

# HOUSE BILL No. 1552

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 9-30-5-5; IC 20-33-9-1.5; IC 34-24-5; IC 35-40-5-3; IC 35-42; IC 35-43-2-2; IC 35-45-2-2.

**Synopsis:** Criminal law matters. Reclassifies the level of the offense for causing the death of another person or a law enforcement animal when operating a vehicle in certain circumstances if: (1) the person has a previous conviction of operating while intoxicated within the five years preceding the commission of the offense; or (2) the person operated the vehicle when the person knew that the person's driver's license, driving privilege, or permit is suspended or revoked. Provides that if a person is convicted of harassment or public harassment, the victim of the offense has a civil cause of action against the convicted person. Reclassifies reckless homicide from a Level 5 felony to a Level 4 felony. Reclassifies certain acts of criminal recklessness from Level 5 felonies to Level 4 felonies. Specifies that a person who knowingly or intentionally breaks and enters a building or a structure, other than a dwelling, of another person without the other person's consent commits criminal trespass, a Class A misdemeanor. Defines the crime of public harassment, a Class A misdemeanor.

**Effective:** July 1, 2017.

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January 23, 2017, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

## HOUSE BILL No. 1552

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 9-30-5-5, AS AMENDED BY P.L.26-2016,  
2       SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2017]: Sec. 5. (a) A person who causes the death of another  
4       person when operating a vehicle:  
5               (1) with an alcohol concentration equivalent to at least  
6               eight-hundredths (0.08) gram of alcohol per:  
7                       (A) one hundred (100) milliliters of the person's blood; or  
8                       (B) two hundred ten (210) liters of the person's breath;  
9               (2) with a controlled substance listed in schedule I or II of  
10              IC 35-48-2 or its metabolite in the person's blood; or  
11              (3) while intoxicated;  
12       commits a Level 5 felony. However, the offense is a Level 4 felony if  
13       the person has a previous conviction of operating while intoxicated  
14       within the ten (10) years preceding the commission of the offense, or  
15       if the person operated the vehicle when the person knew that the  
16       person's driver's license, driving privilege, or permit is suspended or  
17       revoked. ~~for a previous conviction for operating a vehicle while~~



1 ~~intoxicated.~~

2 (b) A person at least twenty-one (21) years of age who causes the  
3 death of another person when operating a vehicle:

4 (1) with an alcohol concentration equivalent to at least  
5 fifteen-hundredths (0.15) gram of alcohol per:

6 (A) one hundred (100) milliliters of the person's blood; or

7 (B) two hundred ten (210) liters of the person's breath; or

8 (2) with a controlled substance listed in schedule I or II of  
9 IC 35-48-2 or its metabolite in the person's blood;

10 commits a Level 4 felony. **However, the offense is a Level 3 felony**  
11 **if the person has a previous conviction of operating while**  
12 **intoxicated within the five (5) years preceding the commission of**  
13 **the offense, or if the person operated the vehicle when the person**  
14 **knew that the person's driver's license, driving privilege, or permit**  
15 **is suspended or revoked.**

16 (c) A person who causes the death of a law enforcement animal (as  
17 defined in IC 35-46-3-4.5) when operating a vehicle:

18 (1) with an alcohol concentration equivalent to at least  
19 eight-hundredths (0.08) gram of alcohol per:

20 (A) one hundred (100) milliliters of the person's blood; or

21 (B) two hundred ten (210) liters of the person's breath; or

22 (2) with a controlled substance listed in schedule I or II of  
23 IC 35-48-2 or its metabolite in the person's blood;

24 commits a Level 6 felony. **However, the offense is a Level 5 felony**  
25 **if the person has a previous conviction of operating while**  
26 **intoxicated within the five (5) years preceding the commission of**  
27 **the offense, or if the person operated the vehicle when the person**  
28 **knew that the person's driver's license, driving privilege, or permit**  
29 **is suspended or revoked.**

30 (d) A person who violates subsection (a), (b), or (c) commits a  
31 separate offense for each person or law enforcement animal whose  
32 death is caused by the violation of subsection (a), (b), or (c).

