



February 18, 2011

HOUSE BILL No. 1158

DIGEST OF HB 1158 (Updated February 16, 2011 12:25 pm - DI 96)

Citations Affected: IC 35-41; IC 35-42.

Synopsis: Use of handheld wireless communications device while operating a motor vehicle. For purposes of determining whether a person has committed criminal recklessness or has recklessly killed another human being, the trier of fact may consider, in addition to other relevant factors, whether the person used a handheld wireless communications device while operating a moving motor vehicle.

Effective: July 1, 2011.

Yarde, Clere, Riecken, McMillin

January 10, 2011, read first time and referred to Committee on Roads and Transportation.
February 17, 2011, amended, reported — Do Pass.

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HB 1158—LS 7016/DI 106+



February 18, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1158



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 35-41-1-12.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2011]: **Sec. 12.5. "Handheld wireless**
4 **communications device" means a handheld device used for the**
5 **transfer of information without the use of electrical conductors or**
6 **wires. The term includes the following:**

- 7 (1) **A wireless telephone.**
- 8 (2) **A personal digital assistant.**
- 9 (3) **A pager.**
- 10 (4) **A text messaging device.**

11 SECTION 2. IC 35-42-1-5 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) A person who
13 recklessly kills another human being commits reckless homicide, a
14 Class C felony.

15 (b) **In determining whether a person acted recklessly, the trier**
16 **of fact may consider, in addition to other relevant factors, whether**
17 **the person used a handheld wireless communications device while**

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1 **operating a moving motor vehicle.**

2 SECTION 3. IC 35-42-2-2, AS AMENDED BY P.L.75-2006,
3 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2011]: Sec. 2. (a) As used in this section, "hazing" means
5 forcing or requiring another person:

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

- 9 (b) A person who recklessly, knowingly, or intentionally performs:
 - 10 (1) an act that creates a substantial risk of bodily injury to another
 - 11 person; or
 - 12 (2) hazing;

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

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

- 17 (1) a Class A misdemeanor if the conduct includes the use of a
18 vehicle;

- 19 (2) a Class D felony if:
 - 20 (A) it is committed while armed with a deadly weapon; or
 - 21 (B) the person committed aggressive driving (as defined in
 - 22 IC 9-21-8-55) that results in serious bodily injury to another
 - 23 person; or

- 24 (3) a Class C felony if:
 - 25 (A) it is committed by shooting a firearm into an inhabited
 - 26 dwelling or other building or place where people are likely to
 - 27 gather; or
 - 28 (B) the person committed aggressive driving (as defined in
 - 29 IC 9-21-8-55) that results in the death of another person.

- 30 (d) A person who recklessly, knowingly, or intentionally:
 - 31 (1) inflicts serious bodily injury on another person; or
 - 32 (2) performs hazing that results in serious bodily injury to a
 - 33 person;

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

36 (e) A person, other than a person who has committed an offense
37 under this section or a delinquent act that would be an offense under
38 this section if the violator was an adult, who:

- 39 (1) makes a report of hazing in good faith;
- 40 (2) participates in good faith in a judicial proceeding resulting
- 41 from a report of hazing;
- 42 (3) employs a reporting or participating person described in

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1 subdivision (1) or (2); or
 2 (4) supervises a reporting or participating person described in
 3 subdivision (1) or (2);
 4 is not liable for civil damages or criminal penalties that might
 5 otherwise be imposed because of the report or participation.
 6 (f) A person described in subsection (e)(1) or (e)(2) is presumed to
 7 act in good faith.
 8 (g) A person described in subsection (e)(1) or (e)(2) may not be
 9 treated as acting in bad faith solely because the person did not have
 10 probable cause to believe that a person committed:
 11 (1) an offense under this section; or
 12 (2) a delinquent act that would be an offense under this section if
 13 the offender was an adult.
 14 **(h) In determining whether a person acted recklessly under**
 15 **subsection (d)(1), the trier of fact may consider, in addition to other**
 16 **relevant factors, whether the person used a handheld wireless**
 17 **communications device while operating a moving motor vehicle.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Roads and Transportation, to which was referred House Bill 1158, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete page 2.

Page 3, delete lines 1 through 27.

Page 3, delete lines 38 through 42.

Page 4, delete lines 1 through 18, begin a new paragraph and insert:
"SECTION 2. IC 35-42-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) A person who recklessly kills another human being commits reckless homicide, a Class C felony.

(b) In determining whether a person acted recklessly, the trier of fact may consider, in addition to other relevant factors, whether the person used a handheld wireless communications device while operating a moving motor vehicle.

SECTION 3. IC 35-42-2-2, AS AMENDED BY P.L.75-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) As used in this section, "hazing" means forcing or requiring another person:

- (1) with or without the consent of the other person; and
- (2) as a condition of association with a group or organization;

to perform an act that creates a substantial risk of bodily injury.

(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 Class 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;
- (2) a Class D felony if:
 - (A) it is committed while armed with a deadly weapon; or
 - (B) the person committed aggressive driving (as defined in IC 9-21-8-55) that results in serious bodily injury to another person; or
- (3) a Class C felony if:
 - (A) it is committed by shooting a firearm into an inhabited

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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.

(d) A person who recklessly, knowingly, or intentionally:

- (1) inflicts serious bodily injury on another person; or
- (2) performs hazing that results in serious bodily injury to a person;

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

(e) A person, other than a person who has committed an offense under this section or a delinquent act that would be an offense under this section if the violator was an adult, who:

- (1) makes a report of hazing in good faith;
- (2) participates in good faith in a judicial proceeding resulting from a report of hazing;
- (3) employs a reporting or participating person described in subdivision (1) or (2); or
- (4) supervises a reporting or participating person described in subdivision (1) or (2);

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

(f) A person described in subsection (e)(1) or (e)(2) is presumed to act in good faith.

(g) A person described in subsection (e)(1) or (e)(2) may not be treated as acting in bad faith solely because the person did not have probable cause to believe that a person committed:

- (1) an offense under this section; or
- (2) a delinquent act that would be an offense under this section if the offender was an adult.

(h) In determining whether a person acted recklessly under subsection (d)(1), the trier of fact may consider, in addition to other relevant factors, whether the person used a handheld wireless communications device while operating a moving motor vehicle."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1158 as introduced.)

SOLIDAY, Chair

Committee Vote: yeas 10, nays 1.



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