



CRIMINAL CODE EVALUATION COMMISSION

Legislative Services Agency
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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
David Powell
Larry Landis
Chief Justice Randall Shepard

LSA Staff:

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

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

MEETING MINUTES¹

Meeting Date: October 4, 2011
Meeting Time: 10:30 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 6

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

Members Absent: Rep. Greg Steuerwald; Professor Craig Bradley.

Senator Bray called the meeting to order at 10:40 a.m. and asked the Commission members to introduce themselves.

Consolidation of Definitions in the Criminal Code: Andrew Hedges, Senior Staff Attorney with Legislative Services Agency, told the Commission members that the purpose of this effort is to move all definitions of crimes used in IC 35 to a newly created IC 35-31.5-2. He noted all definitions in the criminal code are not in IC 35-41-1. As proposed, all definitions will be included in this new article and chapter.

Mr. Hedges indicated that the current draft is almost 100 pages. He noted that the new format for bill drafts is to include in the repealed sections the entire text of each section with a strikeout through the text. K.C. Norwalk, Senior Staff Attorney, will email the final

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.

draft when it is completed.

Consolidation of Certain Criminal Law Provisions in Titles 4 and 5: Mr. Hedges discussed how sections of Titles 4 and 5 could be rewritten. (See Exhibit A). He noted that many of the criminal penalties for violating sections in Titles 4 and 5 are difficult to find. Consequently, the Commission members considered grouping all of these references in one section of Title 35 for easier reference.

Exhibit A shows these references. Mr. Hedges noted that none of these criminal provisions were moved to Title 35 since they are all generally a part of the scheme that deals with regulatory statutes. As an example, Mr. Hedges cited IC 4-4-27, which governs the inspection of grain moisture testing equipment. The criminal provisions are in the final section of this chapter.

Senator Bray noted the large number of criminal violations associated with lottery and gaming operations. He asked Mr. Hedges to contact both the Lottery Commission and Gaming Commission to determine whether the administrators in these agencies recommend any other changes to the criminal statutes concerning gaming and lottery administration.

The members also discussed whether any of these misdemeanors could be decriminalized. Representative Pierce noted that since infractions take away the monetary incentive to break laws, people might not violate these statutes. David Powell also noted that prosecuting attorneys find it difficult to prove when violations of this section of the code occurred.

Inspector General David Thomas next testified about the proposed rewriting of Titles 4 and 5. He noted several problems with the way that IC 4 and 5 are currently organized so that operating rules are mixed with criminal penalties. He told the members that parts of the statute are difficult to understand and to prosecute. As an example, IC 5-13-5 requires every public officer who receives public funds to maintain a cashbook and to record all daily transactions. It is possible that a public official receiving money at the end of the business day could be liable for a Class B misdemeanor for waiting until the next day to deposit the money.

Mr. Thomas also noted that many of these misdemeanors are difficult to prosecute and because so few appellate court cases cite these statutes, it appears that prosecuting attorneys file few cases in this area of law. He also indicated that he would be open to reducing many of the criminal misdemeanors to infractions

During questions and answers with the Commission members, Mr. Thomas indicated that his staff could recommend portions of IC 4 and 5 that could be rewritten for a meeting in December.

Data Analysis Working Group: Representative Foley told the Commission members that concerns had been raised about offender data used during the prior legislative session to estimate the effect that sentencing changes would have on future prison populations. Consequently, a Data Analysis Working Group was formed to ensure that decision makers have valid and reliable information on population produced from sound methodology.

John von Arx, special consultant to the Governor, told Commission members that a subcommittee is examining the analysis from the previous year to ensure that terminologies have uniform definitions. The subcommittee is also examining Department of Correction (DOC) population trends. Mr. von Arx noted that DOC population grew slowly or almost leveled out between 2008 and 2010 as compared to earlier in the decade.

