



Indiana Public Defender Council

TRAFFIC LAW MANUAL

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Table of Contents

I. LICENSE SUSPENSIONS	1
A. Which Offenses Carry a License Suspension?	1
1. Discretionary Suspension (Ind. Code § 9-30-16-1(c))	1
2. Mandatory Suspension (Ind. Code § 9-30-16-2).....	1
B. Pre-Trial Suspension for Operating While Intoxicated Crimes	1
1. Prima Facie Evidence of Intoxication	1
2. Refusal of a Chemical Test	2
a. <i>Advisement Required Prior to Offering of Chemical Test</i>	3
b. <i>Conduct Sufficient to Portray Refusal</i>	3
3. Stay of Suspension Pending SDP Petition.....	4
C. Post-Conviction Suspension for Operating While Intoxicated Crimes.....	4
1. First Offense Misdemeanor OWI Offenses	4
2. Any Prior Conviction for OWI.....	5
3. Prior Conviction for OWI within Seven Years (Ind. Code § 9-30-5-3)	5
4. Operating While Intoxicated Causing Serious Bodily Injury (Ind. Code § 9-30-5-4)	6
5. Operating While Intoxicated Causing Death (Ind. Code § 9-30-5-5)	6
6. Other Considerations.....	7
a. <i>OWI License Suspension – The Importance of a Clear and Correct Abstract of Judgment</i>	7
b. <i>Proof of Financial Responsibility – OWI Suspension</i>	9
D. License Suspension for Other Operating Offenses	9
1. Operating Without Ever Receiving a Valid License	9
2. Driving While Suspended	10
a. <i>Driving While Suspended – Prior Conviction</i>	10
b. <i>Driving While Suspended – Suspension Resulted from a Conviction</i>	11
3. Operating Without Financial Responsibility	11
a. <i>After a Court Appearance</i>	12
b. <i>After an Accident Report is Filed</i>	12

<i>c. More than One Incident in Three Years</i>	13
<i>d. After a Judgment is Entered</i>	13
<i>e. Conditions of Reinstatement</i>	14
4. Leaving the Scene of an Accident.....	14
5. Engaging in a Speed Contest.....	15
6. Reckless Driving	15
7. Passing a School Bus Stop Arm Violation	16
8. Reckless Driving in a Work Zone	16
9. Aggressive Driving.....	17
10. Manslaughter or Reckless Homicide.....	18
11. Registration Offenses	18
12. Two Infractions for Speeding in a Work Zone.....	18
E. License Suspension for Non-Operating Offenses.....	20
1. Fuel Theft	20
2. Child Support Delinquency – Ind. Code § 9-30-13-7	20
3. BMV Points.....	20
4. Minor in Consumption	20
F. License Suspension for Juvenile Offenses.....	21
1. Discretionary Suspensions	21
<i>a. Condition of Pretrial Release</i>	21
<i>b. Operating While Intoxicated Offenses</i>	21
<i>c. Graffiti</i>	21
<i>d. Any Other Delinquent Act that Would Be an Adult Offense</i>	22
2. Mandatory Suspensions.....	22
<i>a. Drug Possession or Dealing</i>	22
<i>b. Operating While Intoxicated Offenses</i>	22
<i>c. Fuel Theft</i>	23
<i>d. School Attendance and Performance</i>	23
G. Habitual Vehicular Substance Offender Enhancement.....	25
H. Habitual Traffic Violator	25
1. Suspension Length – Life, 10 years, and 5 years	26

2. Out of State Judgments.....	27
3. Same Conviction Can Be Used for Subsequent HTV Determinations.....	27
4. Notice Requirements	27
5. Operating as HTV	28
6. Defense of Extreme Emergency.....	28
7. Class B Motor Driven Cycle Allowed.....	29
8. SDP Eligible.....	29
a. <i>Requesting a Finding of HTV</i>	29
I. Points	30
1. Points Suspension.....	30
II. WAYS TO GET RELIEF FROM LICENSE SUSPENSION.....	31
A. Specialized Driving Privileges.....	31
1. Who is Eligible for Relief through Standardized Driving Privileges?	32
2. Where Do You File the Petition?	32
3. What is Included in the Petition?.....	33
a. <i>Motor Vehicle Registrations</i>	33
4. What is Required for the Hearing?.....	34
5. What is My Client Required to Do?	34
6. Operating While Intoxicated Cases.....	34
a. <i>Pre-Trial OWI Suspensions: Prima Facie Evidence of Intoxication</i>	35
b. <i>Pre-Trial OWI Suspensions: Refusal of a Chemical Test</i>	36
c. <i>Post-Conviction License Suspension</i>	37
7. Lifetime Suspensions	37
8. Other Operating Offenses.....	37
9. After the Order is Issued	38
10. Commercial Driver's License.....	38
11. Violations of an Order for Specialized Driving Privileges.....	38
12. Appealing a Denial of SDP	38
B. Ignition Interlock	38
1. What is ignition interlock?	39
2. How long can ignition interlock be imposed?.....	39

3. Defendant is responsible to pay for ignition interlock	39
4. How are ignition interlock violations reported to the court?	39
5. What are the penalties for violating the court order for ignition interlock?	40
a. <i>Ignition Interlock as a Condition of SDP</i>	40
b. <i>Ignition Interlock in Lieu of Pretrial Suspension in OWI Cases</i>	40
c. <i>Tampering with the Device</i>	40
d. <i>Assisting Someone in Circumventing the Interlock Device</i>	41
6. The BMV Is Required to Notify the Defendant of an Ignition Interlock Order.....	41
7. Requirement for Rescission of an Ignition Interlock Order	41
C. Petition for Rescission of Lifetime Suspension	42
1. What Is Required for the Petition?	42
2. Trial Court Has Wide Discretion in Granting or Denying Rescission	43
D. Petition for Judicial Review of License Suspensions and Trial Rule 60 (B).....	43
1. Bureau Review	43
2. Judicial Review	44
3. Trial Rule 59 and 60 (B).....	45
E. Waiver of BMV Reinstatement Fees	45
F. Traffic Amnesty Program	46
1. Qualifying Costs/Fees	46
2. Exclusions	46
3. Petition Contents	47
4. Where to file the Petition.....	47
5. Hearing	48
6. Effect of Granting of Petition.....	48
7. Appeal	49
G. Staying Suspended Driving Privileges.....	49
1. Proof of Future Financial Responsibility	49
2. Timing	49
3. Reinstatement Fees.....	49
III. APPENDIX—	50
A. Appendix I – Sample Petition and Order for Ignition Interlock in Lieu of License Suspension ...	50

B. Appendix II - Sample Petition and Order for Rescission of Lifetime Suspension and Reinstatement of Driving Privileges.....	50
C. Appendix III - Sample Petition and Order for Traffic Amnesty.....	50
D. Appendix IV - Sample Petition, Order Setting Hearing, Summons, and Order for Specialized Driving Privileges.....	50
E. Appendix V - Sample Petition, Order Setting Hearing, Summons, Indigency Affidavit, and Order Waiving Fees for Waiver of Reinstatement Fees.....	50

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I. LICENSE SUSPENSIONS

A. Which Offenses Carry a License Suspension?

1. Discretionary Suspension (Ind. Code § 9-30-16-1(c))

Indiana Code § 9-30-16-1(c)(1) allows the court to impose a license suspension for any conviction in which the operation of a motor vehicle is an element of the offense. This suspension may be for any period up to the allowable period of incarceration for the offense.

In addition to those suspensions allowed under Ind. Code § 9-30-16-1(c)(1), Ind. Code § 9-30-16-1(c)(2) and (3) allows the court to impose a license suspension for any period up to the allowable period of incarceration for the offense for criminal convictions under Ind. Code § 9-30-5; Ind. Code § 35-46-9; or Ind. Code § 14-15-8 (before its repeal); or any offense that involves the use of a vehicle under Ind. Code § 35-42-1; Ind. Code § 35-42-2; or Ind. Code § 35-44.1-3-1.

2. Mandatory Suspension (Ind. Code § 9-30-16-2)

Indiana Code § 9-30-16-2 provides that any offense that includes the element of causing or resulting in serious bodily injury while operating a vehicle carries a mandatory minimum license suspension of one (1) year. This suspension may be increased up to the maximum allowable period of incarceration.

Any offense that includes the element of causing the death of another person and the offense involved the operation of a motor vehicle, there is a mandatory minimum license suspension of two (2) years. This suspension may be increased up to the maximum allowable period of incarceration. This suspension is not eligible for standardized driving privileges.

B. Pre-Trial Suspension for Operating While Intoxicated Crimes

For operating while intoxicated crimes, the court will suspend a person's driver's license pre-trial for two reasons: prima facie evidence of intoxication (testing over .08) and refusal of a chemical test.¹

An administrative pre-trial suspension of driving privileges does not bar prosecution of the OWI.² A license suspension is not punishment for purposes of double jeopardy.³

1. Prima Facie Evidence of Intoxication

A person who operates a vehicle in Indiana impliedly consents to a chemical test. If an officer has probable cause that an OWI has been committed, they are required to offer a chemical test. The officer can offer more than one chemical test. A person who operates a

¹ Ind. Code § 9-30-6-9.

² Schrefler v. State, 660 N.E.2d 585 (Ind. Ct. App. 1996).

³ Id.

vehicle must submit to each chemical test offered by an officer to comply with the implied consent requirements.

If a person submits to a chemical test and that test results in prima facie evidence of intoxication (testing 0.08 or higher), the BMV is required to suspend that person's license for 180 days or until the case is disposed, whichever occurs first.⁴ When the person's license is suspended for prima facie evidence of intoxication, the bureau is required to send notice of the suspension and the person has the opportunity for judicial review.⁵

A pre-trial suspension for prima facie evidence of intoxication is eligible for standardized driving privileges. As an alternative, the court may forego suspension and enter an order requiring an ignition interlock device until the case is disposed.⁶

This pretrial suspension begins on the day the court finds probable cause and recommends suspension, and not upon mailing or receipt of the notice by the BMV.⁷

A person is entitled to credit for any days their license is suspended pretrial for prima facie evidence of intoxication.⁸

PRACTICE TIP: For a first time OWI offender, it can be concerning to receive notice from the BMV that there is a six-month license suspension. It is important to explain to clients that this suspension will end when the case is disposed (if no additional suspension is imposed after conviction).

2. Refusal of a Chemical Test

A chemical test refusal will result in mandatory license suspension that begins when probable cause is found. A refusal for a first-time offender carries a one (1) year license suspension. If the person has a prior conviction for OWI, the suspension period for refusal is two (2) years. **This suspension is not eligible for specialized driving privileges⁹ and will not terminate upon disposition.**

Post-conviction suspensions for OWI, if any, will run consecutive to the refusal suspension. For example, if a person refuses a chemical test and has a prior conviction, the suspension will be for a minimum of three years total (two years for the refusal and one-year mandatory minimum suspension) with no possibility for a specialized driving privilege for two years.

The court does have the ability, however, to terminate a refusal suspension at any time. Ind. Code § 9-30-16-6(b) allows for the court to terminate all or any part of a refusal suspension if

⁴ Ind. Code § 9-30-6-9(c).

⁵ Ind. Code § 9-30-6-9(d).

⁶ Ind. Code § 9-30-6-8(d).

⁷ Gabbard v. State 2009 Ind. App. UNPUB Lexis 1.

⁸ Ind. Code § 9-30-16-6.

⁹ Ind. BMV v. Newlin, 74 N.E.3d 569 (Ind. Ct. App. 2017).

it is “in the best interests of society.” The “best interest of society” allows a defendant to argue for relief if they have employment, a family, are seeking treatment or rehabilitation, and other mitigating circumstances.

A person is not entitled to credit for any days suspended for a chemical test refusal. All other suspensions imposed will run consecutive to the refusal suspension.¹⁰

Pre-conviction suspension for prima facie evidence of intoxication and suspension for chemical test refusal may be challenged by judicial review.

a. Advisement Required Prior to Offering of Chemical Test

If a person refuses to submit to a chemical test, the officer must inform the person that their license will be suspended. If an officer does not advise the person that his refusal to take the chemical test will result in a license suspension, the license suspension cannot stand.¹¹ An officer is not required to offer a chemical test to an unconscious person. Likewise, an unconscious person cannot refuse a chemical test.

Further, an advisement containing the phrase “your license **may** be suspended” is sufficient to meet the advisement requirement.¹²

Timmons v. State, 723 N.E.2d 916 (Ind. Ct. App. 2000) (suspension affirmed where arresting officer’s advisement conveyed the strong likelihood that a suspension of driving privileges would follow a refusal to submit to a chemical test, where the advisement form contained the phrase “may” but was never read aloud, but signed by the defendant acknowledging that he understood that his license would be suspended).

b. Conduct Sufficient to Portray Refusal

Refusal to submit to a chemical test occurs when the conduct of the motorist is such that a reasonable person in the officer’s position would be justified in believing the motorist was capable of refusal and manifested an unwillingness to submit to the test.¹³

Simply walking away from an officer after being asked to submit to a chemical test is sufficient to constitute a refusal to submit to a chemical test.¹⁴

Failure to blow hard enough for a test is not a sufficient ground for a refusal, if the officer has no other reason to believe the defendant was being uncooperative or intentionally attempting to skew the results of the test.¹⁵

¹⁰ Ind. Code § 9-30-16-6.

