

Members

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



## CRIMINAL CODE EVALUATION COMMISSION

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Commission

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

### MEETING MINUTES<sup>1</sup>

Meeting Date: September 20, 2012  
Meeting Time: 10:30 A.M.  
Meeting Place: State House, 200 W. Washington  
St., Room 431  
Meeting City: Indianapolis, Indiana  
Meeting Number: 2

**Members Present:** Rep. Ralph Foley, Chairperson; Rep. Greg Steuerwald; Rep. Matt Pierce; Sen. Richard Bray; Sen. Randall Head; Sen. Lindel Hume; Judge John Marnocha; Judge Lance D. Hamner; Commissioner Bruce Lemmon; David Powell; Larry Landis; Chief Justice Brent Dickson.

**Members Absent:** Sen. Greg Taylor; Attorney General Greg Zoeller; Rep. Linda Lawson; Professor Craig Bradley.

Rep. Ralph Foley called the meeting to order at 10:33 A.M. and asked the members to introduce themselves.

Rep. Foley then introduced Deborah Daniels, a partner with Krieg Devault, LLP. Rep. Foley explained that Ms. Daniels is a former Chief Counsel of the Marion County

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<sup>1</sup> 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.

Prosecutor's Office and she formerly worked for the United States Department of Justice and the United States Attorney's Office for the Southern District of Indiana.

Ms. Daniels gave a report and background of the Criminal Code Evaluation Commission Workgroup and recognized the attorney members of the Workgroup. Ms. Daniels then gave a PowerPoint presentation<sup>2</sup> concerning proposed changes to Title 35.

Chairman Foley suggested to Ms. Daniels that regarding resisting law enforcement, IC 35-4.1-3-1, and disarming an officer, IC 35-44.1-3-2, the definitions for law enforcement and public safety should not be the same for both crimes.

Chief Justice Dickson discussed the criminal gang activity statutes and asked if the language in the statutes should be objective or subjective. David Powell explained that the language in these statutes helps clarify who is subject to the statutes and suggested that the Commission clarify these statutes.

Larry Landis brought up the point that metabolized marijuana could stay in a person's bloodstream for up to thirty days and the penalty for operating while intoxicated, even if there was no impairment or intoxication at the time of the accident, could be raised due to the presence of metabolized marijuana. Mr. Landis also stated that a person may legally smoke medicinal marijuana in another state with a prescription and be charged with operating while intoxicated in Indiana because marijuana metabolites may remain in the person's blood for weeks after smoking marijuana. Ms. Daniels responded that the Workgroup has not addressed the operating while intoxicated statutes.

Rep. Pierce pointed out that there are proposed statutory changes in the presentation where the Workgroup did not reach a consensus. He stated that there was not a lot of information about why a consensus was not reached and asked that both sides be able to present their arguments. Rep. Pierce also stated his interest in the Commission studying protection zones and asked that the Commission hear testimony on this issue.

Mr. Powell and Mr. Landis both agreed to present their office's views on issues that were not agreed to in the Workgroup.

Senator Head brought up the arson statute, IC 35-43-1-1, and noted that the only enhancement for the crime is bodily injury or serious bodily injury. Senator Head suggested the crime should also be enhanced for an exploding meth lab. In response to Senator Head's suggestion, Ms. Daniels stated the Workgroup would look into arson in relation to meth labs.

Rep. Pierce brought up issues regarding male rape and criminal deviate conduct. He stated that under current law, male on male rape cannot be charged as rape but can be charged as criminal deviate sexual conduct. He suggested that the

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<sup>2</sup>Attachment 1.

rape statute be amended to encompass male on male rape. Rep. Pierce also added his concerns that the phrase "criminal deviate conduct" should be renamed because it implies certain sex acts are deviate between consenting adults.

Rep. Steuerwald indicated his support for Rep. Pierce's suggestion for the Commission to study protection zones.

Chairman Foley adjourned the meeting at 1:30 p.m.

CCEC

9/20/12

Attachment I

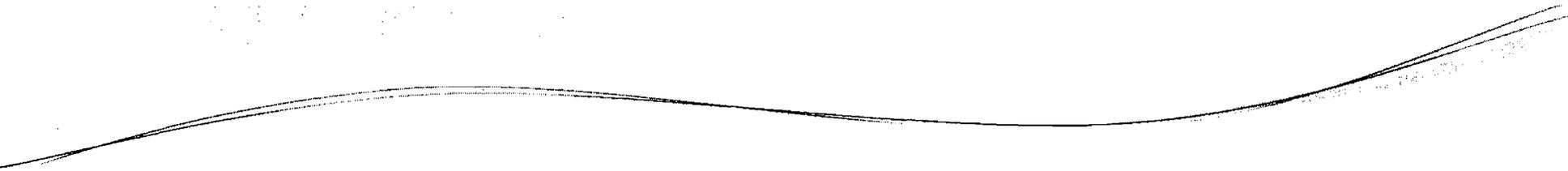
# Report of the Criminal Code Evaluation Commission Workgroup

September 20, 2012

*Submitted by Deborah J. Daniels  
Krieg DeVault LLP*

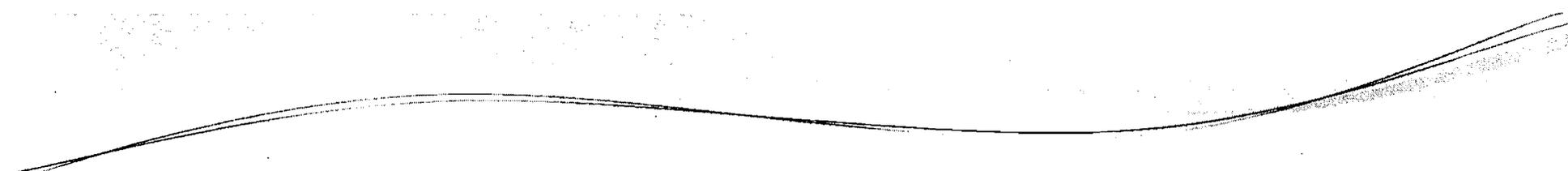
# Background

- CCEC established by HEA 1001, 2009
- Purpose: “evaluating the criminal laws of Indiana”
- Staff support statutorily required from Indiana Criminal Justice Institute (ICJI)
- ICJI entered Memorandum of Understanding with Indiana Judicial Center(IJC)
- IJC contracted with 3 attorneys; others loaned from other agencies to assist



## Background (*cont'd.*)

- Review began in 2010
  - CCEC chaired by Rep. Matt Pierce
  - Principles and work plan developed by CCEC members Steve Johnson (IPAC), Larry Landis (IPDC) and Judge John Marnocha (St. Joseph County Superior Court)



# Principles

- Consistency
- Proportionality of Penalties
- Like Sentences for Like Crimes
- Elimination of Duplication
- Increased Certainty (Length of Sentence to be Served)
- Keep Dangerous Offenders in Prison; Avoid Use of Scarce Prison Space for Nonviolent Offenders

# Composition and History of CCEC

## Workgroup

- Team of attorneys began working on comprehensive review in early 2011
- Contributing agencies:
  - Indiana Judicial Center
  - Indiana Prosecuting Attorneys Council
  - Indiana Public Defender Council
  - Indiana Attorney General

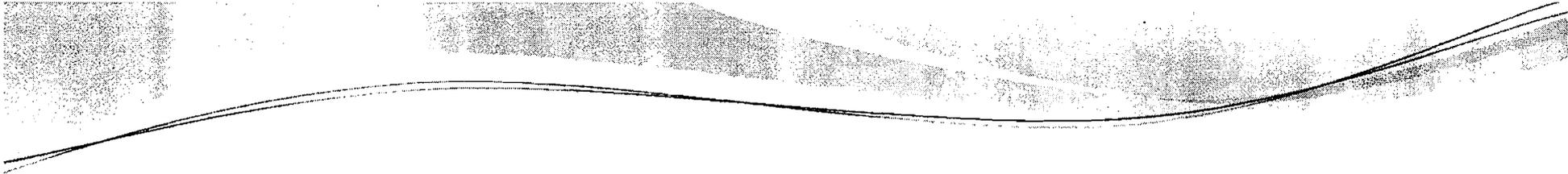
# Attorney Members of CCEC Workgroup

- Deborah J. Daniels, Krieg DeVault LLP (Convenor)
- Larry Brodeur, IPAC
- Suzanne O'Malley, IPAC
- Andrew Cullen, IPDC
- Michael McMahon, IJC
- Molly Johnson (Molly Johnson Law Office)
- Victoria Ursulskis, Attorney at Law



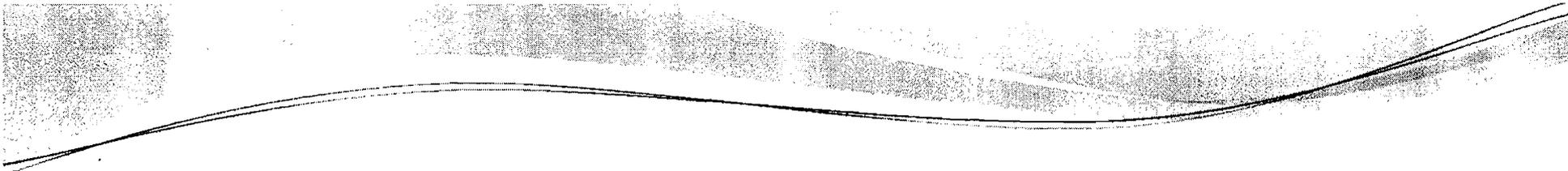
## CCEC Workgroup (*cont'd.*)

