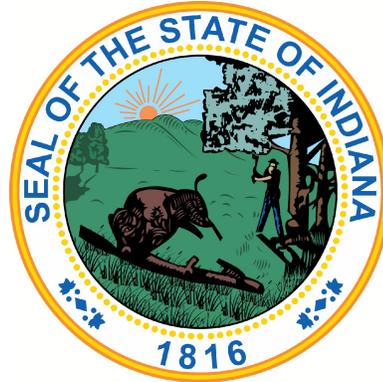


# NEW LEGISLATION

# 2004



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## TRAFFIC

### IC 9-30-5-3 (P.L. 82, §1)

### OWI WITH KIDS IN CAR

- ▶ Creates new Class D Felony enhancement for OWI, where driver at least 21 years of age and passenger under 18 years of age.
- ▶ Note Kellogg v. State, 636 N.E.2d 1261 (Ind. App. 1994), affirming conviction for Neglect of a Dependent (D Felony) for OWI with 4 year old in car, but holding that conviction for both violates double jeopardy.

### IC 9-30-5-5 (P.L. 82, §2) (P.L. 76, §2)

### OWI CAUSING DEATH

- ▶ Current law provides for Class C Felony penalty for causing death while operating a motor vehicle if 0.08 in blood or breath, OR Schedule I or II in body, OR while intoxicated. Change requires that Schedule I or II now be in BLOOD instead of BODY. (Note that OWI Causing Serious Bodily Injury under IC 9-30-5-4 still requires BODY.)
- ▶ Maintains basic Class B Felony enhancement for causing death while operating a motor vehicle with a prior conviction within 5 years, but changes language from "prior unrelated conviction under this chapter" to "previous conviction of operating while intoxicated." (Intent is to allow convictions from other states to be used)

- ▶ Creates new Class B Felony enhancement for causing death while operating a motor vehicle if at least 0.15 in blood or breath, OR Schedule I or II in blood, where the driver is at least 21 years of age.
- ▶ Creates new Class B Felony enhancement for causing death while operating a motor vehicle if the person knew driver's license was suspended based upon a previous OWI conviction.

**IC 9-30-10-5 (P.L. 82, §3)**

**HTV LIFETIME**

- ▶ Mandates a lifetime suspension of driving privileges where driver convicted of a second and unrelated conviction for OWI Causing Death. (Current law = 2 to 5 year suspension)

**IC 9-30-5-4 (P.L. 76, §3)**

**OWI CAUSING SBI**

- ▶ Maintains basic Class C Felony enhancement for causing death while operating a motor vehicle with a prior conviction within 5 years, but changes language from "prior unrelated conviction under this chapter" to "previous conviction of operating while intoxicated." (Intent is to allow convictions from other states to be used)

**IC 9-30-5-4 (P.L. 76)**

**IGNITION INTERLOCK**

- ▶ Generally toughens and enhances penalties for operating without ignition interlock when required to do so.
- ▶ Generally allows for ignition interlock as an alternative to many license suspensions. ( § 9 - Mandatory suspension upon OWI "arrest" during pendency of case)  
( § 12 - Mandatory 1 year suspension for refusal)
- ▶ Generally requires ignition interlock for many probationary drivers.
- ▶ Generally mandates BMV to keep record of ignition interlock requirements.

**IC 9-30-5-10(f) (P.L. 76, §6)**

**LICENSE SUSPENSION FOR DRUG CONVICTION**

**IC 35-48-4-15(a) (P.L. 76, §23)**

- ▶ Maintains current law requiring suspension of operator's license and vehicle registrations for 6 months to 2 years upon conviction of any possession or dealing drug crime, except new law now requires that "a motor vehicle was used in the commission of the offense."

**IC 9-19-11 (P.L. 67) (Effective 7/1/05)**

**SEAT BELT / CHILD RESTRAINT**

- ▶ Old law required child 4-11 years old to be in child restraint system or seat belt.
- ▶ New law requires child less than 8 years old to be in child restraint system. If too big to reasonably fit, may be in seat belt. Child 8-15 years old must be in child restraint or seat belt. (Applies to Indiana Licensed Drivers only)
- ▶ If driver licensed out-of-state, child under 16 must be in child restraint or seat belt.
- ▶ New law applies to ALL MOTOR VEHICLES, including trucks and SUV.
- ▶ However, existing law (IC 9-19-10-2) which requires all front seat occupants to wear seat belt, and applies only to passenger motor vehicles (IC 9-13-2-123), exempts trucks and SUV. This loophole was NOT fixed by 2004 legislation.
- ▶ Removes rental vehicles and out-of-state registered cars from exemption.
- ▶ No BMV points and no HTV predicate for violations under this chapter.
- ▶ All violations are Class D Infractions. (\$25)
- ▶ Fines sent to ICJI for grants to assist organizations who purchase and distribute child restraint systems to needy.
- ▶ Not effective until 07-01-05.

