

# HOUSE BILL No. 1283

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## 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.

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January 10, 2019, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

## HOUSE BILL No. 1283

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.63-2018,  
2 SECTION 1, 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 ~~body~~ **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.63-2018,  
 10 SECTION 2, 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 ~~body~~; **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 6 felony. However, the offense is a Level 5 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.63-2018,  
 35 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 36 UPON PASSAGE]: Sec. 5. (a) A person who causes the death of  
 37 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 5 felony, except as provided in subsection (b).  
 8           (b) A person who causes the death of another person when operating  
 9           a vehicle under the conditions set forth in subsection (a)(1), (a)(2), or  
 10          (a)(3) commits a Level 4 felony if:  
 11          (1) the person operating the vehicle has a previous conviction of  
 12          operating while intoxicated within the ten (10) years preceding  
 13          the commission of the offense;  
 14          (2) the person operating the vehicle knows that the person's  
 15          driver's license, driving privilege, or permit is suspended or  
 16          revoked for a previous conviction for operating a vehicle while  
 17          intoxicated; or  
 18          (3) the driving privileges of the person operating the vehicle are  
 19          suspended under IC 9-30-10 because the person is a habitual  
 20          traffic violator.  
 21          (c) A person who causes the death of another person when operating  
 22          a vehicle:  
 23          (1) with an alcohol concentration equivalent to at least  
 24          fifteen-hundredths (0.15) gram of alcohol per:  
 25                  (A) one hundred (100) milliliters of the person's blood; or  
 26                  (B) two hundred ten (210) liters of the person's breath; or  
 27          (2) with: a ~~controlled substance~~  
 28                  **(A) cocaine;**  
 29                  **(B) a narcotic drug** listed in schedule I or II of IC 35-48-2; or  
 30                  its ~~metabolite~~  
 31                  **(C) methamphetamine;**  
 32                  in the person's blood;  
 33          commits a Level 4 felony.  
 34          (d) A person who causes the death of a law enforcement animal (as  
 35          defined in IC 35-46-3-4.5) when operating a vehicle:  
 36          (1) with an alcohol concentration equivalent to at least  
 37          eight-hundredths (0.08) gram of alcohol per:  
 38                  (A) one hundred (100) milliliters of the person's blood; or  
 39                  (B) two hundred ten (210) liters of the person's breath; or  
 40          (2) with:  
 41                  **(A) a controlled substance, other than**  
 42                  **tetrahydrocannabinol**, listed in schedule I or II of IC 35-48-2



- 1                   or its metabolite in the person's blood; or  
 2                   **(B) ten (10) or more nanograms of tetrahydrocannabinol**  
 3                   **per milliliter of the person's whole blood;**  
 4                   commits a Level 6 felony.
- 5                   (e) A person who commits an offense under subsection (a), (b), (c),  
 6                   or (d) commits a separate offense for each person or law enforcement  
 7                   animal whose death is caused by the violation of subsection (a), (b),  
 8                   (c), or (d).
- 9                   (f) It is a defense under subsection (a), (b), (c), or (d) that the person  
 10                   accused of causing the death of another person or a law enforcement  
 11                   animal when operating a vehicle with a controlled substance listed in  
 12                   schedule I or II of IC 35-48-2 or its metabolite in the person's blood  
 13                   consumed the controlled substance in accordance with a valid  
 14                   prescription or order of a practitioner (as defined in IC 35-48-1) who  
 15                   acted in the course of the practitioner's professional practice.
- 16                   SECTION 4. IC 9-30-15.5-1, AS AMENDED BY P.L.198-2016,  
 17                   SECTION 606, IS AMENDED TO READ AS FOLLOWS  
 18                   [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter,  
 19                   "vehicular substance offense" means any misdemeanor or felony in  
 20                   which operation of a vehicle while intoxicated, operation of a vehicle  
 21                   in excess of the statutory limit for alcohol, or operation of a vehicle  
 22                   with a controlled substance or **(before July 1, 2019)** its metabolite in  
 23                   the person's body, is a material element. The term includes an offense  
 24                   under IC 9-30-5, IC 9-24-6-15 (before its repeal), IC 9-24-6.1-7, and  
 25                   IC 9-11-2 (before its repeal).
- 26                   SECTION 5. IC 34-28-5-5, AS AMENDED BY P.L.146-2016,  
 27                   SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28                   UPON PASSAGE]: Sec. 5. (a) A defendant against whom a judgment  
 29                   is entered is liable for costs. Costs are part of the judgment and may not  
 30                   be suspended except under IC 9-30-3-12. Whenever a judgment is  
 31                   entered against a person for the commission of two (2) or more civil  
 32                   violations (infractions or ordinance violations), the court may waive the  
 33                   person's liability for costs for all but one (1) of the violations. This  
 34                   subsection does not apply to judgments entered for violations  
 35                   constituting:
- 36                   (1) Class D infractions; or  
 37                   (2) Class C infractions for unlawfully parking in a space reserved  
 38                   for a person with a physical disability under IC 5-16-9-5 or  
 39                   IC 5-16-9-8.
- 40                   (b) If a judgment is entered:  
 41                   (1) for a violation constituting:  
 42                   (A) a Class D infraction; or



