissibility

Sec. 3. (a) If a law enforcement officer has probable cause to believe that a person committed an offense under IC 9-30-5, the person may be arrested. However, if the chemical test results in prima facie evidence that the person is intoxicated, the person shall be arrested for an offense under this chapter, IC 9-30-5, or IC 9-30-9.

(b) At any proceeding under this chapter, IC 9-30-5, or IC 9-30-9, a person's refusal to submit to a chemical test is admissible into evidence.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-4

Bureau rules

Sec. 4. The bureau shall adopt rules under IC 4-22-2 necessary to carry out this chapter, IC 9-30-5, IC 9-30-9, or IC 9-30-15.

As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.8.

IC 9-30-6-5

Breath test operators, equipment, and chemicals; certification; rules; certificates as prima facie evidence

Sec. 5. (a) The director of the department of toxicology of the Indiana University school of medicine shall adopt rules under IC 4-22-2 concerning the following:

(1) Standards and regulations for the:

- (A) selection;
- (B) training; and
- (C) certification;

of breath test operators.

(2) Standards and regulations for the:

- (A) selection; and
- (B) certification;

of breath test equipment and chemicals.

(3) The certification of the proper technique for administering a breath test.

(b) Certificates issued in accordance with rules adopted under subsection (a) shall be sent to the clerk of the circuit court in each county where the breath test operator, equipment, or chemicals are used to administer breath tests. However, failure to send a certificate does not invalidate any test.

(c) Certified copies of certificates issued in accordance with rules adopted under subsection (a):

(1) are admissible in a proceeding under this chapter, IC 9-30-5, IC 9-30-9, or IC 9-30-15;

(2) constitute prima facie evidence that the equipment or chemical:

(A) was inspected and approved by the department of toxicology on the date specified on the certificate copy; and

(B) was in proper working condition on the date the breath test was administered if the date of approval is not more than one hundred eighty (180) days before the date of the breath test;

(3) constitute prima facie evidence of the approved technique for administering a

breath test; and

(4) constitute prima facie evidence that the breath test operator was certified by the department of toxicology on the date specified on the certificate.

(d) Results of chemical tests that involve an analysis of a person's breath are not admissible in a proceeding under this chapter, IC 9-30-5, IC 9-30-9, or IC 9-30-15 if:

- (1) the test operator;
- (2) the test equipment;
- (3) the chemicals used in the test, if any; or
- (4) the techniques used in the test;

have not been approved in accordance with the rules adopted under subsection (a).

As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.9.

IC 9-30-6-6

Chemical tests on blood, urine, or other bodily substance; disclosure of results; no privilege or liability; results admissible; limitation

Sec. 6. (a) 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, 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 section; or

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

shall deliver the sample or disclose the results of the test to a law enforcement officer who requests the sample or results as a part of a criminal investigation. Samples 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 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 a blood, urine, or other bodily substance sample in accordance with this section.

(3) 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 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.

(c) For the purposes of this chapter, IC 9-30-5, or IC 9-30-9:

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

(2) 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.

(e) The 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.

(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 transported to a hospital or other medical facility.

(C) 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.

(D) 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) If the person:

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

(2) resists 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 obtain a sample, in the taking of the sample.

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

(j) A law enforcement officer may transport the person to a place other than a hospital where the sample may be obtained by any of the following persons who are trained in obtaining bodily substance samples and who have been engaged to 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 emergency medical technician-basic advanced (as defined in IC 16-18-2-112.5).

(5) An emergency medical technician-intermediate (as defined in IC 16-18-2-112.7).

(6) A paramedic (as defined in IC 16-18-2-266).

As added by P.L.2-1991, SEC.18. Amended by P.L.2-1993, SEC.69; P.L.132-1993, SEC.1; P.L.1-1994, SEC.40; P.L.205-2003, SEC.3.

IC 9-30-6-7

Refusal to submit to chemical tests or test results in prima facie evidence of intoxication; duties of arresting officer

Sec. 7. (a) If a person refuses to submit to a chemical test, the arresting officer shall inform the person that refusal will result in the suspension of the person's driving privileges.

(b) If a person refuses to submit to a chemical test after having been advised that the refusal will result in the suspension of driving privileges or submits to a chemical test that results in prima facie evidence of intoxication, the arresting officer shall do the following:

(1) Obtain the person's driver's license or permit if the person is in possession of the document and issue a receipt valid until the initial hearing of the matter held under IC 35-33-7-1.

(2) Submit a probable cause affidavit to the prosecuting attorney of the county in which the alleged offense occurred.

