March 15, 2023

ENGROSSED
HOUSE BILL No. 1363

DIGEST OF HB 1363 (Updated March 14, 2023 11:02 am - DI 140)

Citations Affected: IC 35-31.5; IC 35-43.

Synopsis: Criminal mischief and criminal trespass. Provides that a person who recklessly, knowingly, or intentionally damages the property of a scientific research facility without the consent of, or with consent which was fraudulently obtained from, the owner, possessor, or occupant of the property that is damaged commits criminal mischief, a Class A misdemeanor. Provides that a person who, not having a contractual interest in the property, knowingly or intentionally enters the real property of a scientific research facility without the permission of, or with permission which was fraudulently obtained from, the owner of the scientific research facility or an authorized person, and knowingly or intentionally engages in conduct that causes property damage to: (1) the owner of or a person having a contractual interest in the scientific research facility; (2) the operator of the scientific research facility; or (3) a person having personal property located on the property of the scientific research facility; commits criminal trespass, a Level 6 felony.

Effective: July 1, 2023.

Negele

(SENATE SPONSORS — ALTING, KOCH)

January 17, 2023, read first time and referred to Committee on Courts and Criminal Code.
February 2, 2023, amended, reported — Do Pass.
February 6, 2023, read second time, ordered engrossed.
February 7, 2023, engrossed. Read third time, passed. Yeas 72, nays 22.

SENATE ACTION

February 27, 2023, read first time and referred to Committee on Corrections and Criminal Law.
March 14, 2023, reported favorably — Do Pass.

March 15, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

ENGROSSED
HOUSE BILL No. 1363

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:

SECTION 1. IC 35-31.5-2-287, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 287. "Scientific research facility" means a facility in which research is conducted, **including the production or maintenance of research models.**

SECTION 2. IC 35-43-1-2, AS AMENDED BY P.L.111-2021, SECTION 104, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) A person who recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent commits criminal mischief, a Class B misdemeanor. However, the offense is:

(1) a Class A misdemeanor if the pecuniary loss is at least seven hundred fifty dollars ($750) but less than fifty thousand dollars ($50,000); and

(2) a Level 6 felony if:

(A) the pecuniary loss is at least fifty thousand dollars ($50,000);

(B) the damage causes a substantial interruption or impairment of utility service rendered to the public;

(C) the damage is to a public record; or

(D) the damage is to a law enforcement animal (as defined in IC 35-46-3-4.5).

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

(1) a structure used for religious worship without the consent of the owner, possessor, or occupant of the property that is damaged;

(2) a school or community center without the consent of the owner, possessor, or occupant of the property that is damaged;

(3) the property of an agricultural operation (as defined in IC 32-30-6-1) without the consent of the owner, possessor, or occupant of the property that is damaged;

(4) the property of a scientific research facility (as defined in IC 35-31.5-2-287) without the consent of, or with consent which was fraudulently obtained from, the owner, possessor, or occupant of the property that is damaged;

~~(4)~~ **(5)** the grounds:

(A) adjacent to; and

(B) owned or rented in common with;

a structure or facility identified in subdivisions (1) through ~~(3)~~ **(4)** without the consent of the owner, possessor, or occupant of the property that is damaged;

~~(5)~~ **(6)** personal property contained in a structure or located at a facility identified in subdivisions (1) through ~~(3)~~ **(4)** without the consent of the owner, possessor, or occupant of the property that is damaged;

~~(6)~~ **(7)** property that is vacant real property (as defined in IC 36-7-36-5) or a vacant structure (as defined in IC 36-7-36-6); or

~~(7)~~ **(8)** property after the person has been denied entry to the property by a court order that was issued:

(A) to the person; or

(B) to the general public by conspicuous posting on or around the property in areas where a person could observe the order when the property has been designated by a municipality or county enforcement authority to be a vacant property, an abandoned property, or an abandoned structure (as defined in IC 36-7-36-1);

commits institutional criminal mischief, a Class A misdemeanor. However, the offense is a Level 6 felony if the pecuniary loss (or property damage, in the case of an agricultural operation **or a scientific**

research facility) is at least seven hundred fifty dollars ($750) but less than fifty thousand dollars ($50,000), and a Level 5 felony if the pecuniary loss (or property damage, in the case of an agricultural operation **or a scientific research facility)** is at least fifty thousand dollars ($50,000).