- 1 (B) a Class C infraction for unlawfully parking in a space  
 2 reserved for a person with a physical disability under  
 3 IC 5-16-9-5 or IC 5-16-9-8; or  
 4 (2) in favor of the defendant in any case;  
 5 the defendant is not liable for costs.
- 6 (c) Except for costs, and except as provided in subsections (e), ~~and~~  
 7 (f), **and (g)** and IC 9-21-5-11(e), the funds collected as judgments for  
 8 violations of statutes defining infractions shall be deposited in the state  
 9 general fund.
- 10 (d) A judgment may be entered against a defendant under this  
 11 section or section 4 of this chapter upon a finding by the court that the  
 12 defendant:
- 13 (1) violated:
- 14 (A) a statute defining an infraction; or  
 15 (B) an ordinance; or
- 16 (2) consents to entry of judgment for the plaintiff upon a pleading  
 17 of nolo contendere for a moving traffic violation.
- 18 (e) The funds collected for an infraction judgment described in  
 19 section 4(h) of this chapter shall be transferred to a dedicated county  
 20 fund. The money in the dedicated county fund does not revert to the  
 21 county general fund or state general fund and may be used, after  
 22 appropriation by the county fiscal body, only for the following  
 23 purposes:
- 24 (1) To pay compensation of commissioners appointed under  
 25 IC 33-33-49.
- 26 (2) To pay costs of the county's guardian ad litem program.
- 27 (f) The funds collected for an infraction judgment described in  
 28 section 4(i) of this chapter shall be transferred to a dedicated toll  
 29 revenue fund created as part of a project under IC 8-15.5-1-2(b)(4).  
 30 The money in the fund does not revert to the county general fund or  
 31 state general fund and may be used only to pay the cost of operating,  
 32 maintaining, and repairing the tolling system for a project under  
 33 IC 8-15.5-1-2(b)(4), including major repairs, replacements, and  
 34 improvements.
- 35 **(g) The funds collected for an infraction judgment imposed for**  
 36 **a violation of IC 35-48-4-11.3 shall be transferred as follows:**
- 37 **(1) Ten dollars (\$10) shall be transferred to the auditor of**  
 38 **state for deposit in the state user fee fund established in**  
 39 **IC 33-37-9-2.**
- 40 **(2) Ten dollars (\$10) shall be transferred to the county auditor**  
 41 **for deposit in the county general fund.**
- 42 **(3) Any amount remaining after transfer of the funds**



1           **described in subdivisions (1) and (2) shall be transferred to**  
 2           **the auditor of state for deposit in the state general fund.**

3           SECTION 6. IC 35-46-9-6, AS AMENDED BY P.L.63-2018,  
 4           SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 5           UPON PASSAGE]: Sec. 6. (a) Except as provided in subsections (b)  
 6           and (c), a person who operates a motorboat while:

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

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

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

18           (3) intoxicated;

19           commits a Class C misdemeanor.

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

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

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

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

24           (C) this chapter; or

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

26           (c) The offense is a Level 5 felony if the offense results in the death  
 27           of another person.

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

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

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

40           (1) introducing into the person's body a controlled substance,  
 41           **unless the substance is marijuana;**

42           (2) testing the strength, effectiveness, or purity of a controlled



1 substance; or  
 2 (3) enhancing the effect of a controlled substance;  
 3 commits a Class C misdemeanor. However, the offense is a Class A  
 4 misdemeanor if the person has a prior unrelated judgment or conviction  
 5 under this section.

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

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

- 13 (1) knowingly or intentionally possesses (pure or adulterated):  
 14 **(A) more than thirty (30) grams of marijuana;**  
 15 **(B) more than five (5) grams of hash oil;**  
 16 **(C) more than five (5) grams of hashish; or**  
 17 **(D) salvia;**  
 18 (2) knowingly or intentionally grows or cultivates marijuana; or  
 19 (3) knowing that marijuana is growing on the person's premises,  
 20 fails to destroy the marijuana plants;

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

23 (b) The offense described in subsection (a) is a Class A  
 24 misdemeanor if:

- 25 (1) the person has a prior conviction for a drug offense; or  
 26 (2) the:  
 27 (A) marijuana, hash oil, hashish, or salvia is packaged in a  
 28 manner that appears to be low THC hemp extract; and  
 29 (B) person knew or reasonably should have known that the  
 30 product was marijuana, hash oil, hashish, or salvia.

31 (c) The offense described in subsection (a) is a Level 6 felony if:

- 32 (1) the person has a prior conviction for a drug offense; and  
 33 (2) the person possesses:  
 34 (A) at least ~~thirty (30)~~ **sixty (60)** grams of marijuana; ~~or~~  
 35 (B) at least ~~five (5)~~ **ten (10)** grams of hash oil, hashish; or  
 36 **(C) at least five (5) grams of salvia.**

37 SECTION 9. IC 35-48-4-11.3 IS ADDED TO THE INDIANA  
 38 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 39 [EFFECTIVE UPON PASSAGE]: **Sec. 11.3. (a) A person who**  
 40 **knowingly or intentionally possesses marijuana, hash oil, or**  
 41 **hashish commits a Class D infraction.**

42 **(b) A person may not be charged with a violation of this section**





1 **and an offense under section 11 of this chapter for the same act.**  
2 **SECTION 10. An emergency is declared for this act.**

