

I. MISDEMEANOR OWI

A. Basic Offenses

There are now five (5) misdemeanor offenses in Indiana with respect to adults consuming alcohol (or having certain controlled substances in their body *without* a valid prescription) and operating an automobile. These five (5) basic offenses will be referred to herein as “Operating While Intoxicated Type Offenses.”

1. Three (3) “Per Se” Offenses

a. Class “C” Misdemeanor “Per Se”

The first of the three (3) “Per Se” type misdemeanor offenses is concerned with the *amount* of alcohol in a person’s breath or blood. IC 9-30-5-1(a) prohibits the operation of a vehicle with at least **.08 but less than .15** grams of alcohol by weight in your blood or breath. This offense is charged as Class “C” Misdemeanor.

A Class “C” Misdemeanor is punishable by a maximum term of imprisonment of sixty (60) days, a fine of up to Five Hundred Dollars (\$500), or both. IC 35-50-3-4.

b. Class “A” Misdemeanor “Per Se”

The second “Per Se” offense is only concerned with the amount of alcohol a person has consumed. IC 9-30-5-1(b) prohibits the operation of a vehicle with **.15 or above** grams of alcohol by weight in your blood or breath. This offense is charged as a Class “A” Misdemeanor.

A Class “A” Misdemeanor is punishable by a maximum term of imprisonment of three hundred sixty-five (365) days, a fine of up to Five Hundred Dollars (\$500), or both. IC 35-50-3-4.

c. Controlled Substances Class "C" Misdemeanor "Per Se"

The last of the “Per Se” type misdemeanor offenses is concerned with the presence of controlled substances or their metabolites in a person’s body. IC 9-30-5-1(c) prohibits the operation of a vehicle with any amount of certain controlled substances or metabolites in your body. Under IC 9-30-5-1, it is a defense to this offense that the accused person had a valid prescription for the controlled substance. This offense is charged as Class “C” Misdemeanor.

A Class “C” Misdemeanor is punishable by a maximum term of imprisonment of sixty (60) days, a fine of up to Five Hundred Dollars (\$500), or both. IC 35-50-3-4.

2. Two (2) Operating While “Intoxicated” Offenses

a. Class “C” Misdemeanor “Intoxicated”

The second statute, IC 9-30-5-2, prohibits the operation of a vehicle while ***intoxicated***. “Intoxicated” is defined as under the influence of alcohol, a controlled substance, a drug other than alcohol or a controlled substance, or a combination of these, so that there is an impaired condition of thought and action and the loss of normal control of your faculties. IC 9-13-2-86.

A person who operates a vehicle while “Intoxicated” commits a Class “C” Misdemeanor. IC 9-30-5-2(a).

b. Class “A” Misdemeanor “Intoxicated”

If it is proven that a person operated a vehicle while intoxicated, and in doing so additionally endangered someone, it is a Class “A” Misdemeanor. IC 9-30-5-2(b).

II. FELONY OWI

A. Previous Conviction Within 5 Years **(IC 9-30-5-3)**

If *within five (5) years of the present arrest* a person has a previous conviction for an “Operating While Intoxicated Type Offense,” the new offense will be elevated to a Level 6 felony.

A Level 6 felony carries a punishment of six (6) months to two and one-half (2½) years imprisonment. The advisory sentence is one (1) year. In addition the person may be fined up to Ten Thousand Dollars (\$10,000). IC 35-50-2-7.

An “advisory sentence” is a guideline that the court may voluntarily consider when imposing a sentence.

Additionally, the Court must order the convicted person to serve at least five (5) days imprisonment if the person has one previous conviction and ten (10) days imprisonment if the person has two (2) or more convictions (without good time credit). IC 9-30-5-15.

The judge must also suspend driving privileges for at least one (1) year. IC 9-30-16-2(a). However, the person may be eligible for Specialized Driving Privileges. IC 9-30-16-2(b).

B. Minors in Vehicle **(IC 9-30-5-3)**

If the driver of the vehicle is at least 21 years old, with any passenger under 18, and the driver has either 1) a Blood Alcohol Content of **.15 or greater**, or 2) operates a vehicle while intoxicated, in a manner that endangers a person. The charge is a Level 6 felony.

A Level 6 felony carries a punishment of six (6) months to two and one-half (2½) years imprisonment. The advisory sentence is one (1) year. In addition the person may be fined up to Ten Thousand Dollars (\$10,000). IC 35-50-2-7.

