

HOUSE BILL No. 1028

DIGEST OF INTRODUCED BILL

Citations Affected: IC 9-30; IC 34-28-5-5; IC 35-46-9-6; IC 35-48-4.

Synopsis: Marijuana. Decriminalizes the possession of: (1) 30 grams or less of marijuana; or (2) five grams or less of hash oil or hashish; by making the violation a Class D infraction. Provides that a person who knowingly or intentionally possesses an instrument, a device, or another object that the person intends to use for introducing marijuana into the person's body commits a Class D infraction. Establishes a per se intoxication level of 10 nanograms of THC per milliliter of whole blood for purposes of operating while intoxicated laws, and requires that the analysis of controlled substances in a person's blood measure only the controlled substance and not the metabolites of the controlled substance.

Effective: Upon passage.

Lucas

January 4, 2021, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1028

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 9-30-5-1, AS AMENDED BY P.L.142-2020,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 1. (a) A person who operates a vehicle with
4 an alcohol concentration equivalent to at least eight-hundredths (0.08)
5 gram of alcohol but less than fifteen-hundredths (0.15) gram of alcohol
6 per:
7 (1) one hundred (100) milliliters of the person's blood; or
8 (2) two hundred ten (210) liters of the person's breath;
9 commits a Class C misdemeanor.
10 (b) A person who operates a vehicle with an alcohol concentration
11 equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:
12 (1) one hundred (100) milliliters of the person's blood; or
13 (2) two hundred ten (210) liters of the person's breath;
14 commits a Class A misdemeanor.
15 (c) A person who operates a vehicle with:
16 (1) a controlled substance, **other than tetrahydrocannabinol**,
17 listed in schedule I or II of IC 35-48-2 ~~or its metabolite~~ in the



1 person's blood; or

2 **(2) ten (10) or more nanograms of tetrahydrocannabinol per**
 3 **milliliter of the person's whole blood;**

4 commits a Class C misdemeanor.

5 (d) It is a defense to subsection (c) that the accused person
 6 consumed the controlled substance in accordance with a valid
 7 prescription or order of a practitioner (as defined in IC 35-48-1) who
 8 acted in the course of the practitioner's professional practice.

9 SECTION 2. IC 9-30-5-4, AS AMENDED BY P.L.184-2019,
 10 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 UPON PASSAGE]: Sec. 4. (a) A person who causes serious bodily
 12 injury to another person when operating a vehicle:

13 (1) with an alcohol concentration equivalent to at least
 14 eight-hundredths (0.08) gram of alcohol per:

15 (A) one hundred (100) milliliters of the person's blood; or

16 (B) two hundred ten (210) liters of the person's breath;

17 (2) with:

18 (A) a controlled substance, **other than**
 19 **tetrahydrocannabinol**, listed in schedule I or II of IC 35-48-2
 20 **or its metabolite** in the person's blood; or

21 **(B) ten (10) or more nanograms of tetrahydrocannabinol**
 22 **per milliliter of the person's whole blood;** or

23 (3) while intoxicated;

24 commits a Level 5 felony. However, the offense is a Level 4 felony if
 25 the person has a previous conviction of operating while intoxicated
 26 within the five (5) years preceding the commission of the offense.

27 (b) A person who violates subsection (a) commits a separate offense
 28 for each person whose serious bodily injury is caused by the violation
 29 of subsection (a).

30 (c) It is a defense under subsection (a)(2) that the accused person
 31 consumed the controlled substance in accordance with a valid
 32 prescription or order of a practitioner (as defined in IC 35-48-1) who
 33 acted in the course of the practitioner's professional practice.

34 SECTION 3. IC 9-30-5-5, AS AMENDED BY P.L.184-2019,
 35 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 UPON PASSAGE]: Sec. 5. (a) A person who causes the death or
 37 catastrophic injury of another person when operating a vehicle:

38 (1) with an alcohol concentration equivalent to at least
 39 eight-hundredths (0.08) gram of alcohol per:

40 (A) one hundred (100) milliliters of the person's blood; or

41 (B) two hundred ten (210) liters of the person's breath;

42 (2) with:



