



Reprinted
February 5, 2002

SENATE BILL No. 294

DIGEST OF SB 294 (Updated February 4, 2002 4:14 PM - DI 106)

Citations Affected: IC 9-24; IC 9-30; IC 35-50; noncode.

Synopsis: Operating a vehicle while intoxicated. Makes it a Class A misdemeanor for a person less than 21 years of age to operate a motor vehicle while intoxicated with at least one passenger less than 18 years of age in the vehicle. Makes the offense a nonsuspendible Class D felony if the operator is at least 21 years of age. Prohibits certain persons who have had their driving privileges suspended for life from filing a petition to obtain a restricted driving permit for a specified period. Prohibits persons who have been convicted of certain offenses involving operating a motor vehicle while intoxicated from obtaining a probationary license. Requires a court to recommend lifetime suspension of driving privileges for persons who: (1) have at least three unrelated convictions for certain offenses involving operating a motor vehicle while intoxicated; or (2) are convicted of operating a motor vehicle while intoxicated and causing death. Increases or establishes mandatory jail time for persons convicted of committing certain offenses involving operating a motor vehicle while intoxicated. Provides that court ordered drug and alcohol assessment and treatment programs must be: (1) administered by a court; (2) certified; or (3) authorized under a circuit court alcohol abuse deterrent program.

Effective: July 1, 2002.

**Young R Michael, Alexa, Bray,
Howard**

January 7, 2002, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.
January 31, 2002, reported favorably — Do Pass.
February 4, 2002, read second time, amended, ordered engrossed.

SB 294—LS 6093/DI 69+



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February 5, 2002

Second Regular Session 112th General Assembly (2002)

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 2001 General Assembly.

SENATE BILL No. 294

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

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, 2002]: 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 IC 9-30-5-4,**
13 **IC 9-30-5-5 or has at least two (2) previous unrelated convictions**
14 **for operating while intoxicated may not file a verified petition for**
15 **a restricted driving permit if:**
16 (1) **less than ten (10) years have elapsed after the date the**
17 **person's license was suspended for the offense; and**

SB 294—LS 6093/DI 69+



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(2) the person was less than twenty-one (21) years of age when the person committed the offense.

(c) A person who is convicted of an offense under IC 9-30-5-4, IC 9-30-5-5 or has at least two (2) previous unrelated convictions for operating while intoxicated 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, AS AMENDED BY P.L.291-2001, SECTION 222, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. A person who violates section 1 or 2 of this chapter commits: a ~~Class D felony~~ if:

(1) a **Class D felony** if 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) a Class D felony if the person violates section 1(b) or 2(b) of this chapter and operated a vehicle with at least one (1) passenger less than eighteen (18) years of age.

SECTION 3. IC 9-30-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: 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

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1 at least one hundred eighty (180) days but not more than two (2) years.
 2 The court may stay the execution of that part of the suspension that
 3 exceeds the minimum period of suspension and grant the person
 4 probationary driving privileges for a period of time equal to the length
 5 of the stay. If the court grants probationary driving privileges under this
 6 subsection, the court may order that the probationary driving privileges
 7 include the requirement that the person may not operate a motor
 8 vehicle unless the motor vehicle is equipped with a functioning
 9 certified ignition interlock device under IC 9-30-8.

10 (d) If the court finds that the person has a previous conviction of
 11 operating a vehicle or a motorboat while intoxicated and the previous
 12 conviction occurred less than five (5) years before the conviction under
 13 consideration by the court, the court shall recommend the suspension
 14 of the person's driving privileges for at least one (1) year but not more
 15 than two (2) years. ~~The court may stay the execution of that part of the~~
 16 ~~suspension that exceeds the minimum period of suspension and grant~~
 17 ~~the person probationary driving privileges for a period of time equal to~~
 18 ~~the length of the stay. If the court grants probationary driving privileges~~
 19 ~~under this subsection, the court may order that the probationary driving~~
 20 ~~privileges include the requirement that the person may not operate a~~
 21 ~~motor vehicle unless the motor vehicle is equipped with a functioning~~
 22 ~~certified ignition interlock device under IC 9-30-8.~~

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

28 (f) **If:**

- 29 (1) **the conviction under consideration by the court is for an**
 30 **offense under section 1(a), 1(c), or 2 of this chapter; and**
 31 (2) **the court determines that the person operated a vehicle**
 32 **with at least one (1) passenger less than eighteen (18) years of**
 33 **age in the vehicle;**

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

37 (g) **If the conviction under consideration by the court is for an**
 38 **offense under:**

- 39 (1) ~~section 4 of this chapter;~~
 40 (2) ~~section 5 of this chapter;~~
 41 (3) ~~(2) IC 14-15-8-8(b); or~~
 42 (4) ~~(3) IC 14-15-8-8(c);~~



