Driving With a Suspended or Revoked License Causing Death versus Driving Without a License Causing Death: Why is the Punishment So Vastly Different?

Leslie A. Shively

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I. INTRODUCTION

Consider the following: A man without a driver’s license is operating a vehicle upon a two-lane road; he falls asleep and crosses the center line; he collides head-on with Cameron, a twenty-year-old man driving home from work, hoping to get home for dinner and to spend the evening with his family and newly pregnant fiancé. The car darts off the road and into the ditch; Cameron is killed instantly. The unlicensed driver sustains a broken femur. The crime he will likely be charged with is driving without a license, a Class C misdemeanor\(^1\)—the least severe criminal charge, provided he has never received a prior unrelated conviction for the same offense.\(^2\) But under the same circumstances, if the unlicensed driver instead had a suspended or revoked license, he could be charged with a Class C felony.\(^3\) For purposes of punishment, social stigma, and collateral effects, a Class C misdemeanor and a Class C felony are vastly different. Today, the laws of Indiana do not punish persons who drive without ever having received a license and cause death, but there is a law that punishes persons who drive with a suspended or revoked license and cause death. Why the discrepancy? Why punish one individual differently than another simply because of the status—or lack thereof—of his license? Families of victims killed by unlicensed drivers are receiving little to no justice for their loss.

The “driving with a suspended license causing death” statute should be expanded to include driving without a license. The lack of culpability in this area of the law is disturbing. Individuals who have likely never received training, such as driver’s education, and certainly

\(^1\) See IND. CODE § 9-24-18-1(a) (2010).
\(^2\) Id.
\(^3\) See IND. CODE § 9-24-19-4(b) (2010).
have not passed the state-mandated written and or driving test,\(^4\) will receive the lowest level misdemeanor, even when their driving results in the death of another human being. A higher level of culpability must be introduced in an effort to send a message that driving without a license and causing the death of another person will not be tolerated. Granted, there are other driving behaviors, such as texting, speeding, passing in no passing zones, and operating while intoxicated that are causing fatal accidents, but the focus here will be on driving without ever having obtained a license. In a case that will be discussed later, a bicyclist, Frank Lloyd, was killed when he was struck from behind by a driver with a suspended driver’s license. Neither Frank nor Cameron was contributorily negligent. But for these drivers, Frank and Cameron would be alive. The civil system is not always adequate in attaining justice. Not all individuals have the financial backing to pay judgments and as the old saying goes, you can’t squeeze blood from a turnip.

This comment will discuss the current motor vehicle statutes in Indiana and where they are lacking. Additionally, it will discuss the current homicide statutes and the reasons why driving without a license causing death does not fall under any of them. Then it will give an overview of cases in Indiana that have interpreted various statutes regarding reckless behavior and finish up by suggesting why the Indiana Legislature should adopt a law similar to that in the State of Florida.

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\(^4\) See IND. CODE § 9-24-3-2 (2010).
It is vital to begin with the definitions that affect the statutes discussed. Title 9 of the Indiana Code covers motor vehicles. As with any other state, in order to operate a vehicle on an Indiana highway, an individual must have a valid driver’s license.\textsuperscript{5} Indiana statute 9-13-2-48 defines “driver's license” as “any type of license issued by the state authorizing an individual to operate a motor vehicle on public streets, roads, or highways,”\textsuperscript{6} while “driver” is defined as “a person who drives or is in actual physical control of a vehicle.”\textsuperscript{7} The Indiana Legislature codified requirements to obtain a license in Indiana.\textsuperscript{8} The Bureau of Motor Vehicles (“bureau”) may issue driver’s licenses to persons who meet certain requirements; a licensed driver must be at least sixteen years of age,\textsuperscript{9} hold a valid learner’s permit or hold an unrevoked license from the state of prior residence,\textsuperscript{10} qualify as an Indiana resident at the time of application,\textsuperscript{11} successfully complete a driver’s education course,\textsuperscript{12} successfully pass an examination administered by the bureau,\textsuperscript{13} obtain a specified number of hours of supervised driving practice,\textsuperscript{14} and pay the requisite fees.\textsuperscript{15} The legislature further codified the requirement of an approved driver’s education course. The statute defines it as “a course offered by a high school or driver education school that the superintendent of public instruction periodically designates as approved, after taking into consideration the standards and methods of instruction necessary to ensure adequate training for the operation of a motor vehicle.”\textsuperscript{16} In addition to the requirements mentioned above, an individual is charged with the responsibility to maintain a current driver’s license.

\textsuperscript{5} \textit{See} INDIANA CODE § 9-24-1-1 (2010).
\textsuperscript{6} INDIANA CODE § 9-13-2-48 (2010).
\textsuperscript{7} INDIANA CODE § 9-13-2-47 (2010).
\textsuperscript{8} \textit{See} INDIANA CODE §9-24-3-1, 2.5 (2010).
\textsuperscript{9} \textit{See} INDIANA CODE §9-24-3-2.5(b)(1)(A), (2)(A), (3)(A), (4)(A) (2010).
\textsuperscript{10} \textit{See id.} at (b)(1)(B), (2)(B), (3)(C), (4)(C).
\textsuperscript{11} \textit{See id.} at (b)(3)(B), (4)(B).
\textsuperscript{12} \textit{See id.} at (b)(1)(C).
\textsuperscript{13} \textit{See id.} at (b)(1)(D), (2)(C), (3)(D), (4)(D).
\textsuperscript{14} \textit{See id.} at (b)(1)(E), (2)(D).
\textsuperscript{15} \textit{See} INDIANA CODE §9-29-9 (2010).
“‘Current driving license’ means every class and kind of license or permit that evidences the privilege to operate a motor vehicle upon the highways of Indiana. The term includes a privilege granted by the license.”17 “Driving is a privilege, not a right.”18 Contributors to DUIAttorney.com expand on this phrase by stating, “We all have a Constitutional right to life, liberty and the pursuit of happiness, but not to drive.”19 There is a regular misconception that a right to drive is bestowed upon any person in the United States; however, there is no right to drive enumerated in the text of the Constitution, and certain behavior can result in the privilege being modified or extinguished.20 Black’s Law Dictionary defines privilege as “a special legal right, exemption, or immunity granted to a person or class of persons; an exception to a duty. A privilege grants someone the legal freedom to do or not to do a given act.”21 The Merriam-Webster Dictionary defines privilege as “a right or immunity granted as a peculiar benefit, advantage, or favor.”22

B. Driving Without a License

As previously discussed, an individual operating a motor vehicle without ever having obtained a driver’s license is prohibited by Indiana law, and a violation of the law results in a Class C misdemeanor.23 “A person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty (60) days; in addition, he may be fined not more than five hundred dollars ($500).”24 An individual with a prior unrelated conviction for the same offense

19 Id.
20 See id.
21 BLACK’S LAW DICTIONARY 1316 (9th ed. 2009).
24 IND. CODE § 35-50-3-4 (2010).
of driving without a license will receive a Class A misdemeanor. A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year; in addition, he may be fined not more than five thousand dollars ($5,000). In addition to either a Class C or Class A misdemeanor, “the court shall recommend that the person be prohibited from receiving a valid driving license for a fixed period of at least ninety (90) days and not more than two (2) years.” Punishing persons by not allowing them to obtain a privilege they never took the time to obtain in the first place seems not to be a punishment at all. Code section 9-30-3-16 allows a court to impose further punishment on individuals who have committed a traffic offense. The violator may be required to attend and satisfactorily complete a driver-improvement course that has been approved by the court and the bureau or by the bureau, be placed on probation for up to one year, or suspend the individual's driver's license for up to thirty days. While a term of probation or the requirement to complete a driver’s education course may curb behavior, the additional license suspension, again, is likely to have little or no effect on an individual who has never taken the responsibility to obtain a valid driver’s license seriously. However, if the court places the requirement to obtain a valid driver’s license as a condition of probation, the end goal could be attained.