Randy Koester, Deputy Commissioner of the Department of Correction, explained that DOC reduced parole and probation revocations for technical violations, increased the number of counties with community corrections programs, and requested prosecuting attorneys and criminal court judges in each county to consider other sanctions besides prison for persons sentenced for nonviolent crimes. To increase the number of releases, DOC also reduced time sanctions for prison rule violations, expanded rehabilitative program participation, increased community transition programming participation and expanded the "purposeful incarceration" concept.

Mr. von Arx told the Commission members that one of the issues that has been identified by DOC was the number of Class D offenders who spend less than 12 months in prison. Short-term offenders generally receive little programming and take up space in the Reception Diagnostic Center for processing and in DOC facilities.

To get better insight into this offender group, the Criminal Justice Institute has contracted with the Center for Criminal Justice at IUPUI to examine the files of 2,007 offenders who were released from DOC facilities for Class D felonies in 2011. For each offender, the Center staff will determine whether the offender was committed as part of a plea bargain, whether any alternative sanctions existed at the local level, whether the offender was sent to prison for a probation violation, and whether any other factors required the offender to be in DOC. (See Exhibit B for a complete set of questions that the Center will try to answer for each offender.)

During Commission discussion, the need for ongoing reporting of this type of information was raised as an issue. Representative Foley indicated that this effort would develop a baseline of data, but would not be an ongoing effort.

This report is expected to be completed by January 2012.

Research Group: Deborah Daniels presented to the Commission members two tables (see Exhibit C). One table shows the current scheme for sex crimes by felony level. The other table shows an alternative scheme based on proportional penalties that could be applied based on the severity of the crime. Under current law, sex crimes can be one of four felonies with sometimes wide ranges of incarceration between felony levels. In the alternative scheme, the sex crimes are divided into six different levels with presumably narrower ranges of incarceration. Ms. Daniels told the Commission members that the Research Group did not assign specific terms of incarceration for each level.

Senator Bray told the Commission members that he expects to have three more meetings before the end of the interim. The next meeting would be on October 19 at 10:30 a.m.

The meeting was adjourned at 12:30 p.m.

Exhibit A

Chapter 4. IC 4 Criminal Statutes

35-51-4

35-51-4-1

Sec. 1. The following statutes define crimes in IC 4:

- IC 4-1-10-8 (Concerning state agencies).
- IC 4-1-10-9 (Concerning state agencies).
- IC 4-2-6-13 (Concerning state officers).
- IC 4-2-6-14 (Concerning state officers).
- IC 4-2-7-8 (Concerning the inspector general).
- IC 4-4-27-8 (Concerning the inspection of grain).
- IC 4-11-1-6 (Concerning certain loans and mortgages).
- IC 4-13-1.2-11 (Concerning the department of correction ombudsman).
- IC 4-13-4.1-4 (Concerning the department of administration).
- IC 4-13-19-11 (Concerning the department of child services ombudsman).
- IC 4-13.6-4-14 (Concerning state public works).
- IC 4-15-2-42 (Concerning state merit employment).
- IC 4-15-10-4 (Concerning certain state employee reports).
- IC 4-21.5-3-36 (Concerning administrative proceedings).
- IC 4-21.5-3-37 (Concerning administrative proceedings).
- IC 4-30-3-19 (Concerning the lottery).
- IC 4-30-3-19.5 (Concerning the lottery).
- IC 4-30-3-19.7 (Concerning the lottery).
- IC 4-30-12-5 (Concerning the lottery).
- IC 4-30-13-1 (Concerning the lottery).
- IC 4-30-14-1 (Concerning the lottery).
- IC 4-30-14-2 (Concerning the lottery).
- IC 4-30-14-3 (Concerning the lottery).
- IC 4-30-14-4 (Concerning the lottery).
- IC 4-30-14-5 (Concerning the lottery).
- IC 4-30-14-6 (Concerning the lottery).
- IC 4-31-13-3 (Concerning horse racing).
- IC 4-31-13-3.5 (Concerning horse racing).
- IC 4-31-13-9 (Concerning the lottery).
- IC 4-32.2-8-4 (Concerning charity gaming).
- IC 4-33-10-1 (Concerning riverboat gambling).
- IC 4-33-10-2 (Concerning riverboat gambling).
- IC 4-33-10-2.1 (Concerning riverboat gambling).
- IC 4-33-10-2.5 (Concerning riverboat gambling).
- IC 4-33-22-14 (Concerning boxing and mixed martial arts).
- IC 4-33-22-40 (Concerning boxing and mixed martial arts).
- IC 4-35-9-2 (Concerning gambling games at racetracks).
- IC 4-35-9-3 (Concerning gambling games at racetracks).
- IC 4-35-9-4 (Concerning gambling games at racetracks).
- IC 4-35-9-5 (Concerning gambling games at racetracks).
- IC 4-36-6-5 (Concerning gambling in certain establishments).

