Members

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

LSA Staff:

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

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

CRIMINAL CODE EVALUATION COMMISSION

Legislative Services Agency
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Indianapolis, Indiana 46204-2789
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MEETING MINUTES[1]

Meeting Date:	**July 27, 2011**
Meeting Time:	**10:30 A.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 431**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**3**

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

Members Absent: **Chief Justice Randall Shepard.**

Senator Bray called the meeting to order at 10:40 a.m. He introduced Ms. Deborah Daniels, who has been leading a work group looking at possible revisions of the Indiana criminal code. Ms. Daniels spoke on possible changes to theft statutes in the Indiana criminal code. See Exhibit A.

The Commission discussed the proposals recommended by Ms. Daniels (shown in Exhibit A) and made the following decisions of what to include in a final bill draft that would be reviewed and voted on at a later commission meeting.

Recommendation # 1 – The members considered whether the language in IC 35-43-4-2 in which a person intends "... to deprive the other person of any part of (the property's) value or use" should be removed from statute as superfluous. The members did not consider the language to be superfluous since removal of this language would permit a person to take another person's car for a joy ride with no legal repercussions. The vote was 13 to 0 to retain this language in the final draft.

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

Recommendation #2 – Dollar Threshold for Felony Theft: Under current law, Indiana is the only state without a dollar threshold for theft. The Commission members propose making $750 the threshold between theft as a misdemeanor and theft as a felony. The vote was 7 to 6 in favor.

Recommendation #3 – Criminal Conversion: The Commission members voted to remove IC 35-43-4-3. The vote was 9 - 3 to remove. The Commission members also voted to remove receiving stolen property language (IC 35-43-4-2 (b)) because it was redundant as well. The vote was 12 - 0 in favor.

Recommendation #4 – The Commission took no vote on aggregating theft offenses into one episode of theft.

Recommendation #5 – Developing a Method to Value Stolen Property: The Commission members took no action on this recommendation.

Recommendation #6 – Enhancement of Certain Thefts to Class D Felonies Regardless of Monetary Value or If Monetary Value Is less than $750: The Commission members propose including the following changes to be included in the final bill draft. They voted 11 - 2 to enhance the offense to a Class D felony if the property is a firearm. An effort to enhance the misdemeanor theft to a Class D felony if the property is a motor vehicle failed by a 5 to 7 vote. Language to enhance the theft charge to a Class D felony if the victim of the offense was at least 67 years of age or affected by mental illness, mental retardation, dementia, or other physical or mental incapacity also was not recommended. Language to enhance the penalty to a Class D felony if the value of the property was at least $750 or if the person had a prior unrelated conviction of theft or conversion was approved by a 7 to 6 vote.

Recommendation #7 – Monetary Threshold for Class C Felonies: The proposal to lower the monetary threshold for a Class C felony to $25,000 from the current $100,000 failed by a 5 to 7 vote. The proposal to reduce the threshold to $50,000 from $100,000 passed by a vote of 9 to 3.

Recommendation #8 – Conforming Changes to Burglary Statute and Arrest Powers for Law Enforcement Officers: The Commission members voted 12 - 0 to include these changes in the draft.

The Commission decided to include the following conforming language to the final draft that would be reviewed by the Commission:

1. It recommends technical corrections shown on page 17 of Exhibit A for language defining deception and fraud.

2. It recommends language shown on pages 23 through 26 of Exhibit A.

Senator Bray adjourned the meeting at 1:30 p.m. and told the Commission members that at the next meeting on August 18, the Commission members would examine sex crimes.

Recommendations for Property Offenses

Exhibit A
Criminal Code Evaluation Commission
July 13, 2011 Meeting #2

CURRENT THEFT STATUTE

IC 35-43-4-2

(a) A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a Class D felony.

CURRENT THEFT STATUTE (cont'd)

(b) However, the offense is a Class C felony if:

(1) the fair market value of the property is at least one hundred thousand dollars ($100,000); or

(2) the property that is the subject of the theft is a valuable metal . . .

Theft: Recommendation #1

- Remove superfluous language from theft statute

- *35-43-4-2. Theft*

  (a) A person who knowingly or intentionally exerts unauthorized control over property of another person~~, with intent to deprive the other person of any part of its value or use,~~ commits theft . . . .