An “advisory sentence” is a guideline that the court may voluntarily consider when imposing a sentence.

C. Serious Bodily Injury **(IC 9-30-5-4)**

Any “Operating While Intoxicated Type Offense” may be elevated and charged as a Level 6 felony if “serious bodily injury” is inflicted on another person. IC 9-39-5-4(a).

A Level 6 felony carries a punishment of six (6) months to two and one-half (2½) years imprisonment. The advisory sentence is one (1) year. In addition the person may be fined up to Ten Thousand Dollars (\$10,000). IC 35-50-2-7.

However, the offense may be elevated to a Level 5 felony if serious bodily injury is caused and the person has a previous conviction for an “Operating While Intoxicated Type Offense” within five (5) years of the commission of this new offense. IC 9-30-5-4(b).

The punishment for a Level 5 felony is one (1) year to six (6) years imprisonment. The advisory sentence is three (3) years. In addition the person may be fined up to ten thousand

dollars (\$10,000). IC 35-50-2-6.

“Serious bodily injury” is defined in IC 35-31.5-2-292 as “bodily injury that creates a substantial risk of death or causing serious permanent disfigurement, unconsciousness, extreme pain, permanent or protracted loss or impairment of the function of a bodily member or organ, or the loss of a fetus.”

Please note that an offense is charged for **each** person suffering serious bodily injury. Thus, one accident can result in multiple charges being filed for each person injured. IC 9-30-5-4(b). IC 35-50-1-2(b) defines an “episode of criminal conduct” as offenses or a connected series of offenses that are closely related in time, place, and circumstance. According to IC 35-50-1-2(d), the single “episode of criminal conduct” can result in consecutive sentences being imposed for each separate offense. If the most serious crime for which the person is sentenced is a Level 6, the total of the consecutive terms of imprisonment may not exceed four (4) years. If the most serious crime for which the person is sentenced is a Level 5, the total of the consecutive terms of imprisonment may not exceed seven (7) years.

The judge must also suspend driving privileges for at least one (1) year. IC 9-30-16-2(a). However, the person may be eligible for Specialized Driving Privileges. IC 9-30-16-2(b).

D. Death **(IC 9-30-5-5)**

A person who causes the death of a person while committing an “Operating While Intoxicated Type Offense,” commits a Level 5 felony. IC 9-30-5-5.

The punishment for a Level 5 felony is one (1) year to six (6) years imprisonment. The advisory sentence is three (3) years. In addition the person may be fined up to ten thousand dollars (\$10,000). IC 35-50-2-6.

The offense is a Level 4 felony if, within five (5) years before the commission of this offense, the person has a previous conviction for an “Operating While Intoxicated Type Offense.” or the person knew their driver’s license was suspended because of a previous conviction for operating a vehicle while intoxicated. IC 9-30-5-5(a).

The offense is a Level 4 felony if the person operating the vehicle is at least 21 years old and has a .15 grams of alcohol by weight in their blood or breath, or operated with certain controlled substances or its metabolite in their ***BLOOD***. IC 9-30-5-5(b).

The punishment for a Level 4 felony is between two (2) and twelve (12) years. The advisory sentence is six (6) years. In addition the person may be fined up to ten thousand dollars (\$10,000). IC 35-50-2-5.5.

Even if one accident occurs, each resulting death is considered a separate offense. IC 9-30-5-5(d). As discussed previously, a person can receive consecutive sentences for an “episode of criminal conduct.”

“Causing death while operating a vehicle” is defined as a “**crime of violence.**” IC 35-50-1-2(a)(14). Since it is defined as a “crime of violence,” the limitation concerning the imposition of consecutive sentences found at IC 35-50-1-2(c) involving an “episode of criminal conduct” does *not* apply.

If a person is charged with this offense as a Level 5 felony, the maximum sentence would be six (6) years multiplied by the number of persons killed in the accident.

However, if a person has a previous conviction for operating while intoxicated within five (5) years of the present offense, and is charged as a Level 4 felony, the maximum sentence becomes twelve (12) years multiplied by the number of persons who died in the accident.

The judge must also suspend driving privileges for at least two (2) years, which cannot be served on specialized driving privileges. IC 9-30-16-2(c).