- Law Clerks:
  - 5 from Office of the Attorney General
  - 2 from Indiana Prosecuting Attorneys Council
  - 2 from Indiana Public Defender Council
  - 1 from Indiana Judicial Center
- Tasks:
  - Research on model penal code(s)
  - Research on other states' laws and sentencing schemes



# Period of Review

- CCEC Workgroup met 43 times from March 2011 through July 2012
- Over 1,000 hours of work, excluding hundreds of hours of research time expended by law clerks



# Scope of Review

- All Title 35 crimes
  - Felonies only
- Sentencing matrix (6 levels of felonies, from 6 (lowest) to 1 (highest))
- Other sentencing issues
  - Suspendibility of sentences
  - Habitual Offender and related provisions
  - Sentencing enhancements
  - Credit time



# Not Included in Workgroup Review

- Title 9 (traffic offenses)—IPAC has offered to review and make recommendations
- Title 35, Article 38 (Proceedings Following Dismissal, Verdict, or Finding) – IPAC has offered to review and make recommendations
- Specific sentencing ranges on 6-level grid
- % of time off for good behavior

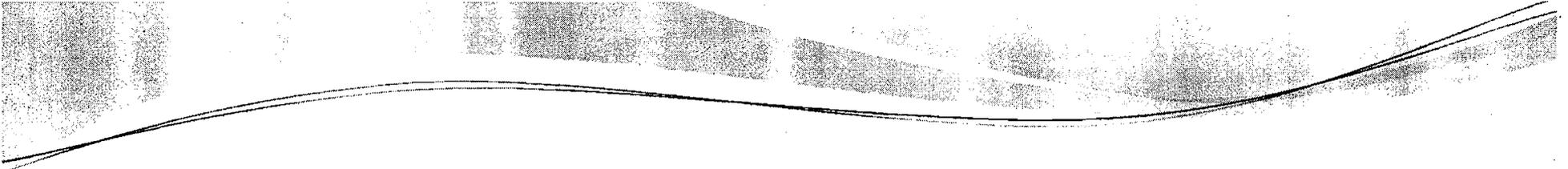
# Structure of Report: Substantive Criminal Provisions

- **Overview:** description of current penalties
- **Issue(s):** questions raised in review
- **Recommendation(s):** recommendations made by the Workgroup for CCEC consideration
  - In some cases, proposed amendments included
- **Rationale:** explanation of Workgroup thought process in arriving at recommendations



## Structure of Report (*cont'd.*)

- ***Workgroup Position:*** indicates whether unanimous recommendation or whether reservations were expressed by any member(s)
- ***Current Statute:*** Full text of current statute



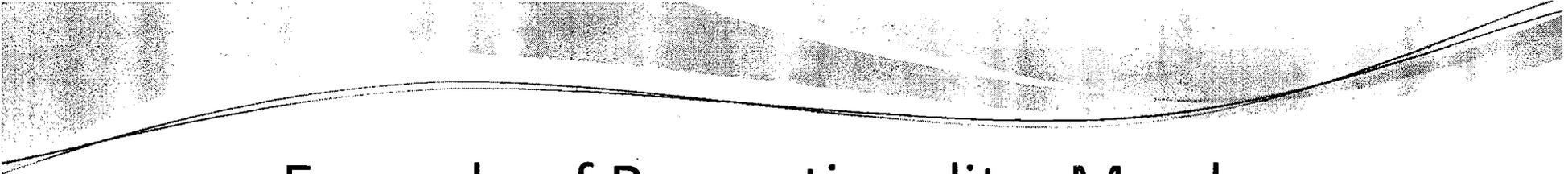
# Structure of Testimony

- Where no change recommended or streamlining only, not included in presentation
- Where consensus achieved on recommendation, no further elaboration on discussion
- Will call attention to:
  - Recommendations for significant change
  - Any reservations expressed by a Workgroup member



# **Substantive Crime Recommendations**

# OFFENSES AGAINST THE PERSON



## Example of Proportionality: Murder

IC 35-42-1-1

Page 13

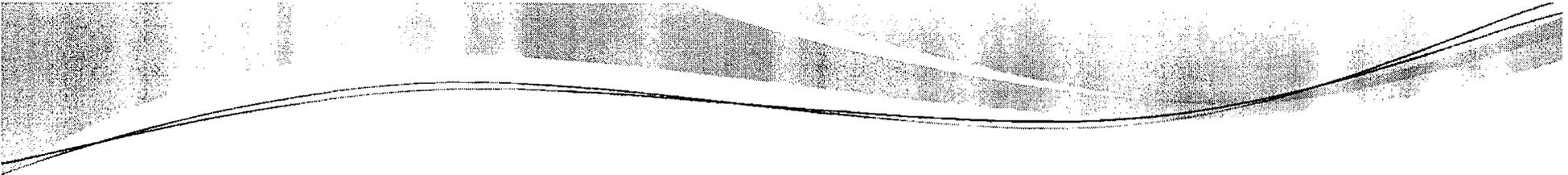
- No substantive changes
- *Conspiracy to Commit Murder* is currently a Class A felony
- Under proposed 6-level ranking, today's Class A would be Level 1 (most severe penalty) or Level 2
- Recommendation:
  - Conspiracy to Commit Murder: Level 2
  - Conspiracy to Commit Murder resulting in death: Level 1

# Battery

IC 35-42-2-1

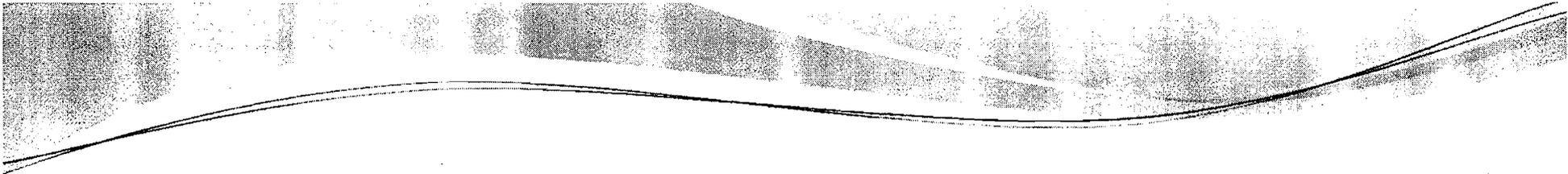
Page 25

- Currently begins at Class B misdemeanor
- Increases up to Class A felony
- Recommendations:
  - Begin at Class A misdemeanor (one level higher)
  - Enhancements should track uniform factors in Code: deadly weapon, bodily injury, serious bodily injury



## Battery (*cont'd.*)

- Recommendations: *cont'd.*
- Statutes relating to battery should be streamlined (include Battery by Bodily Waste, etc.)
- Domestic Battery, Strangulation and Aggravated Battery should remain separate
- Classes of victims for whom penalty enhanced should be limited to those whose job it is to protect us (“public safety officials”)



# Battery (*cont'd.*)

- Workgroup Position:
  - Indiana Public Defender Council representative expressed reservation:
    - Enhancements should only apply to battery on victims who are part of a vulnerable population

# Aggravated Battery

IC 35-42-2-1.5

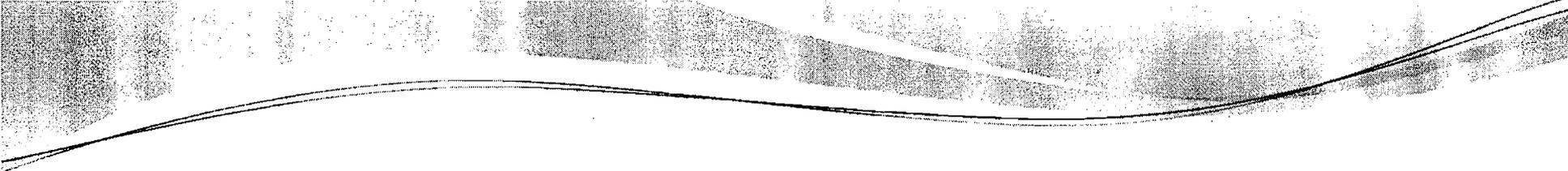
Page 34

- Current penalty: Class B felony regardless of extent of injury/death
- Recommendations:
  - Penalty should be Level 3 (high end of current Class B range)
  - Aggravated Battery resulting in death of a person under 14 should be a Level 1 felony (most severe penalty, reserved for most serious offenses)

## Kidnapping (IC 35-42-3-2, p. 46)

## Confinement (IC 35-42-3-3, p. 48)

- Kidnapping normally thought of as “removing” a person from one place to another but confinement also includes “removing”
- Recommendation: amend to differentiate clearly
  - Kidnapping definition to involve removal
  - Confinement definition to involve confining in one place
  - Same penalties: no change recommended
- **Note**: may require revision of Sex Offender Registry statute/list