Theft: Recommendation #2

- Adopt a misdemeanor theft with felony level enhancements for property valued above a designated monetary threshold.
  - SB 561 as introduced in 2011:
    - A misdemeanor: Property less than $750
    - D felony : Property between $750-$50,000
    - C felony: Property at least $50,000

- Indiana is the only state without a dollar threshold for felony theft.
  - **National Range:** $200 to $2,500
  - **National Average:** $808.08
  - **National Median (mid-point):** $900
  - **National Mode (most frequent dollar figure):**
    - 15 with a $500 threshold
    - 15 with a $1,000 threshold

- *35-43-4-2. Theft*

(c) Except as provided in subsections (d) and (e), *a person who knowingly or intentionally exerts unauthorized control over property of another person~~, with intent to deprive the other person of any part of its value or use,~~ commits theft, a ~~Class D felony.~~* ***Class A misdemeanor.***

Theft: Recommendation #3

- Repeal Conversion (IC 35-43-4-3.)
  - The crime of conversion will be covered by a misdemeanor theft
  - There is no need to preserve the felony enhancements in the conversion statute
    - Current conversion enhancements
      - Unauthorized control of another's vehicle for purposes of committing a crime
      - Failure to return a rental car (enacted in 2011)

- Repeal Receiving Stolen Property (IC 35-43-4-2(b)) because it is redundant
  - *See* SB 561 as introduced in 2011

Theft: Recommendation #4

- Develop a method to aggregate theft offenses that mirrors the existing statutory language for "an episode of criminal conduct"

(b) In determining the value of the property for theft under this section, acts of theft committed in a single episode of criminal conduct, as defined in IC 35-50-1-2(b), may be charged in a single count.

Theft: Recommendation #5

- Develop a method to value the property stolen

- Existing Indiana Statute: 35-43-4-4. Evidence
  (a) The price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value and ownership of the property

(a) ***As used in this section, "value of the property" means the fair market value at the time and place of the crime. If the fair market value cannot be satisfactorily ascertained, "value of the property" means the cost of replacement of the property within a reasonable time after the crime. A price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value of the property.***

Theft: Recommendation #6

- Enhance certain thefts to D felonies regardless of monetary value or if monetary value is at least $750.

(d) An offense described in subsection (c) is a Class D felony if:

(1) the property is a firearm (as defined in IC 35-47-1-5);

(2) the property is a motor vehicle (as defined in IC 9-13-2-105(a));

(3) the offense occurs during a state of disaster emergency declared by the governor under IC 10-14-3-12;

(4) the victim of the offense is:

(A) at least sixty-seven (67) years age; or

(B) affected by mental illness, mental retardation, dementia, or other physical or mental incapacity.

(5) the value of the property is at least seven hundred fifty dollars ($750); or

(6) the person has a prior unrelated conviction for theft or conversion.

Theft: Recommendation #7

- Lower monetary threshold for C felony to $50,000 (as proposed in SB 561)

(e) *~~However, the~~* ***An*** *offense* ***described in subsection (c)*** *is a Class C felony if:*

(1) the ~~fair market~~ value of the property is at least ~~one hundred~~ ***fifty*** *thousand dollars ~~($100,000)~~* ***($50,000)****; or . . . .*

Theft: Recommendation #8

- Make necessary changes to preserve collateral laws affected by altering the current theft statute.

- *35-43-2-1. Burglary*

  A person who breaks and enters the building or structure of another person, with intent to commit ***theft or*** *a felony in it, commits burglary…*

  -Language from SB 561 as introduced in 2011

- *35-33-1-1. Law enforcement officer; federal enforcement officer*

  (a) A law enforcement officer may arrest a person when the officer has:

  (2) probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, ***theft or*** *a felony; . . .*

  -Language from SB 561 as introduced in 2011

Statutory Proposal for Theft

SECTION 1. IC 35-43-4-2, AS AMENDED BY P.L.158-2009, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. (a) **As used in this section, "value of the property" means the fair market value at the time and place of the crime. If the fair market value cannot be satisfactorily ascertained, "value of the property" means the cost of replacement of the property within a reasonable time after the crime. A price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value of the property.**

(b) In determining the value of the property for theft under this section, acts of theft committed in a single episode of criminal conduct, as defined in IC 35-50-1-2(b), may be charged in a single count.

