

SUBSTANTIVE OFFENSES OF SPECIAL NOTE/CONCERN

13.10. Involuntary Manslaughter

The crime of involuntary manslaughter is defined by statute as follows:

A person who kills [another human being] [a fetus] while committing or attempting to commit a [Class C felony] or [Class D felony] or [a Class A misdemeanor] that inherently poses a risk of serious bodily injury, or battery, [(for fetus only) a violation of [IC 9-30-5-1](#) through [IC 9-30-5-5](#) (operating a vehicle while intoxicated)], commits involuntary manslaughter, a Class C felony. [However, if the killing results from operation of a vehicle, the offense is a Class D felony.] [See note*]

Before you may convict the accused the State must have proved each of the following elements:

1. The accused
2. killed [name], a human being

[or]

a fetus
3. while committing or taking a substantial step to commit
4. [name and set out elements of the Class C felony, Class D felony, or Class A misdemeanor]
5. and the [name of Class C felony, Class D felony, or Class A misdemeanor] inherently posed a risk of serious bodily injury
6. and the killing resulted from the operation of a vehicle] (for use only when so charged as D felony).

[or]

1. The accused
2. killed [name]
3. while committing or taking a substantial step to commit
4. a knowing or intentional
5. touching of [name] in a rude, insolent, or angry manner
6. and the killing resulted from the operation of a vehicle] (for use only when so charged as D felony).

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the accused not guilty of involuntary manslaughter, a Class [C or D] felony.

Authority: Ind. Pattern Instruction 3.0800, modified in conformity with basic elements instruction and Art. I, § 19, Ind. Const.; I.C. 35-42-1-4.

Comments from Pattern Instruction Committee:

The following term is defined by law: “serious bodily injury” (I.C. 35-31.5-2-291; Instruction No. 13.3620).

For the definition of “fetus” see Instruction No. 14.1680. *See also* I.C. 35-42-1-4(a).

Under I.C. 35-42-1-6.5, this offense does not apply to an abortion performed in compliance with IC 16-34 or IC 35-1-58.5 (before its repeal).

The Committee notes that it has yet to be expressly decided whether it is an issue of law or fact that the crime committed or attempted “inherently posed a risk of serious bodily injury.” The Committee has cautiously treated the question as one of fact to be resolved by the jury. *But see Fought v. State*, 468 N.E.2d 247 (Ind. Ct. App. 1984) (suggests issue is one of law).

Note*: It is particularly important here to make sure that the instruction reflect only the elements supporting the offense as charged. The definition of the crime in the second paragraph should also be modified to reflect the crime as charged.