

# 2009 ANNUAL REPORT TO THE INDIANA STATE LEGISLATURE

## *ABSTRACT*

The following report is separated into four sections to address the information requested per P.L. 128-2008. Indiana has implemented nearly all of the federal regulations for probationary commercial driver's licenses (CDL). Procedures regarding CDL suspensions and the state verses federal practices will be explained. The state is prohibited from deferring any violation for persons holding a CDL, per the federal regulations. The Indiana Prosecuting Attorney's Council (IPAC) explains how diversion and deferral practices for persons holding CDL are not possible in Indiana. Diversion and deferral programs for persons with an operator's license are not used for cases of DUI or OWI. Other diversion and deferrals are tracked in the majority of counties by IPAC's ProsLink system. The electronic citation (e-citation) program implementation in Indiana is underway under the oversight of the Indiana Supreme Court's Judicial Technology and Automation Committee (JTAC). Ignition interlock and Secure Continuous Remote Alcohol Monitoring (SCRAM) devices are present in Indiana but are not consistently used by courts for reasons ranging from complexities of implementation to overall cost.

## **IMPLEMENTATION OF P.L. 219-2003: FEDERAL LAW FOR CDL**

P.L. 219-2003 dictates that Indiana will enact the federal regulations for persons holding a CDL issued by the Indiana Bureau of Motor Vehicles (BMV) under IC 9-24-6-2. Sections 383.51 and 384.224 under Title 49 of the Code of Federal Regulations (49CFR 383.51 and 384.224) have been adopted into Indiana state law (see Appendix A). One notable difference between the federal regulations and the current Indiana law is that 49 CFR 383.51(a)(3)—“A driver is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder of a CDL drives a CMV or non-CMV and is convicted of the violations” is not enumerated specifically in the Indiana Code. Please see Table 1 of 383.51 within Appendix A for the full list of procedures and practices regarding license suspensions.

## **IMPLEMENTATION OF P.L. 176-2005: PROSECUTORIAL DIVERSION AND DEFERRAL PRACTICES**

Prosecutorial diversion and deferral practices for persons holding a CDL are prohibited by federal regulations (49CFR 383.51) adopted by Indiana Code (see Appendix A). In regard to diversion and deferral practices for persons with an operator's license without the CDL endorsement, the limitations of prosecuting attorney diversions and deferrals are outlined below (IC 33-39-1-8):

(1) an offense under IC 9-30-5-1 through IC 9-30-5-5; or  
 (2) if a person was arrested or charged with an offense under IC 9-30-5-1 through IC 9-30-5-5, an offense involving:  
 (A) intoxication; or  
 (B) the operation of a motor vehicle;  
 if the offense involving intoxication or the operation of a motor vehicle was part of the same episode of criminal conduct as the offense under IC 9-30-5-1 through IC 9-30-5-5.

Therefore, a driving while intoxicated (DUI) or operating a while intoxicated (OWI) would not be eligible for a prosecutorial diversion or deferral. There is no process to count the cases in which a DUI or OWI is reduced to a lesser charge in lieu of a diversion or deferral.

The computer system used by the prosecuting attorneys council to track diversions and deferrals is currently utilized by 84 of 92 counties. Most of these are using a program created by ProsLink under a contract with IPAC and a grant from ICJI. According to IPAC, Clark and Owen do not have deferral programs. Data cannot be received from the interface used in Marion County and the interface with the Lake County Court system may be incomplete. The interface with Allen County is working with ProsLink and data is received directly while the case management systems in Elkhart and St. Joseph Counties will require an interface and training.

Two screenshots used by prosecutors employing the IPAC/ProsLink software can be found in Appendix B. You will note on the Infraction Deferral screen that printed in large red letters is “Do Not Defer A CDL License.” When IPAC and E-citations have an operational interface the plan is to electronically block the possibility of a deferral if it is a CDL license.

When a prosecutor enters information on an offender the system will check the data base to see if there have been other diversions or deferrals involving the same offender. A check of criminal history will also be done. Most prosecutors additionally check BMV records.

## IMPLEMENTATION OF P.L. 206-2007: ELECTRONIC CITATIONS

The e-citation efforts are orchestrated by JTAC. The summary of the implementation of e-citation below was provided by JTAC and is current as of September 21, 2009.

