



January 27, 2000

# HOUSE BILL No. 1392

DIGEST OF HB 1392 (Updated January 26, 2000 1:05 PM - DI 98)

**Citations Affected:** IC 16-18; IC 16-41; IC 16-42; IC 35-42; noncode.

**Synopsis:** Duty to warn about AIDS and related matters. Defines "carrier" and "risk counseling" for purposes of health care and the criminal law. Relocates AIDS crimes from the Indiana Code chapter concerning homicide to the Indiana Code title concerning health. Makes the reckless, knowing, or intentional failure to warn a sexual or needle sharing partner about a person's status as an AIDS, HIV, or Hepatitis B carrier: (1) a Class B misdemeanor for first time offenders; and (2) a Class D felony when the carrier is a repeat offender. Provides standards for a duty to warn. Makes other related changes.

**Effective:** July 1, 2000.

**Brown T, Kruzan**

January 11, 2000, read first time and referred to Committee on Human Affairs.  
January 26, 2000, reported — Do Pass.

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January 27, 2000

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

## HOUSE BILL No. 1392

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 16-18-2-49 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 49. (a) "Carrier", for  
3 purposes of IC 16-41, means a person who has:

- 4 (1) tuberculosis in a communicable stage; ~~or~~  
5 (2) another dangerous communicable disease; ~~or~~  
6 **(3) been diagnosed as having a dangerous communicable**  
7 **disease described in IC 16-41-7-1(a) and has received risk**  
8 **counseling.**  
9 (b) "Carrier", for purposes of IC 16-41-35-39, refers to a carrier  
10 of nuclear waste.

11 SECTION 2. IC 16-18-2-66.7 IS ADDED TO THE INDIANA  
12 CODE AS A NEW SECTION TO READ AS FOLLOWS  
13 [EFFECTIVE JULY 1, 2000]: Sec. 66.7. "Component", for purposes  
14 of IC 16-41-13-7, has the meaning set forth in IC 16-41-13-7.

15 SECTION 3. IC 16-18-2-170 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 170. "High risk  
17 activity", for purposes of IC 16-41-7, has the meaning set forth in

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- 1 ~~IC 16-41-7-1(b)~~; **IC 16-41-7-1.**
- 2 SECTION 4. IC 16-18-2-275 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 275. (a) "Person at
- 4 risk", for purposes of IC 16-41-7-4, has the meaning set forth in
- 5 IC 16-41-7-4(a).
- 6 (b) "Person at risk", for purposes of IC 16-41-7-1, **IC 16-41-7-2**, and
- 7 IC 16-41-7-3, has the meaning set forth in ~~IC 16-41-7-1(c)~~;
- 8 **IC 16-41-7-1.**
- 9 SECTION 5. IC 16-18-2-319.5 IS ADDED TO THE INDIANA
- 10 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 11 [EFFECTIVE JULY 1, 2000]: **Sec. 319.5. "Risk counseling", for**
- 12 **purposes of IC 16-41, means that a person has been:**
- 13 (1) **notified in person that tests have confirmed the presence**
- 14 **of antibodies to the human immunodeficiency virus (HIV) or**
- 15 **Hepatitis B virus in the person's blood;**
- 16 (2) **counseled regarding:**
- 17 (A) **behaviors demonstrated epidemiologically as**
- 18 **transmitting a dangerous communicable disease described**
- 19 **in IC 16-41-7-1(a); and**
- 20 (B) **methods demonstrated epidemiologically as preventing**
- 21 **or reducing the transmission of a dangerous communicable**
- 22 **disease described in IC 16-41-7-1(a); and**
- 23 (3) **informed about the person's duty to warn under**
- 24 **IC 16-41-7-1(d).**
- 25 SECTION 6. IC 16-41-7-1 IS AMENDED TO READ AS
- 26 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) This section
- 27 applies to the following dangerous communicable diseases:
- 28 (1) Acquired immune deficiency syndrome (AIDS).
- 29 (2) Human immunodeficiency virus (HIV).
- 30 (3) Hepatitis B.
- 31 (b) As used in this section, "high risk activity" means sexual or
- 32 needle sharing contact that has been demonstrated epidemiologically
- 33 to transmit a dangerous communicable disease described in subsection
- 34 (a).
- 35 (c) As used in this section, "person at risk" means:
- 36 (1) past and present sexual or needle sharing partners who may
- 37 have engaged in high risk activity; or
- 38 (2) sexual or needle sharing partners before engaging in high risk
- 39 activity;
- 40 with ~~the carrier of a person who has been diagnosed as having a~~
- 41 ~~dangerous communicable disease described in subsection (a). The~~
- 42 **term does not include a person who has allegedly committed rape**



