*Members*

*Sen. Richard Bray, Chairperson*
*Sen. Randall Head*
*Sen. Greg Taylor*
*Sen. Lindel Hume*
*Rep. Ralph Foley*
*Rep. Greg Steuerwald*
*Rep. Matt Pierce*
*Rep. Linda Lawson*
*Judge John Marnocha*
*Judge Lance D. Hamner*
*Professor Craig Bradley*
*Attorney General Greg Zoeller*
*Commissioner Bruce Lemmon*
*Steve Johnson*
*Larry Landis*
*Chief Justice Randall Shepard*

# CRIMINAL CODE EVALUATION COMMISSION

*Legislative Services Agency*
*200 West Washington Street, Suite 301*
*Indianapolis, Indiana 46204-2789*
*Tel: (317) 233-0696 Fax: (317) 232-2554*

*LSA Staff:*

*Will James, Staff Person for the Commission*
*Mark Goodpaster, Fiscal Analyst for the Commission*
*Andrew Hedges, Attorney for the Commission*
*K.C. Norwalk, Attorney for the Commission*

*Authority: P.L. 182-2009(ss)*

## MEETING MINUTES[1]

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|---|---|
| **Meeting Date:** | **June 23, 2011** |
| **Meeting Time:** | **10:40 A.M.** |
| **Meeting Place:** | **State House, 200 W. Washington St., Senate Chamber** |
| **Meeting City:** | **Indianapolis, Indiana** |
| **Meeting Number:** | **1** |

**Members Present:** **Sen. Richard Bray, Chairperson; Sen. Randall Head; Sen. Greg Taylor; Sen. Lindel Hume; Rep. Ralph Foley; Rep. Greg Steuerwald; Rep. Linda Lawson; Judge John Marnocha; Judge Lance D. Hamner; Attorney General Greg Zoeller; Commissioner Bruce Lemmon; Steve Johnson; Larry Landis; Chief Justice Randall Shepard.**

**Members Absent:** **Rep. Matt Pierce; Professor Craig Bradley**

Sen. Bray, the Chairperson, called the meeting to order at 10:40 a.m. He told Commission members that: (1) efforts must be made to change the Indiana Criminal Code to make it more comprehensible; (2) the Code needs to be more consistent, fair, and enforceable, and; (3) the Code should be more lenient on lower Class D felonies. Sen. Bray discussed the handouts provided by the Legislative Council that were passed to the members of the commission providing information concerning new sentencing structures. (Exhibit A)

Sen. Bray requested that the commission members form work groups on the topics he discussed and to report their findings back to him. He then introduced Deborah Daniels, partner with Krieg Devault and former United States Attorney, to speak on the Data Analysis Work Group.

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[1] These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at http://www.in.gov/legislative Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for hard copies.

Ms. Daniels stated the Data Analysis Work Group intends to recommend a new sentencing structure on all felony classes to reduce recidivism and overcrowding of the corrections facilities. PowerPoint presentations (Exhibit B) were distributed to the Commission members. The names of all entities of the Data Analysis Work Group were listed in the presentation. The Indiana Judicial Center sponsored Attorney Daniels' involvement with this research.

Ms. Daniels also described past efforts to reform sentencing laws. In 2010, the Chairman of the Commission, Rep. Matt Pierce, formed a working group to propose legislation for the Commission to consider. The work group consisted of Steve Johnson, Executive Director of the Prosecuting Attorneys Council; Larry Landis, Executive Director of the Public Defenders Council; and Judge John Marnocha from St. Joseph Superior Court. The current work group is engaging in legal research and data analysis. The current legal research team includes two representatives of the Prosecuting Attorneys Council, one representative from the Public Defenders Council, two attorneys from the Judicial Center, and four law clerks from the Attorney General's office.

The topics that the work group is studying include:

- Comparing how other state laws are written and their sentencing structures to Indiana's.
- Restrictions on suspended sentencing.
- Enhancements on sentencing based on prior convictions.
- Habitual offenders and habitual substance offenders.
- Drug laws.
- Sentencing for first-time offenders and repeat offenders.
- Credit-time issues, time served and imposed sentencing.
- How other states determine charging information.
- Various classes of felony offenses and the number of counts filed under each class of felony.

Ms. Daniels also indicated that Indiana's criminal codes were last comprehensively revised in 1977 based on the model penal code that was developed in the 1960s.

