



February 26, 2016

ENGROSSED SENATE BILL No. 142

DIGEST OF SB 142 (Updated February 24, 2016 5:07 pm - DI 69)

Citations Affected: IC 9-30; IC 35-38; IC 35-46.

Synopsis: Operating while intoxicated. Provides that a person who commits the offense of causing the death of another person when operating a vehicle: (1) with an alcohol concentration equivalent to at least 0.08 gram of alcohol per 100 milliliters of the person's blood or 210 liters of the person's breath; (2) with a controlled substance listed in schedule I or II or its metabolite in the person's blood; or (3) while intoxicated; commits a Level 4 felony instead of a Level 5 felony if the person has a previous conviction of operating while intoxicated within 10 years preceding the commission of the offense instead of within five years preceding the commission of the offense. Provides that a person convicted of a Level 6 felony may be committed to the department of correction (DOC) if the person has received an enhanced sentence for being a habitual vehicular substance offender. Provides that a person who operates a motorboat while intoxicated (motorboat OWI) shall receive an enhanced penalty if the person has a previous conviction under a repealed version of the crime.

Effective: July 1, 2016.

Young R Michael, Miller Patricia
(HOUSE SPONSOR — STEUERWALD)

January 5, 2016, read first time and referred to Committee on Corrections & Criminal Law.
January 6, 2016, reported favorably — Do Pass.
January 11, 2016, read second time, ordered engrossed. Engrossed.
January 12, 2016, read third time, passed. Yeas 44, nays 5.

HOUSE ACTION

February 8, 2016, read first time and referred to Committee on Courts and Criminal Code.
February 25, 2016, amended, reported — Do Pass.

ES 142—LS 6383/DI 125



February 26, 2016

Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 142

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 9-30-5-5, AS AMENDED BY P.L.158-2013,
2 SECTION 161, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2016]: Sec. 5. (a) A person who causes the
4 death of another person when operating a vehicle:
5 (1) with an alcohol concentration equivalent to at least
6 eight-hundredths (0.08) gram of alcohol per:
7 (A) one hundred (100) milliliters of the person's blood; or
8 (B) two hundred ten (210) liters of the person's breath;
9 (2) with a controlled substance listed in schedule I or II of
10 IC 35-48-2 or its metabolite in the person's blood; or
11 (3) while intoxicated;
12 commits a Level 5 felony. However, the offense is a Level 4 felony if
13 the person has a previous conviction of operating while intoxicated
14 within the ~~five (5)~~ **ten (10)** years preceding the commission of the
15 offense, or if the person operated the vehicle when the person knew
16 that the person's driver's license, driving privilege, or permit is
17 suspended or revoked for a previous conviction for operating a vehicle

ES 142—LS 6383/DI 125



- 1 while intoxicated.
- 2 (b) A person at least twenty-one (21) years of age who causes the
3 death of another person when operating a vehicle:
- 4 (1) with an alcohol concentration equivalent to at least
5 fifteen-hundredths (0.15) gram of alcohol per:
- 6 (A) one hundred (100) milliliters of the person's blood; or
7 (B) two hundred ten (210) liters of the person's breath; or
8 (2) with a controlled substance listed in schedule I or II of
9 IC 35-48-2 or its metabolite in the person's blood;
10 commits a Level 4 felony.
- 11 (c) A person who causes the death of a law enforcement animal (as
12 defined in IC 35-46-3-4.5) when operating a vehicle:
- 13 (1) with an alcohol concentration equivalent to at least
14 eight-hundredths (0.08) gram of alcohol per:
- 15 (A) one hundred (100) milliliters of the person's blood; or
16 (B) two hundred ten (210) liters of the person's breath; or
17 (2) with a controlled substance listed in schedule I or II of
18 IC 35-48-2 or its metabolite in the person's blood;
19 commits a Level 6 felony.
- 20 (d) A person who violates subsection (a), (b), or (c) commits a
21 separate offense for each person or law enforcement animal whose
22 death is caused by the violation of subsection (a), (b), or (c).
- 23 (e) It is a defense under subsection (a)(2), (b)(2), or (c)(2) that the
24 accused person consumed the controlled substance under a valid
25 prescription or order of a practitioner (as defined in IC 35-48-1) who
26 acted in the course of the practitioner's professional practice.
- 27 SECTION 2. IC 35-38-3-3, AS AMENDED BY P.L.179-2015,
28 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 JULY 1, 2016]: Sec. 3. (a) Except as provided by subsection (b), a
30 person convicted of a misdemeanor may not be committed to the
31 department of correction.
- 32 (b) Upon a request from the sheriff, the commissioner may agree to
33 accept custody of a misdemeanor:
- 34 (1) if placement in the county jail:
- 35 (A) places the inmate in danger of serious bodily injury or
36 death; or
37 (B) represents a substantial threat to the safety of others;
- 38 (2) for other good cause shown; or
39 (3) if a person has more than five hundred forty-seven (547) days
40 remaining before the person's earliest release date as a result of:
- 41 (A) consecutive misdemeanor sentences; or
42 (B) a sentencing enhancement applied to a misdemeanor



1 sentence.