¹¹ Vetor v. State, 688 N.E.2d 1327 (Ind. Ct. App. 1997).

¹² Timmons v. State, 723 N.E.2d 916 (Ind. Ct. App. 2000).

¹³ Burnell v. State, 56 N.E.3d 1146 (Ind. 2016).

¹⁴ Id.

¹⁵ Hurley v. State, 75 N.E.3d 1074 (Ind. 2017).

3. Stay of Suspension Pending SDP Petition

If a person indicates to the court at an initial hearing that the person intends to file a petition for Specialized Driving Privileges hearing with that court under Ind. Code § 9-30-16-3 or Ind. Code § 9-30-16-4, the court shall stay the suspension of the person's driving privileges at the initial hearing and shall not submit the probable cause affidavit to the person's offense to the bureau and set the matter for a SDP hearing not later than 30 days after the initial hearing.¹⁶

Failure to file a SDP petition within 10 days following the initial hearing will result in the court lifting the stay of the suspension.¹⁷

If the person files the SDP petition within 10 days, the stay of suspension continues until the matter is heard and a determination is made by the court at the SDP hearing.¹⁸

If the SDP hearing is continued due to: (A) a congestion of the court calendar; (B) prosecutor's motion for a continuance; or (C) person's unopposed motion for continuance; the stay of suspension continues until addressed at the next hearing.¹⁹ However, if the court grants a person's opposed motion for continuance, the stay is lifted and the court shall submit the PC affidavit related to the person's offense to the bureau for an automatic suspension.²⁰

C. Post-Conviction Suspension for Operating While Intoxicated Crimes

1. First Offense Misdemeanor OWI Offenses

For the following offenses:

- Operating While Intoxicated²¹
- Operating With a BAC of at least .08²²
- Operating With a BAC of at least .15²³
- Operating With a Controlled Substance in the Body²⁴

First time OWI convictions (except offenses resulting in SBI or death) no longer carry a mandatory license suspension. Ind. Code § 9-30-16-1 states that a court may suspend a

Note: Discretionary license suspensions for first time offenders does not affect a BMV-imposed suspension for a chemical test refusal. When the court finds there has been a chemical test refusal, there is a mandatory one-year license suspension imposed by the BMV, even if the court imposes no additional suspension after the conviction.

¹⁶ Ind. Code § 9-30-16-1(g).

¹⁷ Ind. Code § 9-30-16-1(g)(2).

¹⁸ Ind. Code § 9-30-16-1(g)(3).

¹⁹ Ind. Code § 9-30-16-1(g)(4).

²⁰ Ind. Code § 9-30-16-1(g)(5).

²¹ Ind. Code § 9-30-5-2.

²² Ind. Code § 9-30-5-1(a).

²³ Ind. Code § 9-30-5-1 (b).

²⁴ Ind. Code § 9-30-5-1-(c).

person's driver's license up to the maximum allowable period of incarceration for first time OWI convictions (For C-Misdemeanor offenses – 60 days or for A-Misdemeanor offenses – 365 days).

2. Any Prior Conviction for OWI

Any conviction for operating while intoxicated where the person has a prior conviction for an OWI offense carries a mandatory minimum license suspension of one (1) year.²⁵ The previous conviction can be from any time period. This suspension is a minimum suspension only-- the court has discretion to increase that suspension up to the maximum allowable period of incarceration.

This mandatory suspension cannot be negotiated by plea agreement. Even if a Level 6 Felony OWI is granted alternative misdemeanor sentencing, there is a mandatory license suspension of 365 days as a result of the prior offense.²⁶ If the court fails to impose a mandatory suspension at sentencing, the BMV has the authority to suspend the person's license for the mandatory minimum period.²⁷

3. Prior Conviction for OWI within Seven Years (Ind. Code § 9-30-5-3)

There are two separate instances whereby a misdemeanor operating while intoxicated may be enhanced to a higher felony based on a prior conviction within seven (7) years of arrest.²⁸

Operating while intoxicated offenses may be enhanced if there is a prior operating while intoxicated conviction within five years of arrest. The misdemeanor is enhanced to a Level 6 Felony by separate information.

However, if the **prior conviction** is for operating while intoxicated causing death or operating while intoxicated causing SBI, the current offense is enhanced to a Level 5 Felony.²⁹

Note: Ind. Code § 9-30-5-3 provides for a felony OWI that is not based on prior convictions. Ind. Code § 9-30-5-3(a)(2) states that it is a Level 6 Felony to operate a vehicle while intoxicated causing endangerment, or operating with a BAC of at least 0.15, if the defendant is 21 years of age and had a passenger in the vehicle less than 18 years of age. This section does not carry a mandatory license suspension. The court may suspend up to the maximum period of incarceration.

²⁵ Ind. Code § 9-30-16-2(a)(3).

²⁶ Id.

²⁷ Ind. Code § 9-30-6-12.

²⁸ Ind. Code § 9-30-5-3(a)

²⁹ Ind. Code § 9-30-5-3(b).

4. Operating While Intoxicated Causing Serious Bodily Injury (Ind. Code § 9-30-5-4)

A person who causes serious bodily injury to another person when operating while intoxicated, operating with 0.08 or greater, or with a controlled substance in the body commits a Level 6 felony. It is a Level 5 felony if the person has a prior OWI within five (5) years of arrest.

Any conviction for operating while intoxicated that causing serious bodily injury to another person carries a mandatory minimum license suspension of 365 days. The Court has discretion to increase that suspension up the maximum allowable period of incarceration.

It is a separate offense for each person for whom serious bodily injury was caused by the OWI. Operating while intoxicated resulting in serious bodily injury is listed as a “crime of violence” under Ind. Code § 35-50-1-2. Therefore, the sentences may be run consecutively. However, Ind. Code § 9-30-16-1(d) expressly states that “multiple suspensions of driving privileges ordered by a court that are part of the same episode of criminal conduct **shall be served concurrently.**”

5. Operating While Intoxicated Causing Death (Ind. Code § 9-30-5-5)

It is a Level 4 felony to cause the death of another person while operating a vehicle with a blood alcohol content of .08 or more, while intoxicated, or with a controlled substance in the blood.³⁰

A person at least 21 years old who causes the death of another person while operating with a BAC at least .15 or with a controlled substance in the blood commits a Level 4 felony.

A conviction for OWI causing death carries a mandatory minimum two-year license suspension.³¹ There is a maximum suspension allowed up to the period of allowable incarceration.³²

This license suspension is not eligible for specialized driving privileges, including any suspension in excess of the minimum 2 years.³³

NOTE: There is an additional offense for causing the death of a law enforcement animal when operating while intoxicated as a Level 6 felony. It is a separate offense for each law enforcement animal that dies. However, this offense does not carry the mandatory 2-year license suspension, as the statute provides that the minimum suspension shall be imposed for causing the death of another “person.” See Ind. Code § 9-30-5-5(b).

³⁰ Ind. Code § 9-30-5-5.

³¹ Ind. Code § 9-30-16-2(c).

³² Id.

³³ Id.

It is a separate offense for each person whose death is caused by the OWI.³⁴ Operating while intoxicated causing death is a crime of violence under Ind. Code § 35-50-1-2. However, even if the sentences are ordered consecutive, the license suspensions **must be ordered concurrent** pursuant to Ind. Code § 9-30-16-1(d).

Operating While Intoxicated License Suspensions

Offense	Period of Suspension	Mandatory/Discretionary Suspension
Operating While Intoxicated Class C Misdemeanor	0-60 days	Discretionary
Operating at least .08 but less than .15 C Misdemeanor	0-60 days	Discretionary
Operating with a Controlled Substance in the Body C Misdemeanor	0-60 days	Discretionary
Operating While Intoxicated A Misdemeanor	0-365 days	Discretionary
Operating at least .15 A Misdemeanor	0-365 days	Discretionary
OWI Causing Serious Bodily Injury	1 year – max allowed period of incarceration	Mandatory
OWI Causing Death	2 years – max allowed period of incarceration (not SDP eligible)	Mandatory
Any OWI offense where there is a prior OWI conviction	1 year – max allowed period of incarceration	Mandatory
Refusal of a chemical test	1 year; 2 years if prior OWI conviction (not SDP eligible)	Mandatory and Consecutive to Post-conviction suspension

6. Other Considerations

a. OWI License Suspension – The Importance of a Clear and Correct Abstract of Judgment

It is important that the court's abstract of judgment is clear and correct regarding the license suspension when an OWI conviction is imposed or when a plea agreement is entered. Even if the court fails to impose a mandatory suspension at sentencing, the BMV has the authority to suspend the person's license for the mandatory minimum

³⁴ Ind. Code § 9-30-5-5.

period. Ind. Code § 9-30-6-12 provides that “[i]f the court fails to recommend a fixed period of suspension, or recommends a fixed term that is less than the minimum term required by statute, the bureau shall impose the minimum period of suspension required by statute.”

In addition, the trial court may enter a mandatory license suspension, after sentencing and without a hearing, if that suspension is statutorily required.³⁵ The text of the plea agreement should be as clear as possible to avoid any mistake on the part of the BMV or future corrections by the court without a hearing.

PRACTICE TIP: An error by the court will not result in the defendant escaping the mandatory minimum suspension. If you enter into a plea agreement for less than the mandatory minimum suspension, the BMV will suspend your client’s license for the mandatory minimum regardless of the court order. It is important to advise your client of the mandatory minimum suspension even if the plea calls for a lesser suspension, as the BMV has the authority to impose the mandatory minimum suspension regardless of the court order.

If the abstract of judgment is unclear or confusing, the BMV can take the most literal interpretation in imposing suspension, even if that interpretation was contrary to the court’s intention and the law. The record can be made clear or corrected with post-trial motions or appeals, but this delay may result in additional suspension or cost for the defendant.³⁶

With refusal suspensions, if the State and defendant agree to stipulate to no refusal pursuant to a term in an accepted plea agreement, or if the court finds in the sentencing order at sentencing that terminating the refusal is in the best interest of society, the court shall terminate all or any part of the remaining suspension under IC 9-30-6-9(b) and shall enter this finding in its sentencing order. This must also be clear in the abstract of judgment. Without a clear record, the BMV has the authority to continue the suspension and it will require post-conviction motions in the trial court to terminate the suspension.

A court and the BMV, if applicable, shall terminate all or any part of the remaining suspension of a person’s license suspension under IC 9-30-16-1(c) or under IC 9-30-6-9 if the charges against the person are dismissed, the person is acquitted, or the person’s conviction is vacated or reversed on appeal.³⁷

³⁵ Dixon v. State, 685 N.E.2d 715 (Ind. Ct. App. 1997) (trial court did not err by recommending the mandatory suspension without the presence of the defendant after previously conducting a full sentencing hearing).

³⁶ See Terry v. State, 2010 Ind. App. UNPUB Lexis 1073 (Trial court intended to impose a minimum 90-day suspension on an OWI consecutive to the two-year refusal suspension. The abstract of judgment reflected an 820-day suspension (2 years and 90 days). The BMV interpreted this to be the suspension imposed on the OWI and ran the 820 days consecutive to the two-year refusal for a total of four years and 90-day license suspension).

³⁷ Ind. Code § 9-30-16-6.5.

b. Proof of Financial Responsibility – OWI Suspension

If a person's license is suspended as a result of an OWI conviction, the BMV requires proof of financial responsibility before reinstatement. Ind. Code § 9-30-6-12(c) states that if the court recommends suspension as a result of an OWI conviction, the license will remain suspended for three years until the person provides proof of future financial responsibility (SR 22 form). If at any time during that three years the person fails to maintain proof of financial responsibility, the BMV must suspend the license again until the person provides proof of financial responsibility.

The trial court may not waive the requirement of a defendant to provide an SR 22 (aka "high-risk insurance") for three years after an OWI conviction.³⁸

If the court has suspended a person's driver's license for an OWI offense, this three-year period of proof of financial responsibility does not apply unless and until conviction is entered. If the person is not convicted of an OWI offense, there is no requirement to show proof of financial responsibility prior to reinstatement.

PRACTICE TIP: It is important to advise your client that even when the conviction carries no license suspension, they are required to present an SR22 to the BMV prior to obtaining reinstatement. If your client's driver's license was not suspended pre-trial, for example when your client pleads guilty while chemical test results are pending, the BMV will suspend his license after conviction until an SR22 is filed with the BMV. The BMV will send notice, but it is important to advise your client of this requirement in advance. It can cause concern or panic for your client to receive notice of a possible license suspension for three years after being advised that there will be no suspension for the OWI. Explaining the SR22 requirement before plea or conviction by the court can save your client from that concern and allow him to avoid a delay in reinstatement.

D. License Suspension for Other Operating Offenses

1. Operating Without Ever Receiving a Valid License

It is a Class C misdemeanor to operate a vehicle upon a highway without ever receiving a valid license to drive. This offense is enhanced to a Class A misdemeanor if the person has a prior conviction for the same offense.³⁹

Operating without Receiving a Valid License will carry a discretionary license suspension up to the maximum allowable period of incarceration.⁴⁰ There is no mandatory license suspension.

