

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR IGNITION  
INTERLOCK DEVICE IN LIEU OF SUSPENSION PURSUANT TO IND. CODE 9-30-6-8(d)**

Under Ind. Code § 9-30-6-7(b)(2), whenever a law enforcement officer has probable cause to believe that a person has operated a vehicle while intoxicated and that the person has either refused a chemical test for intoxication or submitted to a chemical test that resulted in prima facie evidence of intoxication, such officer must complete an affidavit to be submitted to the Prosecuting Attorney and filed with the Court. Such probable cause affidavit must state the basis for the law enforcement officer's belief that the person was operating while intoxicated, indicate whether such person was arrested for operating while intoxicated, and indicate whether the chemical test offered to such person was either refused or resulted in prima facie evidence of intoxication. Ind. Code § 9-30-6-8(b).

Under Ind. Code § 9-30-6-8(c), at the initial hearing, the Court, upon a determination that probable cause exists pursuant to Ind. Code § 9-30-6-8(a), shall recommend the immediate suspension of the person's driving privileges, order the surrender of any licenses or permits, and forward the suspension order and license to the Bureau of Motor Vehicles.

Effective July 1, 2004, Ind. Code § 9-30-6-8 was amended by adding subsection (d), which provides, "(d) If it is determined under subsection (a) that there is probable cause to believe that a person violated IC 9-30-5, the court may, as an alternative to a license suspension under subsection (c)(1), issue an order recommending that the person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 until the bureau is notified by a court that the criminal charges against the person have been resolved." P.L. 76-2004, § 9.

This legislation also added qualifying language to Ind. Code § 9-30-6-8(c), stating that the procedure detailed above was to be employed except as provided in Ind. Code § 9-30-6-8(d). More simply, if the Court, in its discretion, orders the installation of an ignition interlock device under Ind. Code § 9-30-6-8(d), the suspension order under Ind. Code § 9-30-6-8(c) is not required. Nothing in Ind. Code § 9-30-6-8(c) or (d) appears to differentiate between chemical test refusals and chemical test failures.

When suspension of a person's driving privileges is mandated under Ind. Code § 9-30-6-8(c), the duration of such probable cause suspension is determined by Ind. Code § 9-30-6-9(b) and (c). Where a Court determines that probable cause exists that a person operated a vehicle while intoxicated and refused a chemical test, Ind. Code § 9-30-6-9(b) states that the bureau of motor vehicles shall suspend the person's license for one year or until the suspension is ordered terminated under Ind. Code 9-30-5. Analogous provisions for persons failing a chemical test for intoxication are codified at Ind. Code § 9-30-6-9(c).

P.L. 76-2004 again modified this section of the Ind. Code by inserting a new paragraph, Ind. Code § 9-30-6-9(a), which provides: "This section does not apply if an ignition interlock device order is issued under section 8(d) of this chapter [9-30-6-8(d)]." Again, the statute does not differentiate between chemical test refusals and chemical test failures.

Further amendments to Ind. Code § 9-30-6 further support the availability of ignition interlock orders to persons purportedly refusing chemical tests for intoxication. Ind. Code § 9-30-6-10 describes how aggrieved persons against whom **an ignition interlock device order has been issued** or whose driving privileges have been suspended are entitled to a prompt judicial hearing. Such hearings shall be limited to the following issues: (1) Whether the arresting officer had probable cause to believe that the person was operating a vehicle in violation of Ind. Code § 9-30-5, and (2) whether the person refused to submit to a chemical test. Ind. Code § 9-30-6-10(c). Had the legislature not intended for ignition interlock orders to be applicable to persons refusing chemical tests for intoxication, it is illogical that a procedure would have been codified to challenge the validity of such orders.

"[The] objective in statutory construction is to determine and effect the intent of the legislature." Matter of Lawrance, 579 N.E.2d 32, 38 (Ind. 1991). "Where possible, every word must be given effect and meaning. . . ." Hall Drive Ins. Inc. v. City of Fort Wayne, 773 N.E.2d 255, 257 (Ind. 2002). Courts must assume the language employed in a statute was used intentionally. Burks v. Bolerjack, 427 N.E.2d 887, 890 (Ind. 1981). The plain language of the statute, which permits the installation of an ignition interlock device in lieu of a probable cause suspension, makes such orders equally available to persons

refusing or failing chemical tests for intoxication. The arresting officer's assertion that Defendant refused to submit to a chemical test for intoxication does not preclude the Court from ordering an ignition interlock device in lieu of suspension pursuant to Ind. Code § 9-30-6-8(d).

For the foregoing reasons, the Defendant respectfully requests that the Court order the installation of an ignition interlock device in lieu of a license suspension, pursuant to Ind. Code § 9-30-6-8(d).

(Signature)