

STATE:

INDIANA

General Reference:

Burn's Indiana Statutes Annotated

Basis for a DWI Charge:

Standard DWI Offense:	Operating a vehicle while intoxicated <sup>403</sup> (Class C Misdemeanor) IC9-30-5-2(a) Operating a vehicle while intoxicated and endangering a person (Class A Misdemeanor) IC9-30-5-2(b)
Illegal Per Se Law (BAC/BrAC)	I. $\geq .08$ but $< .15$ <sup>404</sup> (Class C Misdemeanor) IC9-30-5-1(a) and 9-30-5-4(a)(1) II. $\geq .15$ (Class A Misdemeanor) IC9-30-5-1(b) <b>III. Any Amount of a Controlled Substance</b> <sup>405,406and 407</sup> (Class C Misdemeanor) IC9-30-5-1(c) and 9-30-5-4(a)(2) <u>Persons Under 21 Years Old.</u> $\geq .02$ but $< .08$ (Class C Infraction) IC9-30-5-8.5
Presumption (BAC/BrAC):	$\geq .08$ <sup>408</sup> IC9-30-6-15(b)(2) <u>Persons Under 21 Years Old.</u> $\geq .02$ is a presumption of a violation of IC9-30-5-8.5. IC9-30-6-15(c)
Types of Drugs/Drugs and Alcohol:	Operating a vehicle while intoxicated (Class A Misdemeanor) IC9-30-5-2 and IC9-13-2-86
Other:	A BAC/BrAC $\geq .05$ but $< .08$ is <b>relevant evidence</b> of intoxication. IC 9-13-2-151 A BAC/BrAC $\geq .08$ is also <i>prima facie</i> evidence of intoxication. IC9-13-2-131

<sup>403</sup> The term "intoxicated" is defined as under the influence of alcohol, a controlled substance (as defined under IC 35-48-1-9), a drug other than alcohol or a controlled substance or a combination of alcohol, controlled substance or drugs so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties. IC9-13-2-86

<sup>404</sup> Standards: "Alcohol Concentration Equivalent" means grams of alcohol per either 100 milliliters of blood or 210 liters of breath. IC9-13-2-131, 9-13-2-151, 9-30-5-1(a), 9-30-5-5, 9-30-5-4(a), 9-30-5-8.5, 9-30-6-15(b)(2), 9-30-8-2, 9-30-10-4 and 9-30-15-3

<sup>405</sup> This State's illegal per se law also makes it an offense (Class C misdemeanor) for a person to operate a motor vehicle with any amount of a controlled substance in his/her blood. An appellate court has held that this provision does not violate (1) either equal protection or due process of law under the U.S. Constitution, (2) the 8th Amendment under the U.S. Constitution and (3) the privileges and immunities clause of the Indiana Constitution. *Shepler v. State*, 758 N.E.2d 966 (Ind. App. 3 Dist. 2001), transfer denied 774 N.E.2d 507 (Ind. 2002)

<sup>406</sup> Exception: It is a defense to this offense if it is shown that the defendant was using a controlled substance via a valid prescription. IC9-30-5-1(c); 20-9.1-3-1.6(c).

<sup>407</sup> Although the language of the statute clearly applies only to controlled substances in the blood, the Indiana Supreme Court has held that the State can present evidence of other bodily substances (e.g., urine) to establish this fact. *Rhoades v. State*, 675 N.E.2d 698 (Ind. 1997) Previous decisions by the Indiana Court of Appeals, which held that evidence of such drugs in a person's urine alone was not sufficient to prove the presence of these drugs in the blood, have been abrogated by the *Rhoades* case. *Moore v. State*, 645 N.E.2d 6 (Ind. App. 1 Dist. 1994), *Hoornaert v. State*, 652 N.E.2d 874 (Ind. App. 1995), and *Estes v. State*, 656 N.E.2d 528 (Ind. App. 1995)

<sup>408</sup> Under IC9-30-6-15(b)(2), a chemical test indicating a BAC  $\geq .08$  is to be taken as a presumption of such BAC.

**School Bus Operators.** It is a Class A Misdemeanor to consume either alcohol or a controlled substance within six hours of operating a school bus. IC20-9.1-3-1.6 Sanctions: Jail – not more than 1 year; fine – not more than \$5,000. IC35-50-3-2

Chemical Breath Tests for Alcohol Concentration:

Preliminary Breath Test Law:

**Limited** PBT for injury/death offenses  
IC9-30-7-2 and 3

Implied Consent Law:

Arrest Required (Yes/No):

**No** An actual arrest is not required. Nevertheless, a request for a test must still be based on probable cause. IC9-30-6-2 and *Clark v. State*, 372 N.E.2d 185 (Ind. 1978). *Dalton v. State*, 773 N.E.2d 332 (Ind. App. 2002)

Implied Consent Law

Applies to Drugs (Yes/No):