(c) Except as provided in subsections (d) and (e), a person who knowingly or intentionally exerts unauthorized control over property of another person~~, with intent to deprive the other person of any part of its value or use,~~ commits theft, a ~~Class D felony.~~ **Class A misdemeanor.**

(d) An offense described in subsection (c) is a Class D felony if:

(1) the property is a firearm (as defined in IC 35-47-1-5);

~~(2) the property is a~~ motor vehicle (as defined in IC 9-13-2-105(a));

~~(3) the offense occurs~~ during a state of disaster emergency declared by the governor under IC 10-14-3-12;

(4) the victim of the offense is:

~~(A)~~ at least sixty-seven (67) years age; or

~~(B) affected~~ by mental illness, mental retardation, dementia, or other physical or mental incapacity.

(5) the value of the property is at least seven hundred fifty dollars ($750); or

(6) the person has a prior unrelated conviction for theft or conversion.

(e) ~~However, the~~ **An** offense **described in subsection (c)** is a Class C felony if:

(1) the ~~fair market~~ value of the property is at least ~~one hundred~~ **fifty** thousand dollars ~~($100,000)~~ **($50,000)**; or

(2) the property that is the subject of the theft is a valuable metal (as defined in IC 25-37.5-1-1) and:

(A) relates to transportation safety;

(B) relates to public safety; or

(C) is taken from a:

(i) hospital or other health care facility;

(ii) telecommunications provider;

(iii) public utility (as defined in IC 32-24-1-5.9(a)); or

(iv) key facility;

and the absence of the property creates a substantial risk of bodily injury to a person.

SB 561 as Introduced in 2011

Proposed amendments to current law

SB 561 Proposed Amendments (cont'd)

- Section 33 adds the following definition for "defraud" as IC 35- 41-1-8.3:

  "deprive any person of any money, property, interest, benefit, or right by means of false or deceptive pretenses, representations, or promises."

- As mentioned, Section 34 creates a misdemeanor theft category below $750 (and refines class D and C felony theft categories).

- Section 34 repeals "Auto Theft and Receiving Stolen Auto Parts" (IC 35-43-4-2.5) to avoid redundancy.

SB 561 Proposed Amendments (cont'd)

- Section 35 amends Suspension of Driving Privileges (IC 35-43-4-8) to make a technical correction.

- Section 36 amends Forgery (IC 35-43-4-8) from a Class C felony to a Class D felony to conform with the revised Theft statute.
  - This amendment also merges subsection (d) into subsection (c) to incorporate "state identification card" with a person applying for a driver's license.

SB 561 Proposed Amendments (cont'd)

- Section 37 amends Deception (IC 35-43-5-3) by moving subparts (a)(6) and (a)(10) into subpart (a)(2)

  (a) A person who . . .

  (2) knowingly or intentionally:

  (A) makes a false or misleading written statement; **or**

  (B) misrepresents

  (i) the identity of the person or another person;

  (ii) a person as being a physician licensed under IC 25-22.5; or

  (iii) the identity or quality of property;

  with intent to obtain property, employment, or an educational opportunity . . . .

  materially

  materially

  passes 11-0

- Section 37 also deletes subpart (a)(11), and merges it into subpart (a)(5).

  (a) A person who . . .

  (5) with intent to defraud another person furnishing electricity, gas, water, telecommunication, or any other utility service **or cable television service**, avoids a lawful charge for that service by scheme or device or by tampering with facilities or equipment of the person furnishing the service; . . . .

  where?

  Matt Pierce

SB 561 Proposed Amendments (cont'd)

- Section 38 repeals "Terroristic Deception" (IC 35-43-5-3.6) and merges it into Identity Deception (IC 35-43-5-3.5)

- Section 38 amends Identity Deception (IC 35-43-5-3.5) to add "intent to commit terrorism or obtain a weapon on mass destruction" for purposes of an enhancement to a Class C felony:

  (b) However, the offense defined in subsection (a) (Deception) is a Class C felony if . . .

