



Reprinted  
February 6, 2018

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## SENATE BILL No. 404

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DIGEST OF SB 404 (Updated February 5, 2018 3:10 pm - DI 106)

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

**Synopsis:** Operating while intoxicated. Removes the minimum age requirement for a person to be convicted of operating a vehicle while intoxicated causing death, and specifies that the defense to certain operating while intoxicated offenses involving the use of a controlled substance only applies if the defendant consumed the controlled substance in accordance with a valid prescription.

**Effective:** July 1, 2018.

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## Koch, Freeman, Taylor G

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January 8, 2018, read first time and referred to Committee on Corrections and Criminal Law.  
February 1, 2018, amended, reported favorably — Do Pass.  
February 5, 2018, read second time, amended, ordered engrossed.

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SB 404—LS 6253/DI 131





Reprinted  
February 6, 2018

Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

## SENATE BILL No. 404

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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 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) A person who operates a  
3 vehicle with an alcohol concentration equivalent to at least  
4 eight-hundredths (0.08) gram of alcohol but less than  
5 fifteen-hundredths (0.15) gram of alcohol per:  
6           (1) one hundred (100) milliliters of the person's blood; or  
7           (2) two hundred ten (210) liters of the person's breath;  
8 commits a Class C misdemeanor.  
9           (b) A person who operates a vehicle with an alcohol concentration  
10 equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:  
11           (1) one hundred (100) milliliters of the person's blood; or  
12           (2) two hundred ten (210) liters of the person's breath;  
13 commits a Class A misdemeanor.  
14           (c) A person who operates a vehicle with a controlled substance  
15 listed in schedule I or II of IC 35-48-2 or its metabolite in the person's  
16 body commits a Class C misdemeanor.  
17           (d) It is a defense to subsection (c) that the accused person

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1 consumed the controlled substance ~~under~~ **in accordance with** a valid  
 2 prescription or order of a practitioner (as defined in IC 35-48-1) who  
 3 acted in the course of the practitioner's professional practice.

4 SECTION 2. IC 9-30-5-4, AS AMENDED BY P.L.158-2013,  
 5 SECTION 160, IS AMENDED TO READ AS FOLLOWS  
 6 [EFFECTIVE JULY 1, 2018]: Sec. 4. (a) A person who causes serious  
 7 bodily injury to another person when operating a vehicle:

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

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

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

12 (2) with a controlled substance listed in schedule I or II of  
 13 IC 35-48-2 or its metabolite in the person's body; or

14 (3) while intoxicated;

15 commits a Level 6 felony. However, the offense is a Level 5 felony if  
 16 the person has a previous conviction of operating while intoxicated  
 17 within the five (5) years preceding the commission of the offense.

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

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

25 SECTION 3. IC 9-30-5-5, AS AMENDED BY P.L.123-2017,  
 26 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 27 JULY 1, 2018]: Sec. 5. (a) A person who causes the death of another  
 28 person when operating a vehicle:

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

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

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

33 (2) with a controlled substance listed in schedule I or II of  
 34 IC 35-48-2 or its metabolite in the person's blood; or

35 (3) while intoxicated;

36 commits a Level 5 felony, except as provided in subsection (b).

37 (b) A person who causes the death of another person when operating  
 38 a vehicle under the conditions set forth in subsection (a)(1), (a)(2), or  
 39 (a)(3) commits a Level 4 felony if:

40 (1) the person operating the vehicle has a previous conviction of  
 41 operating while intoxicated within the ten (10) years preceding  
 42 the commission of the offense;



1 (2) the person operating the vehicle knows that the person's  
 2 driver's license, driving privilege, or permit is suspended or  
 3 revoked for a previous conviction for operating a vehicle while  
 4 intoxicated; or

5 (3) the driving privileges of the person operating the vehicle are  
 6 suspended under IC 9-30-10 because the person is a habitual  
 7 **traffic** violator.

8 (c) A person ~~at least twenty-one (21) years of age~~ who causes the  
 9 death of another person when operating a vehicle:

10 (1) with an alcohol concentration equivalent to at least  
 11 fifteen-hundredths (0.15) 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 a controlled substance listed in schedule I or II of  
 15 IC 35-48-2 or its metabolite in the person's blood;

16 commits a Level 4 felony.