**Yes** IC9-30-6-2

Refusal to Submit to Chemical Test

Admitted into Evidence:

Other Information:

**Yes** (Criminal and Civil Cases) IC9-30-6-3(b)  
I. In accidents where there has been either a fatality or a serious injury, a blood sample may be obtained via force from a driver suspected of any DWI offense. IC9-30-6-6(g) and (h)  
II. In order to insure that offenders are <.08 BAC/BrAC prior to pre-trial release, the law provides a chart to guide law enforcement officers on the number of hours a person should be held based on their BAC/BrAC. IC35-33-1-6

Chemical Tests of Other Substances for Alcohol Concentration Which Are

Authorized Under the Implied Consent Law:

Blood:

**Yes**<sup>409</sup>

Urine:

**Yes**

Other:

**Any other bodily substance**

Adjudication of DWI Charges:

Mandatory Adjudication Law (Yes/No):

**No**

Anti-Plea-Bargaining Statute (Yes/No):

**No**

Pre-Sentencing Investigation Law (PSI) (Yes/No):

**Yes** Mandatory for subsequent alcohol driving offenses. IC9-30-5-15

Sanctions for Refusal to Submit to a Chemical Test:

Refusal to Take a Preliminary Breath Test:

Criminal Sanctions (Fine/Jail):

Class C Infraction – Not more than **\$500** IC9-30-7-5(a) and 34-28-5-4(c) **Suspension** – Not more than **1 year except if prior refusal – 2 years.** IC9-30-7-5(b) & 9-30-6-9

Administrative Licensing Action (Susp/Rev):

**DWI Offenses and Commercial Motor Vehicles (CMV)/Commercial Driver’s Licenses (CDL):** A person is “disqualified” from operating a CMV for 1 mandatory year (3 years if transporting hazardous materials) if, while driving a CMV, that person (1) has a BAC/BrAC ≥ .04, (2) is under the influence of alcohol or a controlled substance or (3) refuses to submit to a chemical test for an alcohol concentration. For either (1) a subsequent violation or (2) a combination of two or more violations of any of the above listed items, the

<sup>409</sup> The implied consent law requires a driver to submit one or more “chemical tests.” The substances that may be tested are breath, blood, urine or any other bodily substance. IC9-30-6-1 and IC9-30-6-6(a)

“disqualification” is for life. However, for a second violation only, the CDL may be reinstated after 10 years. It is a Class C Infraction for a person to operate a CMV with a BAC ≥ .04 but < .08. The sanction of this offense is a fine of not more than \$500. IC9-24-6-8 et seq.  
(continued)

Refusal to Take Implied Consent

Chemical Test:

Criminal Sanction (Fine/Jail):

Administrative Licensing Action

(Susp/Rev):

**Yes Limited<sup>410</sup>**

**1-year suspension.<sup>411</sup>** May not be mandatory if there is a DWI conviction. IC9-30-6-9 (a)  
A driver’s license may be reinstated if the DWI charges are dismissed. IC9-30-6-11 (a)(1)

Sanctions Following a Conviction for a DWI Offense:

Criminal Sanctions:

Imprisonment:

Term (Day, Month, Years, Etc.):

1. Intoxicated offense/Illegal per se offense BAC/BrAC ≥ .08 but < .15 – Class C Misdemeanor – Not more than **60 days** 2. Endangerment Intoxicated offense/Illegal per se offense BAC/BrAC ≥ .15 – Class A Misdemeanor – Not more than **1 year** 3. Either 1 or 2 above if there has been a previous conviction of either offense (within 5 years) – Class D felony<sup>412</sup>-A fixed term of **1½ years**  
4. A serious injury where a person has been operating a vehicle with a BAC/BrAC ≥ .08, with a schedule I or II controlled substance or while intoxicated – first offense – Class D felony-A fixed term of **2 years**; subsequent offense<sup>413</sup> (within 5 years) – Class C felony-A fixed term of **4 years** IC9-30-5-1, -2, -3, 4 and 5, IC35-50-2-6 and -7 and IC35-50-3-2 and 4  
Persons Under 21 Years Old. BAC/BrAC ≥ .02 but < .08-Class C Infraction – **None**

Mandatory Minimum Term:

1) A conviction for **ANY** alcohol-related driving offense, where there has been **one** previous conviction for **ANY** type of alcohol driving offense, **5 days** (with 48 consecutive hours) 2) A conviction for **ANY** alcohol-related driving offense, where there have been **two or more** previous convictions

