INDIANA CRIMINAL CODE 9-30-2-2:

WHO DOES IT PROTECT?

A RESEARCH PAPER

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All law enforcement officers, in every state, are tasked with knowing and understanding their own state’s statues and criminal codes. By having such knowledge, these officers are capable of being efficient and effective in their efforts with the fight against crime. Despite our freedom, all citizens of the United States of America surrender certain liberties so that they can procure security in our society. Laws, therefore, become byproducts of the will of the people and, usually, have the interest of society when created. But what happens when laws become confusing or ineffective? Fortunately, our system has courts to determine and examine the intent of law and of the designers of these laws. As a result, certain laws are repealed or are amended to adapt to changes in society or for other various reasons. There still exist, unfortunately, certain laws which remain unchanged.

I believe Indiana has outdated and laws that require amendments. One law in particular can be located in the Indian Criminal Code titled *Uniform and badge; marked police vehicle*. Indiana law enforcement officers are required, under Indiana Criminal Code 9-30-2-2 (Title 9, Article 30, Chapter 2, Section 2), to be in a uniform or a clearly marked police vehicle before arresting or issuing any summons that pertain to the regulation and use of motor vehicles in Indiana highways. All of these violations, which pertain to motor vehicle law, are all found in Title 9 of the Indiana Criminal Code. All other criminal offenses, not related to the regulation and the use of a motor vehicle, do not require a marked police vehicle, or an officer to be in uniform, in order for the officer to make a traffic stop.

As a result, it has been my experience that Indiana Criminal Code 9-30-2-2 provides a significant amount of uncertainty for criminal justice personnel and for its
citizens. My intent is to inform the reader about the law and briefly about its origin. I will then explain some instrumental decisions handed down by different Indiana Courts of Appeals and apply their meanings as they relate to the current law. I am including personal opinions of those within the criminal justice system including local prosecutors, judges, and police officers. I am also seeking opinions from police officers in other states and examples of any law as it relates to their respective state. By providing the reader with a well-rounded overview of the current law, legal opinions, and opinions of criminal justice personnel it is my goal to identify this law’s weaknesses in an effort to have the law amended to a more practical one.

Legislative History

According to the Legislative Services Agency of Indiana, the law originated in 1927 and was approved on March 8th. Chapter 109, Section 1 read:

Be it enacted by the general assembly of the State of Indiana, That no peace officer shall have any authority to arrest any person for any violation of any of the laws of this state regulating the use and operation of motor vehicles on the public highways of the state, or any of the ordinances of any city or town thereof, regulating the use and operation of motor vehicles on the public highways of this state, unless, at the time of such arrest, such officer is wearing a distinctive uniform and a badge of authority which will clearly show him to casual observation to be an officer. The provisions of this section shall not be construed to apply to any officer making such arrest when there is a uniformed officer present at the time of such arrest (Legislative Services Agency, 2008).
A significant difference with this law (from 1927) and our current law is the absence of any police vehicle being mentioned. This original language still appears in the current law. Unfortunately, voting records could not be located with this original law in an attempt to try and determine its origin.

The law would see its first modification seven years later. On February 28, 1929 the Indiana General Assembly altered the original law and moved its location in the code book. Acts 1929, Chapter 22, Section 1, read:

Be it enacted by the general assembly of the State of Indiana, That section 1 of the above be amended to read as follows: Section 1. That no peace officer shall have any authority to arrest any person for any violation of any of the laws of this state regulating the use and operation of motor vehicles on the public highways of the state, or any of the ordinances of any city or town thereof, regulating the use and operation of motor vehicles on the public highways of this state, unless, at the time of such arrest, such officer is wearing a distinctive uniform and a badge of authority which will clearly show him to casual observation to be an officer. The provisions of this section shall not be construed to apply to any officer making any such arrest when there is a uniformed officer present at the time of such arrest, nor shall such provisions apply to any regular police officer or any city or town, within the limits of his jurisdiction (Legislative Services Agency, 2008).

This law and the law preceding this law were archived in the Indiana Supreme Court. No additional information was obtained related to the two laws. In this revision, a new clause appeared that excused police officers employed in cities and towns.
Acts 1969, Chapter 144, Section 1 was approved, with amendments, on March 12, 1969. It read:

No peace officer shall have any authority to arrest any person for any violation of any of the laws of this state regulating the use and operation of motor vehicles on the public highways of the state, or any of the ordinances of any city or town thereof, regulating the use and operation of motor vehicles on the public highways of this state, unless, at the time of such arrest, such officer is wearing a distinctive uniform and a badge of authority, or is operating a motor vehicle which is clearly marked as a police vehicle, which will clearly show him or his vehicle to casual observations to be an officer. The provisions of this section shall not be construed to apply to any officer making any such arrest when there is a uniformed officer present at the time of such arrest, nor shall such provisions apply to any regular police officer of any city or town, within the limits of his jurisdiction (Legislative Services Agency, 2008).

This marks the first time a vehicle is mentioned and can be presumed to reflect changes in society and the use of automobiles at the time. Automobile ownership and manufacturing in 1969 was drastically different from automobile ownership and manufacturing in 1929. Also present is the previous change; the exemption for local law enforcement when they were enforcing laws in their own jurisdiction. Much like the ideals of Federalism, it appeared that the Indiana General Assembly allowed smaller jurisdictions freedom to enact and enforce their own laws.

In 1990 the entire criminal code was overhauled. Instead of codes being classified as “Acts, Title, Section”, they would now be known as “Title, Article, Chapter, Section”.
The newly titled law was found under Indiana Criminal Code 9-4-8-1, titled *Identification of arresting officers; marking; police vehicles*. The law may have been replaced within the law book and assigned a new set of identifying numbers, but the language remained exactly the same under Acts 1969, Chapter 144, Section 1. This lasted approximately one year.

In 1990, the law was moved to a different section within the criminal code book as well as amended. Title 9, Article 30, Chapter 1, Section 2 (Indiana Code 9-30-1-2) read:

A law enforcement officer may not arrest or issue a traffic information and summons to a person for a violation of an Indiana law regulating the use and operation of a motor vehicle on an Indiana highway or an ordinance of a city of town regulating the use and operation of a motor vehicle on an Indiana highway unless at the time of the arrest the officer is: (1) wearing a distinctive uniform and a badge of authority; or (2) operating a motor vehicle that is clearly marked as a police vehicle; that will clearly show the officer or the officer’s vehicle to casual observations to be an officer or a police vehicle. This section does not apply to an officer making an arrest when there is a uniformed officer present at the time of the arrest (Legislative Services Agency, 2008).

A few changes are evident with the passing of Indiana Code 9-30-1-1. No longer was the general assembly referring to police officers as peace officers. This appears to mark a change in times as it relates to the use of the English language. The new law also removes the exemption of local law enforcement who were enforcing the laws within their jurisdiction. As a police officer, I can speculate that the earlier change brought on
confusion for both citizens and police officers about when traffic stops could be initiated and when they could not. Finally, in 1991, the law was re-codified again under Public Law Bill no. 2. The new law was located at Indiana Code 9-3-2-2. The law has since been unchanged and unmoved.