³⁸ See State v. Hargrave, 51 N.E.3d 255 (Ind. Ct. App. 2016).

³⁹ Ind. Code § 9-24-18-1.

⁴⁰ Ind. Code § 9-30-16-1(c)(1).

2. Driving While Suspended

Operating a motor vehicle upon a highway with a suspended license is a Class A Infraction, which does not carry a license suspension.⁴¹

a. Driving While Suspended – Prior Conviction

It is a Class A Misdemeanor to operate on a suspended license with a prior conviction within ten (10) years for driving while suspended as an infraction or misdemeanor. This crime no longer carries a mandatory minimum suspension. The court may impose no suspension or suspend up to one year.⁴²

The required culpable state is that the driver knew or reasonably could have known his driving privilege was suspended.⁴³ Notice of a license suspension mailed by the Indiana BMV establishes a rebuttable presumption that a driver knew driving privileges were suspended.⁴⁴ Proof of mailing of the notice is not necessary to establish knowledge.⁴⁵ The State may prove a driver knew or reasonably could have known his license was suspended by referring to other facts and circumstances surrounding the case.⁴⁶



⁴¹ Ind. Code § 9-24-19-1.

⁴² Ind. Code § 9-24-19-2.

⁴³ Coats v. State, 697 N.E.2d 1261 (Ind. Ct. App. 1998) and State v. Keihn, 542 N.E.2d 963 (Ind. 1989).

⁴⁴ Ind. Code § 9-24-19-8.

⁴⁵ Fields v. State, 679 N.E.2d 898 (Ind. 1997).

⁴⁶ Burdine v. State, 510 N.E.2d 1385 (Ind. Ct. App. 1987).

b. Driving While Suspended – Suspension Resulted from a Conviction

Ind. Code § 9-24-19-3 states that a person who operates a motor vehicle when he knows his license is suspended as a result of a criminal conviction commits a Class A Misdemeanor. This misdemeanor carries a license suspension from zero days to one year.

It is a Level 6 Felony if the operation results in bodily injury. A conviction for this enhanced offense carries a discretionary license suspension up to the maximum allowable period of incarceration.

It is a Level 5 Felony if the operation of the motor vehicle results in the death of another person. A mandatory minimum license suspension of two years will be imposed and may be increased up to the maximum period of incarceration. This suspension is not eligible for standardized driving privileges, including any suspension in excess of the two-year minimum.

NOTE: Ind. Code § 9-24-19-3 provides no specific license suspension for the Level 5 Felony offense of Driving While Suspended Resulting in Death. Ind. Code § 9-30-16-2 provides for a mandatory minimum two-year suspension for the conviction of “an offense that includes the element of *causing* the death of another person...”[emphasis added]. The enhanced Driving While Suspended offense has the specific element that the operation of a motor vehicle “*results* in the death of another person.” [Emphasis added]. Even though these are two different elements, the Court of Appeals has found the same Level of causation is required for either “causing” death or “resulting” in death. See *Spaulding v. State*, 815 N.E.2d 1039 (Ind. Ct. App. 2004). Any conviction for an operating offense that causes or results in the death of another person will carry a two-year suspension and be ineligible for specialized driving privileges.

3. Operating Without Financial Responsibility

It is a Class A infraction to operate or permit the operation of a vehicle on a public highway without financial responsibility. However, the offense is a Class C misdemeanor if the person knowingly or intentionally operates a vehicle without financial responsibility and has a prior unrelated conviction for operating without financial responsibility.⁴⁷

NOTE: The subsection prohibiting “permit[ting] the operation of” a motor vehicle without financial responsibility applies only to the owner of a rental company, a “peer to peer sharing program” or an employer.

⁴⁷ Ind. Code § 9-25-8-2.

For either the Class A infraction or Class C misdemeanor, there is a mandatory license suspension of at least ninety (90) days and up to one (1) year. However, if the person has a prior conviction for operating without financial responsibility within five (5) years of the commission of the offense, the mandatory license suspension is one (1) year.

PRACTICE TIP: It is an offense under this section of the code to operate without financial responsibility. It is important to remember that this does not require a person to carry proof of financial responsibility. In Hammond v. State, 675 N.E.2d 353 (Ind. Ct. App. 1996), the court held that Ind. Code § 9-25-8-2 does not require a driver to show proof of financial responsibility during a traffic stop, but only that financial responsibility to be in effect for the vehicle. Id. at 355. But see Rosenbaum v. State, 930 N.E.2d 72, (Ind. Ct. App. 2010) (Hammond does not stand for the proposition that a police officer cannot ask for proof of financial responsibility, but that a motorist cannot be arrested for or found guilty of operating without financial responsibility when the vehicle is insured). If the vehicle was insured at the time of the stop, even if your client had no proof that it was at the traffic stop, he cannot be found guilty of operating without financial responsibility.

a. After a Court Appearance

If a person is convicted of a traffic offense that requires a court appearance, the court shall require the person to show proof that financial responsibility was in force on the date of the violation.⁴⁸ If the person does not provide proof of financial responsibility, the court shall suspend the person's driver's license. If the court fails to impose the mandatory minimum suspension of ninety (90) days, the BMV will impose the minimum suspension regardless of court order.⁴⁹

PRACTICE TIP: Not all courts mandate proof of financial responsibility at the time of conviction for a traffic offense. However, the BMV will require proof of insurance after a court conviction for an operating offense, even if no license suspension was imposed by the court. It is good practice to inform your clients that they will be required to show proof of insurance to the BMV after conviction or they will be suspended for 90 days. This practice will save a future phone call if your client does not keep a current address with the BMV and does not receive notice of the requirement to show insurance.

b. After an Accident Report is Filed

If an accident report is filed with the BMV, there is a requirement that each person driving provide proof of financial responsibility at the time of operation within forty-five (45) days.⁵⁰ The request for proof of financial responsibility will be sent by the BMV. If the driver fails to provide proof of financial responsibility or lies about

NOTE: An operator is required to provide proof of financial responsibility after an accident report regardless of the dismissal of criminal charges, no criminal charges being filed, or conviction to a non-driving offense. The only exceptions to the resulting license suspension are for rental vehicles or vehicles owned by an employer.

⁴⁸ Ind. Code § 9-25-5-1.

⁴⁹ Id.

⁵⁰ Ind. Code § 9-25-5-2.

his financial responsibility, his license will be suspended for ninety days to one year.⁵¹

c. More than One Incident in Three Years

If a person operates without proof of financial responsibility, fails to provide financial responsibility after an accident report, or gives a false statement about financial responsibility more than one time in three years, there is a mandatory one (1)-year license suspension imposed by the BMV.⁵²

d. After a Judgment is Entered

If a person receives a judgment in excess of \$200 for bodily injury, death, or property damages arising from the use of a motor vehicle upon a public highway and fails to satisfy that judgment for ninety (90) days, the BMV will suspend their license for up to seven (7) years until that judgment is satisfied.⁵³

PRACTICE TIP: Always ask your client if they had insurance at the date and date of the incident. If not, ask the court to add a count for operating without insurance, impose the sentence, and get an SDP in Court and waive reinstatement fees during the hearing. Usually, this suspension will be concurrent with the other suspensions from the case.

If the debtor can obtain a court order to pay in installments and can show proof of future financial responsibility (SR 22) for at least three (3) years, the BMV will not suspend the debtor's license.⁵⁴ A debtor may apply to the court at a later date to pay in installments. If a court order is granted at a later date to pay in installments and the debtor can show proof of SR 22 for three years, the suspended driving privileges may be reinstated. However, if the debtor fails to pay an installment, the driving privileges will be suspended.

The BMV may not suspend for any missed installment payment for judgments entered at least seven (7) years after the date of the accident.⁵⁵

If the judgment is discharged or stayed in bankruptcy, the BMV will not reinstate driving privileges until the debtor provides proof of future financial responsibility (SR 22) for three (3) years.⁵⁶

⁵¹ Ind. Code § 9-25-6-3(d).

⁵² Ind. Code § 9-25-6-3.5.

⁵³ Ind. Code § 9-25-6-6.

⁵⁴ Ind. Code § 9-25-6-6(a).

⁵⁵ Ind. Code § 9-25-6-6(c).

⁵⁶ Ind. Code § 9-25-6-7.

e. Conditions of Reinstatement

The BMV shall reinstate the driving privileges upon expiration of the suspension period with proof of future financial responsibility (SR 22).⁵⁷

For a first or second offense, a person is required to show proof of SR 22 for a period of (3) years from the date the suspension expires. For a third or subsequent offense, proof of SR 22 for a period of five (5) years is required.

If a person provides proof of financial responsibility at the time of the offense, but after his license has already been suspended, the BMV will reinstate the driving privileges and remove any administrative suspension from the person's driving record.⁵⁸

4. Leaving the Scene of an Accident

Indiana Code § 9-26-1-1.1 provides that an operator is required to stop at the scene of an accident or as close to the accident as possible and remain at the scene to give their name, address and registration information, to show their driver's license, and to render assistance to anyone who is injured and report the injury to the police department. If the accident is with an unattended vehicle or results in other property damage, the person is required to take reasonable steps to report the accident to the owner or law enforcement officer if the owner cannot be located.

NOTE: Leaving the scene of an accident, even as a Class B misdemeanor, is a major offense under the habitual traffic violator statute. If combined with two (2) other major traffic offenses, it will result in a ten (10)-year license suspension.

Leaving the scene of an accident is a Class B misdemeanor.⁵⁹

Leaving the Scene of an Accident -- Enhancements⁶⁰

Class A Misdemeanor	If the accident results in bodily injury to another person
Level 6 Felony	(1) If the accident results in moderate or serious bodily injury to another person; or (2) the person has a previous under Ind. Code § 9-30-10-4(a) within the prior 5 years.
Level 4 Felony	If the accident results in the death or catastrophic injury of another person
Level 3 Felony	If the accident results in the death or catastrophic injury of another person; and the driver was intoxicated at the time of the accident.

⁵⁷ Ind. Code § 9-25-6-14.

⁵⁸ Ind. Code § 9-25-6-1.

⁵⁹ Ind. Code § 9-25-1-1.1(b).

⁶⁰ Id.

Indiana Code § 9-30-4-6.1 provides the license suspensions for leaving the scene of an accident. Leaving the scene of an accident resulting in personal injury or property damage greater than two hundred dollars (\$200) will result in immediate suspension upon conviction for six (6) months (or expiration of the court ordered suspension, whichever is later). This suspension is eligible for standardized driving privileges.⁶¹

When the accident has resulted in death, the mandatory minimum suspension is two (2) years and may be increased up to five (5) years by the court. A new (or renewed) license will not be issued until the person can show proof of financial responsibility for three years after reinstatement (SR 22).

NOTE: In the case of leaving the scene of an accident resulting in death, it is unclear if the suspension is eligible for specialized driving privileges. Indiana Code § 9-30-4-6.1(c) provides that license suspension that is imposed for leaving the scene of an accident convictions are eligible for specialized driving privileges. However, Ind. Code § 9-30-16-2 provides that an offense that involves motor vehicle operation and causing death of another person carries a minimum two-year suspension and is not eligible for specialized driving privileges. There is an available argument that Ind. Code § 9-30-4-6.1(c) shows the legislature's intent that these specific license suspensions be eligible for relief under the specialized driving privileges chapter.

5. Engaging in a Speed Contest

It is a Class B misdemeanor to engage in a motor vehicle speed contest on a highway or street (except in a work zone as provided below).⁶²

It is also a Class B misdemeanor to obstruct or place a barricade or obstacle across a highway or street to facilitate or as an incident to a motor vehicle speed contest.⁶³

These offenses carry a discretionary license suspension up to six (6) months.⁶⁴

6. Reckless Driving

It is a Class C Misdemeanor if a person operates a vehicle recklessly by:⁶⁵

- driving at an unreasonably high/low rate of speed under the circumstances as to endanger the safety of the property of others or block the proper flow of traffic;
- passes another vehicle from the rear while on a slope or on a curve where vision is obstructed for a distance of less than five hundred (500) feet ahead;
- drives in and out of a line of traffic, except as otherwise permitted; or

⁶¹ Ind. Code § 9-30-4-6.1.

⁶² Ind. Code § 9-21-6-3. See also Ind. Code § 9-21-6-1.

⁶³ Ind. Code § 9-21-6-3. See also Ind. Code § 9-21-6-2.

⁶⁴ Ind. Code § 9-30-16-1(c)(1).

⁶⁵ Ind. Code § 9-21-8-52.

- speeds up or refuses to give one-half (1/2) the roadway to a driver overtaking and desiring to pass;

If reckless driving causes bodily injury to a person, it is elevated to a Class A Misdemeanor and the court may impose suspension up to one (1) year—this is not a mandatory license suspension.⁶⁶

NOTE: There is an additional crime of reckless driving with a tractor-trailer combination defined in Indiana Code § 9-21-8-50. This statute provides that “a person who operates a tractor-trailer combination in a reckless or deliberate attempt to: (1) endanger the safety or property of others; or (2) block the proper flow of traffic; commits a Class B misdemeanor.” As with all offenses where the operation of a motor vehicle is an element of the offense, the court may impose suspension up to the maximum allowable period of incarceration.