  (4) a person obtains, possesses, transfers, or uses the identifying information of another person with intent to:

  (A) commit terrorism;

  (B) obtain or transport a weapon of mass destruction

SB 561 Proposed Amendments (cont'd)

- Section 39 amends Synthetic Identity Deception (IC 35-43-5-3.8) to add "intent to commit terrorism or obtain a weapon on mass destruction" for purposes of an enhancement to a Class C felony:

  (b) The offense under subsection (a) (Synthetic Identity Deception) is a Class C felony if . . .

  (3) a person obtains, possesses, transfers, or uses the identifying information of another person with intent to:

  (A) commit terrorism;

  (B) obtain or transport a weapon of mass destruction

SB 561 Proposed Amendments (cont'd)

- Section 40 amends Unlawful Possession of a Card Skimming Device (IC 35-43 5-4.3) to add "intent to commit terrorism or obtain a weapon of mass destruction" for purposes of an enhancement to a Class C felony:

  However, unlawful possession of a card skimming device **with intent to commit terrorism or obtain or transport a weapon of mass destruction** is a class C felony.

SB 561 Proposed Amendments (cont'd)

- Sections 41-47 makes the following offenses more uniform with enhancements that to conform the new thresholds for theft established by Section 34:
  - Amends **Insurance Fraud** (IC 35-43-5-7.2) (SB 561 Sec. 41,45)
  - Amends **Check Deception** (IC 35-43-5-5) (SB 562 Sec. 42)
  - Amends **Welfare Fraud** (IC 35-43-5-7) (SB 561 Sec. 43)
  - Amends **Medicaid Fraud** (IC 35-43-5-7.1) (SB 561 Sec. 44)
  - Amends **Bank Fraud** (IC 35-43-5-8) (SB 561 Sec. 46)
  - Amends **Check Fraud** (IC 35-43-5-12) (SB 561, Sec. 47)

Recommendations for Other Property Offenses

recommended
23-26

~~TTTT~~ ~~TTTT~~ 10-0

Other Property Offenses: Recommendation #1

- Break Criminal Mischief (IC 35-43-1-2) into subsections for specific acts of "mischief" instead of having separate "mischief" offenses.
- For example, "Cemetery Mischief" is already in the Criminal Mischief statute (IC 35-43-1-2.1) while the following offenses are entirely separate:
  - Unlawful acts relating to caves (35-43-1-3)
  - Railroad Mischief (35-43-2-5.5)
  - Computer Tampering (35-43-1-4)

Other Property Offenses: Recommendation #2

- Merge Falsely Representing Entity as Disadvantaged or Women Owned Business Enterprise (35-43-5-9) and Government Contract Procurement through False Information (35-43-5-11) into Deception (35-43-5-3) as subsection (b).

- *IC 35-43-5-3* ***(b) A person who knowingly or intentionally falsely represents:***

  (1) any entity as a disadvantaged business enterprise (as defined in IC 5-16-6.5-1) or a women owned business enterprise (as defined in IC 5-16-6.5-3) in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5-designed to assist disadvantaged business enterprises or women owned business enterprises in obtaining contracts with public agencies for the provision of goods and services; or

  (2) an entity with which the person will subcontract all or part of a contract with a public agency (as defined in IC 5-16-6.5-2) as a disadvantaged business enterprise (as defined in IC 5-16-6.5-1) or a women owned enterprise (as defined in IC 5-16-16.5-3) in order to qualify for certification as an eligible bidder under a program conducted by a public agency designed to assist disadvantaged business enterprises or women owned enterprises in obtaining contracts with public agencies for the provision of goods and services;

  ~~*(b)*~~ ***(c) In determining . . .***

Other Property Offenses: Recommendation #3

- Merge Possession of Device or Substance to Interfere with Drug or Alcohol Screening Test (IC 35-43-5-18) and Interfering with Drug or Alcohol Screening Test (IC 35-43-5-19)

(a) A person who knowingly or intentionally possesses a:

(1)device; or

(2)substance

designed or intended to be used to interfere with a drug or alcohol screening test commits possession of a device or substance used to interfere with a drug or alcohol screening test, a Class B misdemeanor.