C. Driving with a Suspended or Revoked License

While a first offense of driving without a license is a C misdemeanor, a first offense of driving with a suspended or revoked license is a Class A infraction. “A person who operates a motor vehicle upon a highway while the person’s driving privilege, license, or permit is

26 IND. CODE § 35-50-3-2 (2010).
27 IND. CODE § 9-24-18-1(b) (2010).
28 See IND. CODE § 9-30-3-16 (2010).
29 See id. at §§ (1)-(3).
suspended or revoked commits a Class A infraction.”\textsuperscript{31} Indiana Code section 9-24-19-2 makes it a Class A misdemeanor for a person to operate a vehicle when the person knows he currently has a suspended or revoked license and has a prior conviction for driving with a suspended or revoked license within the past ten years.\textsuperscript{32} The significant difference between the Class A infraction and the Class A misdemeanor is the requirement of a properly documented prior conviction; the Class A infraction is a lesser included offense of the Class A misdemeanor.\textsuperscript{33}

Code section 9-24-19-3 states,

A person who operates a motor vehicle upon a highway when the person knows that the person’s driving privilege, license, or permit is suspended or revoked, when the person’s suspension or revocation was a result of the person’s conviction of an offense (as defined in IC 35-41-1-19)\textsuperscript{34} commits a Class A misdemeanor.

Consequently, this means that although a violation may be a first offense for driving with a suspended or revoked license, it is automatically raised to a Class A misdemeanor if the suspension or revocation of the individual’s license stemmed from a criminal conviction.

Misdemeanors and felonies are considered “offenses”\textsuperscript{36} under Indiana law, while traffic violations and the like are typically termed “infractions.”\textsuperscript{37} “Although traffic violations may

\textsuperscript{31} § 9-24-19-1; see also Upshaw v. Indiana, 934 N.E.2d 178, 183 (Ind. Ct. App. 2010) (citing the language of Indiana Code section 9-24-19-1).
\textsuperscript{32} See, e.g., IND. CODE § 9-24-19-2 (2010); George v. Indiana, 901 N.E.2d 590, 597 (Ind. Ct. App. 2009) transfer denied, 915 N.E.2d 990 (Ind. 2009); Spivey v. Indiana, 922 N.E.2d 91, 92 (Ind. Ct. App. 2010), stating: [T]he State was required to prove beyond a reasonable doubt that Spivey operated a motor vehicle on a highway when he knew his driving privileges had been suspended and also, that within the past ten years, Spivey had a prior unrelated judgment for a violation of certain other traffic laws.\textsuperscript{33} See Trotter v. Indiana, 838 N.E.2d 553, 560 (Ind. Ct. App. 2005); see also Upshaw, 934 N.E.2d at 183-84 (determining that Upshaw should have been convicted of a Class A infraction rather than a Class A misdemeanor because he did not have a prior misdemeanor conviction).\textsuperscript{34} See IND. CODE §35-41-1-19 (2010) (“‘Offense’ means a crime. The term does not include an infraction.”).\textsuperscript{35} IND. CODE § 9-24-19-3 (2010).\textsuperscript{36} See § 35-41-1-19.
\textsuperscript{37} See BLACK’S LAW DICTIONARY 850 (9th ed. 2009) (defining infraction as “a violation, usually of a rule or local ordinance and usually not punishable by incarceration.”).
once have been criminal offenses, traffic violations are now civil proceedings."  

Criminal offenses that commonly result in suspended or revoked driver’s licenses include reckless driving, operating a vehicle while intoxicated, and habitual traffic violator. “In addition to any other penalty imposed for a conviction under this chapter, the court shall recommend that the person’s driving privileges be suspended for a fixed period of not less than ninety (90) days and not more than two (2) years.”

Code section 9-24-19-4 states, in relevant part, “A person who violates section 3 of this chapter commits a Class C felony if the operation results in the death of another person.” In a situation where an accident resulting in death occurs, the suspension or revocation of the driver’s license must have stemmed from a criminal conviction in order for the driver to be charged with a Class C felony. A Class C felony calls for “imprison[ment] for a fixed term of between two (2) and eight (8) years . . . . In addition, the person may not be fined more than ten thousand dollars ($10,000).” These code sections were enacted by the Indiana General Assembly in 2000 under House Bill number 1050. In an interview with Representative Jeff Thompson, sponsor of House Bill 1050, he stated, “If I recall, a judge brought this to me in an effort to step up the penalty to try and discourage driving on a suspended license.”

D. The Lone Case Decided Under 9-24-19-4(b) and Cases Used to Interpret

40 See IND. CODE §§ 9-30-5-1 to 4 (2010).
41 See IND. CODE § 9-30-10-4 (2010).
43 IND. CODE § 9-24-19-4(b) (2010).
44 See id.
45 IND. CODE § 35-50-2-6(a) (2010).
To date, only one case has been decided. The case of *Spaulding v. Indiana* was a case of first impression for the Court of Appeals of Indiana.\(^{48}\) At the time of the accident, in September 2002, Spaulding’s license was suspended for one year as a result of a prior conviction for operating while intoxicated.\(^{49}\) A witness (Hydell) two cars behind Spaulding attempted to pass when he noticed a bicycle rider approximately a quarter mile ahead of Spaulding.\(^{50}\) Anticipating that Spaulding would swerve to avoid the bicyclist, Hydell merged back into the lane of traffic behind Spaulding.\(^{51}\) Hydell then observed Spaulding hit the bicyclist.\(^{52}\)

A person’s knowledge of his suspended or revoked license can be inferred from a computer printout of the official driving record showing that a notice was sent to the person.\(^{53}\) A similar printout from the Bureau of Motor Vehicles (BMV) would show that an individual has no license and never received a license.\(^{54}\) In a situation where the defendant is from a different state, the same information can be obtained from any other state by a search through that particular state’s BMV. If no driving records are located, a national criminal history can be obtained through the National Crime Information Center (NCIC) created and maintained by the Federal Bureau of Investigation (FBI).\(^{55}\) Spaulding admitted to the responding officer that he should not have been driving because his license was suspended, and the officer confirmed this by checking Spaulding’s BMV record.\(^{56}\) Spaulding’s vehicle had damage to the front end, including a shattered windshield, containing evidence of his impact with the deceased (Lloyd),


\(^{49}\) See id. at 1040.

