February 27, 2001

HOUSE BILL No. 1737

DIGEST OF HB 1737 (Updated February 26, 2001 12:16 PM - DI 87)

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

Synopsis: Drunk driving. Establishes the crime of operating while intoxicated with at least one child under the age of 18 in the vehicle. Punishes operating a motor vehicle with an alcohol concentration of at least.08% and less than.10% with a child in the vehicle as a Class A misdemeanor. Makes operating a motor vehicle with an alcohol concentration of at least.10% with a child in the vehicle a Class D felony. Makes operating a motor vehicle under the influence of a controlled substance with a child in the vehicle a Class A misdemeanor. Makes operating while intoxicated with a child in the vehicle a Class D felony. Removes provision making third offense operating while intoxicated a Class C felony. Gives the judge discretion

(Continued next page)

Effective: July 1, 2001.

Kruzan, Kruse, Welch, Goodin, Kuzman, Ruppel

January 17, 2001, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.
February 26, 2001, amended, reported — Do Pass.

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Digest Continued

to impose mandatory 5 days in jail or 30 days of community service. Provides 6 month to 2 year license suspension for a person who operates a vehicle with an alcohol concentration of at least.10% or more with a child in the vehicle. Removes provision calling for lifetime license suspension for third operating while intoxicated offense. Makes operating while intoxicated with a child in the vehicle and an alcohol concentration of at least of.15% nonsuspendible. Makes operating while intoxicated (per se or impaired) with a child in the vehicle while having a previous conviction for OWI (per se or impaired) nonsuspendible. Makes the first offense of operating while intoxicated with a child suspendible (unless the driver's alcohol concentration is at least.15%). Requires lifetime license suspension for persons convicted of operating while intoxicated causing death and for a third or subsequent operating while intoxicated conviction. Reduces the availability of hardship licenses for persons with lifetime license suspensions. Increases mandatory jail time for various alcohol offenses. Makes technical changes.

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February 27, 2001

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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HOUSE BILL No. 1737

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:

SECTION 1. IC 9-24-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. **(a) Except as provided in subsections (b) and (c),** if:

(1) an individual's driving license has been suspended under Indiana motor vehicle law; and

(2) because of the nature of the individual's employment the suspension would work an undue hardship and burden upon the individual's family or dependents;

the individual may file a verified petition for a restricted driving permit for the sole purpose of driving to and from work and in the course of employment during the period of the driving license suspension.

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

(1) less than ten (10) years have elapsed after the date the person's license was suspended for the offense; and

(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 9-30-5-5 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 9-30-5-1, AS AMENDED BY P.L.1-2000, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) A person who operates a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol but less than fifteen-hundredths (0.15) gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class C misdemeanor.

(b) **A person who operates a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol but less than ten-hundredths (0.10) gram of alcohol per:**

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class A misdemeanor if the person operates the motor vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle.

(c) A person who operates a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class D felony if the person operates the motor vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle.

(d) A person who operates a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class A misdemeanor.

~~(c)~~ **(e)** A person who operates a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body commits a Class C misdemeanor. **However, the offense is a Class A misdemeanor if the person operates the motor vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle.**

~~(d)~~ **(f)** It is a defense to subsection ~~(c)~~ **(e)** that the accused person

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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.

SECTION 3. IC 9-30-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. A person who operates a vehicle while intoxicated commits a Class A misdemeanor. **However, the offense is a class D felony if the person operates the motor vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle.**

SECTION 4. 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 occurred within the five (5) years immediately preceding the occurrence of the violation of section 1 or 2 of this chapter.

SECTION 5. IC 9-30-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: 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 at least one hundred eighty (180) days but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this

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subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) 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 less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. ~~The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.~~

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

(f) If:

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

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

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

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

(1) section 4 of this chapter;

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

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

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

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

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

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

SECTION 6. IC 9-30-5-15, AS AMENDED BY P.L.32-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 15. (a) In addition to any criminal penalty imposed for an offense under this chapter the court shall:

(1) order:

(A) that the person be imprisoned for at least five (5) days; or

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

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

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

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

(1) order

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

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

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

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

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

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

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the

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person suffers from alcohol abuse;

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

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

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

(2) order the person to:

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

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

if the person is convicted of operating while intoxicated with at least one (1) passenger less than eighteen (18) years of age in the vehicle.