# Sex Offenses

- Several penalty increases recommended
- No penalty decreases recommended

## Rape (IC 35-42-4-1, Page 54)

## Criminal Deviate Conduct

(IC 35-42-4-2, Page 55)

- Current penalties: Both currently Class B felony, enhanced to Class A for deadly force, etc.
- Recommendations:
  - Level 3 felony (“high B” equivalent)
  - Level 1 felony (“high A”) in the event of use of deadly force, deadly weapon, or drug; or resulting in serious bodily injury

# Child Molesting

(IC 35-42-4-3)

Page 56

- Current penalties: See handout
- Proposed penalties: See sentencing grid (notebook)
  - No substantive changes in law recommended
  - Proportionally arranged on sentencing grid

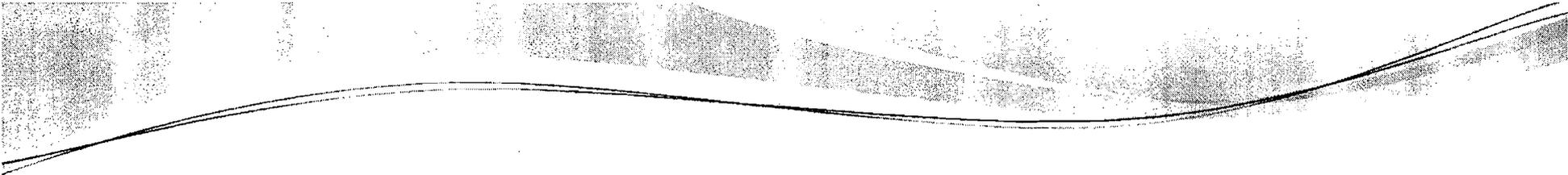


# Child Solicitation

(IC 35-42-4-6)

Page 64

- Discussed by CCEC, legislative committees for years
  - Workgroup recommendations were informed by those discussions
  - Today's solicitation routinely occurs over the internet
  - Penalty should be increased
    - Child solicitation is believed by many to be attempted child molestation; but the courts have not so held



## Child Solicitation (*cont'd.*)

- Current penalty: Class D felony
  - Class C if offender uses computer network
  - Class B if second time use of computer network
- Recommendations:
  - Make the penalty for all child solicitation a Level 5 felony (equivalent to Class C felony)
  - No enhancement for second time use of computer network
  - No difference if conducted via computer network versus phone call or in person

# Child Seduction

(IC 35-42-4-7)

Page 67

- Current penalty for all child seduction is a Class D felony
- Recommendation: increase to Level 5 felony (equivalent to Class C) if intercourse occurs

# Sexual Battery

(IC 35-42-4-8)

Page 69

- Current penalty:
  - Class D felony
  - Class C if use of deadly force (DF), deadly weapon (DW), drug
- Recommendations:
  - Basic penalty should remain Level 6 (same)
  - For proportionality with other offenses, penalty should be increased to Level 4 (equivalent of lower Class B) for use of DF, DW, drug

# Sexual Misconduct with a Minor

(IC 35-42-4-9)

Page 71

- Current penalty for intercourse or Criminal Deviate Conduct (CDC) with child age 14-15:
  - Class C felony
  - Class B felony if offender is over 21
  - Class A for use of deadly force (DF), deadly weapon (DW), drug; or resulting in serious bodily injury (SBI)
- Recommendation: Level 1 (“high A”) for use of DF, DW, drug; or resulting in SBI

# Sexual Misconduct with a Minor

*(cont'd.)*

- Current penalty for fondling (child age 14-15):
  - Class D felony
  - Class C felony if offender is over 21
  - Class B felony using DW, DF, drug or causing SBI
- Recommendation: increase to Level 2 (“low Class A” felony level) if offender uses DW, DF, drug or causes SBI

# Robbery and Carjacking

(IC 35-42-5-1 and 35-42-5-2)

Pages 79-80

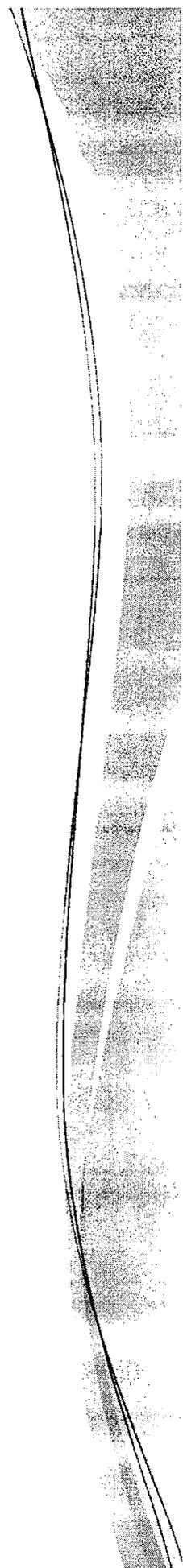
- Current penalty for Robbery:
  - Class C felony
  - Class B felony if committed with deadly weapon (DW) or bodily injury (BI) results
  - Class A felony if serious bodily injury (SBI) results

# Robbery and Carjacking

(IC 35-42-5-1 and 35-42-5-2)

(*cont'd.*)

- Recommendations:
  - Penalty for basic offense: Level 5 (same)
  - Use of DW or resulting in BI: Level 3 (“high B”)
  - Resulting in SBI: Level 2 (“low A”)
    - *Note:* If death occurs, the offense is Felony Murder
  - **REPEAL** Carjacking statute
    - Rationale: carjacking is simply robbery where the item taken is a car



# OFFENSES AGAINST PROPERTY

# Arson

(IC 35-43-1-1)

Page 82

- Issue: Indiana case law does not permit multiple counts of arson in the event of multiple victims of a single arson
- Recommendation: A person who commits arson should be deemed by statute to commit a separate offense for each victim who suffers serious bodily injury as a result



## Arson (*cont'd.*)

- Current penalty:
  - Class B felony
  - Class A felony if it results in bodily injury (BI) or serious bodily injury (SBI) to another person
- Recommendations:
  - Arson and arson for hire should be treated the same, and BI and SBI should be treated differently
  - Basic penalty: Level 4 (“low B”)
  - Resulting in BI: Level 3 (“high B”)
  - Resulting in SBI: Level 2 (“low A”)
  - (**Note:** Arson resulting in death is Felony Murder)

# Mischief

(IC 35-43-1-2)

Page 84

- Recommendation:
  - Streamlining only:
    - Combine multiple offenses
    - Move out of Arson chapter
  - No proposed change in penalty

# Computer Tampering

(IC 35-43-1-4)

Page 89

- Workgroup reviewed this statute in close consultation with primary subject matter expert at ISP
  - Problem: gap in Indiana law in regard to obtaining private ID info through hacking (malicious hackers treated same as “adventure seekers”)
- Workgroup reviewed multiple other states’ statutes, including Florida statute (recommended by ISP as a more modern statute than Indiana’s)
  - FL statute clearer, easier to follow, with a more modern approach based on today’s technology

# Computer Tampering

(IC 35-43-1-4) (*cont'd.*)

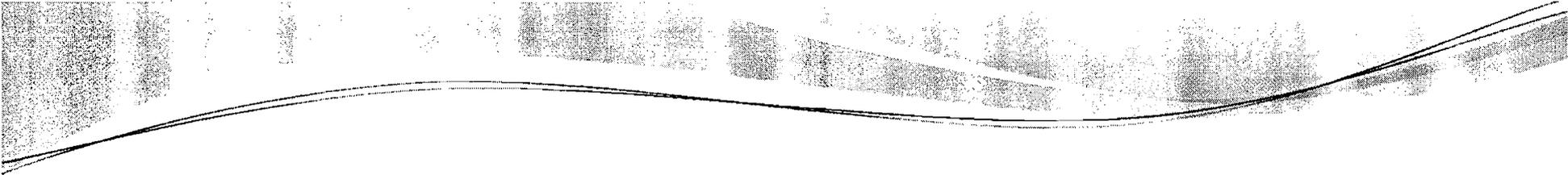
- Recommendation: Adopt Florida statute
  - Florida statutes Title XLVI, Chapter 815: Sections 815.04, 815.06
  - Draft has been prepared by LSA

# Burglary

(IC 35-43-2-1)

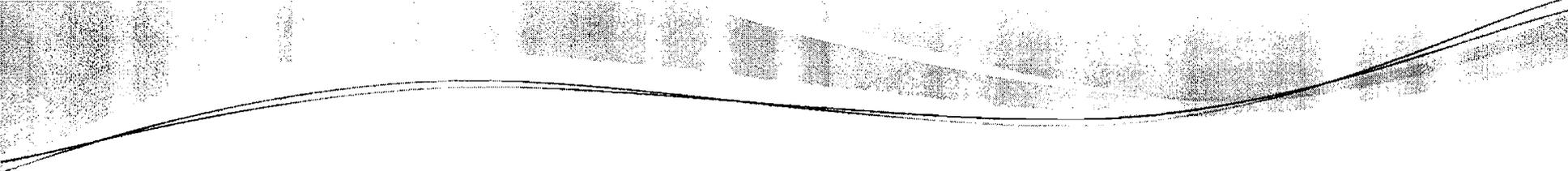
Page 94

- Burglary statute was discussed at length, with an eye toward proportionality of penalties
- Current penalty:
  - Class C felony
  - Class B if dwelling or religious worship structure
  - Class A if resulting in bodily injury (BI) or serious bodily injury (SBI) to a person other than defendant



