

## **IC 9-30-5**

### **Chapter 5. Operating a Vehicle While Intoxicated**

#### **IC 9-30-5-0.1**

##### **Repealed**

*(As added by P.L.220-2011, SEC.229. Repealed by P.L.63-2012, SEC.14.)*

#### **IC 9-30-5-0.2**

##### **Application of certain amendments to prior law**

Sec. 0.2. The amendments made to IC 33-19-6-10 (before its repeal, now codified at IC 33-37-5-10) by P.L.85-1998 apply to findings under this chapter made after June 30, 1998, regardless of when the action was filed.

*As added by P.L.220-2011, SEC.230.*

#### **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**

#### **Level 6 or Level 5 felony; previous convictions; passenger less than 18 years of age**

Sec. 3. (a) Except as provided in subsection (b), a person who violates section 1 or 2 of this chapter commits a Level 6 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.

(b) A person who violates section 1 or 2 of this chapter or subsection (a)(2) commits a Level 5 felony if:

(1) the person has a previous conviction of operating while intoxicated causing death (IC 9-30-5-5); or

(2) the person has a previous conviction of operating while intoxicated causing serious bodily injury (IC 9-30-5-4).

*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; P.L.126-2008, SEC.9; P.L.158-2013, SEC.159.*

### **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 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 Level 6 felony. However, the offense is a Level 5 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; P.L.125-2012, SEC.335; P.L.158-2013, SEC.160.*

### **IC 9-30-5-5**

#### **Classification of offense; death; death of law enforcement animal**

Sec. 5. (a) A person who causes the death of another person when operating a 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 Level 5 felony. However, the offense is a Level 4 felony if the person has a previous conviction of operating while intoxicated within the ten (10) years preceding the commission of the offense, or if the person operated the 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 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 Level 4 felony.

(c) A person who causes the death of a law enforcement animal (as defined in IC 35-46-3-4.5) when operating a 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; 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 Level 6 felony.

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

(e) It is a defense under subsection (a)(2), (b)(2), or (c)(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; P.L.102-2010, SEC.1; P.L.125-2012, SEC.336; P.L.158-2013, SEC.161; P.L.26-2016, SEC.1.*

#### **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.

*As added by P.L.2-1991, SEC.18. Amended by P.L.125-2012, SEC.337.*

#### **IC 9-30-5-7**

##### **Ignition interlock device offenses; violation of court order**

Sec. 7. (a) Except as provided in subsection (b), 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.

(b) Subsection (a) 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.

(c) 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.

(d) 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; P.L.188-2015, SEC.106.*

#### **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 commercial driver's license**

Sec. 9.5. Probationary driving privileges under this chapter do not apply to 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. Amended by P.L.125-2012, SEC.338.*

#### **IC 9-30-5-10**

##### **Repealed**

*(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; P.L.94-2006, SEC.5; P.L.172-2006, SEC.1; P.L.126-2008,*

*SEC.10; P.L.40-2012, SEC.2; P.L.125-2012, SEC.339; P.L.85-2013, SEC.90; P.L.217-2014, SEC.125. Repealed by P.L.188-2015, SEC.107.)*

**IC 9-30-5-11**

*(As added by P.L.2-1991, SEC.18. Amended by P.L.153-2005, SEC.3; P.L.125-2012, SEC.340. Repealed by P.L.217-2014, SEC.126.)*

**IC 9-30-5-12**

**Repealed**

*(As added by P.L.2-1991, SEC.18. Amended by P.L.64-1994, SEC.4; P.L.85-2013, SEC.91. Repealed by P.L.217-2014, SEC.127.)*

**IC 9-30-5-13**

**Repealed**

*(As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.7; P.L.125-2012, SEC.341. Repealed by P.L.217-2014, SEC.128.)*

**IC 9-30-5-14**

**Repealed**

*(As added by P.L.2-1991, SEC.18. Amended by P.L.2-2005, SEC.37; P.L.85-2013, SEC.92. Repealed by P.L.217-2014, SEC.129.)*

**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 35-50-2-2.2 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 good time credit (as defined in IC 35-50-6-0.5) 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; P.L.168-2014, SEC.18; P.L.74-2015, SEC.1.*

### **IC 9-30-5-16**

#### **Specialized driving privileges; ignition interlock device; violation**

Sec. 16. (a) Except as provided in subsection (b), the court may, in granting specialized driving privileges under IC 9-30-16-3 or IC 9-30-16-4, also order that the specialized 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) 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.

(c) A person who knowingly or intentionally violates a court order issued under this section commits a Class A misdemeanor.

*As added by P.L.2-1991, SEC.18. Amended by P.L.76-2004, SEC.8; P.L.172-2006, SEC.2; P.L.217-2014, SEC.130; P.L.113-2014, SEC.31; P.L.188-2015, SEC.108.*

**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.*

**IC 9-30-5-18**

**Driving while intoxicated or alcohol and drug services program; certified abstract of program enrollment**

Sec. 18. (a) If:

- (1) a criminal proceeding for driving while intoxicated under IC 9-30-5 is deferred under IC 12-23-5-1 through IC 12-23-5-9; or
- (2) a child alleged to be a delinquent child based upon the child's violation of IC 9-30-5 voluntarily attends or is ordered by the court under IC 31-37 to attend an alcohol and drug services program;

the court, within ten (10) days after the defendant or child begins the program, shall forward to the bureau a certified abstract of program enrollment.

(b) The abstract must state the following:

- (1) The defendant's or child's name, address, date of birth, and driver's license number.
- (2) The name and location of the alcohol and drug services program that the defendant or child is attending.

*As added by P.L.125-2012, SEC.342.*