

Members

Rep. Linda Lawson, Chairperson
Rep. Vernon Smith
Rep. Bruce Borders
Rep. Ralph Foley
Sen. Brent Steele
Sen. Carlin Yoder
Sen. James Arnold
Sen. Lindel Hume
Larry Landis
Steve Johnson
Commissioner Edwin Buss
Greg Server
Don Travis
Hon. Stephen R. Heimann



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**CRIMINAL LAW AND SENTENCING POLICY
STUDY COMMITTEE**

Legislative Services Agency
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Institute
Andrew Hedges, Attorney for the Committee
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Timothy Tyler, Attorney for the Committee
Mark Goodpaster, Fiscal Analyst for the
Committee

Authority: P.L. 100-2010

MEETING MINUTES¹

Meeting Date: October 21, 2010
Meeting Time: 9:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Rep. Linda Lawson, Chairperson; Rep. Vernon Smith; Rep. Ralph Foley; Sen. Brent Steele; Sen. James Arnold; Sen. Lindel Hume; Larry Landis; Steve Johnson; Commissioner Edwin Buss; Greg Server; Don Travis; Hon. Stephen R. Heimann.

Members Absent: Rep. Bruce Borders; Sen. Carlin Yoder.

Representative Lawson call the meeting to order at 9:11 a.m.

Review of Preliminary Drafts²

Representative Lawson called on K.C. Norwalk of the Legislative Services Agency to present several bills that were brought before the committee.

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.

²Note: All preliminary drafts will be posted on the Criminal Law and Sentencing Policy website.

PD 3092: Criminal Law and Sentencing Policy Study Committee

Mr. Norwalk explained that PD 3092 (Exhibit 1) relocates the statute establishing the Criminal Law and Sentencing Policy Study Committee.

The Committee voted 11-0 to recommend PD 3092 to the 2011 General Assembly.

PD 3431: Parole

Mr. Norwalk described PD 3431 (Exhibit 2) as a bill that provides certain offenders who are serving sentences for multiple felonies or multiple life sentences eligibility for parole after serving 30 years in the Department of Correction.

The Committee discussed the bill draft and several committee members expressed concern about granting parole to sex offenders. Rep. Smith noted that Senator Waterman has proposed a similar bill in the past. The Committee then discussed amending the draft so that it would not apply to sex offenders.

The Committee voted to recommend PD 3431, but not to apply to sex offenders, to the 2011 General Assembly.

PD 3421: Arrest and Conviction Admissions

Mr. Norwalk explained that PD 3421 (Exhibit 3) would restrict employers from inquiring about and considering a potential employee's arrest or criminal conviction records unless the arrest or conviction had a rational relationship to the job being interviewed for and that the employer could inquire and consider arrest or conviction records after the potential employee received a conditional offer of employment.

Senator Hume explained his reasons for bringing this draft to the Committee. He explained that individuals with arrest and conviction records are having a difficult time getting beyond the initial stages of the interview process.

The Committee agreed to amend PD 3421 to allow an employer to withdraw a conditional offer of employment for any reason.

A motion to recommend PD 3421 for introduction in the 2011 General Assembly was defeated by a 6-to-5 vote.

PDOC: GPS Monitoring and Parole

Representative Lawson called on Legislative Services Agency attorney Andrew Hedges to explain the preliminary draft concerning GPS monitoring and parole (Exhibit 4). Mr. Hedges explained that the draft would require individuals convicted of child molesting to wear a GPS tracking device based upon the recommendation of the Director of Parole Services and a validated recidivism risk assessment. The draft also permits the parole board to require other sex and violent offenders to wear GPS tracking devices if this is recommended by the Director of Parole Services and a validated recidivism risk assessment.

The Committee voted 11-0 to recommend this preliminary draft to the General Assembly.

PD 3461: Dissemination of Sexual Material

Mr. Norwalk discussed PD 3461 (Exhibit 5) and explained that the bill draft provides defenses to the crimes of disseminating matter that is harmful to minors, child exploitation and possession of child pornography.

Stephen Johnson, of the Prosecuting Attorney's Council, suggested that the draft be

amended to provide that the defenses do not apply to a person other than the person who sent the image or is depicted in the image. The Committee agreed by consent to incorporate Mr. Johnson's suggestions in this bill draft.

The Committee voted 11-0 to recommend this draft, as amended with Mr. Johnson's suggestions, to the General Assembly.

PD 3448: Invasion of Privacy by Photography

Mr. Norwalk next described PD 3448 (Exhibit 6) . He explained that the bill draft would make it a Class A misdemeanor for a person to surreptitiously photograph the private area of an individual under circumstances in which a reasonable person would believe that the person's private area is not visible to the public. The Committee noted that this draft was addressing up-skirt cameras and the filming of people in changing rooms.

The Committee voted 10-1 to recommend this draft to the General Assembly.

PD 3420 and PD 3433: Methamphetamines

Representative Lawson asked the Committee for their thoughts on two different bills drafts concerning methamphetamines. PD 3420 (Exhibit 7) would make ephedrine and pseudoephedrine schedule V controlled substances, while PD 3433 (Exhibit 8) would create a pseudoephedrine tracking system. Larry Landis, of the Indiana Public Defender Council, and Stephen Johnson, of the Indiana Prosecuting Attorney's Council, both stated that they preferred PD 3420 but would also support PD 3433. Senator Arnold, Senator Hume, Senator Steele and Representative Foley expressed their support for PD 3433.

Representative Lawson called for a vote on PD 3433 and it was approved by the Committee 10-1.

Final Report

The Committee members approved the final report 10-0.

The meeting was adjourned at 11:00 A.M.

Exhibit 1
CLSP
10-21-10

**PRELIMINARY DRAFT
No. 3092**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 2-5-31; IC 2-5.5-5.

Synopsis: Criminal law and sentencing policy study committee. Relocates the statute establishing the criminal law and sentencing policy study committee.

Effective: July 1, 2011.



A BILL FOR AN ACT to amend the Indiana Code concerning the general assembly.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 2-5-31 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]:

4 **Chapter 31. Criminal Law and Sentencing Policy Study**
5 **Committee**

6 **Sec. 1. The criminal law and sentencing policy study committee**
7 **is established.**

8 **Sec. 2. The committee consists of fourteen (14) members**
9 **appointed as follows:**

10 (1) **Four (4) members of the senate, not more than two (2) of**
11 **whom may be affiliated with the same political party,**
12 **appointed by the president pro tempore.**

13 (2) **Four (4) members of the house, not more than two (2) of**
14 **whom may be affiliated with the same political party,**
15 **appointed by the speaker.**

16 (3) **The executive director of the prosecuting attorneys council**
17 **of Indiana or the executive director's designee.**

18 (4) **The executive director of the public defender council of**
19 **Indiana or the executive director's designee.**

20 (5) **One (1) person who:**

21 (A) **has experience in administering probation programs;**
22 **and**

23 (B) **is a member of the Probation Officers' Professional**
24 **Association of Indiana;**

25 **appointed by the members of the Association.**

26 (6) **One (1) circuit or superior court judge who exercises**
27 **criminal or juvenile jurisdiction, appointed by the chief**
28 **justice of the supreme court.**

29 (7) **The commissioner of the department of correction.**

30 (8) **The chairman of the parole board.**

31 **Sec. 3. The chairman of the legislative council shall appoint a**



1 legislative member of the committee to serve as chair of the
2 committee. Whenever there is a new chairman of the legislative
3 council, the new chairman may remove the chair of the committee
4 and appoint another chair.

5 Sec. 4. If a legislative member of the committee ceases to be a
6 member of the chamber from which the member was appointed,
7 the member also ceases to be a member of the committee.

