Members

Sen. R. Michael Young, Chairperson
Sen. Brent Steele
Sen. James Arnold
Sen. Lindel Hume
Rep. Greg Steuerwald
Rep. Jud McMillin
Rep. Matt Pierce
Rep. Linda Lawson
Larry Landis
David Powell
Commissioner Bruce Lemmon
Thor Miller
Don Travis
Hon. Stephen R. Heimann

CRIMINAL LAW AND SENTENCING POLICY STUDY COMMITTEE

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

Authority: IC 2-5-32.5

MEETING MINUTES[1]

Meeting Date:	**August 15, 2013**
Meeting Time:	**10:00 A.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 130**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**1**

Members Present: **Sen. R. Michael Young, Chairperson; Sen. James Arnold; Sen. Lindel Hume; Rep. Greg Steuerwald; Rep. Jud McMillin; Rep. Matt Pierce; Rep. Linda Lawson; Larry Landis; David Powell; Commissioner Bruce Lemmon; Don Travis; Hon. Stephen R. Heimann.**

Members Absent: **Sen. Brent Steele; Thor Miller.**

Senator Young called the meeting to order at 10:04 a.m.

Senator Young introduced the members of the Committee and read the topics assigned to the Committee by the Legislative Council. Senator Young noted that the Committee would also review criminal law issues in Title 14 (Department of Natural Resources).

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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.

I. Conflict Resolution

Legislative Services Agency attorney Craig Mortell described the process of resolving conflicts in the Indiana Code and provided the Committee with a list of conflicts created by HEA1006-2013. (See Exhibit 1).

II. Title 7.1

Legislative Services Agency attorney Andrew Hedges presented draft legislation to the Committee that relocates and revises numerous criminal law provisions in Title 7.1. (See Exhibit 2). Mr. Hedges noted that several existing criminal law provisions did not have a *mens rea* requirement, and that a *mens rea* element was required for traditional crimes, but not for "regulatory" crimes. Mr. Hedges distributed a copy of *Morrisette v. United States* (Exhibit 3) and *Eddie Dean Gregory v. State* (Exhibit 4), cases which delineate when *mens rea* is required.

III. Fiscal Impact of HEA 1006-2013

Legislative Services Agency fiscal analyst Mark Goodpaster described the estimated fiscal impact of HEA1006-2013 and how the population of the Indiana Department of Correction would likely change due to sentencing changes introduced in HEA1006-2013. (See Exhibits 5, 6, and 7).

IV. Workgroup

Representative Steuerwald stated that he had convened an informal workgroup to try and understand the fiscal impact of HEA1006-2013. The workgroup plans to contract with a third party criminal justice research group to review the costs and savings associated with HEA1006-2013. The research group will present its findings to the workgroup and the Committee. Representative Steuerwald presented the Committee with a "Statement of Work and Scope" that would be used to direct the research group's analysis. (See Exhibit 8).

Senator Young stated that the Committee would likely need six meetings to accomplish its charge, and that he intended to ask for budgetary authority to hold additional meetings.

Senator Young adjourned the meeting at 2:36 p.m.

Exhibit 1
CLSP
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CONFLICTS AND HOW THEY ARE RESOLVED

1. What is a conflict?

If, in a legislative session,

- a section of the Indiana Code is amended by two (or more) acts, and
- neither act recognizes the amendment made in the Code section by the other act,

the result is what we in LSA refer to as "a **conflict**".

The result of a conflict is the appearance in the Indiana Code of multiple versions of the Code section. If a Code section is amended by two different acts, and neither act recognizes the other, each act creates a different version of the Code section. Since each of these versions is duly enacted, the Indiana Code ends up containing not one but TWO versions of the Code section.

EXAMPLE: IC 3-14-2-3 was amended in 2013 by Senate Enrolled Act 518 [Public Law 194-2013] and by House Enrolled Act 1006 [Public Law 158-2013]. Here are the amendatory SECTIONS of the acts:

SEA 518:

SECTION 94. IC 3-14-2-3, AS AMENDED BY P.L.103-2005, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. A person who:

(1) subscribes the name of another person to an affidavit of registration, **a petition of nomination, a declaration of candidacy,** or application for an absentee ballot knowing that the **affidavit, petition, declaration, or** application contains a false statement; or

(2) subscribes the name of another person to an affidavit of registration, **a petition of nomination, a declaration of candidacy,** or application for an absentee ballot without writing on it the person's own name and address as an attesting witness;

commits a Class D felony.