If reckless driving causes property damage, it is elevated to a Class B Misdemeanor and the court may impose suspension up to one (1) year—this is not a mandatory license suspension.⁶⁷

7. Passing a School Bus Stop Arm Violation

A person who passes a school bus with an arm signal device extended commits a Class A Misdemeanor; it is a Level 6 Felony if it results in bodily injury to a person and a Level 5 Felony if it causes the death of another person.⁶⁸

In addition to any other penalty imposed, the court may suspend a person’s license for 90 days; or if the person has a previous conviction under Ind. Code § 9-30-8-52 or Ind. Code § 9-21-12-1, the court may suspend the person’s license for up to one year.⁶⁹

8. Reckless Driving in a Work Zone

A person who recklessly operates a vehicle in the immediate vicinity of a highway work zone when workers are present commits a Class A misdemeanor.⁷⁰

It is a Class A misdemeanor to knowingly or intentionally operate a vehicle in the vicinity of a highway work zone when workers are present:⁷¹

- with the intent to damage traffic control devices or inflict bodily injury on a worker.
- knowingly, intentionally, or recklessly engages in aggressive driving or a speed contest.

⁶⁶ Ind. Code § 9-21-8-52(d).

⁶⁷ Ind. Code § 9-21-8-52(c).

⁶⁸ Ind. Code § 9-21-8-52(b).

⁶⁹ Ind. Code § 9-21-8-52(e).

⁷⁰ Ind. Code § 9-21-8-56(b).

⁷¹ Ind. Code § 9-21-8-56.

- recklessly fail to obey a traffic control device or flagman in a work zone when workers are present.

Each of these Class A misdemeanors are enhanced to a Level 6 felony if the offense results in bodily injury to a worker in the worksite.⁷²

Each of these misdemeanors is also enhanced to a Level 6 felony if the person who commits the offense has a prior conviction for reckless driving in a work zone within five (5) years or if the operator is intoxicated or above 0.08 when the offense is committed.⁷³

The offense is enhanced to a Level 5 felony if the offense results in the death of a worker in the worksite.⁷⁴ This offense carries a mandatory minimum license suspension of two (2) years. This suspension is not eligible for standardized driving privileges.⁷⁵

9. Aggressive Driving

Aggressive driving is defined as committing at least three of the following during a continuous episode of driving:⁷⁶

- (1) Following too closely,
- (2) Unsafe operation of a vehicle (slowing down or stopping, turning from a direct course on a highway or changing lanes),
- (3) Passing on the right by driving off the roadway,
- (4) Unnecessary sounding of the horn,
- (5) Failure to yield,
- (6) Failure to obey a traffic control device,
- (7) Driving at an unsafe speed, and
- (8) Repeatedly flashing the headlights.

If all of these are done knowingly and intentionally with the intent to harass or intimidate a person in another vehicle, that offense is a Class A Misdemeanor (except in a work zone as provided for above).⁷⁷

The court may suspend a person's license for up to one year upon conviction for misdemeanor aggressive driving.⁷⁸

⁷² Ind. Code § 9-21-8-56(g).

⁷³ Ind. Code § 9-21-8-56(f).

⁷⁴ Ind. Code § 9-21-8-56(h).

⁷⁵ Ind. Code § 9-30-16-2.

⁷⁶ Ind. Code § 9-21-8-55(b).

⁷⁷ Ind. Code § 9-21-8-55(c).

⁷⁸ Ind. Code § 9-30-16-1.

Aggressive driving may be enhanced to a Level 6 felony through the criminal recklessness statute in Ind. Code § 35-42-2-2. That statute states that criminal recklessness is a Level 6 felony if a person commits aggressive driving and it results in serious bodily injury to another person. This conviction will carry a mandatory license suspension of at least one (1) year and is eligible for standardized driving privileges.⁷⁹

The offense is enhanced to a Level 5 felony if the aggressive driving results in death to another person. This conviction carries a mandatory minimum license suspension of at least two (2) years and is not eligible for standardized driving privileges.⁸⁰

10. Manslaughter or Reckless Homicide

Manslaughter or reckless homicide involving the use of a motor vehicle carries a mandatory license suspension of at least two (2) years and not more than (5) years.⁸¹ This suspension is eligible for standardized driving privileges.⁸²

11. Registration Offenses

Ind. Code § 9-30-4-8 states that a person whose registration has been suspended or revoked, and the reinstatement is contingent upon proof of financial responsibility operates or permits the unregistered vehicle to be operated commits a Class C misdemeanor. This offense may carry up to 60 days of license suspension.⁸³

12. Two Infractions for Speeding in a Work Zone

Indiana Code § 9-21-5-11 provides for a license suspension where two infractions for speeding in a work zone are committed within a one (1)-year period. This suspension is discretionary, and if imposed it will be for a period of time as determined by the court. A court, at its discretion, may set periodic review hearings to review an individual's specialized driving privileges.⁸⁴

⁷⁹ Id.

⁸⁰ Ind. Code § 9-30-16-2(c).

⁸¹ Ind. Code § 9-30-4-6.1.

⁸² Ind. Code § 9-30-4-6.1(c).

⁸³ Ind. Code § 9-30-16-1.

⁸⁴ Ind. Code § 9-30-16-3.5.

Operating Offenses – License Suspension

Offense	Period of Suspension	Mandatory/Discretionary Suspension
Operating w/o Ever Receiving a Valid License <ul style="list-style-type: none"> Class C Misdemeanor Class A Misdemeanor 	0 – 60 days 0 – 365 days	Discretionary Discretionary
Driving While Suspended <ul style="list-style-type: none"> Class A Misdemeanor Level 6 Felony Level 5 Felony 	0 -365 days 0 – 2 ½ years 2 years – 6 years (not SDP eligible)	Discretionary Discretionary Mandatory minimum 2 years
Operating without Financial Responsibility <ul style="list-style-type: none"> A Infraction C Misdemeanor Prior within 5 years More than one offense in 3 years 	90 - 365 days 90 – 365 days 365 days 365 days	Mandatory Mandatory Mandatory Mandatory
Leaving the Scene of an Accident <ul style="list-style-type: none"> B Misdemeanor If accident results in bodily injury, or property damage more than \$200 A Misdemeanor Level 6 Felony Level 5 Felony Level 3 Felony 	0-180 days 180 days 180 days – 365 days 180 days – 2.5 years 2 years – 5 years 2 years – 5 years	Discretionary Mandatory Mandatory Mandatory Mandatory Mandatory
Engaging in a Speed Contest	0 days – 180 days	Discretionary
Reckless Driving <ul style="list-style-type: none"> C Misdemeanor With property damage A Misdemeanor 	0 – 60 days 0 – 365 days 0 – 365 days	Discretionary Discretionary Discretionary
Reckless Driving in a Work Zone <ul style="list-style-type: none"> A Misdemeanor Level 6 Felony Level 5 Felony 	0-365 days 0 -2 ½ years 2 years – 6 years (not SDP eligible)	Discretionary Discretionary Mandatory
Speeding in a Work Zone – 2 Infractions in One Year	0-60 days	Discretionary
Aggressive Driving <ul style="list-style-type: none"> Causing SBI (criminal recklessness) Causing death (crim. recklessness) 	0 – 365 days 1 year – 2.5 years 2 years – 6 years (not SDP eligible)	Discretionary Mandatory Mandatory
Manslaughter	2 years -5 years (not SDP eligible)	Mandatory
Reckless Homicide	2 years – 5 years (not SDP eligible)	Mandatory
Operating without Valid Registration	0 days – 60 days	Discretionary
Operating as HTV <ul style="list-style-type: none"> Level 6 Causing SBI or Death – Level 5 	0 – 2 ½ years (SDP eligible) Lifetime (SDP eligible except causing death)	Discretionary Mandatory

E. License Suspension for Non-Operating Offenses

1. Fuel Theft

Upon conviction for fuel theft, the BMV is required to suspend the person's driver's license for thirty (30) days. The suspension begins five (5) days after mailing notice of the suspension, and not on the date of conviction.⁸⁵

2. Child Support Delinquency – Ind. Code § 9-30-13-7

If the BMV receives notice from the Title IV-D agency that a person either failed to appear for a hearing or was found to be delinquent, the BMV is required to suspend the person's driver's license until the arrearage is paid in full or a payment plan is established with the IV-D agency. The BMV is not permitted to reinstate the person's license until the arrearage is paid or a payment plan is established. This suspension is eligible for standardized driving privileges.

If the person is delinquent in child support and holds a CDL, the bureau shall not immediately suspend his license, but shall indicate that he has a conditional license to drive to and from work and in the course of employment. Conditional driving privileges are valid for thirty (30) days from the date of notice by the BMV. The delinquent person then has to obtain an order for conditional driving privileges from the court within that thirty (30)-day period. If an order is not obtained and the person is not otherwise eligible for reinstatement, his/her driver's license will be suspended.

3. BMV Points

The BMV assigns point values for certain traffic infractions and offenses. (See BMV points chart, which can be accessed at <https://www.in.gov/bmv/licenses-permits-ids/suspension-and-reinstatement/citation-points-and-driver-safety-program/>). Two or more traffic offenses within a one-year period will require an operator to complete defensive driving. Failure to complete this program will result in suspension until the program is completed.

4. Minor in Consumption

It is a Class C misdemeanor for a minor to knowingly possess, consume, or transport an alcoholic beverage.⁸⁶ If a minor consumes or transports alcohol while operating a vehicle, the court may suspend his driver's license for up to one (1) year.⁸⁷ However, if he is under

⁸⁵ Ind. Code § 9-30-13-8.

⁸⁶ Ind. Code § 7.1-5-7-7

⁸⁷ Id.

eighteen (18) years-old, the court is required to suspend his license for at least sixty (60) days.⁸⁸

License Suspension – Non-Operating Offenses

Offense	Period of Suspension	Mandatory/Discretionary Suspension
Fuel Theft	30 days	Mandatory
Child Support Delinquency	Until arrearage paid or payment plan established (except CDL)	Mandatory (except CDL)
Minor in Consumption of Alcohol While Operating	0 days – 1 year	Discretionary

F. License Suspension for Juvenile Offenses

1. Discretionary Suspensions

a. Condition of Pretrial Release

When a child is alleged to have been delinquent, the juvenile court may require the child to surrender his driver's license as a condition of release to ensure the child's appearance at hearings.⁸⁹

b. Operating While Intoxicated Offenses

If a juvenile commits an offense that would be charged under Ind. Code § 9-30-5 (OWI offenses), the license suspension is the same as it would be for adults.⁹⁰ If there is no refusal of a chemical test, the court may stay the suspension and grant a probationary license for 180 days or grant a specialized driving privilege (pretrial or post-conviction suspension).

c. Graffiti

If a juvenile commits the delinquent act of criminal mischief that involves the use of graffiti, the court may suspend his license for one year from the date of disposition.⁹¹ However, if the child removes the graffiti or made restitution, the court may rescind the

⁸⁸ *Id.*

⁸⁹ Ind. Code § 31-37-6-10.

⁹⁰ Ind. Code § 31-37-19-17.3.

⁹¹ Ind. Code § 31-37-19-17.

order of suspension or allow the child to receive a license or permit before the period of suspension has run.⁹²

d. Any Other Delinquent Act that Would Be an Adult Offense

Ind. Code § 31-37-19-5 provides the court with the discretion to order a child to surrender his driver's license for "a specified period of time" as a term of any dispositional decree for a delinquent act that would be a criminal offense if committed by an adult.

2. Mandatory Suspensions

a. Drug Possession or Dealing

Dealing or possessing controlled substances or prescription drugs without a prescription will result in a mandatory license suspension of at least six (6) months and not more than one (1) year.⁹³ If the child does not yet have a permit, that suspension would begin from the time he would otherwise be eligible for a permit.⁹⁴ However, at any time after disposition, the court may enter an order finding the juvenile has committed no further offenses and allow the child to receive a license or permit before the suspension is completed.

If the child committed the dealing or possession of controlled substances on school property, within 1,000 feet of school property, or on a school bus, his license will be suspended for at least six (6) months and up to two (2) years.⁹⁵ If the child does not yet have a permit, that suspension would begin from the time he or she would otherwise be eligible for a permit.⁹⁶ Again, at any time after disposition, the court may enter an order finding the juvenile has committed no further offenses and allow the child to receive a license or permit before the suspension is completed.

b. Operating While Intoxicated Offenses

If a juvenile commits an offense that would be charged under Ind. Code § 9-30-5 (OWI offenses), the license suspension is the same as it would be for adults.⁹⁷ If there is no refusal of a chemical test, the court may stay the suspension and grant a probationary license for 180 days or grant a specialized driving privilege (pretrial or post-conviction suspension).

⁹² Ind. Code § 31-37-19-20.

⁹³ Ind. Code § 31-37-19-13.

⁹⁴ Ind. Code § 31-37-19-15.

⁹⁵ Ind. Code § 31-37-19-14.

⁹⁶ Ind. Code § 31-37-19-16.

