

# HOUSE BILL No. 1126

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-18-2-170; IC 16-18-2-275; IC 16-41-7; IC 35-42-2-2.

**Synopsis:** Duty to notify of communicable disease. Makes it a Class D felony instead of a Class B misdemeanor for a person who knows of the person's status as a carrier of a dangerous communicable disease to fail to warn another person who is at risk of contracting the disease from the carrier of the following: (1) The carrier's disease status. (2) The need to seek health care such as counseling and testing. Repeals the offense from its current placement among the health related statutes and places the offense within the criminal code as part of the offense of criminal recklessness. Makes conforming amendments.

**Effective:** July 1, 1998.

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January 8, 1998, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

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# HOUSE BILL No. 1126



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 16-18-2-170 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 170. "High risk  
3 activity", for purposes of IC 16-41-7, has the meaning set forth in  
4 ~~IC 16-41-7-1(b)~~; **IC 35-42-2-2(c)**.

5 SECTION 2. IC 16-18-2-275 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 275. (a) "Person at  
7 risk", for purposes of IC 16-41-7-4, has the meaning set forth in  
8 IC 16-41-7-4(a).

9 (b) "Person at risk", for purposes of ~~IC 16-41-7-1~~ and IC 16-41-7-3,  
10 has the meaning set forth in ~~IC 16-41-7-1(c)~~; **IC 35-42-2-2(d)**.

11 SECTION 3. IC 16-41-7-2 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) A carrier is a  
13 "serious and present danger to the health of others" under the following  
14 conditions:

15 (1) The carrier engages repeatedly in a behavior that has been  
16 demonstrated epidemiologically (as defined by rules adopted by  
17 the state department under IC 4-22-2) to transmit a dangerous



1 communicable disease or that indicates a careless disregard for  
2 the transmission of the disease to others.

3 (2) The carrier's past behavior or statements indicate an imminent  
4 danger that the carrier will engage in behavior that transmits a  
5 dangerous communicable disease to others.

6 (3) The carrier has failed or refused to carry out the carrier's duty  
7 to warn **another person of the carrier's status as described**  
8 **under section † of this chapter: IC 35-42-2-2(e)(3).**

9 (b) A person who has reasonable cause to believe that a person:

10 (1) is a serious and present danger to the health of others as  
11 described in subsection (a);

12 (2) has engaged in noncompliant behavior; or

13 (3) is suspected of being a person at risk (as described in **section**  
14 **† of this chapter); IC 35-42-2-2(d));**

15 may report that information to a health officer.

16 (c) A person who makes a report under subsection (b) in good faith  
17 is not subject to liability in a civil, an administrative, a disciplinary, or  
18 a criminal action.

19 (d) A person who knowingly or recklessly makes a false report  
20 under subsection (b) is civilly liable for actual damages suffered by a  
21 person reported on and for punitive damages.

22 SECTION 4. IC 16-41-7-3 IS AMENDED TO READ AS  
23 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 3. (a) A licensed  
24 physician who diagnoses, treats, or counsels a patient with a dangerous  
25 communicable disease shall inform the patient of the **patient's duty**  
26 **under section † of this chapter: penalty for the failure to warn of the**  
27 **communicable disease under IC 35-42-2-2(e)(3).**

28 (b) A physician described in subsection (a) may notify the  
29 following:

30 (1) A health officer if the physician has reasonable cause to  
31 believe that a patient:

32 (A) is a serious and present danger to the health of others as  
33 described in section 2(a) of this chapter;

34 (B) has engaged in noncompliant behavior; or

35 (C) is suspected of being a person at risk (as defined in **section**  
36 **† of this chapter); IC 35-42-2-2(d)).**

37 (2) A person at risk (as defined in **section † of this chapter)**  
38 **IC 35-42-2-2(d))** or a person legally responsible for the patient if  
39 the physician:

40 (A) has medical verification that the patient is a carrier;

41 (B) knows the identity of the person at risk;