8 Sec. 5. A legislative member of the committee may be removed
9 at any time by the appointing authority who appointed the
10 legislative member.

11 Sec. 6. If a vacancy exists on the committee, the appointing
12 authority who appointed the former member whose position is
13 vacant shall appoint an individual to fill the vacancy.

14 Sec. 7. The committee shall submit a final report of the results
15 of its study to the legislative council before November 1 of
16 even-numbered years. The report must be in an electronic format
17 under IC 5-14-6.

18 Sec. 8. The Indiana criminal justice institute shall provide staff
19 support to the committee to prepare:

- 20 (1) minutes of each meeting; and
21 (2) the final report.

22 Sec. 9. The legislative services agency shall provide staff support
23 to the committee to:

- 24 (1) advise the committee on legal matters, criminal
25 procedures, and legal research; and
26 (2) draft potential legislation.

27 Sec. 10. Each member of the committee is entitled to receive the
28 same per diem, mileage, and travel allowances paid to individuals
29 who serve as legislative and lay members, respectively, of interim
30 study committees established by the legislative council.

31 Sec. 11. The affirmative votes of a majority of the voting
32 members appointed to the committee are required for the
33 committee to take action on any measure, including the final
34 report.

35 Sec. 12. Except as otherwise specifically provided by this
36 chapter, the committee shall operate under the rules of the
37 legislative council. All funds necessary to carry out this chapter
38 shall be paid from appropriations to the legislative council and the
39 legislative services agency.

40 Sec. 13. (a) The committee is established to evaluate criminal
41 laws, sentencing laws, and policies as they relate to:

- 42 (1) the purposes of the criminal justice and corrections
43 systems;
44 (2) the availability of sentencing options; and
45 (3) the inmate population in department of correction
46 facilities.



1 **If, based on the committee's evaluation under this subsection, the**
2 **committee determines that changes are necessary or appropriate,**
3 **the committee shall make recommendations to the general**
4 **assembly for the modification of sentencing laws and policies and**
5 **for the addition, deletion, or expansion of sentencing options.**

6 **(b) The committee shall do the following:**

7 **(1) Conduct a continuing study of the laws relating to:**

8 **(A) the investigation of crimes;**

9 **(B) the prosecution of crimes;**

10 **(C) criminal procedures;**

11 **(D) alternative sentencing programs;**

12 **(E) the department of correction;**

13 **(F) parole;**

14 **(G) probation;**

15 **(H) community corrections;**

16 **(I) home detention programs;**

17 **(J) criminal registries;**

18 **(K) victim rights;**

19 **(L) the classification of criminal offenses into felony and**
20 **misdemeanor categories;**

21 **(M) sex offenders; and**

22 **(N) juvenile offenders.**

23 **(2) Study federal requirements or incentives for states to pass**
24 **certain laws or establish specific programs.**

25 **(3) Determine the long range needs of the criminal justice and**
26 **corrections systems and recommend policy priorities for those**
27 **systems.**

28 **(4) Identify critical problems in the criminal justice and**
29 **corrections systems and recommend strategies to solve the**
30 **problems.**

31 **(5) Assess the cost effectiveness of the use of state and local**
32 **funds in the criminal justice and corrections systems.**

33 **(6) Propose plans, programs, and legislation for improving the**
34 **effectiveness of the criminal justice and corrections systems.**

35 **(c) The committee may study other topics assigned by the**
36 **legislative council or as directed by the committee chair. The**
37 **committee may meet as often as necessary.**

38 **SECTION 2. IC 2-5.5-5 IS REPEALED [EFFECTIVE JULY 1,**
39 **2011].**



Exhibit 2
CLSP
10-21-10



PRELIMINARY DRAFT
No. 3431

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 11-13-3-2,.

Synopsis: Parole. Provides that certain individuals who are serving a sentence for multiple felonies or multiple life sentences are eligible for parole after serving 30 years.

Effective: July 1, 2011.



A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-13-3-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Release on parole
3 and discharge of an offender sentenced for an offense under IC 35-50
4 shall be determined under IC 35-50-6.

5 (b) Parole and discharge eligibility for offenders sentenced for
6 offenses under laws other than IC 35-50 is as follows:

7 (1) A person sentenced upon conviction of a felony to an
8 indeterminate term of imprisonment is eligible for consideration
9 for release on parole upon completion of his minimum term of
10 imprisonment, less the credit time he has earned with respect to
11 that term.

12 (2) A person sentenced upon conviction of a felony to a
13 determinate term of imprisonment is eligible for consideration for
14 release on parole upon completion of one-half (1/2) of his
15 determinate term of imprisonment or at the expiration of twenty
16 (20) years, whichever comes first, less the credit time he has
17 earned with respect to that term.

18 (3) A person sentenced upon conviction of first degree murder or
19 second degree murder to a term of life imprisonment is eligible
20 for consideration for release on parole upon completion of twenty
21 (20) years of time served on the sentence. A person sentenced
22 upon conviction of a felony other than first degree murder or
23 second degree murder to a term of life imprisonment is eligible
24 for consideration for release on parole upon completion of fifteen
25 (15) years of time served on the sentence. A person sentenced
26 upon conviction of more than one (1) felony to more than one (1)
27 term of life imprisonment is ~~not~~ eligible for consideration for
28 release on parole ~~under this section: upon completion of thirty~~
29 **(30) years of time served on the sentences, whether the**
30 **sentences were ordered to be served consecutively or**
31 **concurrently.** A person sentenced to a term of life imprisonment



1 does not earn credit time with respect to that term.
2 (4) A person sentenced upon conviction of a misdemeanor is not
3 eligible for parole and shall, instead, be discharged upon
4 completion of his term of imprisonment, less the credit time he
5 has earned with respect to that term.
6 (c) A person whose parole is revoked may be reinstated on parole
7 by the parole board any time after the revocation, regardless of whether
8 the offender was sentenced under IC 35-50 or another law. The parole
9 board may adopt, under IC 4-22-2, rules and regulations regarding
10 eligibility for reinstatement.



Exhibit 3
CLSP
10-21-10



PRELIMINARY DRAFT
No. 3421

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 22-5-6.

Synopsis: Arrest and conviction admissions. Provides that an employer may inquire about and consider an individual's arrest or criminal conviction records if the arrest or conviction bears a rational relationship to the duties and responsibilities of the individual's position or employment or a potential position or employment. Provides that an employer may inquire into and consider an arrest or conviction record of a prospective employee after the prospective employee has received a conditional offer of employment.

Effective: July 1, 2011.



A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]:

4 **Chapter 6. Employer Inquiries Into Conviction and Arrest**
5 **Records**

6 **Sec. 1. (a) Except as provided in subsection (b), an employer**
7 **may inquire about and consider an individual's arrest or criminal**
8 **conviction record for purposes of:**

9 **(1) hiring or terminating the individual; or**

10 **(2) the terms, conditions, or privileges of employment;**

11 **if the arrest or conviction record bears a rational relationship to**
12 **the duties and responsibilities of the individual's position or**
13 **employment or a potential position or employment.**

14 **(b) An employer may inquire into and consider an arrest or**
15 **conviction record for a prospective employee only after the**
16 **prospective employee has received a conditional offer of**
17 **employment. An employer may withdraw a conditional offer of**
18 **employment if the prospective employee has a conviction record**
19 **that bears a rational relationship to the duties and responsibilities**
20 **of the position.**



Exhibit 4
CLSP
10-21-10

Specifies that the parole board shall, upon recommendation of the director of parole services based upon a validated recidivism risk assessment, require that certain persons convicted of child molesting be required to wear a GPS tracking device; and permits the parole board to require other sex and violent offenders be required to wear a GPS tracking device if this is recommended by the director of parole services based upon a validated recidivism risk assessment. Provides that the parole board may remove the requirement that a parolee wear a GPS tracking device upon recommendation of the director of parole services based upon a validated recidivism risk assessment.

