
HOUSE BILL No. 1320

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-30-5-16; IC 35-38-2-3; IC 35-41-1-10.5; IC 35-48-4-13.

Synopsis: Drug and alcohol control. Specifies that a court may require a person with a probationary license to install an ignition interlock device in addition to another condition of the probationary license or without imposing any other condition of the probationary license. Authorizes a court to issue an arrest warrant for a probationer who has failed a chemical test. Defines "family housing complex" to include subsidized housing, and specifies that a person who visits a location that is used one or more times to unlawfully use a controlled substance commits visiting a common nuisance, a Class B misdemeanor.

Effective: July 1, 2006.

Woodruff

January 10, 2006, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

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HOUSE BILL No. 1320



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 9-30-5-16 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16. (a) Except as
3 provided in subsections (b) and (c), the court may, in granting
4 probationary driving privileges under this chapter, also order that the
5 probationary driving privileges include the requirement that a person
6 may not operate a motor vehicle unless the vehicle is equipped with a
7 functioning certified ignition interlock device under IC 9-30-8. **A court**
8 **may prohibit a person from operating a motor vehicle unless the**
9 **vehicle is equipped with a functioning certified ignition interlock**
10 **device under IC 9-30-8:**

- 11 (1) **in addition to any other condition of receiving a**
- 12 **probationary license; or**
- 13 (2) **without imposing any other condition of receiving a**
- 14 **probationary license.**

- 15 (b) An order granting probationary driving privileges:
- 16 (1) under:
- 17 (A) section 12(a) of this chapter, if the person has a previous



1 conviction that occurred at least ten (10) years before the
 2 conviction under consideration by the court; or
 3 (B) section 12(c) of this chapter; or
 4 (2) to a person who has a prior unrelated conviction for an offense
 5 under this chapter of which the consumption of alcohol is an
 6 element;

7 must prohibit the person from operating a motor vehicle unless the
 8 vehicle is equipped with a functioning certified ignition interlock
 9 device under IC 9-30-8. However, a court is not required to order the
 10 installation of an ignition interlock device for a person described in
 11 subdivision (1) or (2) if the person is successfully participating in a
 12 court supervised alcohol treatment program in which the person is
 13 taking disulfiram or a similar substance that the court determines is
 14 effective in treating alcohol abuse.

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

- 18 (1) Has been convicted of violating section 1 or 2 of this chapter.
- 19 (2) Is employed as the operator of a vehicle owned, leased, or
 20 provided by the employee's employer.
- 21 (3) Is subject to a labor agreement that prohibits an employee who
 22 is convicted of an alcohol related offense from operating the
 23 employer's vehicle.

24 SECTION 2. IC 35-38-2-3, AS AMENDED BY P.L.13-2005,
 25 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2006]: Sec. 3. (a) The court may revoke a person's probation
 27 if:

- 28 (1) the person has violated a condition of probation during the
 29 probationary period; and
- 30 (2) the petition to revoke probation is filed during the
 31 probationary period or before the earlier of the following:
 32 (A) One (1) year after the termination of probation.
 33 (B) Forty-five (45) days after the state receives notice of the
 34 violation.

35 (b) When a petition is filed charging a violation of a condition of
 36 probation, the court may:

- 37 (1) order a summons to be issued to the person to appear; or
- 38 (2) order a warrant for the person's arrest if:
 39 (A) there is a risk of the person's fleeing the jurisdiction; ~~or~~
 40 (B) **there is a risk of the person** causing harm to others; ~~or~~
 41 (C) **the person has failed a chemical test (as defined in**
 42 **IC 9-13-2-22).**

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1 (c) The issuance of a summons or warrant tolls the period of
2 probation until the final determination of the charge.

3 (d) The court shall conduct a hearing concerning the alleged
4 violation. The court may admit the person to bail pending the hearing.

5 (e) The state must prove the violation by a preponderance of the
6 evidence. The evidence shall be presented in open court. The person is
7 entitled to confrontation, cross-examination, and representation by
8 counsel.

