



February 7, 2003

SENATE BILL No. 172

DIGEST OF SB 172 (Updated February 6, 2003 11:38 AM - DI 106)

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

Synopsis: Operating a vehicle while intoxicated. Makes the offense of operating a motor vehicle while intoxicated as a Class A misdemeanor a Class D felony if at least one passenger less than 18 years of age was in the vehicle if the driver is over the age of 21. 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 have two convictions 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: (1) assessments for alcohol and drug abuse; or (2) an alcohol or drug abuse program must be conducted by certain persons.

Effective: July 1, 2003.

**Young R Michael, Broden, Howard,
Simpson**

January 7, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.
February 6, 2003, amended, reported favorably — Do Pass.

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SB 172—LS 6419/DI 69+



February 7, 2003

First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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SENATE BILL No. 172

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 9-30-5-3, AS AMENDED BY P.L.291-2001,
2 SECTION 222, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2003]: Sec. 3. A person who violates section 1
4 or 2 of this chapter commits a Class D felony if:
5 (1) the person has a previous conviction of operating while
6 intoxicated ~~and~~
7 (2) ~~the previous conviction of operating while intoxicated that~~
8 occurred within the five (5) years immediately preceding the
9 occurrence of the violation of section 1 or 2 of this chapter; ~~or~~
10 (2) **the person:**
11 (A) **is at least twenty-one (21) years of age;**
12 (B) **violates section 1(b) or 2(b) of this chapter; and**
13 (C) **operated a vehicle with at least one (1) passenger less**
14 **than eighteen (18) years of age.**
15 SECTION 2. IC 9-30-5-10 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. (a) In addition to a
17 criminal penalty imposed for an offense under this chapter or

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1 IC 14-15-8, the court shall, after reviewing the person's bureau driving
 2 record and other relevant evidence, recommend the suspension of the
 3 person's driving privileges for the fixed period of time specified under
 4 this section.

5 (b) If the court finds that the person:

6 (1) does not have a previous conviction of operating a vehicle or
 7 a motorboat while intoxicated; or

8 (2) has a previous conviction of operating a vehicle or a
 9 motorboat while intoxicated that occurred at least ten (10) years
 10 before the conviction under consideration by the court;

11 the court shall recommend the suspension of the person's driving
 12 privileges for at least ninety (90) days but not more than two (2) years.

13 (c) If the court finds that the person has a previous conviction of
 14 operating a vehicle or a motorboat while intoxicated and the previous
 15 conviction occurred more than five (5) years but less than ten (10)
 16 years before the conviction under consideration by the court, the court
 17 shall recommend the suspension of the person's driving privileges for
 18 at least one hundred eighty (180) days but not more than two (2) years.
 19 The court may stay the execution of that part of the suspension that
 20 exceeds the minimum period of suspension and grant the person
 21 probationary driving privileges for a period of time equal to the length
 22 of the stay. If the court grants probationary driving privileges under this
 23 subsection, the court may order that the probationary driving privileges
 24 include the requirement that the person may not operate a motor
 25 vehicle unless the motor vehicle is equipped with a functioning
 26 certified ignition interlock device under IC 9-30-8.

27 (d) If the court finds that the person has a previous conviction of
 28 operating a vehicle or a motorboat while intoxicated and the previous
 29 conviction occurred less than five (5) years before the conviction under
 30 consideration by the court, the court shall recommend the suspension
 31 of the person's driving privileges for at least one (1) year but not more
 32 than two (2) years. ~~The court may stay the execution of that part of the~~
 33 ~~suspension that exceeds the minimum period of suspension and grant~~
 34 ~~the person probationary driving privileges for a period of time equal to~~
 35 ~~the length of the stay. If the court grants probationary driving privileges~~
 36 ~~under this subsection, the court may order that the probationary driving~~
 37 ~~privileges include the requirement that the person may not operate a~~
 38 ~~motor vehicle unless the motor vehicle is equipped with a functioning~~
 39 ~~certified ignition interlock device under IC 9-30-8.~~

40 (e) **If the conviction under consideration by the court is for an**
 41 **offense under section 1(b) of this chapter, the court shall**
 42 **recommend the suspension of the person's driving privileges for at**

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1 least one hundred eighty (180) days but not more than two (2)
2 years.

