



January 20, 2012

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## SENATE BILL No. 154

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DIGEST OF SB 154 (Updated January 17, 2012 12:18 pm - DI 106)

**Citations Affected:** IC 7.1-1; IC 9-30; IC 11-13; IC 14-8; IC 14-15; IC 35-38; IC 35-46; IC 35-51.

**Synopsis:** Operating a motorboat while intoxicated. Makes operating a motorboat while having a schedule I or II controlled substance in the person's body a Class C misdemeanor. Transfers the crime of operating a motorboat while intoxicated from the natural resources code to the criminal code. Makes conforming amendments and repeals superseded provisions.

**Effective:** July 1, 2012.

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### Steele

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January 4, 2012, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.  
January 19, 2012, reported favorably — Do Pass.

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SB 154—LS 6589/DI 106+



January 20, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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## SENATE BILL No. 154



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 7.1-1-3-13.5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 13.5. "Conviction for  
3 operating while intoxicated" means a conviction (as defined in  
4 IC 9-13-2-38):

- 5 (1) in Indiana for:
  - 6 (A) an alcohol related or drug related crime under Acts 1939,
  - 7 c.48, s.52, as amended, IC 9-4-1-54 (repealed September 1,
  - 8 1983), IC 9-11-2 (repealed July 1, 1991), or IC 14-1-5
  - 9 (repealed July 1, 1995); or
  - 10 (B) a crime under IC 9-30-5-1 through IC 9-30-5-9,
  - 11 **IC 35-46-9**, or IC 14-15-8 (**before its repeal**); or
  - 12 (2) in any other jurisdiction in which the elements of the crime for
  - 13 which the conviction was entered are substantially similar to the
  - 14 elements of a crime described in IC 9-30-5-1 through IC 9-30-5-9,
  - 15 **IC 35-46-9-5**, or IC 14-15-8-8 (**before its repeal**).

16 SECTION 2. IC 9-30-5-10, AS AMENDED BY P.L.126-2008,  
17 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

SB 154—LS 6589/DI 106+



1 JULY 1, 2012]: Sec. 10. (a) In addition to a criminal penalty imposed  
2 for an offense under this chapter, **IC 35-46-9**, or IC 14-15-8 (**before its**  
3 **repeal**), the court shall, after reviewing the person's bureau driving  
4 record and other relevant evidence, recommend the suspension of the  
5 person's driving privileges for the fixed period of time specified under  
6 this section. The court may require that a period of suspension  
7 recommended under this section be imposed, if applicable, before a  
8 period of incarceration or after a period of incarceration, or both before  
9 and after a period of incarceration, as long as the suspension otherwise  
10 complies with the periods established in this section.

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

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

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

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

19 (c) If the court finds that the person has a previous conviction of  
20 operating a vehicle or a motorboat while intoxicated and the previous  
21 conviction occurred more than five (5) years but less than ten (10)  
22 years before the conviction under consideration by the court, the court  
23 shall recommend the suspension of the person's driving privileges for  
24 at least one hundred eighty (180) days but not more than two (2) years.  
25 The court may stay the execution of that part of the suspension that  
26 exceeds the minimum period of suspension and grant the person  
27 probationary driving privileges for a period of time equal to the length  
28 of the stay.

29 (d) If the court finds that the person has a previous conviction of  
30 operating a vehicle or a motorboat while intoxicated and the previous  
31 conviction occurred less than five (5) years before the conviction under  
32 consideration by the court, the court shall recommend the suspension  
33 of the person's driving privileges for at least one (1) year but not more  
34 than two (2) years. The court may stay the execution of that part of the  
35 suspension that exceeds the minimum period of suspension and grant  
36 the person probationary driving privileges for a period of time equal to  
37 the length of the stay. If the court grants probationary driving privileges  
38 under this subsection, the court shall order that the probationary driving  
39 privileges include the requirement that the person may not operate a  
40 motor vehicle unless the motor vehicle is equipped with a functioning  
41 certified ignition interlock device under IC 9-30-8. However, the court  
42 may grant probationary driving privileges under this subsection without

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1 requiring the installation of an ignition interlock device if the person is  
 2 successfully participating in a court supervised alcohol treatment  
 3 program in which the person is taking disulfiram or a similar substance  
 4 that the court determines is effective in treating alcohol abuse. The  
 5 person granted probationary driving privileges under this subsection  
 6 shall pay all costs associated with the installation of an ignition  
 7 interlock device unless the sentencing court determines that the person  
 8 is indigent.

9 (e) If the conviction under consideration by the court is for an  
 10 offense under:

- 11 (1) section 4 of this chapter;
- 12 (2) section 5 of this chapter;
- 13 (3) IC 14-15-8-8(b) **(before its repeal); or**
- 14 (4) IC 14-15-8-8(c) **(before its repeal);**
- 15 **(5) IC 35-46-9-5(b); or**
- 16 **(6) IC 35-46-9-5(c);**

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

19 (f) If the conviction under consideration by the court is for an  
 20 offense involving the use of a controlled substance listed in schedule  
 21 I, II, III, IV, or V of IC 35-48-2, in which a vehicle was used in the  
 22 offense, the court shall recommend the suspension or revocation of the  
 23 person's driving privileges for at least six (6) months.