## Burglary (*cont'd.*)

- Recommendations:
  - Level 5 felony (same) for basic offense
  - Level 4 for burglary of dwelling
    - See other recommendations regarding dwelling vs. religious worship structures
  - Level 3 for burglary causing BI
  - Level 2 for use of deadly weapon (DW) or causing SBI
  - Level 1 (most severe penalty) for burglary of a dwelling resulting in death of a person other than the defendant [if felony-murder statute N/A to facts]



## Burglary (*cont'd.*)

- Additional recommendations:
  - Current statute requires proof of intent to commit a felony when entering. Should include breaking and entering coupled with the commission of a felony after entering (regardless of prior intent)
  - Statute should also be amended to include breaking and entering with intent to commit, or coupled with the commission of, theft
    - Necessary if General Assembly adopts dollar threshold for felony theft



## Burglary (*cont'd.*)

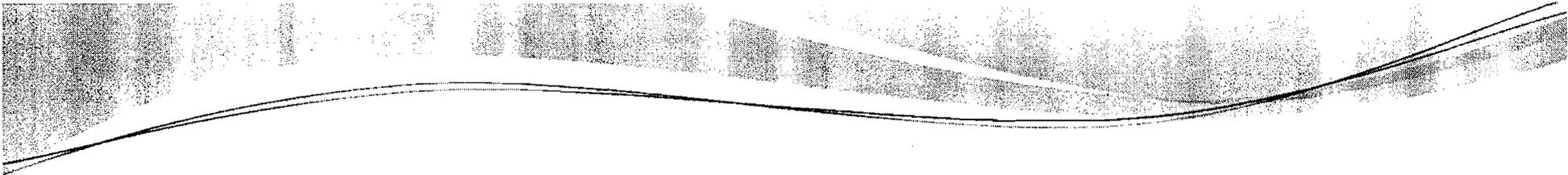
- Additional recommendations (*cont'd.*):
  - Burglary of a dwelling should be more serious than burglary of any other structure (including places of religious worship). People have the highest expectation of safety and protection in their homes.
  - Whether or not the building is occupied at the time of the burglary should not be relevant.
  - The outcome of the burglary (e.g., bodily injury) should increase the penalty proportionally to the severity of the outcome.

# Theft; Receiving Stolen Property

(IC 35-43-4-2)

Page 97

- Current penalty:
  - Class D felony, regardless of \$ amount of theft, except:
  - Class C felony if fair market value (FMV) is \$100,000 or more
  - Class C felony if the object taken is a valuable metal (relating to public safety, health) and there is a substantial risk of bodily injury based on the absence of the metal



# Theft (*cont'd.*)

- **Dollar Threshold**

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



## Theft (*cont'd.*)

- Aggregation
  - Aggregation of multiple theft events to reach felony threshold
  - National survey results:
    - 32 states have aggregation by statute
    - 2 states have aggregation only by case law
  - Most states define by use of “common scheme or plan” – not generally well defined



# Theft (*cont'd.*)

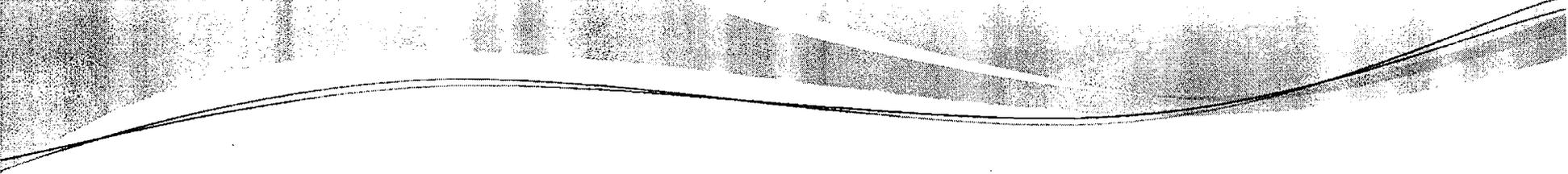
## Aggregation (*cont'd.*)

- Distinct from Indiana's "episode of criminal conduct" statute affecting consecutive sentencing/sentence enhancement (IC 35-50-1-2)
  - In "single episode" of multiple offenses other than crimes of violence, maximum becomes advisory sentence for next highest felony level
- State of Washington (source of Indiana's "single episode" provision) provides **3 options** for prosecutors:
  - **Charge multiple thefts separately; OR**
  - Use "episode of criminal conduct" **penalty enhancement** to increase penalty for the group of thefts; OR
  - **Aggregate as "common scheme or plan"** to achieve threshold for higher penalty



## Theft (*cont'd.*)

- **Valuation:** How states prove dollar value
  - Current Indiana law (IC 35-43-4-4(a)): Price marking (on property displayed for sale)
  - Fair market value (Indiana currently uses FMV to determine Class C felony threshold)
  - Replacement value (some other states)



## Theft (*cont'd.*)

- Recommendations:

- 1. **Dollar Threshold for Felony Theft**

- Theft of under \$750: Class A Misdemeanor
- Theft of \$750 up to \$50,000: Level 6 felony
- Theft of \$50,000 or more: Level 5 felony (this reduces by half the threshold for Level 5 felony)

**NOTE:** CCEC voted in favor of these thresholds in 2010 and 2011



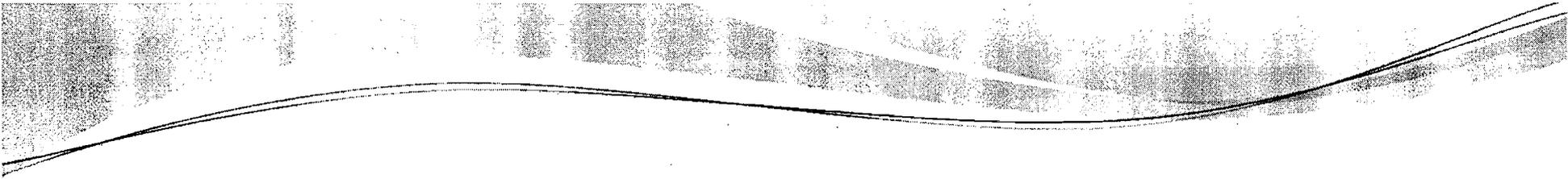
## Theft (*cont'd.*)

- Recommendations (*cont'd.*):
- 2. **Measuring Value:**
  - Fair Market Value (FMV) standard (used currently in Indiana)
  - Aggregation: Discussed with CCEC in 2011; Washington State proposal recommended, giving prosecutors 3 options:
    - Charge multiple thefts separately; OR
    - Use “episode of criminal conduct” penalty enhancement to increase penalty for the group of thefts; OR
    - Aggregate as “common scheme or plan” to achieve threshold for higher penalty



## Theft (*cont'd.*)

- Recommendations: (*cont'd.*)
- 3. **Preserve collateral laws reliant on Theft statute**
  - Burglary definition (“breaking and entering with intent to commit a felony or theft”)
  - Warrantless arrest (shoplifting)
- 4. **REPEAL “Receiving Stolen Property” and “Failure to Return or Pay for (Borrowed Items)” (IC 35-43-4-3.5)**
  - Rationale: These offenses are included in Theft definition



## Theft (*cont'd.*)

- **Note:** All these recommendations have previously been approved by majority vote of the CCEC

## Theft (*cont'd.*)

- Workgroup Position:
  - Reservations were expressed by a representative of IPAC about creating a dollar threshold for theft
    - Theory: Indiana has separate “Conversion” statute, IC 35-43-4-3
    - Conversion is a Class A misdemeanor (unless the property converted is a rental car: then a D felony)
    - Definitions are similar and prosecutors sometimes use Conversion in lieu of Theft at their discretion
  - Majority view is reflected in recommendations made above

# Auto Theft/Receiving Stolen Auto Parts

(IC 35-43-4-2.5)

Page 102

- Current penalty: Class D felony
  - Class C felony with prior conviction
- Recommendation: Level 6 felony, enhanced to Level 5 with prior conviction (no change)
- Rationale for penalty higher than standard theft:
  - Auto theft and trade in stolen parts is a significant problem for law enforcement and the public
  - Most stolen autos will have a value of at least \$750 anyway

# Conversion

(IC 35-43-4-3)

Page 105

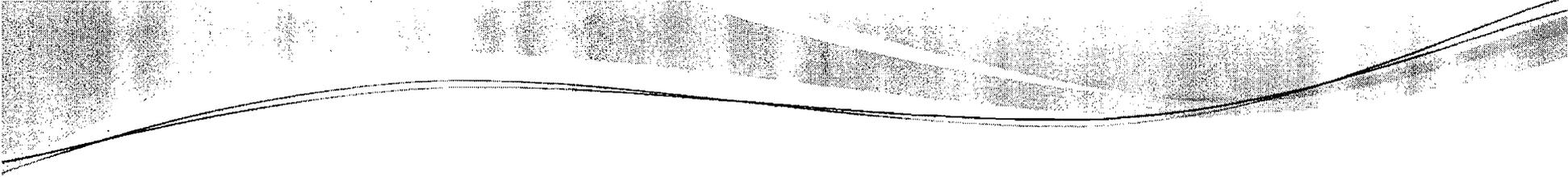
- The Conversion statute has been discussed by the General Assembly multiple times
- Recently amended to include failure to return rental car
- Discussed last summer by CCEC and no change recommended
- Workgroup chose not to make a recommendation for those reasons