\(^{50}\) See id.

\(^{51}\) See id.

\(^{52}\) See id.


\(^{54}\) See Telephone Interview with Kathy Shively, Chief of Commc’ns, Whitley Cnty. (Ind.) Sheriff’s Dep’t (Feb. 15, 2011).

\(^{55}\) See id.

\(^{56}\) See *Spaulding*, 815 N.E.2d at 1042.
who sustained severe head and body trauma. The state charged Spaulding with driving while suspended resulting in death, and a November 2003 bench trial resulted in Spaulding being found guilty as charged.

The court addressed “the extent to which a causation requirement for driving while suspended resulting in death exists under Indiana law.” In accomplishing this, the court looked to Micinski v. Indiana. Micinski was charged with and convicted of two counts of driving under the influence causing bodily injury, Class D felonies. Micinski struck two Notre Dame students who were walking in the road. Micinski had been drinking well into the early morning hours, and after striking the pedestrians, he continued driving home, where he learned of the accident the next morning. The collision left both students with long-term brain damage. In Micinski’s appeal to the court of appeals, the court held, “To convict under this statute, the state must prove beyond a reasonable doubt that the defendant (1) operated a vehicle[,] (2) while intoxicated, and (3) that the intoxication did directly and proximately cause serious bodily injury.” The Supreme Court of Indiana subsequently overturned the court of appeals decision in Micinski stating, “[T]his construction of the statute leads the jury to ask a ‘but-for’ kind of question: ‘Is it the driver’s intoxication that caused him to hit the victim?’” It further concluded,

[T]his is not what the legislature intended. The statute creates a crime-driving while intoxicated-and adds higher penalties if the commission of this offense results in serious injury or the death of another person. There is, of course, a need

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57 See id.
58 See id.
59 Spaulding, 815 N.E.2d at 1041.
60 See Micinski v. Indiana, 487 N.E.2d 150 (Ind. 1986).
61 See id. at 152.
62 See id.
63 See id.
64 See id.
65 Micinski, 487 N.E.2d at 154.
66 Id.
to show causation; in the typical case a showing that the driver ran into the victim would suffice. We find nothing in the statute to indicate that the General Assembly intended to require that the State prove a causal link between the driver’s intoxication and the fact that injury resulted from his driving.\textsuperscript{67}

In vacating the court of appeals’ opinion in \textit{Micinski}, the supreme court determined that analysis of the statute in question “should focus on the driver’s acts . . . . If the driver’s conduct caused the injury, he commits the crime; if someone else’s conduct caused the injury, he is not guilty.”\textsuperscript{68} Indiana case law necessitates a causal link, but “showing that the driver ran into the victim would suffice.”\textsuperscript{69} In \textit{Spaulding}, the court of appeals concluded that the statute (driving while suspended resulting in death) should be analyzed like the driving while intoxicated resulting in death statute.\textsuperscript{70} Neither the “driving while suspended” statute nor the “driving while intoxicated” statute (when \textit{Macinski} was decided) contains any additional language of causation other than the requirement that the defendant’s driving “results” in the death of another person.\textsuperscript{71} Under the driving while suspended resulting in death statute,

\begin{quote}
[T]he State must prove two elements: (1) the defendant operated a motor vehicle upon a highway knowing that his driving privilege, license, or permit is suspended or revoked, and that the suspension or revocation was a result of his conviction of an offense; and (2) the defendant’s operation resulted in the death of another person.\textsuperscript{72}
\end{quote}

The \textit{Spaulding} court held that the State does not have to establish reckless or negligent actions on the part of the driver, only that the person’s death was caused by the act of driving.\textsuperscript{73}

Spaulding claimed that the State failed to prove that his driving was the proximate cause of the accident that killed Lloyd.\textsuperscript{74} In his attempt to support this, he cited to another Indiana

\textsuperscript{67} \textit{Id.}
\textsuperscript{68} \textit{Id.}
\textsuperscript{69} \textit{Id.}
\textsuperscript{70} \textit{See Spaulding v. Indiana, 815 N.E.2d 1039, 1041 (Ind. Ct. App. 2004).}
\textsuperscript{71} \textit{See id.}
\textsuperscript{72} \textit{Spaulding}, 815 N.E.2d at 1041.
\textsuperscript{73} \textit{See id.}
\textsuperscript{74} \textit{See id.}
case, *Abney v. Indiana*. In *Abney*, the Supreme Court of Indiana held that a conviction for operating while intoxicated causing death requires the State to prove that the defendant’s operation of the motor vehicle while intoxicated was a “substantial cause” of the subsequent death, not simply a “contributing” cause. Lanny Abney drove intoxicated, and well over the legal limit of intoxication, resulting in the death of bicyclist Jon Heffernan. Heffernan was bicycling home from work when he was struck from behind by Abney and instantly killed. The *Abney* court restated the rule established in *Micinski* that the State is required to prove that the defendant’s actions were a proximate cause of the victim’s death or serious bodily injury. “‘Conduct,’ in the context of *Abney* and *Micinski*, is taken to mean the driver’s act of operating the vehicle not any particular way in which the driver operates the vehicle.” In referring to this principle, the *Spaulding* court stated, “If Spaulding had not been driving on that day, he would not have killed Lloyd.” The court affirmed Spaulding’s conviction because he “was the substantial, and only, cause” of Lloyd’s death.

Aside from the decision in *Spaulding*, no other cases regarding the “driving while suspended resulting in death” statute have reached the appellate courts in Indiana. Until another case is decided or the statute is modified, *Spaulding* will remain precedent.

### III. Analysis

#### A. The Statute as it Currently Reads

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75 See Abney v. Indiana, 766 N.E.2d 1175 (Ind. 2002).
76 See Spaulding, 815 N.E.2d at 1041-42 (citing Abney, 766 N.E.2d at 1176).
77 See Abney, 766 N.E.2d at 1176.
78 See id.
79 See Spaulding, 815 N.E.2d at 1042 (citing Abney, 766 N.E.2d at 1178).
80 Spaulding, 815 N.E.2d at 1042.
81 Id.
82 Id.
Is it possible that the “driving while suspended resulting in death” statute came into existence simply as a means to curb repeat offenders? Of course. It is quite possible that the legislature enacted this law without looking beyond the scope of persons who drive with a suspended or revoked license. This statute is still a baby; it has not undergone any amendments since its enactment in 2000, and only one case has been decided by the court of appeals. Perhaps at its birth, the legislature did not contemplate the possibility that individuals driving without licenses are just as culpable as individuals driving with suspended or revoked licenses when their actions result in the death of another. In a telephone interview with Representative Jeff Thompson it was discussed that driving without a license, even a first violation, falls under the umbrella of an “offense.” Because a first offense of driving without a license is a Class C misdemeanor, this makes it an “offense.” Hypothetically, an individual who has never previously been charged with driving without a license will only be charged with a Class C misdemeanor if the first time he is caught driving without a license is the result of a fatal accident. Thompson stated, “Yes, and that should be the same penalty as listed here (referring to 9-24-19-4), I agree. Obviously, we’ve left something out. There’s a loophole that says that if you have no license and cause the death of another, there’s less penalty. That should be fixed.”