24 SECTION 3. IC 9-30-6-5.5, AS ADDED BY P.L.220-2011,  
 25 SECTION 231, IS AMENDED TO READ AS FOLLOWS  
 26 [EFFECTIVE JULY 1, 2012]: Sec. 5.5. (a) Notwithstanding IC 4-22-2,  
 27 to implement P.L.1-2000, the director of the department of toxicology  
 28 of the Indiana University School of Medicine may adopt a rule required  
 29 under section 5 of this chapter, section 6 of this chapter, or both in the  
 30 manner provided for emergency rules under IC 4-22-2-37.1.

31 (b) A rule adopted under this section is effective when it is filed  
 32 with the secretary of state and expires on the latest of the following:

- 33 (1) The date that the director adopts another emergency rule  
 34 under this section to amend, repeal, or otherwise supersede the  
 35 previously adopted emergency rule.
- 36 (2) The date that the director adopts a permanent rule under  
 37 IC 4-22-2 to amend, repeal, or otherwise supersede the previously  
 38 adopted emergency rule.
- 39 (3) July 1, 2001.

40 (c) For the purposes of IC 9-30-7-4, IC 14-15-8-14 **(before its**  
 41 **repeal), IC 35-46-9,** and other statutes, the provisions of a rule adopted  
 42 under this section shall be treated as a requirement under section 5 of

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1 this chapter, section 6 of this chapter, or both as appropriate.

2 SECTION 4. IC 9-30-6-8 IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2012]: Sec. 8. (a) Whenever a judicial officer  
4 has determined that there was probable cause to believe that a person  
5 has violated IC 9-30-5, **IC 35-46-9**, or IC 14-15-8 (**before its repeal**),  
6 the clerk of the court shall forward:

7 (1) a copy of the affidavit; and

8 (2) a bureau certificate as described in section 16 of this chapter;  
9 to the bureau.

10 (b) The probable cause affidavit required under section 7(b)(2) of  
11 this chapter must do the following:

12 (1) Set forth the grounds for the arresting officer's belief that there  
13 was probable cause that the arrested person was operating a  
14 vehicle in violation of IC 9-30-5 or a motorboat in violation of  
15 **IC 35-46-9 or IC 14-15-8 (before its repeal)**.

16 (2) State that the person was arrested for a violation of IC 9-30-5  
17 or operating a motorboat in violation of **IC 35-46-9 or IC 14-15-8**  
18 **(before its repeal)**.

19 (3) State whether the person:

20 (A) refused to submit to a chemical test when offered; or

21 (B) submitted to a chemical test that resulted in prima facie  
22 evidence that the person was intoxicated.

23 (4) Be sworn to by the arresting officer.

24 (c) Except as provided in subsection (d), if it is determined under  
25 subsection (a) that there was probable cause to believe that a person  
26 has violated IC 9-30-5, **or IC 35-46-9, or IC 14-15-8 (before its**  
27 **repeal)**, at the initial hearing of the matter held under IC 35-33-7-1:

28 (1) the court shall recommend immediate suspension of the  
29 person's driving privileges to take effect on the date the order is  
30 entered;

31 (2) the court shall order the person to surrender all driver's  
32 licenses, permits, and receipts; and

33 (3) the clerk shall forward the following to the bureau:

34 (A) The person's license or permit surrendered under this  
35 section or section 3 or 7 of this chapter.

36 (B) A copy of the order recommending immediate suspension  
37 of driving privileges.

38 (d) If it is determined under subsection (a) that there is probable  
39 cause to believe that a person violated IC 9-30-5, the court may, as an  
40 alternative to a license suspension under subsection (c)(1), issue an  
41 order recommending that the person be prohibited from operating a  
42 motor vehicle unless the motor vehicle is equipped with a functioning

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1 certified ignition interlock device under IC 9-30-8 until the bureau is  
 2 notified by a court that the criminal charges against the person have  
 3 been resolved.

4 SECTION 5. IC 11-13-3-4, AS AMENDED BY P.L.229-2011,  
 5 SECTION 104, IS AMENDED TO READ AS FOLLOWS  
 6 [EFFECTIVE JULY 1, 2012]: Sec. 4. (a) A condition to remaining on  
 7 parole is that the parolee not commit a crime during the period of  
 8 parole.

9 (b) The parole board may also adopt, under IC 4-22-2, additional  
 10 conditions to remaining on parole and require a parolee to satisfy one  
 11 (1) or more of these conditions. These conditions must be reasonably  
 12 related to the parolee's successful reintegration into the community and  
 13 not unduly restrictive of a fundamental right.