# Forgery

(IC 35-43-5-2)

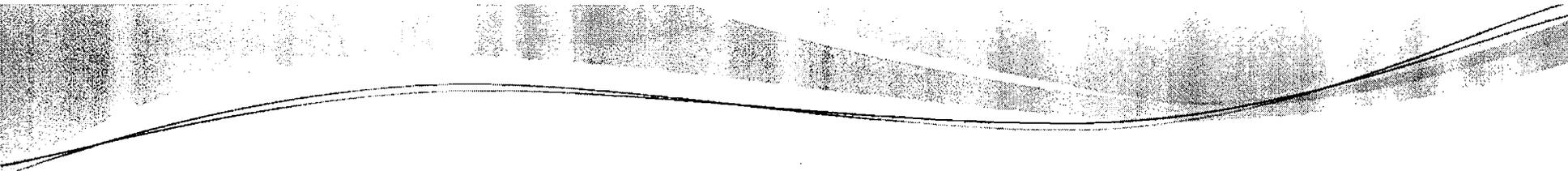
Page 107

- Current penalty: Class C felony
- Recommendation: Level 6 felony (equivalent to Class D felony penalty)
- Rationale:
  - Proportionality with both Theft and Counterfeiting (currently class D felony)
  - Cannot always determine value in cases of forgery, so no dollar threshold is recommended



## Forgery (*cont'd.*)

- Additional recommendations:
  - Remove unnecessary language (“or otherwise commits fraud”) in subsection (c)
  - Streamline Code by merging 3 other offenses into this statute
    - Possession of Fraudulent Sales Document
    - Making a False Sales Document
    - Delivery of a False Sales Document



## Forgery (*cont'd.*)

- Workgroup Position:
  - Representative of IPAC expressed personal reservation about reducing Forgery penalty to the level of Counterfeiting
    - Basis: Forgery includes additional element of “intent to defraud”
  - Overall recommendation based on similarity of Forgery, Theft and Counterfeiting and minimal likelihood that a defendant would be charged with Counterfeiting if there were no intent to defraud



## Forgery (*cont'd.*)

- **Note:** Based on DOC data and Data Analysis Workgroup review, a fairly sizeable number of inmates are committed to DOC for forgery
  - In the 3-month period studied:
    - 54 new commitments
    - 109 probation violations



# Fraud

(IC 35-43-5-4)

Page 116

- Current penalty: Class D felony
  - Discussed at length by Workgroup
- Recommendation: Because value of fraud is sometimes difficult to determine, not recommended that Fraud mirror the proposed Theft recommendation
  - Propose Level 6 penalty
  - No misdemeanor level recommended

# Insurance Fraud

(IC 35-43-5-4.5)

Page 119

- Question: Should Insurance Fraud be merged into another statute?
  - Fraud
  - Theft
  - Deception
- Recommendation: More research is required before making this determination

# Check Deception

(IC 35-43-5-5)

Page 121

- “Bad check” statute
  - Payment to obtain money or property with a check the writer knows will not be honored by bank
- Current penalty:
  - Class A misdemeanor
  - Class D felony if amount is at least \$2,500 and the property acquired was a motor vehicle
- Recommendation: Should mirror penalties for Theft
- Rationale: Proportionality
  - Use of bad check to obtain money or property without payment is equivalent to Theft

# Welfare Fraud

(IC 35-43-5-7)

Page 124

- Current penalty:
  - Class A Misdemeanor
  - Class D felony if amount over \$250, under \$2,500
  - Class D felony if not more than \$250 but prior conviction
  - Class C felony if amount \$2,500 or more



## Welfare Fraud (*cont'd.*)

- Recommendation: Penalties should mirror those in Theft statute based on dollar thresholds
- Rationale: **Proportionality**
  - Welfare Fraud is a form of Theft; penalties are reliant on dollar amounts
  - Currently, a person who commits Welfare Fraud in the amount of \$2,500 or more is a C felon while a person who commits other Theft of any amount under \$100,000 is a D felon



## Welfare Fraud (*cont'd.*)

- Additional suggestion:
  - “Welfare” is a somewhat outdated term
  - Consider amending to “public assistance” fraud, perhaps combining with other public assistance statutes (see below)

**Medicaid Fraud (IC 35-43-5-7.1, p. 126)**

**[CHIP] Fraud (IC 35-43-5-7.2, p. 127)**

**Check Fraud (IC 35-43-5-12, p. 136)**

- Current penalties: differ from both Theft and Welfare Fraud
- Recommendation: All should mirror Theft statute
- Rationale: **Proportionality** (see Welfare Fraud rationale)

# Fraud on Financial Institutions

(IC 35-43-5-8)

Page 129

- Current penalty: Class C felony (regardless of amount)
- Recommendation: Level 5 felony (same)
- Rationale:
  - Normally, would consider a form of Theft
  - This type of fraud carries risk to the greater population (savings insured by financial institution)
  - Greater risk of harm merits the higher penalty

# Inmate Fraud

(IC 35-43-5-20)

Page 141

- Generally like other fraud/theft but committed by inmate of jail or prison
- Current penalty: Class C felony
  - Background:
    - Offense is another form of Theft, but
    - Class D not seen as sufficient deterrent for those already serving a prison term for another crime
- Recommendation:
  - Level 6 felony for pre-trial inmates
  - Level 5 felony for post-conviction inmates serving a sentence for conviction of another crime



OFFENSES AGAINST PUBLIC  
ADMINISTRATION

# Obstruction of Justice

(IC 35-44.1-2-2)

Page 160

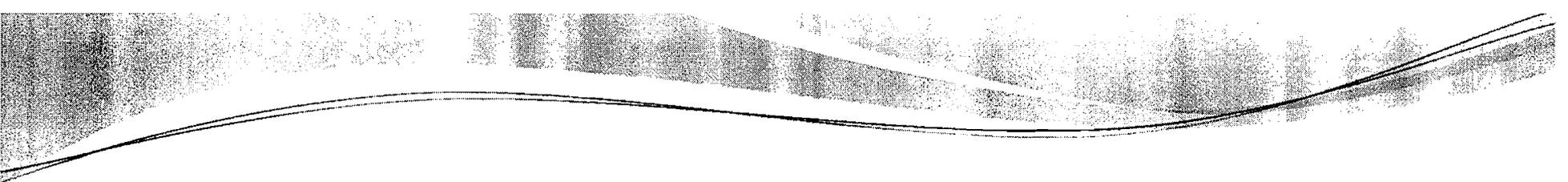
- Current definition: inducement “by threat, coercion, or false statement” [to withhold testimony, etc.]
- Recommendation: add to methods “or offer of goods, services or anything of value”
- Rationale: Filling gap in definition
  - Indiana case law holding that a positive inducement rather than a threat did not constitute Obstruction of Justice

# Resisting Law Enforcement

(IC 35-4.1-3-1)

Page 169

- Current penalties:
  - Class A misdemeanor
  - D felony if use of vehicle, deadly weapon, etc.
  - C felony if person operates vehicle causing serious bodily injury
  - B felony if person operates vehicle causing death
  - A felony if person operates vehicle causing death of officer engaged in official duties



## Resisting Law Enforcement (*cont'd.*)

- Recommendation: Propose same progression of penalties
  - Current Class B for causing death proposed as Level 3 (“high B”)
  - Current Class A for death of officer proposed as Level 2
- Suggest consideration of repealing suspension of driving privileges provision

# Disarming an Officer

(I.C. 35-44.1-3-2)

Page 171

- Current penalties: Class C felony
  - Class B if results in SBI to officer
  - Class A if results in death to the (disarmed) officer or firearm taken resulting in SBI to the officer
- Recommendation:
  - Level 3 (“high B”) if SBI to an officer
  - Level 2 (“low A”) if officer’s weapon is used to inflict SBI on any officer (expansion of current language)



## Disarming an Officer (*cont'd.*)

- Recommendation (*cont'd.*):
  - Level 1 if offense results in death of any law enforcement officer (expansion of current language)
- Rationale:
  - Proportionality
  - Same penalty should obtain whether the disarmed officer or another officer is wounded or killed during the offense



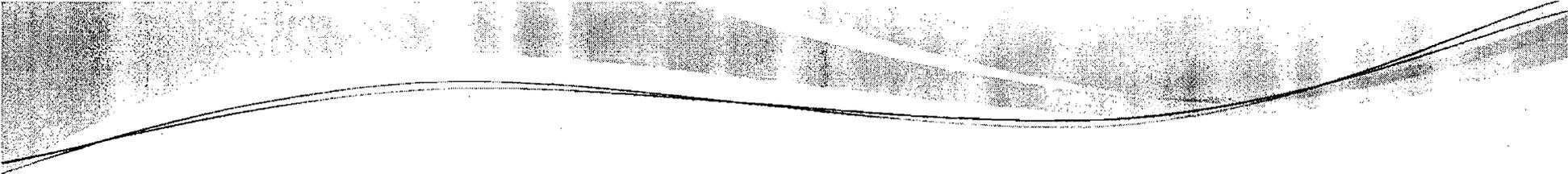
OFFENSES AGAINST PUBLIC  
HEALTH,  
ORDER, AND DECENCY



