

Members

Sen. Brent Steele, Chairperson
Sen. Richard Bray
Sen. James Arnold
Sen. Lindel Hume
Rep. Ralph Foley
Rep. Greg Steuerwald
Rep. Ed DeLaney
Rep. Vernon Smith
Larry Landis
David Powell
Commissioner Bruce Lemon
Greg Server
Don Travis
Hon. Stephen R. Heimann



CRIMINAL LAW AND SENTENCING POLICY STUDY COMMITTEE

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Institute
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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 13, 2011
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St.,
Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Brent Steele, Chairperson; Sen. Richard Bray; Sen. James Arnold; Sen. Lindel Hume; Rep. Ralph Foley; Rep. Ed DeLaney; Rep. Vernon Smith; Larry Landis; David Powell; Commissioner Bruce Lemon; Greg Server; Don Travis.

Members Absent: Rep. Greg Steuerwald; Hon. Stephen R. Heimann.

Senator Steele called the meeting to order at 1:10 p.m.

I. Sealing criminal records

Senator Steele opened the meeting by noting that the General Assembly passed HEA 1211-2011 - dealing with the sealing of criminal records - in the previous session (Exhibit 1), and that the Indiana Public Defender Council (IPDC) had suggested certain changes to streamline the new statute. In addition, the Bureau of Motor Vehicles (BMV) has asserted that this statute does not apply to them, so the IPDC has also suggested specifying that the BMV is not excluded from the statute. Although the Supreme Court has also adopted rules to address the sealing of criminal records, it is preferable that the sealing of records be

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.

done statutorily rather than by rule. PD 3689 (Exhibit 2) was drafted to address these issues.

Legislative Services Agency Attorney Andrew Hedges presented PD 3689 to the Committee. HB 1211-2011 was made up of two separate bills, the first of which concerned itself with the records of persons who have not been convicted of a crime, and the second of which dealt with the records of persons who have been convicted of a crime. PD 3689: (1) provides that the same procedures apply to sealing the records of convicted persons and persons who have not been convicted; (2) makes the petition to seal records confidential; (3) specifies that the requirement to seal certain records applies to noncriminal justice agencies (including the BMV); and (4) makes the knowing or intentional disclosure of certain records a Class B misdemeanor.

In response to a question from Representative Foley, Mr. Hedges stated that this bill would apply to centralized records maintained by a governmental entity, but would probably not affect a private company that performed background checks based on information it collected itself.

Steve Key, executive director of the Hoosier State Press Association, testified that he was concerned that the confidentiality provisions of the bill would unduly restrict the press. In addition, he was concerned that there may be a possible conflict between the public records law and the requirement that certain records relating to criminal convictions be sealed, particularly in the case of records maintained by a state agency which may have fired a person due to the person's criminal conviction.

II. Criminal Code Evaluation Commission research team

Deborah Daniels summarized the work that the Criminal Code Evaluation Commission's research team has presented to the Criminal Code Evaluation Commission. Ms. Daniels described: (1) the current sentencing scheme for controlled substances (Exhibit 3); (2) a new controlled substances felony proportionality proposal (Exhibit 4); (3) potential changes to the marijuana sentencing statutes (Exhibit 5); and (4) proposed changes to suspended sentences (Exhibit 6).

III. Data Analysis Work Group

Representative Foley testified that the Data Analysis Work Group (DAWG) was established to provide accurate data concerning criminal offenders. Accurate data is necessary for the legislature to adopt effective policies and to measure the effectiveness of current policies.

John von Arx testified that DAWG was recently established to provide accurate data concerning criminal offenders because of questions concerning the validity of criminal offender data used during the 2011 session. Professors from IUPUI have created a statistical methodology for DAWG, and DAWG intends to examine a sample consisting of 2007 cases, including offenders from every county. This information will then be available to be used as a baseline to strengthen DOC population projections and to inform legislative proposals.

DOC Deputy Director Randy Koester testified that DOC would like to move to the electronic storage and transmission of certain documents, which would make certain procedures more efficient and which would also assist in obtaining accurate data.

Senator Steele adjourned the meeting at 3:20 p.m.

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1211

AN ACT to amend the Indiana code concerning restricted access to criminal records.

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

SECTION 1. IC 35-38-5-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 5.5. (a) If a person charged with a crime:**

- (1) is not prosecuted or if charges against the person are dismissed;
- (2) is acquitted of all criminal charges; or
- (3) is convicted of the crime and the conviction is subsequently vacated;

the person may petition a court to restrict disclosure of the records related to the arrest to a noncriminal justice organization or an individual.

(b) A petition under subsection (a) must be verified and filed in:

- (1) the court in which the charges against the person were filed, for a person described in subsection (a)(1); or
- (2) the court in which the trial was held, for a person described in subsection (a)(2) or (a)(3).