SUMMARY			
124	Agencies Deployed	32	Sheriff's Departments
9	Agencies Trained (but not Deployed)	98	Police Departments
6	Agencies Scheduled for Training	3	State Agencies
8	Agencies in Planning Stage	133	Total Agencies Trained/Deployed

## INDIANA'S USE OF IGNITION INTERLOCKS AND SCRAM

Several alcohol monitoring technologies are currently being implemented in Indiana courts; however, the lack of centralized data collection/reporting makes summarizing these activities problematic. Thus, the numbers reported here represent responses from only a fraction of all Indiana courts. ICJI, though, was able with the help of the Indiana Judicial Center (IJC) to obtain data that provide a very basic understanding of Indiana's use of these technologies.

At ICJI's request, the IJC contacted the state's Alcohol and Drug Programs, Drug Courts, and Reentry Courts to discover which alcohol monitoring technologies were currently being deployed. Of the 39 Drug and Alcohol Programs, 24 Drug Courts, and 3 Reentry Courts which responded, 18 indicated that it uses both ignition interlock and SCRAM. Fourteen responded that they use either SCRAM or ignition interlock but not both. Five respondents indicated that did not use SCRAM or ignition interlock but did use a different technology, primarily remote breath testing. Finally, 30 responded that they do not use any of these types of alcohol monitoring technology.

This data is not a representative sample of all Indiana courts; therefore the data reported should be taken with caution. The courts represent a sizeable percentage of the sites where these types of technologies are most likely to be implemented, however the data were not obtained using a random sample. The current ignition interlock statutes can be found in Appendix C.

*This 2009 report was created by the Indiana Criminal Justice Institute in concert with Indiana Bureau of Motor Vehicles, Department of Revenue, Judicial Center, and Prosecuting Attorney's Counsel for use by the Indiana State Legislature per P.L. 128-2008.*

APPENDIX A:

CODE OF FEDERAL REGULATIONS

*Title 49: Transportation*

**§ 384.224 Noncommercial motor vehicle violations.**

The State must have and enforce laws and/or regulations applicable to drivers of non-CMV, as defined in §383.5 of this subchapter, which meet the minimum requirements of Tables 1 and 2 to §383.51 of this subchapter.

[67 FR 49762, July 31, 2002]

**§ 383.51 Disqualification of drivers.**

(a) *General.* (1) A driver or holder of a CDL who is disqualified must not drive a CMV.

(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(3) A driver is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder of a CDL drives a CMV or non-CMV and is convicted of the violations.

(4) Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(5) Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to §383.51) after 10 years if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to §383.51) must not be reinstated.

(b) *Disqualification for major offenses.* Table 1 to §383.51 contains a list of the offenses and periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

**Table 1 to §383.51**

<b>If a driver operates a motor vehicle</b>	<b>For a first conviction or refusal to be</b>	<b>For a first conviction or refusal to be</b>	<b>For a first conviction or refusal to be</b>	<b>For a second conviction or refusal to be</b>	<b>For a second conviction or refusal to be</b>
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and is convicted of:	tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for ...	tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for ...	tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and CDL holder must be disqualified from operating a CMV for ...	tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for ...	tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for ...
(1) Being under the influence of alcohol as prescribed by State law * * *	1 year	1 year	3 years	Life	Life.
(2) Being under the influence of a controlled substance * * *	1 year	1 year	3 years	Life	Life.
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV * * *	1 year	Not applicable	3 years	Life	Not applicable.

(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in §383.72 of this part * * *	1 year	1 year	3 years	Life	Life.
(5) Leaving the scene of an accident * * *	1 year	1 year	3 years	Life	Life.
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this table * * *	1 year	1 year	3 years	Life	Life.
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV	1 year	Not applicable	3 years	Life	Not applicable.

(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide	1 year	Not applicable	3 years	Life	Not applicable.
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance * * *	Life-not eligible for 10-year reinstatement				

(c) *Disqualification for serious traffic violations.* Table 2 to §383.51 contains a list of the offenses and the periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

**Table 2 to §383.51**

<b>If the driver operates a motor vehicle and is convicted of:</b>	<b>For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL</b>	<b>For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from</b>	<b>For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have</b>	<b>For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be</b>
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	<b>holder must be disqualified from operating a CMV for ...</b>	<b>operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for ...</b>	<b>a CDL and a CDL holder must be disqualified from operating a CMV for ...</b>	<b>disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CDL holder's license or non-CMV driving privileges, for ...</b>
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit	60 days	60 days	120 days	120 days.
(2) driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property	60 days	60 days	120 days	120 days.
(3) making improper or erratic traffic lane changes	60 days	60 days	120 days	120 days.