3 (f) If:

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

6 (2) the court determines that the person was at least
7 twenty-one (21) years of age and operated a vehicle with at
8 least one (1) passenger less than eighteen (18) years of age in
9 the vehicle;

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

13 (g) If:

14 (1) the conviction under consideration by the court is for an
15 offense under section (1)(b) of this chapter; and

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

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

21 (h) If the conviction under consideration by the court is for an
22 offense under:

23 (1) section 4 of this chapter;

24 (2) section 5 of this chapter;

25 (3) IC 14-15-8-8(b); or

26 (4) IC 14-15-8-8(c);

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

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

34 SECTION 3. IC 9-30-5-15, AS AMENDED BY P.L.32-2000,
35 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
36 JULY 1, 2003]: Sec. 15. (a) In addition to any criminal penalty
37 imposed for an offense under this chapter the court shall:

38 (1) order:

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

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

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

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

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

10 ~~(1) order~~

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

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

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

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

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

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

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

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

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

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

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

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

37 **(B) if appropriate, successfully complete an alcohol or drug**
 38 **program;**

39 **if the person is at least twenty-one (21) years of age and is**
 40 **convicted of an offense under section 1(a), 1(c), or 2 of this chapter**
 41 **with at least one (1) passenger less than eighteen (18) years of age**
 42 **in the vehicle.**



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1 **(e) In addition to any criminal penalty imposed for an offense**
 2 **under this chapter, the court shall order the person to:**

- 3 **(1) receive an assessment of the person's degree of alcohol and**
 4 **drug abuse; and**
 5 **(2) if appropriate, successfully complete an alcohol or drug**
 6 **program;**

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

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

- 11 **(1) a court established alcohol and drug services program**
 12 **certified under IC 12-23-14;**
 13 **(2) a circuit court alcohol abuse deterrent program**
 14 **established under IC 9-30-9; or**
 15 **(3) a drug court certified under IC 12-23-14.5.**

16 **In a county that does not have a program described in subdivision**
 17 **(1), (2), or (3), the assessment must be conducted by an addiction**
 18 **services treatment provider certified by the division of mental**
 19 **health and addiction under IC 12-23.**

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

- 23 **(1) certified under IC 12-23-14 or IC 12-23-14.5; or**
 24 **(2) authorized under IC 9-30-9.**

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

29 ~~(e)~~ **(h) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence**
 30 **imposed under this section may not be suspended. The court may**
 31 **require that the person serve the term of imprisonment in an**
 32 **appropriate facility at whatever time or intervals (consecutive or**
 33 **intermittent) determined appropriate by the court. However:**

- 34 **(1) at least forty-eight (48) hours of the sentence must be served**
 35 **consecutively; and**
 36 **(2) except as provided in subsection (e), the entire sentence**
 37 **must be served within six (6) months after the date of sentencing.**

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

40 **SECTION 4. IC 9-30-10-5 IS AMENDED TO READ AS**
 41 **FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) If it appears from**
 42 **the records maintained in the bureau that a person's driving record**

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1 makes the person a habitual violator under section 4 of this chapter, the
 2 bureau shall mail a notice to the person's last known address that
 3 informs the person that the person's driving privileges will be
 4 suspended in thirty (30) days because the person is a habitual violator
 5 according to the records of the bureau.

6 (b) Thirty (30) days after the bureau has mailed a notice under this
 7 section, the bureau shall suspend the person's driving privileges for:

8 (1) **except as provided in subdivision (2)**, ten (10) years if the
 9 person is a habitual violator under section 4(a) of this chapter;

10 (2) **life if the person is a habitual violator under section 4(a) of**
 11 **this chapter and has two (2) or more violations under section**
 12 **4(a)(4) through section 4(a)(7) of this chapter;**

13 (3) ten (10) years if the person is a habitual violator under section
 14 4(b) of this chapter; or

15 ~~(3)~~ (4) five (5) years if the person is a habitual violator under
 16 section 4(c) of this chapter.