(c) A petition under subsection (a) must be filed not earlier than:

- (1) if the person is acquitted, thirty (30) days after the person is acquitted;
- (2) if the person's conviction is vacated, three hundred sixty-five (365) days after:

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- (A) the order vacating the person's conviction is final, if there is no appeal or the appeal is terminated before entry of an opinion or memorandum decision; or
- (B) the opinion or memorandum decision vacating the person's conviction is certified; or
- (3) if the person is not prosecuted, thirty (30) days after charges are dismissed, if the charges are not refiled.
- (d) A petition under subsection (a) must set forth:
 - (1) the date of the arrest;
 - (2) the charge;
 - (3) the date charges were dismissed, if applicable;
 - (4) the date of conviction or acquittal, if applicable;
 - (5) the date the conviction was vacated, if applicable;
 - (6) the basis on which the conviction was vacated, if applicable;
 - (7) the law enforcement agency employing the arresting officer;
 - (8) any other known identifying information, such as the name of the arresting officer, case number, or court cause number;
 - (9) the date of the petitioner's birth; and
 - (10) the petitioner's Social Security number.
- (e) A copy of a petition under subsection (a) shall be served on the prosecuting attorney and the state central repository for records.
- (f) If the prosecuting attorney wishes to oppose a petition under subsection (a), the prosecuting attorney shall, not later than thirty (30) days after the petition is filed, file a notice of opposition with the court setting forth reasons for opposing the petition. The prosecuting attorney shall attach to the notice of opposition a certified copy of any documentary evidence showing that the petitioner is not entitled to relief. A copy of the notice of opposition and copies of any documentary evidence shall be served on the petitioner in accordance with the Indiana Rules of Trial Procedure. The court may:
 - (1) summarily grant the petition;
 - (2) set the matter for hearing; or
 - (3) summarily deny the petition, if the court determines that:
 - (A) the petition is insufficient; or
 - (B) based on documentary evidence submitted by the prosecuting attorney, the petitioner is not entitled to have access to the petitioner's arrest records restricted.
- (g) If a notice of opposition is filed under subsection (f) and the

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court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

(h) After a hearing is held under subsection (g), the court shall grant the petition filed under subsection (a), unless the petitioner is being reprosecuted on charges related to the original conviction.

(i) If the court grants a petition filed under subsection (a), the court shall order the state police department not to disclose or permit disclosure of the petitioner's limited criminal history information to a noncriminal justice organization or an individual under IC 10-13-3-27.

SECTION 2. IC 35-38-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 8. Restricted Access to Conviction Records

Sec. 1. This chapter does not apply to a sex or violent offender unless the offender's status as a sex or violent offender is solely due to the offender's conviction for sexual misconduct with a minor (IC 35-42-4-9) and the offender proves that the defense described in IC 35-42-4-9(e) applies to the offender.

Sec. 2. This chapter applies only to a person:

- (1) convicted of a misdemeanor or a Class D felony that did not result in injury to a person; or
- (2) adjudicated a delinquent child for committing an offense that, if committed by an adult, would be a misdemeanor or Class D felony that did not result in injury to a person.

Sec. 3. Eight (8) years after the date a person completes the person's sentence and satisfies any other obligations imposed on the person as a part of the sentence, the person may petition a sentencing court to order the state police department to restrict access to the records concerning the person's arrest and involvement in criminal or juvenile court proceedings.

Sec. 4. The court shall grant a petition under this chapter if the court finds:

- (1) the person is:
 - (A) not a sex or violent offender; or
 - (B) a sex or violent offender, but the offender's status as a sex or violent offender is solely due to the offender's conviction for sexual misconduct with a minor (IC 35-42-4-9) and the offender proved that the defense described in IC 35-42-4-9(e) applies to the offender;
- (2) the person was:
 - (A) convicted of a misdemeanor or a Class D felony that

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- did not result in injury to a person; or
- (B) adjudicated a delinquent child for committing an offense that, if committed by an adult, would be a misdemeanor or Class D felony not resulting in injury to a person;
- (3) eight (8) years have passed since the person completed the person's sentence and satisfied any other obligation imposed on the person as part of the sentence; and
- (4) the person has not been convicted of a felony since the person completed the person's sentence and satisfied any other obligation imposed on the person as part of the sentence.

Sec. 5. If the court grants the petition of a person under this chapter, the court shall do the following:

- (1) Order:
 - (A) the department of correction; and
 - (B) each:
 - (i) law enforcement agency; and
 - (ii) other person;

who incarcerated, provided treatment for, or provided other services for the person under an order of the court; to prohibit the release of the person's records or information relating to the misdemeanor, nonviolent Class D felony, or juvenile adjudication described in section 2 of this chapter, in the person's records to a noncriminal justice agency without a court order.
- (2) Order any:
 - (A) state;
 - (B) regional; or
 - (C) local;

central repository for criminal history information to prohibit the release of the person's records or information relating to the misdemeanor, nonviolent Class D felony, or juvenile adjudication described in section 2 of this chapter, in the person's records to a noncriminal justice agency without a court order.