In response to questions from Sen. Taylor, Ms. Daniels stated that she would examine the sentencing laws of selected states. She also indicated that staff with the Pew Center performed much of the analysis for the 2011 legislative proposal and that the Pew Center agreed to bring in a statistician to analyze the Pew Center's study.

In response to questions from Sen. Hume, Ms. Daniels stated that the work group is currently at a research stage and intends to prepare a report regarding sentencing options. She said the Judicial Center held an evidence-based practice seminar consisting of judges, prosecutors, defense counsels, and probation officers discussing SB 561- 2011 and topics to reduce recidivism. Ms. Daniels emphasized that the Commission should examine what programs and practices work to reduce the recidivism rate of offenders. The Council of State Governments is currently researching how imposed sentences, the length of incarceration, and related matters affect the recidivism rate and state population levels.

Rep. Ralph Foley also added comments about the data analysis group (Exhibit C) and their efforts as to the following: (1) defining what data is being measured; (2) making certain the statistics are the same; (3) understanding what data is being compared or measured; and (4) for all parties involved, agreeing with the measurements being used to assist the Criminal Code Evaluation Commission, Criminal Law and Sentencing Policy Study Committee, and for other legislative work.

Rep. Foley said that public safety should be the highest priority when proposing changes in sentencing laws. He also described his efforts last session relating to Amendment 47 of SB 561- 2011 to increase funding for counties to use to supervise offenders released in the communities. He also wishes to examine in more detail the role of probation and parole officers in supervising offenders who are either released from the Department of Correction or sentenced by the courts.

Sen. Bray, told the commission members that he would like to see the felony classes increased from four felony classes. He also indicated that he wishes the Commission will examine in more detail changes to criminal laws concerning theft, drugs, and the more complex issues such as drugs, sex crimes, and sentencing structures.

Steve Johnson suggested that the Commission consider expanding the current felony levels from four (A, B, C, and D) to either five or six felony classifications to define the crimes.

Sen. Taylor advocated for restricting access of arrest and conviction records of offenders convicted and sentenced for nonviolent crimes given the difficulty that persons with criminal histories have in securing employment, particularly when the overall unemployment rate is high.

Sen. Bray suggested that by evaluating the sentencing structure and understanding what works, the sentencing structure of the Code will be improved. Selected commission members assigned to certain groups are to provide the Annie E. Casey Foundation their available dates to meet to discuss the theft statute and to report back their findings to Sen. Bray before next month's commission meeting. Any data discovery is to be sent to the commission members.

Sen. Bray adjourned the meeting at 11:31 a.m.

2. **CRIMINAL LAW AND SENTENCING POLICY STUDY COMMITTEE (IC 2-5-32.5)**

THE COMMITTEE IS CHARGED WITH STUDYING THE FOLLOWING TOPICS:

A. The laws relating to:

(a) the investigation of crimes;
(b) the prosecution of crimes;
(c) criminal procedures;
(d) alternative sentencing programs;
(e) the department of correction;

**Exhibit A**
**Criminal Code Evaluation Commission**
**June 23, 2011 Meeting #1**

(f) parole;
(g) probation;
(h) community corrections;
(i) home detention programs;
(j) criminal registries;
(k) victim rights;
(l) the classification of criminal offenses into felony and misdemeanor categories;
(m) sex offenders; and
(n) juvenile offenders;

(SEA 90, 490, HEA 1153);

B. Federal requirements or incentives for states to pass certain laws or establish specific programs (SEA 90, 490, HEA 1153);

C. The long range needs of the criminal justice and corrections systems and recommend policy priorities for those systems (SEA 90, 490, HEA 1153);

D. Critical problems in the criminal justice and corrections systems and recommend strategies to solve the problems (SEA 90, 490, HEA 1153);

E. The cost effectiveness of the use of state and local funds in the criminal justice and corrections systems (SEA 90, 490, HEA 1153);

F. Plans, programs, and legislation for improving the effectiveness of the criminal justice and corrections systems (SEA 90, 490, HEA 1153);

G. The proposal that this committee be required to review all requests for proposed legislative or constitutional changes in criminal law, criminal procedure, the law governing delinquent acts, or juvenile court procedures related to alleged delinquent acts before they are considered by the House of Representatives or Senate, unless the proposed change in criminal law has been approved by certain legislative committees and specific amounts of money have been appropriated to the department of correction if certain department expenses will increase (SB 558, HB 1571);