**ENDANGERED ADULTS / APS**

**(P.L. 281-2003)**

**(Overriding Governor's Veto - Effective Immediately)**

**IC 35-42-2-1(6) & (7) (P.L. 281-2003, §3)**

**BATTERY**

- ▶ Adds new section making it a Class C Felony to commit battery upon an endangered adult, resulting in serious bodily injury.
- ▶ Adds new section making it a Class B Felony to commit battery upon an endangered adult, resulting in death.

**IC 35-46-1-13 (P.L. 281-2003, §4)**

**FAILURE TO REPORT ABUSE**

- ▶ Increases penalty for failure to report abuse of an endangered adult, from Class A Infraction to Class B Misdemeanor, but now requires that the failure to report be done "knowingly."

**IC 12-10-3-2 (P.L. 281-2003, §1)**

**DEFINITION**

- ▶ Above statutes use more restrictive definition of endangered adult: A person at least 18 who is incapable, by reason of physical or mental incapacity, of managing their property or providing self care, and who is threatened with harm by neglect or battery. (Excluding incapacities caused by alcohol or drugs)

**IC 12-10-3-17 (P.L. 281-2003, §2)**

**APS NURSING HOME INVESTIGATIONS**

- ▶ Adult Protective Services may immediately investigate reports of abuse to nursing home residents, and need not wait for invitation from State Department of Health to do so.

**IC 35-47-4-6 (P.L. 43)**

**TRIAL TESTIMONY OF ENDANGERED ADULTS**

- ▶ Allows introduction into evidence at trial of statements or videotape of a endangered adult in lieu of “live” testimony, where the endangered adult is found at a hearing to be “unavailable” due to medical reasons or serious emotional distress.
- ▶ Allows defense to then introduce transcript or videotape of the hearing.

## **CHILD ABUSE**

**IC 12-14-25.5-3 (P.L. 70, §9, 18) OUT-OF-HOME PLACEMENT/RECORDS CHECK**

- ▶ Before placing an abused child in a temporary out-of-home residence, even other family members, the County Office of Family and Children shall conduct a criminal history check on all residents of that home.
- ▶ Placement may not be made if any such resident has a substantiated report of child abuse or neglect, or an adjudication/conviction for any felony listed in IC 12-17.4-4-11. (Includes any homicide, any sex, drug, or weapons crime, battery, neglect, kidnapping/confinement, carjacking, arson, or obscenity - Apparently Robbery, Burglary, Criminal Recklessness, and misdemeanor Battery is OK)
- ▶ Court may make placement anyway if felony is Class C or Class D felony (generally), and specific finding is made that act “is not relevant to the person’s present ability to care for a child.”

## IC 35-46-1-4(b) (P.L. 46, §1)

## NEGLECT OF A DEPENDENT

- ▶ Maintains current law: “A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally (1) places the dependent in a situation that endangers the dependent’s life or health, (2) abandons or cruelly confines the dependent, (3) deprives the dependent of necessary support, (4) deprives the dependent of education as required by law, commits Neglect of a Dependent, a Class D Felony.”
- ▶ If (1) (2) or (3) results in bodily injury, it is a Class C Felony.  
If (1) (2) or (3) results in serious bodily injury, it is a Class B Felony.
- ▶ New law makes it a Class A Felony where the defendant is at least 18 and the dependent is less than 14, if it results in death.