<sup>410</sup> Under a separate implied consent law, a driver involved in a fatal or serious bodily injury accident may be asked by a law enforcement officer to submit to a chemical test. A person does not have to submit to this test if offered but refusal is a Class C Infraction with a possible fine of not more than \$500. The court may impose a license suspension for not more than 1 year. IC9-27-5-4(b), IC9-30-7-1 to 9-9-30-7-5 and IC34-4-32-4(c) Since the law does not require that person submit to a test, it was held not to violate Federal and State constitutional provision against unreasonable searches and seizures. *Griswold v. State*, 725 N.E.2d 416 (Ind. App. 2000) trans. denied 735 N.E.2d 230 (Ind. 2000). For a discussion of 4th Amendment issues regarding the general implied consent statute, IC9-30-6-2, see *Cochran v. State* 771 N.E.2d 104 (Ind. App. 2002) *Brown v. State* 774 N.E.2d 1001 (Ind. App. 2002)

<sup>411</sup> This suspension is consecutive to any suspension for a DWI offense. However, if a court finds in the sentence order for a DWI Conviction that it is in the best interest of society, it may terminate all or any part of this suspension. IC9-30-5-14 (b)

<sup>412</sup> A person convicted of a Class D felony may, at the court’s discretion, be sentenced as if they had been convicted of a Class A misdemeanor (Jail: Not more than 1 year, fine: Not more than \$5,000) provided that this was the person’s first felony conviction. IC35-50-2-7 and IC35-50-3-2

<sup>413</sup> A Class C infraction is a civil (not a criminal) violation.

for **ANY** type of alcohol driving offense, **10 days** (with 48 consecutive hours) IC9-13-2-130<sup>414</sup> and IC9-30-5-15

Fine:

Amount (\$ Range):

1. Intoxicated offense/Illegal per se offense BAC/BrAC  $\geq$  .08 but  $<$  .15 – Class C Misdemeanor – Not more than **\$500** IC35-50-3-4; 2.

Endangerment Intoxicated offense/Illegal per se offense BAC/BrAC  $\geq$  .15 – Class A Misdemeanor – Not more than **\$5,000** IC35-50-3-23. Either 1 or 2 above if there has been a previous intoxicated offense (within 5 years) – Class D felony – not more than **\$10,000** IC35-50-2-6 4. A serious injury where a person has been operating a vehicle with a BAC/BrAC  $\geq$  .08, with a schedule I or II controlled substance or while intoxicated – first or subsequent offense (within 5 years) – Class D or C felony respectively – Not more than **\$10,000** IC35-50-2-6 IC35-50-2-5 and -6

Persons Under 21 Years Old. BAC/BrAC  $\geq$  .02 but  $<$  .08– Class C Infraction – Not more than **\$500** IC9-30-5-8.5 and IC34-4-32-4(c)

**None**

Mandatory Min. Fine (\$):

Other Penalties:

Community Service:

For a second alcohol offense, mandatory community restitution or service of **30 days** in lieu of imprisonment. For a third or subsequent alcohol offense, mandatory community restitution or service of **60 days** in lieu of imprisonment. IC9-13-2-130 and IC9-30-5-15.

Restitution

(e.g., Victim’s Fund)

**Yes** The court may order a defendant to pay direct compensation to a victim. IC35-50-5-3 There is also a victims’ compensation fund. IC5-2-6.1-1 et seq.

Other:

**Alcohol and Drug Countermeasures Fee.** All DWI offenders are assessed a fee of **\$200** for alcohol and drug countermeasures programs. IC33-19-6-10  
**Emergency Medical Services Fund.** The court may order a defendant to make “restitution” of up to **\$1,000** to the emergency medical services fund for any needed services provided by emergency services personnel as a result of their actions. IC9-30-5-17  
**Victim Impact Program.** A defendant may be ordered by the court to participate in programs with DWI offense victims. IC9-30-14-2

<sup>414</sup> A prior conviction for “driving while intoxicated” is defined to mean a prior violation of IC9-30-5-1 thru IC9-30-5-9. IC9-13-2-130

**Double Jeopardy.** Based upon the same factual situation, a person who has been subjected to licensing action under the administrative per se law may also be subsequently prosecuted for a drunk-driving offense. Such subsequent criminal trial does not violate the constitutional prohibition against double jeopardy. *Schrefler v. State*, 660 N.E.2d 585 (Ind. App. 1996)

**Visitation Program.** A defendant may be required to visit emergency care facilities, coroner facilities or alcoholism treatment centers. IC9-30-14-3 (3)

Administrative Licensing Actions:  
Pre-DWI Conviction Licensing Action:  
 Administrative Per Se Law:

**Yes**<sup>415</sup> Based on BAC/BrAC *prima facie* evidence  $\geq .08$  First and subsequent offenses – **suspension up to 180 days** or until the DWI charges have been disposed of which ever occurs first. IC9-30-6-9 (b) A person may be granted restricted driving privileges after 30 days. IC9-30-6-9 (e) Such privileges, however, cannot be granted if the person has been convicted of a serious injury/death-related DWI offense or if he/she has been convicted of a previous DWI offense. IC9-24-15-6.5 A person may also be issued a restricted license under IC9-30-5-11 et seq. if he/she has not been convicted of a DWI offense. IC9-24-15-9 If DWI charges are dismissed or the defendant is found not guilty of the DWI offense, the court shall order the driver’s license reinstated. IC9-30-6-11