Court Interpretations


*James v. State of Indiana* (1993) involves, Julius James, of Elkhart, Indiana who was stopped by Sergeant Windbigler of the Elkhart Police Department on February 15, 1992. Officer Windbigler observed James exceeded the posted speed limit and made a left turn without ever signaling the turn. As Officer Windbigler sought information from James, Officer Swygart assisted. It was Officer Swygart who observed James reached past a rolled cigarette in the vehicle’s ashtray. As Officer Windbigler shined his flashlight on the ashtray, James tried shutting it. James eventually was asked to step outside of his car. At this time, Sergeant Windbigler retrieved the cigarette from the ashtray. It was suspected that the cigarette contained marijuana. James was subsequently arrested for possession of marijuana and cocaine. James was found not guilty of the cocaine possession, but was convicted for the possession of marijuana.

James filed an appeal of his conviction and among many things, argued that the trial court should have granted his motion to suppress the evidence from the vehicle stop. Specifically, James argued that the traffic stop was a violation of Indiana Code 9-30-2-2. Basing his traffic stop solely on traffic violations, James noted that Officer Windbigler was in plain clothes and in an unmarked car at the time of the stop and that a uniformed officer or an officer with a marked car should have initiated the traffic stop. In the appeal,

In the *State v. Whitney* case, an off-duty State Trooper pulled over a man for a traffic violation. The trooper was neither in uniform nor in a clearly marked police vehicle. The defendant stepped out from his vehicle and noticed that the trooper had personal plates on his vehicle. The defendant also observed that the trooper had a weapon that did not appear to be a standard law enforcement weapon. The trooper obtained the defendant’s identification and refused to return it. A brief struggle ensued and the defendant was shot in the groin. As a result, the trial court awarded the defendant damages for false arrest and false imprisonment. The State appealed the ruling; however, the Court of Appeals, Fourth District agreed with the trial court. Specifically, the Court of Appeals noted how the trooper took the license from the defendant and refused to return it. The Court considered this refusal to return the license a restriction of Whitney’s freedom.

In the *James* case, the court recognized that the Officer Windbigler stopped James to investigate James’ erratic driving. The court explained in its ruling that this stop was a detention, and technically an arrest, but it wasn’t an act in which a person was taken into custody. It appears with the *James* case (1993) that the police are in fact allowed to stop motorists for violations of Indiana law regarding the use of Indiana highways; they are not allowed to make an arrest for this same reason or even issue a summons. This case illustrates that the stop (detention) of the vehicle is allowed and a subsequent arrest can be made as long as it is for a crime other than any violation of Indiana motor vehicle law.

In State of Indiana v. Loretta J. Caplinger (1993), an off-duty Lapel Police Officer named Randy Busby observed a vehicle in front of him swerve and cross the center line of the roadway. This occurred in December of 1990. The suspect vehicle then turned west onto Indiana State Road 32 and Officer Busby followed. It should be noted that Officer Busby was in his personal vehicle while following the suspect vehicle. The suspect vehicle then swerved across the center line several more times, almost struck a car heading the opposite direction, and almost ran off the roadway. Officer Busby followed this vehicle from Madison County into Hamilton County. While following the suspect vehicle, Officer Busby called and notified that Madison County Sheriff’s Department that he was following a suspected drunken driver and requested an officer. Officer Busby was then connected with the Hamilton County Sheriff’s Department. At this time, the suspect vehicle turned into a driveway and stopped in a yard.

Officer Busby pulled in directly behind the driver (Caplinger). Caplinger then attempted to back out of the yard and almost struck Officer Busby’s personal vehicle. According to court documents, Officer Busby smelled alcohol coming from Caplinger’s vehicle when he approached it. Officer Busby then reached in Caplinger’s vehicle and turned off the ignition and removed the keys. Officer Busby, who was not in uniform, identified himself as a police officer. Hamilton County Sheriff’s Deputy Bruce Knott arrived and resumed an operating while intoxicated investigation. Caplinger failed three standardized field sobriety tests and was advised of her implied consent warning (If a driver were to refuse to submit to a chemical breath test, their license would automatically be suspended for one year). Caplinger agreed to take the certified test and
provided an adequate breath sample to which she tested at .17%. As a result of the breath test, Caplinger was preliminarily charged with operating a vehicle while intoxicated.

At trial, Caplinger sought to suppress her breath test and all evidence presented at the traffic stop. Caplinger’s basis for this suppression was that she believed she was illegally detained by Officer Busby who was neither in a uniform nor in a clearly marked police vehicle (which at that time was codified as Indiana Code 9-4-8-1). The trial court granted Caplinger’s motion and suppressed all the standardized field sobriety testing and the result of the breath test. The State then appealed the decision.

In the appeal, the State explained that Officer Busby was justified in the detention of Caplinger and that the arrest of Caplinger, by Officer Knott, was valid. Caplinger contested that State’s argument and explained that she believed she was arrested when Officer Busby interfered with her freedom of movement. The court decided that Officer Busby did illegally arrest Caplinger. This decision was based upon precedent set by the Indiana Supreme Court that defined arrests as being when police officers “interrupt the freedom of an accused and restrict his liberty of movement” (quoted in Amstrong v. State (1982), Ind., 429 N.E.2d 647, 651). Essentially, the Indiana Supreme Court found that Officer Busby’s detention was more than just a detention, it was an arrest. This decision was based, in part, on Officer Busby’s own testimony that he removed Caplinger’s car keys so that she could no longer drive. He also testified that he identified himself as a police officer and that Caplinger was not free to leave.

*State of Indiana v. Chris Samaras* (1994)

*State of Indiana v. Chris Samaras* (1994), an Indiana State Police Detective, Bill Smith, was off-duty and not in a clearly marked police vehicle when he observed a
vehicle (driven by Chris Samaras) weaving from lane to lane on I-465 in Indianapolis. This occurred on May 15, 1993. As in the previous case, Detective Smith called for a uniform car to make a traffic stop. Detective Smith was informed, via radio, by Indiana State Trooper Laurie Schmitt that she was responding towards his location.

Detective Smith continued to follow Samaras’ vehicle for approximately fourteen miles. When Detective Smith observed Samaras forcing other vehicles to swerve and miss Samaras’ vehicle, Detective Smith turned on his red, emergency light and signaled Samaras to pull over. Detective Smith then identified himself as a police officer and took Samaras’ driver license and informed Samaras that he was being detained until Trooper Schmitt arrived.