As added by P.L.70-2011, SEC.1.

Chapter 5. IC 5 Criminal Statutes

35-51-5

35-51-5-1

Sec. 1. The following statutes define crimes in IC 5:

- IC 5-1-4-22 (Concerning hospital bonding authorities).
- IC 5-2-2-11 (Concerning the law enforcement academy building commission).
- IC 5-2-4-7 (Concerning criminal intelligence information).
- IC 5-10-4-3-16 (Concerning the Indiana state teacher's retirement fund).
- IC 5-11-1-18 (Concerning state board of accounts).
- IC 5-11-10-3 (Concerning certification of claims).
- IC 5-13-14-3 (Concerning public funds).
- IC 5-13-14-4 (Concerning public funds).
- IC 5-14-3-10 (Concerning access to public records).
- IC 5-15-6-8 (Concerning local public records commissions).
- IC 5-16-7-3 (Concerning wage scale of contractor's and subcontractors employees).
- IC 5-16-9-5 (Concerning parking for persons with physical disabilities).
- IC 5-17-1-5 (Concerning public purchases).
- IC 5-17-1-6 (Concerning public purchases).
- IC 5-28-15-7 (Concerning enterprise zones).
- IC 5-28-15-8 (Concerning enterprise zones).

As added by P.L.70-2011, SEC.1.

Chapter 27. Inspection of Grain Moisture Testing Equipment

4-4-27

4-4-27-0.2

Sec. 0.2. The amendments made by P.L.101-1992 to IC 16-5-2 (repealed) (now codified in this chapter) do not affect:

- (1) rights or liabilities accrued;
- (2) penalties incurred;
- (3) crimes committed; or
- (4) proceedings begun;

before July 1, 1992. Those rights, liabilities, penalties, crimes, and proceedings continue and shall be imposed and enforced under IC 16-5-2 (repealed) (as in effect before July 1, 1992) as if P.L.101-1992 had not been enacted. As added by P.L.220-2011, SEC.23.

4-4-27-1

Sec. 1. The director of the department of agriculture or the director's designee shall, at least one (1) time each year, inspect and test all equipment used to test the moisture and the foreign material and dockage content of grain purchased, sold, or exchanged in Indiana.

As added by P.L.2-1993, SEC.32. Amended by P.L.1-2006, SEC.46.

4-4-27-2

Sec. 2. Each piece of equipment that is tested and found to be true in accordance with rules or standards prescribed by the National Institute of Standards and Technology, the United States Department of Agriculture, and the department of agriculture must bear a seal issued by the office of the director of the department of agriculture to that effect with the date of inspection and expiration date.

As added by P.L.2-1993, SEC.32. Amended by P.L.1-2006, SEC.47.

4-4-27-3

Sec. 3. (a) The director of the department of agriculture or the director's designee shall charge a fee of ten dollars (\$10) for each moisture testing device inspected from each inspection site under this chapter.