17 (d) A person who causes the death of a law enforcement animal (as  
 18 defined in IC 35-46-3-4.5) when operating a vehicle:

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

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

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

23 (2) with a controlled substance listed in schedule I or II of  
 24 IC 35-48-2 or its metabolite in the person's blood;

25 commits a Level 6 felony.

26 (e) A person who commits an offense under subsection (a), (b), (c),  
 27 or (d) commits a separate offense for each person or law enforcement  
 28 animal whose death is caused by the violation of subsection (a), (b),  
 29 (c), or (d).

30 (f) It is a defense under subsection (a), (b), (c), or (d) that the person  
 31 accused of causing the death of another person or a law enforcement  
 32 animal when operating a vehicle with a controlled substance listed in  
 33 schedule I or II of IC 35-48-2 or its metabolite in the person's blood  
 34 consumed the controlled substance in accordance with a valid  
 35 prescription or order of a practitioner (as defined in IC 35-48-1) who  
 36 acted in the course of the practitioner's professional practice.

37 SECTION 4. IC 35-46-9-6, AS AMENDED BY P.L.85-2017,  
 38 SECTION 118, IS AMENDED TO READ AS FOLLOWS  
 39 [EFFECTIVE JULY 1, 2018]: Sec. 6. (a) Except as provided in  
 40 subsections (b) and (c), a person who operates a motorboat while:

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



1 per:  
2 (A) one hundred (100) milliliters of the person's blood; or  
3 (B) two hundred ten (210) liters of the person's breath;  
4 (2) having a controlled substance listed in schedule I or II of  
5 IC 35-48-2 or its metabolite in the person's body; or  
6 (3) intoxicated;  
7 commits a Class C misdemeanor.  
8 (b) The offense is a Level 6 felony if:  
9 (1) the person has a previous conviction under:  
10 (A) IC 14-1-5 (repealed);  
11 (B) IC 14-15-8-8 (repealed); or  
12 (C) this chapter; or  
13 (2) the offense results in serious bodily injury to another person.  
14 (c) The offense is a Level 5 felony if the offense results in the death  
15 of another person.  
16 (d) It is a defense to a prosecution under subsection (a)(2) that the  
17 accused person consumed the controlled substance ~~under~~ **in**  
18 **accordance with** a valid prescription or order of a practitioner (as  
19 defined in IC 35-48-1-24) who acted in the course of the practitioner's  
20 professional practice.



## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 404, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- Page 1, delete lines 1 through 17.
- Delete pages 2 through 4.
- Page 5, line 12, reset in roman "Level 5".
- Page 5, line 12, delete "Level 4".
- Page 5, line 15, reset in roman "Level 4".
- Page 5, line 15, delete "Level 3".
- Page 5, line 34, reset in roman "Level 4".
- Page 5, line 34, delete "Level 3".
- Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 404 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 9, Nays 0.

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 SENATE MOTION

Madam President: I move that Senate Bill 404 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 9-30-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) A person who operates a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol but less than fifteen-hundredths (0.15) gram of alcohol per:

- (1) one hundred (100) milliliters of the person's blood; or
- (2) two hundred ten (210) liters of the person's breath;

commits a Class C misdemeanor.

(b) A person who operates a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

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

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(2) two hundred ten (210) liters of the person's breath;  
commits a Class A misdemeanor.

(c) A person who operates a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body commits a Class C misdemeanor.

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

SECTION 2. IC 9-30-5-4, AS AMENDED BY P.L.158-2013, SECTION 160, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 4. (a) A person who causes serious bodily injury to another person when operating a vehicle:

(1) with an alcohol concentration equivalent 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) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or

(3) while intoxicated;

commits a Level 6 felony. However, the offense is a Level 5 felony if the person has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense.

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

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

Page 2, after line 37, begin a new paragraph and insert:

"SECTION 4. IC 35-46-9-6, AS AMENDED BY P.L.85-2017, SECTION 118, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: 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 controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; 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 of another person.
  - (d) It is a defense to a prosecution under subsection (a)(2) that the accused person consumed the controlled substance ~~under~~ **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."
- Renumber all SECTIONS consecutively.
- (Reference is to SB 404 as printed February 2, 2018.)

KOCH

