



CRIMINAL CODE EVALUATION COMMISSION

Legislative Services Agency
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Sen. Greg Taylor
Sen. Lindel Hume
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Mark Goodpaster, Fiscal Analyst for the
Commission

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

MEETING MINUTES¹

Meeting Date: July 13, 2011
Meeting Time: 10:30 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: 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; Steven Johnson; Larry Landis.

Members Absent: Chief Justice Randall Shepard.

Senator Bray convened the meeting at 10:30 a.m. After opening remarks he recognized Ms. Deborah Daniels to speak. Ms. Daniels explained that there are a group of attorneys, four law clerks from the Office of the Attorney General and an attorney from the Public Defender Council, researching the topic of theft and property crimes.

After distributing a copy of a slide presentation to the members (see Exhibit A), Ms. Daniels explained that in today's meeting she would present some alternatives that the Commission members could consider on the topic of theft and property crimes. Her testimony to the Commission followed the outline provided in Exhibit A.

After the presentation, Commission members discussed the advantages and disadvantages of establishing value limits for theft and property crimes.

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.

Senator Bray asked Ms. Daniels and the research team to develop a series of alternatives for property crimes for the next meeting, using SB 561-2011 as a guideline.

The meeting was adjourned at 12:00 p.m.

Exhibit A

**REPORT OF CRIMINAL CODE RESEARCH TEAM
on
THEFT AND OTHER PROPERTY CRIMES**

Presented at the July 13, 2011 Meeting of the
Criminal Code Evaluation Commission

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)
- 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

DISCUSSION AGENDA

Theft

- Dollar threshold for felony
- Aggregation of multiple thefts to reach dollar threshold
- Valuation
- Other sentencing enhancements
- Status of Conversion statute
- SB 561 provisions relating to Theft

DISCUSSION AGENDA *(continued)*

- Forgery, Counterfeiting, Application Fraud
- Other proposed changes to achieve consistency with Theft
 - Included in SB 561
 - Other suggestion(s)
- Potential opportunities to streamline existing statutes
- Potential improvements to Trespass statute

THEFT

(IC 35-43-4-1)

Dollar Threshold

- Summary of other state laws regarding misdemeanor/felony dollar threshold
 - 49 states have a dollar threshold for felony theft
 - Range: \$200 to \$2,500
 - Average: \$808.08
 - Median (mid-point): \$900
 - Mode (most frequent dollar figure):
 - 15 @ \$500
 - 15 @ \$1,000

Theft (*cont'd*)

Aggregation

- Aggregation of multiple theft events to reach felony threshold

- National survey results:
 - 32 states have aggregation by statute
 - 2 states have aggregation only by case law

- Most states define by use of “common scheme or plan” – not generally well defined

- Distinct from Indiana’s “episode of criminal conduct” statute affecting consecutive sentencing/sentence enhancement (IC 35-50-1-2)

Theft (*cont'd*)

- In “single episode” of multiple offenses other than crimes of violence, maximum becomes advisory sentence for next highest felony level

- State of Washington (source of Indiana’s “single episode” provision) provides 3 options for prosecutors:
 - Charge multiple thefts separately; OR
 - Use “episode of criminal conduct” penalty enhancement to increase penalty for the group of thefts; OR
 - Aggregate as “common scheme or plan” to achieve threshold for higher penalty

Theft (*cont'd*)

- **Valuation**: How states prove dollar value
 - Indiana statute, IC 35-43-4-4(a): Price marking (commercial theft only)
 - Market value
 - Replacement value

Theft (*cont'd*)

Other Enhancements to Felony Level

- Proposal: second offense in any amount constitutes felony (included in SB 561)

- Other factors used in other states in addition to repeat offense:
 - Firearm
 - Motor Vehicle
 - Looting in the wake of a natural or human-initiated disaster
 - Theft from a vulnerable person, e.g., elderly

Theft (*cont'd*)

Indiana Conversion Statute (IC 35-43-4-3)

- Theft statute includes element of “intent to deprive the [owner] of any part of its value or use”

- 2010 Indiana Appellate Court ruling: little distinction between theft and conversion, as intent is inferred (*Poling v. State*, 938 N.E.2d 1212 (In.Ct.App. 2010))

- IPAC recommends keeping Conversion statute to preserve the option of charging misdemeanor regardless of value
 - Any need for Conversion enhancements relating to taking a car for use in a crime? Could be incorporated into Theft statute

Other Proposed Changes to Theft Statute Included in SB 561:

- Reduce threshold for Class C felony Theft from \$100,000 to \$50,000
- Preservation of collateral laws:
 - Burglary definition (“breaking and entering with intent to commit a felony *or theft*”)
 - Warrantless arrest (shoplifting)
- Streamlining :
 - Elimination of IC 35-43-4-2(b), “Receiving Stolen Property” portion of Theft statute (redundant)
 - Repeal of IC 35-43-5-3.6, Terroristic Deception, and merger into Identity Deception
 - Repeal of IC 35-43-4-2.5, Auto Theft and Receiving Stolen Auto Parts (redundant)
 - Added: definition of “defraud”

