



January 28, 2000

HOUSE BILL No. 1290

DIGEST OF HB 1290 (Updated January 27, 2000 12:48 PM - DI 76)

Citations Affected: IC 9-30; IC 34-24; noncode.

Synopsis: Driving while intoxicated. Provides an additional minimum term of imprisonment for conviction of operating while intoxicated when a child less than 16 years of age is a passenger in the vehicle.

Effective: July 1, 2000.

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January 11, 2000, read first time and referred to Committee on Courts and Criminal Code.
January 27, 2000, amended, reported — Do Pass.

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HB 1290—LS 7285/DI 51+



January 28, 2000

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

HOUSE BILL No. 1290

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 9-30-5-15, AS AMENDED BY P.L.266-1999,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2000]: Sec. 15. (a) **In addition to any criminal penalty
4 imposed for an offense under this chapter, the court shall order
5 that the person be imprisoned for at least two (2) days if a child
6 who is less than sixteen (16) years of age was a passenger in the
7 vehicle at the time the person committed the offense for which the
8 person is being sentenced.**
9 (b) In addition to any criminal penalty imposed for an offense under
10 this chapter, the court shall:
11 (1) order:
12 (A) that the person be imprisoned for at least five (5) days; or
13 (B) the person to perform at least thirty (30) days of
14 community service; and
15 (2) order the person to receive an assessment of the person's
16 degree of alcohol and drug abuse and, if appropriate, to
17 successfully complete an alcohol or drug abuse treatment

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1 program, including an alcohol deterrent program if the person
 2 suffers from alcohol abuse;
 3 if the person has one (1) previous conviction of operating while
 4 intoxicated. **However, the court shall issue an order that the person**
 5 **be imprisoned for at least ten (10) days and may not issue an order**
 6 **under subdivision (1)(B) if a child who is less than sixteen (16)**
 7 **years of age was a passenger in the vehicle at the time the person**
 8 **committed the offense for which the person is being sentenced.**

9 ~~(b)~~ (c) **Except as provided in subsection (d)**, in addition to any
 10 criminal penalty imposed for an offense under this chapter, the court
 11 shall:

12 (1) order:

13 (A) that the person be imprisoned for at least ~~ten (10)~~ **thirty**
 14 **(30)** days; or

15 (B) the person to perform at least sixty (60) days of community
 16 service; and

17 (2) order the person to receive an assessment of the person's
 18 degree of alcohol and drug abuse and, if appropriate, to
 19 successfully complete an alcohol or drug abuse treatment
 20 program, including an alcohol deterrent program if the person
 21 suffers from alcohol abuse;

22 if the person has at least two (2) previous convictions of operating
 23 while intoxicated.

24 **(d) In addition to any criminal penalty imposed for an offense**
 25 **under this chapter, if a child who is less than sixteen (16) years of**
 26 **age was a passenger in the vehicle at the time the person committed**
 27 **the offense under this chapter, the court shall order:**

28 **(1) that the person be imprisoned for at least:**

29 **(A) thirty (30) days if the person has two (2) and not more**
 30 **than two (2) previous convictions of operating while**
 31 **intoxicated; and**

32 **(B) ninety (90) days if the person has at least three (3)**
 33 **previous convictions of operating while intoxicated; and**

34 **(2) that the person receive an assessment of the person's**
 35 **degree of alcohol and drug abuse and, if appropriate,**
 36 **successfully complete an alcohol or drug abuse treatment**
 37 **program, including an alcohol deterrent program if the**
 38 **person suffers from alcohol abuse.**

39 ~~(e)~~ (e) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence
 40 imposed under this section may not be suspended. The court may
 41 require that the person serve the term of imprisonment in an
 42 appropriate facility at whatever time or intervals (consecutive or



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1 intermittent) determined appropriate by the court. However:

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

4 (2) the entire sentence must be served within six (6) months after
5 the date of sentencing.

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

8 SECTION 2. IC 34-24-1-1 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) The following
10 may be seized:

11 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
12 intended for use by the person or persons in possession of them to
13 transport or in any manner to facilitate the transportation of the
14 following:

15 (A) A controlled substance for the purpose of committing,
16 attempting to commit, or conspiring to commit any of the
17 following:

18 (i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).

19 (ii) Dealing in a schedule I, II, or III controlled substance
20 (IC 35-48-4-2).

21 (iii) Dealing in a schedule IV controlled substance
22 (IC 35-48-4-3).

23 (iv) Dealing in a schedule V controlled substance
24 (IC 35-48-4-4).

25 (v) Dealing in a counterfeit substance (IC 35-48-4-5).

26 (vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).

27 (vii) Dealing in paraphernalia (IC 35-48-4-8.5).

28 (viii) Dealing in marijuana, hash oil, or hashish
29 (IC 35-48-4-10).

30 (B) Any stolen (IC 35-43-4-2) or converted property
31 (IC 35-43-4-3) if the retail or repurchase value of that property
32 is one hundred dollars (\$100) or more.

33 (C) Any hazardous waste in violation of IC 13-30-6-6.

34 (2) All money, negotiable instruments, securities, weapons,
35 communications devices, or any property commonly used as
36 consideration for a violation of IC 35-48-4 (other than items
37 subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1
38 before its repeal):

39 (A) furnished or intended to be furnished by any person in
40 exchange for an act that is in violation of a criminal statute;

41 (B) used to facilitate any violation of a criminal statute; or

42 (C) traceable as proceeds of the violation of a criminal statute.