(3) Send a copy of the probable cause affidavit submitted under subdivision (2) to the bureau.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-8

Probable cause; suspension of driving privileges; ignition interlock device

Sec. 8. (a) Whenever a judicial officer has determined that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, the clerk of the court shall forward:

(1) a copy of the affidavit; and

(2) a bureau certificate as described in section 16 of this chapter; to the bureau.

(b) The probable cause affidavit required under section 7(b)(2) of this chapter must do the following:

(1) Set forth the grounds for the arresting officer's belief that there was probable cause that the arrested person was operating a vehicle in violation of IC 9-30-5 or a motorboat in violation of IC 14-15-8.

(2) State that the person was arrested for a violation of IC 9-30-5 or operating a motorboat in violation of IC 14-15-8.

(3) State whether the person:

(A) refused to submit to a chemical test when offered; or

(B) submitted to a chemical test that resulted in prima facie evidence that the person was intoxicated.

(4) Be sworn to by the arresting officer.

(c) Except as provided in subsection (d), if it is determined under subsection (a) that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, at the initial hearing of the matter held under IC 35-33-7-1:

(1) the court shall recommend immediate suspension of the person's driving privileges to take effect on the date the order is entered;

(2) the court shall order the person to surrender all driver's licenses, permits, and receipts; and

(3) the clerk shall forward the following to the bureau:

(A) The person's license or permit surrendered under this section or section 3 or 7 of this chapter.

(B) A copy of the order recommending immediate suspension of driving privileges.

(d) If it is determined under subsection (a) that there is probable cause to believe that a person violated IC 9-30-5, the court may, as an alternative to a license suspension under subsection (c)(1), issue an order recommending that the person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 until the bureau is notified by a court that the criminal charges against the person have been resolved.

As added by P.L.2-1991, SEC.18. Amended by P.L.57-1995, SEC.4; P.L.76-2004, SEC.9.

IC 9-30-6-8.5

Ignition interlock device; notice

Sec. 8.5. (a) If the bureau receives an order recommending use of an ignition interlock device under section 8(d) of this chapter, the bureau shall immediately do the following:

(1) Mail a notice to the person's last known address stating that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending use of an ignition interlock device;
whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

(b) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this section is not subject to any administrative adjudication under IC 4-21.5.

As added by P.L.76-2004, SEC.10.

IC 9-30-6-8.7

Offenses; operating motor vehicle without ignition interlock device

Sec. 8.7. (a) A person commits a Class B infraction if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device;
and

(2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 8(d) of this chapter.

(b) A person commits a Class B misdemeanor if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device;
and

(2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section

8(d) of this chapter.

As added by P.L.76-2004, SEC.11.

IC 9-30-6-9

Suspension of driving privileges; duties of bureau; limitations; nature of action; suspension and reinstatement

Sec. 9. (a) This section does not apply if an ignition interlock device order is issued under section 8(d) of this chapter.

(b) If the affidavit under section 8(b) of this chapter states that a person refused to submit to a chemical test, the bureau shall suspend the driving privileges of the person:

(1) for one (1) year; or

(2) until the suspension is ordered terminated under IC 9-30-5.

(c) If the affidavit under section 8(b) of this chapter states that a chemical test resulted in prima facie evidence that a person was intoxicated, the bureau shall suspend the driving privileges of the person:

(1) for one hundred eighty (180) days; or

(2) until the bureau is notified by a court that the charges have been disposed of; whichever occurs first.

(d) Whenever the bureau is required to suspend a person's driving privileges under this section, the bureau shall immediately do the following:

(1) Mail a notice to the person's last known address that must state that the person's driving privileges will be suspended for a specified period, commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending suspension of the person's driving privileges under section 8(c) of this chapter; whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

(e) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this article is not subject to any administrative adjudication under IC 4-21.5.

(f) If a person is granted probationary driving privileges under IC 9-30-5 and the bureau has not received the probable cause affidavit described in section 8(b) of this chapter, the bureau shall suspend the person's driving privileges for a period of thirty (30) days. After the thirty (30) day period has elapsed, the bureau shall, upon receiving a reinstatement fee, if applicable, from the person who was granted probationary driving privileges, issue the probationary license if the person otherwise qualifies for a license.

(g) If the bureau receives an order granting probationary driving privileges to a person who has a prior conviction for operating while intoxicated, the bureau shall do the following:

(1) Issue the person a probationary license and notify the prosecuting attorney of the county from which the order was received that the person is not eligible for a probationary license.

(2) Send a certified copy of the person's driving record to the prosecuting attorney. The prosecuting attorney shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order. If the bureau does not receive a corrected order within sixty (60) days, the bureau shall notify the attorney general, who shall, in accordance with IC 35-

38-1-15, petition the court to correct the court's order.