B. Homicide Statutes: Driving Without a License Causing Death Does Not Fit Indiana’s culpability statute defines intentionally, knowingly, and recklessly. “A person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” “A person engages in conduct ‘knowingly’ if, when he engages in the

83 See IND. CODE § 35-41-1-19 (2010) (“‘Offense’ means a crime. The term does not include an infraction.”).
84 See id.
85 Thompson, supra note 47.
87 § 35-41-2-2(a).
conduct, he is aware of a high probability that he is doing so.” 88 “A person engages in conduct ‘recklessly’ if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.” 89 When looking at the various homicide statutes, it is somewhat easy to determine which levels of culpability fit with each crime. For example, a portion of the murder statute states, “A person who . . . knowingly or intentionally kills another human being . . . .” 90 The voluntary manslaughter statute uses the same levels of culpability—intentionally or knowingly. 91 And as one might assume, the reckless homicide statute employs the reckless level of culpability. 92 The involuntary manslaughter statute is a bit fuzzier. While it uses the term “recklessly,” it only uses that term in reference to a child care provider’s “reckless” supervision of a child. 93 The portion of the involuntary manslaughter statute that could arguably be used to charge an individual who drives without a license and causes the death of another states,

A person who kills another human being while committing or attempting to commit: (1) a Class C or D felony that inherently poses a risk of serious bodily injury; (2) a Class A misdemeanor that inherently poses a risk or serious bodily injury; or (3) battery; commits involuntary manslaughter, a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony. 94

But in order to be charged under this subsection, a person would have to have a previous conviction for driving without a license, thereby elevating the second offense to an A misdemeanor. 95 It is unlikely, however, that any court would find the act of driving without a

88 § 35-41-2-2(b).
89 § 35-41-2-2(c).
91 See IND. CODE § 35-42-1-3 (2010).
93 See IND. CODE § 35-42-1-4(e) (2010).
94 § 35-42-1-4(d).
95 See IND. CODE § 9-24-18-1(a) (2010).
license to be “a Class A misdemeanor that inherently poses a risk of serious bodily injury.” In an interview with Jake Rigney, deputy prosecuting attorney with the Marion County Prosecutor’s Office, located in Indianapolis, Indiana, he stated, “With regard to involuntary manslaughter, I think the statute is relatively clear regarding when a person can or cannot be charged . . . . I would certainly argue that driving always poses a risk of serious bodily injury.” Rigney further stated,

I think the legislature purposely created the homicide statutes, as a whole, to address both the devil you know and the devil you don’t . . . murder, voluntary manslaughter, and involuntary manslaughter are all devils we know. Murder is killing someone on purpose. Voluntary manslaughter is killing someone on purpose while you’re suddenly mad. Involuntary manslaughter is killing someone while doing something else illegal. . . . These are all fairly definite situations.

Driving without a license and causing the death of another does not fit into the murder or voluntary manslaughter statutes. Fitting it into the involuntary manslaughter or reckless homicide statutes is possible but quite a stretch. It could reasonably be argued that persons who drive with a suspended or revoked license have, at least at some point in the past, been properly trained and passed the requisite driving and written examinations in order for the state to declare them a safe driver. While persons who drive without ever having received a license, most likely, have never completed a driver’s education course, have never driven with an instructor, and have never been declared to be a safe driver. But when an accident resulting in death occurs, an individual who has never received a driver’s license is punished less severely. Each person will likely see these situations differently, but it is worth the debate.

96 § 35-42-1-4(c)(2).
97 Interview with Jake Rigney, Deputy Prosecuting Att’y, Marion Cnty. Prosecutor’s Office, in Indianapolis, Ind. (Feb. 10, 2011).
98 Id.
The reckless homicide statute states, “A person who recklessly kills another human being commits reckless homicide, a Class C felony.”

Indiana’s reckless homicide statute was enacted in 1976 under P.L. 148, Section 2, it was amended in 1977 under P.L. 340, Section 29 and in 1980 under P.L. 83, Section 6. Aside from the definition given in the statute, what behavior, while driving, is considered “reckless”? Does operating a vehicle without ever having received a license fall under this definition? As the reckless homicide law stands now, it is far too vague. Although it may not be unconstitutionally vague, the reckless homicide statute, along with the “driving while suspended resulting in death” statute, allows crimes such as driving without a license and causing death to fall through the cracks. And for individuals who do not have the requisite training and licensing, it allows them to get away with nothing more than a Class A misdemeanor.

Black’s Law Dictionary defines reckless as “characterized by the creation of a substantial and unjustifiable risk of harm to others and by a conscious (and sometimes deliberate) disregard for or indifference to that risk . . . .” The appellate courts of Indiana have recognized several behaviors and actions to be “reckless.” In discussing the possibility of charging an unlicensed driver with reckless homicide, Rigney said, “I think it depends. I do not believe the question of whether or not the defendant was a licensed driver is the most important aspect. The question I would ask is how the defendant was driving, and what was his prior experience, licensed or otherwise, with operating motor vehicles?” He went on to state, “I believe that whether or not

\[100\] § 35-42-1-5.
\[101\] See Rigney, supra note 97.
\[102\] BLACK’S LAW DICTIONARY 1385 (9th ed. 2009).
\[104\] Rigney, supra note 97.
the driver was licensed at the time of the accident . . . is certainly relevant to that analysis. But I don’t think it should be determinative, on its own.”  Perspective from a practicing attorney regarding such issues gives valuable insight. Rigney believes driving without a license is not reckless per se because of its heavy dependence on the portion of the recklessness statute that reads “[a]nd the disregard involves a substantial deviation from acceptable standards of conduct.”  Whether a driver is licensed, unlicensed, suspended, or revoked is not conduct, it is a status, and because of this, a driver’s status in conjunction with a driver’s conduct must substantially deviate from acceptable norms in order to result in a reckless homicide charge.  “[T]he statute’s focus on a defendant’s conduct, rather than their status, is appropriate, given that the general purpose of the criminal homicide statutes [is] to punish and deter the conduct, as opposed to a particular status.”  Rigney makes an interesting distinction between operating while intoxicated and driving without a license:

I think the nature of those statuses bears out important distinctions that make them incomparable . . . . The issue is the likelihood of danger. Driving is always dangerous, but I haven’t seen much data to suggest that unlicensed drivers are significantly more dangerous than licensed ones. Drunk driving, on the other hand, has been . . . proven to carry far greater danger than driving in general.