14 (c) If a person is released on parole, the parolee shall be given a  
 15 written statement of the conditions of parole. Signed copies of this  
 16 statement shall be:

- 17 (1) retained by the parolee;
- 18 (2) forwarded to any person charged with the parolee's
- 19 supervision; and
- 20 (3) placed in the parolee's master file.

21 (d) The parole board may modify parole conditions if the parolee  
 22 receives notice of that action and had ten (10) days after receipt of the  
 23 notice to express the parolee's views on the proposed modification.  
 24 This subsection does not apply to modification of parole conditions  
 25 after a revocation proceeding under section 10 of this chapter.

26 (e) As a condition of parole, the parole board may require the  
 27 parolee to reside in a particular parole area. In determining a parolee's  
 28 residence requirement, the parole board shall:

- 29 (1) consider:
  - 30 (A) the residence of the parolee prior to the parolee's
  - 31 incarceration; and
  - 32 (B) the parolee's place of employment; and
- 33 (2) assign the parolee to reside in the county where the parolee
- 34 resided prior to the parolee's incarceration unless assignment on
- 35 this basis would be detrimental to the parolee's successful
- 36 reintegration into the community.

37 (f) As a condition of parole, the parole board may require the  
 38 parolee to:

- 39 (1) periodically undergo a laboratory chemical test (as defined in
- 40 ~~IC 14-15-8-1~~ **IC 9-13-2-22**) or series of tests to detect and
- 41 confirm the presence of a controlled substance (as defined in
- 42 IC 35-48-1-9); and



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- 1 (2) have the results of any test under this subsection reported to  
 2 the parole board by the laboratory.  
 3 The parolee is responsible for any charges resulting from a test  
 4 required under this subsection. However, a person's parole may not be  
 5 revoked on the basis of the person's inability to pay for a test under this  
 6 subsection.
- 7 (g) As a condition of parole, the parole board:
- 8 (1) may require a parolee who is a sex offender (as defined in  
 9 IC 11-8-8-4.5) to:
- 10 (A) participate in a treatment program for sex offenders  
 11 approved by the parole board; and  
 12 (B) avoid contact with any person who is less than sixteen (16)  
 13 years of age unless the parolee:
- 14 (i) receives the parole board's approval; or  
 15 (ii) successfully completes the treatment program referred to  
 16 in clause (A); and
- 17 (2) shall:
- 18 (A) require a parolee who is a sex or violent offender (as  
 19 defined in IC 11-8-8-5) to register with a local law  
 20 enforcement authority under IC 11-8-8;  
 21 (B) prohibit a parolee who is a sex offender from residing  
 22 within one thousand (1,000) feet of school property (as defined  
 23 in IC 35-41-1-24.7) for the period of parole, unless the sex  
 24 offender obtains written approval from the parole board;  
 25 (C) prohibit a parolee who is a sex offender convicted of a sex  
 26 offense (as defined in IC 35-38-2-2.5) from residing within  
 27 one (1) mile of the victim of the sex offender's sex offense  
 28 unless the sex offender obtains a waiver under IC 35-38-2-2.5;  
 29 (D) prohibit a parolee who is a sex offender from owning,  
 30 operating, managing, being employed by, or volunteering at  
 31 any attraction designed to be primarily enjoyed by children  
 32 less than sixteen (16) years of age;  
 33 (E) require a parolee who is a sex offender to consent:  
 34 (i) to the search of the sex offender's personal computer at  
 35 any time; and  
 36 (ii) to the installation on the sex offender's personal  
 37 computer or device with Internet capability, at the sex  
 38 offender's expense, of one (1) or more hardware or software  
 39 systems to monitor Internet usage; and  
 40 (F) prohibit the sex offender from:  
 41 (i) accessing or using certain web sites, chat rooms, or  
 42 instant messaging programs frequented by children; and

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1 (ii) deleting, erasing, or tampering with information on the  
 2 sex offender's personal computer with intent to conceal an  
 3 activity prohibited by item (i).

4 The parole board may not grant a sexually violent predator (as defined  
 5 in IC 35-38-1-7.5) or a sex offender who is an offender against children  
 6 under IC 35-42-4-11 a waiver under subdivision (2)(B) or (2)(C). If the  
 7 parole board allows the sex offender to reside within one thousand  
 8 (1,000) feet of school property under subdivision (2)(B), the parole  
 9 board shall notify each school within one thousand (1,000) feet of the  
 10 sex offender's residence of the order.

11 (h) The address of the victim of a parolee who is a sex offender  
 12 convicted of a sex offense (as defined in IC 35-38-2-2.5) is  
 13 confidential, even if the sex offender obtains a waiver under  
 14 IC 35-38-2-2.5.

15 (i) As a condition of parole, the parole board may require a parolee  
 16 to participate in a reentry court program.