33 (e) It is a defense under subsection (a)(2), (b)(2), or (c)(2) that the  
34 accused person consumed the controlled substance under a valid  
35 prescription or order of a practitioner (as defined in IC 35-48-1) who  
36 acted in the course of the practitioner's professional practice.

37 SECTION 2. IC 20-33-9-1.5, AS ADDED BY P.L.72-2006,  
38 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
39 JULY 1, 2017]: Sec. 1.5. As used in this chapter, "harassment" refers  
40 to harassment under ~~IC 35-45-2-2~~. **IC 35-45-2-2(a) and public**  
41 **harassment under IC 35-45-2-2(b).**

42 SECTION 3. IC 34-24-5 IS ADDED TO THE INDIANA CODE AS



A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]:

**Chapter 5. Cause of Action for Victims of Harassment**

**Sec. 1. As used in this chapter, "harassment" refers to harassment (as described in IC 35-45-2-2(a)) and public harassment (as described in IC 35-45-2-2(b)).**

**Sec. 2. If a person is convicted of harassment, the victim of the offense:**

**(1) has a civil cause of action against the person convicted of the offense; and**

**(2) may recover the following from the person in the civil action:**

**(A) Actual damages.**

**(B) Equitable relief, including injunctive relief.**

**(C) Punitive damages.**

**(D) Reasonable attorney's fees and court costs.**

**(E) Any other relief a court considers proper.**

**Sec. 3. An action under this chapter must be brought not more than two (2) years after the date the person is convicted of harassment.**

SECTION 4. IC 35-40-5-3, AS AMENDED BY P.L.65-2016, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) This section applies if either of the following has occurred:

(1) The alleged felony or delinquent act that would have been a felony if committed by an adult was directly perpetrated against the victim.

(2) The alleged felony, misdemeanor, or delinquent act that would have been a felony or misdemeanor if committed by an adult was:

(A) a violation of IC 35-42-2 (offenses against the person), IC 35-45-2-1 (intimidation), ~~IC 35-45-2-2~~ **IC 35-45-2-2(a)** (harassment), **IC 35-45-2-2(b) (public harassment)**, IC 35-46-1-15.1 (invasion of privacy), IC 35-46-1-15.3, or IC 35-47-4-3 (pointing a firearm); and

(B) directly perpetrated against the victim by a person who:

(i) is or was a spouse of the victim;

(ii) is or was living as if a spouse of the victim; or

(iii) has a child in common with the victim.

(3) The alleged misdemeanor or delinquent act that would have been a misdemeanor if committed by an adult, other than a misdemeanor described in subdivision (2), was directly perpetrated against the victim, and the victim has complied with



the notice requirements under IC 35-40-10.

(b) A victim has the right to confer with a representative of the prosecuting attorney's office:

(1) after a crime allegedly committed against the victim has been charged;

(2) before the trial of a crime allegedly committed against the victim; and

(3) before any disposition of a criminal case involving the victim.

This right does not include the authority to direct the prosecution of a criminal case involving the victim.

SECTION 5. IC 35-42-1-5, AS AMENDED BY P.L.158-2013, SECTION 415, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. A person who recklessly kills another human being commits reckless homicide, a ~~Level 5~~ **Level 4** felony.

SECTION 6. IC 35-42-2-2, AS AMENDED BY P.L.158-2013, SECTION 423, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. (a) A person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person commits criminal recklessness. Except as provided in subsection (b), criminal recklessness is a Class B misdemeanor.

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

(1) a Level 6 felony if:

(A) it is committed while ~~armed with a deadly weapon;~~ **operating a motor vehicle;** or

(B) the person committed aggressive driving (as defined in ~~IC 9-21-8-55~~) **that offense** results in serious bodily injury to another person; ~~or~~

(2) a Level 5 felony if

(A) it is committed by shooting a firearm into an inhabited dwelling or other building or place where people are likely to gather; or

(B) the person committed aggressive driving (as defined in ~~IC 9-21-8-55~~) **that results in the death of another person; it is committed while armed with a deadly weapon; and**

(3) a Level 4 felony if:

(A) it is committed by shooting a firearm into an inhabited dwelling or other building or place where people are likely to gather; or