17 (c) The notice must inform the person that the person may be
 18 entitled to relief under section 6 of this chapter or may seek judicial
 19 review of the person's suspension under this chapter.

20 SECTION 5. IC 35-50-2-2, AS AMENDED BY P.L.116-2002,
 21 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2003]: Sec. 2. (a) The court may suspend any part of a
 23 sentence for a felony, except as provided in this section or in section
 24 2.1 of this chapter.

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

28 (1) The crime committed was a Class A or Class B felony and the
 29 person has a prior unrelated felony conviction.

30 (2) The crime committed was a Class C felony and less than seven
 31 (7) years have elapsed between the date the person was
 32 discharged from probation, imprisonment, or parole, whichever
 33 is later, for a prior unrelated felony conviction and the date the
 34 person committed the Class C felony for which the person is
 35 being sentenced.

36 (3) The crime committed was a Class D felony and less than three
 37 (3) years have elapsed between the date the person was
 38 discharged from probation, imprisonment, or parole, whichever
 39 is later, for a prior unrelated felony conviction and the date the
 40 person committed the Class D felony for which the person is
 41 being sentenced. However, the court may suspend the minimum
 42 sentence for the crime only if the court orders home detention

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1 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
2 sentence specified for the crime under this chapter.

3 (4) The felony committed was:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (i) school property;

33 (ii) a public park;

34 (iii) a family housing complex; or

35 (iv) a youth program center;

36 (P) dealing in a schedule I, II, or III controlled substance
37 (IC 35-48-4-2) if the court finds the person possessed a firearm
38 (as defined in IC 35-47-1-5) at the time of the offense, or the
39 person delivered or intended to deliver to a person under
40 eighteen (18) years of age at least three (3) years junior to the
41 person and was on a school bus or within one thousand (1,000)
42 feet of:

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- 1 (i) school property;
 2 (ii) a public park;
 3 (iii) a family housing complex; or
 4 (iv) a youth program center;
 5 (Q) an offense under IC 9-30-5 (operating a vehicle while
 6 intoxicated) and the person who committed the offense has
 7 accumulated at least two (2) prior unrelated convictions under
 8 IC 9-30-5; ~~or~~
 9 (R) **an offense under IC 9-30-5-5 (operating a vehicle while**
 10 **intoxicated causing death); or**
 11 (S) aggravated battery (IC 35-42-2-1.5).
 12 (c) Except as provided in subsection (e), whenever the court
 13 suspends a sentence for a felony, it shall place the person on probation
 14 under IC 35-38-2 for a fixed period to end not later than the date that
 15 the maximum sentence that may be imposed for the felony will expire.
 16 (d) The minimum sentence for a person convicted of voluntary
 17 manslaughter may not be suspended unless the court finds at the
 18 sentencing hearing that the crime was not committed by means of a
 19 deadly weapon.
 20 (e) Whenever the court suspends that part of an offender's (as
 21 defined in IC 5-2-12-4) sentence that is suspendible under subsection
 22 (b), the court shall place the offender on probation under IC 35-38-2 for
 23 not more than ten (10) years.
 24 (f) An additional term of imprisonment imposed under
 25 IC 35-50-2-11 may not be suspended.
 26 (g) A term of imprisonment imposed under IC 35-47-10-6 or
 27 IC 35-47-10-7 may not be suspended if the commission of the offense
 28 was knowing or intentional.
 29 (h) A term of imprisonment imposed for an offense under
 30 IC 35-48-4-6(b)(1)(B) may not be suspended.
 31 **SECTION 6. [EFFECTIVE JULY 1, 2003] IC 9-30-5-3,**
 32 **IC 9-30-5-10, IC 9-30-5-15, and IC 35-50-2-2, all as amended by**
 33 **this act, apply only if the last offense was committed after June 30,**
 34 **2003.**

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SENATE MOTION

Mr. President: I move that Senator Broden be added as second author and Senator Howard be added as coauthor of Senate Bill 172.