(4) following the vehicle ahead too closely	60 days	60 days	120 days	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident	60 days	60 days	120 days	120 days.
(6) driving a CMV without obtaining a CDL	60 days	Not applicable	120 days	Not applicable.
(7) driving a CMV without a CDL in the driver's possession <sup>1</sup>	60 days	Not applicable	120 days	Not applicable.
(8) driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported	60 days	Not applicable	120 days	Not applicable.

<sup>1</sup> Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.

(d) *Disqualification for railroad-highway grade crossing offenses.* Table 3 to §383.51 contains a list of the offenses and the periods for which a driver must be disqualified, when the driver is operating a CMV at the time of the violation, as follows:

**Table 3 to §383.51**

<b>If the driver is convicted of operating a CMV in violation of a Federal, State or local law because . . .</b>	<b>For a first conviction a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .</b>	<b>For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .</b>	<b>For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .</b>
(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train * * *	No less than 60 days	No less than 120 days	No less than 1 year.
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear * * *	No less than 60 days	No less than 120 days	No less than 1 year.
(3) The driver is always required to stop, but fails to stop before driving onto the crossing * * *	No less than 60 days	No less than 120 days	No less than 1 year.
(4) The driver fails to have sufficient space to drive completely through the crossing	No less than 60 days	No less than 120 days	No less than 1 year.

without stopping * * *			
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing * * *	No less than 60 days	No less than 120 days	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance * * *	No less than 60 days	No less than 120 days	No less than 1 year.

(e) *Disqualification for violating out-of-service orders.* Table 4 to §383.51 contains a list of the offenses and periods for which a driver must be disqualified when the driver is operating a CMV at the time of the violation, as follows:

**TABLE 4 TO §383.51**

	<b>For a first conviction while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for ...</b>	<b>For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .</b>	<b>For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for ...</b>
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials	No less than 180 days or more than 1 year	No less than 2 years or more than 5 years	No less than 3 years or more than 5 years.

(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title, or while operating a vehicle designed to transport 16 or more passengers, including the driver	No less than 180 days or more than 2 years	No less than 3 years or more than 5 years	No less than 3 years or more than 5 years.
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[67 FR 49756, July 31, 2002, as amended at 68 FR 4396, Jan. 29, 2003; 72 FR 36787, July 5, 2007]

**§ 383.52 Disqualification of drivers determined to constitute an imminent hazard.**

(a) The Assistant Administrator or his/her designee must disqualify from operating a CMV any driver whose driving is determined to constitute an imminent hazard, as defined in §383.5.

(b) The period of the disqualification may not exceed 30 days unless the FMCSA complies with the provisions of paragraph (c) of this section.

(c) The Assistant Administrator or his/her delegate may provide the driver an opportunity for a hearing after issuing a disqualification for a period of 30 days or less. The Assistant Administrator or his/her delegate must provide the driver notice of a proposed disqualification period of more than 30 days and an opportunity for a hearing to present a defense to the proposed disqualification. A disqualification imposed under this paragraph may not exceed one year in duration. The driver, or a representative on his/her behalf, may file an appeal of the disqualification issued by the Assistant Administrator's delegate with the Assistant Administrator, Adjudications Counsel (MC-CC), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001.

(d) Any disqualification imposed in accordance with the provisions of this section must be transmitted by the FMCSA to the jurisdiction where the driver is licensed and must become a part of the driver's record maintained by that jurisdiction.

(e) A driver who is simultaneously disqualified under this section and under other provisions of this subpart, or under State law or regulation, shall serve those disqualification periods concurrently.

[67 FR 49759, July 31, 2002, as amended at 72 FR 55700, Oct. 1, 2007]

**§ 383.53 Penalties.**

(a) *General rule.* Any person who violates the rules set forth in subparts B and C of this part may be subject to civil or criminal penalties as provided for in 49 U.S.C. 521(b).

(b) *Special penalties pertaining to violation of out-of-service orders* —(1) *Driver violations.* A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than \$2,500 for a first conviction and not less than \$5,000 for a second or subsequent conviction, in addition to disqualification under §383.51(e).