Sec. 6. (a) If a person whose records are restricted under this chapter brings a civil action that might be defended with the contents of the records, the defendant is presumed to have a complete defense to the action.

(b) For the plaintiff to recover in an action described in subsection (a), the plaintiff must show that the contents of the

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restricted records would not exonerate the defendant.

(c) In an action described in subsection (a), the plaintiff may be required to state under oath whether:

- (1) the plaintiff had records in the criminal justice system; and
- (2) those records were restricted.

(d) In an action described in subsection (a), if the plaintiff denies the existence of the records, the defendant may prove the existence of the records in any manner compatible with the law of evidence.

Sec. 7. If a court orders a person's records to be restricted under this chapter, the person may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the restricted records.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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Exhibit 2

10/13/11 sentg policy

PRELIMINARY DRAFT
No. 3689

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 35-38.

Synopsis: Criminal history. Provides that the same procedures apply to the adjudication of a petition to restrict disclosure of certain arrest and other records that is filed under IC 35-38-5-5.5 or under IC 35-38-8. Makes it a Class B misdemeanor to knowingly or intentionally disclose, without a court order, records restricted under these laws, and provides that petitions to restrict disclosure are confidential.

Effective: July 1, 2012.

1034



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 35-38-5-5.5, AS ADDED BY P.L.194-2011,
2 SECTION 1. IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 5.5. (a) If a person charged with a crime:
4 (1) is not prosecuted or if charges against the person are
5 dismissed;
6 (2) is acquitted of all criminal charges; or
7 (3) is convicted of the crime and the conviction is subsequently
8 vacated;
9 the person may petition a court to restrict disclosure of the records
10 related to the arrest to a noncriminal justice organization or an
11 individual.
12 (b) A petition under subsection (a) must be verified and filed in:
13 (1) the court in which the charges against the person were filed,
14 for a person described in subsection (a)(1); or
15 (2) the court in which the trial was held, for a person described in
16 subsection (a)(2) or (a)(3).
17 (c) A petition under subsection (a) must be filed not earlier than:
18 (1) if the person is acquitted, thirty (30) days after the person is
19 acquitted;
20 (2) if the person's conviction is vacated, three hundred sixty-five
21 (365) days after:
22 (A) the order vacating the person's conviction is final, if there
23 is no appeal or the appeal is terminated before entry of an
24 opinion or memorandum decision; or
25 (B) the opinion or memorandum decision vacating the person's
26 conviction is certified; or
27 (3) if the person is not prosecuted, thirty (30) days after charges
28 are dismissed, if the charges are not refiled.
29 (d) A petition under subsection (a) must set forth:
30 (1) the date of the arrest;
31 (2) the charge;



- 1 (3) the date charges were dismissed, if applicable;
 2 (4) the date of conviction or acquittal, if applicable;
 3 (5) the date the conviction was vacated, if applicable;
 4 (6) the basis on which the conviction was vacated, if applicable;
 5 (7) the law enforcement agency employing the arresting officer;
 6 (8) any other known identifying information, such as the name of
 7 the arresting officer, case number, or court cause number;
 8 (9) the date of the petitioner's birth; **and**
 9 (10) the petitioner's Social Security number; **and**
 10 **(11) the name and address of any noncriminal justice agency**
 11 **with records the petitioner is seeking to have restricted under**
 12 **this section.**

13 (e) A copy of a petition under subsection (a) shall be served on the
 14 prosecuting attorney and the state central repository for records.

15 (f) If the prosecuting attorney wishes to oppose a petition under
 16 subsection (a), the prosecuting attorney shall, not later than thirty (30)
 17 days after the petition is filed, file a notice of opposition with the court
 18 setting forth reasons for opposing the petition. The prosecuting attorney
 19 shall attach to the notice of opposition a certified copy of any
 20 documentary evidence showing that the petitioner is not entitled to
 21 relief. A copy of the notice of opposition and copies of any
 22 documentary evidence shall be served on the petitioner in accordance
 23 with the Indiana Rules of Trial Procedure. The court may:

- 24 (1) summarily grant the petition;
 25 (2) set the matter for hearing; or
 26 (3) summarily deny the petition, if the court determines that:
 27 (A) the petition is insufficient; or
 28 (B) based on documentary evidence submitted by the
 29 prosecuting attorney, the petitioner is not entitled to have
 30 access to the petitioner's arrest records restricted.