YOUNG R MICHAEL

SENATE MOTION

Mr. President: I move that Senator Simpson be added as coauthor of Senate Bill 172.

YOUNG R MICHAEL

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COMMITTEE REPORT

Mr. President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred Senate Bill No. 172, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 10.

Page 2, line 20, after "person" insert ":

(A) is at least twenty-one (21) years of age;

(B)".

Page 2, line 20, delete "chapter" and insert "**chapter;**".

Page 2, line 21, before "operated" begin a new line double block indented and insert:

"(C)".

Page 3, line 31, after "person" insert "**was at least twenty-one (21) years of age and**".

Page 3, line 37, after "(g)" insert:

"If:

(1) the conviction under consideration by the court is for an offense under section (1)(b) 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 (1) year but not more than two (2) years.

(h)".

Page 3, reset in roman line 40.

Page 3, line 41, reset in roman "(3)".

Page 3, line 41, delete "(2)".

Page 3, line 42, reset in roman "(4)".

Page 3, line 42, delete "(3)".

Page 4, delete lines 3 through 12.

Page 4, line 13, delete "(j)" and insert "**(i)**".

Page 4, line 35, delete ":".

Page 4, strike line 36.

Page 4, line 37, strike "that the person be imprisoned for at least".

Page 4, line 37, delete "ninety".

Page 4, line 38, delete "(90)".

Page 4, line 38, strike "days;".

Page 4, line 40, strike "and".

Page 4, line 41, strike "(2)".

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Page 5, line 24, after "is" insert "**at least twenty-one (21) years of age and is**".

Page 5, line 28, delete ":".

Page 5, delete lines 29 through 30.

Page 5, line 31, delete "(2)".

Page 5, run in lines 28 and 31.

Page 5, delete lines 32 through 35, begin a new line block indented and insert:

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

(2) if appropriate, successfully complete an alcohol or drug program;".

Page 5, line 41, delete "or".

Page 6, line 1, delete "IC 9-30-9." and insert "**IC 9-30-9; or**

(3) a drug court certified under IC 12-23-14.5."

Page 6, line 3, after "(1)" insert ",".

Page 6, line 3, delete "or".

Page 6, line 3, after "(2)," insert "**or (3),**".

Page 6, line 9, delete "IC 12-23-14;" and insert "**IC 12-23-14 or IC 12-23-14.5;**".

Page 6, between lines 25 and 26, begin a new paragraph and insert:

"SECTION 5. IC 9-30-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5. (a) If it appears from the records maintained in the bureau that a person's driving record makes the person a habitual violator under section 4 of this chapter, the bureau shall mail a notice to the person's last known address that informs the person that the person's driving privileges will be suspended in thirty (30) days because the person is a habitual violator according to the records of the bureau.

(b) Thirty (30) days after the bureau has mailed a notice under this section, the bureau shall suspend the person's driving privileges for:

(1) **except as provided in subdivision (2),** ten (10) years if the person is a habitual violator under section 4(a) of this chapter;

(2) **life if the person is a habitual violator under section 4(a) of this chapter and has two (2) or more violations under section 4(a)(4) through section 4(a)(7) of this chapter;**

(3) ten (10) years if the person is a habitual violator under section 4(b) of this chapter; or

~~(3)~~ (4) five (5) years if the person is a habitual violator under section 4(c) of this chapter.

(c) The notice must inform the person that the person may be entitled to relief under section 6 of this chapter or may seek judicial

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review of the person's suspension under this chapter."

Page 8, line 15, delete "operating a vehicle while intoxicated with at least one" and insert "**an offense under IC 9-30-5-5 (operating a vehicle while intoxicated causing death); or**".

Page 8, delete lines 16 through 17.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 172 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 5, Nays 4.

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