1 under IC 35-42-4-1, criminal deviate conduct under IC 35-42-4-2,  
 2 child molesting under IC 35-42-4-3, child solicitation under  
 3 IC 35-42-4-6, child seduction under IC 35-42-4-7, sexual battery  
 4 under IC 35-42-4-8, or sexual misconduct with a minor under  
 5 IC 35-42-4-9.

6 (d) Carriers who know of their status as a carrier of a dangerous  
 7 communicable disease described in subsection (a) have a duty to warn  
 8 or cause to be warned by a third party a person at risk of the following:

9 (1) The carrier's disease status.

10 (2) The need to seek health care such as counseling and testing.

11 SECTION 7. IC 16-41-7-5, AS AMENDED BY P.L.1-1999,  
 12 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 13 JULY 1, 2000]: Sec. 5. (a) Except as provided in ~~IC 35-42-1-9~~, A  
 14 person carrier who recklessly, **knowingly, or intentionally** violates  
 15 or fails to comply with this chapter commits a Class B misdemeanor.

16 (b) Each day a violation ~~continues~~ constitutes a separate offense.

17 SECTION 8. IC 16-41-7-6 IS ADDED TO THE INDIANA CODE  
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 19 1, 2000]: Sec. 6. (a) A carrier who:

20 (1) recklessly, knowingly, or intentionally violates or fails to  
 21 comply with section 1 of this chapter; and

22 (2) has a previous unrelated conviction for a violation of  
 23 section 5 of this chapter, this section, IC 16-41-13-7,  
 24 IC 16-41-14-21, IC 35-42-1-7 (before its repeal), IC 35-42-1-9  
 25 (before its repeal), or an offense under the laws of the United  
 26 States or another state that is substantially similar to an  
 27 offense described in section 5 of this chapter, this section, or  
 28 IC 16-41-13-7;

29 commits a Class D felony.

30 (b) Each violation described in this section constitutes a separate  
 31 offense.

32 SECTION 9. IC 16-41-8-1 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. (a) Except as  
 34 provided in subsections (d) and (e), a person may not disclose or be  
 35 compelled to disclose medical or epidemiological information  
 36 involving a communicable disease or other disease that is a danger to  
 37 health (as defined under rules adopted under IC 16-41-2-1). This  
 38 information may not be released or made public upon subpoena or  
 39 otherwise, except under the following circumstances:

40 (1) Release may be made of medical or epidemiologic information  
 41 for statistical purposes if done in a manner that does not identify  
 42 an individual.



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1 (2) Release may be made of medical or epidemiologic information  
 2 with the written consent of all individuals identified in the  
 3 information released.

4 (3) Release may be made of medical or epidemiologic information  
 5 to the extent necessary to enforce public health laws, laws  
 6 described in IC 31-37-19-4 through IC 31-37-19-6, IC 31-37-19-9  
 7 through IC 31-37-19-10, IC 31-37-19-12 through IC 31-37-19-23,  
 8 IC 35-38-1-7.1, ~~and IC 35-42-1-7~~, **IC 16-41-7-6, IC 16-41-13-7,**  
 9 **and IC 16-41-14-21**, or to protect the health or life of a named  
 10 party.

11 (b) Except as provided in subsection (a), a person responsible for  
 12 recording, reporting, or maintaining information required to be reported  
 13 under IC 16-41-2 who recklessly, knowingly, or intentionally discloses  
 14 or fails to protect medical or epidemiologic information classified as  
 15 confidential under this section commits a Class A misdemeanor.