As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.12; P.L.153-2005, SEC.4.

IC 9-30-6-10

Judicial hearing; petition; issues; findings; county prosecutor to represent state; burden of proof; appeal

Sec. 10. (a) A person against whom an ignition interlock device order has been issued under section 8.5 of this chapter or whose driving privileges have been suspended under section 9 of this chapter is entitled to a prompt judicial hearing. The person may file a petition that requests a hearing:

(1) in the court where the charges with respect to the person's operation of a vehicle are pending; or

(2) if charges with respect to the person's operation of a vehicle have not been filed, in any court of the county where the alleged offense or refusal occurred that has jurisdiction over crimes committed in violation of IC 9-30-5.

(b) The petition for review must:

(1) be in writing;

(2) be verified by the person seeking review; and

(3) allege specific facts that contradict the facts alleged in the probable cause affidavit.

(c) The hearing under this section shall be limited to the following issues:

(1) Whether the arresting law enforcement officer had probable cause to believe that the person was operating a vehicle in violation of IC 9-30-5.

(2) Whether the person refused to submit to a chemical test offered by a law enforcement officer.

(d) If the court finds:

(1) that there was no probable cause; or

(2) that the person's driving privileges were suspended under section 9(b) of this chapter and that the person did not refuse to submit to a chemical test; the court shall order the bureau to rescind the ignition interlock device requirement or reinstate the person's driving privileges.

(e) The prosecuting attorney of the county in which a petition has been filed under this chapter shall represent the state on relation of the bureau with respect to the petition.

(f) The petitioner has the burden of proof by a preponderance of the evidence.

(g) The court's order is a final judgment appealable in the manner of civil actions by either party. The attorney general shall represent the state on relation of the bureau with respect to the appeal. As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.13; P.L.2-2005, SEC.38.

IC 9-30-6-11

Reinstatement of driving privileges; rescission of ignition interlock device requirement; conditions; findings of fact

Sec. 11. (a) Notwithstanding any other provision of this chapter, IC 9-30-5, or IC 9-30-9, the court shall order the bureau to rescind an ignition interlock device requirement or reinstate the driving privileges of a person if:

(1) all of the charges under IC 9-30-5 have been dismissed and the prosecuting attorney states on the record that no charges will be refiled against the person;

(2) the court finds the allegations in a petition filed by a defendant under section 18 of this chapter are true; or

(3) the person:

(A) did not refuse to submit to a chemical test offered as a result of a law enforcement officer having probable cause to believe the person committed the offense charged; and

(B) has been found not guilty of all charges by a court or by a jury.

(b) The court's order must contain findings of fact establishing that the requirements for reinstatement described in subsection (a) have been met.

(c) A person whose driving privileges are reinstated under this section is not required to pay a reinstatement fee.

As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.14.

IC 9-30-6-12

Suspension of driving privileges recommended by court; compliance; limitation

Sec. 12. (a) If a court recommends suspension of the driving privileges under this chapter, IC 9-30-5, or IC 9-30-9:

(1) the bureau shall comply with the recommendation of suspension, and the driving privileges of the person remain suspended for the period set by the court; and

(2) the person shall surrender to the court all licenses, permits, or receipts issued to the person, and the court shall immediately forward the licenses, permits, or receipts to the bureau with the abstract of conviction or judgment.

(b) During the three (3) years following the termination of the suspension the person's driving privileges remain suspended until the person provides proof of financial responsibility in force under IC 9-25.

(c) If at any time during the three (3) years following the termination of the suspension imposed under subsection (a) a person who has provided proof of financial responsibility under IC 9-25 fails to maintain the proof, the bureau shall suspend the person's driving privileges until the person again provides proof of financial responsibility under IC 9-25.

(d) An agency action under this section is not subject to IC 4-21.5.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-13

Reinstatement of driving privileges; rescission of ignition interlock device requirement; duties of bureau

Sec. 13. If a court orders the bureau to rescind an ignition interlock device requirement or reinstate a person's driving privileges under this article, the bureau shall comply with the order. Unless the order for reinstatement is issued under section 11(2) of this chapter, the bureau shall also do the following:

(1) Remove any record of the ignition interlock device requirement or suspension from the bureau's recordkeeping system.

(2) Reinstate the privileges without cost to the person.

As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.15.

IC 9-30-6-13.5

Removal of suspension from record

Sec. 13.5. Whenever a case filed under IC 9-30-5 is terminated in favor of the defendant and the defendant's driving privileges were suspended under section 9(c) of this chapter, the bureau shall remove any record of the suspension, including the reason for suspension, from the defendant's official driving record.