HEA 1006:

SECTION 8. IC 3-14-2-3, AS AMENDED BY P.L.103-2005, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. A person who:

(1) subscribes the name of another person to an affidavit of registration or application for an absentee ballot knowing that the application contains a false statement; or

(2) subscribes the name of another person to an affidavit of registration or application for an absentee ballot without writing on it the person's own name and address as an attesting witness;

commits a ~~Class D~~ **Level 6** felony.

Due to the enactment of these two SECTIONS, the Indiana Code presently contains the following multiple versions of IC 3-14-2-3:

IC 3-14-2-3, Version A

Note: This version of section amended by P.L.194-2013, SEC.94. See also following version of this section amended by P.L.158-2013, SEC.8, effective 7-1-2014.

Sec. 3. A person who:

(1) subscribes the name of another person to an affidavit of registration, a petition of nomination, a declaration of candidacy, or application for an absentee ballot knowing that the affidavit, petition, declaration, or application contains a false statement; or

(2) subscribes the name of another person to an affidavit of registration, a petition of nomination, a declaration of candidacy, or application for an absentee ballot without writing on it the person's own name and address as an attesting witness;

commits a Class D felony.

As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.23; P.L.194-2013, SEC.94.

IC 3-14-2-3, Version B

Note: This version of section amended by P.L.158-2013, SEC.8, effective 7-1-2014. See also preceding version of this section amended by P.L.194-2013, SEC.94.

Sec. 3. A person who:

(1) subscribes the name of another person to an affidavit of registration or application for an absentee ballot knowing that the application contains a false statement; or

(2) subscribes the name of another person to an affidavit of registration or application for an

absentee ballot without writing on it the person's own name and address as an attesting witness; commits a Level 6 felony.
As added by P.L.5-1986, SEC.10. Amended by P.L.103-2005, SEC.23; P.L.158-2013, SEC.8.

2. How are conflicts resolved?

Of course, we do not want sections of the Code to exist in multiple versions. We prefer that the Code contain only one version of each section. Therefore, in the year after a conflict is created, legislation is enacted to resolve the conflict. The legislation -- usually the annual technical corrections ("TC") bill but in this case the HEA 1006 "follow up" bill -- *merges* the multiple versions of the Code section *into one* version that incorporates *all* of the changes made in the section in the prior session.

The conflict-resolving SECTION:

- contains a lead-in line that refers to both (or all) of the acts that amended the Code section in the prior session, and
- includes *every word* that appears in any of the multiple versions of the Code section.

The type style in which each word is presented in the conflict-resolving SECTION follows this scheme:

If a word was:	. . . the word is presented in the conflict-resolving SECTION:
already in the Code section and was NOT AFFECTED by either act (or any act) that amended the Code section . . .	in roman type.
ADDED to the Code section by both acts (or all of the acts) that amended the Code section . . .	in roman type.
ADDED to the Code section by one act but **not** by both acts (or all of the acts) that amended the Code section . . .	in *italic type.*
STRICKEN by one act but **not** by both acts (or all of the acts) that amended the Code section . . .	in ~~*italic and stricken type.*~~
STRICKEN by both acts (or all of the acts) that amended the Code section . . .	not at all -- the word is deleted.

In the case of IC 3-14-2-3, SEA 518 [P.L.194-2013] added these words: "**a petition of nomination, a declaration of candidacy,**"; "**affidavit, petition, declaration, or**"; and "**a petition of nomination, a declaration of candidacy,**". And HEA 1006 [P.L.158-2013] struck "~~**Class D**~~" and added "**Level 6**".