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- 1 (3) Any portion of real or personal property purchased with
 2 money that is traceable as a proceed of a violation of a criminal
 3 statute.
- 4 (4) A vehicle that is used by a person to:
 5 (A) commit, attempt to commit, or conspire to commit;
 6 (B) facilitate the commission of; or
 7 (C) escape from the commission of;
 8 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 9 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 10 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).
- 11 (5) Real property owned by a person who uses it to commit any of
 12 the following as a Class A felony, a Class B felony, or a Class C
 13 felony:
 14 (A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
 15 (B) Dealing in a schedule I, II, or III controlled substance
 16 (IC 35-48-4-2).
 17 (C) Dealing in a schedule IV controlled substance
 18 (IC 35-48-4-3).
 19 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- 20 (6) Equipment and recordings used by a person to commit fraud
 21 under IC 35-43-5-4(11).
- 22 (7) Recordings sold, rented, transported, or possessed by a person
 23 in violation of IC 24-4-10.
- 24 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
 25 defined by IC 35-45-6-1) that is the object of a corrupt business
 26 influence violation (IC 35-45-6-2).
- 27 (9) Unlawful telecommunications devices (as defined in
 28 IC 35-45-13-6) and plans, instructions, or publications used to
 29 commit an offense under IC 35-45-13.
- 30 **(10) A vehicle used by a person to commit an offense under**
 31 **IC 9-30-5-1, IC 9-30-5-2, IC 9-30-5-3, IC 9-30-5-4, or**
 32 **IC 9-30-5-5 if the person:**
 33 **(A) has at least two (2) prior unrelated convictions under:**
 34 **(i) IC 9-30-5-1;**
 35 **(ii) IC 9-30-5-2;**
 36 **(iii) IC 9-30-5-3;**
 37 **(iv) IC 9-30-5-4;**
 38 **(v) IC 9-30-5-5;**
 39 **(vi) an alcohol or drug related crime under Acts 1939,**
 40 **c.48, s.52, as amended;**
 41 **(vii) IC 9-4-1-54 (repealed September 1, 1983); or**
 42 **(viii) IC 9-11-2 (repealed July 1, 1991); and**



- 1 **(B) is the owner of the vehicle.**
 2 **A vehicle seized under this subdivision must be the vehicle**
 3 **used at the time the person committed the third or subsequent**
 4 **offense.**
 5 (b) A vehicle used by any person as a common or contract carrier in
 6 the transaction of business as a common or contract carrier is not
 7 subject to seizure under this section, unless it can be proven by a
 8 preponderance of the evidence that the owner of the vehicle knowingly
 9 permitted the vehicle to be used to engage in conduct that subjects it to
 10 seizure under subsection (a).
 11 (c) Money, negotiable instruments, securities, weapons,
 12 communications devices, or any property commonly used as
 13 consideration for a violation of IC 35-48-4 found near or on a person
 14 who is committing, attempting to commit, or conspiring to commit any
 15 of the following offenses shall be admitted into evidence in an action
 16 under this chapter as prima facie evidence that the money, negotiable
 17 instrument, security, or other thing of value is property that has been
 18 used or was to have been used to facilitate the violation of a criminal
 19 statute or is the proceeds of the violation of a criminal statute:
 20 (1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).
 21 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
 22 substance).
 23 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
 24 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)
 25 as a Class B felony.
 26 (5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a
 27 Class A felony, Class B felony, or Class C felony.
 28 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as
 29 a Class C felony.
 30 **SECTION 3. [EFFECTIVE JULY 1, 2000] (a) IC 9-30-5-15, as**
 31 **amended by this act, applies only to a person who is sentenced after**
 32 **June 30, 2000, for which the last offense is committed after June**
 33 **30, 2000.**
 34 **(b) IC 34-24-1-1, as amended by this act, applies only to a**
 35 **person sentenced after June 30, 2000, for which the last offense is**
 36 **committed after June 30, 2000.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1290, 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, line 5, after "if" delete ":".

Page 1, line 6, delete "(1)".

Page 1, run in lines 5 through 6.

Page 1, line 8, delete "; and" and insert ".".

Page 1, delete lines 9 through 10.

Page 1, line 14, reset in roman "five (5)" and delete "ten (10)".

Page 2, line 6, delete "only".

Page 2, line 7, delete "under" and insert **"that the person be imprisoned for at least ten (10) days"**.

Page 2, line 8, delete "subdivision (1)(A)".

Page 2, line 12, delete "In" and insert **"Except as provided in subsection (d), in"**.

Page 2, line 24, reset in roman "at least".

Page 2, line 24, delete "exactly".

Page 2, line 25, delete "However, the court shall issue an order".

Page 2, delete lines 26 through 40, begin a new paragraph and insert:

"(d) In addition to any criminal penalty imposed for an offense under this chapter, if a child who is less than sixteen (16) years of age was a passenger in the vehicle at the time the person committed the offense under this chapter, the court shall order:

(1) that the person be imprisoned for at least:

(A) thirty (30) days if the person has two (2) and not more than two (2) previous convictions of operating while intoxicated; and

(B) ninety (90) days if the person has at least three (3) previous convictions of operating while intoxicated; and

(2) that the person receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse."

and when so amended that said bill do pass.

(Reference is to HB 1290 as introduced.)

DVORAK, Chair

Committee Vote: yeas 13, nays 0.

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