2 (c) After June 30, 2014, and before January 1, 2016, a court may not
3 commit a person convicted of a Level 6 felony to the department of
4 correction if the person's earliest possible release date is less than
5 ninety-one (91) days from the date of sentencing, unless the
6 commitment is due to the person violating a condition of probation,
7 parole, or community corrections by committing a new criminal
8 offense.

9 (d) After December 31, 2015, a court may not commit a person
10 convicted of a Level 6 felony to the department of correction, unless:

11 (1) the commitment is due to the person violating a condition of
12 probation, parole, or community corrections by committing a new
13 criminal offense; or

14 (2) the person: ~~is convicted of:~~

15 (A) **is convicted of** at least two (2) Level 6 felonies that are
16 ordered to be served consecutively; ~~or~~

17 (B) **is convicted of** a Level 6 felony that is enhanced by an
18 additional fixed term under IC 35-50-2-8 through
19 IC 35-50-2-16; ~~or~~

20 (C) **has received an enhanced sentence under**
21 **IC 9-30-15.5-2;**

22 and the person's earliest possible release date is more than three
23 hundred sixty-five (365) days after the date of sentencing.

24 A person who may not be committed to the department of correction
25 may be placed on probation, committed to the county jail, or placed in
26 community corrections for assignment to an appropriate community
27 corrections program.

28 (e) After June 30, 2014, and before January 1, 2016, a sheriff is
29 entitled to a per diem and medical expense reimbursement as described
30 in P.L.205-2013, SECTION 4 for the cost of incarcerating a person
31 described in subsections (c) and (d) in a county jail. The sheriff is
32 entitled to a per diem and medical expense reimbursement only for the
33 time that the person described in subsections (c) and (d) is incarcerated
34 in the county jail. The reimbursement:

35 (1) shall be reviewed by the budget committee; and

36 (2) is subject to approval by the budget agency.

37 (f) Subject to appropriation from the general assembly, a sheriff is
38 entitled to a per diem and medical expense reimbursement from the
39 department of correction for the cost of incarcerating a person
40 described in subsections (c) and (d) in a county jail. The sheriff is
41 entitled to a per diem and medical expense reimbursement only for the
42 time that the person described in subsections (c) and (d) is incarcerated



1 in the county jail.

2 SECTION 3. IC 35-46-9-6, AS AMENDED BY P.L.168-2014,
 3 SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 4 JULY 1, 2016]: Sec. 6. (a) Except as provided in subsections (b) and
 5 (c), a person who operates a motorboat while:
 6 (1) having an alcohol concentration equivalent (as defined in
 7 IC 9-13-2-2.4) to at least eight-hundredths (0.08) gram of alcohol
 8 per:
 9 (A) one hundred (100) milliliters of the person's blood; or
 10 (B) two hundred ten (210) liters of the person's breath;
 11 (2) having a controlled substance listed in schedule I or II of
 12 IC 35-48-2 or its metabolite in the person's body; or
 13 (3) intoxicated;
 14 commits a Class C misdemeanor.

15 (b) The offense is a Level 6 felony if:
 16 (1) the person has a previous conviction under:
 17 (A) IC 14-1-5 (repealed);
 18 **(B) IC 14-15-8-8 (repealed); or**
 19 ~~(B)~~ **(C)** this chapter; **or**
 20 (2) the offense results in serious bodily injury to another person.

21 (c) The offense is a Level 5 felony if the offense results in the death
 22 of another person.

23 (d) It is a defense to a prosecution under subsection (a)(2) that the
 24 accused person consumed the controlled substance under a valid
 25 prescription or order of a practitioner (as defined in IC 35-48-1-24)
 26 who acted in the course of the practitioner's professional practice.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections & Criminal Law, to which was referred Senate Bill No. 142, 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 to SB 142 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 8, Nays 0

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 142, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 9-30-5-5, AS AMENDED BY P.L.158-2013, SECTION 161, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: 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 ~~five (5)~~ **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:

ES 142—LS 6383/DI 125



- (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."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 142 as printed January 7, 2016.)

WASHBURNE

Committee Vote: yeas 9, nays 0.