- 1 (A) a controlled substance, **other than**
 2 **tetrahydrocannabinol**, listed in schedule I or II of IC 35-48-2
 3 **or its metabolite** in the person's blood; **or**
 4 **(B) ten (10) or more nanograms of tetrahydrocannabinol**
 5 **per milliliter of the person's whole blood;** or
 6 (3) while intoxicated;
 7 commits a Level 4 felony.
- 8 (b) A person who causes the death of a law enforcement animal (as
 9 defined in IC 35-46-3-4.5) when operating a vehicle:
 10 (1) with an alcohol concentration equivalent to at least
 11 eight-hundredths (0.08) gram of alcohol per:
 12 (A) one hundred (100) milliliters of the person's blood; or
 13 (B) two hundred ten (210) liters of the person's breath; or
 14 (2) with:
 15 (A) a controlled substance, **other than**
 16 **tetrahydrocannabinol**, listed in schedule I or II of IC 35-48-2
 17 **or its metabolite** in the person's blood; **or**
 18 **(B) ten (10) or more nanograms of tetrahydrocannabinol**
 19 **per milliliter of the person's whole blood;**
 20 commits a Level 6 felony.
- 21 (c) A person who commits an offense under subsection (a) or (b)
 22 commits a separate offense for each person or law enforcement animal
 23 whose death (or catastrophic injury, in the case of a person) is caused
 24 by the violation of subsection (a) or (b).
- 25 (d) It is a defense under subsection (a) or (b) that the person accused
 26 of causing the death or catastrophic injury of another person or the
 27 death of a law enforcement animal when operating a vehicle with a
 28 controlled substance listed in schedule I or II of IC 35-48-2 or its
 29 metabolite in the person's blood consumed the controlled substance in
 30 accordance with a valid prescription or order of a practitioner (as
 31 defined in IC 35-48-1) who acted in the course of the practitioner's
 32 professional practice.
- 33 SECTION 4. IC 9-30-15.5-1, AS AMENDED BY P.L.198-2016,
 34 SECTION 606, IS AMENDED TO READ AS FOLLOWS
 35 [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter,
 36 "vehicular substance offense" means any misdemeanor or felony in
 37 which operation of a vehicle while intoxicated, operation of a vehicle
 38 in excess of the statutory limit for alcohol, or operation of a vehicle
 39 with a controlled substance or **(before July 1, 2020)** its metabolite in
 40 the person's body, is a material element. The term includes an offense
 41 under IC 9-30-5, IC 9-24-6-15 (before its repeal), IC 9-24-6.1-7, and
 42 IC 9-11-2 (before its repeal).



1 SECTION 5. IC 34-28-5-5, AS AMENDED BY P.L.146-2016,
 2 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 UPON PASSAGE]: Sec. 5. (a) A defendant against whom a judgment
 4 is entered is liable for costs. Costs are part of the judgment and may not
 5 be suspended except under IC 9-30-3-12. Whenever a judgment is
 6 entered against a person for the commission of two (2) or more civil
 7 violations (infractions or ordinance violations), the court may waive the
 8 person's liability for costs for all but one (1) of the violations. This
 9 subsection does not apply to judgments entered for violations
 10 constituting:

11 (1) Class D infractions; or

12 (2) Class C infractions for unlawfully parking in a space reserved
 13 for a person with a physical disability under IC 5-16-9-5 or
 14 IC 5-16-9-8.

15 (b) If a judgment is entered:

16 (1) for a violation constituting:

17 (A) a Class D infraction; or

18 (B) a Class C infraction for unlawfully parking in a space
 19 reserved for a person with a physical disability under
 20 IC 5-16-9-5 or IC 5-16-9-8; or

21 (2) in favor of the defendant in any case;

22 the defendant is not liable for costs.

23 (c) Except for costs, and except as provided in subsections (e), ~~and~~
 24 (f), **and (g)** and IC 9-21-5-11(e), the funds collected as judgments for
 25 violations of statutes defining infractions shall be deposited in the state
 26 general fund.

27 (d) A judgment may be entered against a defendant under this
 28 section or section 4 of this chapter upon a finding by the court that the
 29 defendant:

30 (1) violated:

31 (A) a statute defining an infraction; or

32 (B) an ordinance; or

33 (2) consents to entry of judgment for the plaintiff upon a pleading
 34 of nolo contendere for a moving traffic violation.

35 (e) The funds collected for an infraction judgment described in
 36 section 4(h) of this chapter shall be transferred to a dedicated county
 37 fund. The money in the dedicated county fund does not revert to the
 38 county general fund or state general fund and may be used, after
 39 appropriation by the county fiscal body, only for the following
 40 purposes:

41 (1) To pay compensation of commissioners appointed under
 42 IC 33-33-49.



1 (2) To pay costs of the county's guardian ad litem program.

2 (f) The funds collected for an infraction judgment described in
3 section 4(i) of this chapter shall be transferred to a dedicated toll
4 revenue fund created as part of a project under IC 8-15.5-1-2(b)(4).
5 The money in the fund does not revert to the county general fund or
6 state general fund and may be used only to pay the cost of operating,
7 maintaining, and repairing the tolling system for a project under
8 IC 8-15.5-1-2(b)(4), including major repairs, replacements, and
9 improvements.