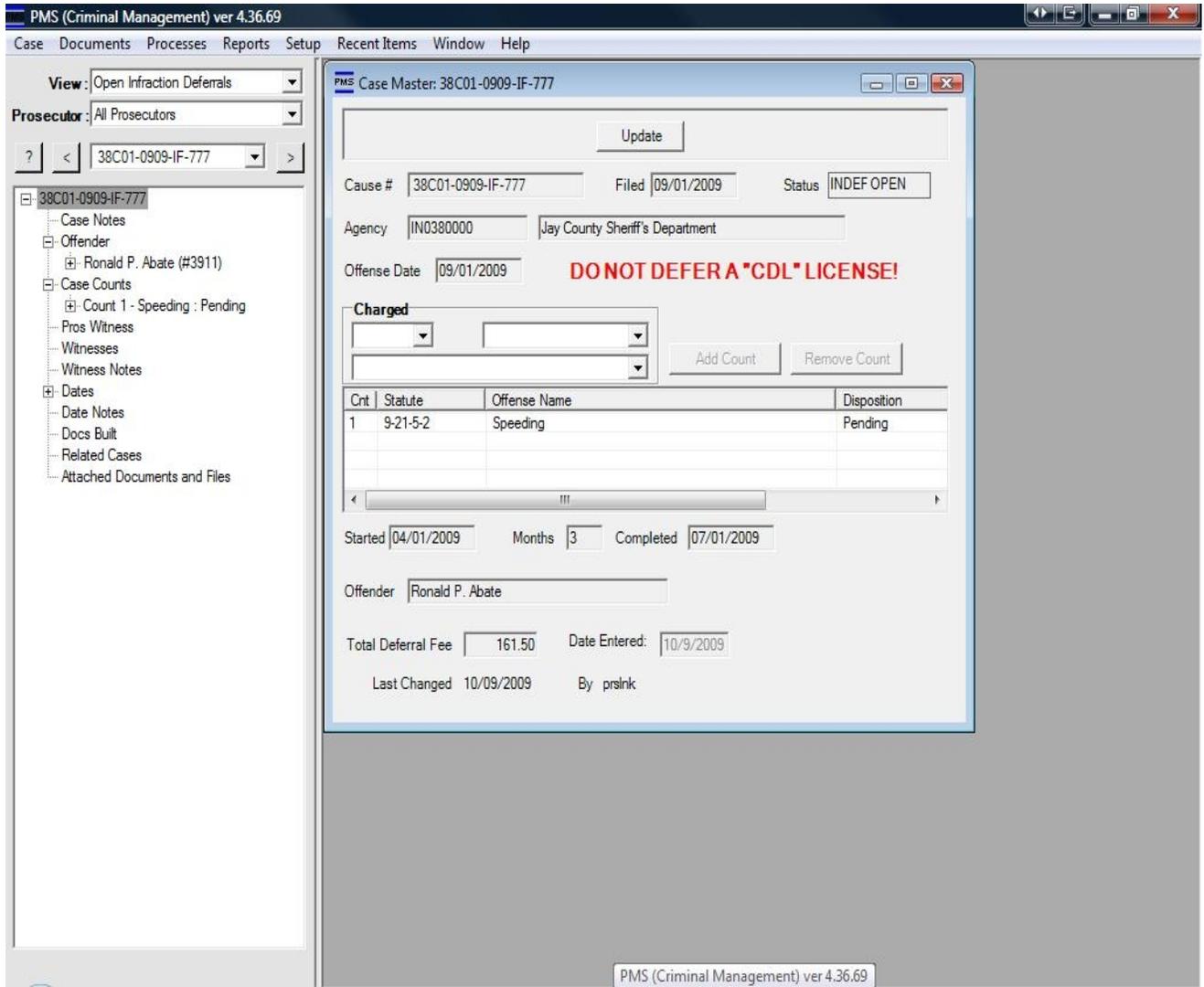
(2) *Employer violations.* An employer who is convicted of a violation of §383.37(c) shall be subject to a civil penalty of not less than \$2,750 nor more than \$25,000.

(c) *Special penalties pertaining to railroad-highway grade crossing violations.* An employer who is convicted of a violation of §383.37(d) must be subject to a civil penalty of not more than \$10,000.