III. MANDATORY JAIL SENTENCES

A. Misdemeanor with a Prior “OWI type” Conviction

Even if the present charge is a misdemeanor, the judge must sentence a person to at least five (5) days in jail *without* “good time credit” if the person has one previous conviction for an “OWI type offense”. The judge does have the option of allowing the person to perform 180 hours of community service in lieu of the executed jail sentence. IC 9-30-5-15 (a).

If the person has two (2) OR MORE prior “OWI type convictions,” there is a mandatory jail sentence of ten (10) days *without* “good time credit.” The judge has the option of ordering the person to perform 360 hours of community service in lieu of the executed jail sentence. IC 9-30-5-15(b).

Indiana law does permit the person to serve the mandatory jail sentence on work release or home detention if the person is participating in a court approved substance abuse program and is approved by the home detention agency and the sentencing judge.

B. Felony OWI

The court may suspend any part of a sentence for an OWI felony except for the mandatory period mentioned above. IC 35-50-2-2.2. The mandatory sentence can also be served on work release or home detention unless the offense caused serious bodily injury or death. IC 35-38-2.6.

IV. HABITUAL OFFENDERS

(35-50-2-8)

The court may sentence a person convicted of a felony to an additional fixed, nonsuspendible term of imprisonment of six (6) to twenty (20) years for Levels 1-4 and two (2) to six (6) years for levels 5 and 6 if the State proves beyond a reasonable doubt that the person is an Habitual Offender (HO).

A person convicted of a Level 5 felony is an HO if the person has been convicted of two (2) prior unrelated felonies and at least one (1) of the felonies is not a Level 6 or Class D.

A person convicted of a felony offense is an HO if the person has been convicted of three (3) prior unrelated felonies.

When the State seeks an HO enhancement for a Level 5 or 6 felony conviction, a prior Level 5, Level 6, Class C, or Class D conviction cannot be used to enhance the sentence if more than ten (10) years have passed since the person finished the person's sentence for that conviction.

The State may not seek to enhance a sentence under this statute if the current offense is a misdemeanor that is enhanced to a felony solely because of a prior conviction.

V. HABITUAL VEHICULAR SUBSTANCE OFFENDER (HVSO) **(9-30-15.5)**

A person sentenced to an "Operating While Intoxicated Type Offense" may have their sentence enhanced if the court finds that the person is an HVSO. An HVSO will have an additional one (1) to eight (8) years of imprisonment added to the person's sentence.

A "vehicular substance offense" is defined as any misdemeanor or felony in which operation of a motor vehicle while intoxicated, operation of a motor vehicle in excess of the statutory limit for alcohol, or operation of a motor vehicle with a controlled substance or its metabolite in the person's body, is a material element. IC 9-30-15.5-1

The state may seek to enhance a person's sentence under these statutes if the person has two (2) prior unrelated convictions for "vehicular substance offenses". At least one (1) of the prior conviction dates must be within ten (10) years before the date of the current offense.

If the person has at least three (3) prior unrelated convictions, the person can be made HVSO regardless of the time between prior convictions.

VI. LICENSE SUSPENSIONS

A. ADMINISTRATIVE SUSPENSION OF DRIVING PRIVILEGES

1. Suspension for Failing "Chemical Test"

Whenever a law enforcement officer in the State of Indiana has probable cause to believe that a person has committed an "Operating While Intoxicated Type Offense," the officer will offer the driver a chemical test(s) to determine that person's blood and/or breath alcohol level. The test(s) may be of the blood, breath, urine, or all three (3). IC 9-30-6-2. If the results of a chemical test show a blood alcohol concentration of .08 or more, that person will be arrested. Further, the Indiana Bureau of Motor Vehicles ("BMV") will be notified of the test failure. At a person's first court hearing, called an "Initial Hearing", the Judge should suspend a person's driving privileges immediately for one hundred eighty (180) days in open court if he failed any chemical test(s). If for some reason the Judge doesn't immediately suspend the driving privileges, but the judge finds probable cause to believe that the driver failed a "chemical test," paperwork will be sent to the BMV advising it of this. Once the BMV receives this information, the BMV will send notice to the driver at his last known address, advising that the person's driving privileges are suspended. This suspension (whether by the Judge or the BMV) is called an "administrative suspension." This suspension will last for one hundred eighty (180) days or until the case is disposed of by the Court, whichever occurs first. IC 9-30-6-9(c).

A person suspended for failing a chemical test may be eligible for Specialized Driving Privileges or for an Ignition Interlock Device. IC 9-30-16-3(a) and IC 9-30-6-8(d).