⁹⁷ Ind. Code § 31-37-19-17.3.

c. Fuel Theft

The delinquent act of fuel theft carries a thirty (30)-day mandatory license suspension.⁹⁸

d. School Attendance and Performance

The BMV can suspend a juvenile's license for school sanctions as well. Ind. Code § 9-24-2-1 provides that the BMV must suspend the driving privileges or permit for a minor for any of the following reasons:

- Is a habitual truant under Ind. Code § 20-33-2-11;
- Is under at least a second suspension from school for the school year under Ind. Code § 20-33-8-14 or Ind. Code § 20-33-8-15;
- Is under an expulsion from school under Ind. Code § 20-33-8-14, Ind. Code § 20-33-8-15, or Ind. Code § 20-33-8-16; or
- Is considered a dropout under Ind. Code § 20-33-2-28.5.

A juvenile's license will be suspended for ninety (90) days up to one (1) year if the student is found to be delinquent for not attending school and has a prior adjudication for not attending school.⁹⁹

License Suspension – Juvenile Delinquency

Offense	Period of Suspension	Mandatory/Discretionary Suspension
Any Act that Would be Criminal as an Adult	Court specifies period of time	Discretionary
Dealing or Possessing Controlled Substances <ul style="list-style-type: none">• on school property	180 days – 1 year	Mandatory

⁹⁸ Ind. Code § 31-37-19-17.2.

⁹⁹ Ind. Code § 31-37-19-4.

	180 days – 2 years	Mandatory
Graffiti	1 year	Discretionary
Fuel Theft	30 days	Mandatory
Minor in Consumption while Operating	60 days – 1 year	Mandatory
OWI	Same as adult suspensions for each offense (SDP eligible except refusal or causing death)	Both depending on the offense
School sanctions	Determined by BMV	Mandatory
Not Attending School w/Prior	90 days – 1 year	Mandatory
Condition of Pretrial Release	Until disposition	Discretionary

G. Habitual Vehicular Substance Offender Enhancement

Ind. Code § 9-30-15.5 creates a sentencing enhancement for “vehicular substance offense” convictions. A “vehicular substance offense” is defined as a misdemeanor or felony “in which operation of a vehicle while intoxicated, operation of a vehicle in excess of the statutory limit for alcohol, or operation of a vehicle with a controlled substance or its metabolite in the person’s body, is a material element.”¹⁰⁰

The State may seek to enhance a vehicular substance offense if there are two (2) prior convictions for vehicular substance offenses and one of the convictions was within 10 years of the present offense.¹⁰¹

The State may also enhance a vehicular substance offense if there are three (3) prior vehicular substance convictions at any time.¹⁰²

The current offense has to occur after sentencing for the prior offense, and the prior offenses must occur after commission and sentencing of the other priors, similar to the habitual offender sentencing statute.¹⁰³

This enhancement carries a mandatory additional fixed term of imprisonment of at least 1 year, with discretion of up to 8 years.¹⁰⁴ Ind. Code § 9-30-16-1 allows for the possible license suspension to also increase from 1-8 years. If there is no element of causing death or a chemical test refusal, this suspension will be eligible for standardized driving privileges.¹⁰⁵

H. Habitual Traffic Violator

There are three separate ways that a person can be determined by the BMV to be a habitual traffic violator.

A person is a habitual traffic violator if they have **at least two (2) convictions** for the following offenses within a ten (10)-year period:¹⁰⁶

- Reckless homicide resulting from the operation of a motor vehicle;
- Voluntary or involuntary manslaughter resulting from the operation of a vehicle;
- Failure to stop after an accident resulting in death or injury;
- OWI resulting in death; or
- Operating with a BAC of 0.08 or greater resulting in death.

¹⁰⁰ Ind. Code § 9-30-15.5-1.

¹⁰¹ Ind. Code § 9-30-15.5-2(a).

¹⁰² Id.

¹⁰³ Ind. Code § 9-30-15.5-2(b).

¹⁰⁴ Ind. Code § 9-30-15.5-2(d).

¹⁰⁵ See Ind. Code § 9-30-16-1.

¹⁰⁶ Ind. Code § 9-30-10-4(a).

A person is a habitual traffic violator if they have **at least three (3) convictions** for the following offenses within a ten (10)-year period:¹⁰⁷

- OWI;
- Reckless driving;
- Criminal recklessness as a felony involving the operation of a motor vehicle;
- Drag racing or engaging in a speed contest;
- Leaving the scene of an accident;
- Resisting law enforcement with a vehicle; or
- Any felony under title 9 or any other section in which the operation of a vehicle is an element of the offense.

A person is a habitual traffic violator if they have **at least ten (10) judgments** (not arising out of the same incident) within a ten (10) year period for **Any traffic violation** that is reported to the bureau, excluding parking tickets or equipment violations.¹⁰⁸ However, one of the judgments must be for the following: (1) Any of the offenses listed in the two sections above; (2) Driving while suspended if the suspension is the result of a criminal offense; or (3) Operating without ever receiving a valid license.¹⁰⁹

The ten (10)-year period is determined by offense date, not conviction or judgment date.¹¹⁰

1. Suspension Length – Life, 10 years, and 5 years

Upon finding someone to be a habitual traffic violator, the BMV will suspend a driver's license for life, for 10 years, or for 5 years depending on the qualifying judgments.¹¹¹

The BMV will suspend a person's license **for life** if that person has two convictions within ten (10) years for OWI Causing Death or Operating with BAC of 0.08 or greater Causing Death.¹¹²

The BMV will suspend a person's license for **5 years** for the accumulation of 10 traffic violations and one qualifying judgment within ten (10) years.¹¹³

All other HTV adjudications will carry a **10-year** license suspension.¹¹⁴

¹⁰⁷ Ind. Code § 9-30-10-4(b).

¹⁰⁸ Ind. Code § 9-30-10-4(c).

¹⁰⁹ Id.

¹¹⁰ Ind. Code § 9-30-10-4(e).

¹¹¹ Ind. Code § 9-30-10-5(b).

¹¹² Ind. Code § 9-30-10-5(b)(2).

¹¹³ Ind. Code § 9-30-10-5(b)(4).

¹¹⁴ Ind. Code § 9-30-10-5(b)(3).

2. Out of State Judgments and Residents

A judgment or conviction includes judgments from any other jurisdiction that has substantially similar elements.¹¹⁵ Further, the BMV has the right to suspend a motorist's driving privileges as a habitual traffic violator even if the person is no longer a current resident of Indiana.¹¹⁶

3. Same Conviction Can Be Used for Subsequent HTV Determinations

The same convictions may be used for two separate HTV determinations so long as three convictions occur within ten (10) years.¹¹⁷

Hill v. State, 15 N.E.3d 589 (Ind. Ct. App. 2014) (Hill had accumulated three qualifying convictions (the latest one on February 28, 2008) and was adjudged to be an HTV on April 25, 2008. Hill was convicted of two more qualifying convictions in March, 2008 and March, 2009. The BMV adjudged Hill to be HTV a second time based on the two subsequent convictions combined with the February 28, 2008 conviction. He was suspended until 2019. Though Hill argued that the statute did not allow for using the same conviction for two separate HTV determinations, the Court held that so long as the convictions did not arise from a single incident, the statute did not prohibit using the same conviction twice to adjudge Hill as an HTV.).

4. Notice Requirements

If a person is adjudged to be a habitual traffic violator, the BMV is required to mail notice, including that the person is entitled to administrative and judicial review, to the last known address that the person's license will be suspended in thirty (30) days.¹¹⁸

The State must prove that the BMV mailed notice of suspension that complies with the notice requirements for a person to be found guilty of Operating as HTV.¹¹⁹ However, an untimely or incomplete notice does not justify a reversal of the suspension—the remedy for failure to send adequate notice is to advise the person of his rights to review and allow a belated challenge through administrative or judicial review.¹²⁰

There is a two-year statute of limitations for HTV—if the bureau does not discover that a person's driving record makes them HTV for more than two years after the final qualifying conviction, the bureau cannot suspend the person's license for any period.¹²¹

¹¹⁵ Ind. Code § 9-30-10-4(d).

¹¹⁶ Indiana Bureau of Motor Vehicles v. Douglass, 135 N.E.3d 598 (Ind. Ct. App. 2019).

¹¹⁷ Hill v. State, 15 N.E.3d 589 (Ind. Ct. App. 2014).

¹¹⁸ Ind. Code § 9-30-10-5.

¹¹⁹ Bishop v. State, 638 N.E.2d 1278 (Ind. Ct. App. 1994).

¹²⁰ State v. Hammond, 761 N.E.2d 812 (Ind. 2002).

¹²¹ Ind. Code § 9-30-10-5(d).

5. Operating as HTV

A person who operates a vehicle after being suspended as HTV commits a Level 6 Felony.¹²² Service by the bureau of notice of the suspension to the last known address creates a rebuttable presumption that the person knew their license was suspended as a HTV.¹²³

A Level 6 Felony conviction for Operating as HTV **no longer carries a lifetime suspension**. The mandatory lifetime suspension was repealed in 2015. The court has the discretion, after a conviction for Operating as HTV, to impose suspension up to the maximum allowed period of incarceration. This is a discretionary suspension.

NOTE: In 2015, the legislature removed the court-ordered suspension for life as a result of operating as HTV. However, the legislature also removed the mandatory 365-day suspension if the conviction is entered as an Alternate A Misdemeanor. There is no longer a codified minimum period of suspension for a misdemeanor conviction for Operating as HTV. As such, the court has the discretion to suspend the person's license for up to one year.

There are two ways that Operating as HTV results in a Level 5 Felony:

A person who operates a motor vehicle after their driver's license is forfeited for life commits a Level 5 Felony.¹²⁴

A person who is a habitual traffic violator and commits an offense involving the operation of a motor vehicle which causes serious bodily injury or death commits a Level 5 Felony.¹²⁵ This conviction will carry a lifetime suspension of driving privileges.¹²⁶

Operating as HTV for Life under the former statute does not carry the same notice requirements as Operating as HTV—the court has presumed that a lifetime suspension has resulted from a person going to court and being convicted for operating as an HTV and therefore the notice requirement has been met.¹²⁷

6. Defense of Extreme Emergency

In a criminal case for Operating as HTV or Operating as HTV for Life, it is a defense that the operation of a motor vehicle was necessary to save life or limb in an extreme emergency.¹²⁸

¹²² Ind. Code § 9-30-10-16.

¹²³ Id.

¹²⁴ Ind. Code § 9-30-10-17(a)(1).

¹²⁵ Ind. Code § 9-30-10-17(a)(2).

¹²⁶ Ind. Code § 9-30-10-17(b).

¹²⁷ See Wilkinson v. State, 743 N.E.2d 1267 (Ind. Ct. App. 2001) (overruled in part, Armfield v. State, 918 N.E.2d 316 (Ind. 2009); and Brock v. State, 936 N.E.2d 266 (Ind. Ct. App. 2010) (superseded by 955 N.E.2d 195 (Ind. 2011)).

¹²⁸ Ind. Code § 9-30-10-18.

The defendant bears the burden of proof by preponderance of the evidence to establish this defense.¹²⁹

7. Class B Motor Driven Cycle Allowed

It is a defense under Ind. Code § 9-30-10-18 that the defendant was operating a motor driven cycle. The defendant bears the burden of proving that defense by a preponderance of the evidence.¹³⁰ It is still required that the person carry an unexpired identification card with a motor driven cycle endorsement by the BMV for this defense to be available.¹³¹

8. SDP Eligible

A person whose driving privileges are suspended as HTV for a period of time or for life is eligible for specialized driving privileges, **except** where lifetime suspension is imposed for two convictions of OWI Causing Death or Operating with BAC of .08 or Greater Causing Death (Ind. Code § 9-30-10-5(b)(2)), or a person is convicted of Operating as HTV and the offense causes death (Ind. Code § 9-30-10-17(b)).¹³²

a. Requesting a Finding of HTV

Indiana Code § 9-30-10-6.5 allows for a defendant to request a finding of HTV. This petition must be filed in the court that entered the last moving violation judgment against the person and must be filed under the same cause number as the last moving violation.¹³³

A filing fee will not be imposed for this petition.¹³⁴

PRACTICE TIP: The availability for immediate specialized driving privileges makes this section very useful for defendants. For example, if you have a client who is taking a plea to his third OWI in ten years, and he is awarded specialized driving privileges for the one-year suspension that results from that conviction, that order for SDP **will not cover** the HTV suspension that will result from this third conviction. When he is found to be HTV and suspended for ten years, suspension relief will require a new SDP order under an MI cause number with a filing fee, and perhaps filed in a different county depending on residency. However, if a contemporaneous petition is filed at the guilty plea hearing or shortly after asking the sentencing court to find the defendant to be HTV, one SDP can be entered that will cover all the suspensions and your client can avoid an interruption in his license and the cost of refiling for a second SDP. This petition needs to be filed in writing, and a separate proposed order should be tendered specifically complying with this section to leave no room for challenge by the State or the BMV.

¹²⁹ Ind. Code § 9-30-10-18.

¹³⁰ Ind. Code § 9-30-10-18.

¹³¹ Ind. Code § 9-21-11-12.

¹³² Ind. Code § 9-30-10-19.

¹³³ Ind. Code § 9-30-10-6.5(b).

¹³⁴ Ind. Code § 9-30-10-6.5(e).