Other:

Under IC9-30-6-8, the court may suspend a license at the initial hearing if there is probable cause to believe that the person was driving either while illegal per se or intoxicated. The initial hearing must be held within 10 days after the arrest. IC35-33-7-1(c)

Post DWI Conviction Licensing Action:  
 Type of Licensing Action  
 (Susp/Rev):

**Suspension All offenses** IC9-30-5-8.5 and IC9-30-5-10

Term of License Withdrawal  
 (Days, Months, Years, etc.):

First offense (Illegal per se/Intoxicated) – **90 days to 2 years**; second or subsequent offense (Illegal per se/Intoxicated) (within 10 years but more than 5 years from a first offense) – **180 days to 2 years**; second or subsequent offense (Illegal per se/Intoxicated) (within 5 years) – **1 to 2 years**; Ignition interlock required after license reinstatement {if one year – ignition interlock required for six months; if 2 years – ignition interlock required for one year} Injury-Related offense (where a person has been operating a vehicle with a BAC/BrAC  $\geq .08$ , with a schedule I or II controlled substance or while intoxicated) – **2 to 5 years** IC9-30-5-10<sup>416</sup>

<sup>415</sup> If a defendant makes a request for an early trial and one is not held within 90 days of the initial hearing, the court may order the driver’s license to be reinstated. The reinstatement cannot take effect until 90 days after the initial hearing. IC9-30-6-11 and IC9-30-6-18

<sup>416</sup> IC9-13-2-130 defines the phrase “previous conviction of operating while intoxicated” to include any DWI offense under IC9-30-5.

Mandatory Minimum Term of Withdrawal:	<u>Persons Under 21 Years Old</u> . BAC/BrAC ≥ .02 but < .08 – Not more than <b>1 year</b> IC9-30-5-8.5
Other:	
Rehabilitation:	
Alcohol Education:	<b>Yes</b> <sup>419</sup>
Alcohol Treatment:	<b>Yes</b>
Vehicle Impoundment/Confiscation:	
Authorized by Specific Statutory Authority:	<b>Yes.</b> Forfeiture of a motor vehicle <u>permitted</u> if driven by a person who has at least two prior DUIs within five years if that person commits additional DUI or driving with a suspended license. IC34-24-11(a)(15)
- Terms Upon Which Vehicle Will Be Released:	
Other:	Vehicle registration “certificates” shall be suspended/revoked for <b>6 months</b> if the defendant was convicted of a felony while using a motor vehicle (e.g., subsequent DWI offenses). IC9-30-4-6(b)(3) <i>and</i> (d)(1)
Miscellaneous Sanctions Not Included Elsewhere:	<b>“Home detention”</b> may be ordered in lieu of the minimum imprisonment sentence for certain offenses including DWI. “Home detention” using electronic monitoring also may be ordered as a part of probationary work release program. IC35-38-1-21, 35-38-2-2.3(a)(15), 35-38-2.5 and 35-38-3-5 <b>Ignition Interlock.</b> I. Under IC9-30-8-1 and 9-30-5-16, as a condition for obtaining probationary driving privileges, the court may require a defendant to use only vehicles equipped with “ignition interlock” devices for a term established by the court

<sup>417</sup> A probationary (restricted) license may be issued for 180 days. This restricted license does not take effect until a defendant’s license has been suspended for 30 days under the admin. per se law. IC9-30-5-11 and IC9-30-6-9 However, a first DWI offender who has refused to submit to a chemical test is not eligible for a probationary restricted license. Such a person is subject to a mandatory minimum license suspension of 90 days. IC9-30-5-12

<sup>418</sup> A probationary (restricted) license may be issued for that portion of the suspension period that exceeds the mandatory minimum period. IC9-30-5-10(c) and 9-30-5-12(c)(2)

<sup>419</sup> IC9-30-5-15(a)(2) and (b)(2), 9-30-9-3, 9-30-9-6 and 12-23-14-1

with the limitation that such term cannot exceed the maximum prison sentence; violation of this requirement is a Class A infraction. 9-30-5-7 II. Other provisions of law also provide that a person convicted of an illegal per se/intoxicated offense (within 5 years or within 10 years but more than 5 years of a previous conviction) may be granted probationary (restricted) driving privileges on the condition that the person only operate vehicles equipped with ignition interlock devices. IC9-30-5-10(c) and (d)

**Persons Under 21 Years Old.** Under separate provisions of the law, the court may suspend the driving privileges of a person under 21 years if he/she has any “alcohol present in a bodily substance.” IC9-24-18-12

Other Criminal Actions Related to DWI

Homicide by Vehicle:

State Has Such a Law:

**Yes I.** A death where a person has been operating a vehicle with a BAC/BrAC  $\geq .08$ , with a schedule I or II controlled substance or while intoxicated – first offense – Class C felony; subsequent offense<sup>420</sup> (within 5 years) – Class B felony IC9-30-5-1, -2, -3, -4 and -5, IC35-50-2-5, 6 and -7 and IC35-50-3-2, and -4.