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

3 **(h) If:**

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

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

8 **the court shall recommend the lifetime suspension of the person's**
9 **driving privileges.**

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

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

18 SECTION 4. IC 9-30-5-15, AS AMENDED BY P.L.32-2000,
19 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2002]: Sec. 15. (a) In addition to any criminal penalty
21 imposed for an offense under this chapter the court shall:

22 (1) order:

23 (A) that the person be imprisoned for at least five (5) days; ~~or~~
24 **and**

25 (B) ~~that~~ the person ~~to~~ perform at least thirty (30) days of
26 community restitution or service; and

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

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

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

36 (1) order

37 ~~(A)~~ that the person be imprisoned for at least ~~ten (10)~~ **ninety**
38 **(90)** days; ~~or~~

39 ~~(B)~~ the person ~~to~~ perform at least sixty (60) days of community
40 restitution or service; and

41 (2) order the person to receive an assessment of the person's
42 degree of alcohol and drug abuse and, if appropriate, to

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1 successfully complete an alcohol or drug ~~abuse treatment~~
 2 program; including an alcohol deterrent program if the person
 3 suffers from alcohol abuse;
 4 if the person has at least two (2) previous convictions of operating
 5 while intoxicated.

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

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

10 **(2) order the person to receive an assessment of the person's**
 11 **degree of alcohol and drug abuse and, if appropriate, to**
 12 **successfully complete an alcohol or drug program;**

13 **if the person is convicted of an offense under section 1(b) of this**
 14 **chapter.**

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

17 **(1) order that the person be imprisoned for at least three (3)**
 18 **days; and**

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

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

22 **(B) if appropriate, successfully complete an alcohol or drug**
 23 **program;**

24 **if the person is convicted of an offense under section 1(a), 1(c), or**
 25 **2 of this chapter with at least one (1) passenger less than eighteen**
 26 **(18) years of age in the vehicle.**

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

29 **(1) order that the person be imprisoned for at least two (2)**
 30 **years; and**

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

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

34 **(B) if appropriate, successfully complete an alcohol or drug**
 35 **program;**

36 **if the person is convicted of an offense under section 5 of this**
 37 **chapter.**

38 **(f) An assessment for alcohol and drug abuse required under**
 39 **this section must be conducted by:**

40 **(1) a court established alcohol and drug services program**
 41 **certified under IC 12-23-14; or**

42 **(2) a circuit court alcohol abuse deterrent program**

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established under IC 9-30-9.
In a county that does not have a program described in subdivision (1) or (2), the assessment must be conducted by an addiction services treatment provider certified by the division of mental health and addiction under IC 12-23.

(g) A court ordering a person to complete an alcohol or drug abuse program under this section must determine that the program is:

- (1) certified under IC 12-23-14; or**
- (2) authorized under IC 9-30-9.**

In a county that does not have a program described in subdivision (1) or (2), the program must be conducted by an addiction services treatment provider certified by the division of mental health and addiction under IC 12-23.

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

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

SECTION 5. IC 35-50-2-2, AS AMENDED BY P.L.238-2001, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

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

- (1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.
- (2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.
- (3) The crime committed was a Class D felony and less than three

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

9 (4) The felony committed was:

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

11 (B) battery (IC 35-42-2-1) with a deadly weapon or battery
 12 causing death;

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

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

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

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

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

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

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

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

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

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

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

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

31 (O) dealing in cocaine, a narcotic drug, or methamphetamine
 32 (IC 35-48-4-1) if the court finds the person possessed a firearm
 33 (as defined in IC 35-47-1-5) at the time of the offense, or the
 34 person delivered or intended to deliver to a person under
 35 eighteen (18) years of age at least three (3) years junior to the
 36 person and was on a school bus or within one thousand (1,000)
 37 feet of:

38 (i) school property;

39 (ii) a public park;

40 (iii) a family housing complex; or

41 (iv) a youth program center;

42 (P) dealing in a schedule I, II, or III controlled substance

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1 (IC 35-48-4-2) if the court finds the person possessed a firearm
 2 (as defined in IC 35-47-1-5) at the time of the offense, or the
 3 person delivered or intended to deliver to a person under
 4 eighteen (18) years of age at least three (3) years junior to the
 5 person and was on a school bus or within one thousand (1,000)
 6 feet of:

- 7 (i) school property;
- 8 (ii) a public park;
- 9 (iii) a family housing complex; or
- 10 (iv) a youth program center;

11 (Q) an offense under IC 9-30-5 (operating a vehicle while
 12 intoxicated) and the person who committed the offense has
 13 accumulated at least two (2) prior unrelated convictions under
 14 IC 9-30-5; ~~or~~

15 **(R) operating a vehicle while intoxicated with at least one**
 16 **(1) passenger less than eighteen (18) years of age in the**
 17 **vehicle as a Class D felony (IC 9-30-5-3(a)(2)); or**
 18 **(S) aggravated battery (IC 35-42-2-1.5).**

19 (c) Except as provided in subsection (e), whenever the court
 20 suspends a sentence for a felony, it shall place the person on probation
 21 under IC 35-38-2 for a fixed period to end not later than the date that
 22 the maximum sentence that may be imposed for the felony will expire.