31 (g) If a notice of opposition is filed under subsection (f) and the
 32 court does not summarily grant or summarily deny the petition, the
 33 court shall set the matter for a hearing.

34 (h) After a hearing is held under subsection (g), the court shall grant
 35 the petition filed under subsection (a), unless the petitioner is being
 36 reprosecuted on charges related to the original conviction.

37 (i) If the court grants a petition filed under subsection (a), the court
 38 shall **do the following:**

39 (1) Order the state police department not to disclose or permit
 40 disclosure of the petitioner's limited criminal history information
 41 to a noncriminal justice organization or an individual under
 42 IC 10-13-3-27.

43 (2) **Order any:**

- 44 (A) **noncriminal justice agency identified in the petition;**
 45 (B) **law enforcement agency or other person who:**
 46 (i) **arrested;**



- 1 (ii) incarcerated;
 2 (iii) provided treatment for; or
 3 (iv) provided other services for the person under an
 4 order of the court; or
 5 (C) criminal records repository;
 6 to prohibit the release without a court order of the person's
 7 records or other information relating to the person's arrest,
 8 charge, conviction (including a juvenile adjudication), or
 9 treatment to a noncriminal justice agency.

10 (j) If a court orders a person's records to be restricted under
 11 this chapter, the person may legally state on an application for
 12 employment or any other document that the person has not been
 13 arrested for or convicted of the felony or misdemeanor recorded
 14 in the restricted records.

15 (k) A person who, without a court order that requires
 16 disclosure, knowingly or intentionally discloses or permits the
 17 disclosure of records to a noncriminal justice agency that have
 18 been restricted under this section commits a Class B misdemeanor.

19 (l) A petition filed under subsection (a) is confidential.

20 SECTION 2. IC 35-38-8-3.5 IS ADDED TO THE INDIANA CODE
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 22 1, 2012]: Sec. 3.5. (a) A petition under section 3 of this chapter must
 23 set forth:

- 24 (1) the date of the arrest;
 25 (2) the charge;
 26 (3) the date of the conviction;
 27 (4) the date the person completed the person's sentence and
 28 satisfied any other obligations imposed on the person as part
 29 of the person's sentence;
 30 (5) the law enforcement agency employing the arresting
 31 officer;
 32 (6) any other known identifying information, such as the name
 33 of the arresting officer, case number, or court cause number;
 34 (7) the date of the petitioner's birth;
 35 (8) the petitioner's Social Security number; and
 36 (9) the name and address of any agency with records the
 37 petitioner is seeking to have restricted to noncriminal justice
 38 agencies.

39 (b) A copy of a petition described in section 3 of this chapter
 40 shall be served on the prosecuting attorney and the state central
 41 repository for records.

42 (c) If the prosecuting attorney wishes to oppose a petition under
 43 section 3 of this chapter, the prosecuting attorney shall, not later
 44 than thirty (30) days after the petition is filed, file a notice of
 45 opposition with the court setting forth reasons for opposing the
 46 petition. The prosecuting attorney shall attach to the notice of



1 **opposition a certified copy of any documentary evidence showing**
 2 **that the petitioner is not entitled to relief. A copy of the notice of**
 3 **opposition and copies of any documentary evidence shall be served**
 4 **on the petitioner in accordance with the Indiana Rules of Trial**
 5 **Procedure.**

6 **(d) A petition filed under this chapter is confidential.**

7 SECTION 3. IC 35-38-8-5, AS ADDED BY P.L.194-2011,
 8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2012]: Sec. 5. If the court grants the petition of a person under
 10 this chapter, the court shall do the following:

11 **(1) Order:**

12 **(A) the department of correction; and**

13 **(B) each:**

14 **(i) law enforcement agency; and**

15 **(ii) other person;**

16 **who incarcerated; provided treatment for; or provided other**
 17 **services for the person under an order of the court;**

18 **(1) Order the state police department** to prohibit the release of
 19 the person's records or information relating to the misdemeanor,
 20 nonviolent Class D felony, or juvenile adjudication described in
 21 section 2 of this chapter, in the person's records to a noncriminal
 22 justice agency without a court order.