H. Truth in sentencing, good time credit and earned credit time, and felony classifications (SB 561, HB 1530);

I. Developing a criminal information packet that would contain all relevant information that pertains to an offender's dangerousness or lack of dangerousness, including: (1) the original charges; (2) the terms of any plea agreement; (3) whether the jury found the offender guilty of lesser included offenses; and (4) any other information that would allow a more accurate assessment of an offender's character (SB 561);

J. The criminal laws regarding marijuana (SR 20, 70); and

K. Issues regarding the establishment of a child protection registry (SR 84).

3. **INTERIM STUDY COMMITTEE ON ECONOMIC DEVELOPMENT (IC 2-5-31.8)**

THE COMMITTEE IS CHARGED WITH STUDYING THE FOLLOWING TOPICS:

A. Best practices in state and local economic development policies and activities (HEA 1004, SB 589, HB 1007, 1466);

B. The use and effectiveness of tax credits and deductions (HEA 1004, SB 589, HB 1007, 1466);

C. Whether there are any specific sectors of the economy for which Indiana might have comparative advantages over other states (HEA 1004, SB 589, HB 1007, 1466);

D. The extent to which Indiana's tax laws encourage business investment, and any improvements that might be made to Indiana's tax laws (HEA 1004, SB 589, HB 1007, 1466);

E. The extent to which Indiana's education systems support economic development (HEA 1004, SB 589, HB 1007, 1466);

F. The benefits of existing community revitalization enhancement districts and possible new community revitalization enhancement districts as an economic development tool (HEA 1004, SB 589, HB 1007, 1466);

G. Any other issue as directed by the committee's co-chairs (HEA 1004, SB 589, HB 1007, 1466);

H. The effect IC 5-22-15-20.9 and IC 36-1-12-22 will have on non-local businesses (Senator Yoder); and

I. Unfair practice laws and the use of stolen information technology by businesses that offer products for sale in the state of Indiana (SR 57).

4. **INTERIM STUDY COMMITTEE ON EDUCATION ISSUES (IC 2-5-33.5)**

THE COMMITTEE IS CHARGED WITH STUDYING THE FOLLOWING TOPICS:

A. The causes of low graduation rates in Indiana high schools (SEA 85, HB 1369);

B. Best practices that increase graduation rates in high schools in Indiana and other states (SEA 85, HB 1369);

C. Training and technical assistance opportunities for high schools to effectively

# CRIMINAL CODE EVALUATION COMMISSION

## RESEARCH EFFORTS
## 2011

Exhibit B
Criminal Code Evaluation
Commission
June 23, 2011 Meeting #1

# Purpose of Research Efforts

Provide background to inform the deliberations of the Criminal Code Evaluation Commission

# LEGAL RESEARCH

# Research Team Members:

- *Attorney Review Team*:
  - Larry Brodeur, Indiana Prosecuting Attorneys Council
  - Suzanne O'Malley, Indiana Prosecuting Attorneys Council
  - Andrew Cullen, Indiana Public Defender Council
  - Molly Johnson, Attorney at Law
  - Vicki Ursulskis, Attorney at Law
  - Michael McMahon, Indiana Judicial Center
  - Deborah Daniels, Consultant to Indiana Judicial Center (Convenor)

*Research team members cont'd*

- *Law Clerk Team*:
  - Justin Swanson, Indiana Public Defender Council
  - Chris Pierce, Indiana Attorney General's Office
  - Leif Johnson, Indiana Attorney General's Office
  - Sean McGoff, Indiana Attorney General's Office
  - Keenan Fennimore, Indiana Attorney General's Office

# Tasks Being Undertaken

- Review of Indiana Criminal Code
  - Streamlining opportunities
  - Definitional inconsistencies (among statutes; between statutes and case law)
  - Comparison to other states' laws
  - Reorganization opportunities, e.g., public health section to capture similar laws
  - Listing of all restrictions on suspendibility
  - Listing of all sentencing enhancements
  - Review of habitual offender statutes specifically, with comparison to other states