[59 FR 26028, May 18, 1994, as amended at 64 FR 48111, Sept. 2, 1999; 67 FR 49759, July 31, 2002; 72 FR 36788, July 5, 2007]

# APPENDIX B

## SCREENSHOTS FROM PROSLINK





# APPENDIX C

## IGNITION INTERLOCK STATUTES

### CURRENT IGNITION INTERLOCK STATUTES

#### **I. Authorized uses of ignition interlock**

There are three circumstances where a Court may order an ignition interlock device in Indiana. Ignition interlock may be ordered pretrial as an alternative to immediate license suspension based upon a finding of probable cause and failure of a breath test, as a condition of a Court ordered deferral of an OWI under I.C. 9-30-9-3, or upon conviction of an OWI offense under I.C. 9-30-5 in lieu of a license suspension. Additional charges and penalties may apply when a person is in violation of court ordered ignition interlock.

**Pre-trial ignition interlock orders**-I.C. 9-30-6-8(d) as an alternative to license suspension upon probable cause finding at initial hearing;

**Conditional Court Deferral under I.C. 9-30-9-3-** as one of the conditions of a deferral ordered by the Court and agreed by both prosecutor and defense to allow defendant to participate in court ordered alcohol treatment program;

**Conviction**-I.C. 9-30-5-10 in lieu of required license suspension upon conviction for an offense under IC 9-30-5 or IC 14-15-8

NOTE: All statutes authorizing installation of ignition interlock state that the Court “may” order a person to install an ignition interlock device, i.e. person may not operate a vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device except IC 9-30-5-10(d).

#### **A. Pretrial use of ignition interlock**

##### **1. Probable Cause Suspension prior to trial under IC 9-30-6 Implied Consent Laws**

- a) IC 9-30-6-8 requires immediate suspension of driving privileges at initial hearing upon a finding by court that a person has violated IC 9-30-5 or IC 14-15-8 (effective on date order is entered).
- b) Court shall order immediate surrender of all licenses, permits and receipts.
- c) Clerk shall forward the surrendered license or permit and a copy of the order of suspension to BMV.

##### **2. Length of pretrial probable cause suspension under IC 9-30-6-9**

- a) Outlines the length of the license suspension required based upon refusal of a chemical test or breath test result that shows prima facie evidence of intoxication and sets forth BMV's duties to provide notice of suspension. Does not apply where ignition interlock is ordered under IC 9-30-6-8(d).
- b) One year minimum suspension for refusal to take a chemical test.
- c) 180 day suspension if chemical test results in prima facie evidence of intoxication, i.e. .08 or above.
- d) 30 day suspension if probationary license is issued and BMV does not receive a probable cause affidavit.

### **3. Pretrial use of ignition interlock discretionary under I.C. 9-30-6-8(d)**

Use of ignition interlock prior to trial or disposition of the criminal case is within the Court's discretion in that the Court may issue an order recommending that person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device until the BMV is notified by the court that the criminal charges have been resolved as an alternative to the license suspension for minimum 30 up to 180 days required by I.C. 9-30-8-8.

### **4. BMV must provide notice to defendant upon receipt or order recommending use of ignition interlock device under IC 9-30-6-8.5**

### **5. Penalties for operating a motor vehicle without court ordered ignition interlock device under IC 9-30-6-8.7**

- a) **Class B infraction** if person operates a vehicle without a functioning certified ignition interlock device and has been prohibited from operating a motor vehicle without a functioning ignition interlock device.
- b) **Class B misdemeanor** if person operates a motor vehicle without a functioning certified ignition interlock device and knows he is prohibited from operating a motor vehicle without a functioning ignition interlock device.

### **6. Hardship Licenses granted pursuant to a pretrial petition under IC 9-24-15**

- a) Ignition interlock **mandatory** as condition of hardship license under IC 9-24-15-6.5(c) in a county that provides for ignition interlock.
- b) Ignition interlock **required** as a condition of the probationary driving privileges for the **entire duration of the probationary driving privileges** in counties that provides for installation of ignition interlock under IC 9-20-8.

- c) IC 9-24-15-6.5(c) provides that a probationary (Hardship) license granted under IC 9-24-15 shall not take effect until person's driving privileges have been suspended for minimum 30 days.