In a road-rage incident turned fatal, Benton Barber was convicted of two counts of reckless homicide for the deaths of two teenagers. The vehicle carrying the two teenagers crossed the median and collided with a truck after Barber swerved into their lane of traffic, causing the driver to over correct and lose control. Barber contended that his movement into the victim’s lane of traffic was negligence, not recklessness, because it was “an error in

\[\text{References}\]

105 Id.
106 See Rigney, supra note 97 (citing IND. CODE § 35-41-2-2(c) (2010)).
107 See Rigney, supra note 97.
108 Rigney, supra note 97.
109 Id.
110 See Barber v. Indiana, 863 N.E.2d 1199, 1202-03 (Ind. Ct. App. 2007).
111 See id.
Barber cited *Beeman v. Indiana* to support this contention. In *Beeman*, the defendant was driving a semi tractor-trailer at an excessive rate of speed (in a construction zone) when he failed to brake, striking the last car in a line of twenty, killing the passenger of that vehicle. Although Beeman’s conviction for reckless homicide was affirmed, the court stated, “Proof that an accident arose out of the inadvertence, lack of attention, forgetfulness or thoughtlessness of the driver of a vehicle, or from an error of judgment on his part, will not support a charge of reckless homicide.” This was the statement relied upon by Barber and an often-quoted case in other reckless homicide cases in Indiana. Additionally, Barber cited to *Whitaker v. Indiana* in his attempt to argue that his swerving into the victim’s lane of traffic was analogous to Whitaker’s failure in applying his brakes. Whitaker was charged and convicted of reckless homicide, but his conviction was subsequently overturned by the Court of Appeals of Indiana. Whitaker was driving a tanker truck on a two-lane highway on a day when the weather was clear and the pavement dry. He was driving sixty miles per hour in a fifty-five mile per hour zone and approximately two to four car lengths behind the victim’s vehicle when she applied her brakes and signaled to turn. Whitaker did not attempt to apply his brakes or avoid hitting her until right before he struck her vehicle, sending it into the lane of oncoming traffic where it was struck by a dump truck, killing her instantly. The court in *Whitaker* rejected the State’s argument that “the fact that Whitaker failed to take any action to stop or

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112 See id. (citing Appellant Br. p. 10).
113 See *Beeman v. Indiana*, 115 N.E.2d 919 (Ind. 1953).
114 *Beeman*, 115 N.E.2d at 922.
117 See id. at 424-25.
118 See id.
119 See id.
evade Cox’s car after she applied her brakes and signaled to turn is, in itself, evidence of his recklessness.” 120 Rather, the court cited to Beeman stating that “this would be evidence of inadvertence or lack of attention; in other words, negligence, not recklessness.” 121 The Whitaker court responded to the State’s contention—that Whitaker saw Cox stopped in front of him but erroneously miscalculated that she would turn before he reached her—stating that, “Even so, this would represent a gross error in judgment, but again such an error constitutes negligence, not recklessness.” 122 The court of appeals found that Barber’s actions did not result from negligence or a simple error in judgment but instead rose to the level of recklessness. 123 “The evidence supports a finding that Barber’s actions were reckless, that is, that they were perpetrated in ‘plain, conscious, and unjustifiable disregard of harm that might result’ and that they constituted ‘a substantial deviation from acceptable standards of conduct.’” 124 The court stated, Surrounding circumstances can make otherwise lawful conduct reckless. For example, moving from side to side within one’s own lane may not be reckless on a dry road at thirty miles an hour with no cars in the vicinity, but such movement may be reckless on a wet road at sixty-five miles per hour with another car within a few feet, as happened here. 125

In Barnhart v. Indiana, the defendant, attempting to pass three vehicles in a no-passing zone while traveling up a hill and driving at a high rate of speed, collided head-on into an oncoming vehicle causing the death of the passenger. 126 His conviction for reckless homicide was affirmed. 127 As in Barber, the court wrestled with the reckless vs. negligence argument. Although the same court had previously found that the simple fact that a driver was attempting to pass another car on a two-lane road while approaching a hill did not, by itself, establish a

120 Whitaker, 778 N.E.2d at 428.
121 Id. (citing Beeman v. Indiana, 115 N.E.2d 919, 922 (Ind. 1953)).
122 Whitaker, 778 N.E.2d at 428.
124 Barber, 863 N.E.2d at 1205 (citing IND. CODE § 35-41-2-2(c)).
125 Barber, 863 N.E.2d at 1205.
127 See id. at 320.
deliberate violation, here, it found that “Barnhart’s conduct clearly brought him within the scope of both the reckless driving and reckless homicide statutes.” The evidence was more than enough for the jury to infer that his deliberate act amounted to a reckless disregard for others’ safety. Similarly, in Napier v. Indiana, the appellant was attempting to pass other vehicles on a two-lane highway in a no-passing zone when he collided with an oncoming vehicle, killing his passenger. Napier was convicted of involuntary manslaughter, and in affirming the conviction, the Supreme Court of Indiana found,

[I]n the case at bar[,] the facts . . . were sufficient for the jury to find that the appellant had consciously chosen to cross a yellow line to pass other vehicles; that his voluntary act exceeded mere negligence and the fact that his deliberate, unlawful act resulted in the death of another person constituted manslaughter.

It is somewhat difficult to articulate similarities when comparing a road rage situation, driving at an excessive speed, or passing in a no-passing zone to driving without a license causing death. The Beeman court maintained that mere negligence is not enough to sustain a reckless homicide conviction but laid out a test in order to sustain a conviction for reckless homicide: “To be guilty of a reckless disregard for the safety of others, it is not necessary that one intend the harm which results from it. It is sufficient that the actor realizes, or should realize, that there is a strong probability that such harm may result.” Driving without a license does not, by itself, create a “strong probability that such harm may result.” In order to sustain a conviction for reckless homicide, it is necessary to show conduct that “[i]Involves a conscious choice of a course of action which injures another, either with knowledge of the serious danger

128 See id. at 318 (citing Seibert v. Indiana, 156 N.E.2d 878 (Ind. 1959)).
129 Barnhart, 304 N.E.2d at 319.
130 See id.
131 See Napier v. Indiana, 266 N.E.2d 199 (Ind. 1971).
132 Napier, 266 N.E.2d at 203.
133 See Beeman v. Indiana, 115 N.E.2d 919 (Ind. 1953).
134 Beeman, 115 N.E.2d at 923; see also Broderick v. Indiana, 231 N.E.2d 526, 528 (Ind. 1968) (citing the test laid out in Beeman).
135 Beeman, 115 N.E.2d at 923.
to others involved therein, or with knowledge of facts which would disclose the danger to any reasonable man.”136 Arguably, driving without a license and causing death involves “knowledge of the serious danger to others involved,”137 and that the choice of driving without a license “involves a conscious choice of action.”138 The difficulty therein lies with the phrase “which injures another.”139 Without additional actions (reckless in nature) it would be difficult to show that the act of driving without a license, alone, is sufficient for a reckless homicide charge.