17 (j) As a condition of parole, the parole board:

18 (1) shall require a parolee who is a sexually violent predator  
 19 under IC 35-38-1-7.5; and

20 (2) may require a parolee who is a sex or violent offender (as  
 21 defined in IC 11-8-8-5);

22 to wear a monitoring device (as described in IC 35-38-2.5-3) that can  
 23 transmit information twenty-four (24) hours each day regarding a  
 24 person's precise location, subject to the amount appropriated to the  
 25 department for a monitoring program as a condition of parole.

26 (k) As a condition of parole, the parole board may prohibit, in  
 27 accordance with IC 35-38-2-2.6, a parolee who has been convicted of  
 28 stalking from residing within one thousand (1,000) feet of the residence  
 29 of the victim of the stalking for a period that does not exceed five (5)  
 30 years.

31 (l) As a condition of parole, the parole board may prohibit a parolee  
 32 convicted of an offense under IC 35-46-3 from owning, harboring, or  
 33 training an animal, and, if the parole board prohibits a parolee  
 34 convicted of an offense under IC 35-46-3 from having direct or indirect  
 35 contact with an individual, the parole board may also prohibit the  
 36 parolee from having direct or indirect contact with any animal  
 37 belonging to the individual.

38 (m) A parolee may be responsible for the reasonable expenses, as  
 39 determined by the department, of the parolee's participation in a  
 40 treatment or other program required as a condition of parole under this  
 41 section. However, a person's parole may not be revoked solely on the  
 42 basis of the person's inability to pay for a program required as a

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1 condition of parole under this section.

2 SECTION 6. IC 14-8-2-135 IS REPEALED [EFFECTIVE JULY 1,  
3 2012]. Sec. 135: "Intoxicated", for purposes of IC 14-15-8, has the  
4 meaning set forth in IC 14-15-8-3.

5 SECTION 7. IC 14-8-2-40 IS REPEALED [EFFECTIVE JULY 1,  
6 2012]. Sec. 40: "Chemical test", for purposes of IC 14-15-8, has the  
7 meaning set forth in IC 14-15-8-1.

8 SECTION 8. IC 14-8-2-56 IS REPEALED [EFFECTIVE JULY 1,  
9 2012]. Sec. 56: "Controlled substance", for purposes of IC 14-15-8, has  
10 the meaning set forth in IC 14-15-8-2.

11 SECTION 9. IC 14-8-2-148 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 148. "Law enforcement  
13 officer", has the following meanings:

14 (1) For purposes of IC 14-15-8, the meaning set forth in  
15 IC 14-15-8-4.

16 (2) for purposes of IC 14-22-40, has the meaning set forth in  
17 IC 14-22-40-5.

18 SECTION 10. IC 14-8-2-238 IS REPEALED [EFFECTIVE JULY  
19 1, 2012]. Sec. 238: "Relevant evidence", for purposes of IC 14-15-8,  
20 has the meaning set forth in IC 14-15-8-6.

21 SECTION 11. IC 14-8-2-251 IS REPEALED [EFFECTIVE JULY  
22 1, 2012]. Sec. 251: "Serious bodily injury", for purposes of IC 14-15-8,  
23 has the meaning set forth in IC 14-15-8-7.

24 SECTION 12. IC 14-8-2-212 IS REPEALED [EFFECTIVE JULY  
25 1, 2012]. Sec. 212: "Prima facie evidence of intoxication", for purposes  
26 of IC 14-15-8, has the meaning set forth in IC 14-15-8-5.

27 SECTION 13. IC 14-15-4-4 IS AMENDED TO READ AS  
28 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 4. A person who  
29 violates this chapter commits a Class C misdemeanor. However, the  
30 offense is:

31 (1) a Class A misdemeanor if the accident or collision results in  
32 an injury to a person;

33 (2) a Class D felony if:

34 (A) the accident or collision results in serious bodily injury to  
35 a person; or

36 (B) within the five (5) years preceding the commission of the  
37 offense, the person had a previous conviction of any of the  
38 offenses listed in IC 9-30-10-4(a), **IC 35-46-9-5**, or  
39 IC 14-15-8-8 (**before its repeal**); or

40 (3) a Class C felony if the accident or collision results in the death  
41 of a person.

42 SECTION 14. IC 14-15-8 IS REPEALED [EFFECTIVE JULY 1,

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2012]. (Operating a Motorboat While Intoxicated).

SECTION 15. IC 14-15-11-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 14. (a) The bureau may suspend or revoke the driver's license of a person upon the conviction of the person of a crime based on a violation of IC 14-15-3, IC 14-15-8 **(before its repeal), IC 35-46-9**, or IC 14-15-12.

(b) In suspending or revoking a driver's license under this section, the bureau shall follow the procedure set forth in IC 9-30-4.