2. Suspension for "Refusing"

Whenever a law enforcement officer in the State of Indiana has probable cause, he or she will offer the driver a breath, blood, and/or urine test. The tests must be offered within three (3) hours. If any chemical test offered is not taken, whether it be blood, breath, or urine, or all three (3), the police officer will, in addition to charging the driver with OWI, remove the driver's license from his possession and deliver it to the court. At the Initial Hearing, the judge will suspend the operator's driving privileges for one (1) year for refusing to take any or all of the chemical test(s). However, if the person has a previous conviction for operating while intoxicated,

the license suspension for refusing will be two (2) years. If the judge fails to advise the driver in open court of the suspension of driving privileges, but finds probable cause to believe that the driver refused to take the “chemical test(s),” the BMV will suspend his driving privileges once it receives the proper paperwork from the Court. The BMV will then mail notice to the suspended driver at his last known address. IC 9-30-6-9(b).

The Court may, at sentencing, terminate all or part of the remaining refusal suspension. However, the Court will only order the termination if to do so would be in the best interests of society.

Please note that a person who refuses the chemical test is not eligible for Specialized Driving Privileges. However, “Interlock” devices in lieu of the suspension may be available.

B. IGNITION INTERLOCK DEVICES (IID's)

The term “Ignition Interlock Device” (IID) is defined in IC 9-13-2-76 as a device that can measure blood alcohol concentration and prevents a motor vehicle from being started without first determining the operator’s breath alcohol concentration through the taking of a deep lung breath sample.

IID's require a breath sample in order for the vehicle to operate. During operation the IID will require additional breath samples and if alcohol is detected the vehicle will become inoperable.

The court may, as an alternative to the chemical test failure suspension, order that a person cannot operate a motor vehicle unless it is equipped with a functioning certified IID. IC 9-30-6-8(d).

A court will not permit installation of an IID in work vehicles owned, leased, or provided by the person's employer.

If a person “refuses” the breath, blood and/or urine test, the person can petition the court to stay the suspension for refusing the breath, blood, or urine tests by petitioning the court for permission to install an ignition interlock device. IC 9-30-6-8(d).

A court, when granting Specialized Driving Privileges for “OWI type” offenses or HTV suspensions, may order that a person cannot operate a motor vehicle unless it is equipped with a functioning certified IID. IC 9-30-5-16 and IC 9-30-8.

C. PETITION FOR JUDICIAL REVIEW **(IC 9-30-6-10)**

A person is entitled to prompt judicial hearing to attempt to have an “administrative suspension” or “ignition interlock” order overturned. However, the hearing is limited to two (2) issues:

- 1) Whether or not the police officer had probable cause to believe that a person had operated a vehicle while committing an “Operating While Intoxicated Type Offense”; or
- 2) Whether or not the driver refused to take the chemical test(s).

D. LICENSE SUSPENSIONS FOLLOWING CONVICTION
(IC 9-30-16)

For any conviction for OWI, a court may suspend the person's driving privileges for a period up to the maximum allowable period of incarceration under the penalty for the offense. IC 9-30-16-1(c).

However, the court shall order the license of a person suspended for a period of at least one (1) year if the person is convicted of the following: OWI causing serious bodily injury; OWI when the person has a prior conviction for OWI. IC 9-30-16-2(a).

A person convicted of OWI causing death will have a license suspension for at least two (2) years. IC 9-30-16-2(c).

E. CREDIT TIME

A person is entitled to credit towards the suspension imposed at sentencing for any days during which the license was suspended for chemical test failure. IC 9-30-16-6. If a person's license was suspended for refusing a chemical test, the person will not receive credit for days served on the refusal suspension. The suspension imposed at sentencing will be served consecutively with the refusal suspension. IC 9-30-16-6(b). However, the person will receive credit toward the suspension imposed at sentencing for time spent on the refusal suspension if the court terminates all or part of the remaining refusal suspension at sentencing. IC 9-30-16-6(c).

A person who serves a suspension on an IID or SDP shall receive credit for suspension time served on either. IC 9-30-16-1(e).

F. SPECIALIZED DRIVING PRIVILEGES (SDP)
(IC 9-30-16)

A court imposing a suspension of driving privileges may stay the suspension and grant a Specialized Driving Privilege (SDP). The SDP must stay in effect for a minimum of one-hundred and eighty (180) days and may include conditions such as the use of an ignition interlock device and/or restricted hours and routes. IC 9-30-16-3.