23 **(2) Order any:**

24 **(A) noncriminal justice agency identified in the petition;**

25 **(B) law enforcement agency or other person who:**

26 **(i) arrested;**

27 **(ii) incarcerated;**

28 **(iii) provided treatment for; or**

29 **(iv) provided other services for the person under an**
 30 **order of the court; or**

31 **(C) criminal records repository;**

32 **to prohibit the release without a court order of the person's**
 33 **records or information in the person's records relating to the**
 34 **misdemeanor, nonviolent Class D felony, or juvenile**
 35 **adjudication described in section 2 of this chapter, to a**
 36 **noncriminal justice agency.**

37 **(2) Order any:**

38 **(A) state;**

39 **(B) regional; or**

40 **(C) local;**

41 **central repository for criminal history information to prohibit the**
 42 **release of the person's records or information relating to the**
 43 **misdemeanor, nonviolent Class D felony, or juvenile adjudication**
 44 **described in section 2 of this chapter, in the person's records to a**
 45 **noncriminal justice agency without a court order.**

46 SECTION 4. IC 35-38-8-8 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2012]: **Sec. 8. A person who, without a court order that requires**
3 **disclosure, knowingly or intentionally discloses or permits the**
4 **disclosure of records to a noncriminal justice agency that have**
5 **been restricted under this chapter commits a Class B**
6 **misdemeanor.**



Exhibit 3

10/13/11 Sent Policy

IC 35-48-4 (Drug Crimes) Current Scheme

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

A Felony	B Felony	C Felony	D Felony
<u>Dealing</u> in Coke/Narcotic >3 grams <u>OR</u> to a person <18 and 3 years junior, or within 1000 feet of the protected zones	<u>Dealing</u> in Coke/Narcotic		
<u>Possession</u> > 3 grams Coke/Narcotic within 1000 feet of a protected zone	<u>Possession</u> < 3 grams Coke/Narcotic within 1000 feet of a protected zone	<u>Possession</u> > 3 grams Coke/Narcotic <u>OR</u> while also in possession of a firearm	<u>Possession of</u> Coke/Narcotic
<u>Dealing</u> in Meth >3 grams <u>OR</u> to a person <18 and 3 years junior, or within 1000 feet of the protected zones	<u>Dealing</u> in Meth		
<u>Possession</u> > 3 grams Meth within 1000 feet of a protected zone	<u>Possession</u> < 3 grams Meth within 1000 feet of a protected zone	<u>Possession</u> > 3 grams Meth <u>OR</u> while also in possession of a firearm	<u>Possession of</u> Meth
<u>Dealing</u> in Sched I, II, III >3 grams <u>OR</u> to a person <18 and 3 years junior, or within 1000 feet of the protected zones	<u>Dealing</u> in Schedule I, II, III		
	<u>Dealing</u> in Schedule IV >3 grams <u>OR</u> to a person <18 and 3 years junior, or within 1000 feet of the protected zones	<u>Dealing</u> in Schedule IV	
		<u>Possession of</u> Schedule I, II, III, IV within 1000 feet of a protected zone	<u>Possession of</u> Schedule I, II, III, IV
	<u>Dealing</u> in Schedule V >3 grams <u>OR</u> to a person <18 and 3 years junior, or within 1000 feet of the protected zones		<u>Dealing</u> in Schedule V
			<u>Possession</u> of certain Schedule V

Exhibit 4 10/13/11 sen's policy

IC 35-48-4 (Controlled Substances) Felony Proportionality Proposal

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

<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
	<u>Dealing</u> > 28 grams of Coke/Narc OR dealing > 10 but < 28 grams AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> > 10 but < 28 grams of Coke/Narc OR dealing > 3 but < 10 grams AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]
		<u>Possession</u> of > 28 grams of Coke/Narc OR possess > 10 but < 28 grams AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]
<u>Manufacturing</u> - Meth Lab explosion causing serious bodily injury to someone other than the manufacturer OR causing property damage > \$10,000	<u>Dealing</u> > 28 grams of Meth OR dealing > 10 but < 28 grams AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> > 10 but < 28 grams of Meth OR dealing > 3 but < 10 grams AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]

IC 35-48-4 (Controlled Substances) Felony Proportionality Proposal

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

		<p><u>Possession</u> > 28 grams of Meth OR possess > 10 but < 28 grams AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>
<p>Note: The basic definition of dealing would have to change to account for the change of "manufacturing" from an element</p>		
<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
	<p><u>Dealing</u> > 28 grams or > 560 pills of Sched I,II, or III OR dealing > 10 but < 28 grams or < 560 pills but > 200 pills AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>	<p><u>Dealing</u> > 10 but < 28 grams or < 560 but < 200 pills of Sched I,II, or III OR dealing > 3 but < 10 grams or > 60 but < 200 pills AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>

IC 35-48-4 (Controlled Substances) Felony Proportionality Proposal

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

		<u>Possession</u> of > 28 grams or > 560 pills of Sched I,II,or III OR possess > 10 but < 28 grams or < 560 but > 200 pills AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]
		<u>Dealing</u> > 28 grams of Sched IV or V OR dealing > 10 but < 28 grams AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]