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SECTION 1. IC 11-13-3-4, AS AMENDED BY P.L.111-2009, SECTION 2. IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) A condition to remaining on parole is that the parolee not commit a crime during the period of parole.

(b) The parole board may also adopt, under IC 4-22-2, additional conditions to remaining on parole and require a parolee to satisfy one (1) or more of these conditions. These conditions must be reasonably related to the parolee's successful reintegration into the community and not unduly restrictive of a fundamental right.

(c) If a person is released on parole, the parolee shall be given a written statement of the conditions of parole. Signed copies of this statement shall be:

- (1) retained by the parolee;
- (2) forwarded to any person charged with the parolee's supervision; and
- (3) placed in the parolee's master file.

(d) The parole board may modify parole conditions if the parolee receives notice of that action and had ten (10) days after receipt of the notice to express the parolee's views on the proposed modification. This subsection does not apply to modification of parole conditions after a revocation proceeding under section 10 of this chapter.

(e) As a condition of parole, the parole board may require the parolee to reside in a particular parole area. In determining a parolee's residence requirement, the parole board shall:

- (1) consider:
 - (A) the residence of the parolee prior to the parolee's incarceration; and
 - (B) the parolee's place of employment; and
- (2) assign the parolee to reside in the county where the parolee resided prior to the parolee's incarceration unless assignment on this basis would be detrimental to the parolee's successful reintegration into the community.

(f) As a condition of parole, the parole board may require the parolee to:

- (1) periodically undergo a laboratory chemical test (as defined in IC 14-15-8-1) or series of tests to detect and confirm the presence of a controlled substance (as defined in IC 35-48-1-9); and
- (2) have the results of any test under this subsection reported to the parole board by the laboratory.

The parolee is responsible for any charges resulting from a test required under this subsection. However, a person's parole may not be revoked on the basis of the person's inability to pay for a

1 test under this subsection.

2 (g) As a condition of parole, the parole board:

3 (1) may require a parolee who is a sex offender (as defined in IC 11-8-8-4.5) to:

4 (A) participate in a treatment program for sex offenders approved by the
5 parole board; and

6 (B) avoid contact with any person who is less than sixteen (16) years of
7 age unless the parolee:

8 (i) receives the parole board's approval; or

9 (ii) successfully completes the treatment program referred to in
10 clause (A); and

11 (2) shall:

12 (A) require a parolee who is a sex or violent offender (as defined in
13 IC 11-8-8-5) to register with a local law enforcement authority under
14 IC 11-8-8;

15 (B) prohibit a parolee who is a sex offender from residing within one
16 thousand (1,000) feet of school property (as defined in IC 35-41-1-24.7)
17 for the period of parole, unless the sex offender obtains written approval
18 from the parole board;

19 (C) prohibit a parolee who is a sex offender convicted of a sex offense
20 (as defined in IC 35-38-2-2.5) from residing within one (1) mile of the
21 victim of the sex offender's sex offense unless the sex offender obtains a
22 waiver under IC 35-38-2-2.5;

23 (D) prohibit a parolee who is a sex offender from owning, operating,
24 managing, being employed by, or volunteering at any attraction designed
25 to be primarily enjoyed by children less than sixteen (16) years of age;

26 (E) require a parolee who is a sex offender to consent:

27 (i) to the search of the sex offender's personal computer at any
28 time; and

29 (ii) to the installation on the sex offender's personal computer or
30 device with Internet capability, at the sex offender's expense, of
31 one (1) or more hardware or software systems to monitor
32 Internet usage; and

33 (F) prohibit the sex offender from:

34 (i) accessing or using certain web sites, chat rooms, or instant
35 messaging programs frequented by children; and

36 (ii) deleting, erasing, or tampering with information on the sex
37 offender's personal computer with intent to conceal an activity
38 prohibited by item (i).

39 The parole board may not grant a sexually violent predator (as defined in IC 35-38-1-7.5) or a
40 sex offender who is an offender against children under IC 35-42-4-11 a waiver under subdivision

1 (2)(B) or (2)(C). If the parole board allows the sex offender to reside within one thousand (1,000)
2 feet of school property under subdivision (2)(B), the parole board shall notify each school within
3 one thousand (1,000) feet of the sex offender's residence of the order.

4 (h) The address of the victim of a parolee who is a sex offender convicted of a sex
5 offense (as defined in IC 35-38-2-2.5) is confidential, even if the sex offender obtains a waiver
6 under IC 35-38-2-2.5.

7 (i) As a condition of parole, the parole board may require a parolee to participate in a
8 reentry court program.

9 (j) As a condition of parole, the parole board:

10 (1) shall require a parolee who is a sexually violent predator under

11 ~~IC 35-38-1-7.5~~; and

12 (2) may require a parolee who is a sex or violent offender (as defined in

13 ~~IC 11-8-8-5~~);

14 to wear a monitoring device (as described in ~~IC 35-38-2.5-3~~) that can transmit information
15 twenty-four (24) hours each day regarding a person's precise location: **has been convicted of**
16 **child molesting under:**

17 (i) **IC 35-42-4-3(a)(1) through (a)(4); or**

18 (ii) **IC 35-42-4-3(b)(1) through (b)(3); and**

19 (2) **may require a parolee who has been convicted of a sex or violent offense**
20 **that is not described in subdivision (1);**

21 **to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information**
22 **twenty-four (24) hours each day regarding a person's precise location, if the department's**
23 **director of parole services recommends, based upon a validated recidivism risk assessment,**
24 **that the parolee be required to wear a monitoring device. The parole board may remove**
25 **the requirement that a parolee be required to wear a monitoring device upon**
26 **recommendation of the department's director of parole services based upon a validated**
27 **recidivism risk assessment.**

28 (k) As a condition of parole, the parole board may prohibit, in accordance with
29 IC 35-38-2-2.6, a parolee who has been convicted of stalking from residing within one thousand
30 (1,000) feet of the residence of the victim of the stalking for a period that does not exceed five
31 (5) years.

32 (l) As a condition of parole, the parole board may prohibit a parolee convicted of an
33 offense under IC 35-46-3 from owning, harboring, or training an animal, and, if the parole board
34 prohibits a parolee convicted of an offense under IC 35-46-3 from having direct or indirect
35 contact with an individual, the parole board may also prohibit the parolee from having direct or
36 indirect contact with any animal belonging to the individual.

37 (m) A parolee may be responsible for the reasonable expenses, as determined by the
38 department, of the parolee's participation in a treatment or other program required as a condition
39 of parole under this section. However, a person's parole may not be revoked solely on the basis of
40 the person's inability to pay for a program required as a condition of parole under this section.

Exhibit 5
CLSP
10-21-10



PRELIMINARY DRAFT
No. 3461

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 20-26-5-33; IC 20-33-8-13.5; IC 35-42-4-4;
IC 35-49-3-4.

Synopsis: Dissemination of sexual material. Provides defenses to the crimes of disseminating matter that is harmful to minors, child exploitation, and possession of child pornography if a cellular telephone was used and the defendant and recipient of the matter are certain ages and meet other requirements. Provides that a school corporation may offer classes, instruction, or programs regarding the risks and consequences of creating and sharing sexually suggestive or explicit materials. Provides that discipline rules adopted by a school corporation must prohibit bullying through the use of computers, computer systems, or computer networks of a school corporation.