This license may be available for a person with an OWI administrative suspension, OWI suspension at sentencing, or Habitual Traffic Violator (HTV) suspension.

The SDP is not available for the following: a person who has never been an Indiana resident; a person who is seeking an SDP for a chemical test refusal suspension; or a person who has been previously granted an SDP and the person has more than one (1) conviction for violating the conditions of an SDP. IC 9-30-16-3(d).

G. "HIGH RISK" INSURANCE (SR 22) FOLLOWING CONVICTION

If a person has been convicted of an "Operating While Intoxicated Type Offense," the person must file proof of financial responsibility with the Bureau of Motor Vehicles. IC 9-30-6-12(b). The form used is called an "SR 22." The person's insurance agent will file this SR 22 form with the BMV and it must continually be on file with the BMV for a period of three (3) years following expiration of the court imposed driver's license suspension.

Upon receipt of the filing from the insurance company, and upon payment of any required reinstatement fees, the convicted driver can again obtain a driver's license.

The convicted driver and his insurance company must keep this SR 22 filing in force with the BMV for the entire three (3) year period. If there is any lapse, the Bureau will re-suspend the person's driving privileges until another proper filing is made. IC 9-30-6-12(d).

A person who is granted Specialized Driving Privileges (SDP) must maintain proof of insurance during the period of the SDP.

H. HABITUAL TRAFFIC VIOLATORS (HTV) **(IC 9-30-10)**

An even longer period of suspension of driving privileges will be imposed if the court or the BMV determines that a person is a "habitual traffic violator" (HTV). There are three (3) categories of HTV. The offense dates, rather than the conviction dates, are used when determining whether the judgments occurred within the periods listed below.

If a person is notified that he or she is an HTV, the BMV will include the commencement date of the suspension. If this occurs, the driver must act quickly because the suspension will commence in thirty (30) days. IC 9-30-10-5.

If the driver believes that there are errors in his driving record, he may notify the Commissioner in writing of the errors and request reinstatement of his driving privileges. IC 9-30-10-6.

Indiana law allows the driver to petition the court to review his habitual violator status due to record keeping errors. The burden is on the driver to prove the errors, by a preponderance of the evidence, in order to prevail. The petitioner must pay the Court costs of the judicial proceeding, but he is entitled to a refund of all of his court costs if he prevails. IC 9-30-10-7.

A. Category One

The first category of habitual violator involves a driver accumulating *ten (10) or more judgments*, not arising out of the same incident, for any moving traffic violations of a type required to be reported to the Bureau, within a ten (10) year period. At least one (1) of the judgments must be for a violation listed in "Category Two" or "Category Three" below. IC 9-30-10-4(c). The penalty imposed by the BMV is a five (5) year suspension of a person's driving privileges. IC 9-30-10-5(b)(4).

B. Category Two

A driver may also become a habitual traffic violator if, within a ten (10) year period, the driver has accumulated *three (3) or more judgments*, not arising out of the same incident, for any of the following offenses: "Operating While Intoxicated Type Offense"; "Reckless Driving"; "Criminal Recklessness as a Felony Involving Operation of a Vehicle"; "Drag Racing or Engaging in a Speed Contest"; certain "Leaving the Scene" offenses; certain "Resisting Law Enforcement" offenses; any Felony under the motor vehicle statutes of Indiana, or any Felony in which operation of a motor vehicle was an element of the offense. The penalty for this second category of habitual violators is a ten (10) year suspension of driving privileges. IC 9-30-10-5(b)(3).

C. Category Three

This (10) year suspension occurs when a person has accumulated, within the last ten (10) years, *two (2) or more convictions* not arising out of the same incident, for Reckless Homicide, Voluntary or Involuntary Manslaughter, Leaving the Scene when Involved in an Accident Resulting in Death or Injury to any Person, Operating a Vehicle While Intoxicated Resulting in Death, or Operating a Vehicle with .08 or more Alcohol in the Blood Resulting in Death.

If the driver has two (2) convictions for operating a vehicle while intoxicated resulting in death or operating a vehicle with .08 or more alcohol in the blood resulting in death the license

suspension is for **life**.

D. Suspension of License and Specialized Driving Privileges (SDP)

If a court finds by clear and convincing evidence that a person is an HTV, the court shall order that the person is an HTV and order the BMV to suspend the person's driving privileges.