Applying the type style scheme shown above to the changes made in IC 3-14-2-3 by SEA 518 and HEA 1006 in 2013, we arrive at a 2014 conflict-resolving SECTION for IC 3-14-2-3 that looks like this:

SECTION 1. IC 3-14-2-3, AS AMENDED BY P.L.194-2013, SECTION 94, AND AS AMENDED BY P.L.158-2013, SECTION 8, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. A person who:

(1) subscribes the name of another person to an affidavit of registration, *a petition of nomination, a declaration of candidacy,* or application for an absentee ballot knowing that the *affidavit, petition, declaration, or* application contains a false statement; or
(2) subscribes the name of another person to an affidavit of registration, *a petition of nomination, a declaration of candidacy,* or application for an absentee ballot without writing on it the person's own name and address as an attesting witness;

commits a ~~*Class D*~~ *Level 6* felony.

HEA 1006 CONFLICT SECTIONS

The following Code sections that were amended by HEA 1006 [P.L.158-2013] are "conflict" sections that need to be the subject of conflict-resolving SECTIONS in the 2014 HEA 1006 "follow up" bill:

IC 3-14-2-3
IC 3-14-2-11
IC 3-14-2-29
IC 4-13-2-14.7
IC 6-6-2.5-28
IC 7.1-5-1-9.5
IC 8-10-1-29
IC 9-17-3-7
IC 9-22-3-33
IC 11-8-8-4.5
IC 11-8-8-5
IC 11-8-8-15
IC 11-8-8-19
IC 12-17.2-6-14
IC 12-24-3-2
IC 16-31-3-14
IC 16-41-12-15
IC 20-28-5-8
IC 22-15-5-16
IC 23-19-5-8
IC 24-4-18-6
IC 25-1-1.1-2
IC 25-22.5-8-2
IC 29-3-7-7
IC 31-19-9-10
IC 31-30-1-2.5
IC 31-30-1-4
IC 31-34-1-3
IC 31-37-4-3
IC 33-37-5-23
IC 34-24-1-1
IC 35-38-1-1.5
IC 35-38-1-7.5
IC 35-41-4-2
IC 35-42-1-1
IC 35-42-3.5-1
IC 35-42-4-1
IC 35-42-4-3
IC 35-42-4-4
IC 35-42-4-6
IC 35-42-4-7
IC 35-42-4-11
IC 35-42-4-12
IC 35-42-4-13
IC 35-43-2-2
IC 35-44.1-2-3
IC 35-44.1-3-1
IC 35-44.1-3-5
IC 35-45-2-1
IC 35-45-6-1
IC 35-46-1-4
IC 35-46-3-11
IC 35-47-4-5
IC 35-47-9-2
IC 35-48-4-10
IC 35-48-4-11
IC 35-48-4-12
IC 35-48-4-14.5
IC 35-49-3-1
IC 35-49-3-2
IC 35-50-1-2
IC 35-50-2-7
IC 35-50-2-9
IC 35-50-6-3.3
IC 35-51-4-1

Craig Mortell
Legislative Services Agency
presentation to Criminal Law and Sentencing Policy Study Committee
August 15, 2013

Exhibit 2
CLSP
8/15

Title 7.1 rewrite. Revises numerous provisions of Title 7.1 that deal with criminal liability.

SECTION 1. IC 7.1-3-26-5, AS ADDED BY P.L.165-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. **(a)** A person located within Indiana or outside Indiana that wants to sell and ship wine directly to a consumer must be the holder of a direct wine seller's permit and comply with this chapter. **A person who sells and ships wine directly to a consumer without holding a valid direct wine seller's permit commits a Class A infraction.**

(b) The offense described in subsection (a) is:

(1) a Class A misdemeanor if the seller:

(A) knowingly or intentionally violates this section; and

(B) has one (1) prior unrelated conviction or judgment for an infraction under this chapter for an act or omission that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction; and

(2) a Level 6 felony if the seller:

(A) knowingly or intentionally violates this section; and

(B) has at least two (2) prior unrelated convictions or judgments for infractions under this chapter for acts or omissions that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction.

SECTION 2. IC 7.1-3-26-6, AS ADDED BY P.L.165-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. **(a)** A seller may sell and ship wine directly only to a consumer who meets all of the following requirements:

(1) The consumer is at least twenty-one (21) years of age.

(2) The consumer has an Indiana address.

(3) The consumer intends to use wine purchased under this chapter for personal use only and not for resale or other commercial purposes.