*Tasks Being Undertaken cont'd*

- <u>Comparative Sentencing Research</u>
  - Comparison of Indiana's drug sentencing laws with those of selected other states
    - State selection criteria include:
      - States with similar demographics, including urban and rural areas
      - States with a general "tough on crime" reputation
      - Contiguous states

*Comparative Research cont'd*

- Comparison of Indiana's overall sentencing scheme to those of other states and Model Penal Code
  - Same criteria for state selection (see above)
  - Review of ALI 2011 Model Penal Code sentencing drafts
  - Aspects of review:
    - Sentence ranges
    - Determinate vs. indeterminate sentencing
    - Credit time
    - Average sentences served as well as imposed (referred to data analysis team)

# DATA ANALYSIS

- Purpose:
  - To ensure clear understanding on the part of all stakeholders as to basic data relating to the Indiana Department of Correction population
  - To provide means of determining current/future trends in incarceration
  - To provide means of determining the effect of potential changes in Indiana sentencing laws
  - To examine composition of the Class C and Class D felony population of IDOC
  - To inform the deliberations of the Criminal Code Evaluation Commission and any other entity engaged in review of Indiana criminal sentencing requirements

*Data Analysis cont'd*

- Entities represented:
  - Indiana Prosecuting Attorneys Council
  - Indiana Public Defender Council
  - Indiana Judicial Conference
  - Indiana Criminal Justice Institute
  - Indiana Legislative Services Agency
  - Indiana Department of Correction
  - Indiana General Assembly

  - Convenor: The Honorable Ralph Foley, Indiana House of Representatives

## DATA ANALYSIS WORKING GROUP

## PROPOSED GOALS AND STARTING ASSUMPTIONS

### Goals: Preliminary List

1. Base imprisonment versus ~~probation~~ community supervision decisions on risk to community of recidivism/violence and most likely method of reducing risk of recidivism.

2. Determine whether there is a population regarding which the community would be better served (protected from recidivism) through community supervision/swift and certain sanctions than through imprisonment.

3. Deal with offenders in the way most likely to protect the public.

    a. Objectives:
        i. Reduce recidivism
        ii. Imprison the most dangerous offenders for appropriate terms – but also protect community after release

    b. Strategies to achieve objectives:
        i. Risk assessment
        ii. Evidence-based approaches to different types of offenders based on risk assessment
        iii. Appropriately long sentences for violent offenders, followed by community monitoring after release
        iv. Performance measures to assess results

4. Make best (most cost-effective) use of scarce public safety funding

### Starting Assumptions: Preliminary List

1. The jobs of both protecting the public and managing limited public resources are shared among the General Assembly, the Governor, the prosecutors and the courts, at a minimum. All criminal justice stakeholders have an obligation to contribute constructively to both missions.

2. The sentence "served" is understood to include all time spent incarcerated, including time served in jail awaiting trial and sentencing.



**Exhibit C**
**Criminal Code Evaluation Commission**
**June 23, 2011 Meeting #1**

3. Comparisons must be apples to apples.

    a. Example: All of the following can yield different and, to the untrained eye, seemingly contradictory findings; and are not necessarily causally connected:

        i. Crime rate (FBI UCR, based on reported crimes)
        ii. Crime rate (Victim survey, based on reported and unreported crimes)
        iii. Arrest rate
        iv. Number of cases filed in court
        v. Raw number of convictions
        vi. Conviction rate
        vii. Prison population (jurisdictional vs. custodial)
        viii. Range of sentence for a particular crime (e.g., 20-50 years for Class A felony)
        ix. Average sentence imposed (by court) for a particular crime e.g., 20 years vs. 40 years for a Class A felony
        x. Average time actually served by offender

    b. Data working group should determine the appropriate measures in terms of DOC population and trends, e.g.,

        i. "Jurisdictional count": those sentenced to and under DOC jurisdiction
        ii. "Custodial count": only those in DOC facilities (not including those in rental beds in county jails, etc. but still under DOC jurisdiction).

    c. We need to update the prior analysis of the DOC population (2000-2008 Pew study data) with 2009, 2010 data to get current trend to the maximum extent possible, assuring all participants that only DOC jurisdictional and/or custodial data are included in any count of "Indiana prisoners" in any given year.

4. We should make use of work already accomplished in terms of data analysis, but improve on it.

5. We must all accept from the outset and throughout the process that all parties are operating in good faith.

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