Trooper Schmitt eventually arrived on scene and began a suspect drunk driver investigation. At the scene, Samaras failed standardized field sobriety testing and was later given a certified breath test. Samaras tested at .14% and was preliminarily charged with operating a vehicle while intoxicated. Samara argued at trial that his evidence of intoxication should be suppressed because it stemmed from an illegal traffic stop. The trial court agreed with Samaras and threw out the standardized field sobriety tests results along with the certified breath test. The State of Indiana appealed. Much like the Caplinger case, the appellate court decided that Detective Smith “arrested” Samaras because Samaras was not free to leave despite Detective Smith’s testimony that he was simply detaining Samaras.


*Miller v. State of Indiana* (1994) brings another case in which an off-duty officer stopped a vehicle for suspicion of drunk driving. On December 31, 1992, Dennis Goen (a
firefighter and Special Deputy Sheriff) was traveling on Highway 45 and noticed a car (later known to be driven by Regina Miller) driving erratically. Miller’s car traveled at various speeds, crossed the center line, and weaved from side to side. Deputy Goen followed this vehicle for approximately fifteen minutes and tried, at various times, to get Miller to stop by honking his horn and flashing his lights. Goen was in his personal vehicle and not in a uniform. Eventually, Goen’s vehicle and Miller’s vehicle were stopped at a traffic light and Goen exited his vehicle and approached Miller. Goen then asked Miller if she was alright and if she were on any medication. When Miller told Goen that she was fine and not on any medication Goen expressed to Miller that he did not want her driving any longer and identified himself as a special deputy. Goen then asked Miller to park along the side of the road.

As the traffic light turned green, Miller asked Goen if she could drive her car to a church parking lot down the road. Goen preferred her parking the car there but suggested to Miller that would be acceptable. Goen then asked a noninvolved motorist to call 911 and inform dispatchers that Goen was out of his personal vehicle talking with Miller and to send an on-duty unit.

At the church lot Goen asked Miller if she had been drinking and she replied that she had. Goen then reached into Miller’s vehicle and removed the keys from the ignition. Officer David Drake then arrived and assumed the investigation. Miller told Officer Drake that she had too much to drink and he noticed that she smelled of an alcoholic beverage and that her eyes were bloodshot and her speech was slurred. Officer Drake then asked Miller to perform two standardized field sobriety tests to which Miller failed. Officer Drake transported Miller to the local police station where she provided an
adequate breath sample at .23%. Miller was then preliminarily charged with operating a
vehicle while intoxicated and moved to have her evidence suppressed after Goen stopped
her car. The trial court denied Miller’s motion and convicted her from the bench. Miller
then appealed the decision.

During the appeal, the court found similarities pertaining to this case as with the
*Caplinger* case (1993). As a result of this comparison, this court suppressed the evidence
against Miller as it did in the *Caplinger* case (1993). The State, again, argued that the
stop of Miller was merely a detention as opposed to an arrest. The State also tried arguing
that since Goen was a Special Deputy, rather than a full-time law enforcement officer,
Goen should not be held at the same standard and should be excluded from the uniform
and/or clearly marked car prerequisite. This is an argument which has not been presented
as of yet.

According to Indiana Code 9-13-2-92, only law enforcement officers are
incapable of making an arrest. The State argued that since Goen was appointed as a
Special Deputy by the Sheriff, and not as a full-time law enforcement officer, Goen was
excluded. This law lists the following law enforcement officers who shall be held under
its auspices: state police officers, city, town or county officers, a sheriff, and a county
coroner. The court disagreed with the State’s interpretation. In it’s ruling, the court
explained that its primary objective is to interpret original intent of the legislature.
Because a sheriff can appoint special deputies so that these special deputies have the
powers of law enforcement officers, the court ruled against the State. The court added
that Indiana Code 9-30-2-2 is good public policy. The court found that the intent of the
law was to protect law enforcement officers from any resistance brought against the
officers because the officers were not easily recognized. An additional aim was to prevent injury to citizens from police impersonators. Since law enforcement officers are tasked with wearing a uniform or being in a clearly marked police vehicle the law helps distinguish these officers from impersonators.

While all three judges concurred with the appeal and the suppression of the evidence, Justice William Garrard provided a separate opinion. Briefly, Justice Garrard believed in the intent and spirit of Indiana Code 9-30-2-2 although he felt as if the legislative branch should enact law that would exclude the investigation of operating while intoxicated offenses. Justice Garrard explained that he believed the law helps to differentiate real police officers and impersonators to the public. However, Justice Garrard has suggested that the inherent risk associated with drunk driving should supersede the current law. He concluded his separate opinion by suggesting that Officer Goen could take pride in the fact that he at least prevented injury or death to others.

*State of Indiana v. Timothy G. Hart (1996)*

While the previous cases deal with off-duty officers stopping drivers, this case concerns a citizen’s observation and interaction with a suspected drunk driver. In March of 1995, Jon Collins was driving his vehicle in Vanderburgh County, following a vehicle driven by Timothy G. Hart. Collins observed Hart swerve in and out of traffic and enter into oncoming traffic. After watching Hart almost disregard two automated traffic lights, Collins decided to approach Hart’s vehicle at a third automatic signal when the two were both stopped. Collins then reached into the vehicle and pulled the keys from the ignition and placed Hart’s car in park. Collins observed that Hart was unable to sit up on his own and had to hold onto the steering wheel to keep him upright. Collins also noticed that
Hart smelled strongly of alcohol. While Collins dealt with Hart, another motorist called the police to inform them of the stop.

Collins explained to Hart that the police were en route. When Hart learned the police were responding he exited his vehicle and ran. Collins remained with the vehicle. The police were able to apprehend Hart within one mile from his vehicle. Hart was arrested and charged with operating a vehicle while intoxicated. At the initial trial, Hart moved to suppress the evidence brought against him by the State claiming that the stop was in violation of Indiana Code 9-30-2-2. Hart was granted his request and the State appealed.

The appellate court reviewed the trial court’s decision and reversed the suppression of the evidence. The court viewed the arrest as a valid citizen’s arrest under Indiana Criminal Code 35-33-1-4. Here, the court explained that a person’s Fourth Amendment right (unlawful search and seizure) did not apply to private citizens arresting someone as long as the private citizen was doing so and not as an agent of a police department. In Indiana, citizens can make arrest for misdemeanors that involve any breach of the peace. In fact, this case set precedent on this particular matter because the charge of operating while intoxicated had yet to be considered as a breach of the peace in Indiana. The appellate court did view Hart’s actions (driving while intoxicated) as a breach of a peace. The court also acknowledged that it admitted, as a result of the court’s ruling, that an officer’s authority for operating while intoxicated arrests are more limited that the ordinary citizen’s authority for making the same arrest. This argument was dismissed when the court explained that by limiting a citizen to the same standard would fall outside of the meaning and intent of Indiana Code 35-33-1-4.

The Thompson (1998) case illustrates how a defendant moved to suppress any evidence obtained from him after his traffic stop for violations of a crime other than traffic offenses or an offense related to the use of a motor vehicle. William Thompson was operating his vehicle in Fayette County erratically and according to police testimony, Thompson almost rear-ended a vehicle in front of him as the stopped vehicle was waiting for pedestrian traffic to cross in front of it. Two plain clothes officers stopped Thompson and while Thompson was looking for his registration paperwork, the two officers located a pill bottle which contained heroin. Thompson was charged with drug possession and criminal recklessness (with a vehicle).