(c) A person who recklessly, knowingly, or intentionally damages property:

(1) during the dealing or manufacture of or attempted dealing or manufacture of a controlled substance; and

(2) by means of a fire or an explosion;

commits controlled substances criminal mischief, a Level 6 felony. However, the offense is a Level 5 felony if the offense results in moderate bodily injury to any person other than a defendant.

(d) If a person is convicted of an offense under this section that involves the use of graffiti, the court may, in addition to any other penalty, order that the person's driver's license be suspended or invalidated by the bureau of motor vehicles for not more than one (1) year.

(e) The court may rescind an order for suspension or invalidation under subsection (d) and allow the person to receive a license or permit before the period of suspension or invalidation ends if the court determines that the person has removed or painted over the graffiti or has made other suitable restitution.

(f) For purposes of this section, "pecuniary loss" includes:

(1) the total costs incurred in inspecting, cleaning, and decontaminating property contaminated by a pollutant; and

(2) a reasonable estimate of all additional costs not already incurred under subdivision (1) that are necessary to inspect, clean, and decontaminate property contaminated by a pollutant, to the extent that the property has not already been:

(A) cleaned;

(B) decontaminated; or

(C) both cleaned and decontaminated.

The term includes inspection, cleaning, or decontamination conducted by a person certified under IC 16-19-3.1.

SECTION 3. IC 35-43-2-2, AS AMENDED BY P.L.220-2021, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) As used in this section, "authorized person" means a person authorized by an agricultural operation **or a scientific research facility** to act on behalf of the agricultural operation **or the scientific research facility.**

(b) A person who:

(1) not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent;

(2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person's agent;

(3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle;

(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent;

(5) not having a contractual interest in the property, knowingly or intentionally enters the:

(A) property of an agricultural operation that is used for the production, processing, propagation, packaging, cultivation, harvesting, care, management, or storage of an animal, plant, or other agricultural product, including any pasturage or land used for timber management, without the consent of the owner of the agricultural operation or an authorized person; or

(B) dwelling of another person without the person's consent;

(6) knowingly or intentionally:

(A) travels by train without lawful authority or the railroad carrier's consent; and

(B) rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier's consent;

(7) not having a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is:

(A) vacant real property (as defined in IC 36-7-36-5) or a vacant structure (as defined in IC 36-7-36-6); or

(B) designated by a municipality or county enforcement authority to be:

(i) abandoned property or an abandoned structure (as defined in IC 36-7-36-1); or

(ii) an unsafe building or an unsafe premises (as described in IC 36-7-9);

(8) not having a contractual interest in the property, knowingly or intentionally enters the real property of an agricultural operation (as defined in IC 32-30-6-1) without the permission of the owner of the agricultural operation or an authorized person, and knowingly or intentionally engages in conduct that causes property damage to:

(A) the owner of or a person having a contractual interest in the agricultural operation;

(B) the operator of the agricultural operation; or

(C) a person having personal property located on the property of the agricultural operation;

(9) not having a contractual interest in the property, knowingly or intentionally enters the real property of a scientific research facility (as defined in IC 35-31.5-2-287) without the permission of, or with permission which was fraudulently obtained from, the owner of the scientific research facility or an authorized person, and knowingly or intentionally engages in conduct that causes property damage to:

(A) the owner of or a person having a contractual interest in the scientific research facility;

(B) the operator of the scientific research facility; or

(C) a person having personal property located on the property of the scientific research facility;

~~(9)~~ **(10)** knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by conspicuous posting on or around the premises in areas where a person can observe the order when the property has been designated by a municipality or county enforcement authority to be:

(A) a vacant property;

(B) an abandoned property;