9 (f) Probation may not be revoked for failure to comply with
10 conditions of a sentence that imposes financial obligations on the
11 person unless the person recklessly, knowingly, or intentionally fails to
12 pay.

13 (g) If the court finds that the person has violated a condition at any
14 time before termination of the period, and the petition to revoke is filed
15 within the probationary period, the court may:

16 (1) continue the person on probation, with or without modifying
17 or enlarging the conditions;

18 (2) extend the person's probationary period for not more than one
19 (1) year beyond the original probationary period; or

20 (3) order execution of all or part of the sentence that was
21 suspended at the time of initial sentencing.

22 (h) If the court finds that the person has violated a condition of
23 home detention at any time before termination of the period, and the
24 petition to revoke probation is filed within the probationary period, the
25 court shall:

26 (1) order a sanction as set forth in subsection (g); and

27 (2) provide credit for time served as set forth under
28 IC 35-38-2.5-5.

29 (i) If the court finds that the person has violated a condition during
30 any time before the termination of the period, and the petition is filed
31 under subsection (a) after the probationary period has expired, the court
32 may:

33 (1) reinstate the person's probationary period, with or without
34 enlarging the conditions, if the sum of the length of the original
35 probationary period and the reinstated probationary period does
36 not exceed the length of the maximum sentence allowable for the
37 offense that is the basis of the probation; or

38 (2) order execution of all or part of the sentence that was
39 suspended at the time of the initial sentencing.

40 (j) If the court finds that the person has violated a condition of home
41 detention during any time before termination of the period, and the
42 petition is filed under subsection (a) after the probation period has

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- 1 expired, the court shall:
- 2 (1) order a sanction as set forth in subsection (i); and
- 3 (2) provide credit for time served as set forth under
- 4 IC 35-38-2.5-5.
- 5 (k) A judgment revoking probation is a final appealable order.
- 6 (l) Failure to pay fines or costs required as a condition of probation
- 7 may not be the sole basis for commitment to the department of
- 8 correction.
- 9 (m) Failure to pay fees or costs assessed against a person under
- 10 IC 33-40-3-6, IC 33-37-2-3(c), or IC 35-33-7-6 is not grounds for
- 11 revocation of probation.

12 SECTION 3. IC 35-41-1-10.5 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10.5. "Family housing
 14 complex" means a building or series of buildings:

- 15 (1) that is:
- 16 (A) owned by a governmental unit or political subdivision; or
- 17 (B) **subsidized housing (including housing that is subsidized**
- 18 **under Section 8 of the United States Housing Act of 1937**
- 19 **(42 U.S.C. 1437f));**
- 20 (2) that contains at least twelve (12) dwelling units; and
- 21 (3) where children are domiciled or are likely to be domiciled.

22 SECTION 4. IC 35-48-4-13 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13. (a) A person who
 24 knowingly or intentionally visits a building, structure, vehicle, or other
 25 place that is used **one (1) or more times** by any person to unlawfully
 26 use a controlled substance commits visiting a common nuisance, a
 27 Class B misdemeanor.

28 (b) A person who knowingly or intentionally maintains a building,
 29 structure, vehicle, or other place that is used one (1) or more times:

- 30 (1) by persons to unlawfully use controlled substances; or
- 31 (2) for unlawfully:
- 32 (A) manufacturing;
- 33 (B) keeping;
- 34 (C) offering for sale;
- 35 (D) selling;
- 36 (E) delivering; or
- 37 (F) financing the delivery of;
- 38 controlled substances, or items of drug paraphernalia as described
- 39 in IC 35-48-4-8.5;
- 40 commits maintaining a common nuisance, a Class D felony.

41 SECTION 5. [EFFECTIVE JULY 1, 2006] **IC 35-38-2-3,**
 42 **IC 35-41-1-10.5, and IC 35-48-4-13, all as amended by this act,**

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1 **apply only to crimes committed after June 30, 2006.**

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