(e) As part of any criminal penalty imposed for an offense under this chapter, the court shall:

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

(2) order the person to:

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

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

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

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

SECTION 7. IC 35-50-2-2, AS AMENDED BY P.L.188-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) The court may suspend any part of a

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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 (3) 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 D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

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

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

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

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

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

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

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

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

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

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

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

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

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

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(N) rioting (IC 35-45-1-2) with a deadly weapon;
(O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) as a Class A felony;
(P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the amount of controlled substance involved has an aggregate weight of three (3) grams or more;
(Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5; ~~or~~
(R) an offense under IC 9-30-5-1 or IC 9-30-5-2 with at least one (1) passenger less than eighteen (18) years of age in the vehicle:
(i) while having an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood, or two hundred ten (210) liters of the person's breath (IC 9-30-5-1(c)); or
(ii) while having a previous conviction under IC 9-30-5-1 or IC 9-30-5-2; or
(S) aggravated battery (IC 35-42-2-1.5).

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

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

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

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

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

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

SECTION 8. [EFFECTIVE JULY 1, 2001] **IC 9-30-5-1, IC 9-30-5-2, IC 9-30-5-5, IC 9-30-5-10, IC 9-30-5-15, and**

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IC 35-50-2-2, all as amended by this act, apply only if the last offense was committed after June 30, 2001.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, Ethics and Veterans Affairs, to which was referred House Bill 1737, 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 13, delete "IC 9-30-5-3(b) or".

Page 2, line 2, delete "IC 9-30-5-3(b)".

Page 2, line 3, delete "or".

Page 2, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 2. IC 9-30-5-1, AS AMENDED BY P.L.1-2000, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) A person who operates a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol but less than fifteen-hundredths (0.15) gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class C misdemeanor.

(b) **A person who operates a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol but less than ten-hundredths (0.10) gram of alcohol per:**

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class A misdemeanor if the person operates the motor vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle.

(c) A person who operates a vehicle with an alcohol concentration equivalent to at least ten-hundredths (0.10) gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class D felony if the person operates the motor vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle.

(d) A person who operates a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

(1) one hundred (100) milliliters of the person's blood; or

(2) two hundred ten (210) liters of the person's breath;

commits a Class A misdemeanor.

~~(c)~~ **(e)** A person who operates a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body commits a Class C misdemeanor. **However, the offense is a Class A misdemeanor if the person operates the motor vehicle with**

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at least one (1) passenger less than eighteen (18) years of age in the vehicle.

~~(d)~~ **(f)** It is a defense to subsection ~~(c)~~ **(e)** 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.

SECTION 3. IC 9-30-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. A person who operates a vehicle while intoxicated commits a Class A misdemeanor. **However, the offense is a class D felony if the person operates the motor vehicle with at least one (1) passenger less than eighteen (18) years of age in the vehicle.**".

Page 2, line 13, after "intoxicated" insert ";".

Page 2, line 13, reset in roman "and".

Page 2, line 14, reset in roman "(2) the previous conviction of operating while intoxicated".

Page 2, line 14, delete "that".

Page 2, line 16, delete "; or" and insert ".".

Page 2, delete lines 17 through 42.

Page 4, line 2, delete "1(b)" and insert "**1(c) or 1(d)**".

Page 4, line 10, delete "child" and insert "**passenger**".

Page 4, delete lines 23 through 29.

Page 4, line 30, delete "(i)" and insert "**(h)**".

Page 4, line 33, delete "(j)" and insert "**(i)**".

Page 5, line 1, reset in roman "or".

Page 5, line 2, delete "that".

Page 5, line 2, reset in roman "to".

Page 6, line 5, delete "child" and insert "**passenger**".

Page 6, line 6, delete "In addition to" and insert "**As part of**".

Page 6, line 16, delete "**operating while intoxicated causing**" and insert "**an offense under section 5 of this chapter**.".

Page 6, delete line 17.

Page 7, line 42, delete "IC 9-30-5-3(a)(2), operating a vehicle" and insert "**IC 9-30-5-1 or IC 9-30-5-2 with at least one (1) passenger less than eighteen (18) years of age in the vehicle:**

(1) while having an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood, or two hundred ten (210) liters of the person's breath (IC 9-30-5-1(c)); or

(2) while having a previous conviction under IC 9-30-5-1 or IC 9-30-5-2".

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Page 8, delete line 1.

Page 8, line 2, delete "eighteen (18) years of age in the vehicle".

Page 8, line 23, delete "IC 9-30-5-3" and insert "**IC 9-30-5-1, IC 9-30-5-2**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1737 as introduced.)

KUZMAN, Chair

Committee Vote: yeas 11, nays 0.

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