## JUVENILES

### IC 31-37-3 (P.L. 87)

### CURFEW

- ▶ Maintains current law: A 15, 16, or 17 year old has 11:00 pm curfew on weekdays, and 1:00 am curfew for Friday and Saturday nights. Under 15 is 11:00 pm all nights.
- ▶ New law adds provision in response to Hodgkins v. Peterson, 355 F.3d 1048 (7th Cir. January 22, 2004), which invalidated Indiana curfew law for a second time.
- ▶ New provision requires that officer have reasonable belief that juvenile has violated curfew law and that there is “no legal defense.”
- ▶ Defenses now available under IC 31-37-3-3.5:
  - Juvenile is emancipated or married,
  - Juvenile is accompanied by parent, guardian, or custodian,
  - Juvenile is accompanied by an adult specified by parent, guardian, or custodian,
  - Juvenile is engaged in interstate travel,
  - Juvenile is participating in, going to, or returning from:
    - lawful employment,
    - a school sanctioned activity,
    - a religious event,
    - an emergency involving the protection of a person or property,
    - a constitutionally protected activity such as freedom of speech and assembly, or
    - an activity conducted by a nonprofit or governmental entity that provides recreation, education, training, or other care under the supervision of an adult.

**IC 35-46-1-8 (P.L. 46, §2)**

**CONTRIBUTING TO DELINQUENCY**

- ▶ Maintains current law: “A person at least eighteen (18) years of age who knowingly or intentionally encourages, aids, or causes a person less than eighteen (18) years of age to commit an act of delinquency, commits Contributing to Delinquency, a Class A Misdemeanor.”
- ▶ New law makes it a Class C Felony if the defendant is at least 21 and furnishes alcohol or drugs to the juvenile, and the “consumption, ingestion, or use of the alcoholic beverage, controlled substance, or drug is the proximate cause of the death of any person.” (E.g. overdose, juvenile kills another)

**DEPARTMENT OF CORRECTIONS / JAILS**

**IC 11-11-3-9 (P.L. 85, §38)**

**VISITATION OF SEX OFFENDERS**

- ▶ IDOC may restrict the visitation of a juvenile or adult sex offender by prohibiting the visitation of children under 18, where the victim of the sex offense was under 18.

**IC 35-44-3-9 (P.L. 30)**

**TRAFFICKING WITH AN INMATE**

- ▶ If DOC or Jail employee commits Trafficking With an Inmate involving tobacco products, there is a mandatory \$5,000 fine in addition to any term of imprisonment or probation.

**IC 11-12-3.7 (P.L. 85)**

**FORENSIC DIVERSION / COMMUNITY TRANSITION**

- ▶ More “let ‘em out of jail” legislation.
- ▶ Pre-Conviction and Post-Conviction Forensic Diversion available for nonviolent offenders suffering from mental illness or addiction. Designed to offer alternative community treatment.
- ▶ Pre-Conviction Diversion - Defendant pleads guilty; Judge stays entry of judgment; Defendant assigned to treatment for up to 2 years (misdemeanor) or 3 years (felony); If treatment successful, charges dismissed; If unsuccessful, judgment is entered and Defendant is sentenced.
- ▶ Post-Conviction Diversion - Court may require completion of forensic diversion program as condition of probation.

# INSANITY DEFENSE / MENTAL COMMITMENT

## IC 35-36-2-2 (P.L. 77, §3)

## COOPERATION WITH PSYCHIATRISTS

- ▶ If defendant interposes insanity defense, but refuses to cooperate with court-appointed psychiatrists, he may not present any independent expert testimony on the issue, unless the lack of cooperation is caused by mental illness.

## IC 12-26-15-1 (P.L. 77, §2)

## COMMITMENT AFTER INSANITY VERDICT

- ▶ After verdict of Not Responsible by Reason of Insanity, Prosecutor must petition for mental commitment. New law requires facility or physician to notify Prosecutor and others designated by Court when inmate/patient escapes, or is transferred, discharged, or allowed outside facility not under custodial supervision.
- ▶ The court may designate victim or victim's family to receive such notice.

See, Berryman v. State, 796 N.E.2d 741 (Ind. App. 2003), *trans. granted* 801 N.E.2d 170 (Ind. 2004); In re Berryman, 797 N.E.2d 820 (Ind. App. 2003).

# MISCELLANEOUS

## IC 22-11-14.5 (P.L. 25, §3)

## INDOOR PYROTECHNICS

- ▶ Establishes rules for regulation of indoor pyrotechnics (WWE, Rock Concerts)
- ▶ Creates criminal penalties for rule violations resulting in serious bodily injury or death.

## IC 22-12-1 (P.L. 25, §7)

## MECHANICAL BULL RIDING

- ▶ Defines "bull ride simulator" and designates them as a "regulated amusement device," subject to licensing, inspection, safety standards, and other rules.

\* This is a summary and should not be relied upon. Please refer to text of statute.

\* All statutes are effective July 1, 2004 unless otherwise indicated.

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