# Criminal Gang Activity

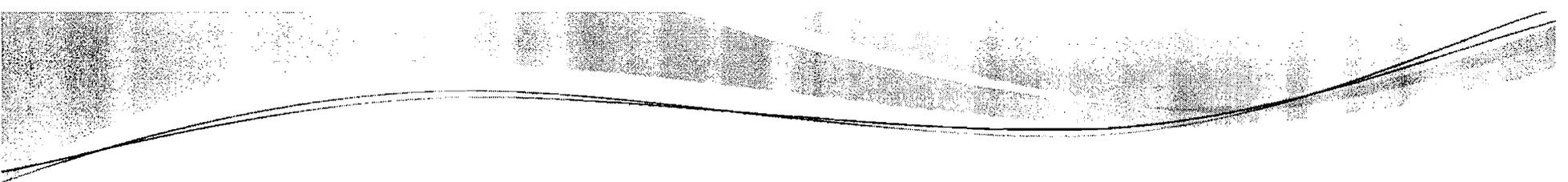
Page 211

- Substantive Law Statutes:
  - **Criminal Gang Activity:** IC 35-45-9-3
  - **Criminal Gang Intimidation:** IC 35-45-9-4
  - **Criminal Gang Recruitment:** IC 35-45-9-5
- Sentencing Enhancement for Gang Activity:
  - IC 35-50-2-15



# Criminal Gang Activity (*cont'd.*)

- Current law:
  - **Activity:** actively participates in gang -- D felony
  - **Intimidation:** threatens another person for refusing to join or withdrawing from gang -- C felony
  - **Recruitment (to join a gang)** -- D felony
    - Class C felony if within 1,000 feet of a school or the recruit is under age 18



# Criminal Gang Activity (*cont'd.*)

- Current law: (*cont'd.*)
  - **Sentencing Enhancement:**
    - Basis: member of a gang at time of offense AND committed it “at the direction of or in affiliation with” gang
    - Enhancement: consecutive sentence equal to the longest sentence defendant received for any count in underlying case



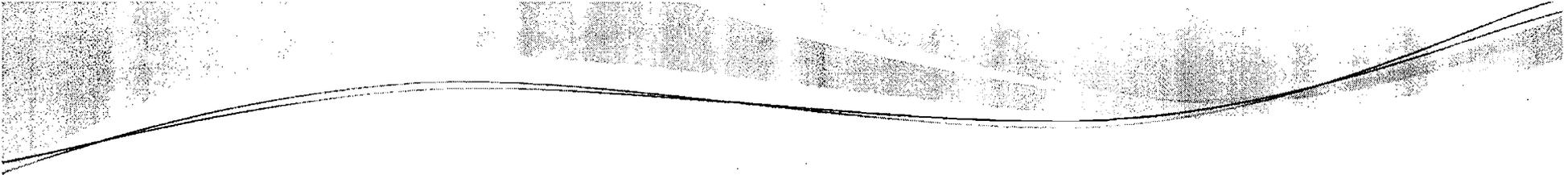
# Criminal Gang Activity (*cont'd.*)

- Recommendations:

- Proportional penalties for substantive violations (Level 6, enhanced to Level 5)
- Add language to both the “gang activity” and sentencing enhancement sections: proof that the criminal activity *promoted or furthered the interests* of a criminal gang OR was done to *increase defendant’s personal standing* with gang = sufficient evidence of gang-related activity

# Criminal Gang Activity (*cont'd.*)

- Recommendations: (*cont'd.*)
  - Amend **Intimidation** section (35-45-9-4) to include threatening a person who wishes to withdraw from gang
  - Amend **Recruitment** (35-45-9-5) to include a person who recruits/intimidates a person to remain in a gang as well as to join a gang
- Rationale: Filling gaps in existing definitions



# Criminal Gang Activity (*cont'd.*)

- Rationale: (*cont'd.*)
  - Prosecutors sought assistance: Statute as written is difficult to use, needs clearer definitions
  - Case law has failed to support conviction based on, e.g., wearing Vice Lords tattoo but no proof defendant was acting “at the direction of or in affiliation with” a gang
- Research:
  - Reviewed laws of various other states with urban centers, gang activity (FL language recommended)

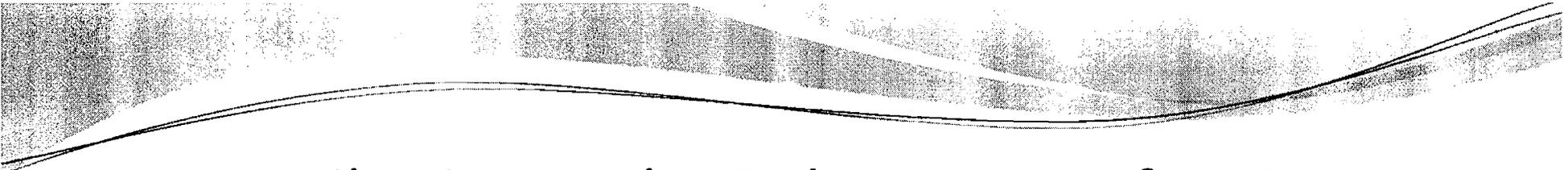
# MISCELLANEOUS OFFENSES

# Contributing to the Delinquency of a Minor

(IC 35-46-1-8)

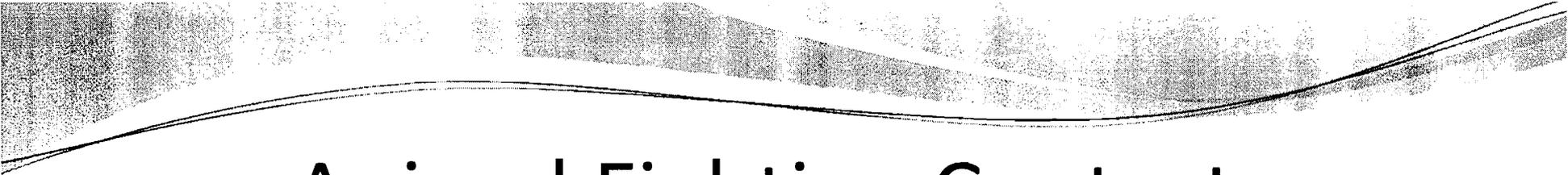
Page 237

- Current penalties: jumps from Class A misdemeanor to Class C felony
  - No intermediate penalty: same penalty if the alcohol or drug ingestion causes death OR person under 18 is induced to commit felony drug dealing
- Recommendations:
  - Keep basic offense a Class A misdemeanor
  - Level 6 felony if person under 18 induced to commit felony drug dealing



## Contributing to the Delinquency of a Minor (*cont'd.*)

- Recommendations: (*cont'd.*)
  - Level 5 felony if ingestion of substance by person under 18 causes death (and perpetrator over 21)
- Rationale:
  - Proportionality (death should lead to higher sanction than non-death)



# Animal Fighting Contests

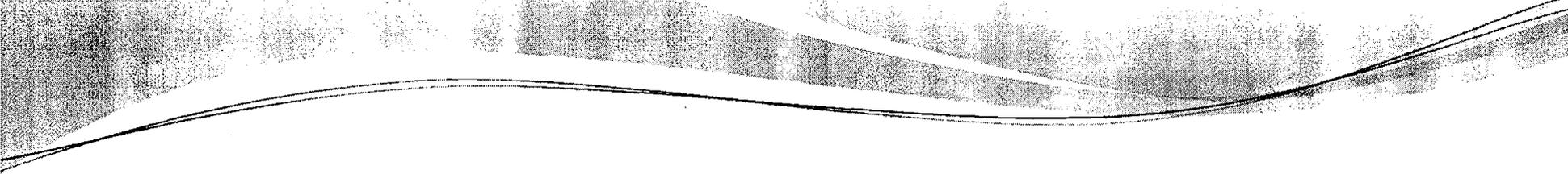
Pages 246-249

- Current penalties:
  - **Purchase or Possession of Animals for Fighting Contests (IC 35-46-3-8)**—Class D felony
  - **Animal Fighting Contests, promoting or staging (IC 35-46-3-9)**—D felony
  - **Promoting an Animal Fighting Contest (IC 35-46-3-9.5)**—D felony [Possession of Paraphernalia with Intent to Promote, etc.]
  - **Attendance at Animal Fighting Contest (IC 35-46-3-10)**—A misdemeanor, enhanced to D felony with prior conviction under the same chapter



## Animal Fighting Contests (*cont'd.*)

- Recommendation:
  - Maintain same proportionality
    - Each D felony would become Level 6 felony
    - Maintain Class A misdemeanor for first-time attendance



## Animal Fighting Contests (*cont'd.*)

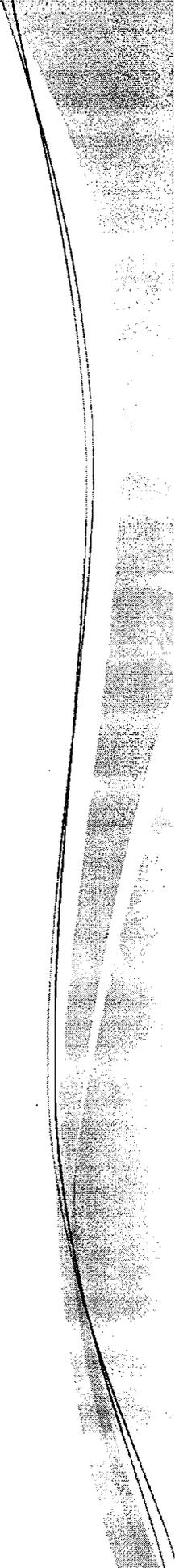
- Rationale:
  - Workgroup carefully considered relative offenses and penalties
  - Determined they are proportional and appropriate
    - Attendance is a lesser offense than promoting/staging an animal fight
    - Appropriate to enhance to Level 6 felony upon second conviction for attendance; or attendance after conviction for promotion, etc.