Thompson was found guilty of both charges in the Fayette County Court and appealed the trial court’s ruling. One of his appeals involved a challenge of the traffic stop. Thompson argued that the officers were not authorized to affect a traffic stop and arrest him for criminal recklessness because of Indiana Code 9-30-2-2. If the judges of the court of Appeals of the Fifth District were to agree with Thompson, then all of the evidence afterwards would have been considered fruit from a poisonous tree and, therefore, not admitted.

The Court of Appeals, however, did not agree with Thompson. The court stated that despite the two officers both being in plain clothes and in an unmarked vehicle; they stopped Thompson for an offense that was unrelated to any offense regulating the use of a motor vehicle. The court’s opinion explained by stating, “Instead, its purpose is to punish those whose personal conduct presents a substantial risk of bodily harm to others” (Thompson v. State, 1998). The court further explained that Thompson’s actions justified
being charged with criminal recklessness and since he happened to be operating a vehicle while doing so, the offense became more serious.

*Donald Hatcher v. State of Indiana (2002)*

*Hatcher v. State (2002)* involves a motorist, Donald Hatcher, who was stopped in September of 2000 while driving a semi tractor-trailer. On this day, Indiana State Police Sergeant Karol Ruby was southbound on Interstate 65 in an unmarked police vehicle. She was also off-duty and not in uniform. Hatcher passed Sergeant Ruby on her right. Sergeant Ruby activated her in-car radar unit and recorded the speed Hatcher was traveling. Hatcher eventually made an illegal lane change as well.

Sergeant Ruby called for assistance on her radio to make a traffic stop. Hatcher then began to exit the highway and Sergeant Ruby followed him. Hatcher stopped at a truck stop and filled up his semi tractor-trailer. Hatcher then went inside to pay for gas and came back out. As Hatcher exited the store, Sergeant Ruby and two Whiteland Police Officers (in uniform) approached him. Sergeant Ruby then identified herself and continued to issue Hatcher citations for speeding (76 miles per hour in a 40 miles per hour zone), unsafe lane movement, and for a tire violation.

Instead of paying for the citations, Hatcher appeared in court to contest the violations. Hatcher asked the judge to dismiss the case because he believed Sergeant Ruby did not meet the requirements falling under Indiana Code 9-30-2-2. The judge ruled in favor of the state and Hatcher appealed the decision to the Court of Appeals in the Second District. Hatcher believed that since Sergeant Ruby was not in uniform or in a marked police vehicle, she could not cite him. Hatcher added that he also did not believe
Sergeant Ruby could cite him since he was never under arrest. Ultimately, the Court of Appeals affirmed the lower court’s judgment.


In _Davis v. State_ (2006), an undercover narcotics officer was watching a 24 hour gas station in a deprived section of Indianapolis in March of 2005. Officer Kevin Watterson was a member of the Neighborhood Resource Unit and was looking for narcotics, firearms, and prostitution in the area. He was in an unmarked police car and was wearing a dark-colored, hooded sweatshirt, jeans, and a vest with the wording “POLICE” on it. Additionally, Officer Watterson wore a badge on his right shoulder. He specifically chose this area because he had testified that he had made between 20 and 50 arrests at this same gas station in the last four years for the same classifications of crime.

Shortly after beginning his surveillance, Officer Watterson observed a green Taurus fail to signal when it pulled into the gas station parking lot. A second vehicle then pulled into the same parking lot parking next to the Taurus. A passenger then got out of the second vehicle and into the passenger seat of the Taurus. Officer Watterson asked for an additional unit to keep surveillance on the second car as it left and Officer Watterson eventually approached the Taurus and knocked on the driver window.

Officer Watterson explained to the driver, Charles Brennan that he was stopping him because he did not signal a turn and because he suspected him to be involved with narcotic activity. When asked, Brennan admitted to having a gun under his seat and that he had a permit for the gun. Officer King arrived on the scene as back-up and observed another passenger in the rear of Brennan’s vehicle. Officer King asked the passenger, Ernest Davis, to step out of the vehicle. As Davis exited the vehicle, Officer King
observed a gun under the passenger seat. Officer King placed Davis into handcuffs and told Davis that he was under arrest for possession of a firearm. At the scene, Davis denied having the firearm. Davis subsequently filed a motion to suppress at the trial and argued that Officer Watterson was not in uniform or in a marked vehicle and that there was no reasonable suspicion for any criminal activity. The trial court denied Davis’ motion so he appealed the decision to the Court of Appeals.

The Court of Appeals recognized that the wearing of a badge by Officer Watterson did not satisfy the requirement of wearing a uniform. The court also noted that Officer Watterson’s vest did not display a name or an Indianapolis Police Department logo. In his testimony, the driver of the vehicle (Brennan) mentioned that he believed Officer Watterson was a potential robber as he walked up to Brennan’s vehicle. Because the court recognized that a potential pitfall of any officer not being in uniform or a clearly marked police vehicle would be that of officer safety, the court ruled against the detention of the vehicle for any vehicular law investigation. The court then determined, with a vote of two to one, that Officer Watterson also lacked enough reasonable suspicion to stop the car as it related to narcotic activity. It should be noted that Justice Mark Bailey dissented with the majority opinion and believed this reasonable suspicion existed.


The *Williamson* case (2006) involved an impaired driver in Warrick County. An off-duty excise officer employed by the Indiana Department of Alcohol and Tobacco, (Charles Butler), was in an unmarked police vehicle and out of uniform when he overheard a dispatched call involving Laura Williamson. Officer Butler responded to the area since he was close and located Williamson’s vehicle. While following the vehicle,
Officer Butler observed several infractions related to the use of a motor vehicle on an Indiana highway and updated dispatch so that a marked, on-duty unit could make a traffic stop.

Eventually, Williamson pulled into an apartment complex and exited her vehicle. Officer Butler then exited his vehicle and approached Williamson on foot, identified himself, and presented a badge of authority for identification purposes. Officer Butler then explained to Williamson that he was assisting the Warrick County Sheriff’s Department with the 911 call reporting her driving behavior. Williamson explained to Officer Butler that she home and began looking for her keys to her apartment. Williamson could not locate her keys and never entered her home. Officer Butler then continued his conversation with Williamson while awaiting the arrival of an on-duty unit.

Shortly after, Sergeant Paul Weinzapfel (Warrick County Sheriff’s Department) arrived and began an operating while intoxicated investigation. Williamson failed standardized field sobriety tests and provided Sergeant Weinzapfel with enough probable cause for an arrest. Williamson was charged with two misdemeanors related to operating while intoxicated and filed a motion to suppress any and all evidence discovered during the stop. After hearing Williamson’s motion, the trial court granted the suppression. The State of Indiana then appealed the decision to the Court of Appeals.

