
SENATE BILL No. 576

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-24-15-2; IC 9-30-5; IC 35-50-2-2.

Synopsis: Drunk driving. Establishes that a person who operates a motor vehicle while intoxicated with at least one child under the age of 18 in the vehicle commits a nonsuspendible Class D felony. Provides that a person whose license is suspended following a conviction of: (1) operating a motor vehicle while intoxicated with at least one child in the vehicle; (2) operating a motor vehicle while intoxicated with one previous conviction; and (3) operating a motor vehicle with an alcohol concentration greater than 0.15%; may not obtain a probationary license. Requires lifetime license suspension for persons convicted of operating a motor vehicle while intoxicated causing death and for a third or subsequent conviction of operating a motor vehicle while intoxicated. Reduces the availability of hardship licenses for persons with lifetime license suspensions. Increases mandatory jail time for various alcohol offenses.

Effective: July 1, 2001.

Young R Michael

January 23, 2001, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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First Regular Session 112th General Assembly (2001)

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 2000 General Assembly.

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SENATE BILL No. 576



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

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

1 SECTION 1. IC 9-24-15-2 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. **(a) Except as**
 3 **provided in subsections (b) and (c),** if:
 4 (1) an individual's driving license has been suspended under
 5 Indiana motor vehicle law; and
 6 (2) because of the nature of the individual's employment the
 7 suspension would work an undue hardship and burden upon the
 8 individual's family or dependents;
 9 the individual may file a verified petition for a restricted driving permit
 10 for the sole purpose of driving to and from work and in the course of
 11 employment during the period of the driving license suspension.
 12 **(b) A person who is convicted of an offense under**
 13 **IC 9-30-5-3(b) or IC 9-30-5-5 may not file a verified petition for a**
 14 **restricted driving permit if:**
 15 **(1) less than ten (10) years have elapsed after the date the**
 16 **person's license was suspended for the offense; and**
 17 **(2) the person was less than twenty-one (21) years of age when**



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the person committed the offense.
(c) A person who is convicted of an offense under IC 9-30-5-3(b) or IC 9-30-5-5 may not file a verified petition for a restricted driving permit if:

- (1) less than twenty-five (25) years have elapsed after the date the person's license was suspended for the offense; and
- (2) the person was at least twenty-one (21) years of age when the person committed the offense.

SECTION 2. IC 9-30-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) 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 ~~and~~
- ~~(2) the 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 operated a motor vehicle with at least one (1) child less than eighteen (18) years of age in the vehicle.**

(b) A person who violates section 1 or 2 of this chapter commits a Class C felony if the person has at least two (2) prior unrelated convictions for operating while intoxicated.

SECTION 3. IC 9-30-5-5, AS AMENDED BY P.L.120-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: 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 ten-hundredths (0.10) 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 E~~ **Class B** felony. ~~However, the offense is a Class B felony if, within the five (5) years preceding the commission of the offense, the person had a prior unrelated conviction under this chapter.~~

(b) A person who violates subsection (a) commits a separate offense for each person whose death 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.

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1 SECTION 4. IC 9-30-5-10 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) In addition to a
 3 criminal penalty imposed for an offense under this chapter or
 4 IC 14-15-8, the court shall, after reviewing the person's bureau driving
 5 record and other relevant evidence, recommend the suspension of the
 6 person's driving privileges for the fixed period of time specified under
 7 this section.

8 (b) If the court finds that the person:

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

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

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

16 (c) If the court finds that the person has a previous conviction of
 17 operating a vehicle or a motorboat while intoxicated and the previous
 18 conviction occurred more than five (5) years but less than ten (10)
 19 years before the conviction under consideration by the court, the court
 20 shall recommend the suspension of the person's driving privileges for
 21 at least one hundred eighty (180) days but not more than two (2) years.
 22 The court may stay the execution of that part of the suspension that
 23 exceeds the minimum period of suspension and grant the person
 24 probationary driving privileges for a period of time equal to the length
 25 of the stay. If the court grants probationary driving privileges under this
 26 subsection, the court may order that the probationary driving privileges
 27 include the requirement that the person may not operate a motor
 28 vehicle unless the motor vehicle is equipped with a functioning
 29 certified ignition interlock device under IC 9-30-8.

30 (d) If the court finds that the person has a previous conviction of
 31 operating a vehicle or a motorboat while intoxicated and the previous
 32 conviction occurred less than five (5) years before the conviction under
 33 consideration by the court, the court shall recommend the suspension
 34 of the person's driving privileges for at least one (1) year but not more
 35 than two (2) years. ~~The court may stay the execution of that part of the~~
 36 ~~suspension that exceeds the minimum period of suspension and grant~~
 37 ~~the person probationary driving privileges for a period of time equal to~~
 38 ~~the length of the stay. If the court grants probationary driving privileges~~
 39 ~~under this subsection, the court may order that the probationary driving~~
 40 ~~privileges include the requirement that the person may not operate a~~
 41 ~~motor vehicle unless the motor vehicle is equipped with a functioning~~
 42 ~~certified ignition interlock device under IC 9-30-8.~~

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1 (e) If the conviction under consideration by the court is for an
 2 offense under section 1(b) of this chapter, the court shall
 3 recommend the suspension of the person's driving privileges for at
 4 least one hundred eighty (180) days but not more than two (2)
 5 years.