# Failure to Disclose Recruitment

(IC 35-46-4-4)

Page 257

- Current offense/penalty:
  - Recruitment of a student athlete w/o 10 days' notice to his school athletic department
  - Class D felony
- Recommendation: **REPEAL**
- Rationale: Civil penalties sufficient; this activity should not be criminalized



REGULATION OF WEAPONS AND  
INSTRUMENTS OF VIOLENCE

# Dangerous Possession of a Firearm

(IC 35-47-10-5)

Page 282

- Current offense: Child who possesses firearm (or provides to another child) for other than legally authorized purpose
- Penalty: Class A misdemeanor
  - Class C felony with prior conviction
- Recommendation: keep proportional (Class A misdemeanor, Level 5 for prior conviction)



# Dangerous Possession of a Firearm

*(cont'd.)*

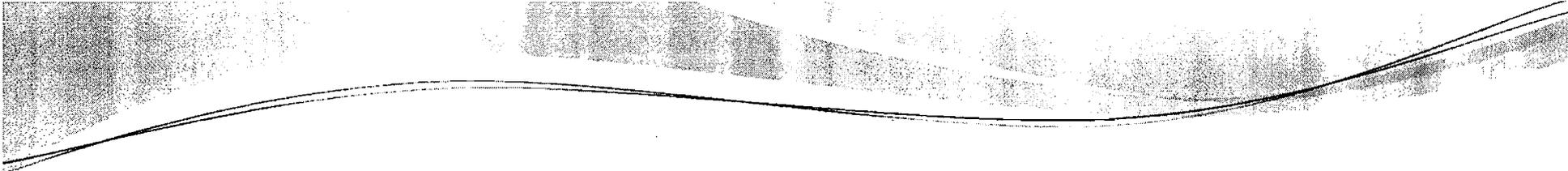
- Additional issue:
  - Not clear that a prior juvenile adjudication for Class A misdemeanor under the statute would count as a prior conviction for enhancement purposes
- Recommendations:
  - CCEC should clarify to reflect legislative intent: should A misdemeanor prior adjudication result in Level 5 felony [or juvenile equivalent] for second offense?
  - Should the Level 5 repeat offense be prosecutable as either juvenile or adult offense at discretion of judge?

# Dangerous Control of a Firearm

(IC 35-47-10-6)

Page 283

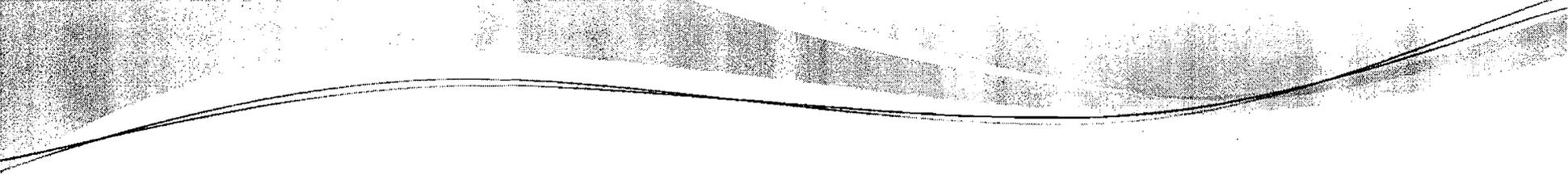
- Current offense: adult provides a firearm to a child without legally authorized purpose
- Current penalty: C felony; B felony with prior conviction
- Recommendation:
  - Level 5 felony
  - Level 4 felony (“low B”) with prior conviction
- Rationale: Proportionality



CONTROLLED EXPLOSIVES:  
No recommendations other than  
proportional sentences within 1-6 level grid  
(See pages 289-299)

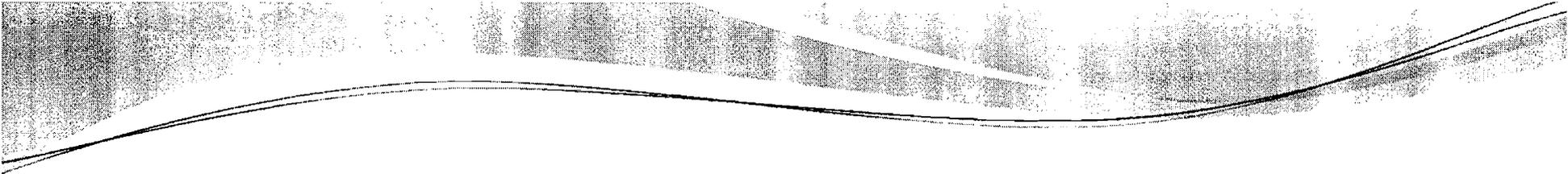


**CONTROLLED SUBSTANCES**  
**(Beginning on page 300)**



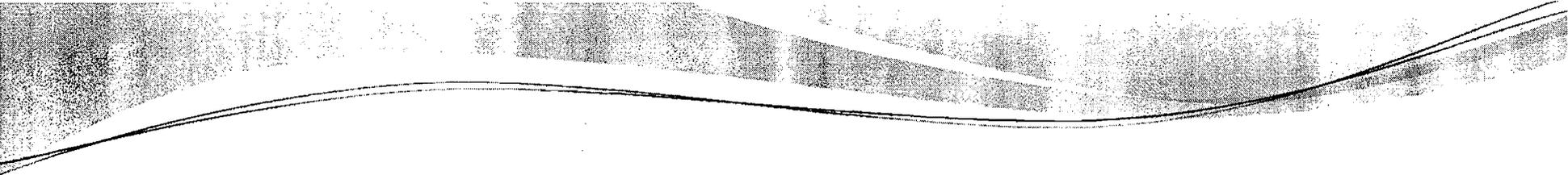
# Overview of Controlled Substances Review

- Controlled Substances offenses are found in IC 35-48
- Review by Workgroup:
  - Current offense levels
  - Current enhancements
  - Suggestions made in the past (e.g., 3-gram cut-off)
  - Review of other states' laws
  - Discussion with veteran drug prosecutors



## Controlled Substances (*cont'd.*)

- Current penalties for cocaine, methamphetamine
  - **Dealing:**
    - Class B felony if less than 3 grams
    - Class A felony if 3 grams or more
    - Class A if (any amount):
      - Delivered to person under 18 and 3 years younger than dealer
      - Delivered in a protected zone



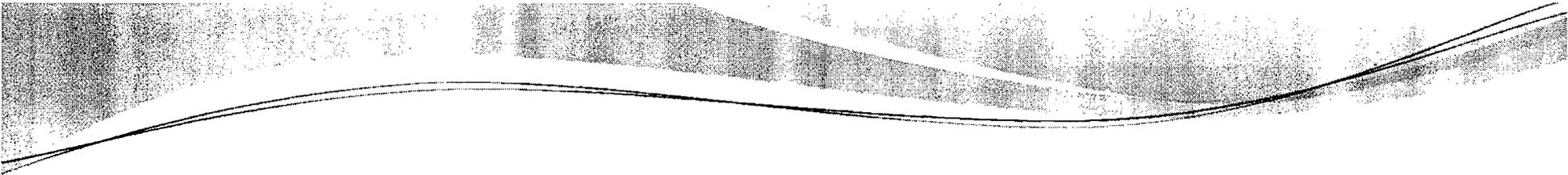
## Controlled Substances (*cont'd.*)

- Current penalties for cocaine, methamphetamine:  
(*cont'd.*)
  - **Possession:**
    - Class D felony
    - Class C felony if:
      - At least 3 grams possessed; OR
      - Possessor also had a firearm
    - Class B felony if less than 3 grams but in protected zone
    - Class A felony if 3 grams or more and in protected zone



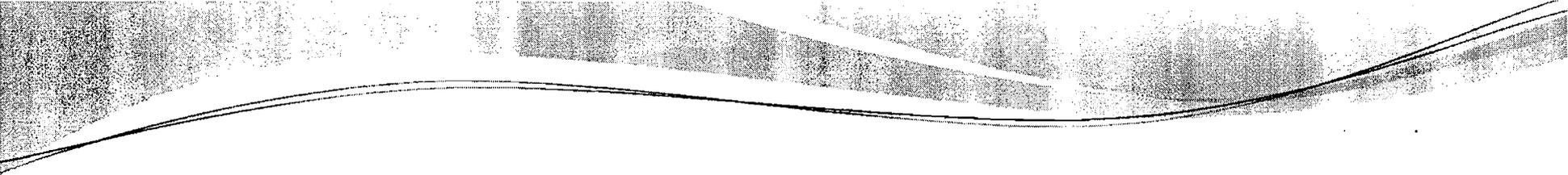
## Controlled Substances (*cont'd.*)