During the appellate hearing the court recognized that Officer Butler never stopped Williamson or detained her (restricting her movement). The court explained that just because Officer Butler asked Williamson some questions did not necessarily mean that Williamson could automatically believe she was not free to leave. The court also took into consideration a comment made by Williamson when she told Officer Butler that
she had reached home and referred to it as home base. This court considered this comment to mean that Williamson felt as if she were free from arrest or that any arrest was taking place. The court found that the trial court made an error by granting the suppression and remanded the decision and sent the case back to the trial court.


This final example involves Spring Lake Town Marshal Richard Jefford from Hancock County. In May of 2005, Marshal Jefford was on foot walking around in Spring Lake. Jefford was in ordinary clothing and did not have a badge on him. While walking, Jefford observed Larry Maynard driving a Cadillac. Jefford testified that he had known Maynard for approximately 20 years and believed his license was suspended. Jefford recorded the vehicle’s plate number and eventually drove to the Sheriff’s Department located in Greenfield. There, Jefford confirmed that Maynard license was suspended.

Marshal Jefford then filled out arrest paperwork which included a probable cause affidavit and a ticket. Jefford took these documents and presented them to the prosecutor of Hancock County. With the proper paperwork filled out by Jefford, charges were brought against Maynard. Two months later, Maynard was arrested in his home on a warrant from the previously submitted paperwork. Maynard was scheduled for a hearing in January of 2006 and filed a motion to dismiss the case and claimed that Marshal Jefford did not have the authority to issue or build an arrest as it applied to Indiana Code 9-30-20-2. Maynard’s motion was not granted and he was found guilty of operating a motor vehicle when his privileges were suspended for life. Maynard appealed his decision to the Court of Appeals.
Maynard, like previous defendants, claimed that the arresting officer did not have the authority because he (Marshal Jefford) was out of uniform and not in a clearly marked police vehicle. The Court of Appeals recognized that at no time Marshal Jefford tried to stop or detain Maynard; there never was any direct interaction between the two. Maynard even tried having the case dismissed because he felt that Indiana Code 9-30-2-2 prevented police officers from issuing any tickets when they were out of uniform or not in a marked car despite being on a different date at a different time. The court denied Maynard’s appeal and affirmed the decision of the lower, trial court.

Professional Interpretations and Experiences

As an officer with 13 years of experience (with 8 years as a plain clothed detective) I have observed firsthand how restrictive Indiana Code 9-30-2-2 can be. There have been countless times where I would have liked to issue a summons for violations of Title 9 of the Indiana Criminal Code but could not because I was in an unmarked car and in plain clothes. Locally, all Muncie police detectives are assigned to an unmarked, Ford Taurus. Each Taurus is outfitted with a siren box and has emergency lights that are not easily seen until they are activated. Each Taurus; however, has a police license plate and a police radio antenna mounted on the rear of the vehicle. The Muncie Police Department has been issuing these vehicles since 1998 and the detectives who operate these vehicles acknowledge that these vehicles are easily recognized as police vehicles, despite not being clearly marked. Instead of relying on my own, subjective personal experiences; however, I sought experiences and interpretations of other officers from Indiana as well as other states, from local prosecutors, and from two local judges.
Ball State University Police Chief Gene Burton shared his thoughts about the law with me. According to Chief Burton (personal communication, August 18, 2008), the law is prohibitive for plain clothes officers. Chief Burton continued and mentioned that he did not believe the law was even entirely understood by the citizenry. Chief Burton explained that, while serving as his department’s executive, he has received numerous complaints on detectives who were in unmarked cars and were not making traffic stops. The law, and the limitations it has on plain clothes police officers, are difficult for Chief Burton to explain to ordinary citizens. I asked Chief Burton if he would suggest any changes or alterations to the current law. He responded, “We should examine if the current law has outlived its usefulness. What are we trying to protect or prohibit by having the law? Is it achieving these goals? I would say it probably isn’t” (personal communication, August 18, 2008).

I inquired with co-workers who all worked plain clothed details including Detectives Brad Wiemer and Nathan Sloan. These two officers had a considerable difference with seniority on the department and I was looking for possible differences in opinion. Detective Wiemer has been an officer since 1994 and a detective since 1998. Detective Sloan has been an officer since 2001 and a detective since 2003. Both officers serve on hazardous duty teams with the department (S.C.U.B.A. and S.W.A.T. respectively) and have significant experience in the criminal justice system.

When I asked Detective Wiemer about the current statute, he was undecided. “I understand why the law is there, but I also think the law was a knee jerk reaction by legislators to try and fix a problem that is more isolated than widespread” (personal communication, August 18, 2008). He explained that he believed the law was written to
protect the public from potential impersonators. Detective Wiemer concurs with Chief Burton and stated that he did not believe that the majority of the population was knowledgeable about the law. I asked if he could recall any specific instances and he recalled a night during the holidays when he was working a plain clothed, overtime assignment.

Detective Wiemer stated that he was in his unmarked Ford Taurus wearing jeans and a sweatshirt and driving on South Madison Street. The Muncie Fire Department had two fire trucks responding to a fire on Madison Street and were both running with their lights and sirens activated. As Detective Wiemer pulled to the side so that the fire trucks could proceed by him (opposite direction), a vehicle, traveling the same direction as Wiemer, passed him. This vehicle, according to Wiemer, continued passing other vehicles that were yielding the right of way and pulled over to the side. After this same vehicle disregarded an automatic traffic light, Wiemer stopped the vehicle and discovered that the driver had been drinking. Wiemer did not permit the driver to continue driving, but knew he could not make an arrest. The driver’s sister was called to the scene and took possession of the vehicle and gave her brother a ride home. Wiemer explained that he was frustrated by not being able to make the arrest.

Detective Sloan has experienced frustration albeit in a different manner. Sloan admitted that even he is confused about the law. He expressed to me that he was unsure if he was unable to arrest drivers for traffic offenses alone or if he was unable to arrest drivers for any offense. Sloan was further frustrated because he claims to have approached judges previously with this very scenario and that he has never been given a clear answer. Sloan still feels as if he is allowed to stop vehicles as long as he was not
arresting them or issuing them a traffic ticket: “...it does not say that you can’t stop people on the street to tell me them that their driving is inappropriate without arresting them or issuing them a ticket” (personal communication, August 15, 2008). Sloan adds that he has made several stops on felons in the past, but recognizes that these persons have had warrants for their arrests. He finally takes aim with the distinctive uniform wording. According to Sloan, “Anyone who sees me on duty as a detective knows that I am an officer” (personal communication, August 15, 2008). Sloan was referring to the badge and gun worn on the right side of his belt and his handcuffs and extra gun magazine on his left side of his belt. All of these items are in clear view and distinguish him from ordinary citizens. Because of this, Sloan thinks that the law should be rewritten.