IC 35-48-4 (Controlled Substances) Felony Proportionality Proposal

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

<u>Level 4</u>	<u>Level 5</u>	<u>Level 6</u>
<u>Dealing</u> > 3 but < 10 grams of Coke/Narc OR dealing < 3 grams AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> < 3 grams of Cocaine	
<u>Possession</u> > 10 but < 28 grams of Coke/Narc OR possess > 3 but < 10 grams AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> > 3 but < 10 grams of Coke/Narc OR possess < 3 grams AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> < 3 grams of Coke/Narc
<u>Dealing</u> > 3 but < 10 grams of Meth OR deal < 3 grams AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> < 3 grams of Meth	

IC 35-48-4 (Controlled Substances) Felony Proportionality Proposal

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

<p><u>Possession</u> > 10 but < 28 grams of Meth OR possess > 3 but < 10 grams AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>	<p><u>Possession</u> > 3 but < 10 grams of Meth OR possess < 3 grams AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>	<p><u>Possession</u> < 3 grams of Meth</p>
<p>of the offense to an aggravator</p>		
<p><u>Level 4</u></p>	<p><u>Level 5</u></p>	<p><u>Level 6</u></p>
<p><u>Dealing</u> > 3 but < 10 grams or > 60 but < 200 pills of Sched I,II, or III OR dealing < 3 grams or < 60 pills AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>	<p><u>Dealing</u> < 3 grams OR < 60 pills of Sched I,II, or III</p>	

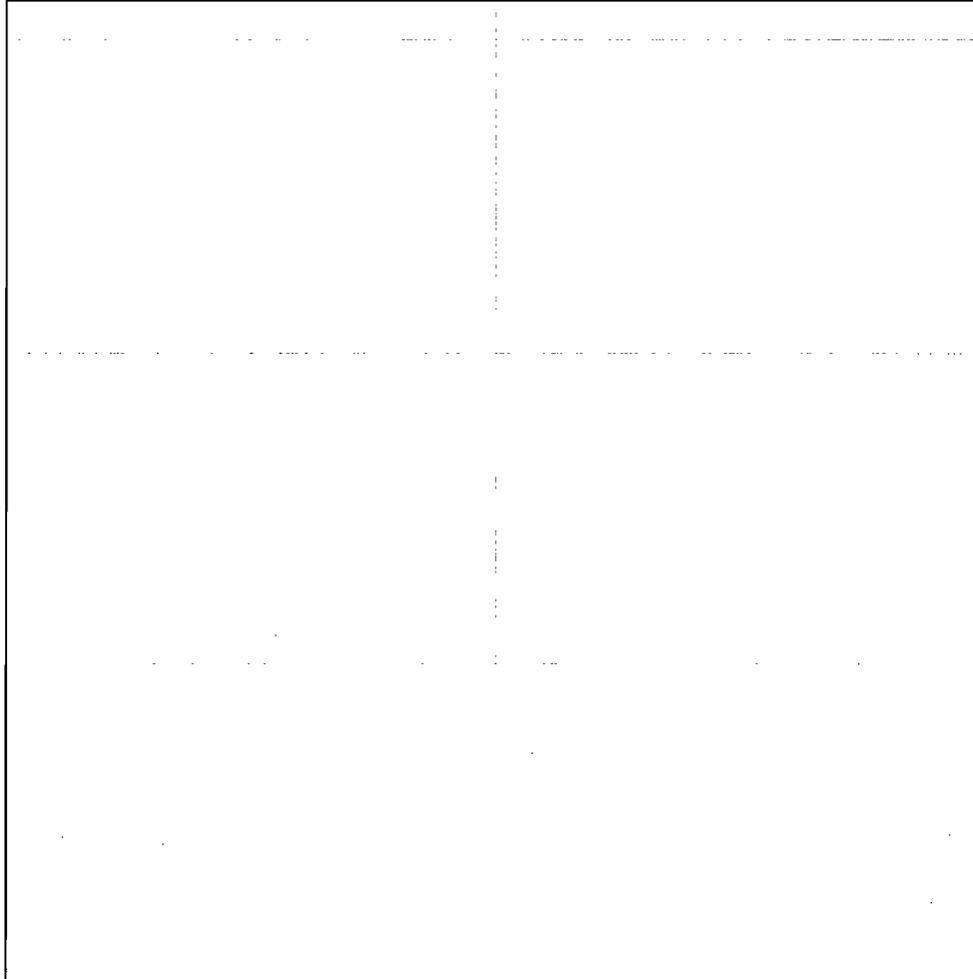
IC 35-48-4 (Controlled Substances) Felony Proportionality Proposal