II. Involuntary Manslaughter where the death is related to vehicle operation and the defendant has committed or attempted to commit either a Class C felony, Class D felony or Class A Misdemeanor (e.g., driving while intoxicated) that imposes a risk of serious bodily injury– Class D felony IC35-42-1-4 and 35-50-2-7

III. Involuntary Manslaughter where the death is related to vehicle operation and the killing of a fetus– Class D felony IC35-42-1-4

Sanctions:

Criminal Sanction:

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<sup>420</sup> A previous offense includes any prior drunk-driving offense conviction.

**License Suspension and DWI Charge Deferral.** For first offenders (except those offenses related to serious injury/death), the DWI charges may be deferred and dismissed. The law provides for two (2) different deferral schemes depending upon the court hearing the case. (1) Under IC9-25-6-10, 9-30-9-3 and 9-30-9-5, the charges may be deferred for up to 4 years. As part of the deferral, the court may suspend a defendant’s license from 2 to 4 years. However, it appears that the court must suspend a defendant’s license for 1 year. The court may grant restricted driving privileges after this 1-year period; in addition, the defendant may be required to participate in an alcohol treatment program.

**License Suspension and Probation Following Conviction.** In certain circuit courts, persons convicted of a DWI offense may be placed on probation and referred to an alcohol abuse deterrent program. As part of the probation, the court may suspend a defendant’s license from 90 days to 4 years. However, it appears that a defendant’s license must be suspended for 30 days. After this 30-day period, the court may grant probationary (restricted) driving privileges. IC9-30-9-3, 9-30-9-6 and 9-30-9-7

<p>Imprisonment (Term):</p>	<p><u>Class B felony</u>-A fixed term of <b>10 years</b> <u>Class C felony</u>-A fixed term of <b>4 years</b> <u>Class D felony</u>-A fixed term of <b>1½ years</b></p>
<p>Mandatory Minimum Term:</p>	<p>There are mandatory imprisonment sanctions in cases involving offenders who have prior felony convictions. See IC35-50-2-2 for details.</p>
<p>Fine (\$ Range):</p>	<p><u>Class B, C or D felonies</u> – Not more than <b>\$10,000</b></p>
<p>Mandatory Minimum Fine:</p>	<p><b>None</b></p>
<p>Administrative Licensing Action:</p>	
<p>Licensing Authorized and Type of Action:</p>	<p>I. A death where a person has been operating a vehicle with a BAC ≥ .08, with a schedule I or II controlled substance or while intoxicated– suspension 9-30-5-8.5 and 9-30-5-10</p> <p>II. <u>Involuntary Manslaughter</u>– <b>Suspension/Revocation</b><sup>421</sup> IC9-30-4-6 (b)(1) and (d)(2)</p>
<p>Length of Term of Licensing Withdrawal:</p>	<p>I. A death where a person has been operating a vehicle with a BAC ≥ .08, with a schedule I or II controlled substance or while intoxicated-<b>2 to 5 years</b></p> <p>II. <u>Involuntary Manslaughter</u>-<b>2 to 5 years</b></p>
<p>Mandatory Action--Minimum Length of License Withdrawal:</p>	<p>For either I or II above, there appears to be a mandatory licensing action for <b>2 years</b>.</p>
<p><u>Driving While License Suspended or Revoked</u> Where the Basis Was a DWI Offense:<sup>422</sup></p>	<p>These sanctions apply when a person operates a motor vehicle while the license is suspended/revoked and where the licensing action was the result of the commission of a criminal offense (e.g., DWI). IC 9-24-19-3 and IC35-41-1-19</p>
<p>Sanction:</p>	
<p>Criminal:</p>	
<p>Imprisonment (Term):</p>	<p>I. Class A Misdemeanor – Not more than <b>1 year</b> IC9-24-19-3 and IC35-50-3-2</p> <p>II. Where there is Bodily Injury– Class D felony-A fixed term of <b>1½ years</b> IC35-50-2-7 Under certain</p>

<sup>421</sup> Registration “certificates” may also be suspended/revoked for not less than two but no more than five years of any person who has been convicted of either “involuntary” manslaughter or “reckless homicide” resulting from the operation of a motor vehicle. This appears to be mandatory. IC30-4-6(b)(1) and (d)(2)