23 (d) The minimum sentence for a person convicted of voluntary
 24 manslaughter may not be suspended unless the court finds at the
 25 sentencing hearing that the crime was not committed by means of a
 26 deadly weapon.

27 (e) Whenever the court suspends that part of a sex and violent
 28 offender's (as defined in IC 5-2-12-4) sentence that is suspendible
 29 under subsection (b), the court shall place the offender on probation
 30 under IC 35-38-2 for not more than ten (10) years.

31 (f) An additional term of imprisonment imposed under
 32 IC 35-50-2-11 may not be suspended.

33 (g) A term of imprisonment imposed under IC 35-47-10-6 or
 34 IC 35-47-10-7 may not be suspended if the commission of the offense
 35 was knowing or intentional.

36 (h) A term of imprisonment imposed for an offense under
 37 IC 35-48-4-6(b)(1)(B) may not be suspended.

38 **SECTION 6. [EFFECTIVE JULY 1, 2002] IC 9-30-5-3,**
 39 **IC 9-30-5-10, IC 9-30-5-15, and IC 35-50-2-2, all as amended by**
 40 **this act, apply only if the last offense was committed after June 30,**
 41 **2002.**



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COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred Senate Bill No. 294, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 294 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 8, Nays 1.

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SENATE MOTION

Mr. President: I move that Senators Alexa, Bray and Howard be added as coauthors of Senate Bill 294.

YOUNG R MICHAEL

SENATE MOTION

Mr. President: I move that Senate Bill 294 be amended to read as follows:

- Page 4, line 34, strike "abuse treatment".
- Page 4, line 35, after "program" delete "," and insert ";".
- Page 4, line 35, strike "including an alcohol deterrent program if the person".
- Page 4, strike line 36.
- Page 5, line 6, strike "abuse treatment".
- Page 5, line 7, after "program" delete "," and insert ";".
- Page 5, line 7, strike "including an alcohol deterrent program if the person".
- Page 5, strike line 8.
- Page 5, line 17, delete "abuse treatment".
- Page 5, line 18, delete ", including an alcohol deterrent program if the" and insert ";".
- Page 5, delete line 19.
- Page 5, line 30, delete, "abuse treatment".
- Page 5, line 30, delete ", including an alcohol deterrent" and insert ";".
- Page 5, delete line 31.
- Page 6, line 1, delete "abuse treatment".
- Page 6, line 1, delete ", including an alcohol deterrent" and insert ";".
- Page 6, delete line 2.
- Page 6, line 6, delete ":".
- Page 6, line 7, delete "(1)".
- Page 6, line 7, after "by" insert ":".
- Page 6, run in lines 6 through 7.
- Page 6, line 7, delete "a program administered by a court under", begin a new line block indented and insert:
 - (1) a court established alcohol and drug services program certified under IC 12-23-14; or**
 - (2) a circuit court alcohol abuse deterrent program**

SB 294—LS 6093/DI 69+

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established under IC 9-30-9.

In a county that does not have a program described in subdivision (1) or (2), the assessment must be conducted by an addiction services treatment provider certified by the division of mental health and addiction under IC 12-23.

(g) A court ordering a person to complete an alcohol or drug abuse program under this section must determine that the program is:

- (1) certified under IC 12-23-14; or
- (2) authorized under IC 9-30-9.

In a county that does not have a program described in subdivision (1) or (2), the program must be conducted by an addiction services treatment provider certified by the division of mental health and addiction under IC 12-23."

Page 6, delete lines 8 through 19.

(Reference is to SB 294 as printed February 1, 2002.)

ALEXA

SENATE MOTION

Mr. President: I move that Senate Bill 294 be amended to read as follows:

Page 1, line 12, after "under" insert "IC 9-30-5-4,".

Page 1, delete line 13 and insert "has at least two (2) previous unrelated convictions for operating while intoxicated".

Page 2, line 2, after "under" insert "IC 9-30-5-4,".

Page 2, delete line 3 and insert "has at least two (2) previous unrelated convictions for operating while intoxicated".

Page 2, line 11, delete "(a)".

Page 2, line 18, delete "a Class A misdemeanor if the person was less than" and insert "a Class D felony if the person violates section 1(b) or 2(b) of this chapter and operated a vehicle with at least one (1) passenger less than eighteen (18) years of age.".

Page 2, delete lines 19 through 27.

(Reference is to SB 294 as printed February 1, 2002.)

YOUNG R MICHAEL



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