(b) All fees shall be deposited in the grain buyers and warehouse licensing agency license fee fund established by IC 26-3-7-6.3.

As added by P.L.2-1993, SEC.32. Amended by P.L.1-2006, SEC.48; P.L.207-2007, SEC.1.

4-4-27-4

Sec. 4. Money shall be appropriated to the department of agriculture for the use of the office in carrying out this chapter.

As added by P.L.2-1993, SEC.32. Amended by P.L.1-2006, SEC.49.

4-4-27-5

Sec. 5. The department of agriculture may adopt rules under IC 4-22-2 to administer this chapter.

As added by P.L.2-1993, SEC.32. Amended by P.L.1-2006, SEC.50.

4-4-27-6

Sec. 6. The department of agriculture may:

- (1) employ such persons;
- (2) make such expenditures;
- (3) require such reports and records;
- (4) make such investigations; and
- (5) take such other action;

as the department of agriculture considers necessary or suitable for the proper administration of this chapter.

As added by P.L.2-1993, SEC.32. Amended by P.L.1-2006, SEC.51.

4-4-27-7

Sec. 7. A copy of this chapter and all rules adopted under this chapter shall be posted in a conspicuous manner and placed at every commercial grain buying site.

As added by P.L.2-1993, SEC.32.

4-4-27-8

Sec. 8. A person who recklessly uses equipment:

(1) to ascertain the moisture and the foreign material and dockage content of grain in the process of commercial buying or selling of grain; and

(2) that does not bear the seal required by section 2 of this chapter;

commits a Class B misdemeanor.

As added by P.L.2-1993, SEC.32.

TITLE 35. CRIMINAL LAW AND PROCEDURE

35

ARTICLE 1. REPEALED

35-1 (Repealed by P.L.2-1995, SEC.140.)

ARTICLE 1.1. REPEALED

35-1.1 (Repealed by Acts 1981, P.L.298, SEC.9.)

ARTICLE 2. REPEALED

35-2 (Repealed by Acts 1981, P.L.298, SEC.9(a).)

ARTICLE 2.1. REPEALED

35-2.1 (Repealed by Acts 1981, P.L.298, SEC.9.)

ARTICLE 3. REPEALED

35-3 (Repealed by P.L.1-1993, SEC.238.)

ARTICLE 3.1. REPEALED

35-3.1 (Repealed by Acts 1981, P.L.298, SEC.9(a).)

ARTICLE 4. REPEALED

35-4 (Repealed by P.L.1-1993, SEC.238.)

1 SECTION 1. IC 4-11-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2012]: Sec. 6. An officer who **knowingly, intentionally, or** recklessly lends to any
3 person a greater amount of funds than ~~he~~ **the officer** is authorized by law to lend commits
4 **unauthorized lending**, a Class B misdemeanor.

5 SECTION 2. IC 4-13-4.1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2012]: Sec. 4. (a) Neither the commissioner of the department of administration nor any
7 employee of his **the** department may be financially interested or have any personal beneficial
8 interest in the purchase of any printing, lithographing, paper, binding, stationery, printing
9 materials, or office supplies.

10 (b) If the commissioner of the department of administration or an employee of his
11 department knowingly falsely certifies any bill on account of the public printing, lithographing,
12 binding, stationery, printing material, or office supplies, he commits a Class D felony: **A**
13 **commissioner of the department of administration or any employee of the department of**
14 **administration who knowingly or intentionally makes a material misstatement on a bill on**
15 **account for public printing, lithography, binding, stationery, printing material, or office**
16 **supplies commits fraud on a printing account, a Class D felony. [repeal?]**

17 SECTION 3. IC 5-1-4-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2012]: Sec. 22. (a) A member, agent, or employee of an authority who knowingly is
19 interested in any contract with the authority or in the sale of any property to the authority
20 commits a Class A misdemeanor. Such contracts are void: This section does not apply to
21 contracts **a contract** for purchases **purchase** of property between an authority and other
22 departments, municipalities, or subdivisions of state government.