6 (f) If:

7 (1) the conviction under consideration by the court is for an
 8 offense under section 1 or 2 of this chapter; and

9 (2) the court determines that the person operated a vehicle
 10 with at least one (1) child less than eighteen (18) years of age
 11 in the vehicle;

12 the court shall recommend the suspension of the person's driving
 13 privileges for at least one hundred eighty (180) days but not more
 14 than two (2) years.

15 (g) If the conviction under consideration by the court is for an
 16 offense under:

17 (1) section 4 of this chapter;

18 ~~(2) section 5 of this chapter;~~

19 ~~(3) (2) IC 14-15-8-8(b); or~~

20 ~~(4) (3) IC 14-15-8-8(c);~~

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

23 (h) If:

24 (1) the conviction under consideration by the court is for an
 25 offense under section 1 or 2 of this chapter; and

26 (2) the court finds that the person has at least two (2) prior
 27 unrelated convictions for operating while intoxicated;

28 the court shall recommend the lifetime suspension of the person's
 29 driving privileges.

30 (i) If the conviction under consideration by the court is for an
 31 offense under section 5 of this chapter, the court shall recommend
 32 the lifetime suspension of the person's driving privileges.

33 ~~(j) Subject to this section,~~ if the conviction under consideration
 34 by the court is for an offense involving the use of a controlled
 35 substance listed in schedule I, II, III, IV, or V of IC 35-48-2, the court
 36 shall recommend the suspension or revocation of the person's driving
 37 privileges for at least six (6) months.

38 SECTION 5. IC 9-30-5-15, AS AMENDED BY P.L.32-2000,
 39 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2001]: Sec. 15. (a) In addition to any criminal penalty
 41 imposed for an offense under this chapter the court shall:

42 (1) order:

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- 1 (A) that the person be imprisoned for at least five (5) days; ~~or~~
 2 **and**
 3 (B) **that** the person ~~to~~ perform at least thirty (30) days of
 4 community restitution or service; and
 5 (2) order the person to receive an assessment of the person's
 6 degree of alcohol and drug abuse and, if appropriate, to
 7 successfully complete an alcohol or drug abuse treatment
 8 program, including an alcohol deterrent program if the person
 9 suffers from alcohol abuse;
 10 if the person has one (1) previous conviction of operating while
 11 intoxicated.
 12 (b) In addition to any criminal penalty imposed for an offense under
 13 this chapter, the court shall:
 14 (1) order
 15 ~~(A) that the person be imprisoned for at least ten (10) days; or~~
 16 **(90) days; or**
 17 ~~(B) the person to perform at least sixty (60) days of community~~
 18 ~~restitution or service; and~~
 19 (2) order the person to receive an assessment of the person's
 20 degree of alcohol and drug abuse and, if appropriate, to
 21 successfully complete an alcohol or drug abuse treatment
 22 program, including an alcohol deterrent program if the person
 23 suffers from alcohol abuse;
 24 if the person has at least two (2) previous convictions of operating
 25 while intoxicated.
 26 (c) **In addition to any criminal penalty imposed for an offense**
 27 **under this chapter, the court shall:**
 28 **(1) order that the person be imprisoned for at least three (3)**
 29 **days; and**
 30 **(2) order the person to receive an assessment of the person's**
 31 **degree of alcohol and drug abuse and, if appropriate, to**
 32 **successfully complete an alcohol or drug abuse treatment**
 33 **program, including an alcohol deterrent program if the**
 34 **person suffers from alcohol abuse;**
 35 **if the person is convicted of an offense under section 1(b) of this**
 36 **chapter.**
 37 (d) **In addition to any criminal penalty imposed for an offense**
 38 **under this chapter, the court shall:**
 39 **(1) order that the person be imprisoned for at least three (3)**
 40 **days; and**
 41 **(2) order the person to:**
 42 **(A) receive an assessment of the person's degree of alcohol**

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1 **and drug abuse; and**
 2 **(B) if the person suffers from alcohol abuse, successfully**
 3 **complete an alcohol or drug abuse treatment program,**
 4 **including an alcohol deterrent program, if appropriate;**
 5 **if the person is convicted of operating while intoxicated with at**
 6 **least one (1) child less than eighteen (18) years of age in the vehicle.**

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

9 **(1) order that the person be imprisoned for at least three (3)**
 10 **years; and**

11 **(2) order the person to:**

12 **(A) receive an assessment of the person's degree of alcohol**
 13 **and drug abuse; and**

14 **(B) if the person suffers from alcohol abuse, successfully**
 15 **complete an alcohol or drug abuse treatment program,**
 16 **including an alcohol deterrent program, if appropriate;**

17 **if the person is convicted of operating while intoxicated causing**
 18 **death.**

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

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

26 (2) **except as provided in subsection (e)**, the entire sentence
 27 must be served within six (6) months after the date of sentencing.