<sup>422</sup> I. It is a Class C misdemeanor to operate a CMV during a CDL disqualification. The sanctions for this offense are a jail term of not more than 60 days and/or a fine of not more than \$500. IC9-24-6-16 and IC35-50-3-4 II. If a person operates a CMV during a Federal 24-hour out-of-service order under 49 CFR 392.5, which prohibits driving a CMV either while under the influence or with any “measured alcohol concentration,” they are subject to the following sanctions. A CDL disqualification as follows: first violation – 90 days (mand) to 1 year; second violation (within 10 years) – 1 year (mand) to 5 years; and, third or subsequent violation (within 10 years) – 3 years (mand) to 5 years. If the CMV operator was driving a CDL either containing hazardous materials or designed to carry more than 15 persons, the CDL disqualification periods are as follows: first violation-180 days (mand) to 2 years; and, subsequent violation (within 10 years) – 3 years (mand) to 5 years. For any violation, a civil fine of \$1,000. IC9-13-2-120.5, 9-24-6-10.5 and 9-24-6-19



	conditions, this may be reduced to a Class A Misdemeanor IC35-50-2-7(b)
	III. Where there is a Death– Class C felony-A fixed term of <b>4 years</b> IC35-50-2-6
Mandatory Minimum Term of Imprisonment:	There are mandatory imprisonment sanctions in cases involving offenders who have prior felony convictions. See IC35-50-2-2 for details.
Fine (\$ Range)	<u>Class A Misdemeanor</u> – Not more than <b>\$5,000</b> IC35-50-3-2 <u>Class C or D felony</u> – Not more than <b>\$10,000</b> IC35-50-2-6 and IC35-50-2-7
Mandatory Minimum Fine:	<b>None</b>
Administrative Licensing Actions:	
Type of Licensing Action: (Susp/Rev):	<b>Suspension</b> IC9-24-19-5
Length of Term of License Withdrawal Action:	<b>90 days to 2 years</b> IC9-24-19-5
Mandatory Term of License Withdrawal Action:	<b>90 days</b> IC9-24-19-5
<u>Habitual Traffic Offender Law:</u>	
State Has Such a Law (Yes/No):	<b>Yes</b> IC9-30-10-1 et seq.
Grounds for Being Declared an Habitual Offender:	I. 2 convictions (within 10 years) for traffic law violations related to death offenses as listed in IC9-30-10-4(a) (e.g., DWI resulting in death) II. 3 convictions (within 10 years) for major offenses as listed in IC9-30-10-4(b) (e.g., DWI and reckless driving) III. 10 convictions for any moving violations (within 10 years) IC9-30-10-4(c) However, one of these must have been a conviction for an offense listed in either IC9-30-10-4(a) or IC9-30-10-4(b).
Term of License Rev While Under Habitual Offender Status:	I. For 2 traffic law violations related to death offenses convictions under IC9-30-10-4 (a) – <b>10-year suspension</b> IC9-30-10-5(b)(1) II. For 3 major offense convictions under IC9-30-10-4(b) – <b>10-year suspension</b> <sup>423and424</sup> IC9-30-10-5(b)(2) III. For 10 convictions of moving violations under IC9-30-10-4(c) – <b>5-year suspension</b> <sup>425and426</sup> IC9-30-10-5(b)(3)

<sup>423</sup> After **5 years**, a probationary restricted license may be issued provided that offender has not been convicted of a death-related offense under IC9-30-10-4 (a). In addition, if one of the offenses under IC9-30-10-4 (b) was for a drunk-driving offense, the offender must complete a rehabilitation program before such restricted license can be issued. IC9-30-10-9 (b)

<sup>424</sup> After **3 years**, a probationary restricted license may be issued the offender's status is based on a violation of IC9-30-10-4 (b) and (c). In order to be eligible for such a license, the offender must establish, among other things, (1) no convictions of a death-related offense as listed in IC9-30-10-4(a) and (2) any convictions were either: driving without a license based on infractions or driving without a license for a subsequent time. IC9-30-10-9(d)

<sup>425</sup> A probationary restricted license may be issued at any time to an habitual offender who operates a vehicle for commercial or business purposes and where the habitual offender status is based on a violation of IC9-30-10-4 (c). In order to be eligible for such driving privileges, the offender must establish, among other things, that he/she has not been

Type of Criminal Offense if Convicted on Charges of Driving While on Habitual Offender Status:

Class D felony IC9-30-10-16 At the court's discretion, a first offender may be sentenced for a Class A Misdemeanor

Sanctions Following a Conviction of Driving While on Habitual Offender Status:

Imprisonment (Term):

Class D felony-**1½ years**; Class A Misdemeanor – Not more than **1 year** IC35-50-2-7 and IC35-50-3-2

Mandatory Minimum Term of Imprisonment:

**None**

Fine (\$ Range):

Class D felony – Not more than **\$10,000**; Class A Misdemeanor – Not more than **\$5,000**

Mandatory Minimum Fine:

**None**

Licensing Actions (Specify):