42 (C) has a reasonable belief of a significant risk of harm to the

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- 1 identified person at risk;  
 2 (D) has reason to believe the identified person at risk has not  
 3 been informed and will not be informed of the risk by the  
 4 patient or another person; and  
 5 (E) has made reasonable efforts to inform the carrier of the  
 6 physician's intent to make or cause the state department of  
 7 health to make a disclosure to the person at risk.
- 8 (c) A physician who notifies a person at risk under this section shall  
 9 do the following:  
 10 (1) Identify the dangerous communicable disease.  
 11 (2) Inform the person of available health care measures such as  
 12 counseling and testing.
- 13 (d) A physician who in good faith provides notification under this  
 14 section is not subject to liability in a civil, an administrative, a  
 15 disciplinary, or a criminal action.
- 16 (e) A patient's privilege with respect to a physician under  
 17 IC 34-1-14-5 is waived regarding:  
 18 (1) notification under subsection (b); and  
 19 (2) information provided about a patient's noncompliant behavior  
 20 in an investigation or action under this chapter, IC 16-41-2,  
 21 IC 16-41-3, IC 16-41-5, IC 16-41-6, IC 16-41-8, IC 16-41-9,  
 22 IC 16-41-13, IC 16-41-14, and IC 16-41-16.
- 23 (f) A physician's immunity from liability under subsection (d)  
 24 applies only to the provision of information reasonably calculated to  
 25 protect an identified person who is at epidemiological risk of infection.
- 26 (g) A physician who notifies a person under this section is also  
 27 required to satisfy the reporting requirements under IC 16-41-2-2  
 28 through IC 16-41-2-8.
- 29 SECTION 5. IC 16-41-7-4 IS AMENDED TO READ AS  
 30 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 4. (a) As used in this  
 31 section, "person at risk" means an individual who in the best judgment  
 32 of a licensed physician:  
 33 (1) has engaged in high risk activity (as defined in ~~section 4 of~~  
 34 ~~this chapter~~; **IC 35-42-2-2(c)**); or  
 35 (2) is in imminent danger of engaging in high risk activity (as  
 36 defined in ~~section 4 of this chapter~~; **IC 35-42-2-2(c)**).
- 37 (b) If a health officer is notified in writing by a physician under  
 38 section 3(b)(1)(A) of this chapter of a patient:  
 39 (1) for whom the physician has medical verification that the  
 40 patient is a carrier; and  
 41 (2) who, in the best judgment of the physician, is a serious and  
 42 present danger to the health of others;



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1 the health officer shall make an investigation of the carrier as  
 2 authorized in IC 16-41-5-2 to determine whether the environmental  
 3 conditions surrounding the carrier or the conduct of the carrier requires  
 4 the intervention by the health officer or designated health official to  
 5 prevent the spread of disease to others.

6 (c) If the state department is requested in writing by a physician who  
 7 has complied with the requirements of section 3(b)(2) of this chapter  
 8 to notify a person at risk, the state department shall notify the person  
 9 at risk unless, in the opinion of the state department, the person at risk:

- 10 (1) has already been notified;  
 11 (2) will be notified; or  
 12 (3) will otherwise be made aware that the person is a person at  
 13 risk.

14 (d) The state department shall establish a confidential registry of all  
 15 persons submitting written requests under subsection (c).

16 (e) The state department shall adopt rules under IC 4-22-2 to  
 17 implement this section. Local health officers may submit advisory  
 18 guidelines to the state department to implement this chapter,  
 19 IC 16-41-1, IC 16-41-3, IC 16-41-5, IC 16-41-8, or IC 16-41-9. The  
 20 state department shall fully consider such advisory guidelines before  
 21 adopting a rule under IC 4-22-2-29 implementing this chapter,  
 22 IC 16-41-1, IC 16-41-3, IC 16-41-5, IC 16-41-8, or IC 16-41-9.