The court may order that the person is eligible for SDP. IC 9-30-10-6.5.

If the court does not order the BMV to suspend a person's driving privileges, the BMV may make the person an HTV unless more than two (2) years have passed since the most recent qualifying conviction. IC 9-30-10-5.

A person whose license was suspended for life is eligible for an SDP. IC 9-30-10-19.

E. Operating a Vehicle While Suspended for HTV

A person who operates a motor vehicle while his driving privileges are suspended due to habitual violator status commits a Level 6 felony.

A person who operates a vehicle with a lifetime HTV suspension, or a person with an HTV suspension who causes serious bodily injury or death, commits a Level 5 felony. IC 9-30-10-17. The court can only suspend a person's license for life under this section if the new offense caused death.

A defense to the charge exists if the operation of the vehicle was necessary to save life or limb in an extreme emergency. The defendant must bear the burden of proof by a preponderance of the evidence to establish this defense. IC 9-30-10-18.

A person who has served at least ten (10) years of a lifetime HTV suspension may petition a court for rescission of the suspension and reinstatement of driving privileges. IC 9-30-10-14.1.

VIII. CIRCUIT COURT ANTABUSE PROGRAM **(IC 9-30-9-1)**

The Circuit Court of Allen County has established an "Alcohol Abuse Deterrent Program" (AADP). This program provides for the medical treatment of individuals who have a "previous conviction" for operating vehicles after consuming too much alcohol and/or drugs. The treatment is with Disulfiram, or Antabuse, which is a substance that is a chemical deterrent to the use of alcohol. An individual may be placed in the program either pre or post-conviction.

Under the **pre-conviction** scheme the Court, with the consent of the defendant and the Prosecuting Attorney, will conditionally defer the proceedings for up to three (3) years. The Court will not defer the proceedings if the offense involves death or serious bodily injury, if there are other criminal proceedings alleging commission of a felony which are pending against the defendant, if the defendant is on probation or parole and the probation or parole authority does not consent to the defendant's participation, or if the defendant fails to meet additional eligibility requirements imposed by the Court. If the proceedings are deferred and the defendant violates the rules of the Antabuse program or other conditions imposed by the Court, the Court can order the criminal proceedings to be resumed. If the defendant fulfills the Antabuse program and other conditions set by the Court, the Court may either dismiss the felony charges or sentence the convicted person as a Class "A" Misdemeanor.

When the Court enters its order conditionally deferring charges, the Court may suspend your driving privileges for at least two (2) years but not more than four (4) years. IC 9-30-9-5(a). The Court may only grant probationary driving privileges after a person's driving privileges have been suspended for one (1) year. IC 9-30-9-5(b).

A **post-conviction** Antabuse program may also be offered as a condition of probation.

After conviction, successful completion of the Antabuse program will be a condition of any probation the Court will impose at sentencing. The court will also suspend the defendant's driving privileges for at least ninety (90) days but not more than three (3) years and may grant probationary driving privileges only after the defendant's license has been suspended for at least thirty (30) days. IC 9-30-9-7(b).

The court may, as an alternative to a license suspension for either the pre-conviction or post-conviction, issue an order prohibiting the defendant from operating a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device. IC 9-30-9-5(c) and 9-30-9-7(c).

A participant in the Antabuse program must pay the Alcohol Abuse Deterrent Program fees. In addition, there is also a cost of the physical examination required before beginning the Antabuse program and a physical examination may be required annually. Counseling is also routinely ordered.

IX. ALCOHOL OR DRUG TREATMENT PROGRAM

In a misdemeanor case, before conviction, the Court may, with the consent of the defendant and the Prosecuting Attorney, order the defendant to satisfactorily complete an alcohol or drug treatment program. The charges may be dismissed if the treatment program is completed and certain other conditions are met. IC 12-23-5-1. This program is available to a defendant only one time and may require a suspension of his driving privileges. Prosecutors rarely, if ever, consent to this.

X. FORENSIC DIVERSION PROGRAM

(IC 11-12-3.7-4)

The community corrections advisory board, or a forensic advisory board if the county has no community corrections board, determines whether a person will be allowed to participate in the forensic diversion program. An individual must have either an "addictive disorder" or a "mental illness" to participate in the program.