23 (b) **A member, agent, or employee of an authority may not be financially interested**
24 **or have any personal beneficial interest in a contract with the authority or in the sale of any**
25 **property to the authority. A contract or the sale of property between:**

26 (1) **the authority; and**

27 (2) **a member, agent, or employee of an authority who is financially**
28 **interested or has a personal beneficial interest in the contract or sale;**

29 **is voidable at the discretion of the authority.**

30 (c) **A member, agent, or employee of an authority who knowingly or intentionally:**

31 (1) **enters into a contract with; or**

32 (2) **sells property to;**

33 **while being financially interested or having a personal beneficial interest in the contract or**
34 **sale commits self dealing with a hospital bonding authority, a Class A misdemeanor.**

35 **[repeal]**

Exhibit B

This study will seek to answer the following questions:

1. Is the conviction offense an accurate representation of the facts of the case?
 - a. What other charges might have been (were) filed?
 - b. What charges were dismissed as part of a plea agreement that ended with a D Felony conviction?
2. If the offenders were not going to go to IDOC for the conviction offenses, then what are the alternatives?
 - a. Are there viable (keeping in mind public safety) options at the local level?
 - b. Are there community-based options available in that jurisdiction?
 - c. What policies exist to support or discourage the use of community-based or local sentencing alternatives to IDOC?
 - i. Policies of the courts in that jurisdiction
 - ii. Policies internal to the prosecutor's office in that jurisdiction
3. If the offenders are being sentenced to IDOC as a result of probation violations, is the use of incarceration at the state level necessary/warranted?
 - a. What are the facts related to the violations?
 - b. What local alternatives are available as alternative sanctions for probation violations?
 - c. Are there additional facts that would support a conclusion that incarceration at the state level is the necessary response?
4. If the offenders are serving short terms in IDOC, is this a function of the original sentence?
 - a. How is jail time credit being factored in?
 - b. Is there a requirement in place that leads to "walk through" admissions when going to prison might be avoided?
 - c. What other factors are influencing the differences between the length of sentence and the actual length of time spent in IDOC facilities?

DRAFT

Terminology and Definitions

- “Admission” - # of new offenders sentenced to DOC
 - does not include Parole and CTP violators
 - Probation violators are inherently considered new offenders
- “Release” - # of offenders released from DOC custody via Parole, Probation, CTP, or discharged
- “Snapshot” – as of any given date, the # of offenders sentenced to DOC (includes inmates held in county jails and contract beds)
- “Population” - the # of offenders sentenced to DOC (includes inmates held in county jails and contract beds)
- “Capacity” (Operational) – The total bed capacity of the facility
- “Average Length of Stay” – the # of days the offender ‘stayed’ in DOC for their incarceration period resulting in release for a given year. (This has always been reported based on capacity needs, so the #'s are typically driven down due to the fact that parole violators are included)
- “Estimated Possible Release Date” – The expected DOC release date, with the assumption that an offender will receive good time credit of day for a day.
- “Credit time classes”
 - Class 1 - earns 1 day credit for each day served.
 - Class 2 - earns 1 day credit for every 2 days served.
 - Class 3 - earns no credit time
 - Class 4 - 1 day credit for every 6 days served.
- “Levels of housing security”
 - Minimum. Level 1 - Usually are the lowest level of supervision and include work release and camps. Mostly unfenced.
 - Medium. Level 2 – include facilities such as IYC - WCC they have more supervision and offenders must be within 8 years of release. They will have more closely controlled movement. Closed perimeter.
 - Medium. Level 3. Offenders must be within 15 years of release. These facilities have even more controlled movement of offenders within facilities.
 - Maximum. Level 4. The most closely controlled movement of the offenders. Offenders with 15 or more year start at Level 4. ISP and WVD are Level 4 facilities.
- “Initial Period of Incarceration” - that part of a convicted person’s sentence spent incarcerated in prison or jail, and includes the sentence minus any applicable credit time.
- “Total Period of incarceration” - the initial period of incarceration plus any additional period(s) of incarceration resulting from parole, probation or community corrections revocations following initial release from prison.
- “Jail Holds” - a person convicted of a felony and sentenced to the Department of Correction, but held by agreement with the Sheriff, in a county jail in exchange for a per diem established by law.