(4) Except as provided in subdivision (5), the consumer has provided to the seller in one (1) initial face-to-face transaction at the seller's place of business appearing on the seller's application for a direct wine seller's permit or any locations authorized by IC 7.1-3-12-5 all the following:

(A) Name, telephone number, Indiana address, or consumer's Indiana business address.

(B) Proof of age by a state issued driver's license or state issued identification card showing the consumer to be at least twenty-one (21) years of age.

(C) A verified statement, made under penalties for perjury, that the

consumer satisfies the requirements of subdivisions (1) through (3).

(5) If:

(A) before April 1, 2006, the consumer has engaged in a transaction with a seller in which the seller sold wine to the consumer and, after April 1, 2006, but before December 31, 2006, the consumer provides the seller with a verified statement, made under penalties for perjury, that the consumer is at least twenty-one (21) years of age; and

(B) the seller provides the name and Indiana address of the consumer to the commission before January 15, 2007;

the seller may sell directly to the consumer in accordance with this chapter.

(b) A seller who violates this section commits a Class A infraction. However, the offense is:

(1) a Class A misdemeanor if the seller:

(A) knowingly or intentionally violates subsection (a)(1) through (a)(4) of this section; and

(B) has one (1) prior unrelated conviction or judgment for an infraction under this chapter for an act or omission that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction; and

(2) a Level 6 felony if the seller:

(A) knowingly or intentionally violates subsection (a)(1) through (a)(4) of this section; and

(B) has at least two (2) prior unrelated convictions or judgments for infractions under this chapter for acts or omissions that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction.

(c) It is a defense to an action or prosecution under this section that the seller obtained from the consumer the verified statement required under subsections (a)(4) or (a)(5).

SECTION 3. IC 7.1-3-26-10. AS ADDED BY P.L.165-2006, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. ~~It is unlawful for the~~ **(a) Except as provided in subsections (b) and (c), the** holder of a farm winery brandy distiller's permit ~~to ship or cause to be shipped~~ **who ships** brandy produced under this title to a consumer **commits a Class A infraction.**

(b) The offense described in subsection (a) is:

(1) a Class A misdemeanor if the seller:

(A) knowingly or intentionally violates this section; and

(B) has one (1) prior unrelated conviction or judgment for an infraction under this chapter for an act or omission that occurred

not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction; and

(2) a Level 6 felony if the seller:

(A) knowingly or intentionally violates this section; and

(B) has at least two (2) prior unrelated convictions or judgments for infractions under this chapter for acts or omissions that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction.

SECTION 4. IC 7.1-3-26-15 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~(a) Except as provided in subsections (b) and (c), a seller who violates this chapter commits a Class A infraction.~~

~~(b) Except as provided in subsection (d), a seller who:~~

~~(1) knowingly or intentionally violates this chapter; and~~

~~(2) has one (1) prior unrelated conviction or judgment for an infraction under this section for an act or omission that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction;~~

~~commits a Class A misdemeanor.~~

~~(c) Except as provided in subsection (d), a seller who:~~

~~(1) knowingly or intentionally violates this chapter; and~~

~~(2) has at least two (2) prior unrelated convictions or judgments for infractions under this section for acts or omissions that occurred not more than ten (10) years before the act or omission that is the basis for the most recent conviction or judgment for an infraction;~~

~~commits a Level 6 felony.~~

~~(d) A person who violates section 6(5) of this chapter commits a Class A infraction. The commission may consider an infraction committed under this subsection in its determination of whether to renew a seller's permit.~~

SECTION 5. IC 7.1-3-26-16 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 16. If a direct wine seller is charged under section 15 of this chapter with selling to a consumer who does not meet the requirements of section 6 of this chapter, it is a defense to the charge if the direct wine seller obtained from the consumer the verified statement required under section 6(4)(C) or 6(5)(A) of this chapter and produces a copy of the verified statement.~~

SECTION 6. IC 7.1-3-27-3, AS ADDED BY P.L.109-2013, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. **(a)** An artisan distiller may produce not more than ten thousand (10,000) gallons of liquor in any calendar year. Liquor produced by an artisan distiller that is sold through a wholesaler licensed under IC 7.1-3-8 may not be counted toward the gallonage limit.