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

<p><u>Possession</u> > 10 but < 28 grams or < 560 but > 200 pills of Sched I,II, or III OR possess > 3 but < 10 grams or > 60 but < 200 pills AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>	<p><u>Possession</u> > 3 but < 10 grams or > 60 but < 200 pills of Sched I,II, or III or possess < 3 grams or < 60 pills but AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>	<p><u>Possession</u> < 3 grams OR < 60 pills of Sched I, II, or III</p>
<p><u>Dealing</u> > 10 but < 28 grams of Sched IV or V OR dealing > 3 but < 10 grams AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>	<p><u>Dealing</u> > 3 but < 10 grams of Sched IV or V OR deal < 3 grams AND manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>	<p><u>Dealing</u> < 3 grams of Sched IV, or V</p>
<p><u>Possession</u> of > 28 grams of Sched IV or V OR possess > 10 but < 28 grams AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>	<p><u>Possession</u> > 10 but < 28 grams of Sched IV or V OR possess >3 but <10 grams AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>	<p><u>Possession</u> > 3 grams of Sched IV or V OR possess < 3 grams AND manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]</p>

IC 35-48-4 (Controlled Substances) Felony Proportionality Proposal

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The image shows a large, empty rectangular box with a solid black border. Inside the box, there is a faint, dashed grid pattern consisting of two vertical lines and two horizontal lines, creating a 3x3 grid of cells. This box is intended for a proportionality chart.

IC 35-48-4 (Controlled Substances) Felony Proportionality Proposal

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<u>Possession</u> < 3 grams of Sched IV or V	

Potential Marijuana Changes (changes in red)

In DOC as of 8/9/10	Crime	Aggravator/Mitigator	Suspendible/Enhancement	IC Cite	2010 Class of Offense	1977 Class of Offense	PROPOSAL
54	Dealing in Marijuana, Hash Oil, or Hashish	>10 pounds	Suspendible/DL	35-48-4-10	C Felony	D Felony	6 Felony
	Dealing in Marijuana, Hash Oil, or Hashish	<1000' of school, park, housing, youth ctr, or bus	Suspendible/DL	35-48-4-10	C Felony	none	Misd - A
35	Dealing in Marijuana, Hash Oil, or Hashish	recipient or intended recipient <18 years	Suspendible/DL	35-48-4-10	D Felony	D Felony	Misd - A
	Dealing in Marijuana, Hash Oil, or Hashish	>30 grams but <10 pounds	Suspendible/DL	35-48-4-10	D Felony	D Felony	Misd - A
	Dealing in Marijuana, Hash Oil, or Hashish	prior conviction (any conviction re: Marijuana)	Suspendible/DL	35-48-4-10	D Felony	D Felony	Misd - A
	Dealing in Marijuana, Hash Oil, or Hashish	2 prior convictions	Suspendible	new			6 Felony
	Manufacturing in Marijuana, Hash Oil	> 10 pounds	Suspendible	new			5 Felony
	Dealing in Marijuana, Hash Oil, or Hashish		Suspendible/DL	35-48-4-10	Misd - A	Misd - A	Misd - C
199	Possession of Marijuana, Hash Oil, or Hashish	> 30 grams	Suspendible/DL	35-48-4-11	D Felony	D Felony	Misd - B
	Possession of Marijuana, Hash Oil, or Hashish	prior conviction (any conviction re: Marijuana)	Suspendible/DL	35-48-4-11	D Felony	D Felony	Misd - C
43	Possession of Paraphernalia	prior conviction for knowing & intentional	Suspendible	35-48-4-8.3	D Felony	D Felony	Misd - A
	Possession of Paraphernalia	prior conviction for recklessly	Suspendible	35-48-4-8.3	D Felony	none	DELETE
	Possession of Paraphernalia	knowing & intentional (otherwise A Infraction)	Suspendible	35-48-4-8.3	Misd - A	Misd - A	Misd - C
	Possession of Paraphernalia	recklessly (otherwise A Infraction)	Suspendible	35-48-4-8.3	Misd - B	none	DELETE
331	TOTAL IN DOC (SNAPSHOT)						
	<u>Additional Proposals</u>						
	Eliminate drivers license suspension						
	Remove the "bath salts" from the synthetic cannabinoids definition and place them in the Schedule 3 definition						

Exhibit 6

10/13/11 sent policy

IC 35-50-2-2

Suspension of sentence; limitations

Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) Except as provided in subsection (i), with respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7: **or the underlying offense did not cause serious bodily injury or death, involve the use of a deadly weapon, involve a violation of IC 35-42-4, or involve the distribution or manufacture of a controlled substance.**

(1) The crime committed was a ~~Class A felony~~ or **Level 1, 2, 3, or 4 Class B felony** and the person has a prior unrelated felony conviction, **other than a Level 6 felony conviction.**

(2) The crime committed was a ~~Class C~~ **Level 5** felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction **other than a Level 6 felony conviction** and the date the person committed the ~~Class C~~ **Level 5** felony for which the person is being sentenced.