I. Points

Points are assessed by the BMV for persons convicted of traffic violations based on a table contained in the Indiana Administrative Code. 140 IAC 1-4.5-10 contains the current table of offenses with their corresponding points. Points are only assessed for two years before they drop off a person's license. If a person is convicted of an out of state violation, points will still be assessed based on the corresponding violation in Indiana.¹³⁵

If a person receives two moving violations in one year, they will be required to take a driver safety course, which grants them a 4-point reduction.¹³⁶ A person may only receive the 4-point credit once every three years—and a person may take a course voluntarily for the 4-point reduction at anytime in those three years.¹³⁷

1. Points Suspension

Once a person has accumulated 20 or more active points, after any credit earned by completion of a driver safety program, within a twenty-four-month period, shall receive a suspension corresponding to the number of active points.¹³⁸ Effectively, twenty points will result in a 1 month suspension, with an extra month being added for every two points above twenty the person has received.¹³⁹

¹³⁵ 140 IAC 1-4.5-5.

¹³⁶ Ind. Code § 9-30-3-12.

¹³⁷ 140 IAC 1-4.5-7.

¹³⁸ 140 IAC 1-4.5-4.

¹³⁹ Id.

II. WAYS TO GET RELIEF FROM LICENSE SUSPENSION

A. Specialized Driving Privileges

In 2015, the legislature repealed the hardship license and implemented specialized driving privileges.

Indiana Code § 9-30-16-3 states: “if a court orders a suspension of driving privileges under this chapter, or imposes a suspension of driving privileges under Ind. Code § 9-30-6-9(c) [pretrial suspension for prima facie evidence of intoxication], the court may stay the suspension and grant a specialized driving privilege as set forth in this section.”

NOTE: If a court grants a SDP petition, advise your clients to laminate the order and make a copy, so that they always have a copy with them.

An order for specialized driving privileges does not terminate the license suspension. Instead, the court stays the suspension and imposes conditions for driving pursuant to court order.

Nearly every suspension imposed for a criminal offense is eligible for specialized driving privileges.¹⁴⁰ Refusal suspensions are never eligible, either pretrial or post-conviction.¹⁴¹ A suspension imposed for a criminal conviction involving the operation of a motor vehicle and where an element was causing the death of another person is not eligible for specialized driving privileges.¹⁴²

Specialized driving privileges are granted for a period of time as determined by the court. A court, at its discretion, may set periodic review hearings to review an individual’s specialized driving privileges.¹⁴³ Orders may be renewed or reissued as allowed by the court. However, trial courts may not grant petitions for specialized driving privileges without also imposing a durational limit that complies with the statutory scheme. The Court of Appeals has agreed with the BMV’s “logical and reasonable” interpretation that Indiana Code § 9-30-16, et seq., places a two-and-a-half-year limit on the duration of any court-issued specialized driving privileges.¹⁴⁴

For sample Petitions and Orders, see Appendix IV. The Coalition for Court Access, Indiana Legal Help, also has specialized driving privilege request forms on their website. For updated forms, see <https://indianalegalhelp.org/court-forms/forms-specialized-driving-privileges/>.

¹⁴⁰ Ind. Code § 9-30-16-1(b).

¹⁴¹ Ind. Code § 9-30-16-1(a)(2).

¹⁴² Ind. Code § 9-30-16-2(b); *Cozmanoff v. State*, 134 N.E.3d 513 (Ind. Ct. App. 2019) (denial of petition for Specialized Driving Privileges following defendant’s 2012 reckless homicide conviction affirmed).

¹⁴³ Ind. Code § 9-30-16-3(c).

¹⁴⁴ *Ind. BMV v. McClung*, 138 N.E.3d 303 (Ind. Ct. App. 2019).

1. Who is Eligible for Relief through Standardized Driving Privileges?

The following are **not eligible** for standardized driving privileges:

- A person who has never been an Indiana resident¹⁴⁵
- Any active refusal suspension¹⁴⁶
- Any suspension as a result of an operating conviction where causing the death of another person was an element¹⁴⁷
- A person who has been deemed incompetent by the BMV under Ind. Code § 9-24-10-7.¹⁴⁸

Specialized driving privileges are available to anyone who has held an operator's license or CDL and was suspended for any criminal conviction in which the operation of a motor vehicle was an element, OWI suspensions (if not ineligible above), or committing two infractions for speeding in a work zone.¹⁴⁹

A person who has never held a valid Indiana driver's license, but was a resident when his license was suspended is still eligible for SDP.¹⁵⁰ However, the court shall require that person to apply for and obtain an Indiana driver's license as a condition of SDP.¹⁵¹

2. Where Do You File the Petition?

If the license suspension is court imposed, a defendant must file a petition for standardized driving privileges in **each court** that has imposed a license suspension.¹⁵² This is for active suspensions only—if your client has two active OWI suspensions from different counties, you must file for SDP in each of those two courts, and both courts must grant the petitions for your client to be permitted to drive.

¹⁴⁵ Ind. Code § 9-30-16-3(a)(1).

¹⁴⁶ Ind. Code § 9-30-16-3(a)(2).

¹⁴⁷ Ind. Code § 9-30-16-2(a).

¹⁴⁸ Ind. Code § 9-30-16-1(a)(3).

¹⁴⁹ Ind. Code § 9-30-16-3.5

¹⁵⁰ Ind. Code § 9-30-16-1(b)(2).

¹⁵¹ Ind. Code § 9-30-16-1(f).

¹⁵² Ind. Code § 9-30-16-3(b).

If the active suspension is an administrative suspension by the BMV and not by court order, the person must file in his **county of residence** if he is a resident of Indiana.¹⁵³ If he is not a resident of Indiana, but was a resident when his license was suspended, he must file in the county where his most recent Indiana moving violation was entered.¹⁵⁴

NOTE: While the law specifically requires that a SDP for court suspensions must be petitioned in each court that imposed suspension, if there is both a court suspension and an administrative suspension, the law does not prohibit including both suspensions in the petition for relief in the convicting court.

3. What is Included in the Petition?

The general requirements for SDP petitions include: (1) the petitions must be verified; (2) it must state the petitioner's age, date of birth, and address; (3) it must be filed in the appropriate county in a circuit or superior court; (4) must state the grounds for relief and the relief sought; and (5) it must be served on the BMV and the prosecuting attorney.¹⁵⁵

A proposed order is usually required as well. That proposed order must list the duration of the SDP (at least six months), **each active suspension, the dates for that suspension, and each cause number for active court suspensions.** The restrictions must also be listed, including a requirement for ignition interlock if imposed.

If you are petitioning more than one court, list only those suspensions for which you are seeking relief. If you list active suspensions from other courts, the BMV may file a motion to correct error after the hearing, even if you have secured orders from each court.

PRACTICE TIP: Orders for SDP will be interpreted by police officers during a traffic stop and not judges. It is always a good idea to make these orders as plain to read and specific as possible. Be clear about the duration of any restrictions imposed. If ignition interlock is imposed for six months, your proposed order should be clear about the end date. For example, your order should say "a functioning ignition interlock device is required until May 13, 2018." Try to avoid, and try to encourage the court to avoid, unverifiable terms such as "must be in alcohol counseling." This will be nearly impossible for a police officer to verify on the highway after business hours.

a. Motor Vehicle Registrations

If your client's motor vehicle registration is also suspended, Ind. Code § 9-30-16-4.5 allows the court to lift that suspension if it grants a petition for SDP. This request should be included in your verified petition for specialized driving privileges and a separate proposed order lifting the registration suspension should be submitted.

¹⁵³ Ind. Code § 9-30-16-4(d)(1).

¹⁵⁴ Ind. Code § 9-30-16-4(d)(2).

¹⁵⁵ See Ind. Code § 9-30-16-3(b); Ind. Code § 9-30-16-3.5(f); and Ind. Code § 9-30-16-4(b).

4. What is Required for the Hearing?

Each person that is granted an SDP is required to have SR22 insurance for the duration of the SDP.¹⁵⁶ This SR22 insurance is required before SDP can be granted. It is good practice to attach this SR22 proof of insurance to the original petition if you are in a court that may not require a hearing (*i.e.*, if the prosecutor is in agreement). Otherwise, a copy of SR22 insurance must be offered for evidence at the SDP hearing.

A certified copy of your client's driving record should also be either attached to the petition or offered for evidence at the hearing. You should obtain your client's driving record prior to filing a petition for SDP to verify all active suspensions and identify where to file. Often your client will have suspensions that he may not be aware of. PDF copies of certified driving records are easy to obtain from the internet at <https://secure.in.gov/BMV/mybmv/Default.aspx>. It requires a log-in ID and payment information from your client.

Even with a detailed proposed order, it may be necessary for your client to specifically testify as to all of the allowances needed under the order. He may need to go through his work schedule, work address, probation needs if applicable, any drug and alcohol counseling, etc. If the prosecutor has not agreed to the terms of the SDP, it is good practice to provide the court with all the information it will need to construct an order. Do not assume that your proposed order will be used.

5. What is My Client Required to Do?

A person who has been granted specialized driving privileges is required to do the following:¹⁵⁷

- Maintain proof of future financial responsibility insurance during the period of SDP,
- Carry a copy of the order granting SDP or have the order in the vehicle being operated by the person,
- Produce the copy of the order granting SDP upon request of a police officer; and
- Carry a validly issued state identification card or driver's license.

6. Operating While Intoxicated Cases

All OWI suspensions, pre-trial and post-conviction, are eligible for specialized driving privileges EXCEPT: (1) a suspension for chemical test refusal (both pre-trial and post-

¹⁵⁶ See Ind. Code § 9-30-16-3(f)(1) and Ind. Code § 9-30-16-3.5(d)(1).

¹⁵⁷ See Ind. Code § 9-30-16-3(f)(1) and Ind. Code § 9-30-16-3.5(d)(1).

conviction);¹⁵⁸ (2) a suspension as a result of OWI causing death;¹⁵⁹ and (3) any suspension for a person that has never been an Indiana resident.¹⁶⁰

a. Pre-Trial OWI Suspensions: Prima Facie Evidence of Intoxication

Prima facie evidence of intoxication will result in immediate suspension of driving privileges.¹⁶¹ There are **two** ways that a person can obtain relief from a pre-trial suspension for prima facie evidence of intoxication: (1) obtain a specialized driving privilege under Ind. Code § 9-30-16; or (2) find relief under Ind. Code § 9-30-6-8(d).

Suspension credit time will be given for any period that ignition interlock is installed pretrial, either through an order for SDP¹⁶² or through relief under Ind. Code § 9-30-6-8(d).¹⁶³

(1) Pretrial specialized driving

Pretrial specialized driving privileges must be filed in the court where charges are pending.¹⁶⁴ If there are no violations, the order for SDP will continue until the case is resolved. If additional suspension is imposed after sentencing, a new order for SDP should be issued to ensure the relief will continue under the post-conviction suspension.

(2) Pre-Trial Ignition Interlock Device

Indiana Code § 9-30-6-8(d) provides: If it is determined that there is probable cause to believe that a person has violated Ind. Code § 9-30-5, the court may as an alternative to any suspension of the person's driving privileges, issue an order recommending that the person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning ignition interlock device until the bureau is notified by a court that the criminal charges against the person have been resolved. This subsection applies even if the person refused to submit to a chemical test. The order remains in effect until the bureau is notified by a court that the criminal charges against the person have been resolved. When the court issues an order under this subsection, no administrative suspension is imposed by the bureau and no suspension is noted on the person's driving record.

¹⁵⁸ Ind. Code § 9-30-16-3(a)(2).

¹⁵⁹ Ind. Code § 9-30-16-2(a).

¹⁶⁰ Ind. Code § 9-30-16-3(a)(1).

¹⁶¹ Ind. Code § 9-30-6-9(b).

¹⁶² Ind. Code § 9-30-16-1(d).

¹⁶³ Ind. Code § 9-30-16-1(e).

¹⁶⁴ Ind. Code § 9-30-16-3(b).

b. Pre-Trial OWI Suspensions: Refusal of a Chemical Test

Refusing a chemical test will result in immediate suspension of driving privileges.¹⁶⁵ A refusal suspension is not eligible for standardized driving privileges, either pre-trial or post-conviction.¹⁶⁶

Though refusal suspensions are not eligible for SDP, they are eligible for relief under Ind. Code § 9-30-6-8(d). If ignition interlock is installed as a result of relief under Ind. Code § 9-30-6-8(d), your client will receive suspension credit for the time the ignition interlock was installed.¹⁶⁷

SDP ineligibility only applies to the current refusal suspension—a prior unrelated suspension for chemical test refusal does not render the person ineligible for SDP on any future suspensions.

If the State stipulates to no refusal or if the court finds that it is in the best interests of society for the refusal suspension to be terminated, an SDP may be issued on any remaining suspension imposed by the court. However, your client will not receive credit time for any suspension already served for the refusal (except where ignition interlock was granted under Ind. Code § 9-30-6-8(d)).

NOTE: If an SDP is granted by the court for a refusal suspension, the BMV will challenge the order by motion to correct error and appeal. There is no benefit to filing on an ineligible suspension. Even if your client can find relief in the trial court, it is likely to be challenged and overturned on appeal. See Ind. BMV v. Newlin, 74 N.E.3d 569 (Ind. Ct. App. 2017). If you find a trial court willing to provide relief, it is best to argue for the refusal to be terminated in the best interests of society.