SECTION 16. IC 14-15-11-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 15. (a) A court in which an individual is convicted of a crime based on a violation of IC 14-15-3, **IC 35-46-9**, IC 14-15-8 **(before its repeal)**, or IC 14-15-12 relating to the operation of a motorboat shall forward a certified abstract of the record of the conviction to the bureau.

(b) If, in the opinion of the court, an individual referred to in subsection (a) should be deprived of the privilege of operating a vehicle or motorboat, the court shall recommend the suspension of the Indiana driver's license issued to the individual for a fixed period. The period of the suspension shall be established by the court but may not exceed one (1) year.

(c) Upon receiving the recommendation of the court under subsection (b), the bureau shall suspend the individual's license for the period recommended by the court.

(d) A certified abstract forwarded to the bureau under subsection (a):

- (1) must be in the form prescribed by the bureau; and
- (2) shall be accepted by an administrative agency or a court as prima facie evidence of the conviction and all other action stated in the abstract.

SECTION 17. IC 14-15-11-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 17. (a) For purposes of the point system for Indiana traffic convictions operated by the bureau under 140 IAC 1-4.5, the bureau shall assess points against a person who commits a crime by operating a motorboat in violation of:

- (1) IC 14-15-3;
- (2) **IC 35-46-9 (or IC 14-15-8 before its repeal)**; or
- (3) IC 14-15-12.

(b) The bureau shall assess points against a person under this section for each crime referred to in subsection (a) that is committed by the person.

(c) The point study committee appointed by the commissioner under 140 IAC 1-4.5-3, in consultation with the department, shall determine

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1 the number of points assessed under subsection (a) for each type of  
2 criminal violation of IC 14-15-3, IC 14-15-8 **(before its repeal)**,  
3 **IC 35-46-9**, or IC 14-15-12 based on the evaluation by the committee  
4 of the danger to human life, human physical safety, and property posed  
5 by the violation.

6 SECTION 18. IC 14-15-12-5 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 5. The requirements  
8 and prohibitions set forth in this chapter concerning personal watercraft  
9 are in addition to the requirements and prohibitions set forth in  
10 IC 14-15-3, **IC 35-46-9**, and IC 14-15-8 **(before its repeal)**.

11 SECTION 19. IC 14-15-13-2, AS ADDED BY P.L.165-2011,  
12 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2012]: Sec. 2. The requirements and prohibitions set forth in  
14 this chapter are in addition to the requirements and prohibitions set  
15 forth in IC 14-15-2, IC 14-15-3, IC 14-15-4, 14-15-8 **(before its**  
16 **repeal)**, **IC 35-46-9**, and IC 14-15-12.

17 SECTION 20. IC 35-38-2-2.3, AS AMENDED BY P.L.111-2009,  
18 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
19 JULY 1, 2012]: Sec. 2.3. (a) As a condition of probation, the court may  
20 require a person to do a combination of the following:

- 21 (1) Work faithfully at suitable employment or faithfully pursue a
- 22 course of study or career and technical education that will equip
- 23 the person for suitable employment.
- 24 (2) Undergo available medical or psychiatric treatment and
- 25 remain in a specified institution if required for that purpose.
- 26 (3) Attend or reside in a facility established for the instruction,
- 27 recreation, or residence of persons on probation.
- 28 (4) Support the person's dependents and meet other family
- 29 responsibilities.
- 30 (5) Make restitution or reparation to the victim of the crime for
- 31 damage or injury that was sustained by the victim. When
- 32 restitution or reparation is a condition of probation, the court shall
- 33 fix the amount, which may not exceed an amount the person can
- 34 or will be able to pay, and shall fix the manner of performance.
- 35 (6) Execute a repayment agreement with the appropriate
- 36 governmental entity to repay the full amount of public relief or
- 37 assistance wrongfully received, and make repayments according
- 38 to a repayment schedule set out in the agreement.
- 39 (7) Pay a fine authorized by IC 35-50.
- 40 (8) Refrain from possessing a firearm or other deadly weapon
- 41 unless granted written permission by the court or the person's
- 42 probation officer.