16 (c) In addition to subsection (b), a public employee who violates this  
 17 section is subject to discharge or other disciplinary action under the  
 18 personnel rules of the agency that employs the employee.

19 (d) Release shall be made of the medical records concerning an  
 20 individual to the individual or to a person authorized in writing by the  
 21 individual to receive the medical records.

22 (e) An individual may voluntarily disclose information about the  
 23 individual's communicable disease.

24 (f) The provisions of this section regarding confidentiality apply to  
 25 information obtained under IC 16-41-1 through IC 16-41-16.

26 SECTION 10. IC 16-41-13-7 IS ADDED TO THE INDIANA  
 27 CODE AS A **NEW SECTION TO READ AS FOLLOWS**  
 28 **[EFFECTIVE JULY 1, 2000]: Sec. 7. (a) This section does not apply**  
 29 **to:**

30 **(1) a person who, for reasons of privacy, donates, sells, or**  
 31 **transfers blood or a blood component at a blood center after**  
 32 **the person has notified the blood center that the blood or**  
 33 **blood component must be disposed of and may not be used for**  
 34 **any purpose; or**

35 **(2) a person who transfers blood, a blood component, or**  
 36 **another body fluid that contains the human immunodeficiency**  
 37 **virus (HIV) for research purposes.**

38 **(b) As used in this section, "component" means plasma,**  
 39 **platelets, or serum of a human being.**

40 **(c) A carrier who recklessly, knowingly, or intentionally**  
 41 **donates, sells, or transfers blood or a blood component that**  
 42 **contains the human immunodeficiency virus (HIV) commits**



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1 transferring contaminated blood, a Class C felony. However, the  
 2 offense is a Class A felony if it results in the transmission of the  
 3 human immunodeficiency virus (HIV) to a person other than the  
 4 carrier.

5 SECTION 11. IC 16-41-14-21 IS ADDED TO THE INDIANA  
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 7 [EFFECTIVE JULY 1, 2000]: **Sec. 21. (a) This section does not apply**  
 8 **to a person who transfers semen or another body fluid that**  
 9 **contains the human immunodeficiency virus (HIV) for research**  
 10 **purposes.**

11 (b) A carrier who recklessly, knowingly, or intentionally  
 12 donates, sells, or transfers semen for artificial insemination that  
 13 contains the human immunodeficiency virus (HIV) commits  
 14 transferring contaminated semen, a Class C felony. However, the  
 15 offense is a Class A felony if it results in the transmission of the  
 16 human immunodeficiency virus (HIV) to a person other than the  
 17 carrier.

18 SECTION 12. IC 16-42-25 IS ADDED TO THE INDIANA CODE  
 19 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2000]:

21 **Chapter 25. AIDS Home Testing Kits**

22 **Sec. 1. The sale or distribution of:**

- 23 (1) diagnostic testing equipment or apparatus; or  
 24 (2) a blood collection kit;

25 intended for home use to diagnose or confirm human  
 26 immunodeficiency virus (HIV) infection or disease is prohibited  
 27 unless the testing equipment, apparatus, or kit has been approved  
 28 for use by the federal Food and Drug Administration.

29 **Sec. 2. A person who knowingly or intentionally violates section**  
 30 **1 of this chapter commits a Class A misdemeanor.**

31 SECTION 13. THE FOLLOWING ARE REPEALED [EFFECTIVE  
 32 JULY 1, 2000]: IC 35-42-1-7; IC 35-42-1-8; IC 35-42-1-9.

33 SECTION 14. [EFFECTIVE JULY 1, 2000] A felony or  
 34 misdemeanor committed under IC 35-42-1-7, IC 35-42-1-8, or  
 35 IC 35-42-1-9 before July 1, 2000, may be prosecuted and remains  
 36 punishable as provided in IC 35-42-1-7, IC 35-42-1-8, and  
 37 IC 35-42-1-9, as in effect before their repeal by this act. This act  
 38 does not affect penalties incurred or proceedings begun before July  
 39 1, 2000.



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COMMITTEE REPORT

Mr. Speaker: Your Committee on Human Affairs, to which was referred House Bill 1392, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

SUMMERS, Chair

Committee Vote: yeas 9, nays 2.

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