(B) the person committed aggressive driving (as defined in



- 1                   **IC 9-21-8-55) that results in the death of another person.**  
2           SECTION 7. IC 35-43-2-2, AS AMENDED BY P.L.32-2016,  
3           SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4           JULY 1, 2017]: Sec. 2. (a) As used in this section, "authorized person"  
5           means a person authorized by an agricultural operation to act on behalf  
6           of the agricultural operation.  
7           (b) A person who:  
8               (1) not having a contractual interest in the property, knowingly or  
9               intentionally enters the real property of another person after  
10              having been denied entry by the other person or that person's  
11              agent;  
12              (2) not having a contractual interest in the property, knowingly or  
13              intentionally refuses to leave the real property of another person  
14              after having been asked to leave by the other person or that  
15              person's agent;  
16              (3) accompanies another person in a vehicle, with knowledge that  
17              the other person knowingly or intentionally is exerting  
18              unauthorized control over the vehicle;  
19              (4) knowingly or intentionally interferes with the possession or  
20              use of the property of another person without the person's consent;  
21              (5) not having a contractual interest in the property, knowingly or  
22              intentionally enters the:  
23                  (A) property of an agricultural operation that is used for the  
24                  production, processing, propagation, packaging, cultivation,  
25                  harvesting, care, management, or storage of an animal, plant,  
26                  or other agricultural product, including any pasturage or land  
27                  used for timber management, without the consent of the owner  
28                  of the agricultural operation or an authorized person; or  
29                  (B) dwelling of another person without the person's consent;  
30              (6) knowingly or intentionally:  
31                  (A) travels by train without lawful authority or the railroad  
32                  carrier's consent; and  
33                  (B) rides on the outside of a train or inside a passenger car,  
34                  locomotive, or freight car, including a boxcar, flatbed, or  
35                  container without lawful authority or the railroad carrier's  
36                  consent;  
37              (7) not having a contractual interest in the property, knowingly or  
38              intentionally enters or refuses to leave the property of another  
39              person after having been prohibited from entering or asked to  
40              leave the property by a law enforcement officer when the property  
41              is:  
42                  (A) vacant real property (as defined in IC 36-7-36-5) or a



- 1 vacant structure (as defined in IC 36-7-36-6); or  
 2 (B) designated by a municipality or county enforcement  
 3 authority to be abandoned property or an abandoned structure  
 4 (as defined in IC 36-7-36-1);  
 5 (8) not having a contractual interest in the property, knowingly or  
 6 intentionally enters the real property of an agricultural operation  
 7 (as defined in IC 32-30-6-1) without the permission of the owner  
 8 of the agricultural operation or an authorized person, and  
 9 knowingly or intentionally engages in conduct that causes  
 10 property damage to:  
 11 (A) the owner of or a person having a contractual interest in  
 12 the agricultural operation;  
 13 (B) the operator of the agricultural operation; or  
 14 (C) a person having personal property located on the property  
 15 of the agricultural operation; ~~or~~  
 16 (9) knowingly or intentionally enters the property of another  
 17 person after being denied entry by a court order that has been  
 18 issued to the person or issued to the general public by  
 19 conspicuous posting on or around the premises in areas where a  
 20 person can observe the order when the property has been  
 21 designated by a municipality or county enforcement authority to  
 22 be a vacant property, an abandoned property, or an abandoned  
 23 structure (as defined in IC 36-7-36-1); **or**  
 24 **(10) knowingly or intentionally breaks and enters a building**  
 25 **or a structure, other than a dwelling, of another person**  
 26 **without the other person's consent;**  
 27 commits criminal trespass, a Class A misdemeanor. However, the  
 28 offense is a Level 6 felony if it is committed on a scientific research  
 29 facility, on a key facility, on a facility belonging to a public utility (as  
 30 defined in IC 32-24-1-5.9(a)), on school property, or on a school bus or  
 31 the person has a prior unrelated conviction for an offense under this  
 32 section concerning the same property. The offense is a Level 6 felony,  
 33 for purposes of subdivision (8), if the property damage is more than  
 34 seven hundred fifty dollars (\$750) and less than fifty thousand dollars  
 35 (\$50,000). The offense is a Level 5 felony, for purposes of subdivision  
 36 (8), if the property damage is at least fifty thousand dollars (\$50,000).  
 37 (c) A person has been denied entry under subsection (b)(1) when the  
 38 person has been denied entry by means of:  
 39 (1) personal communication, oral or written;  
 40 (2) posting or exhibiting a notice at the main entrance in a manner  
 41 that is either prescribed by law or likely to come to the attention  
 42 of the public; or