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- 1 (9) Report to a probation officer at reasonable times as directed
- 2 by the court or the probation officer.
- 3 (10) Permit the person's probation officer to visit the person at
- 4 reasonable times at the person's home or elsewhere.
- 5 (11) Remain within the jurisdiction of the court, unless granted
- 6 permission to leave by the court or by the person's probation
- 7 officer.
- 8 (12) Answer all reasonable inquiries by the court or the person's
- 9 probation officer and promptly notify the court or probation
- 10 officer of any change in address or employment.
- 11 (13) Perform uncompensated work that benefits the community.
- 12 (14) Satisfy other conditions reasonably related to the person's
- 13 rehabilitation.
- 14 (15) Undergo home detention under IC 35-38-2.5.
- 15 (16) Undergo a laboratory test or series of tests approved by the
- 16 state department of health to detect and confirm the presence of
- 17 the human immunodeficiency virus (HIV) antigen or antibodies
- 18 to the human immunodeficiency virus (HIV), if:
- 19 (A) the person had been convicted of an offense relating to a
- 20 criminal sexual act and the offense created an
- 21 epidemiologically demonstrated risk of transmission of the
- 22 human immunodeficiency virus (HIV); or
- 23 (B) the person had been convicted of an offense relating to a
- 24 controlled substance and the offense involved:
- 25 (i) the delivery by any person to another person; or
- 26 (ii) the use by any person on another person;
- 27 of a contaminated sharp (as defined in IC 16-41-16-2) or other
- 28 paraphernalia that creates an epidemiologically demonstrated
- 29 risk of transmission of HIV by involving percutaneous contact.
- 30 (17) Refrain from any direct or indirect contact with an individual
- 31 and, if convicted of an offense under IC 35-46-3, any animal
- 32 belonging to the individual.
- 33 (18) Execute a repayment agreement with the appropriate
- 34 governmental entity or with a person for reasonable costs incurred
- 35 because of the taking, detention, or return of a missing child (as
- 36 defined in IC 10-13-5-4).
- 37 (19) Periodically undergo a laboratory chemical test (as defined
- 38 in ~~IC 14-15-8-1~~ **IC 9-13-2-22**) or series of chemical tests as
- 39 specified by the court to detect and confirm the presence of a
- 40 controlled substance (as defined in IC 35-48-1-9). The person on
- 41 probation is responsible for any charges resulting from a test and
- 42 shall have the results of any test under this subdivision reported

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to the person's probation officer by the laboratory.

(20) If the person was confined in a penal facility, execute a reimbursement plan as directed by the court and make repayments under the plan to the authority that operates the penal facility for all or part of the costs of the person's confinement in the penal facility. The court shall fix an amount that:

(A) may not exceed an amount the person can or will be able to pay;

(B) does not harm the person's ability to reasonably be self supporting or to reasonably support any dependent of the person; and

(C) takes into consideration and gives priority to any other restitution, reparation, repayment, or fine the person is required to pay under this section.

(21) Refrain from owning, harboring, or training an animal.

(22) Participate in a reentry court program.

(b) When a person is placed on probation, the person shall be given a written statement specifying:

(1) the conditions of probation; and

(2) that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:

(A) One (1) year after the termination of probation.

(B) Forty-five (45) days after the state receives notice of the violation.

(c) As a condition of probation, the court may require that the person serve a term of imprisonment in an appropriate facility at the time or intervals (consecutive or intermittent) within the period of probation the court determines.

(d) Intermittent service may be required only for a term of not more than sixty (60) days and must be served in the county or local penal facility. The intermittent term is computed on the basis of the actual days spent in confinement and shall be completed within one (1) year. A person does not earn credit time while serving an intermittent term of imprisonment under this subsection. When the court orders intermittent service, the court shall state:

(1) the term of imprisonment;

(2) the days or parts of days during which a person is to be confined; and

(3) the conditions.

(e) Supervision of a person may be transferred from the court that placed the person on probation to a court of another jurisdiction, with

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1 the concurrence of both courts. Retransfers of supervision may occur  
2 in the same manner. This subsection does not apply to transfers made  
3 under IC 11-13-4 or IC 11-13-5.

4 (f) When a court imposes a condition of probation described in  
5 subsection (a)(17):

- 6 (1) the clerk of the court shall comply with IC 5-2-9; and
- 7 (2) the prosecuting attorney shall file a confidential form  
8 prescribed or approved by the division of state court  
9 administration with the clerk.

10 (g) As a condition of probation, a court shall require a person:

- 11 (1) convicted of an offense described in IC 10-13-6-10;
- 12 (2) who has not previously provided a DNA sample in accordance  
13 with IC 10-13-6; and
- 14 (3) whose sentence does not involve a commitment to the  
15 department of correction;

16 to provide a DNA sample as a condition of probation.

17 SECTION 21. IC 35-46-9 IS ADDED TO THE INDIANA CODE  
18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
19 JULY 1, 2012]:

20 **Chapter 9. Operating a Motorboat While Intoxicated**

21 **Sec. 1. As used in this chapter, "chemical test" means an**  
22 **analysis of an individual's:**

- 23 (1) blood;
- 24 (2) breath;
- 25 (3) urine; or
- 26 (4) other bodily substance;

27 **for the determination of the presence of alcohol or a controlled**  
28 **substance.**

29 **Sec. 2. As used in this chapter, "intoxicated" means under the**  
30 **influence of:**

- 31 (1) alcohol;
- 32 (2) a controlled substance;
- 33 (3) any drug (as defined in IC 9-13-2-49.1) other than alcohol  
34 or a controlled substance; or
- 35 (4) any combination of alcohol, controlled substances, or  
36 drugs;

37 **so that there is an impaired condition of thought and action and the**  
38 **loss of normal control of an individual's faculties.**

39 **Sec. 3. As used in this chapter, "prima facie evidence of**  
40 **intoxication" includes evidence that at the time of an alleged**  
41 **violation there was an alcohol concentration equivalent (as defined**  
42 **in IC 9-13-2-2.4) to at least eight-hundredths (0.08) gram of alcohol**

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per:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath.