Data Work Group Meetings to Date

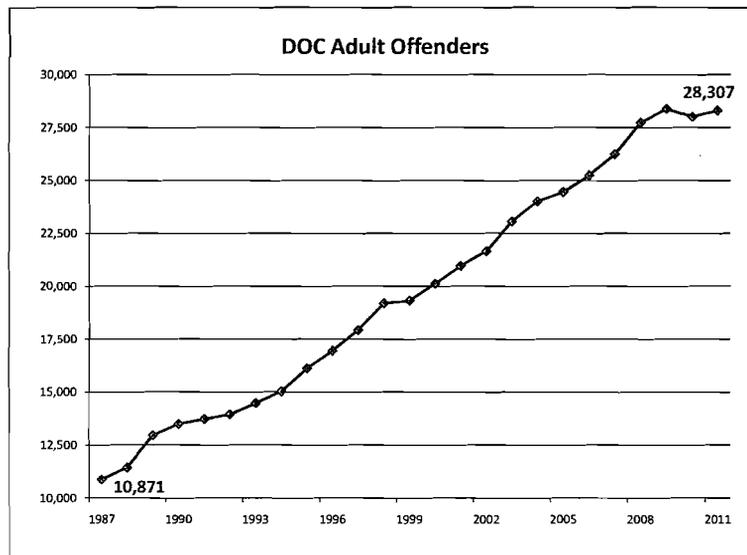
Time	Place
June 23, 2:00 p.m.	Indiana Government Center, Indianapolis
August 12, 10:00 a.m.	Bartholomew County
August 24, 1:00 p.m.	Downtown Indianapolis
September 7, 1:30 p.m.	JTAC Conference Room, Indianapolis
September 30, 11:00 a.m.	Conference Call

Jan-00	Jan-01	Jan-02	Jan-03	Jan-04	Jan-05	Jan-06	Jan-07	Jan-08	Jan-09	Jan-10	Jan-11
19,309	20,125	20,966	21,661	23,069	24,008	24,455	25,237	26,249	27,742	28,389	28,015

Jan-00	Jan-01	Jan-02	Jan-03	Jan-04	Jan-05	Jan-06	Jan-07	Jan-08	Jan-09	Jan-10	Jan-11
4,872	5,401	5,838	6,415	5,742	5,697	7,216	8,345	10,794	11,047	10,467	10,899

CY01	CY02	CY03	CY04	CY05	CY06	CY07	CY08	CY09	CY10
12,688	14,012	13,564	13,482	14,489	14,089	14,085	14,285	15,911	15,429

CY01	CY02	CY03	CY04	CY05	CY06	CY07	CY08	CY09	CY10
11,721	12,153	13,345	14,141	15,184	16,379	17,070	18,264	19,607	19,845



Managing Record Level Prison Population:
Increased Capacity

- Added over 3,200 beds
- Facility Forward initiative
- Classification overrides
- Over-utilized jail beds

Managing Record Level Prison Population:
By Decreasing Admissions

- Increased Community Corrections by four counties, and expanded capacity of others
- Decreased parole revocations for technical violations
- Decreased probation revocations
- Letter from Commissioner to Criminal Justice Stakeholders

Exhibit C

IC 35-42-4 (Sex Crimes) Current Scheme

Prepared by the Criminal Code Evaluation Commission Staff Work Group for consideration by the Commission