¹⁶⁵ Ind. Code § 9-30-6-9(b).

¹⁶⁶ Ind. Code § 9-30-16-1(a)(2).

¹⁶⁷ Ind. Code § 9-30-16-1(e).

c. Post-Conviction License Suspension

An SDP may be obtained in any post-conviction OWI license suspension with the three exceptions listed above.¹⁶⁸ Your client will still need to maintain SR22 insurance, carry the SDP order in his car, and have a valid identification card or driver's license.¹⁶⁹

PRACTICE TIP: If the current OWI conviction will render your client HTV and you are seeking a SDP, you may choose to exercise your right to have the court find your client to be HTV under Ind. Code § 9-30-10-6.5 to avoid any delay in gaining relief from suspension for your client and avoid any additional fees to file an MI petition in the county of residence. However, always do look at your client's driving record personally before exercising this option. Occasionally an out-of-state conviction may not appear on his driving record, or one conviction may be outside of 10 years. It is good practice to confirm personally that your client will indeed be a HTV before requesting a finding by the court.

7. Lifetime Suspensions

The lifetime suspension for Operating as HTV has been repealed. However, there are persons with lifetime suspensions under the old statute that may obtain relief through a SDP—these lifetime suspensions are eligible for standardized driving privileges if the person is otherwise eligible under the statute.¹⁷⁰

CAUTION: If a person's driving privileges were administratively--as opposed to judicially--suspended, the petitioner must file the petition for SDP in the county in which he resides. Ind. Code § 9-30-16-4; *State v. Reinhart*, 112 N.E.3d 705 (Ind. 2018). If the driving record, plea agreement or abstract of judgment shows the suspension as a result of a cause number (*i.e.* for the underlying Operating as HTV case), the SDP petition must be filed under the same criminal cause number in the sentencing court. A filing fee will not be imposed for a petition filed with the criminal court. However, if the plea or sentence did not include a suspension and the BMV imposed the HTV or lifetime suspension, you should file a new petition and SDP order under a MI cause number in the county of residence, with a filing fee.

8. Other Operating Offenses

All suspensions imposed for operating offenses, including drug offenses that carry a possible license suspension, are eligible for standardized driving privileges.¹⁷¹ The exception is for operating offenses that have as an element causing the death of another person—if a crime is enhanced for causing or resulting in death, the suspension will not be eligible for SDP.¹⁷²

¹⁶⁸ Ind. Code § 9-30-16-3(a).

¹⁶⁹ Ind. Code § 9-30-16-3(f).

¹⁷⁰ Ind. Code § 9-30-16-3(a).

¹⁷¹ Ind. Code § 9-30-16-3(a).

¹⁷² Ind. Code § 9-30-16-2(c).

9. After the Order is Issued

After the court has issued an order granting specialized driving privileges, your client is free to drive with proof of insurance and a valid identification card or driver's license.¹⁷³ Shortly after the order is issued, your client will receive a letter from the BMV stating that they are eligible for a conditional license and to report to the BMV to obtain that license. It is to your client's benefit to obtain a conditional license—it will change their status officially and they may avoid future traffic stops for driving while suspended.

10. Commercial Driver's License

A person who holds a CDL may obtain specialized driving privileges—however, they cannot, for the duration of the SDP, operate a vehicle that requires a CDL license.¹⁷⁴

11. Violations of an Order for Specialized Driving Privileges

A person who knowingly or intentionally violates a condition of SDP commits a Class C misdemeanor.¹⁷⁵ If convicted, the court may modify or revoke specialized driving privileges.¹⁷⁶ The court may order the bureau to lift the stay of suspension and suspend the person's license as originally ordered in addition to any additional suspension from the conviction itself (0 – 60 days possible).¹⁷⁷

If a person has been previously granted SDP and has been convicted twice of violating the conditions under Ind. Code § 9-30-16-5, he is ineligible for SDP in the future.

12. Appealing a Denial of SDP

If a trial court denies a request for specialized driving privileges, your client will find little relief in the higher courts—the decision to grant or deny a petition for specialized driving privileges is reviewable only for an abuse of discretion.¹⁷⁸

B. Ignition Interlock

Ignition interlock has become a popular tool for courts since the changes to the traffic code in 2015. It is likely that if your client is charged with OWI, he will receive several form letters from ignition interlock companies offering services.

¹⁷³ Ind. Code § 9-30-16-3(f) and Ind. Code § 9-30-16-3.5(d).

¹⁷⁴ Ind. Code § 9-30-16-3(g) and Ind. Code § 9-30-16-3.5(e).

¹⁷⁵ Ind. Code § 9-30-16-5(a).

¹⁷⁶ Ind. Code § 9-30-16-5(b).

¹⁷⁷ *Id.*

¹⁷⁸ *Jones v. State*, 62 N.E.3d 1205 (Ind. Ct. App. 2016) (finding trial court did not abuse its “broad discretion” in denying SDP for Jones, who had 27 prior traffic violations and two prior OWI convictions in 2004 and 2009).

Ignition interlock may be required pretrial in lieu of suspension, or pre/post-conviction as a condition of standardized driving privileges.¹⁷⁹

1. What is ignition interlock?

Indiana Code § 9-13-2-76 defines an “ignition interlock device” as a blood alcohol concentration equivalence measuring device that prevents a motor vehicle from being started without first determining the operator’s equivalent breath alcohol concentration through the taking of a deep lung breath sample.

An ignition interlock device shall be set to render a motor vehicle inoperable at a breath sample of 0.02 alcohol concentration.¹⁸⁰

The Department of Toxicology adopts rules and standards for ignition interlock certification. All ignition interlock devices must be certified in order to be used. Certification is accomplished by applying to the Department of Toxicology for certification.

2. How long can ignition interlock be imposed?

If the court orders ignition interlock after conviction for an offense, the court shall set the time that the installation must remain in effect—however, the term may not exceed the maximum term of imprisonment the court could have imposed.¹⁸¹

If ignition interlock is ordered as a condition of an SDP, that condition may continue through the duration of the SDP or for a fixed term ordered by the court.

3. Defendant is responsible to pay for ignition interlock

Any person who is required to have an ignition interlock device installed as a part of probation, a specialized driving permit, or any other order of the court is required to pay for the installation, leasing, maintenance, and removal of the ignition interlock device, as well as any additional expenses ordered by the court.¹⁸²

However, if the court orders ignition interlock, the court may find the person to be indigent for the cost of installation.¹⁸³

4. How are ignition interlock violations reported to the court?

The provider of ignition interlock is required to report to the court within two weeks when the following occurs:¹⁸⁴

¹⁷⁹ See Ind. Code § 9-30-8-1 or Ind. Code § 9-30-6-8(d).

¹⁸⁰ Ind. Code § 9-30-8-2.

¹⁸¹ Ind. Code § 9-30-8-1.

¹⁸² Ind. Code § 9-30-8-6(b).

¹⁸³ Ind. Code § 9-30-8-1.

¹⁸⁴ Ind. Code § 9-30-8-6(a).

- There is an attempt to start the vehicle at 0.04 or higher and a reading of 0.04 or lower is not registered within 10 minutes of the first test;
- Absent a documented failure of the equipment, if there is a failure to take or pass any required test; or
- Failure of the person ordered to use an ignition interlock device to appear at the vendor or provider for maintenance, repair, calibration, monitoring, inspection, or replacement of the ignition interlock device.

5. What are the penalties for violating the court order for ignition interlock?

a. Ignition Interlock as a Condition of SDP

If the ignition interlock is ordered as a condition of specialized driving privileges, it is a Class A Misdemeanor to violate the court order for ignition interlock.¹⁸⁵

b. Ignition Interlock in Lieu of Pretrial Suspension in OWI Cases

If ignition interlock is granted as an alternative to suspension under Ind. Code § 9-30-6-8, it is a Class B Misdemeanor to operate a motor vehicle without ignition interlock if the person knows they are prohibited from operating a vehicle without ignition interlock.¹⁸⁶ (It is a Class B infraction to operate a vehicle without ignition interlock after court order even if the person does not know there is an order for ignition interlock).¹⁸⁷

For sample Petitions and Orders, see Appendix I.

c. Tampering with the Device

A person who knowingly or intentionally tampers with an ignition interlock device for the purpose of: (1) circumventing the ignition interlock device; or (2) rendering the ignition interlock device inaccurate or inoperative; commits a Class B Misdemeanor.¹⁸⁸

¹⁸⁵ Ind. Code § 9-30-5-16.

¹⁸⁶ Ind. Code § 9-30-6-8(f).

¹⁸⁷ Ind. Code § 9-30-6-8(e).

¹⁸⁸ Ind. Code § 9-30-5-8(a).

d. Assisting Someone in Circumventing the Interlock Device

A person who solicits another person to blow into the device or start the vehicle equipped with an ignition interlock device for the purpose of providing an operable vehicle to a person who is restricted to driving with ignition interlock commits a Class C Infraction.¹⁸⁹

It is a Class A Misdemeanor for a person to “knowingly assist” another person who is restricted to the use of an ignition interlock device to violate a court order.¹⁹⁰

It is a Class A Infraction to knowingly rent, lease, or loan a motor vehicle that is not equipped with ignition interlock to someone under a court order requiring ignition interlock.

NOTE: The Class A Misdemeanor for assisting a person to violate a court order for ignition interlock, (and potentially other misdemeanors imposed for violating ignition interlock) may have a successful argument under the Proportionality Clause of Article 1, Section 16 of the Indiana Constitution. See also Poling v. State, 853 N.E.2d 1270 (Ind. Ct. App. 2006).

6. The BMV Is Required to Notify the Defendant of an Ignition Interlock Order

If the bureau receives an order recommending use of an ignition interlock device, the bureau shall, within five days, mail notice to the person’s address stating that he may not operate a vehicle without ignition interlock and that he has a right to judicial review.¹⁹¹

7. Requirement for Rescission of an Ignition Interlock Order

The court is required to rescind a pretrial order for ignition interlock if:

- All the charges have been dismissed and the prosecutor states on the record that charges will not be refiled;
- There was an early trial requested and no early trial was granted; or
- There was no refusal and the person was found not guilty of all charges.

¹⁸⁹ Ind. Code § 9-30-5-8(b).

¹⁹⁰ Ind. Code § 9-30-5-7.

¹⁹¹ Ind. Code § 9-30-6-8.5.

C. Petition for Rescission of Lifetime Suspension

A person who has been suspended for life for at least ten (10) years may receive a valid license under Indiana Code § 9-30-10-14.1. This section provides that a person who has had his driving privileges suspended for life may petition a court in a civil action for a rescission of the suspension order and reinstatement if: (1) ten years have elapsed since the date the court ordered suspension for life, and (2) the person has never been convicted of the offenses listed in Ind. Code § 9-30-10-4(a) (nearly all the operating offenses causing death).¹⁹²

NOTE: If there is a lifetime suspension and the person has never been convicted of a major offense (if the underlying HTV is a result of an accumulation of ten traffic offenses) he may petition for rescission after three (3) years. I.C. 9-30-10-14.1(f).

For sample petitions and orders, see Appendix II.

1. What Is Required for the Petition?

The petition for rescission must be filed in the county of residence under a miscellaneous (MI) cause number.¹⁹³ It must include the following:¹⁹⁴

1. Be verified by the petitioner
2. State the petitioner's age, date of birth and place of residence
3. Describe the circumstances leading up to the lifetime suspension of the petitioner's driving privileges
4. Describe the substantial change in the petitioner's circumstances that indicate he is no longer a risk to the safety of others if his license is reinstated, state why lifetime suspension of his license is no longer reasonable, and that it is in the best interests of society for his driving privileges to be reinstated
5. State that at least ten years have elapsed since the order suspending his license for life
6. State that the petitioner has never been convicted of an offense in section 4(a)
7. If the motion is filed under subsection (f) (three-year rescission), state that the requirements of that subsection are met.

The petition must be filed in the circuit or superior court in the county of residence—if the petitioner lives out of state, the petition is filed in the county of the last moving violation. The petition must be served on the prosecuting attorney and the BMV.¹⁹⁵ The prosecuting attorney will represent the State at any hearing.¹⁹⁶

¹⁹² Ind. Code § 9-30-10-14.1(b).

¹⁹³ Ind. Code § 9-30-10-14.1(c)(7).

¹⁹⁴ Ind. Code § 9-30-10-14.1(c).

¹⁹⁵ Ind. Code § 9-30-10-14.1(c)(7).

¹⁹⁶ Ind. Code § 9-30-10-14.1(e).

In order for a rescission to be granted, it is necessary to prove that at least ten (or three) years have passed since the order for lifetime suspension and that there have not been any disqualifying convictions.¹⁹⁷ A certified driving record will need to be offered as an exhibit at the hearing to prove these facts.

2. Trial Court Has Wide Discretion in Granting or Denying Rescission

In Lambert v. State, 53 N.E.2d 1198 (Ind. Ct. App. 2016), Petitioner Lambert filed for a rescission of his suspension under Ind. Code § 9-30-10-14.1. Lambert had no alcohol-related offenses, and the underlying HTV determination was from accumulating ten traffic offenses. However, he had accumulated three lifetime suspensions since being adjudged to be an HTV. The trial court denied his petition for rescission based on the fact that Lambert had been suspended for life three times, the most recent of which was four years prior to the petition for rescission.