“[R]elatively slight deviations from the traffic code, even if they technically rise to the level of ‘reckless driving,’ do not necessarily support a reckless homicide conviction if someone is subsequently killed.”140 The Whitaker court put forth actions sufficient to sustain a conviction of reckless homicide:

Some gross deviations from the traffic code, however, may under certain circumstances be such a substantial departure from acceptable standards of conduct that they will support a reckless homicide conviction, such as ignoring traffic signals at a high rate of speed, driving on a dark road at night without headlights, or intentionally crossing the center line without a legitimate reason for doing so.141

Some may dispute that driving without a license is not a gross deviation from the traffic code, but drivers owe a duty to other drivers to abide by the laws of the state, and that includes obtaining the requisite training and driver’s license.

C. Is Driving Without a License Causing Death Negligent?

Negligence is defined by Black’s Law Dictionary as “the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation . . . .”142 Is driving without a license considered negligent? A “reasonably prudent person” would follow the

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136 Id. at 922-23; see also Broderick, 231 N.E.2d at 528 (discussing the test for recklessness).
137 See Beeman, 115 N.E.2d at 922.
138 See id.
139 See id.
141 Id.
142 BLACK’S LAW DICTIONARY 479 (9th ed. 2009).
laws and obtain a valid driver’s license before operating a vehicle on the roadways. Is this exercising “the standard of care”? As discussed above, the Beeman court found that mere negligence was not sufficient to sustain a charge of reckless homicide.\footnote{Beeman, 115 N.E.2d 919.} Looking again to Whitaker, the court reversed his reckless homicide conviction, responding to the State’s arguments by stating,

“This . . . would be evidence of inadvertence or lack of attention; in other words, negligence, not recklessness.”\footnote{Whitaker, 778 N.E.2d at 428 (citing Beeman, 115 N.E.2d at 922).} It is now becoming clearer as to where Indiana courts draw the line between reckless and negligent driving. Errors in judgment constitute negligence, not recklessness, and in Whitaker, the court concluded, “[T]his case involves a non-intoxicated, well-rested truck driver who drove slightly above the speed limit and arguably followed too closely behind another vehicle on a clear, dry day, with undeniably tragic results . . . this is insufficient to establish guilt of reckless homicide . . . .”\footnote{Whitaker, 778 N.E.2d at 428.}

\textit{Clancy v. Indiana} is a case in which the court of appeals reversed a conviction for criminal recklessness.\footnote{Clancy v. Indiana, 829 N.E.2d 203 (Ind. Ct. App. 2005).} The criminal recklessness statute states, “A person who recklessly, knowingly, or intentionally inflicts serious bodily injury on another person . . . commits criminal recklessness, a Class D felony.”\footnote{IND. CODE § 35-42-2-2(d) (2010).} Clancy was seen traveling in the wrong lane of traffic for several hundred feet when a driver whom Clancy came close to hitting saw that he was asleep at the wheel.\footnote{See Clancy, 829 N.E.2d at 206.} Soon thereafter, Clancy’s truck struck two motorcyclists resulting in severe injuries of one of the motorcyclists, including amputation of the leg at the knee.\footnote{See id.} The State argued that Clancy’s sleeping at the wheel at the time of the accident was evidence of
recklessness but never contended that he acted knowingly or intentionally.\textsuperscript{150} This was a case of first impression in Indiana with regard to falling asleep behind the wheel and criminal culpability.\textsuperscript{151} The court had held in the tort-law context that the mere fact a driver had fallen asleep behind the wheel and caused an accident was not, alone, evidence sufficient to show willful or wanton misconduct.\textsuperscript{152} The court concluded that the rule in civil cases should also apply in the criminal context stating, “It has been stated that wanton or willful misconduct requires a host-driver to (1) be conscious of her misconduct, (2) be motivated by reckless indifference for the safety of her guest, and (3) know that her conduct subjects her guest to a probability of injury.”\textsuperscript{153} The court found similarities between the definitions of willful or wanton misconduct and recklessness and determined that there was no reason to adopt a lesser standard of proof for imposing liability on a sleeping driver in the criminal context.\textsuperscript{154} Further, the court found no evidence that Clancy consciously ignored signs of imminent sleep and subsequently determined that there was not enough evidence of criminal recklessness on his part.\textsuperscript{155} The court found, as it did in \textit{Whitaker}, that “negligent driving generally is not a basis for imposing criminal liability in Indiana, no matter how tragic the result.”\textsuperscript{156}

In \textit{DeVaney v. Indiana}, the Supreme Court of Indiana asked, “Can the mere fact that it was shown that appellant crossed the center line while driving be considered ‘driving with reckless disregard for the safety of others’? . . . Such an occurrence could be completely accidental.”\textsuperscript{157} In \textit{DeVaney}, the appellant was driving while intoxicated and crossed the center

\begin{footnotes}
\item[150] See id. at 206-07.
\item[151] See id. at 207.
\item[152] See id. (citing Brooks v. Bloom, 279 N.E.2d 591 (Ind. Ct. App. 1972)).
\item[153] \textit{Clancy}, 829 N.E.2d at 208 (citing Duncan v. Duncan, 764 N.E.2d 763, 767 (Ind. Ct. App. 2002)).
\item[154] See \textit{Clancy}, 829 N.E.2d at 208.
\item[155] See id. at 209.
\item[156] \textit{Clancy}, 829 N.E.2d at 209 (citing \textit{Whitaker} v. Indiana, 778 N.E.2d 423, 428 (Ind. Ct. App. 2002)).
\end{footnotes}
line striking the decedent’s vehicle.\textsuperscript{158} DeVaney’s conviction for reckless homicide was subsequently overturned. Although attitudes regarding driving while intoxicated have changed since this case was decided in 1972, it is difficult to understand how anyone could see crossing the center line while intoxicated as accidental. Driving without a license is not accidental; it is a conscious choice that an individual makes, but still there are no additional penalties when that choice, without additional reckless actions, results in the death of another. In \textit{Napier}, the Supreme Court of Indiana stated, “The gravamen of the offense charged was the killing of another person while engaged in an unlawful act, which in this case was the unlawful passing.”\textsuperscript{159} Driving without a license is an unlawful act, driving without a license and causing the death of another is “the killing of another person while engaged in an unlawful act,” which leads to the question, when will there be criminal responsibility for this? In the same interview with Jake Rigney, he stated, “I do not think that driving without a license is reckless in and of itself . . . Negligence, on the other hand, is a very appropriate description, in my opinion, of the act of driving without a license.”\textsuperscript{160} Rigney believes that all drivers owe a duty of care to each other,

The traffic code exists as a guide, outlining the specifics of that duty. I think that duty of care extends to licensing issues, and that the criminal laws regarding driving without a license serve to inform citizens that they have a duty to not drive if they have not been approved to do so by the State.\textsuperscript{161}

\textit{D. Driving Without a License Causing Death should be Included in 9-24-19-4}

\textsuperscript{158} See \textit{id.} at 734.  
\textsuperscript{159} Napier v. Indiana, 266 N.E.2d 199, 202 (Ind. 1971).  
\textsuperscript{160} Rigney, \textit{supra} note 97.  
\textsuperscript{161} \textit{id.}  