Effective: July 1, 2011.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 20-26-5-33 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 33. A school corporation may offer classes,
4 instruction, or programs regarding the potential risks and
5 consequences of creating and sharing sexually suggestive or explicit
6 materials through cellular telephones, social networking web sites,
7 computer networks, and other digital media.**

8 SECTION 2. IC 20-33-8-13.5, AS ADDED BY P.L.106-2005,
9 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2011]: **Sec. 13.5. (a) Discipline rules adopted by the
11 governing body of a school corporation under section 12 of this chapter
12 must:**

13 (1) prohibit bullying; and

14 (2) include provisions concerning education, parental
15 involvement, reporting, investigation, and intervention.

16 (b) The discipline rules described in subsection (a) must apply when
17 a student is:

18 (1) on school grounds immediately before or during school hours,
19 immediately after school hours, or at any other time when the
20 school is being used by a school group;

21 (2) off school grounds at a school activity, function, or event;

22 (3) traveling to or from school or a school activity, function, or
23 event; or

24 (4) using property or equipment provided by the school.

25 (c) **The discipline rules described in subsection (a) must prohibit
26 bullying through the use of data or computer software that is
27 accessed through a:**

28 (1) computer;

29 (2) computer system; or

30 (3) computer network;

31 of a school corporation.



1 (c) (d) This section may not be construed to give rise to a cause of
2 action against a person or school corporation based on an allegation of
3 noncompliance with this section. Noncompliance with this section may
4 not be used as evidence against a school corporation in a cause of
5 action.

6 SECTION 3. IC 35-42-4-4, AS AMENDED BY P.L.216-2007,
7 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2011]: Sec. 4. (a) As used in this section:

9 "Disseminate" means to transfer possession for free or for a
10 consideration.

11 "Matter" has the same meaning as in IC 35-49-1-3.

12 "Performance" has the same meaning as in IC 35-49-1-7.

13 "Sexual conduct" means sexual intercourse, deviate sexual conduct,
14 exhibition of the uncovered genitals intended to satisfy or arouse the
15 sexual desires of any person, sadomasochistic abuse, sexual intercourse
16 or deviate sexual conduct with an animal, or any fondling or touching
17 of a child by another person or of another person by a child intended to
18 arouse or satisfy the sexual desires of either the child or the other
19 person.

20 (b) A person who knowingly or intentionally:

21 (1) manages, produces, sponsors, presents, exhibits, photographs,
22 films, videotapes, or creates a digitized image of any performance
23 or incident that includes sexual conduct by a child under eighteen
24 (18) years of age;

25 (2) disseminates, exhibits to another person, offers to disseminate
26 or exhibit to another person, or sends or brings into Indiana for
27 dissemination or exhibition matter that depicts or describes sexual
28 conduct by a child under eighteen (18) years of age; or

29 (3) makes available to another person a computer, knowing that
30 the computer's fixed drive or peripheral device contains matter
31 that depicts or describes sexual conduct by a child less than
32 eighteen (18) years of age;

33 commits child exploitation, a Class C felony.

34 (c) A person who knowingly or intentionally possesses:

35 (1) a picture;

36 (2) a drawing;

37 (3) a photograph;

38 (4) a negative image;

39 (5) undeveloped film;

40 (6) a motion picture;

41 (7) a videotape;

42 (8) a digitized image; or

43 (9) any pictorial representation;

44 that depicts or describes sexual conduct by a child who the person
45 knows is less than sixteen (16) years of age or who appears to be less
46 than sixteen (16) years of age, and that lacks serious literary, artistic,



1 political, or scientific value commits possession of child pornography,
2 a Class D felony.

3 (d) Subsections (b) and (c) do not apply to a bona fide school,
4 museum, or public library that qualifies for certain property tax
5 exemptions under IC 6-1.1-10, or to an employee of such a school,
6 museum, or public library acting within the scope of the employee's
7 employment when the possession of the listed materials is for
8 legitimate scientific or educational purposes.

9 (e) **It is a defense to a prosecution under subsections (b)(1),
10 (b)(2), and (c) if all the following apply:**

11 (1) **A cellular telephone, another wireless or cellular
12 communications device, or a social networking web site was
13 used to possess, produce, or disseminate the image.**

14 (2) **The defendant is not more than four (4) years older or
15 younger than the person who is depicted in the image or who
16 received the image.**

17 (3) **The relationship between the defendant and the person
18 who received the image or who is depicted in the image was a
19 dating relationship or an ongoing personal relationship. For
20 purposes of this subdivision, the term "ongoing personal
21 relationship" does not include a family relationship.**

22 (4) **The act that is the basis of the prosecution was committed
23 by a person less than twenty-two (22) years of age.**

24 (5) **The person receiving the image or who is depicted in the
25 image acquiesced in the defendant's conduct.**

26 SECTION 4. IC 35-49-3-4 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) It is a defense to
28 a prosecution under section 3 of this chapter for the defendant to show:

29 (1) that the matter was disseminated or that the performance was
30 performed for legitimate scientific or educational purposes;

31 (2) that the matter was disseminated or displayed to or that the
32 performance was performed before the recipient by a bona fide
33 school, museum, or public library that qualifies for certain
34 property tax exemptions under IC 6-1.1-10, or by an employee of
35 such a school, museum, or public library acting within the scope
36 of ~~his~~ **the employee's** employment;

37 (3) that ~~he~~ **the defendant** had reasonable cause to believe that the
38 minor involved was eighteen (18) years old or older and that the
39 minor exhibited to the defendant a draft card, driver's license,
40 birth certificate, or other official or apparently official document
41 purporting to establish that the minor was eighteen (18) years old
42 or older; or

43 (4) that ~~he~~ **the defendant** was a salesclerk, motion picture
44 projectionist, usher, or ticket taker, acting within the scope of ~~his~~
45 **the defendant's** employment and that ~~he~~ **the defendant** had no
46 financial interest in the place where ~~he~~ **the defendant** was so



1 employed.

2 **(b) It is a defense to a prosecution under section 3 of this**
3 **chapter if all the following apply:**

4 (1) A cellular telephone, another wireless or cellular
5 communications device, or a social networking web site was
6 used to disseminate matter to a minor that is harmful to
7 minors.

8 (2) The defendant is not more than four (4) years older or
9 younger than the person who received the matter that is
10 harmful to minors.

11 (3) The relationship between the defendant and the person
12 who received the matter that is harmful to minors was a
13 dating relationship or an ongoing personal relationship. For
14 purposes of this subdivision, the term "ongoing personal
15 relationship" does not include a family relationship.

16 (4) The act that is the basis of the prosecution was committed
17 by a person less than twenty-two (22) years of age.

18 (5) The person receiving the matter expressly or implicitly
19 acquiesced in the defendant's conduct.



Exhibit 6
CLSP
10-21-10



PRELIMINARY DRAFT
No. 3448

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-45-4-6.

Synopsis: Invasion of privacy by photography. Establishes the crime of invasion of privacy by photography, a Class A misdemeanor. Provides that the crime is committed if a person, with the intent to: (1) gratify the person's sexual desires; (2) humiliate or embarrass the victim; or (3) publish, transmit, or disseminate the photograph; surreptitiously photographs the private area of an individual under circumstances in which a reasonable person would believe that the individual's private area would not be visible to the public. Increases the penalty to a Class D felony if the person publishes, transmits, or otherwise disseminates the photograph.