**B. Conditional Deferrals ordered by Court for purposes of participation in Court alcohol abuse deterrent programs and Use of Ignition Interlock**

**1. Circuit Court Alcohol Abuse Deterrent Program and Court Deferral under IC 9-30-9-3**

IC 9-30-9-3 allows the Court to conditionally defer a criminal case in which the use of alcohol is a contributing factor or a material element of the offense and order the defendant to satisfactorily complete a Court alcohol program as a condition of the conditional deferral upon the agreement of the Defense and Prosecutor.

**2. Treatment of Driving privileges and use of ignition interlock under IC 9-30-9-5 Conditional deferral discretionary**

- a) Court **may suspend** driver's license for at least 2 years but not more than 4 years when granting conditional deferral and impose other appropriate conditions including payment of fees for the alcohol programs;
- b) Court **may grant probationary driving privileges** only after the driver's license has been suspended for one year;
- c) As an alternative to the license suspension under this statute, {IC 9-30-9-5(a) (1)} Court **may order ignition interlock**. Such order must require the ignition interlock device to remain in effect for at least two years and not more than 4 years.

**3. Penalties for operating without ignition interlock ordered under IC 9-30-9-5 or IC 9-30-9-7**

**IC 9-30-9-7.5**

- a) **Class B infraction** for a person to operate a motor vehicle without an ignition interlock device who is prohibited from operating a motor vehicle unless it is equipped with a functioning certified ignition interlock device.
- b) **Class B misdemeanor** for a person to operate a motor vehicle without an ignition interlock device who **knows** he is prohibited from operating a motor vehicle unless it is equipped with a functioning certified ignition interlock device.

**C. Use of ignition interlock at conviction and sentencing under IC 9-30-5**

**1. IC 9-30-5-10 provides for the license suspensions that are to be imposed in addition to the criminal penalties upon conviction.**

Court merely “recommends” the suspension for the fixed periods of time set forth in the statute. NOTE: Court can now require that the period of suspension recommended be imposed before, after or both before and after a period of incarceration. (2008 amendment)

**2. IC 9-30-5-12 permits the Court to stay the execution of the recommended license suspension and grant a probationary license if the person did not refuse a chemical test.**

- a) 180 day probationary license for conviction of **first offense**;
- b) Court may only stay that portion of a license suspension that exceeds the minimum required license suspension period and probationary license granted for a period of time equal to the length of the stay for **subsequent offenses**

**3. Court referral of defendant to a Court Alcohol Abuse Deterrent program as a condition of probation under IC 9-30-9-6 upon sentencing.**

- a) Court may suspend driver’s license for at least 90 day days but not more than 4 years and impose other appropriate conditions;
- b) Court may grant probationary driving privileges only after the driver’s license has been suspended for at least 30 days;
- c) As an alternative to the license suspension under this statute, {IC 9-30-9-5(a) (1)} Court may order ignition interlock. Such order must require the ignition interlock device to remain in effect for at least two years and not more than 4 years.

**4. IC 9-30-5-12 Orders for probationary license must be issued in accordance with IC 9-30-5-11 and IC 9-30-5-12**

- a) Court must find compelling circumstances warrant the issuance of probationary license.
- b) Burden of proof of eligibility to receive probationary license is on the defendant.

**5. IC 9-30-5-11 minimum conditions that must be imposed on the probationary license.**

- a) Probationary license does not take effect until driver’s license has been suspended at least 30 days;

- b) Court required to notify defendant when the probationary driving period begins and that the BMV may not issue probationary license until reinstatement fees are paid and person otherwise qualifies for a license.

**6. Requirements of the order granting the probationary license.**

- a) IC 9-30-5-13 details the required (minimum) content of the court's order granting the probationary licenses including a specific order that if the court finds that the person has violated the conditions of the order granting probationary driving privileges, the court shall order execution of that part of the sentence concerning suspension of the driving privileges.

**7. Ignition interlock as condition of post conviction probationary license order discretionary**

- a) IC 9-30-5-16(b) Court may order that probationary license include installation of ignition interlock as a condition of the probationary privileges.
- b) Exceptions where order granting probationary license must require ignition interlock. However, Court not required to order ignition interlock if defendant is successfully participating in a court program in which the person is taking disulfiram or a similar substance that court determines is effective in treating alcohol abuse:

- Person has a previous conviction that occurred at least 10 years before instant offense;
- Person has a prior unrelated conviction for an offense under this chapter of which consumption of alcohol is an element;

**8. Installation of ignition interlock prohibited on some vehicles**

IC 9-30-5-16(c) prohibits ignition interlock order on a vehicle operated by an employee who has been convicted of an offense under IC 9-30-5-1 or IC 9-30-5-2, is employed as the operator of a vehicle owned, leased, or provided by the employer, and is subject to a labor agreement that prohibits an employee who is convicted of an alcohol related offense from operating the employer's vehicle.