- Recommendations: (cocaine, methamphetamine)
  - **Dealing:**
    - Level 5 felony if less than 3 grams
    - Level 4 if:
      - 3-10 grams; OR
      - Less than 3 grams dealt to person under 18
      - Less than 3 grams with firearm (not currently an enhancer)
      - Less than 3 grams in protected zone
      - Less than 3 grams with prior dealing (of any controlled substance) conviction



## Controlled Substances (*cont'd.*)

- Recommendations: (cocaine, methamphetamine)  
*cont'd.*
  - **Dealing** (*cont'd.*):
    - Level 3 if:
      - At least 10 but less than 28 grams (28 grams = about one ounce)
      - At least 3 but less than 10 grams but with enhancers (firearm, protected zone, prior dealing conviction)
    - Level 2 if:
      - 28 grams and over
      - At least 10 but less than 28 grams but with enhancers (firearm, protected zone, prior dealing conviction)



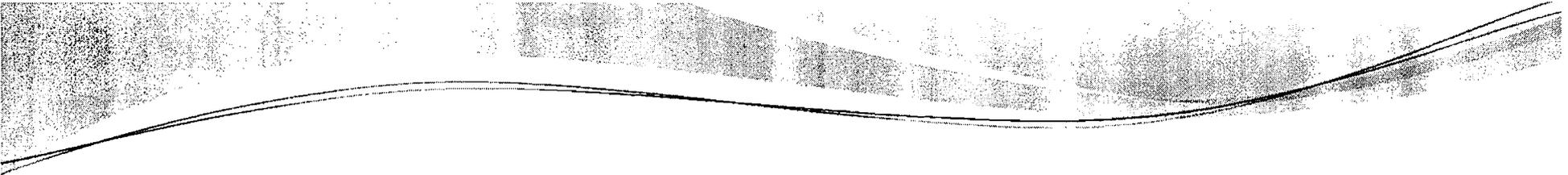
## Controlled Substances (*cont'd.*)

- Recommendations: (*cont'd.*)
  - Level 1 (highest offense level other than Murder)
    - Reserved for manufacture of methamphetamine resulting in a lab explosion that :
      - Causes serious bodily injury to any person other than the offender (who is manufacturing methamphetamine), or
      - Causes property damage of over \$10,000



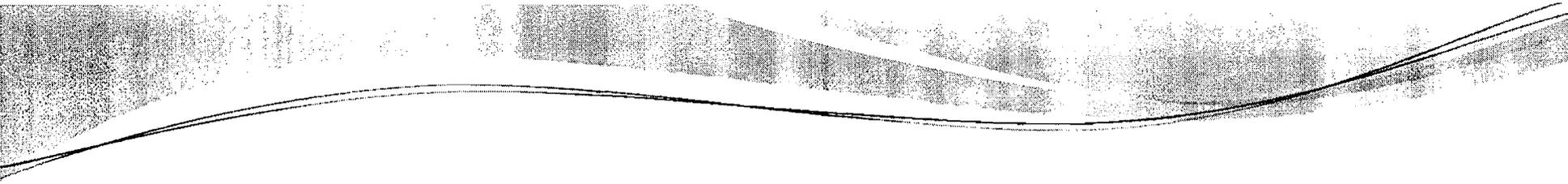
## Controlled Substances (*cont'd.*)

- Recommendations: (cocaine, methamphetamine)  
*--cont'd.*
  - **Possession:**
    - Level 6 felony if less than 3 grams
    - Level 5 felony if:
      - 3-10 grams; OR
      - Less than 3 grams with a firearm
      - Less than 3 grams in protected zone
      - Less than 3 grams with prior dealing (of any controlled substance) conviction



## Controlled Substances (*cont'd.*)

- Recommendations: (cocaine, methamphetamine)  
-- *cont'd.*
  - **Possession** (*cont'd.*)
    - Level 4 felony if:
      - 10-28 grams; OR
      - 3-10 grams with a firearm
      - 3-10 grams in a protected zone
      - 3-10 grams with prior dealing (of any controlled substance) conviction



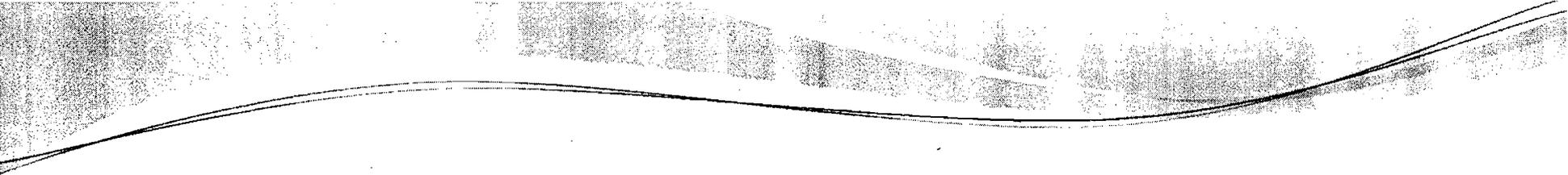
## Controlled Substances (*cont'd.*)

- Recommendations: (cocaine, methamphetamine)  
-- *cont'd.*
  - **Possession** (*cont'd.*)
    - Level 3 felony if:
      - 28 grams or more; OR
      - 10-28 grams with a firearm;
      - 10-28 grams in a protected zone;
      - 10-28 grams with prior dealing (of any controlled substance) conviction



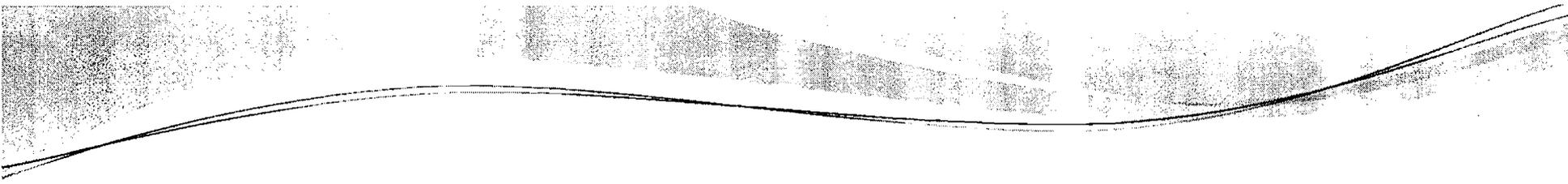
## Controlled Substances (*cont'd.*)

- Recommendations: regarding other scheduled substances
  - See 6-level sentencing grid



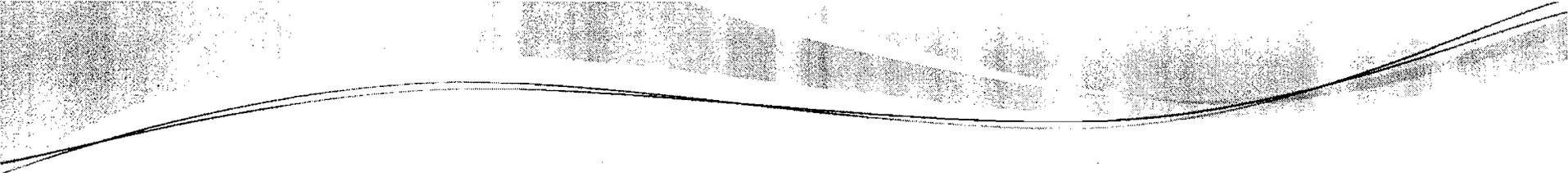
## Controlled Substances (*cont'd.*)

- Other Recommendations:
  - **Possession of paraphernalia:**
    - Recommendations:
      - Class C infraction (Class B with prior) rather than today's misdemeanor
      - Also strike "recklessly" culpability level
    - Rationale:
      - Today's technology can result in possession charge if residue appears;
      - paraphernalia without residue (demonstrating use to ingest drugs) should not be a crime;
      - not possible to "recklessly" possess paraphernalia



# Controlled Substances (*cont'd.*)

- Other Recommendations: (*cont'd.*)
  - **Marijuana penalties:**
    - See Marijuana Chart, page 322 (end of Controlled Substances section)
    - Recommend no possession offense higher than Class A misdemeanor
    - Recommend felony levels for dealing equivalent to today's felony classes for dealing marijuana
  - **REPEAL** driver's license suspension for drug crimes
  - **REPEAL** non-suspendibility provisions within IC 35-48



## Controlled Substances (*cont'd.*)

- Workgroup position:
  - Most provisions generally agreed on by consensus
  - IPDC rep expresses reservations regarding geographic enhancements (within 1,000 feet of protected zone)
    - Basis: belief that protected zone proximity enhancements have not been effective in protecting children and have only resulted in random penalty increases based on geography



## OBSCENITY AND PORNOGRAPHY

No recommendations other than proportional sentences within 1-6 level grid