<u>A Felony</u>	<u>B Felony</u>	<u>C Felony</u>	<u>D Felony</u>
Rape (force, weapon, injury, drug)	Rape		
Criminal Deviate Conduct (force, weapon, injury, drug)	Criminal Deviate Conduct		
Child Molesting (intercourse with force, weapon, injury, drug, or by person >21)	Child Molesting (intercourse)		
	Child Molesting (fondling with force, weapon, injury, drug)	Child Molesting (fondling)	
Vicarious Sexual Gratification (directs intercourse with child <14 with force, weapon, injury, drug)	Vicarious Sexual Gratification (directs intercourse with child <14)	Vicarious Sexual Gratification (directs intercourse with child <16)	
	Vicarious Sexual Gratification (directs fondling with child <14 with force, weapon, injury, drug)	Vicarious Sexual Gratification (directs fondling with child <14)	Vicarious Sexual Gratification (directs fondling with child <16)
Sexual Misconduct with a Minor (intercourse with force, weapon, injury, drug)	Sexual Misconduct with a Minor (intercourse by person >21)	Sexual Misconduct with a Minor (intercourse)	
	Sexual Misconduct with a Minor (fondling with force, weapon, injury, drug)	Sexual Misconduct with a Minor (fondling by person >21)	Sexual Misconduct with a Minor (fondling)
			Performing Sexual Conduct in the Presence of a Minor
	Child Solicitation (prior conviction & use of computer network)	Child Solicitation (use of a computer network)	Child Solicitation
			Child Seduction
		Sexual Battery (force, weapon, injury, drug)	Sexual Battery
			Possession of Child Pornography
		Child Exploitation	
			Sex Offender Internet Offense (prior)
		Unlawful Employment Near Children (prior)	Unlawful Employment Near Children
			Sex Offender Residency Offense (prior)

NOTE: "force" = use of deadly force; "weapon" = while armed with a deadly weapon; "injury" = causing serious bodily injury; "drug" = use of a drug or controlled substance

IC 35-42-4 (Sex Crimes) Proportionality Proposal

Prepared by the Criminal Code Evaluation Commission Staff Work Group for consideration by the Commission

Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
Rape (force, weapon, injury, drug)		Rape			
Criminal Deviate Conduct (force, weapon, injury, drug)		Criminal Deviate Conduct			
Child Molesting (intercourse with force, weapon, injury, drug)	Child Molesting (intercourse by person >21)	Child Molesting (intercourse)			
	Child Molesting (fondling with force, weapon, injury, drug)		Child Molesting (fondling)		
	Vicarious Sexual Gratification (directs intercourse with child <14 with force, weapon, injury, drug)	Vicarious Sexual Gratification (directs intercourse with child <14)	Vicarious Sexual Gratification (directs intercourse with child <16)		
		Vicarious Sexual Gratification (directs fondling with child <14 with force, weapon, injury, drug)	Vicarious Sexual Gratification (directs fondling with child <14)	Vicarious Sexual Gratification (directs fondling with child <16)	
Sexual Misconduct with a Minor (intercourse with force, weapon, injury, drug)		Sexual Misconduct with a Minor (intercourse by person >21)		Sexual Misconduct with a Minor (intercourse)	
	Sexual Misconduct with a Minor (fondling with force, weapon, injury, drug)			Sexual Misconduct with a Minor (fondling by person >21)	Sexual Misconduct with a Minor (fondling)
			Child Solicitation		Performing Sexual Conduct in the Presence of a Minor
			Child Seduction		
			Sexual Battery (force, weapon, injury, drug)		Sexual Battery
				Child Exploitation	Possession of Child Pornography
					Sex Offender Internet Offense (prior)
				Unlawful Employment Near Children (prior)	Unlawful Employment Near Children Sex Offender Residency Offense
					Sex Offender Registry Offense

NOTE: "force" = use of deadly force; "weapon" = while armed with a deadly weapon; "injury" = causing serious bodily injury; "drug" = use of a drug or controlled substance