It is important to present to the trial court a clear change in circumstances and to focus on the best interests of society in pleading and presenting a petition for rescission. Absent a clear abuse of discretion, the appellate courts are unlikely to reverse a trial court's denial of a petition for rescission.

On appeal, Lambert argued that he met the statutory conditions and there was no judicial discretion to deny his petition. The Court of Appeals disagreed and found that there was judicial discretion in finding a “substantial change” in circumstances. The Court further held there was no mandate that the trial court must grant a petition based on the requirements for the pleading. The Court of Appeals upheld the trial court's finding that rescission was not in the best interests of society and affirmed the judgment.

D. Petition for Judicial Review of License Suspensions and Trial Rule 60 (B)

1. Bureau Review

Indiana Code § 9-33-2 allows for bureau review of a BMV record if a material error was made. This review must be made in writing.¹⁹⁸ The BMV has thirty (30) days to determine if a material error was made.¹⁹⁹ If the BMV determines that a material error was made, the BMV shall notify that person in writing, correct the error, remove any suspension and reinstate the license if required.²⁰⁰

¹⁹⁷ Ind. Code § 9-30-10-14.1(b).

¹⁹⁸ Ind. Code § 9-33-2-1(a).

¹⁹⁹ Ind. Code § 9-33-2-1(b).

²⁰⁰ Ind. Code § 9-33-2-1(c).

The bureau is able to modify or cancel its decision to grant relief through a bureau review at any point prior to the deadline for filing for judicial review.²⁰¹

2. Judicial Review

If a request for bureau review is denied, ignored, or unsatisfactory to cure the material error, a person may seek judicial review of the error.²⁰²

This petition must be filed within fifteen (15) days of either: the day notice is received denying relief after bureau review, or thirty days after a petition for bureau review is mailed; whichever occurs earlier.²⁰³

A petition for judicial review must be:²⁰⁴

- (a) Verified by the petitioner;
- (b) State the petitioner's age, date of birth, place of residence, and driver's license number;
- (c) State the action from which you are seeking relief;
- (d) Include a copy of any written order or determination made by the bureau with respect to the action;
- (e) State the grounds for relief, including all facts showing that the bureau's action is wrongful or unlawful;
- (f) And state the relief sought.

The filing of the petition does not automatically stay the suspension—however, the court may stay the suspension pending judicial review if the court finds that the petition states facts that show a reasonable probability that the action is wrongful or unlawful.²⁰⁵

A petition for judicial review will be filed under a miscellaneous (MI) cause number in the circuit or superior court in the county of residence—a nonresident will file in Marion County Circuit Court.²⁰⁶

If the judicial review involves a HTV determination, the court must hear the action within six (6) months of filing.²⁰⁷ The court may modify, affirm, or reverse the action of the BMV and

²⁰¹ Ind. Code § 9-33-2-2(a).

²⁰² Ind. Code § 9-33-2-3(a).

²⁰³ Ind. Code § 9-33-2-3(b).

²⁰⁴ Ind. Code § 9-33-2-3(c).

²⁰⁵ Ind. Code § 9-33-2-3(d).

²⁰⁶ Ind. Code § 9-33-2-3(a).

²⁰⁷ Ind. Code § 9-33-2-3(e).

must issue an order with its findings.²⁰⁸ If the court fails to hear the issue within six (6) months, the original action of the BMV is reinstated in full force and effect.²⁰⁹

3. Trial Rule 59 and 60 (B)

If there is a material error in your client's driving record and it is determined to be the fault of the court and not the BMV, a motion to correct error or motion for relief from judgment should be filed. A petition for administrative review will be unlikely to provide relief if the court made an error in its abstract of judgment.

Administrative and judicial review should be sought if there is a material error and that error is on the part of the BMV alone. If the error lies with the court alone, a motion to correct error should be filed with the trial court and does not require administrative and judicial review prior to filing.

However, a Trial Rule 59 or Trial Rule 60 (B) motion cannot be used to bypass bureau or administrative review.²¹⁰

E. Waiver of BMV Reinstatement Fees

Ind. Code § 9-25-6-15.1 allows for the court to waive the reinstatement fees imposed by the BMV for an indigent person. The court can do this on its own or by motion of the person.²¹¹

For sample petition and orders, see Appendix V. The Coalition for Court Access, Indiana Legal Help, also has BMV reinstatement waiver fee forms on their website. For updated forms, see <https://indianalegalhelp.org/court-forms/forms-specialized-driving-privileges/>.

The petition to waive reinstatement fees must be filed in a criminal court of record in the county of residence.²¹² The petition must be served on the prosecutor and the BMV²¹³, but the BMV is not a party to the action.²¹⁴

The petition must allege that:²¹⁵

- (1) The individual is indigent;
- (2) Has proof of future financial responsibility (SR22)

²⁰⁸ Id.

²⁰⁹ Id.

²¹⁰ See Ind. BMV v. Watson, 70 N.E.2d 380 (Ind. Ct. App. 2017) (petitioner's motion to issue a valid chauffer's license was a petition for judicial review disguised as a motion to correct error, thus trial court erred in granting because petitioner did not comply with the statutory requirements for judicial review).

²¹¹ Ind. Code § 9-25-6-15.1(d).

²¹² Ind. Code § 9-25-6-15.1(a).

²¹³ Ind. Code § 9-25-6-15.1(b).

²¹⁴ Ind. Code § 9-25-6-15.1(c).

²¹⁵ Ind. Code § 9-25-6-15.1(d).

- (3) And waiver is appropriate in light of the individual's character and the circumstances surrounding the petition.

The court is free, if it grants the motion, to impose other reasonable conditions on the person.²¹⁶

A waiver of reinstatement fees will only provide relief for BMV imposed fees. It will not cover the cost of unpaid tickets or an uninsured civil judgment. However, a waiver of reinstatement fees can be issued even if unpaid tickets or other judgments are due.

PRACTICE TIP It will benefit your client to request a waiver of reinstatement fees at the time of sentencing or plea hearing if reinstatement is required for your client to have a valid license. Bringing a proposed order and proof of insurance to the plea hearing can save a subsequent motion and further delay for your client in obtaining a valid license.

F. Traffic Amnesty Program

For sample petitions and orders, see Appendix III. The Coalition for Court Access, Indiana Legal Help, also has traffic amnesty forms on their website. For updated forms, see <https://indianalegalhelp.org/court-forms/forms-specialized-driving-privileges/>.

1. Qualifying Costs/Fees

The following fees/costs/judgments are eligible for a reduction in costs in the traffic amnesty program:²¹⁷

- An unpaid judgment for an infraction described in title 9 that relates to the operation of a motor vehicle, if the infraction was committed before January 1, 2020;
- A driving privileges reinstatement fee (as described in Ind. Code § 9-25-6-15), which a person with a suspended driver's license is or would be required to pay to reinstate the person's driver's license, if the person's driver's license was suspended before January 1, 2020; and
- Any court costs, administrative fees, late fees, or other fees imposed on a person in connection with an unpaid judgement or fee described above.

2. Exclusions

A person is disqualified from participating in the Traffic Amnesty program if (1) the person with a child support arrearage, unless the person has been making the required child support payments for at least six months preceding the date the person files the petition for traffic amnesty; (2) a person with an outstanding arrest warrant; or (3) a person sentenced to pay restitution to the victim of a crime, if the person is not current with the required payments.²¹⁸

²¹⁶ Ind. Code § 9-25-6-15.1(e).

²¹⁷ Ind. Code § 9-33-4-2.

²¹⁸ Ind. Code § 9-33-4-1.

3. Petition Contents

A person must file a verified petition.²¹⁹

The petition must contain:²²⁰

- Person's full name and all other legal names or aliases by which the person is or has been known;
- Person's date of birth;
- Case number or court cause number of the relevant violations;
- Person's social security number and driver's license number; and
- Date of the violation.

The petition must also contain an affirmation that the person does not owe a child support arrearage—or, if the person does owe a child support arrearage, has been making the person's required child support payments for at least the preceding six months—does not have an outstanding arrest warrant; and was not sentenced to pay restitution to the victim of a crime—or, if the person was sentenced to pay restitution, is current with the person's required payments.²²¹

A person may include in a petition any other information that the person believes may assist the court.²²²

4. Where to file the Petition

A person who files a petition under this section shall file the petition under the court cause number of the infraction in a circuit or superior court in the county in which the violation giving rise to the unpaid fees was committed.²²³

The person is not required to pay a filing fee required in civil cases.²²⁴

The person is required to serve a copy of the petition upon the prosecuting attorney. The prosecutor may reply to the petition not later than thirty days after receipt of the petition—if the prosecutor fails to timely reply to the petition, the prosecuting attorney has waived any objection to the petition.²²⁵

²¹⁹ Ind. Code § 9-33-4-4(a).

²²⁰ Id.

²²¹ Ind. Code § 9-33-4-4(a)(4).

²²² Ind. Code § 9-33-4-4(b).

²²³ Ind. Code § 9-33-4-4(c).

²²⁴ Id.

²²⁵ Ind. Code § 9-33-4-4(d) and (e).

If the person wishes to receive traffic amnesty for infractions committed in different counties, the person must file a separate petition in each county in which a violation was committed.²²⁶

5. Hearing

If the prosecutor does not object or has waived objections to the petition, the court may grant the petition for traffic amnesty without a hearing.²²⁷

Similarly, the court may summarily deny a petition if the petition does not meet the requirements of this chapter or if the statements contained in the petition demonstrate that the petitioner is not entitled to relief.²²⁸

If the prosecutor does object, the prosecutor shall file the reasons for objecting to the petition with the court and serve a copy of the objections on the petitioner at the time the prosecutor objects to the petition.²²⁹ The court shall set the matter for a hearing not earlier than sixty days after service of the petition on the prosecutor.²³⁰

6. Effect of Granting of Petition

The court shall grant a petition for traffic amnesty if the petitioner proves by a preponderance of the evidence that the person is qualified and the violation giving rise to the unpaid fees was committed before January 1, 2020.²³¹

If the court grants the petition, the court shall issue an order reducing the amount of unpaid fees owed by the person by fifty percent.²³² To the extent some or all of the unpaid fees consist of a driving privileges reinstatement fee, the court shall specify in its order that the petitioner is entitled to drive privileges reinstatement after paying fifty percent of the otherwise required driving privileges reinstatement fee to the bureau; providing financial responsibility to the court; and the person is determined not to be otherwise ineligible to have their driving privileges reinstated.²³³

The court shall transmit a copy of its order to the bureau in a form and manner prescribed by the bureau.²³⁴

²²⁶ Ind. Code § 9-33-4-4(f).

²²⁷ Ind. Code § 9-33-4-5(a).

²²⁸ Ind. Code § 9-33-4-5(b).

²²⁹ Ind. Code § 9-33-4-5(c).

²³⁰ Id.

²³¹ Ind. Code § 9-33-4-6(a).

²³² Ind. Code § 9-33-4-6(b).

²³³ Id.

²³⁴ Ind. Code § 9-33-4-6(c).

The court shall include in its order a statement that the order is not a conviction, finding of guilt, or finding of liability, and that the order is being issued under Ind. Code § 9-33-4.²³⁵

7. Appeal

The grant or denial of a petition under this chapter is an appealable final order.²³⁶

G. Staying Suspended Driving Privileges

1. Proof of Future Financial Responsibility

When an individual's driving privileges are suspended under Ind. Code § 9-30-3-8 for an individual's failure to satisfy a judgment, the BMV will require proof of future responsibility.²³⁷

2. Timing

An individual's driving privileges will be suspended for three years unless they satisfy the judgment or provide the BMV with proof of future financial responsibility as required under Ind. Code § 9-25. Once the BMV has received this proof it is required to stay the suspension, but if at any time during the three-year time period following the suspension the individual has proved proof of future financial responsibility but fails to maintain the proof of future financial responsibility, the BMV shall suspend the driving privileges until the individual once more provides proof or the suspension is terminated by the BMV.²³⁸

3. Reinstatement Fees

The BMV will waive reinstatement fees for a suspension under Ind. Code § 9-30-3-8 if the individual satisfies the original judgment that led to the suspension, or the individual maintains proof of financial responsibility for three years.²³⁹

²³⁵ Id.

²³⁶ Ind. Code § 9-33-4-6(d).

²³⁷ Id.

²³⁸ Ind. Code § 9-30-3-8.5.

²³⁹ Ind. Code § 9-30-3-8.5(e).

III.APPENDIX—

- A. Appendix I – Sample Petition and Order for Ignition Interlock in Lieu of License Suspension**
- B. Appendix II - Sample Petition and Order for Rescission of Lifetime Suspension and Reinstatement of Driving Privileges**
- C. Appendix III - Sample Petition and Order for Traffic Amnesty**
- D. Appendix IV - Sample Petition, Order Setting Hearing, Summons, and Order for Specialized Driving Privileges**
- E. Appendix V - Sample Petition, Order Setting Hearing, Summons, Indigency Affidavit, and Order Waiving Fees for Waiver of Reinstatement Fees**