Effective: July 1, 2011.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-45-4-6 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 6. (a) As used in this section, "private area" means**
4 **the naked or undergarment clad genitals, pubic area, or buttocks**
5 **of a person.**

6 **(b) A person who, without the consent of the individual:**

7 **(1) knowingly or intentionally surreptitiously photographs,**
8 **video records, or captures a digital image of the private area**
9 **of an individual by means of camera, a video camera, or any**
10 **other type of video recording device;**

11 **(2) performs the act described in subdivision (1) under**
12 **circumstances in which a reasonable person would believe**
13 **that the individual's private area would not be visible to the**
14 **public; and**

15 **(3) performs the act described in subdivision (1) with the**
16 **intent to:**

17 **(A) gratify the sexual desires of the person;**

18 **(B) humiliate or embarrass the individual; or**

19 **(C) publish, transmit, or otherwise disseminate the**
20 **photograph, video, or digital image;**

21 **commits invasion of privacy by photography, a Class A**
22 **misdemeanor. However, the offense is a Class D felony if the**
23 **person publishes the photograph, video, or digital image or**
24 **otherwise transmits or disseminates the photograph, video, or**
25 **digital image to another person.**



Exhibit 7
CLSP
10-21-10



PRELIMINARY DRAFT
No. 3420

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 5-2-6-20; IC 10-13-3-40; IC 35-48.

Synopsis: Ephedrine and pseudoephedrine. Makes ephedrine and pseudoephedrine schedule V controlled substances. Repeals provisions concerning the establishment and operation of an electronic log to record the sale without a prescription of drugs containing ephedrine and pseudoephedrine.

Effective: July 1, 2011.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-13-3-40, AS ADDED BY P.L.190-2006,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 40. (a) The department may use the appropriations
4 described in subsection (b) for either or both of the following purposes
5 (1) operating and maintaining the central repository for criminal
6 history data.

7 (2) Establishing, operating, or maintaining an electronic log to
8 record the sale of drugs containing ephedrine or pseudoephedrine
9 in accordance with IC 35-48-4-14.7.

10 (b) If the amount of money that is deposited in the state general fund
11 during a state fiscal year from handgun license fees (as described in
12 IC 35-47-2-4) exceeds one million one hundred thousand dollars
13 (\$1,100,000), the excess is appropriated from the state general fund to
14 the department for the purposes described in subsection (a). An
15 appropriation under this section is subject to allotment by the budget
16 agency.

17 SECTION 2. IC 35-48-2-12, AS AMENDED BY P.L.22-2008,
18 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
19 JULY 1, 2011]: Sec. 12. (a) The controlled substances listed in this
20 section are included in schedule V.

21 (b) Narcotic drugs containing nonnarcotic active medicinal
22 ingredients. Any compound, mixture, or preparation containing any of
23 the following narcotic drugs, or their salts calculated as the free
24 anhydrous base or alkaloid, in the following quantities, which shall
25 include one (1) or more nonnarcotic active medicinal ingredients in
26 sufficient proportion to confer upon the compound, mixture, or
27 preparation, valuable medicinal qualities other than those possessed by
28 the narcotic drug alone:

29 (1) Not more than 200 milligrams of codeine per 100 milliliters
30 or per 100 grams.

31 (2) Not more than 100 milligrams of dihydrocodeine per 100



- 1 milliliters or per 100 grams.
 2 (3) Not more than 100 milligrams of ethylmorphine per 100
 3 milliliters or per 100 grams.
 4 (4) Not more than 2.5 milligrams of diphenoxylate and not less
 5 than 25 micrograms of atropine sulfate per dosage unit.
 6 (5) Not more than 100 milligrams of opium per 100 milliliters or
 7 per 100 grams.
 8 (6) Not more than 0.5 milligrams of difenoxin (9168), and not less
 9 than 25 micrograms of atropine sulfate per dosage unit.
 10 (c) Pregabalin (2782).
 11 (d) Pyrovalerone (1485).

12 **(e) A material, compound, mixture, or preparation that contains**
 13 **a quantity of any of the following substances, pure or adulterated:**

- 14 (1) **Ephedrine.**
 15 (2) **Pseudoephedrine.**

16 SECTION 3. IC 35-48-4-14.7, AS AMENDED BY P.L.97-2010,
 17 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2011]: Sec. 14.7. (a) This section does not apply to the
 19 following:

- 20 (1) Ephedrine or pseudoephedrine dispensed pursuant to a
 21 prescription.
 22 (2) The sale of a drug containing ephedrine or pseudoephedrine
 23 to a licensed health care provider, pharmacist, retail distributor,
 24 wholesaler, manufacturer, or an agent of any of these persons if
 25 the sale occurs in the regular course of lawful business activities.
 26 However, a retail distributor, wholesaler, or manufacturer is
 27 required to report a suspicious order to the state police department
 28 in accordance with subsection (f).
 29 (3) The sale of a drug containing ephedrine or pseudoephedrine
 30 by a person who does not sell exclusively to walk-in customers for
 31 the personal use of the walk-in customers. However, if the person
 32 described in this subdivision is a retail distributor, wholesaler, or
 33 manufacturer, the person is required to report a suspicious order
 34 to the state police department in accordance with subsection (f).

35 (b) The following definitions apply throughout this section:

- 36 (1) "Constant video monitoring" means the surveillance by an
 37 automated camera that:
 38 (A) records at least one (1) photograph or digital image every
 39 ten (10) seconds;
 40 (B) retains a photograph or digital image for at least
 41 seventy-two (72) hours;
 42 (C) has sufficient resolution and magnification to permit the
 43 identification of a person in the area under surveillance; and
 44 (D) stores a recorded photograph or digital image at a location
 45 that is immediately accessible to a law enforcement officer.
 46 (2) "Convenience package" means a package that contains a drug



1 having as an active ingredient not more than one hundred twenty
2 (120) milligrams of ephedrine or pseudoephedrine, or both.

3 (3) "Ephedrine" means pure or adulterated ephedrine.

4 (4) "Pseudoephedrine" means pure or adulterated
5 pseudoephedrine.

6 (5) "Suspicious order" means a sale or transfer of a drug
7 containing ephedrine or pseudoephedrine if the sale or transfer:

8 (A) is a sale or transfer that the retail distributor, wholesaler,
9 or manufacturer is required to report to the United States Drug
10 Enforcement Administration;

11 (B) appears suspicious to the retail distributor, wholesaler, or
12 manufacturer in light of the recommendations contained in
13 Appendix A of the report to the United States attorney general
14 by the suspicious orders task force under the federal
15 Comprehensive Methamphetamine Control Act of 1996; or

16 (C) is for cash or a money order in a total amount of at least
17 two hundred dollars (\$200).

18 (6) "Unusual theft" means the theft or unexplained disappearance
19 from a particular retail store of drugs containing ten (10) grams or
20 more of ephedrine, pseudoephedrine, or both in a twenty-four (24)
21 hour period.

22 (c) This subsection does not apply to a convenience package. A
23 person may sell a drug that contains the active ingredient of ephedrine
24 or pseudoephedrine, or both, only if the person complies with the
25 following conditions:

26 (1) The person does not sell the drug to a person less than
27 eighteen (18) years of age.

28 (2) The person does not sell drugs containing more than three and
29 six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both,
30 to one (1) individual on one (1) day, or nine (9) grams of
31 ephedrine or pseudoephedrine, or both, to one (1) individual in a
32 thirty (30) day period.

33 (3) The person requires:

34 (A) the purchaser to produce a state or federal identification
35 card.

36 (B) the purchaser to complete a paper or an electronic log in
37 a format approved by the state police department with the
38 purchaser's name, address, and driver's license or other
39 identification number; and

40 (C) the clerk who is conducting the transaction to initial or
41 electronically record the clerk's identification on the log.

42 Records from the completion of a log must be retained for at least
43 two (2) years. A law enforcement officer has the right to inspect
44 and copy a log or the records from the completion of a log in
45 accordance with state and federal law. A person may not sell or
46 release a log or the records from the completion of a log for a



1 commercial purpose. The Indiana criminal justice institute may
 2 obtain information concerning a log or the records from the
 3 completion of a log from a law enforcement officer if the
 4 information may not be used to identify a specific individual and
 5 is used only for statistical purposes. A retailer who in good faith
 6 releases information maintained under this subsection is immune
 7 from civil liability unless the release constitutes gross negligence
 8 or intentional, wanton, or willful misconduct.