Sec. 4. As used in this chapter, "relevant evidence" includes evidence that at the time of the alleged violation there was an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) to at least five-hundredths (0.05) gram and less than eight-hundredths (0.08) 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.

Sec. 5. (a) Except as provided in subsections (b) and (c), a person who operates a motorboat while:

(1) having an alcohol concentration equivalent (as defined in IC 9-13-2-2.4) 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) having a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or
- (3) intoxicated;

commits a Class C misdemeanor.

(b) The offense is a Class D felony if:

- (1) the person has a previous conviction under:
  - (A) IC 14-1-5 (repealed); or
  - (B) this chapter; or
- (2) the offense results in serious bodily injury to another person.

(c) The offense is a Class C felony if the offense results in the death of another person.

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

Sec. 6. A person who operates a motorboat after the person has been ordered not to operate a motorboat under:

- (1) IC 14-15-8 (repealed); or
- (2) this chapter;

commits a Class A misdemeanor.

Sec. 7. (a) In addition to any criminal penalties imposed for a misdemeanor under this chapter, the court shall order the person to not operate a motorboat for at least one (1) year.

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(b) In addition to any criminal penalty imposed for a felony under this chapter, the court shall order the person to not operate a motorboat for at least two (2) years.

Sec. 8. (a) A person who operates a motorboat in water over which Indiana has jurisdiction impliedly consents to submit to the chemical test provisions of this chapter as a condition of operating a motorboat in Indiana.

(b) If a person refuses to submit to a chemical test after having been advised that the refusal will result in the suspension of operating privileges or submits to a chemical test that results in prima facie evidence of intoxication, the arresting law enforcement officer shall do the following:

- (1) Obtain the person's driver's license or permit if the person is in possession of the document and issue a receipt valid until the initial hearing of the matter is held under IC 35-33-7-1.
- (2) Submit a probable cause affidavit to the prosecuting attorney of the county in which the alleged offense occurred.
- (3) Send a copy of the probable cause affidavit submitted under subdivision (2) to the bureau of motor vehicles.

Sec. 9. (a) A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter shall offer the person the opportunity to submit to a chemical test. It is not necessary for the law enforcement officer to offer a chemical test to an unconscious person.

(b) A law enforcement officer may offer a person more than one (1) chemical test under this chapter. However, all tests must be administered within three (3) hours after the officer had probable cause to believe the person violated this chapter.

(c) A person must submit to each chemical test offered by a law enforcement officer to comply with the implied consent provisions of this chapter.

Sec. 10. (a) A law enforcement officer shall offer a portable breath test or chemical test to any person if the officer has reason to believe the person operated a motorboat that was involved in a fatal accident or an accident involving serious bodily injury. If:

- (1) the results of a portable breath test indicate the presence of alcohol;
- (2) the results of a portable breath test do not indicate the presence of alcohol but the law enforcement officer has probable cause to believe the person is under the influence of a controlled substance or another drug; or
- (3) the person refuses to submit to a portable breath test;

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1 the law enforcement officer shall offer a chemical test to the  
 2 person.  
 3 (b) A law enforcement officer may offer a person more than one  
 4 (1) portable breath test or chemical test under this section.  
 5 However, all chemical tests must be administered within three (3)  
 6 hours after the fatal accident or the accident involving serious  
 7 bodily injury.  
 8 (c) It is not necessary for a law enforcement officer to offer a  
 9 portable breath test or chemical test to an unconscious person.  
 10 Sec. 11. (a) If a chemical test results in relevant evidence that  
 11 the person is intoxicated, the person may be arrested for an offense  
 12 under this chapter.  
 13 (b) If a chemical test results in prima facie evidence that the  
 14 person is intoxicated, the person shall be arrested for an offense  
 15 under this chapter.  
 16 (c) A person who refuses to submit to a chemical test may be  
 17 arrested for an offense under this chapter.  
 18 (d) At a proceeding under this chapter, a person's refusal to  
 19 submit to a chemical test is admissible into evidence.  
 20 Sec. 12. (a) The provisions of IC 9-30-6-5 concerning the  
 21 certification and use of chemical breath tests apply to the use of  
 22 chemical breath tests in a prosecution under this chapter.  
 23 (b) IC 9-30-6-6 applies to chemical tests performed under this  
 24 chapter.  
 25 Sec. 13. If a person refuses to submit to a chemical test under  
 26 this chapter, the law enforcement officer shall inform the person  
 27 that the person's refusal will result in the suspension of the  
 28 person's motorboat and motor vehicle operation privileges.  
 29 Sec. 14. The prosecuting attorney of the county in which an  
 30 alleged violation of this chapter occurs shall represent the state in  
 31 a proceeding under this chapter.  
 32 Sec. 15. (a) At a proceeding concerning an offense under this  
 33 chapter, evidence of the alcohol concentration that was in the blood  
 34 of the person charged with the offense;  
 35 (1) at the time of the alleged violation; or  
 36 (2) within the time allowed for testing under sections 9 and 10  
 37 of this chapter;  
 38 as shown by an analysis of the person's breath, blood, urine, or  
 39 other bodily substance is admissible.  
 40 (b) If, in a prosecution for an offense under this chapter,  
 41 evidence establishes that:  
 42 (1) a chemical test was performed on a test sample taken from