I became curious to determine if other states had similar laws and perhaps Indiana copied their state laws. I contacted Sergeant Dan Bolch with the Dane County Sheriff’s Department in Dane County, Wisconsin. I briefed Sergeant Bolch on the current Indiana law. Sergeant Bolch explained that Wisconsin did not have any such law. Bolch explained that in Wisconsin, “the officer, if on duty or in disguise, must make a reasonable effort to inform the arrestee of his/her identity, as an officer” (personal communication, August 27, 2008).

Sergeant Scott Dunham with the Northbrook (Illinois) Police Department and Sergeant Tyler Partyka of the Chicago Police Department provided me with a brief explanation of Illinois’ law. Sergeant Partyka (personal communication, November 18, 2008) explained that drivers in Illinois are allowed to ask for a uniformed car to be present before they identify themselves. Sergeant Dunham stated that in order to “charge with fleeing or eluding you have to have emergency lights activated, giving reasonable
indication of being a police vehicle and the police officer must be uniformed” (personal communication, November 18, 2008). According to Sergeant Dunham there is no requirement to be uniformed to make a traffic stop in general, regardless of reason.

Sergeant Dunham provided me with an excerpt of Illinois law that reads:

Fleeing or attempting to elude a peace officer. (a) Any driver or operator of a motor vehicle who, having been given a visual or audible signal by a peace officer directing such driver or operator to bring his vehicle to a stop, willfully fails or refuses to obey such direction, increases his speed, extinguishes his lights, or otherwise flees or attempts to elude the officer, is guilty of a Class A misdemeanor. The signal given by the peace officer may be by hand, voice, siren, red or blue light. Provided, the officer giving such signal shall be in police uniform, and, if driving a vehicle, such vehicle shall display illuminated oscillating, rotating or flashing red or blue lights which when used in conjunction with an audible horn or siren would indicate the vehicle to be an official police vehicle. Such requirement shall not preclude the use of amber or white oscillating, rotating or flashing lights in conjunction with red or blue oscillating, rotating or flashing lights as required in Section 12-215 of Chapter 12 (Illinois Compiled Statutes, 625 ILCS 5/12-215, 2008).

To paraphrase, the law allows plain clothes police officers to perform traffic stops, despite the offense, for all crimes. In order to charge a driver for eluding (resisting in Indiana law) the police officer making the stop shall be in a uniform and be in an official police vehicle with flashing lights and an audible siren. The Illinois legal language seems
to acknowledge that there is a basis for a legal defense for those drivers who claim to not know that the officer in plain clothes was not an actual police officer.

Detective Rob LeBlanc with the Fairfax County (Virginia) Police Department provided me with some insight pertaining to his own experiences as well as current law in the Commonwealth of Virginia. LeBlanc informed me that he moved from patrol to investigations in the year 2000 and that he has initiated numerous vehicle stops. Some of these stops resulted in arrests, some did not. LeBlanc had this to offer as an opinion:

All have this in common...without being able to predict the circumstances and evolution of each field contact, you follow reasonable, prudent steps to identify yourself and take appropriate law enforcement action... not always in that order.

The identification, while in plain clothes or discrete clothes (business attire), usually begins with a verbal declaration and command that is either accompanied by or precedes the best available display of identification and/or insignia (R. LeBlanc, personal communication, August 14, 2008).

LeBlanc added that many stops are rarely the same and that situational assessments are routinely performed. The key, according to LeBlanc, “is the cop acting reasonably and properly?” (personal communication, August 14, 2008).

LeBlanc additionally provided two excerpts from the Code of Virginia. Both involve police identification while making arrests. Title 19.2-78 reads:

All officers whose duties are to make arrests...who shall make any arrest...shall be dressed at the time of making any such arrest, search or seizure in such uniform as he may customarily wear in the performance of his duties which will clearly show him to casual observation to be an officer. Nothing in this section
shall render unlawful any arrest, search or seizure by an officer who is not in such customary uniform (Code of Virginia, 2008).

Title 46.2-102 defines enforcement actions by law enforcement as well and described how officers are to identify themselves. According to this statute, “Every law-enforcement officer shall be uniformed at the time of the enforcement or shall display his badge or other sign of authority” (Code of Virginia, 2008). LeBlanc explained that he was more comfortable with Virginia’s language than Indiana’s. He pointed out that “announcing or identifying your authority can never be more important than your personal safety and the safety of those you are sworn to protect” (personal communication, August 14, 2008).

Sgt. Thomas C. Haines of the Virginia State Police concurred with what was reported by Detective LeBlanc. Sgt. Haines added that the Virginia Code classifies traffic offenses as misdemeanor offenses. Sgt. Haines currently works in the Hampton Roads /Virginia Beach area for the State Police and added that all of their unmarked police vehicles are equipped with portable blue lights and sirens. According to Haines, these vehicles include those issued to narcotics officers. Sgt. Haines explained that in accordance with his department’s policy, “all officers who measure speed using any radar, vascar, and aircraft are required to be in uniform and display a badge of authority” (personal communication, August 14, 2008).

I contacted Sergeant Edward Greene of the Fairfield Police Department. Sergeant Greene and I spoke briefly about the matter. I explained Indiana’s law to Sergeant Greene and he did not agree with it. Frankly, Sergeant Greene remarked about how conservative the State of Indiana is and how liberal his state is. He believed the two states would have
each other’s law. When I asked specifically about Connecticut’s prerequisites, Sergeant Greene relayed to me “that any officer in Connecticut only had to identify themselves and they can make misdemeanor and felony arrests” (personal communication, August 14, 2008).

I contacted Lt. Cassandra Trout with the California Highway Patrol. Lt. Trout advised me that California does not have any law prohibiting what she refers to as “stops” and “enforcement contacts” (personal communication, August 15, 2008). Lt. Trout went on to explain that many vehicles within the California Highway Patrol are unmarked and that these types of stops occur routinely. Lt. Trout did add; however, that the policy of the California Highway Patrol dictates that traffic enforcement vehicles must be clearly marked. This doesn’t prevent officers in other divisions from making occasional traffic stops; it just requires all traffic enforcement officers to be in uniform since the majority of their work involves traffic law.

After speaking with these officers from other states I wanted to visit the opinion of a prosecutor. I contacted Deputy Prosecutor Diane Frye and asked for her thoughts regarding Indiana Code 9-30-2-2. Mrs. Frye relayed to me that she was a believer in the current law. She voiced her concern over certain people obtaining fictitious badges and uniforms and then committing crimes against unsuspecting persons. She went on by suggesting, “It would be too dangerous to allow officers who were not in uniform or in a marked car to begin to stop people, because the criminal population would take advantage of this” (personal communication, August 15, 2008).