(C) an abandoned structure (as defined in IC 36-7-36-1); or

(D) an unsafe building or an unsafe premises (as described in IC 36-7-9); or

~~(10)~~ **(11)** knowingly or intentionally enters or refuses to leave the polls (as defined in IC 3-5-2-39) or chute (as defined in IC 3-5-2-10) after having been prohibited from entering or asked to leave the polls or chute by a precinct election officer (as defined in IC 3-5-2-40.1) or a law enforcement officer acting on behalf of a precinct election officer;

commits criminal trespass, a Class A misdemeanor. However, the offense is a Level 6 felony if it is committed on a scientific research facility, on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a)), on school property, or on a school bus or the person has a prior unrelated conviction for an offense under this section concerning the same property. The offense is a Level 6 felony, for purposes of subdivision (8), if the property damage is more than seven hundred fifty dollars ($750) and less than fifty thousand dollars ($50,000). The offense is a Level 5 felony, for purposes of ~~subdivision~~ **subdivisions** (8) **and (9),** if the property damage is at least fifty thousand dollars ($50,000).

(c) A person has been denied entry under subsection (b)(1) when the person has been denied entry by means of:

(1) personal communication, oral or written;

(2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public;

(3) a hearing authority or court order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36; or

(4) posting the property by placing identifying purple marks on trees or posts around the area where entry is denied.

(d) For the purposes of subsection (c)(4):

(1) each purple mark must be readily visible to any person approaching the property and must be placed:

(A) on a tree:

(i) as a vertical line of at least eight (8) inches in length and with the bottom of the mark at least three (3) feet and not more than five (5) feet from the ground; and

(ii) not more than one hundred (100) feet from the nearest other marked tree; or

(B) on a post:

(i) with the mark covering at least the top two (2) inches of the post, and with the bottom of the mark at least three (3) feet and not more than five (5) feet six (6) inches from the ground; and

(ii) not more than thirty-six (36) feet from the nearest other marked post; and

(2) before a purple mark that would be visible from both sides of a fence shared by different property owners or lessees may be applied, all of the owners or lessees of the properties must agree to post the properties with purple marks under subsection (c)(4).

(e) A law enforcement officer may not deny entry to property or ask

a person to leave a property under subsection (b)(7) unless there is reasonable suspicion that criminal activity has occurred or is occurring.

(f) A person described in subsection (b)(7) or ~~(b)(9)~~ **(b)(10)** violates subsection (b)(7) or ~~(b)(9),~~ **(b)(10),** as applicable, unless the person has the written permission of the owner, the owner's agent, an enforcement authority, or a court to come onto the property for purposes of performing maintenance, repair, or demolition.

(g) A person described in subsection ~~(b)(9)~~ **(b)(10)** violates subsection ~~(b)(9)~~ **(b)(10)** unless the court that issued the order denying the person entry grants permission for the person to come onto the property.

(h) Subsections (b), (c), and (g) do not apply to the following:

(1) A passenger on a train.

(2) An employee of a railroad carrier while engaged in the performance of official duties.

(3) A law enforcement officer, firefighter, or emergency response personnel while engaged in the performance of official duties.

(4) A person going on railroad property in an emergency to rescue a person or animal from harm's way or to remove an object that the person reasonably believes poses an imminent threat to life or limb.

(5) A person on the station grounds or in the depot of a railroad carrier:

(A) as a passenger; or

(B) for the purpose of transacting lawful business.

(6) A:

(A) person; or

(B) person's:

(i) family member;

(ii) invitee;

(iii) employee;

(iv) agent; or

(v) independent contractor;

going on a railroad's right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to land that the person owns, leases, or operates.

(7) A person having written permission from the railroad carrier to go on specified railroad property.

(8) A representative of the Indiana department of transportation while engaged in the performance of official duties.

(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.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1363, 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 3, line 40, delete "operation." and insert "operation **or the scientific research facility.**".

and when so amended that said bill do pass.

(Reference is to HB 1363 as introduced.)

MCNAMARA

Committee Vote: yeas 11, nays 2.

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1363, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB 1363 as printed February 2, 2023.)

FREEMAN, Chairperson

Committee Vote: Yeas 5, Nays 2