COUNTERFEITING; FORGERY; APPLICATION FRAUD (IC 35-43-5-2)

- SB 561: contained provision to make Forgery a Class D felony
 - Purpose: consistency with Theft statute
 - Currently: Class C felony
- SB 561: combined subsections on driver's license and state ID card (purpose: streamlining)

**OTHER PROPOSED CHANGES TO
ACHIEVE
CONSISTENCY WITH THEFT STATUTE**

Other Proposed Changes (*cont'd*)

PROPOSED CHANGES INCLUDED IN SB 561

Public insurance fraud and welfare fraud

- Statutes:
 - Welfare Fraud, IC 35-43-5-7
 - Medicaid Fraud, IC 35-43-5-7.1
 - Children’s Health Insurance Fraud, IC 35-43-5-7.2

- **Insurance fraud**, IC 35-43-5-4.5 [Class D felony; enhanced to Class C at \$50,000]

- **Check deception**, IC 35-43-5-5

- **Bank fraud**, IC 35-43-5-8 [Class D felony, enhanced to Class C at \$50,000]

- **Check fraud**, IC 35-43-5-12 [Class D felony, enhanced to Class C at \$50,000]

Other Proposed Changes (*cont'd*)

OTHER SUGGESTED CHANGE(S)

Inmate Fraud, IC 35-43-5-20

- Currently Class C felony
- Distinction between arrestees and convicted persons serving time
- Recommendation:
 - » Class D felony for inmate on pre-trial status
 - » Class C felony for inmate serving sentence following conviction

EXAMPLES OF OTHER STREAMLINING OPPORTUNITIES

Criminal Mischief (IC 35-43-1-2) and specific aspects of “mischief”

- Cemetery Mischief (IC 35-43-1-2.1) – recommend no change
- Unlawful Acts Relating to Caves (IC 35-43-1-3) – recommend renumbering as Sec. 2.2
- Railroad Mischief (currently subsection of Criminal Mischief, IC 35-43-1-2(a)(A)(4 and 5)
- Certain aspects of Mischief statute related to data tampering, IC 35-43-1-2(a)(A)(iii) and (B)(iv) may be unnecessary and inconsistent
- Computer Tampering statute, IC 35-43-1-4, could be streamlined

Deception (IC 35-43-5-3)

Repeal and incorporate into Deception as subsection (b):

- Falsely representing status as MBE/WBE, IC 35-43-5-9
- Providing false information to obtain Government contract, IC 35-43-5-11

Examples of Other Streamlining Opportunities (*cont'd*)

Interference with Drug/Alcohol Screening Test

- Recommend merger:
 - Possession of Device/Substance to Interfere with Drug or Alcohol Screening Test (IC 35-43-5-18)
 - Interfering with Drug or Alcohol Screening Test (IC 35-43-5-19)

Examples of Other Streamlining Opportunities (*cont'd*)

Definitions

– Placement within Code

- Possibly **broad definitions section** at beginning of Title 35
 - Basic meaning of term unless otherwise specified
 - Possible wording: “_____ means _____ except as used in _____.”
 - Substantive sections of code using a definition would refer back to definitional cite, e.g., “while using a deadly weapon, as defined in IC 35-_____”

Examples of Other Streamlining Opportunities (*cont'd*)

- Need **consistency in placement** within substantive statute
 - Either start with definition in subsection (a) or start with crime description
 - Alternative: remove all definitions and put in broad definitional statute
- Definitional inconsistencies
 - “**Deadly weapon**” is defined in IC 35-41-1-8
 - Case law definition is much broader than statutory definition
 - “**Law enforcement**” defined differently in different parts of criminal code

CRIMINAL TRESPASS

IC 35-43-2-2

Potential Improvements

- Clean up language to clarify when law enforcement may order a person off property
 - Example: current law provides that property must be deemed “subject to abatement” before a person may be ordered to leave
 - Indianapolis Code Enforcement employees and City attorney suggest this limits ability to enforce law
- Significant surplus language in statute that could be removed without doing damage to enforcement ability

Criminal Trespass (*cont'd*)

- Subsection (a)(5) currently reads:
 - “[a person who:] not having a contractual interest in the property, knowingly or intentionally enters the dwelling of another person without the person’s consent...”
 - Potentially change “dwelling” to “property”
 - Definition (IC 35-41-1-23): anything of value
 - Alternative: change “dwelling” to “any building, structure or vehicle”
 - Would cover residential and commercial property, and vehicles

QUESTIONS?

NEXT STEPS?