For a Class D felony conviction-Forfeiture of license for life<sup>427</sup> IC9- 30-10-16(c)  
 Class C felony for a person to operate a motor vehicle after the license has been suspended for life – Sanctions: Jail – not more than 4 years; fine – not more than \$10,000. IC9-30-10-17 and 35-50-2-6 and *Austin v. State*, 700 N.E.2d 1191 (Ind. App. 1998) (transfer denied 726 N.E.2d 1999 (Ind. 1999)).  
For a Class A misdemeanor conviction – the court on its own discretion may add an additional suspension period (time period to be set by the court) to any suspensions already imposed. IC9-30-10-16(c)

Other State Laws Related to Alcohol Use: Laws Requiring BAC Chemical Tests on Persons Killed in Traffic Accidents:

State Has Such a Law (Yes/No):  
 BAC Chemical Test Is Given to the Following Persons:

**Yes**<sup>428</sup> IC9-27-5-4 (a)

Driver:  
 Vehicle Passengers:  
 Pedestrian:

**Yes** IC9-27-5-4(a)  
**No**  
**Yes** for persons ≥ 15 years old IC9-27-5-4(a)

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convicted either (1) for death-related offense listed in IC9-30-10-4 (a) or (2) for three offenses listed in IC9-30-10-4 (b). IC9-30-10-9 (a)

<sup>426</sup> An habitual offender cannot obtain hardship driving privileges under IC9-24-15. IC9-24-15-9 and IC9-30-10-14(c)

<sup>427</sup> After **10 years**, a person may petition the court for reinstatement of his/her license. IC9-30-10-14 (a)(1) However, under some circumstances, offender's license may be reinstated after only **3 years**. For early reinstatement, the offender must not have been convicted of a death-related offense listed in IC9-30-10-4 (a) and the lifetime suspension must have based on traffic infractions. IC9-30-10-14 (e)

<sup>428</sup> The State Department of Toxicology in conjunction with the Office of Highway Safety may require "appropriate agencies" to collect "necessary specimens" (within 4 hours) from either drivers or pedestrians who are killed in traffic accidents. IC9-27-5-4(a)

Laws Establishing the Minimum AgesConcerning Alcoholic Beverages:

Minimum Age (Years) Sale/Purchase:	<b>21</b> <sup>429</sup> IC7.1-1-3-25, 7.1-5-7-1, 7.1-5-7-8 and 7.1-5-10-22
Minimum Age (Years) Possession:	<b>21</b> IC7.1-5-7-7(a)(1)
Minimum Age (Years) Consumption:	<b>21</b> IC7.1-5-7-7(a)(2)

Dram Shop Laws and Related Legal Actions:

State has a Dram Shop Law (Yes/No): **Yes** IC7.1-5-10-15.5<sup>430and431</sup>

“Dram Shop Law” Concept Has Been Adopted Via a Change to the Common Law Rule by Action of the Highest Court of Record in the State (Case Citation):

**Yes** *Picadilly, Inc. v. Colvin*, 519 N.E.2d 1217 (Ind. 1988), *Elder v. Fisher*, 217 N.E.2d 847 (1966), and *Parrett v. Lebamoff, Inc.*, 408 N.E.2d 1344 (Ind. App. 1980)

Dram Shop Actions-Social Hosts:

**Yes** *Gariup Const. Co. v. Foster*, 519 N.E.2d 224 (Ind. 1988), *Ashlock v. Norris*, 475 N.E.2d 1167 (Ind. App. 3 Dist., 1985), *Delta Tau Delta v. Johnson*, 712 N.E.2d 968 (Ind. 1999)<sup>432</sup>, *Murdock v. Fraternal Order of Eagles*, 779 N.E.2d 964 (Ind. App. 2002) and IC7.1-5-10-15.5

Other:

An alcoholic beverage licensee is liable for the injuries or death of an intoxicated patron who is over 21 years old, if two conditions are proven. (1) The licensee knew that the patron was visibly intoxicated when served alcoholic beverages. And, (2) the furnishing of such beverages was the proximate cause of the injury or death. IC7.1-5-10-15.5(c).<sup>433</sup>

<sup>429</sup> It is not a crime for a minor to simply purchase alcoholic beverages. However, it is a Class C infraction for a minor to “misrepresent” age in order to obtain alcoholic beverages. IC7.1-5-7-1

<sup>430</sup> Under IC7.1-5-10-15.5, a commercial server or a social host is not liable for the actions of intoxicated patrons or guests unless (1) the commercial server/social host had “actual knowledge” that the patron/guest was visibly intoxicated at the time alcoholic beverages were “furnished” and (2) the intoxicated person was the proximate cause of the injury or damage alleged. *Weida v. Dowden*, 664 N.E.2d 742 (Ind. App. 1996), *Vanderhoek v. Willy*, 728 N.E.2d 213 (Ind. App. 2000), and *Culver v. McRoberts*, 192 F.3d 1095 (7th Cir. 1999) Also under IC7.1-5-7-8(b), educational institutions, it appears, are not subject to civil liability unless they sell/furnish alcoholic beverages to a minor. A licensee is not normally liable for the injuries resulting from the criminal conduct (e.g., murder) of an intoxicated patron. Such conduct is either not foreseeable or is an intervening act that breaks the necessary probable cause for liability under the Dram Shop Act. *Merchants Nat. Bank v. Simrell’s Sports Bar*, 741 N.E.2d 383 (Ind. App. 2000)

<sup>431</sup> **Historical Note:** After April 1, 1986, common law dram shop actions were restricted by IC7.1-5-10-15.5. The *Gariup Const. Co.* and *Ashlock* decisions were based on factual situations that occurred prior to this date.