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

30 SECTION 6. IC 35-50-2-2, AS AMENDED BY P.L.188-1999,
 31 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2001]: Sec. 2. (a) The court may suspend any part of a
 33 sentence for a felony, except as provided in this section or in section
 34 2.1 of this chapter.

35 (b) With respect to the following crimes listed in this subsection, the
 36 court may suspend only that part of the sentence that is in excess of the
 37 minimum sentence:

38 (1) The crime committed was a Class A or Class B felony and the
 39 person has a prior unrelated felony conviction.

40 (2) The crime committed was a Class C felony and less than seven

41 (7) years have elapsed between the date the person was
 42 discharged from probation, imprisonment, or parole, whichever

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1 is later, for a prior unrelated felony conviction and the date the
 2 person committed the Class C felony for which the person is
 3 being sentenced.

4 (3) The crime committed was a Class D felony and less than three
 5 (3) years have elapsed between the date the person was
 6 discharged from probation, imprisonment, or parole, whichever
 7 is later, for a prior unrelated felony conviction and the date the
 8 person committed the Class D felony for which the person is
 9 being sentenced. However, the court may suspend the minimum
 10 sentence for the crime only if the court orders home detention
 11 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
 12 sentence specified for the crime under this chapter.

13 (4) The felony committed was:

14 (A) murder (IC 35-42-1-1);

15 (B) battery (IC 35-42-2-1) with a deadly weapon;

16 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;

17 (D) kidnapping (IC 35-42-3-2);

18 (E) confinement (IC 35-42-3-3) with a deadly weapon;

19 (F) rape (IC 35-42-4-1) as a Class A felony;

20 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
 21 felony;

22 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
 23 felony;

24 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
 25 with a deadly weapon;

26 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
 27 injury;

28 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
 29 or with a deadly weapon;

30 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
 31 weapon;

32 (M) escape (IC 35-44-3-5) with a deadly weapon;

33 (N) rioting (IC 35-45-1-2) with a deadly weapon;

34 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a
 35 Class A felony;

36 (P) dealing in a schedule I, II, or III controlled substance
 37 (IC 35-48-4-2) if the amount of controlled substance involved
 38 has an aggregate weight of three (3) grams or more;

39 (Q) an offense under IC 9-30-5 (operating a vehicle while
 40 intoxicated) and the person who committed the offense has
 41 accumulated at least two (2) prior unrelated convictions under
 42 IC 9-30-5; or

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- 1 **(R) operating a vehicle while intoxicated with at least one**
 2 **(1) child less than eighteen (18) years of age in the vehicle**
 3 **(IC 9-30-5-3-(a)(2)); or**
 4 **(S) aggravated battery (IC 35-42-2-1.5).**
 5 (c) Except as provided in subsection (e), whenever the court
 6 suspends a sentence for a felony, it shall place the person on probation
 7 under IC 35-38-2 for a fixed period to end not later than the date that
 8 the maximum sentence that may be imposed for the felony will expire.
 9 (d) The minimum sentence for a person convicted of voluntary
 10 manslaughter may not be suspended unless the court finds at the
 11 sentencing hearing that the crime was not committed by means of a
 12 deadly weapon.
 13 (e) Whenever the court suspends that part of an offender's (as
 14 defined in IC 5-2-12-4) sentence that is suspendible under subsection
 15 (b), the court shall place the offender on probation under IC 35-38-2 for
 16 not more than ten (10) years.
 17 (f) An additional term of imprisonment imposed under
 18 IC 35-50-2-11 may not be suspended.
 19 (g) A term of imprisonment imposed under IC 35-47-10-6 or
 20 IC 35-47-10-7 may not be suspended if the commission of the offense
 21 was knowing or intentional.
 22 (h) A term of imprisonment imposed for an offense under
 23 IC 35-48-4-6(b)(1)(B) may not be suspended.
 24 SECTION 7. [EFFECTIVE JULY 1, 2001] **IC 9-30-5-3,**
 25 **IC 9-30-5-5, IC 9-30-5-10, IC 9-30-5-15, and IC 35-50-2-2, all as**
 26 **amended by this act, apply only if the last offense was committed**
 27 **after June 30, 2001.**

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