9 (4) The person stores the drug:

10 (A) behind a counter in an area inaccessible to a customer or
 11 in a locked display case that makes the drug unavailable to a
 12 customer without the assistance of an employee; or

13 (B) directly in front of the pharmacy counter in the direct line
 14 of sight of an employee at the pharmacy counter, in an area
 15 under constant video monitoring, if the drug is sold in a retail
 16 establishment that:

17 (i) is a pharmacy; or

18 (ii) contains a pharmacy that is open for business.

19 (5) The person posts a sign warning that:

20 (A) it is a criminal offense for a person to purchase drugs
 21 containing more than nine (9) grams of ephedrine or
 22 pseudoephedrine, or both, in a thirty (30) day period;

23 (B) it is a criminal offense for a person to purchase drugs
 24 containing more than three and six-tenths (3.6) grams of
 25 ephedrine or pseudoephedrine, or both, on one (1) day; and

26 (C) depending on the amount of ephedrine or pseudoephedrine
 27 contained in the drug, purchasing more than one (1) package
 28 of drugs containing ephedrine or pseudoephedrine on one (1)
 29 day may be a crime.

30 The warning sign must list maximum amounts of ephedrine or
 31 pseudoephedrine that may be purchased in both grams and
 32 milligrams.

33 (d) A person may not purchase drugs containing more than three
 34 and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both,
 35 on one (1) day, or more than nine (9) grams of ephedrine or
 36 pseudoephedrine, or both, in a thirty (30) day period.

37 (e) This subsection only applies to convenience packages. A person
 38 may not sell drugs containing more than one hundred twenty (120)
 39 milligrams of ephedrine or pseudoephedrine, or both, in any one (1)
 40 transaction if the drugs are sold in convenience packages. A person
 41 who sells convenience packages must secure the convenience packages
 42 in at least one (1) of the following ways:

43 (1) The convenience package must be stored not more than thirty
 44 (30) feet away from a checkout station or counter and must be in
 45 the direct line of sight of an employee at the checkout station or
 46 counter.



1 (2) The convenience package must be protected by a reliable
2 anti-theft device that uses package tags and detection alarms
3 designed to prevent theft.

4 (3) The convenience package must be stored in restricted access
5 shelving that permits a purchaser to remove not more than one (1)
6 package every fifteen (15) seconds.

7 (4) The convenience package must be stored in an area that is
8 under constant video monitoring, and a sign placed near the
9 convenience package must warn that the area is under constant
10 video monitoring.

11 (f) A retail distributor, wholesaler, or manufacturer shall report a
12 suspicious order to the state police department in writing.

13 (g) Not later than three (3) days after the discovery of an unusual
14 theft at a particular retail store, the retailer shall report the unusual theft
15 to the state police department in writing. If three (3) unusual thefts
16 occur in a thirty (30) day period at a particular retail store, the retailer
17 shall, for at least one hundred eighty (180) days after the date of the last
18 unusual theft, locate all drugs containing ephedrine or pseudoephedrine
19 at that particular retail store behind a counter in an area inaccessible to
20 a customer or in a locked display case that makes the drug unavailable
21 to customers without the assistance of an employee.

22 (h) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance
23 after February 1, 2005, that is more stringent than this section.

24 (i) A person who knowingly or intentionally violates this section
25 commits a Class C misdemeanor. However, the offense is a Class A
26 misdemeanor if the person has a prior unrelated conviction under this
27 section.

28 (j) ~~Before June 30, 2007, the state police department shall submit a~~
29 ~~report to the legislative council detailing the effectiveness of this~~
30 ~~section in reducing the illicit production of methamphetamine. The~~
31 ~~report must describe the number of arrests or convictions that are~~
32 ~~attributable to the identification and logging requirements contained in~~
33 ~~this section, and must include recommendations for future action. The~~
34 ~~report must be in an electronic format under IC 5-14-6.~~

35 SECTION 4. IC 5-2-6-20 IS REPEALED [EFFECTIVE JULY 1,
36 2011].



Exhibit 8
CLSP
10-21-10



PRELIMINARY DRAFT
No. 3433

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2011 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 4-6-2-12; IC 25-26-13-4; IC 35-48-4.

Synopsis: Methamphetamines. Requires the attorney general to enter into a memorandum of understanding with an entity to provide a pseudoephedrine (PSE) tracking system that meets certain standards. Requires a retailer to electronically transmit certain information concerning the sale of ephedrine and PSE to a statewide PSE tracking system. Specifies that the board of pharmacy shall adopt certain rules concerning a pharmacy that does not comply with PSE tracking requirements. Provides that a retailer must begin entering data into the PSE tracking system not later than 180 days after the attorney general enters into the memorandum of understanding. Provides that an exemption to the tracking requirement for persons who do not sell exclusively to walk in customers applies only to persons who do not sell to any walk in customers. Requires the state police to report to the legislative council concerning the effectiveness of PSE tracking in reducing the illicit production of methamphetamine.

Effective: January 1, 2012.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-6-2-12 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2012]: **Sec. 12. The attorney general shall enter into
4 a memorandum of understanding with an entity to implement an
5 electronic system to track the sale of ephedrine and
6 pseudoephedrine as required by IC 35-48-4-14.9.**

7 SECTION 2. IC 25-26-13-4, AS AMENDED BY P.L.182-2009(ss),
8 SECTION 371, IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE JANUARY 1, 2012]: Sec. 4. (a) The board may:

10 (1) promulgate rules and regulations under IC 4-22-2 for
11 implementing and enforcing this chapter;

12 (2) establish requirements and tests to determine the moral,
13 physical, intellectual, educational, scientific, technical, and
14 professional qualifications for applicants for pharmacists'
15 licenses;

16 (3) refuse to issue, deny, suspend, or revoke a license or permit or
17 place on probation or fine any licensee or permittee under this
18 chapter;

19 (4) regulate the sale of drugs and devices in the state of Indiana;

20 (5) impound, embargo, confiscate, or otherwise prevent from
21 disposition any drugs, medicines, chemicals, poisons, or devices
22 which by inspection are deemed unfit for use or would be
23 dangerous to the health and welfare of the citizens of the state of
24 Indiana; the board shall follow those embargo procedures found
25 in IC 16-42-1-18 through IC 16-42-1-31, and persons may not
26 refuse to permit or otherwise prevent members of the board or
27 their representatives from entering such places and making such
28 inspections;

29 (6) prescribe minimum standards with respect to physical
30 characteristics of pharmacies, as may be necessary to the
31 maintenance of professional surroundings and to the protection of