As added by P.L.103-1991, SEC.3. Amended by P.L.2-2005, SEC.39.

IC 9-30-6-14

Certified copies of driving and court records as prima facie evidence

Sec. 14. In a proceeding under this article:

- (1) a certified copy of a person's driving record obtained from the bureau; or
- (2) a certified copy of a court record concerning a previous conviction;

constitutes prima facie evidence that the person has a previous conviction of operating while intoxicated.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-15

Evidence of blood alcohol content shown by chemical tests admissible

Sec. 15. (a) At any proceeding concerning an offense under IC 9-30-5 or a violation under IC 9-30-15, evidence of the alcohol concentration that was in the blood of the person charged with the offense:

- (1) at the time of the alleged violation; or
- (2) within the time allowed for testing under section 2 of this chapter;

as shown by an analysis of the person's breath, blood, urine, or other bodily substance is admissible.

(b) If, in a prosecution for an offense under IC 9-30-5, evidence establishes that:

(1) a chemical test was performed on a test sample taken from the person charged with the offense within the period of time allowed for testing under section 2 of this chapter; and

(2) the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood at the time the test sample was taken; or

(B) two hundred ten (210) liters of the person's breath;

the trier of fact shall presume that the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, this presumption is rebuttable.

(c) If evidence in an action for a violation under IC 9-30-5-8.5 establishes that:

(1) a chemical test was performed on a test sample taken from the person charged with the violation within the time allowed for testing under section 2 of this chapter; and

(2) the person charged with the violation:

(A) was less than twenty-one (21) years of age at the time of the alleged violation;

and

(B) had an alcohol concentration equivalent to at least two-hundredths (0.02) gram of alcohol per:

(i) one hundred (100) milliliters of the person's blood; or

(ii) two hundred ten (210) liters of the person's breath;

at the time the test sample was taken;

the trier of fact shall presume that the person charged with the violation had an alcohol concentration equivalent to at least two-hundredths (0.02) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, the presumption is rebuttable.

(d) If, in an action for a violation under IC 9-30-15, evidence establishes that:

(1) a chemical test was performed on a test sample taken from the person charged with the offense within the time allowed for testing under section 2 of this chapter; and

(2) the person charged with the offense had an alcohol concentration equivalent to at least four-hundredths (0.04) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

at the time the test sample was taken;

the trier of fact shall presume that the person charged with the offense had an alcohol concentration equivalent to at least four-hundredths (0.04) gram of alcohol by weight in grams per one

hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, this presumption is rebuttable.

As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.10; P.L.96-1996, SEC.6; P.L.33-1997, SEC.11; P.L.1-2000, SEC.11; P.L.175-2001, SEC.11.

IC 9-30-6-16

Bureau certificate; form and contents

Sec. 16. The bureau certificate must contain the following information and may be substantially in the following form:

BUREAU OF MOTOR VEHICLES

CERTIFICATE

Date of Arrest Time Driver's License No. License State

a.m.

/ / p.m.

Name: (first) (M.I.) (last) Date of Birth

/ /

CURRENT Address (street, city, state, zip)

Court Code Cause Number Sex Weight Height Eyes Hair
The above motorist BUREAU USE ONLY

REFUSED alcohol test
FAILED alcohol test 0.0%
Court Determination

It has been determined there was probable cause the defendant violated IC 9-30-5 this _____ day of _____, 20__ and that charges are pending herein.

_____ Court

_____ County

Judge's Signature

As added by P.L.2-1991, SEC.18. Amended by P.L.2-2005, SEC.40.

IC 9-30-6-17

Trial date; notice; application

Sec. 17. (a) At least ten (10) days before the scheduled trial date of a person charged with a violation of IC 9-30-5, the prosecuting attorney shall notify any person who suffered bodily injury as a result of the alleged offense of the scheduled trial date. The notice must include information concerning the time and place of the trial.

(b) If the injured person died as a result of the alleged offense, the notice required under subsection (a) shall be given to the deceased person's parents, spouse, and children.

(c) This section applies only if the defendant's trial occurs more than ten (10) days after the alleged offense.

(d) A prosecuting attorney's failure to comply with this section is not grounds for postconviction relief.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-18

Early trial request; delay in trial; reinstatement of driving privileges; rescission of ignition interlock device requirement

Sec. 18. (a) A person against whom an ignition interlock device order has been issued under section 8.5 of this chapter or whose driving privileges have been suspended under section 9(c) of this chapter is entitled to rescission of the ignition interlock device requirement or reinstatement of driving privileges if the following occur:

(1) After a request for an early trial is made by the person at the initial hearing on the charges, a trial or other disposition of the charges for which the person was arrested under IC 9-30-5 is not held within ninety (90) days after the date of the person's initial hearing on the charges.