- 1 (3) a hearing authority or court order under IC 32-30-6,
- 2 IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36.
- 3 (d) A law enforcement officer may not deny entry to property or ask
- 4 a person to leave a property under subsection (b)(7) unless there is
- 5 reasonable suspicion that criminal activity has occurred or is occurring.
- 6 (e) A person described in subsection (b)(7) violates subsection
- 7 (b)(7) unless the person has the written permission of the owner, the
- 8 owner's agent, an enforcement authority, or a court to come onto the
- 9 property for purposes of performing maintenance, repair, or demolition.
- 10 (f) A person described in subsection (b)(9) violates subsection
- 11 (b)(9) unless the court that issued the order denying the person entry
- 12 grants permission for the person to come onto the property.
- 13 (g) Subsections (b), (c), and (f) do not apply to the following:
- 14 (1) A passenger on a train.
- 15 (2) An employee of a railroad carrier while engaged in the
- 16 performance of official duties.
- 17 (3) A law enforcement officer, firefighter, or emergency response
- 18 personnel while engaged in the performance of official duties.
- 19 (4) A person going on railroad property in an emergency to rescue
- 20 a person or animal from harm's way or to remove an object that
- 21 the person reasonably believes poses an imminent threat to life or
- 22 limb.
- 23 (5) A person on the station grounds or in the depot of a railroad
- 24 carrier:
- 25 (A) as a passenger; or
- 26 (B) for the purpose of transacting lawful business.
- 27 (6) A:
- 28 (A) person; or
- 29 (B) person's:
- 30 (i) family member;
- 31 (ii) invitee;
- 32 (iii) employee;
- 33 (iv) agent; or
- 34 (v) independent contractor;
- 35 going on a railroad's right-of-way for the purpose of crossing at a
- 36 private crossing site approved by the railroad carrier to obtain
- 37 access to land that the person owns, leases, or operates.
- 38 (7) A person having written permission from the railroad carrier
- 39 to go on specified railroad property.
- 40 (8) A representative of the Indiana department of transportation
- 41 while engaged in the performance of official duties.
- 42 (9) A representative of the federal Railroad Administration while





engaged in the performance of official duties.

(10) A representative of the National Transportation Safety Board while engaged in the performance of official duties.

SECTION 8. IC 35-45-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. (a) A person who, with intent to harass, annoy, **defame, ridicule**, or alarm another person but with no intent of legitimate communication:

(1) makes a telephone call, whether or not a conversation ensues;

(2) communicates with a person by telegraph, mail, or other form of written communication;

(3) transmits an obscene message, or indecent or profane words, on a Citizens Radio Service channel; or

(4) uses a computer network (as defined in IC 35-43-2-3(a)), **cellular or other wireless communications device**, or other form of electronic communication to:

(A) communicate with a person; or

(B) transmit an obscene message or indecent or profane words to a person;

commits harassment, a Class B misdemeanor.

**(b) A person who, with intent to retaliate against, harass, annoy, defame, or ridicule another person, uses a computer network (as defined in IC 35-43-2-3(a)), cellular or other wireless communications device, or other form of electronic communication to convey to a third person or post on the Internet a digital image or video of the other person that depicts the other person:**

**(1) in a state of nudity (as defined in IC 35-45-4-1(d)); or**

**(2) engaged in sexual conduct (as defined in IC 35-42-4-4(a)(4));**

**commits public harassment, a Class A misdemeanor.**

~~(b)~~ (c) A message is obscene if:

(1) the average person, applying contemporary community standards, finds that the dominant theme of the message, taken as a whole, appeals to the prurient interest in sex;

(2) the message refers to sexual conduct in a patently offensive way; and

(3) the message, taken as a whole, lacks serious artistic, literary, political, or scientific value.