**9. Penalties for violation of ignition interlock order as condition of probationary license under IC 9-30-5-7.**

- a) **Class A misdemeanor** for defendant
- b) **Class A misdemeanor** for person who "knowingly" assists another person who is restricted to the use of an ignition interlock order to violate the order, but does not apply where the request to start the vehicle is made for purposes of safety or mechanical repair of the device or vehicle or if the restricted person does not operate the vehicle.

- c) **Class A misdemeanor** for a person who “knowingly” rents, leases, or loans a motor vehicle not equipped with ignition interlock to a restricted person, except in an emergency.
- d) Person subject to ignition interlock requirement who drives another vehicle in an emergency must notify the court of the emergency within 24 hours.

**10. Penalties for tampering under IC 9-30-5-8**

- a) **Class B misdemeanor** to “knowingly or intentionally” tamper with an ignition interlock for purposes of circumventing the device or rendering it inaccurate or inoperative;
- b) **Class C infraction** to solicit another person to blow into an ignition interlock device or start a motor vehicle equipped with ignition interlock for the purpose of providing an operable vehicle to a person who is restricted to driving a vehicle with ignition interlock;

**11. Probationary license prohibited for CDL under IC 9-30-5-9.5.**

**II. Ignition Interlock Devices –Generally-Definitions and Legal and Technical Requirements**

**A. Definition of “Ignition interlock device”**

**I.C. 9-13-2-76:** “Ignition interlock device means a blood alcohol concentration equivalence measuring device that prevents a motor vehicle from being started without first determining the operator’s equivalent breath alcohol concentration through the taking of a deep lung breath sample.”

**B. Technical and Legal Requirements for the Ignition Interlock Device**

**1. I.C. 9-30-8-1 Installation of interlock device: time periods; costs.**

Court required to set the time period that the ignition interlock installation shall remain in effect. Such time period cannot exceed the maximum term of imprisonment that could have been imposed.

Person shall pay the costs of installation unless sentencing Court determines the person is indigent.

Installation must remain in effect for a period of six months if ordered under I.C. 9-30-5-10(d) (Upon conviction of person under I.C. 9-30-5 who has prior within 5 years, Court shall suspend driving privileges for 1 year but not more than 2. Court may “stay” the balance above 1 year and place person on ignition interlock.)

**2. I.C. 9-30-8-2 Set at .02 BAC**

Ignition interlock device shall be set to render vehicle inoperable it detects an alcohol concentration equivalent to at least .02 grams of alcohol per 100 ml blood or 210L of breath of the person who gives the sample.

### **3. I.C. 9-30-8-3 Bureau must adopt rules**

- a) BMV required to adopt rules under I.C. 4-22-2 to establish standards and specifications for ignition interlock devices that Court may order under I.C. 9-30-5-16.
- b) Ignition interlock must meet following requirements at a minimum:
  - 1) Accurate
  - 2) Does not impede safe operation of the vehicle
  - 3) Provides minimum opportunity to be bypassed
  - 4) Shows evidence of tampering if tampering attempted
  - 5) Has a label affixed warning that anyone tampering with or misusing the device is subject to civil penalty.

NOTE: BMV rules for standards and specifications of interlock devices are found at 140 IAC 1-8-1 and 140 IAC 1-8-2. The text of these two rules the same as the statutory text of IC 9-30-8-2 and IAC 9-30-8-3.

### **4. I.C. 9-30-8-4 Responsibility of Manufacturer**

Calibration and maintenance of an ignition interlock ordered by the Court is responsibility of manufacturer.

### **5. I.C. 9-30-8-5 As a Condition of a probationary license**

BMV required to include the condition of ignition interlock on the license when issuing a license to a person ordered by Court under I.C. 9-30-5-16 (probationary license granted in lieu of suspension upon conviction) to operate only a vehicle equipped with an ignition interlock device.