An "addictive disorder" means a diagnosable chronic substance use disorder of sufficient duration to meet the diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. IC 11-12-3.7-1.

A "mental illness" is a psychiatric disorder that is of sufficient duration to meet the diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. IC 11-12-3.7-5.

A person is not eligible to participate in the program if he was charged with a "violent" offense or a "drug dealing" offense. "Violent Offense" is defined in IC 11-12-3.7-6. A "Drug Dealing Offense" is defined in IC 11-12-3.7-3.

In order to qualify, a recent professional examination is mandatory. *Members v. State*, Ind. Ct. App. 2006.

Courts in Indiana are not required to have a forensic diversion program in their county. *Lomont v. State*, 852 N.E.2d 1002, Ind. Ct. App. 2006.

When a person is found to be eligible for the post-conviction forensic diversion program and "has been convicted of an offense that may be suspended," the statute provides that the trial court shall suspend all or a portion of the person's sentence, place the person on probation for the

suspended portion of the person's sentence, and require as a condition of probation that the person successfully participate in and successfully complete the post-conviction forensic diversion program. The Court, however, is not required to suspend all of the person's executed sentence imposed. *Ruble v. State*, 849 N.E.2d 165, 169 (Ind. Ct. App. 2006)

A. Pre-Conviction Forensic Diversion Program
(IC 11-12-3.7-11)

To be eligible for the pre-conviction program the offense a person is charged with must either be a Misdemeanor or a Level 6 felony that may be reduced to a Misdemeanor. The offense charged cannot be a violent offense. Additionally, an individual must not have a conviction of a "Violent" offense in the last 10 years.

In order to participate in the program the person is required to enter a guilty plea to the charged offense. However, the court will not enter the judgment of conviction while the individual is successfully participating in the program. The program may include confinement in an institution, treatment in the community, or a combination of both.

The court will review a report from the forensic diversion program and determine whether an individual successfully completed the program. If an individual successfully completes the program the court will waive entry of the judgment of conviction and dismiss the charges. If the court determines an individual failed to successfully complete the program, the court will enter the judgment of conviction and sentence the person accordingly.

An individual may be required to participate in the program for up to three (3) years. IC 11-12-3.7-11(b)(3).

B. Post-conviction forensic diversion program
(IC11-12-3.7-12)

To be eligible for the Post- Conviction program an individual must not have been charged with a "violent" or "drug dealing" offense. Additionally, an individual must not have a conviction of a "Violent" offense in the last 10 years.

A person will be required to participate in the post-conviction forensic diversion program for not more than two (2) years if the person is charged with a misdemeanor, and no more than three (3) years if charged with a felony. IC 11-12-3.7-12(d).

Once a judgment of conviction is entered, the court shall suspend all or a portion of the individual's sentence and place the person on probation for the remainder of their sentence, with a condition of probation being successful participation and completion of the forensic diversion program.

The court can stay execution of all or part of a nonsuspendible sentence pending successful participation and completion of the forensic diversion program. IC 11-12-3.7-12(c).

The three year time limit in which an individual may be placed in the forensic program does not limit the amount of time an individual may be placed on probation. IC 11-12-3.7-12(d).

If the court determines an individual failed to successfully complete the program, the court shall lift its stay of execution of the nonsuspendible portion of the sentence and have the person remanded to the department of correction. In addition to serving the nonsuspendible portion of their sentence the court may order an individual to serve all or a portion of a person's previously suspended sentence. IC 11-12-3.7-12(f).

If the court determines an individual convicted of an offense that carried nonsuspendible time successfully completed the program, the court shall waive execution of the nonsuspendible portion of the sentence. IC 11-12-3.7-12(g).

XI. COMMERCIAL DRIVERS LICENSE

A commercial vehicle driver is prohibited from operating a vehicle with at least .04 but less than .08 grams of alcohol in his breath or blood. This is a Class "C" Infraction. IC 9-24-6-15.

A CDL driver who is convicted of OWI or refuses a chemical test will have their CDL suspended for one (1) year by the BMV. A CDL driver who is convicted of OWI or refuses a chemical test for a second time will lose the CDL for life with the possibility for reinstatement after ten (10) years.

A person who possesses a Commercial Driver's License (CDL) may be granted an SDP. IC 9-30-16-1. However, a CDL driver who is granted an SDP may not operate a CMV during the SDP.

XII. AIRLINE PILOTS

Pilots are required to submit a notification letter to the FAA within 60 days of an "OWI type" motor vehicle action. A separate notification letter is required for each action.