(b) A person who ***knowingly or intentionally*** *interferes with or attempts to interfere with a drug or alcohol screening test by:*

(1) using a:

(i) device; or

(ii) substance

(2) substituting a human bodily substance that is tested in a drug or alcohol screening test; or

(3) adulterating a substance used in a drug or alcohol test;

commits interfering with a drug or alcohol screening test, a Class B misdemeanor

Other Property Offenses: Recommendation #3

- Merge Possession of Device or Substance to Interfere with Drug or Alcohol Screening Test (IC 35-43-5-18) and Interfering with Drug or Alcohol Screening Test (IC 35-43-5-19)

(a) A person who knowingly or intentionally possesses a:

(1)device; or

(2)substance

designed or intended to be used to interfere with a drug or alcohol screening test commits possession of a device or substance used to interfere with a drug or alcohol screening test, a Class B misdemeanor.

(b) A person who ***knowingly or intentionally*** *interferes with or attempts to interfere with a drug or alcohol screening test by:*

(1) using a:

(i) device; or

(ii) substance

(2) substituting a human bodily substance that is tested in a drug or alcohol screening test; or

(3) adulterating a substance used in a drug or alcohol test;

commits interfering with a drug or alcohol screening test, a Class B misdemeanor

Other Property Crimes: Recommendation #4

- Amend Inmate Fraud (IC 35-43-5-20), a Class C felony, to provide for a Class D felony if the offender is in pre-trial status and a C felony if the offender is an inmate or the property subject to fraud is at least $50,000

*(b) An inmate **in pretrial status** who, with the intent of obtaining money or other property from a person who is not an inmate, knowingly or intentionally:*

(1) makes a misrepresentation to a person who is not an inmate and obtains or attempts to obtain money or other property from the person who is not an inmate; or

(2) obtains or attempts to obtain money or other property from the person who is not an inmate through a misrepresentation made by another person;

*commits inmate fraud, a Class **D** felony. **However, the offense is a Class C felony if:***

(1) the person is an inmate serving a sentence for a crime of which he has been convicted; or

(2) the property subjected to fraud was at least $ 50,000.

Other Property Offenses: Recommendation #5

- Streamline Criminal Trespass (IC 35-43-2-2) by merging current section (2) into section (1) as follows:

(1) not having a contractual interest in the property, knowingly or intentionally enters ***or refuses to leave*** *the real property of another person after having been denied entry* ***or asked to leave*** *by the other person or that person's agent*

no action

Other Property Crimes: Recommendation #6

- Delete abatement language in criminal trespass subsections (a)(7) and (a)(8)

- Streamline Criminal Trespass (IC 35-43-2-2) by combining subsections (a)(2), (a)(7), and (a)(8) into subsection (a)(1).

(a)(1) [a person who] not having a contractual interest in the property:

(A) knowingly or intentionally enters or refuses to leave the real property of another person after having been denied entry or been asked to leave by the other person or that person's agent;

(B) knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by conspicuous posting on or around the premises in areas where a person can observe the order when the property has been designated by a municipality or county enforcement authority to be a vacant property or an abandoned property ~~and is subject to an abatement order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36;~~ or

(C) knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is vacant or designated by a municipality or county enforcement authority to be abandoned property~~; and subject to abatement under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36~~;

Other Property Crimes: Recommendation #7

- Streamline Criminal Trespass (IC 35-43-2-2) by eliminating subsection (f) and provide a catch-all provision

(f) A person who has proper authority or authorization, or a legally justified purpose to enter the property has not committed the crime of Criminal Trespass.

table action ?

Other Property Crimes: Recommendation #8

- Subsection (a)(5) currently reads:

  [person who:] not having a contractual interest in the property, knowingly or intentionally enters the ***dwelling*** *of another person without the person's consent . . . .*

- The Commission may wish to consider changing:

  -"dwelling" to "**property**"; or

  i. IC 35-41-1-23 definition is anything of value

  -"dwelling" to "**any building, structure or vehicle**"

  i. This would cover residential and commercial property as well as motor vehicles

- QUESTIONS?
- NEXT STEPS?

next mtg
sex crimes
10:30 am
Aug 18th
adjourned
1:20 pm

Aug 8

571-0017

Krista Rexford

~~Crim~~
Sent Policy
Aug 18th
1:00

765.342.6814

Alex Miller
LA for
Stewart