<sup>432</sup> In the *Delta Tau Delta* case, a guest at a fraternity house was attacked by another guest who was intoxicated. The State Supreme Court held that the dram shop law did not apply in this social host liability situation since there was no indication to the social host (the fraternity) knew that the injury-causing guest was visibly intoxicated. Note: The court, however, did find that the social host was liable under the common law for failure to maintain a safe place for guests.

<sup>433</sup> **Historical Note and Comment:** The dram shop law was amended in 1996 to limit the scope of liability in situations where an adult patron has been injured or killed as a result of his/her own (voluntary) intoxication. The legislature apparently felt that such an amendment was necessary in order to limit the holding in *National R.R. Passenger Corp. v. Everton by Everton*, 655 N.E.2d 360 (Ind. App. 1995)

Criminal Action Against Owners  
or Employees of Establishments  
that Serve Alcoholic Beverages  
to Intoxicated Patrons:

Type of Criminal Action:

**Class B Misdemeanor** IC7.1-5-1-8, 7.1-5-10-15,  
7.1-5-10-22 and 35-50-3-3

Term of Imprisonment:

Not more than **180 days** IC7.1-3-23-3

Fine (\$ Range):

Not more than **\$1,000** {An administrative fine of not  
more than \$1,000 may also be imposed.}

Administrative Actions Against Owners  
or Establishments that Serve Alcoholic  
Beverages to Intoxicated Patrons:

License of Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes**<sup>434</sup> IC7.1-3-23-2, 7.1-3-23-5 and 7.1-5-10-22

Length of Term of License

Withdrawal:

For revocations, no period is specified in the statute  
IC7.1-3-23-6 For suspensions, not more than 30  
days IC7.1-3-23-7

Criminal Actions Against Owners  
or Employees of Establishments  
that Serve Alcoholic Beverages or the Wrong Type  
of Alcoholic Beverage to Those Persons  
Under the Minimum Drinking Age:

Type of Criminal Action:

**Class C Misdemeanor**<sup>435</sup> IC7.1-5-7-8, 7.1-5-10-22  
and 35-50-3-4

Term of Imprisonment:

Not more than **60 days**

Fine (\$ Range):

Not more than **\$500** {An administrative fine of  
not more than \$1,000 also may be imposed.  
IC7.1-3-23-3}

Administrative Actions Against Owners  
of Establishments That Serve Alcoholic  
Beverages to Those Persons  
Under the Minimum Legal Drinking Age:

License to Serve Alcoholic Beverages

Withdrawn (Yes/No):

**Yes** IC7.1-3-23-2, 7.1-3-23-5, 7.1-3-23-26.1 and  
7.1-5-10-22

Length of Term License

Withdrawal:

For revocations, no period is specified in the statute.  
IC7.1-3-23-6 For suspensions, not more than 30  
days. IC7.1-3-23-7 The licensee may also be fined.  
7.1-3-23-26.1

Anti-Happy Hour Laws/Regulations:

**Yes** IC7.1-5-10-20

<sup>434</sup> An employee or bartender who is convicted of serving alcoholic beverages to an intoxicated person is subject to mandatory revocation of the permit to serve such beverages. IC7.1-3-18-9(f) and IC7.1-3-18-11(f) The permit may be suspended pending the disposition of the charges. IC7.1-3-23-7 (b)(2)

<sup>435</sup> IC7.1-5-7-8(a) states that “[i]t is a Class C misdemeanor for a person to recklessly sell, barter, exchange, provide, or furnish an alcoholic beverage to a minor.”

Laws Prohibiting (1) the Possession of  
Open Containers of Alcoholic Beverages  
and (2) the Consumption of Alcoholic  
Beverages in the Passenger Compartment of a Vehicle:

Open Container Law (Yes/No):

**Yes** Drivers and passengers—Applies while the motor vehicle is located on the right-of-way of a public highway {Class C infraction}. Exempted are passengers in vehicles for the transportation of persons for compensation, the living quarters of a house coach or house trailer, a container located in a fixed center console or other similar fixed compartment that is locked, a container located behind the last upright seat or in an area not normally occupied by a person in a motor vehicle not equipped with a trunk. A violation is not considered a moving violation for which points are assessed. IC 9-30-15-3

Anti-Consumption Law (Yes/No:)

**Yes** Drivers only IC9-30-15-4