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The Court of Appeals of Indiana, in *Whitaker*, reversed Whitaker’s conviction for reckless homicide and in doing so discussed the policy of the legislature in reference to fatal traffic accidents.\(^\text{162}\)

The General Assembly has deemed that neither ‘negligent homicide’ nor ‘vehicular homicide’ is a crime in Indiana, as they are in some states. . . . Since at least 1977 it has been public policy . . . that automobile accident deaths caused by negligence, even gross negligence, fall outside the realm of criminal prosecution, and that the mere violation of a traffic law as a cause of a collision will not automatically raise the death to the level of a homicide.\(^\text{163}\)

Under Indiana Code section 9-24-19-4, the legislature has determined that driving while suspended resulting in death, while not labeled homicide, falls into “the realm of criminal prosecution.” The statement by the court in *Whitaker* does not appear to pass muster any longer. Driving while suspended is a violation of traffic law, as is driving without a license. Adding driving without a license resulting in death to the already existing statute mentioned above would not require the legislature to add an additional crime such as negligent or vehicular homicide. In reference to this proposed amendment of the current statute, Rigney stated,

> I don’t think it would be hard to rewrite that statute to include operating a vehicle having never received a license (OVNRL) causing serious bodily injury or death, and I have difficulty imagining anything that justifies criminalizing driving while suspended causing death, but not OVNRL causing death. I’m not entirely sure either one should be illegal, but if you accept the legislature’s decision that one should be illegal, I can’t think of a really good reason that the other shouldn’t be illegal as well.\(^\text{164}\)

It may be argued that knowingly driving without a license causing death involves the same culpability as knowingly driving with a suspended license causing death. As stated previously, the culpability statute states that “knowingly” is engaging in conduct and having an awareness

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\(^{163}\) *Id.*

\(^{164}\) Rigney, *supra* note 97.
that one is doing so. It seems difficult to distinguish knowingly driving without a license and knowingly driving with a suspended or revoked license. In either situation, the individual knows what he or she is doing and is making a choice to violate the law. In fact, it is debatable that a person driving without a license is more aware of his or her law-breaking actions than an individual whose license is suspended but has yet to receive notice from the bureau or whose notice was sent to a previous address. In regard to Indiana Code section 9-24-19-4, it was established in *Spaulding* that the causal connection required between driving with a suspended license and the death of another is the simple act of driving, in and of itself. Amending this law to include driving without a license causing death or serious bodily injury is something legislators can do to rectify the discrepancy as it currently stands. Providing justice to families of victims killed by unlicensed drivers is just as important as providing justice to families of victims killed by drivers with suspended licenses. Right now, the law is lopsided and the legislature has the opportunity to change that. In a speech at the Thomas M. Cooley Law School, Judge Timothy Connors stated, “Justice is the salve that heals wounds. Without justice the wound festers and festers.”

**E. Florida’s Driving Without a License Causing Death Statute and Cases**

Florida has enacted a law that punishes driving without a license and causing the death of another, the relevant portion of the statute stating,

> Any person who operates a motor vehicle . . . Without having a driver’s license as required under s. 322.03 . . . and who by careless or negligent operation of the motor vehicle causes the death of or serious bodily injury to another human being

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165 *See* IND. CODE § 35-41-2-2(b) (2010).
167 J. Timothy Connors, Washtenaw Cnty. Cir. Ct., Integrity in Our Communities Speaker Event Series (Feb. 15, 2011) (discussing our word as professionals and the duty lawyers owe).
168 *See* FLA. STAT. ANN. § 322.03 (West 2010) (requiring drivers to be licensed).
is guilty of a felony of the third degree, punishable as provided in s. 775.082\textsuperscript{169} . . .

This statute added the requirement of “careless or negligent operation,” but what does Florida define careless or negligent operation to be? Section 316.1925, “Careless driving,” was enacted in 1971 and states,

Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section.\textsuperscript{171}

In comparison, section 316.1923 was enacted in 2001 and defines aggressive careless driving as,

[C]ommitting two or more of the following acts simultaneously or in succession: (1) exceeding the posted speed . . . (2) unsafely or improperly changing lanes . . . (3) following too closely . . . (4) failing to yield the right-of-way . . . (5) improperly passing . . . (6) violating traffic control and signal devices . . .\textsuperscript{172}

The aggressive careless driving statute appears to be analogous to Indiana courts’ definitions of reckless actions, while the careless driving statute seems to be analogous to Indiana case law regarding negligence. In \textit{Florida v. Brown}, Brown, a twenty-one year old who had never applied for a driver’s license, was involved in a collision that resulted in the death of another.\textsuperscript{173} Brown claimed that the “driving without a license and causing death” statute violated constitutional due process because it criminalized simple negligence.\textsuperscript{174} The trial court in \textit{Brown} determined that the offense did not apply selectively; therefore, there was “no rational basis for boot-strapping simple negligence which results in death to the offense of driving without a license, so as to

\textsuperscript{169} \textit{See} FLA. STAT. ANN. § 775.082(3)(d) (West 2010) (“A person who has been convicted of any other designated felony may be punished as follows . . . For a felony of the third degree, by a term of imprisonment not exceeding 5 years.”).

\textsuperscript{170} FLA. STAT. ANN. § 322.34(6)(a) (West 2010).

\textsuperscript{171} FLA. STAT. ANN. § 316.1925(1) (West 2010).

\textsuperscript{172} FLA. STAT. ANN. § 316.1923 (West 2010).


\textsuperscript{174} \textit{See id. at 1188.}
create a felony.” In *Florida v. Smith*, Smith was charged with driving with a suspended license causing death or injury as well as driving under the influence (DUI) manslaughter. In *Smith*, the Supreme Court of Florida found that section 322.34(6)(b) was constitutional, the section states,

> Any person who operates a motor vehicle . . . While his or her driver’s license or driving privilege is canceled, suspended, or revoked pursuant to s. 316.655, s. 322.26(8), s. 322.27(2), or 322.28(2) or (4), and who by careless or negligent operation of the motor vehicle causes the death of or serious bodily injury to another human being is guilty of a felony of the third degree . . . .

In *Smith*, as in the Indiana case of *Abney*, the court determined that

> [T]he state is not required to prove that the operator’s drinking caused the accident. The statute requires only that the operation of the vehicle . . . caused the accident . . . any deviation or lack of care on the part of a driver under the influence to which the . . . accident can be attributed will suffice.