- 1 the safety and welfare of the public;
- 2 (7) subject to IC 25-1-7, investigate complaints, subpoena
- 3 witnesses, schedule and conduct hearings on behalf of the public
- 4 interest on any matter under the jurisdiction of the board;
- 5 (8) prescribe the time, place, method, manner, scope, and subjects
- 6 of licensing examinations which shall be given at least twice
- 7 annually; and
- 8 (9) perform such other duties and functions and exercise such
- 9 other powers as may be necessary to implement and enforce this
- 10 chapter.
- 11 (b) The board shall adopt rules under IC 4-22-2 for the following:
- 12 (1) Establishing standards for the competent practice of
- 13 pharmacy.
- 14 (2) Establishing the standards for a pharmacist to counsel
- 15 individuals regarding the proper use of drugs.
- 16 (3) Establishing standards and procedures before January 1, 2006,
- 17 to ensure that a pharmacist:
- 18 (A) has entered into a contract that accepts the return of
- 19 expired drugs with; or
- 20 (B) is subject to a policy that accepts the return of expired
- 21 drugs of;
- 22 a wholesaler, manufacturer, or agent of a wholesaler or
- 23 manufacturer concerning the return by the pharmacist to the
- 24 wholesaler, the manufacturer, or the agent of expired legend drugs
- 25 or controlled drugs. In determining the standards and procedures,
- 26 the board may not interfere with negotiated terms related to cost,
- 27 expenses, or reimbursement charges contained in contracts
- 28 between parties, but may consider what is a reasonable quantity
- 29 of a drug to be purchased by a pharmacy. The standards and
- 30 procedures do not apply to vaccines that prevent influenza,
- 31 medicine used for the treatment of malignant hyperthermia, and
- 32 other drugs determined by the board to not be subject to a return
- 33 policy. An agent of a wholesaler or manufacturer must be
- 34 appointed in writing and have policies, personnel, and facilities
- 35 to handle properly returns of expired legend drugs and controlled
- 36 substances.
- 37 (c) The board may grant or deny a temporary variance to a rule it
- 38 has adopted if:
- 39 (1) the board has adopted rules which set forth the procedures and
- 40 standards governing the grant or denial of a temporary variance;
- 41 and
- 42 (2) the board sets forth in writing the reasons for a grant or denial
- 43 of a temporary variance.
- 44 (d) The board shall adopt rules and procedures, in consultation with
- 45 the medical licensing board, concerning the electronic transmission of
- 46 prescriptions. The rules adopted under this subsection must address the



- 1 following:
- 2 (1) Privacy protection for the practitioner and the practitioner's
- 3 patient.
- 4 (2) Security of the electronic transmission.
- 5 (3) A process for approving electronic data intermediaries for the
- 6 electronic transmission of prescriptions.
- 7 (4) Use of a practitioner's United States Drug Enforcement
- 8 Agency registration number.
- 9 (5) Protection of the practitioner from identity theft or fraudulent
- 10 use of the practitioner's prescribing authority.

- 11 (e) The governor may direct the board to develop:
 - 12 (1) a prescription drug program that includes the establishment of
 - 13 criteria to eliminate or significantly reduce prescription fraud; and
 - 14 (2) a standard format for an official tamper resistant prescription
 - 15 drug form for prescriptions (as defined in IC 16-42-19-7(1)).

16 The board may adopt rules under IC 4-22-2 necessary to implement
17 this subsection.

- 18 (f) The standard format for a prescription drug form described in
19 subsection (e)(2) must include the following:

- 20 (1) A counterfeit protection bar code with human readable
21 representation of the data in the bar code.
- 22 (2) A thermochromic mark on the front and the back of the
23 prescription that:
 - 24 (A) is at least one-fourth (1/4) of one (1) inch in height and
25 width; and
 - 26 (B) changes from blue to clear when exposed to heat.

- 27 (g) The board may contract with a supplier to implement and
28 manage the prescription drug program described in subsection (e). The
29 supplier must:

- 30 (1) have been audited by a third party auditor using the SAS 70
31 audit or an equivalent audit for at least the three (3) previous
32 years; and
 - 33 (2) be audited by a third party auditor using the SAS 70 audit or
34 an equivalent audit throughout the duration of the contract;
- 35 in order to be considered to implement and manage the program.

36 **(h) The board shall adopt rules and procedures regarding a**
37 **pharmacist or pharmacy that violates IC 35-48-4-14.8.**

38 SECTION 3. IC 35-48-4-14.7, AS AMENDED BY P.L.97-2010,
39 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JANUARY 1, 2012]: Sec. 14.7. (a) This section does not apply to the
41 following:

- 42 (1) Ephedrine or pseudoephedrine dispensed pursuant to a
43 prescription.
- 44 (2) The sale of a drug containing ephedrine or pseudoephedrine
45 to a licensed health care provider, pharmacist, retail distributor,
46 wholesaler, manufacturer, or an agent of any of these persons if



1 the sale occurs in the regular course of lawful business activities.
 2 However, a retail distributor, wholesaler, or manufacturer is
 3 required to report a suspicious order to the state police department
 4 in accordance with subsection (f).

5 (3) The sale of a drug containing ephedrine or pseudoephedrine
 6 by a person who does not sell ~~exclusively~~ to walk-in customers.
 7 ~~for the personal use of the walk-in customers.~~ However, if the
 8 person described in this subdivision is a retail distributor,
 9 wholesaler, or manufacturer, the person is required to report a
 10 suspicious order to the state police department in accordance with
 11 subsection (f).

12 (b) The following definitions apply throughout this section:

13 (1) "Constant video monitoring" means the surveillance by an
 14 automated camera that:

15 (A) records at least one (1) photograph or digital image every
 16 ten (10) seconds;

17 (B) retains a photograph or digital image for at least
 18 seventy-two (72) hours;

19 (C) has sufficient resolution and magnification to permit the
 20 identification of a person in the area under surveillance; and

21 (D) stores a recorded photograph or digital image at a location
 22 that is immediately accessible to a law enforcement officer.

23 (2) "Convenience package" means a package that contains a drug
 24 having as an active ingredient not more than one hundred twenty
 25 (120) milligrams of ephedrine or pseudoephedrine, or both.

26 (3) "Ephedrine" means pure or adulterated ephedrine.

27 (4) "Pseudoephedrine" means pure or adulterated
 28 pseudoephedrine.

29 (5) "Suspicious order" means a sale or transfer of a drug
 30 containing ephedrine or pseudoephedrine if the sale or transfer:

31 (A) is a sale or transfer that the retail distributor, wholesaler,
 32 or manufacturer is required to report to the United States Drug
 33 Enforcement Administration;

34 (B) appears suspicious to the retail distributor, wholesaler, or
 35 manufacturer in light of the recommendations contained in
 36 Appendix A of the report to the United States attorney general
 37 by the suspicious orders task force under the federal
 38 Comprehensive Methamphetamine Control Act of 1996; or

39 (C) is for cash or a money order in a total amount of at least
 40 two hundred dollars (\$200).

41 (6) "Unusual theft" means the theft or unexplained disappearance
 42 from a particular retail store of drugs containing ten (10) grams or
 43 more of ephedrine, pseudoephedrine, or both in a twenty-four (24)
 44 hour period.

45 (c) This subsection does not apply to a convenience package. A
 46 person may sell a drug that contains the active ingredient of ephedrine,



1 pseudoephedrine, or both only if the person complies with the
2 following conditions:

3 (1) The person does not sell the drug to a person less than
4 eighteen (18) years of age.

5 (2) The person does not sell drugs containing more than three and
6 six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both,
7 to one (1) individual on one (1) day, or nine (9) grams of
8 ephedrine or pseudoephedrine, or both, to one (1) individual in a
9 thirty (30) day period.

10 (3) The person requires:

11 (A) the purchaser to produce a state or federal identification
12 card;

13 (B) the purchaser to complete a paper or an electronic log in
14 a format approved by the state police department with the
15 purchaser's name, address, and driver's license or other
16 identification number; and

17 (C) the clerk who is conducting the transaction to initial or
18 electronically record the clerk's identification on the log; and

19 **(D) the clerk who is conducting the transaction to**
20 **electronically transmit information relating to the sale of**
21 **ephedrine or pseudoephedrine to the PSE tracking system**
22 **in accordance with section 14.8 of this chapter.**

23 Records from the completion of a log must be retained for at least
24 two (2) years. A law enforcement officer has the right to inspect
25 and copy a log or the records from the completion of a log in
26 accordance with state and federal law. A person may not sell or
27 release a log or the records from the completion of a log for a
28 commercial purpose. The Indiana criminal justice institute may
29 obtain information concerning a log or the records from the
30 completion of a log from a law enforcement officer if the
31 information may not be used to identify a specific individual and
32 is used only for statistical purposes. A retailer who in good faith
33 releases information maintained under this subsection is immune
34 from civil liability unless the release constitutes gross negligence
35 or intentional, wanton, or willful misconduct.