An "OWI type" motor vehicle action includes: any suspension, revocation or cancellation of driving privileges and any conviction of an "OWI type" offense.

Notice must be sent when your license is suspended due to an arrest for operating a vehicle type offense. In addition, if at a later date a conviction is entered on your record, for an operating a vehicle type offense, a separate notice must also be sent.

Notice must include:

- 1) Person's name, address, date of birth, and airman certificate number;
- 2) The type of violation that resulted in the motor vehicle action;
- 3) The date of the conviction or administrative action;
- 4) The state that holds the record of conviction or administrative action; and
- 5) A statement of whether the motor vehicle action resulted from the same incident or arose out of the same factual circumstances related to a previously-reported motor vehicle action.

To enhance the efficiency of processing, include:

- 1) Driver license number;
- 2) Social Security Number (if different from airman certificate number);
- 3) Daytime telephone number.

If an "OWI type" offense is reduced to a conviction for Reckless, Careless, or Negligent Driving, notice does not need to be sent. Those convictions are not considered to be reportable motor vehicle actions. However, the initial suspension for the "OWI type" offense must be reported.

Send Notice to:

Federal Aviation Administration
Security and Investigations Division (AMC-700)
P.O. Box 25810
Oklahoma City, OK 73125

OR

Fax to (405) 954-4989

XIII. MINORS

In addition to the criminal statutes that make alcohol consumption illegal to persons under twenty-one (21) years of age, IC 9-30-5-8.5 prohibits persons under the age of twenty-one (21) from operating vehicles with blood or breath test results equaling .02 *but less than* .08 grams of alcohol in their breath or blood. The offense is a Class "C" Infraction. The maximum fine that can be imposed is five hundred (\$500) dollars. IC 35-28-5-4(c). No jail time can be imposed.

XIV. BOATS

A "Motorboat" is any watercraft propelled by internal combustion, steam, mechanical means, or electrical means. A sailboat equipped with a motor is considered a motorboat only when the motor is in operation.

Just as with operating a "vehicle", Indiana law prohibits the operation of a motorboat with at least .08 grams of alcohol by weight in a person's breath or blood, while intoxicated, or while having a controlled substance or its metabolite in a person's body. All of these offenses are Class "C" misdemeanors. IC 35-46-9-6(a).

Chemical testing for motorboat OWI is similar to that of automotive OWI. However, a person *may* be arrested if the chemical test results in a BAC between .05 to .08 or if the boater refuses the test. If the chemical test result shows .08 or greater, then the boater *must* be arrested. IC 35-46-9-11.

A Class "C" misdemeanor for OWI boating cannot be enhanced to a Class "A" misdemeanor because of "endangerment" or because the boater's BAC was above a .15 as with automotive OWI's.

The offense can be elevated to a Level 6 felony if the boater was previously convicted of OWI boating or the current offense resulted in serious bodily injury. A prior *automobile* OWI does not elevate a boating OWI to a felony.

The offense is a Level 5 felony if the offense results in the death of another person. IC 35-46-9-6(c).

In addition to any criminal penalties imposed for an offense under this chapter, the court shall suspend a person's license just as if the offense had involved operating an automobile. IC 9-30-5-10.

XV. TRAVEL TO CANADA

Anyone who has been convicted of drunk driving is banned for life from entering Canada. Canada's Immigration Act classifies anyone with an OWI conviction as a member of an "Inadmissible Class" and their entry into Canada would be a criminal offense. The ban from Canada is for life.

A person convicted of an OWI can apply for a permit to be admitted into Canada, five years after all terms of the OWI sentence have been completed. The applicant must show they have been rehabilitated. The application "Minister's Permit of Rehabilitation" along with evidence is considered in deciding whether the individual should be allowed to enter Canada.

For information concerning your ability to enter into Canada, contact this web site:

XVI. PRESENT ADDRESS

It is very important that a driver keeps the Bureau of Motor Vehicles advised as to his present address at all times.

If you have any questions concerning your driving privileges, you can call the Bureau of Motor Vehicles at (317) 232-2840.

This information is reasonably current. However, it is subject to change at any time due to the passage by our legislature of new laws and the ongoing interpretation by our courts of existing laws. This letter should not be considered a substitute for consultation with an attorney.

Very truly yours,

Patrick J. Arata

John R. Watkins