In Florida, with regard to the “driving with a suspended license causing death” statute, “[I]t is not the simple negligence of the driver that is the criminal conduct being punished; it is the willful act of choosing to drive a vehicle . . . with a suspended, canceled, or revoked license that is the criminal conduct being punished.” Florida’s legislature made a simple policy decision that anyone who participates in the prohibited criminal conduct and who, while participating in that prohibited conduct, negligently kills or injures another, is guilty of a more severe crime. The *Smith* court stated that simple negligence, by itself, cannot constitute a criminal act, but it can be

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175 *Brown*, 734 So.2d at 1188.
176 See *Florida v. Smith*, 638 So.2d 509 (Fla. 1994).
177 See, e.g., FLA. STAT. ANN. § 316.655 (West 2010); *Smith*, 638 So.2d at 510 (suspension resulting from conviction of a traffic infraction).
178 See, e.g., FLA. STAT. ANN. § 322.26(8) (West 2010); *Smith*, 638 So.2d at 510 (court suspension resulting from conviction of a serious traffic offense).
179 See, e.g., FLA. STAT. ANN. § 322.27(2) (West 2010); *Smith*, 638 So.2d at 510 (suspension by the Department of Highway Safety and Motor Vehicles resulting from conviction of a serious traffic offense).
180 See, e.g., FLA. STAT. ANN. §§ 322.28(2) or (4) (West 2010); *Smith*, 638 So.2d at 510 (suspension for driving while intoxicated; suspension due to conviction of manslaughter or vehicular homicide).
181 FLA. STAT. ANN. § 322.34(6)(b) (West 2010).
182 *Smith*, 638 So.2d at 510.
183 Id.
184 See id.
used to enhance the penalty for other conduct that constitutes a willful criminal act.\textsuperscript{185} Smith only addressed the criminal act of driving with a suspended, revoked, or canceled license and explained that the offense can be enhanced to a felony only in selective situations, such as when the suspension, revocation, or cancellation of the individual’s license was based on some kind of wrongdoing as opposed to some technical or administrative basis or malfunction.\textsuperscript{186} Brown argued that there was no comparable selectivity in regard to his offense (driving without a license) because the fact that he does not have a license is not related to any misconduct.\textsuperscript{187} The court responded by stating, “The argument is specious, at best, because the criminal act subject to enhancement in both cases is that of purposefully and willfully driving without a license in specific violation of state law.”\textsuperscript{188} “[K]nowingly driving with a suspended, canceled, or revoked driver’s license . . . is indeed a willful act in clear violation of the law.”\textsuperscript{189} The court in Brown overruled the trial court’s decision and held that knowingly operating a motor vehicle in Florida without a license because a person has never applied for one is also a willful act clearly in violation of the law.\textsuperscript{190} In reversing the trial court’s holding in Brown, the court of appeals further held that “[s]ection 322.34(6)(a) clearly provides that one who operates a motor vehicle on the roadways of this state without complying with prescribed licensing procedures . . . shall be guilty of a third-degree felony if his negligence in the unauthorized operation of the vehicle results in the death of another.”\textsuperscript{191}

In a concurring opinion in Monzon v. Florida, along with Monzon not having a driver’s license, his negligent driving was described as being “momentarily inattentive to traffic

\textsuperscript{186} See Brown, 734 So.2d at 1188-89.
\textsuperscript{187} See id. at 1189.
\textsuperscript{188} Brown, 734 So.2d at 1189.
\textsuperscript{189} Smith, 638 So.2d at 510.
\textsuperscript{190} See Brown, 734 So.2d at 1188.
\textsuperscript{191} Brown, 734 So.2d at 1190.
This is similar to the situation described in the introduction, where the driver fell asleep and crossed the center line, resulting in a collision that killed the other driver. The Indiana law should follow the law of Florida because falling asleep and crossing the center line seems to fall under the category of being “momentarily inattentive to traffic conditions.” Why is driving without ever having obtained a driver’s license not a negligent act? “Negligence is the failure to use reasonable care . . . . [N]egligence may consist either in doing something that a reasonably careful person would not do under like circumstances or in failing to do something that a reasonably careful person would do under like circumstances.” A reasonably careful person would not drive without obtaining a driver’s license, to do so would be negligent.

The Indiana Legislature would be wise to amend the current statute; adding language similar to the Florida statute would fill in the gaping hole that currently exists. As the law exists now, adding language such as “negligent driving” would be insufficient to raise “driving without a license causing death” to the felony level, as evidenced by the court’s decision in Whitaker v. Indiana. Florida’s definition of negligence and Indiana’s definition of negligence are different. Negligent driving in Florida was described as “momentar[y] inattenti[on] to traffic conditions,” while Indiana determined that “automobile accident deaths caused by negligence, even gross negligence, fall outside the realm of criminal prosecution, and that the mere violation of a traffic law as a cause of a collision will not automatically raise the death to the level of a homicide.” Indiana’s statute makes driving with a suspended or revoked license and causing the death of another a strict liability offense. No causal link is required. A person with a suspended or revoked license resulting from a criminal conviction that subsequently drives and is

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193 Florida v. Winters, 346 So.2d 991, 993 (Fla. 1977).
194 Monzon, 948 So.2d at 813.
involved in an accident that causes the death of another, will be charged with a Class C felony—period. In Florida, if any person drives a car without having a driver’s license and causes the death of another, he or she is guilty of a felony of the third degree—period. Perhaps the legislature should add driving without a license to the statute and amend it so that it is a strict liability offense. The statute might be amended as such: A person who operates a motor vehicle upon a highway when the person knows that the person has never obtained a license, as required by the bureau of motor vehicles, commits a Class C felony if the operation results in the death of another person. Why should it not be a strict liability offense for anyone who drives without a license or drives with a suspended or revoked license and causes the death of another? The charging decision ultimately turns on the specific situation and the circumstances surrounding the cause of the fatal accident; however, in situations such as that described in the introduction, where the cause of the fatal accident is negligence, the current law does very little to punish one who is driving without a license or driving with an administratively suspended license. Ultimately, whether one’s license is suspended, revoked, or nonexistent, a person who drives while prohibited to do so should be punished equally if his or her driving results in the death of another.

IV. CONCLUSION

Without some modification to the current statute in Indiana, there will continue to be a discrepancy between these two similarly situated traffic violations. When drivers involved in fatal accidents are punished differently depending upon whether they have a suspended or revoked license or no license at all a red flag must be raised to the legislature to revise this matter. While mere negligence is insufficient to sustain a charge of reckless homicide, the

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196 See Beeman v. Indiana, 115 N.E.2d 919 (Ind. 1953).
simple act of driving without a license or driving with a suspended or revoked license and causing death, whether done recklessly, negligently, or knowingly, should be sufficient to sustain a charge of a Class C felony. Allowing persons to essentially walk away with a slap on the wrist when their actions result in another’s death is irresponsible and should not be tolerated.

Amending the statute to make it a strict liability offense will offer justice to families who currently have received none. The Florida statute has done just that, it has taken the offense of driving without a license causing death and given it some teeth. The court in Brown stated it best—“Section 322.34(6)(a) clearly provides that one who operates a motor vehicle on the roadways of this state without complying with prescribed licensing procedures . . . shall be guilty of a third-degree felony if his negligence in the unauthorized operation of the vehicle results in the death of another.” Florida v. Brown, 734 So.2d 1187, 1190 (Fla. Dist. Ct. App. 1999). This is how the Indiana statute should be rewritten, so that courts who hear cases have no room for interpretation on whether the driver’s actions were negligent, but instead that the act of driving while prohibited to do so is, without anything more, negligent in and of itself.