



POLICE / PROSECUTOR UPDATE

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It was intended that this issue of the PPU would be devoted to new legislation. However, on May 21 the Indiana Supreme Court handed down an opinion of some importance to law enforcement officers. One of the cases discussed in the January, 2000, issue of the PPU was a Court of Appeals opinion which addressed the question whether a police officer may routinely ask a driver legitimately stopped for a traffic violation if he has a weapon in the vehicle or on his person. The Court of Appeals held that a police officer may not as a matter of routine practice make such an inquiry. More specifically the court stated that prior to making an inquiry about the presence of weapons, the officer must either: (1) be warranted in believing that his safety was threatened; or (2) the question must reasonably relate to the basis for the traffic stop.

The Supreme Court reversed the Court of Appeals, holding that the Fourth Amendment to the *U.S. Constitution* (the court did not consider whether the result would be the same under the Indiana Constitution) does not prohibit police from routinely inquiring about the presence of weapons. The facts of the case were recited in the January, 2000, PPU. The Fourth Amendment allows a motorist and passengers of a vehicle stopped for a traffic violation to be ordered to exit the vehicle. In comparison, asking whether the stopped motorist has any weapons is far less intrusive and presents insignificant delay. Here, the officer asked about weapons *while* he was investigating whether the driver was intoxicated. The question did not materially extend the duration of the stop or nature of the intrusion (if the purpose of the stop was accomplished before the weapons question was asked, the result could very well have been different). Therefore, the weapons question was justified by police safety concerns.

Finally, since this was a conventional traffic stop, the defendant was not in custody and *Miranda* warnings were not required. *Lockett v. State*, ___ N.E.2d ___ (Ind. 05/21/01).

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We will now look at some new legislation. Due to the restrictions of space, we cannot examine all new laws or look at any of them in great detail. Unless

indicated otherwise, all new or amended legislation is effective **July 1, 2001**.

IC 35-46-1-5 is amended (**effective immediately**) to provide that nonsupport of a child is a Class C felony if the *total* amount of unpaid support due and owing for *one or more children* is at least \$15,000.

IC 31-37-3-3.5 was passed (**effective immediately**) in response to a federal court ruling that the curfew statute was unconstitutional. It sets forth various defenses to a curfew violation. It is too long to reproduce in full, but it leaves the curfew statute as a weak tool.

HEA 1618 amends many statutes to reflect Indiana's switch to the 0.08% alcohol concentration equivalent from the 0.10% standard. 0.08% is now the threshold for prima facie evidence of intoxication. Relevant evidence of intoxication is at least .05% but less than 0.08%. Operating a vehicle while intoxicated is a Class C misdemeanor. Operating a vehicle while intoxicated in a manner that endangers a person is a Class A misdemeanor. The alcohol release standards chart at IC 35-33-1-6 was amended to reflect the new 0.08% standard.

IC 9-30-7-2 was amended to provide that the implied consent law applies to a *portable breath test* as well as a chemical test. Amended **IC 9-30-7-3** to *require* a law enforcement officer to offer a portable breath test or chemical test to any person who the officer has reason to believe operated a vehicle that was involved in a fatal accident or an accident involving serious bodily injury. If: the results of a portable breath test indicate the presence of alcohol; or the results of a portable breath test do not indicate the presence of alcohol but the officer has probable cause to believe the person is under the influence of a controlled substance or another drug; or the person refuses to submit to a portable breath test; then the officer shall offer a chemical test to the person. More than one portable breath test may be offered, but all must be administered within 3 hours after the fatal accident or the accident involving serious bodily injury. **IC 9-30-7-5** is amended to provide that refusal to submit to a portable breath test is also a Class C infraction.

We will look at more legislation next month.

This is a publication of the Clark County Prosecuting Attorney, covering various topics of interest to law enforcement officers. It is directed solely toward issues of evidence, criminal law and procedure. Please consult your city, town, or county attorney for legal advice relating to civil liability. Please direct any suggestions you may have for future issues to Steve Stewart at 285-6264.