36 (4) The person stores the drug:

37 (A) behind a counter in an area inaccessible to a customer or
38 in a locked display case that makes the drug unavailable to a
39 customer without the assistance of an employee; or

40 (B) directly in front of the pharmacy counter in the direct line
41 of sight of an employee at the pharmacy counter, in an area
42 under constant video monitoring, if the drug is sold in a retail
43 establishment that:

44 (i) is a pharmacy; or

45 (ii) contains a pharmacy that is open for business.

46 (5) The person posts a sign warning that:



1 (A) it is a criminal offense for a person to purchase drugs
2 containing more than nine (9) grams of ephedrine or
3 pseudoephedrine, or both, in a thirty (30) day period;

4 (B) it is a criminal offense for a person to purchase drugs
5 containing more than three and six-tenths (3.6) grams of
6 ephedrine or pseudoephedrine, or both, on one (1) day; and

7 (C) depending on the amount of ephedrine or pseudoephedrine
8 contained in the drug, purchasing more than one (1) package
9 of drugs containing ephedrine or pseudoephedrine on one (1)
10 day may be a crime.

11 The warning sign must list maximum amounts of ephedrine or
12 pseudoephedrine that may be purchased in both grams and
13 milligrams.

14 (d) A person may not purchase drugs containing more than three
15 and six-tenths (3.6) grams of ephedrine or pseudoephedrine, or both,
16 on one (1) day, or more than nine (9) grams of ephedrine or
17 pseudoephedrine, or both, in a thirty (30) day period.

18 (e) This subsection only applies to convenience packages. A person
19 may not sell drugs containing more than one hundred twenty (120)
20 milligrams of ephedrine or pseudoephedrine, or both in any one (1)
21 transaction if the drugs are sold in convenience packages. A person
22 who sells convenience packages must secure the convenience packages
23 in at least one (1) of the following ways:

24 (1) The convenience package must be stored not more than thirty
25 (30) feet away from a checkout station or counter and must be in
26 the direct line of sight of an employee at the checkout station or
27 counter.

28 (2) The convenience package must be protected by a reliable
29 anti-theft device that uses package tags and detection alarms
30 designed to prevent theft.

31 (3) The convenience package must be stored in restricted access
32 shelving that permits a purchaser to remove not more than one (1)
33 package every fifteen (15) seconds.

34 (4) The convenience package must be stored in an area that is
35 under constant video monitoring, and a sign placed near the
36 convenience package must warn that the area is under constant
37 video monitoring.

38 (f) A retail distributor, wholesaler, or manufacturer shall report a
39 suspicious order to the state police department in writing.

40 (g) Not later than three (3) days after the discovery of an unusual
41 theft at a particular retail store, the retailer shall report the unusual theft
42 to the state police department in writing. If three (3) unusual thefts
43 occur in a thirty (30) day period at a particular retail store, the retailer
44 shall, for at least one hundred eighty (180) days after the date of the last
45 unusual theft, locate all drugs containing ephedrine or pseudoephedrine
46 at that particular retail store behind a counter in an area inaccessible to



1 a customer or in a locked display case that makes the drug unavailable
2 to customers without the assistance of an employee.

3 (h) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance
4 after February 1, 2005, that is more stringent than this section.

5 (i) A person who knowingly or intentionally violates this section
6 commits a Class C misdemeanor. However, the offense is a Class A
7 misdemeanor if the person has a prior unrelated conviction under this
8 section.

9 (j) Before June 30, ~~2007~~, **2014**, the state police department shall
10 submit a report to the legislative council detailing the effectiveness of
11 this section in reducing the illicit production of methamphetamine. The
12 report must describe the number of arrests or convictions that are
13 attributable to the identification and logging requirements contained in
14 this section, and must include recommendations for future action. The
15 report must be in an electronic format under IC 5-14-6.

16 SECTION 4. IC 35-48-4-14.8 IS ADDED TO THE INDIANA
17 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
18 [EFFECTIVE JANUARY 1, 2012]: **Sec. 14.8. (a) This section does**
19 **not apply to the following:**

20 (1) **Ephedrine or pseudoephedrine dispensed under a**
21 **prescription.**

22 (2) **The sale of a drug containing ephedrine or**
23 **pseudoephedrine to a licensed health care provider,**
24 **pharmacist, retail distributor, wholesaler, or manufacturer,**
25 **or an agent of any of these persons if the sale occurs in the**
26 **regular course of lawful business activities. However, a retail**
27 **distributor, wholesaler, or manufacturer shall report a**
28 **suspicious order to the state police department under section**
29 **14.7(f) of this chapter.**

30 (3) **The sale of a drug containing ephedrine or**
31 **pseudoephedrine by a person who does not sell to walk-in**
32 **customers.**

33 (b) **As used in this section, "PSE tracking system" means a**
34 **statewide electronic system to track the sale of ephedrine and**
35 **pseudoephedrine.**

36 (c) **As used in this section, "stop sale alert" means a notification**
37 **from the PSE tracking system that the completion of a sale would**
38 **result in the purchaser violating state or federal quantity limits**
39 **relating to the sale or purchase of ephedrine or pseudoephedrine.**

40 (d) **A person who sells ephedrine or pseudoephedrine shall enter**
41 **the following information into the PSE tracking system before**
42 **completing the sale:**

43 (1) **The name of the purchaser.**

44 (2) **The address of the purchaser.**

45 (3) **The name of the product containing ephedrine or**
46 **pseudoephedrine that is being purchased.**



1 (4) The amount of the product containing ephedrine or
2 pseudoephedrine that is being purchased.

3 (e) The PSE tracking system must issue a stop sale alert if the
4 completion of a sale would result in the purchaser violating state
5 or federal quantity limits relating to the sale or purchase of
6 ephedrine or pseudoephedrine. A person may not complete a
7 transaction if the PSE tracking system issues a stop sale alert for
8 the transaction.

9 (f) A person shall begin entering data into the PSE tracking
10 system not later than one hundred eighty (180) days after the
11 attorney general enters into a memorandum of understanding
12 described in section 14.9 of this chapter.

13 SECTION 5. IC 35-48-4-14.9 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JANUARY 1, 2012]: Sec. 14.9. (a) As used in this
16 section, "PSE tracking system" has the meaning set forth in section
17 14.8 of this chapter.

18 (b) As used in this section, "stop sale alert" has the meaning set
19 forth in section 14.8 of this chapter.

20 (c) The attorney general shall enter into a memorandum of
21 understanding with an entity to implement the PSE tracking
22 system. The memorandum of understanding must establish the
23 roles and responsibilities of the attorney general and the entity.

24 (d) The memorandum of understanding must provide:

- 25 (1) that:
 - 26 (A) retailers; and
 - 27 (B) law enforcement agencies;
- 28 may not be required to pay a fee for access to the system;
- 29 (2) that for investigative purposes, a law enforcement officer
- 30 is entitled to access to all information on the PSE tracking
- 31 system;
- 32 (3) that sales transaction data will be housed by an
- 33 information technology company operating under strict
- 34 security standards;
- 35 (4) that information on the PSE tracking system will be
- 36 accessible only to authorized law enforcement officers;
- 37 (5) that the entity will forward the data, including data
- 38 concerning a transaction that could not be completed due to
- 39 the issuance of a stop sale alert, to the state police department
- 40 weekly;
- 41 (6) that the entity may not modify sales transaction data that
- 42 is provided to law enforcement; and
- 43 (7) that the entity will ensure that the PSE tracking system
- 44 will have stop sale capability throughout Indiana as set forth
- 45 in section 14.8 of this chapter.