(2) The delay in trial or disposition of the charges is not due to the person arrested under IC 9-30-5.

(b) A person who desires rescission of the ignition interlock device requirement or reinstatement of driving privileges under this section must file a verified petition in the

court where the charges against the petitioner are pending. The petition must allege the following:

(1) The date of the petitioner's arrest under IC 9-30-5.

(2) The date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(3) The date set for trial or other disposition of the matter.

(4) A statement averring the following:

(A) That the petitioner requested an early trial of the matter at the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(B) The trial or disposition date set by the court is at least ninety (90) days after the date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(C) The delay in the trial or disposition is not due to the petitioner.

(c) Upon the filing of a petition under this section, the court shall immediately examine the record of the court to determine whether the allegations in the petition are true.

(d) If the court finds the allegations of a petition filed under this section are true, the court shall order rescission of the ignition interlock device requirement or reinstatement of the petitioner's driving privileges under section 11 of this chapter. The reinstatement must not take effect until ninety (90) days after the date of the petitioner's initial hearing. As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.16; P.L.2-2005, SEC.41

IC 9-30-7

Chapter 7. Implied Consent in Accidents Involving Serious Injury or Death

IC 9-30-7-0.5

Inapplicability to operator of personal assistive mobility device

Sec. 0.5. This chapter does not apply to the operator of an electric personal assistive mobility device.

As added by P.L.143-2002, SEC.9.

IC 9-30-7-1

Definitions

Sec. 1. (a) As used in this chapter, "portable breath test" means a hand held apparatus that measures the alcohol concentration in a breath sample delivered by a person into the mouthpiece of the apparatus.

(b) As used in this chapter, "fatal accident" means an accident, a collision, or other occurrence that involves at least one (1) vehicle and that results in:

(1) death; or

(2) bodily injury that gives a law enforcement officer reason to believe that the death of at least one (1) person is imminent.

As added by P.L.2-1991, SEC.18. Amended by P.L.275-2001, SEC.1.

IC 9-30-7-2

Implied consent to portable breath test or chemical test

Sec. 2. A person who operates a vehicle impliedly consents to submit to the portable

breath test or chemical test under this chapter as a condition of operating a vehicle in Indiana. A person must submit to each portable breath test or chemical test offered by a law enforcement officer under this chapter to comply with this chapter.

As added by P.L.2-1991, SEC.18. Amended by P.L.275-2001, SEC.2.

IC 9-30-7-3

Offer of test; administration of test

Sec. 3. (a) A law enforcement officer shall offer a portable breath test or chemical test to any person who the officer has reason to believe operated a vehicle that was involved in a fatal accident or an accident involving serious bodily injury. If:

(1) the results of a portable breath test indicate the presence of alcohol;

(2) the results of a portable breath test do not indicate the presence of alcohol but the law enforcement officer has probable cause to believe the person is under the influence of a controlled substance or another drug; or

(3) the person refuses to submit to a portable breath test;

the law enforcement officer shall offer a chemical test to the person.

(b) A law enforcement officer may offer a person more than one (1) portable breath test or chemical test under this section. However, all chemical tests must be administered within three (3) hours after

the fatal accident or the accident involving serious bodily injury.

(c) It is not necessary for a law enforcement officer to offer a portable breath test or chemical test to an unconscious person.

As added by P.L.2-1991, SEC.18. Amended by P.L.275-2001, SEC.3.

IC 9-30-7-4

Breath analysis; blood, urine, or other bodily substance; testing requirements

Sec. 4. (a) If a chemical test conducted under this chapter involves an analysis of breath, the test must comply with the requirements under IC 9-30-6-5.

(b) IC 9-30-6-6 applies if a physician or a person trained in obtaining bodily substance samples who is acting under the direction of or under a protocol prepared by a physician or who has been engaged to obtain bodily substance samples:

(1) obtains a blood, urine, or other bodily substance sample from a person at the request of a law enforcement officer who acts under this section; or

(2) performs a chemical test on blood, urine, or another bodily substance obtained from a person under this section.

As added by P.L.2-1991, SEC.18.

IC 9-30-7-5

Refusal to submit to test; Class C infraction; suspension of license

Sec. 5. (a) A person who refuses to submit to a portable breath test or chemical test offered under this chapter commits a Class C infraction.

(b) In addition to any other penalty imposed, the court may suspend the person's driving privileges for a period of not more than one (1) year.