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1 the person charged with the offense within the time allowed  
 2 for testing under sections 9 and 10 of this chapter; and  
 3 (2) the person charged with the offense had an alcohol  
 4 concentration equivalent to at least eight-hundredths (0.08)  
 5 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;

8 the trier of fact shall presume that the person charged with the  
 9 offense had an alcohol concentration equivalent to at least  
 10 eight-hundredths (0.08) gram of alcohol per one hundred (100)  
 11 milliliters of the person's blood or per two hundred ten (210) liters  
 12 of the person's breath at the time the person operated the  
 13 motorboat. However, this presumption is rebuttable.

14 SECTION 22. IC 35-51-14-1, AS ADDED BY P.L.70-2011,  
 15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 16 JULY 1, 2012]: Sec. 1. The following statutes define crimes in IC 14:

17 IC 14-9-8-19 (Concerning the department of natural resources).

18 IC 14-15-3-31 (Concerning watercraft).

19 IC 14-15-4-4 (Concerning watercraft accidents).

20 ~~IC 14-15-8-8 (Concerning operating a watercraft while~~  
 21 ~~intoxicated).~~

22 ~~IC 14-15-8-9 (Concerning operating a watercraft while~~  
 23 ~~intoxicated).~~

24 IC 14-15-9-8 (Concerning divers).

25 IC 14-15-11-11 (Concerning motorboat operators).

26 IC 14-15-12-13 (Concerning personal watercraft).

27 IC 14-16-1-29 (Concerning off-road vehicles).

28 IC 14-17-4-8 (Concerning property acquisition).

29 ~~IC 14-20-1-25 (Concerning state museums and historic sites).~~

30 IC 14-21-1-16 (Concerning historic preservation and archeology).

31 IC 14-21-1-26 (Concerning historic preservation and archeology).

32 IC 14-21-1-26.5 (Concerning historic preservation and  
 33 archeology).

34 IC 14-21-1-27 (Concerning historic preservation and archeology).

35 IC 14-21-1-28 (Concerning historic preservation and archeology).

36 IC 14-21-1-36 (Concerning historic preservation and archeology).

37 IC 14-21-2-5 (Concerning historic preservation and archeology).

38 **IC 14-22-13-10 (Concerning commercial fishing licenses).**

39 IC 14-22-17-4 (Concerning fish and wildlife).

40 IC 14-22-32-3 (Concerning fish and wildlife).

41 IC 14-22-34-12 (Concerning fish and wildlife).

42 IC 14-22-37-2 (Concerning fish and wildlife).



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- 1 IC 14-22-37-3 (Concerning fish and wildlife).
- 2 IC 14-22-38-1 (Concerning fish and wildlife).
- 3 IC 14-22-38-3 (Concerning fish and wildlife).
- 4 IC 14-22-38-6 (Concerning fish and wildlife).
- 5 IC 14-22-40-6 (Concerning fish and wildlife).
- 6 IC 14-23-7-5 (Concerning forestry).
- 7 IC 14-24-11-4 (Concerning entomology and plant pathology).
- 8 IC 14-26-7-8 (Concerning lakes and reservoirs).
- 9 IC 14-27-6-52 (Concerning levees, dams, and drainage).
- 10 IC 14-29-8-5 (Concerning rivers, streams, and waterways).
- 11 IC 14-31-3-15 (Concerning nature preserves).
- 12 IC 14-31-3-16 (Concerning nature preserves).
- 13 IC 14-31-3-17 (Concerning nature preserves).
- 14 IC 14-31-3-19 (Concerning nature preserves).
- 15 IC 14-31-3-20 (Concerning nature preserves).
- 16 IC 14-31-3-21 (Concerning nature preserves).
- 17 IC 14-34-2-6 (Concerning surface coal mining and reclamation).
- 18 IC 14-34-16-6 (Concerning surface coal mining and reclamation).
- 19 IC 14-34-16-7 (Concerning surface coal mining and reclamation).
- 20 IC 14-37-13-6 (Concerning oil and gas).

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 154, 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 made to Senate Bill 154 as introduced.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 7, Nays 0.

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