Mrs. Frye expressed her concern for the citizenry and suggested that citizens would have problems determining if they were required to stop if these types of stops
were allowed. According to Mrs. Frye, these citizens would be allowed to plead safety concerns for not stopping. It would be difficult for these people, according to Mrs. Frye, to ascertain whether the persons stopping them were truly law enforcement or not. Mrs. Frye suggests that, in most cases, officers will be permitted to call for a marked car to assist. Ultimately, she views this as a safety issue.

I also enjoyed the opportunity to contact Delaware County Prosecutor Mark McKinney and solicit his opinions. Mr. McKinney stated, “I think it is a rational statute, from a public safety and confidence standpoint” (personal communication, August 15, 2008). He mentioned stories about women being pulled over by impersonators and eventually raped. According to McKinney, whether someone believes those stories or not, perception is reality. Ultimately, Mr. McKinney believes, with the advances in technology and communication, that there is a minimal burden on plain clothes officers to call and request assistance from a marked patrol car. I asked Mr. McKinney if he had any personal stories related to the law and he mentioned that he has had cases dismissed or not filed because those stops were not compliant with the law, but that those cases were “few and far between” (personal communication, August 15, 2008).

After speaking with police officers and prosecutors I wanted to obtain the perspectives of judges. I was fortunate enough to speak with Judge Marianne Vorhees (Delaware County Circuit Court 1) and Judge Linda Ralu Wolf (Muncie City Court, recently elected to serve in Delaware County Circuit Court 3). Judge Vorhees does not get to sit on trials that involve Indiana Code 9-30-2-2 primarily because her court has jurisdiction over felonies in Indiana. Despite not dealing with these classifications of crime, Judge Vorhees did offer some opinion on the law. She explained that, as a woman,
she may be fearful if she were being pulled over in the middle of the night by an unmarked car without a uniform present and understands why the law was written, but she added that she is not in favor of “hard and fast rules” and doesn’t believe in “never, never, never” (personal communication, November 19, 2008). She then used an example of a motorist speeding down Bethel, possibly drunk, when school children were present. She would prefer that an unmarked car would have the authority to stop that vehicle and make an arrest if need be.

Because Judge Wolf tries misdemeanor cases and has jurisdiction over traffic offenses, she was less willing to offer an opinion on the matter. She explained that she did not want to project an opinion on a legal matter that she may very well have to make a ruling on. Judge Wolf did explain that she has been involved with over 155,000 cases in the Muncie City Court in the last 21 years (L. Wolf, personal communication, November 19, 2008). During her tenure, she had one case come before her involving an operating while intoxicated offense that involved plain clothes detectives. Since the plain clothes detectives were aided with the assistance of a uniformed policeman, Judge Wolf states she found the defendant guilty. I asked Judge Wolf why she believed she has only seen one case in her time and she assumed that the prosecutor’s office does well with screening out potential problem cases, by dismissal, before they are brought to trial.

Conclusion

Laws are added and amended as a result of certain situations. In 1927, when this law was originally placed into the Indiana Criminal Code, the intent of the law was not known. As one of the Court of Appeals noted, their interpretation of the law is to protect both the police and citizens from any harm. Then, with the addition of a clearly marked
police vehicle it is obvious that the law changed as the use and addition of more automobiles increased. Again, it is reasonable to assume that the new change in the law was intended to protect citizens and the police from any unforeseen danger related to any traffic stops. But does this truly help protect citizens?

As stated in previous cases, this protection is afforded to policemen also. In the Whitney case, the defendant did not believe that the person pulling him over was a policeman. The defendant ended up with a gun wound and it is this type of scenario that the law wants to avoid. I disagree. The law, as written, allows a plain clothes officer in an unmarked car to stop citizens from all offenses unrelated to the regulation and use of a motor vehicle. Some of these offenses would include kidnapping, murder, rape, or even criminal recklessness. It is my opinion that the chance of injury to either a policeman or citizen is escalated because of the very nature of the official contact. I cannot foresee a policeman getting into a struggle because that policeman was issuing someone a seat belt ticket or stopped them because they were speeding. I would expect; however, that a policeman would get involved in a confrontation when he or she was stopping a driver for a more serious crime. Besides, the law sends two messages by saying it is not legal to make an arrest for operating while intoxicated when the inherent risk of injury is obvious, but it is authorized to make an arrest for criminal recklessness. Both crimes appear to eliminate similar activity. But there are elements that do less with criminal law and more with logistics.

Today, more and more police departments are facing crippling budgets as tax dollars are becoming more stretched. These budget cuts may result in fewer policemen with fewer resources. Laws which prohibit police officers from performing their duties
then compound the problem. With fewer policemen and restrictive legislation there will be, at a minimum, less chance for the detection and/or apprehension of drunk drivers. It would be irresponsible to say that the number of drunk drivers would increase, but the chance of finding these drunk drivers would be limited. And while I respect the opinions provided by both Mark McKinney and Diane Frye, I disagree about the ease of having a uniformed car come to the location of a driver who is violating or has violated any Title 9 offense. Many of these drivers, in violation, are still in transit making it more difficult for a uniformed car to get involved. Since there are fewer police officers, and other vehicular traffic exists, many officers utilize their lights and siren to get through the traffic so that they can help enforce a Title 9 offense. This isn’t something that is safe or realistic. In essence, the law requires a marked police unit to violate the very same types of traffic laws in order for an unmarked unit to enforce one. As a result, plain clothes officers allow the illegal driving behavior to continue.

To prove the point about how uneasy it is to obtain immediate assistance, one would simply need to review the cases discussed in this paper and examine the time that was required before a uniformed officer was present. In the Caplinger case, an off duty officer followed an intoxicated driver from one county into another. The Samaras case involved an off-duty officer following a suspected drunk driver for 14 miles before stopping the vehicle, after almost hitting oncoming traffic. In both cases, the off-duty officers had called in the suspect drunk and asked for a uniform presence to make the stop. Without considering any intent of the law, it is unarguable that these officers were forced to wait for another police officer when the original police officer had the very same arrest powers, but could not act only because the officer was not wearing a uniform
or in a clearly marked vehicle. Simply put, 9-30-2-2 doesn’t seem to be concerned with the lives and safety of innocent motorists when operating while intoxicated offenses are involved. While safety is a concern for travelling motorists, safety during a traffic stop is important as well.

Generally, police are instructed to stop vehicles in a safe manner. This can include, but is not limited to, on straight stretches of road, on level ground, off of main thoroughfares, and away from high crime area. While citizens don’t necessarily comprehend a police officer’s point of view, these stops make it safer for both the citizen and the officer. Increasing case loads for undercover officers present very real problems pertaining to this law.

Detectives and plain clothes officers, on occasion, do surveillance on different and dangerous cases. If target vehicles leave locations that are under surveillance there is often a need to stop the vehicle. Forcing plain clothes officers to wait for uniformed officers and/or marked police vehicles takes any advantage away from them. Target vehicles can make it from one point to another and the driver can exit the vehicle before a marked/uniformed unit arrives, without ever ascertaining the identity of the driver. By allowing plain clothes officers to make stops in unmarked cars, the advantage is given back to the officers and the stops become safer for both parties.