10 **(g) The funds collected for an infraction judgment imposed for**
11 **a violation of IC 35-48-4-11.3 shall be transferred as follows:**

12 **(1) Ten dollars (\$10) shall be transferred to the auditor of**
13 **state for deposit in the state user fee fund established in**
14 **IC 33-37-9-2.**

15 **(2) Ten dollars (\$10) shall be transferred to the county auditor**
16 **for deposit in the county general fund.**

17 **(3) Any amount remaining after transfer of the funds**
18 **described in subdivisions (1) and (2) shall be transferred to**
19 **the auditor of state for deposit in the state general fund.**

20 SECTION 6. IC 35-46-9-6, AS AMENDED BY P.L.184-2019,
21 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 UPON PASSAGE]: Sec. 6. (a) Except as provided in subsections (b)
23 and (c), a person who operates a motorboat while:

24 (1) having an alcohol concentration equivalent (as defined in
25 IC 9-13-2-2.4) to at least eight-hundredths (0.08) gram of alcohol
26 per:

- 27 (A) one hundred (100) milliliters of the person's blood; or
28 (B) two hundred ten (210) liters of the person's breath;

29 (2) having:

30 **(A) a controlled substance, other than**
31 **tetrahydrocannabinol, listed in schedule I or II of IC 35-48-2**
32 **or its metabolite in the person's body; blood; or**

33 **(B) ten (10) or more nanograms of tetrahydrocannabinol**
34 **per milliliter of the person's whole blood; or**

35 (3) intoxicated;

36 commits a Class C misdemeanor.

37 (b) The offense is a Level 6 felony if:

38 (1) the person has a previous conviction under:

39 (A) IC 14-1-5 (repealed);

40 (B) IC 14-15-8-8 (repealed); or

41 (C) this chapter; or

42 (2) the offense results in serious bodily injury to another person.



1 (c) The offense is a Level 5 felony if the offense results in the death
2 or catastrophic injury of another person.

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

8 SECTION 7. IC 35-48-4-8.3, AS AMENDED BY P.L.187-2015,
9 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 UPON PASSAGE]: Sec. 8.3. (a) This section does not apply to a
11 rolling paper.

12 (b) A person who knowingly or intentionally possesses an
13 instrument, a device, or another object that the person intends to use
14 for:

- 15 (1) introducing into the person's body a controlled substance,
16 **unless the substance is marijuana;**
17 (2) testing the strength, effectiveness, or purity of a controlled
18 substance; or
19 (3) enhancing the effect of a controlled substance;

20 commits a Class C misdemeanor. However, the offense is a Class A
21 misdemeanor if the person has a prior unrelated judgment or conviction
22 under this section.

23 (c) **A person who knowingly or intentionally possesses an**
24 **instrument, a device, or another object that the person intends to**
25 **use for introducing marijuana into the person's body commits a**
26 **Class D infraction.**

27 SECTION 8. IC 35-48-4-11, AS AMENDED BY P.L.153-2018,
28 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
29 UPON PASSAGE]: Sec. 11. (a) A person who:

- 30 (1) knowingly or intentionally possesses (pure or adulterated):
31 (A) **more than thirty (30) grams of marijuana;**
32 (B) **more than five (5) grams of hash oil;**
33 (C) **more than five (5) grams of hashish; or**
34 (D) salvia;
35 (2) knowingly or intentionally grows or cultivates marijuana; or
36 (3) knowing that marijuana is growing on the person's premises,
37 fails to destroy the marijuana plants;

38 commits possession of marijuana, hash oil, hashish, or salvia, a Class
39 B misdemeanor, except as provided in subsections (b) through (c).

40 (b) The offense described in subsection (a) is a Class A
41 misdemeanor if:

- 42 (1) the person has a prior conviction for a drug offense; or



- 1 (2) the:
- 2 (A) marijuana, hash oil, hashish, or salvia is packaged in a
- 3 manner that appears to be low THC hemp extract; and
- 4 (B) person knew or reasonably should have known that the
- 5 product was marijuana, hash oil, hashish, or salvia.
- 6 (c) The offense described in subsection (a) is a Level 6 felony if:
- 7 (1) the person has a prior conviction for a drug offense; and
- 8 (2) the person possesses:
- 9 (A) at least ~~thirty (30)~~ **sixty (60)** grams of marijuana; **or**
- 10 (B) at least ~~five (5)~~ **ten (10)** grams of hash oil **or** hashish; or
- 11 **(C) at least five (5) grams of salvia.**
- 12 SECTION 9. IC 35-48-4-11.3 IS ADDED TO THE INDIANA
- 13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 14 [EFFECTIVE UPON PASSAGE]: **Sec. 11.3. (a) A person who**
- 15 **knowingly or intentionally possesses marijuana, hash oil, or**
- 16 **hashish commits a Class D infraction.**
- 17 **(b) A person may not be charged with a violation of this section**
- 18 **and an offense under section 11 of this chapter for the same act.**
- 19 SECTION 10. **An emergency is declared for this act.**