23 SECTION 6. IC 35-42-2-2, AS AMENDED BY P.L.216-1996,  
 24 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25 JULY 1, 1998]: Sec. 2. (a) **As used in this section, "dangerous  
 26 communicable disease" refers to the following:**

- 27 (1) **Acquired immune deficiency syndrome (AIDS).**  
 28 (2) **Human immunodeficiency virus (HIV).**  
 29 (3) **Hepatitis B.**

30 (b) As used in this section, "hazing" means forcing or requiring  
 31 another person:

- 32 (1) with or without the consent of the other person; and  
 33 (2) as a condition of association with a group or organization;  
 34 to perform an act that creates a substantial risk of bodily injury.

35 (c) **As used in this section, "high risk activity" means sexual or  
 36 needle sharing contact that has been demonstrated  
 37 epidemiologically to transmit a dangerous communicable disease  
 38 described in subsection (a).**

39 (d) **As used in this section, "person at risk" means:**

- 40 (1) **past and present sexual or needle sharing partners who  
 41 may have engaged in high risk activity; or**  
 42 (2) **sexual or needle sharing partners before engaging in high**

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1           **risk activity;**  
 2           **with the carrier of a dangerous communicable disease described in**  
 3           **subsection (a).**

4           ~~(b)~~ **(e)** A person who recklessly, knowingly, or intentionally  
 5 performs **hazing or**

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

8           ~~(2)~~ **hazing;**

9           commits criminal recklessness, a Class B misdemeanor. However, the  
 10 offense is a:

11           (1) Class A misdemeanor if the conduct includes the use of a  
 12           vehicle;

13           (2) Class D felony if it is committed while armed with a deadly  
 14           weapon; ~~or~~

15           **(3) Class D felony if it is committed by a person who knows of**  
 16           **the person's status as a carrier of a dangerous communicable**  
 17           **disease and fails to warn, or cause to be warned by a third**  
 18           **party, a person at risk of:**

19           **(A) the carrier's disease status; and**

20           **(B) the need to seek health care such as counseling and**  
 21           **testing; or**

22           ~~(3)~~ **(4)** Class C felony if it is committed by shooting a firearm  
 23           from a vehicle into an inhabited dwelling or other building or  
 24           place where people are likely to gather.

25           ~~(c)~~ **(f)** A person who recklessly, knowingly, or intentionally:

26           (1) inflicts serious bodily injury on another person; or

27           (2) performs hazing that results in serious bodily injury to a  
 28           person;

29           commits criminal recklessness, a Class D felony. However, the offense  
 30           is a Class C felony if committed by means of a deadly weapon.

31           ~~(d)~~ **(g)** A person, other than a person who has committed an offense  
 32           under this section or a delinquent act that would be an offense under  
 33           this section if the violator was an adult, who:

34           (1) makes a report of hazing in good faith;

35           (2) participates in good faith in a judicial proceeding resulting  
 36           from a report of hazing;

37           (3) employs a reporting or participating person described in  
 38           subdivision (1) or (2); or

39           (4) supervises a reporting or participating person described in  
 40           subdivision (1) or (2);

41           is not liable for civil damages or criminal penalties that might  
 42           otherwise be imposed because of the report or participation.



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1           ~~(e)~~ **(h)** A person described in subsection ~~(d)(1)~~ **(g)(1)** or ~~(d)(2)~~  
2 **(g)(2)** is presumed to act in good faith.  
3           ~~(f)~~ **(i)** A person described in subsection ~~(d)(1)~~ **(g)(1)** or ~~(d)(2)~~ **(g)(2)**  
4 may not be treated as acting in bad faith solely because the person did  
5 not have probable cause to believe that a person committed:  
6           (1) an offense under this section; or  
7           (2) a delinquent act that would be an offense under this section if  
8           the offender was an adult.  
9           SECTION 7. IC 16-41-7-1 IS REPEALED [EFFECTIVE JULY 1,  
10 1998].

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