The Court of Appeals have declared that safety for both parties is the intent for the law. The claim is that it protects officers from citizens who may not readily recognize the officers. It also claims to protect the citizens from impersonators who prey on the unknowing. But as the Hart case (1996) points out, citizens are permitted to arrest fellow citizens for criminal offenses. It doesn’t seem logical to not allow actual police officers
the ability to stop cars in unmarked cars or when they are not in uniform, but to allow ordinary citizens to make these kinds of arrests. Why would a citizen need to impersonate an officer to arrest someone when they can do so themselves?

Another problem with the new law is the assumption made by legislators that a citizen should easily recognize the driver of a vehicle behind them and determine whether or not that driver is in a uniform or operating a clearly marked police car. Nighttime settings make the identification of drivers very difficult. I find it hard to believe that an ordinary person, looking in their rear view mirror with brilliant emergency lights illuminated, would be able to determine what exactly a police officer was wearing while the officer was still inside the vehicle. This suggests that the motorist has already stopped. It would be even more difficult for a motorist who was still operating a vehicle to determine if the officer behind the motorist was in uniform or not, or in a marked vehicle. The law, in this regard, is a little idealistic.

Markings on police cars generally involve striping, police insignias, the word “POLICE” on them, and a seal of City, Town, or State. These markings do make these vehicles stand out, but they are always located on the sides and rear of a vehicle. Other than flashing red and blue lights, a motorist being pulled over by a clearly marked police vehicle is incapable of seeing such markings. Additionally, marking cars to look like police cars and buying uniforms to resemble actual police uniforms is not impossible. The Armed & Famous reality television show demonstrated how the producers were able to purchase older, white Ford Crown Victorias and stripe them to match police vehicles already in the Muncie Police Department’s fleet. I think an interesting point would be to
provide a clearer definition of “clearly marked”. This may be something that can potentially be examined in Indiana’s higher courts on appeal.

Impersonations of police officers will not cease. Indiana Code 9-30-2-2 does not enhance the penalty for those who impersonate the police; it only prevents the police from being able to effectively do their job. Besides, criminals who impersonate police also do so by approaching people at their homes or on the street. To use the same intent of Indiana Code 9-30-2-2 would mean that police officers should not be allowed to make investigatory contacts with citizens in the field if they were not in uniform.

Administrators and the public consider the employment of police officers differently than other professions. With police work, officers are considered on-duty 24 hours despite whether they are on the clock or not. But the law seems to suggest something different. The law does not want off-duty officers or officers in unmarked cars to enforce Title 9 offenses. As a result, some officers turn off their enforcement capacities to avoid trouble and, as Detective Sloan suggested, confusion.

But this confusion seems to be on the part of the police. The law has been in effect since 1927, but not very many citizens seem to know about the law. There is no statistical data that I am aware of to measure what percentage of Indiana residents are familiar with the law, but every citizen I have asked is not familiar with it. This may be a benefit. The impact of the law is confusing for policemen. In fact, Detective Sloan is one of many police officers who have told me that they were confused about stopping vehicles in unmarked cars. With more citizens knowing about the law, it would be reasonable to believe that they would be equally as confused. A very plausible result could involve more police pursuits with additional risks of injury to innocent parties
simply because a motorist did not think they had to stop. While these same motorists may
not flee at a high rate of speed and cause an accident on their own, the result of a police
officer following a motorist with lights and a siren activated disrupts traffic and induces
hazardous situations.

Laws are written to protect people from certain crimes. What does 9-30-2-2
protect people from? It is obvious that since 1927 there are those who still impersonate
the police. The passing of 9-30-2-2 has not rid society of them and if 9-30-2-2 were to be
repealed, laws still exist to deal with those who impersonate officers. Ironically, with
repeal, officers are more inclined to stop a potential impersonator because that person
may have committed a violation of a motor vehicle law. Lastly, our courts often examine
the totality of circumstances when making decisions. Perhaps, after reading some of these
arguments, our legislature can accomplish the same thing. I would like to see Indiana
accomplish something similar to California or Virginia. Both states appear to mandate
uniforms for traffic enforcement officers and still permit plain clothed officers the ability
to make vehicle stops related to motor vehicle enforcement laws.
APPENDIX


(a) "Law enforcement officer", except as provided in subsection (b), includes the following:

(1) A state police officer.

(2) A city, town, or county police officer.

(3) A sheriff.

(4) A county coroner.

(5) A conservation officer.

(6) An individual assigned as a motor carrier inspector under IC 10-11-2-26(a).

(7) A member of a consolidated law enforcement department established under IC 36-3-1-5.1.

(8) An excise police officer of the alcohol and tobacco commission.

Indiana Code 9-30-2-2 Uniform and badge; marked police vehicle.

A law enforcement officer may not arrest or issue a traffic information and summons to a person for a violation of an Indiana law regulating the use and operation of a motor vehicle on an Indian highway or an ordinance of a city or town regulating the use and operation of a motor vehicle on an Indiana highway unless at the time of the arrest the officer is:

(1) wearing a distinctive uniform and a badge of authority; or

(2) operating a motor vehicle that is clearly marked as a police vehicle; that will clearly show the officer of the officer’s vehicle to casual observations to be an
officer or a police vehicle. This section does not apply to an officer making an arrest when there is a uniformed officer present at the time of the arrest.

(3) Indiana Code 35-33-1-4 Citizen’s arrest.

(4) (a) Any person may arrest any other person if:

(5) (1) The other person committed a felony in his presence;

(6) (2) A felony has been committed and he has probable cause to believe that the other person has committed that felony; or

(7) (3) A misdemeanor involving a breach of peace is being committed in his presence and the arrest is necessary to prevent the continuance of the breach of peace.

(8) (b) A person making an arrest under this section shall, as soon as practical, notify a law enforcement officer and deliver custody of the person arrested to a law enforcement officer.

(9) (c) The law enforcement officer may process the arrested person as if the officer had arrested him. The officer who receives or processes a person arrested by another under this section is not liable for false arrest or false imprisonment.

Indiana Code 35-33-1-5 Arrest definition.

Arrest is the taking of a person into custody, that he may be held to answer for a crime.

Indiana Code 35-41-2-2 Culpability
(a) A person engages in conduct “intentionally”, if when he engages in the conduct, it is his conscious objective to do so.

(b) A person engages in conduct “knowingly” if, when he engages in the conduct, he is aware of a high probability that he is doing so.

(c) A person engages in conduct “recklessly” if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.


(b) A person who recklessly, knowingly, or intentionally performs:

   (1) an act that creates a substantial risk of bodily injury to another person; or

   (2) hazing;

commits criminal recklessness. Except as provided in subsection (c), criminal recklessness is a B misdemeanor.

(c) The offense of criminal recklessness as defined in subsection (b) is:

   (1) a Class A misdemeanor if the conduct includes the use of a vehicle.
REFERENCES


