



February 16, 2021

HOUSE BILL No. 1028

DIGEST OF HB 1028 (Updated February 16, 2021 12:24 pm - DI 131)

Citations Affected: IC 9-30; IC 35-46.

Synopsis: Per se intoxication level. Establishes a per se intoxication level of five 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.
February 16, 2021, amended, reported — Do Pass.

HB 1028—LS 6215/DI 131



February 16, 2021

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

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1 person's blood; **or**
 2 **(2) five (5) 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) five (5) 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) five (5) 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) five (5) 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).



SECTION 5. IC 35-46-9-6, AS AMENDED BY P.L.184-2019,
SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
UPON PASSAGE]: Sec. 6. (a) Except as provided in subsections (b)
and (c), a person who operates a motorboat while:

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

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

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

(2) having:

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

(B) **five (5) or more nanograms of tetrahydrocannabinol
per milliliter of the person's whole blood; or**

(3) intoxicated;

commits a Class C misdemeanor.

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

(1) the person has a previous conviction under:

(A) IC 14-1-5 (repealed);

(B) IC 14-15-8-8 (repealed); or

(C) this chapter; or

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

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

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

SECTION 6. **An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1028, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 2, delete "ten (10)" and insert "**five (5)**".

Page 2, line 21, delete "ten (10)" and insert "**five (5)**".

Page 3, line 4, delete "ten (10)" and insert "**five (5)**".

Page 3, line 18, delete "ten (10)" and insert "**five (5)**".

Delete page 4.

Page 5, delete lines 1 through 19.

Page 5, line 33, delete "ten (10)" and insert "**five (5)**".

Page 6, delete lines 8 through 42.

Page 7, delete lines 1 through 18.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1028 as introduced.)

MCNAMARA

Committee Vote: yeas 9, nays 2.