~~(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.~~

(4) **Notwithstanding the other provisions of this subsection,** the felony committed was:

(A) murder (IC 35-42-1-1);

(B) ~~battery (IC 35-42-2-1) with a deadly weapon or battery causing death~~ **attempted murder (IC 35-41-5-1, IC 35-42-1-1);**

(C) ~~sexual battery (IC 35-42-4-8) with a deadly weapon~~ **conspiracy to commit murder (IC 35-41-5-2, IC 35-42-1-1);**

(D) **voluntary manslaughter (IC 35-42-1-3)**

(E) **battery (IC 35-42-2-1 causing death;**

~~(F)(D)~~ kidnapping (IC 35-42-3-2);

~~(G)(E)~~ confinement (IC 35-42-3-3) with a deadly weapon;

~~(H)(F)~~ rape (IC 35-42-4-1) as a ~~Class A~~ **Level 1** felony;

~~(I)(G)~~ criminal deviate conduct (IC 35-42-4-2) as a ~~Class A~~ **Level 1** felony;

(J) neglect of a dependent (IC 35-46-1-4) as a Level 1 or 2 felony;

~~(K)(H)~~ except as provided in subsection (i), child molesting (IC 35-42-4-3) as a ~~Class A or Class B~~ **Level 1, Level 2, or Level 3** felony, unless:

(i) the felony committed was child molesting as a ~~Class B~~ **Level 3** felony;

(ii) the victim was not less than twelve (12) years old at the time the offense was committed;

(iii) the person is not more than four (4) years older than the victim, or more than five (5) years

older than the victim if the relationship between the person and the victim was a dating relationship or an ongoing personal relationship (not including a family relationship);

(iv) the person did not have a position of authority or substantial influence over the victim; and

(v) the person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person;

~~(L)(H)~~ robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;

~~(M)(J)~~ arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;

~~(N)(K)~~ burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;

~~(O)(L)~~ resisting law enforcement (IC 35-44-3-3) with a deadly weapon;

~~(P)(M)~~ escape (IC 35-44-3-5) with a deadly weapon;

~~(Q)(N)~~ rioting (IC 35-45-1-2) with a deadly weapon

~~(O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:~~

~~(i) school property;~~

~~(ii) a public park;~~

~~(iii) a family housing complex; or~~

~~(iv) a youth program center;~~

~~(P) dealing in methamphetamine (IC 35-48-4-1.1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver the methamphetamine pure or adulterated to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:~~

~~(i) school property;~~

~~(ii) a public park;~~

~~(iii) a family housing complex; or~~

~~(iv) a youth program center;~~

~~(Q) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:~~

~~(i) school property;~~

~~(ii) a public park;~~

~~(iii) a family housing complex; or~~

~~(iv) a youth program center;~~

(R) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;

(S) an offense under IC 9-30-5-5(b) (operating a vehicle while intoxicated causing death);

(T) aggravated battery (IC 35-42-2-1.5); or

(U) disarming a law enforcement officer (IC 35-44-3-3.5) **as a Level 1, 2, 3, or 4 felony.**

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall

place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

~~(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.~~

(e) Whenever the court suspends that part of the sentence of a sex or violent offender (as defined in IC 11-8-8-5) that is suspendible under subsection (b), the court shall place the sex or violent offender on probation under IC 35-38-2 for not more than ten (10) years.

~~(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.~~

~~(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.~~

~~(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) or IC 35-48-4-6.1(b)(1)(B) may not be suspended.~~

(i) If a person is:

(1) convicted of child molesting (IC 35-42-4-3) as a Class A felony against a victim less than twelve (12) years of age; and

(2) at least twenty-one (21) years of age;

the court may suspend only that part of the sentence that is in excess of thirty (30) years.

NOTES:

A. The entirety of this draft was not unanimously agreed to by the research team:

- There was some disagreement by at least one of the IPAC representatives with regard to striking Battery with a Deadly Weapon and Sexual Battery with a Deadly Weapon from the nonsuspendible list. The theory of those who proposed the striking was that:
 - Aggravated Battery remains on the list of nonsuspendibles. If a person batters another person with a deadly weapon sufficiently to injure him seriously, the crime will fall into the category of aggravated battery.
 - If a sexual battery with a weapon results in rape or criminal deviate conduct, it will be nonsuspendible under this section. If it is a lesser offense, while it remains a serious offense, it need not be nonsuspendible.
- There was disagreement by the IPDC representatives that any crime should, by its nature, be nonsuspendible as represented in the current subsection (b)(4).

B. For the sake of clarity, the current subsection (b)(4) probably ought to become a new subsection (c), in order to make it clear that the crimes listed in (b)(4) are nonsuspendible regardless of the earlier language in subsection (b).

C. Subsection (d), prohibiting the suspension of a voluntary manslaughter sentence in certain circumstances, would be deleted per this draft because voluntary manslaughter would be made nonsuspendible in all cases (see subsection (b)(4)(d)).

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