(b) An artisan distiller who knowingly or intentionally violates this section commits

a Class B misdemeanor.

SECTION 7. IC 7.1-3-27-8, AS ADDED BY P.L.109-2013, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) The holder of an artisan distiller's permit may do only the following:

(1) Manufacture liquor, including blending liquor purchased from another manufacturer with liquor the artisan distiller manufactures under section 11 of this chapter.

(2) Bottle liquor manufactured by the artisan distiller.

(3) Store liquor manufactured by the artisan distiller.

(4) Transport, sell, and deliver liquor manufactured by the artisan distiller to:

(A) places outside Indiana; or

(B) the holder of a liquor wholesaler's permit under IC 7.1-3-8.

(5) Sell liquor manufactured by the artisan distiller to consumers by the drink, bottle, or case from the premises of the distillery where the liquor was manufactured.

(6) Serve complimentary samples of the liquor manufactured by the artisan distiller to consumers on the premises of the distillery where the liquor was manufactured.

(b) The holder of an artisan distiller's permit who provides samples or sells liquor by the glass must furnish the minimum food requirements prescribed by the commission.

(c) An artisan distiller who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 8. IC 7.1-3-27-9, AS ADDED BY P.L.109-2013, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. **(a)** An artisan distiller may not sell liquor to a retailer or dealer.

(b) An artisan distiller who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 9. IC 7.1-3-27-10, AS ADDED BY P.L.109-2013, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. **(a)** An artisan distiller may not ship liquor or cause liquor to be shipped to a consumer.

(b) An artisan distiller who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 10. IC 7.1-3-27-11, AS ADDED BY P.L.109-2013, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. **(a)** An artisan distiller may blend liquor that the artisan distiller obtains from another manufacturer with liquor that the artisan distiller manufactures. The artisan distiller may sell the blended liquor as liquor that the artisan distiller manufactures only if the final product contains at least sixty percent (60%) of liquor that was fermented and distilled from raw materials by the artisan distiller at the licensed premises of the artisan distiller.

(b) An artisan distiller who knowingly or intentionally sells blended liquor that

contains less than sixty percent (60%) of liquor that was fermented and distilled from raw materials by the artisan distiller at the licensed premises of the artisan distiller commits a Class B misdemeanor.

SECTION 11. IC 7.1-3-27-12, AS ADDED BY P.L.109-2013, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. (a) This section applies only to a person who:

(1) holds an artisan distiller's permit; and

(2) holds an interest in a farm winery permit under IC 7.1-3-12.

(b) An artisan distiller may:

(1) serve samples of liquor that the artisan distiller manufactures; and

(2) sell bottles and cases of liquor that the artisan distiller manufactures;

on the licensed premises where the wine is manufactured only if the wine is manufactured on the same premises where the artisan distiller manufactures liquor.

(c) A person to whom this section applies who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 12. IC 7.1-3-27-13, AS ADDED BY P.L.109-2013, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. (a) This section applies only to a person who:

(1) holds an artisan distiller's permit; and

(2) holds an interest in a brewer's permit for a brewery described in IC 7.1-3-2-7(5).

(b) An artisan distiller may:

(1) serve samples of liquor that the artisan distiller manufactures; and

(2) sell bottles and cases of liquor that the artisan distiller manufactures;

on the licensed premises where the beer is manufactured only if the beer is manufactured on the same premises where the artisan distiller manufactures liquor.

(c) A person to whom this section applies who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 13. IC 7.1-3-27-14, AS ADDED BY P.L.109-2013, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. (a) This section applies only to the holder of an artisan distiller's permit that also holds an interest in a distiller's permit under IC 7.1-3-7.

(b) An artisan distiller may not:

(1) serve complimentary samples of liquor; and

(2) sell liquor;

manufactured under the distiller's permit issued under IC 7.1-3-7 on the premises of the artisan distillery or at any other location that the holder of the artisan distiller's permit is authorized to sell and serve samples of liquor manufactured under the artisan distiller's permit.

(c) A person to whom this section applies who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 14. IC 7.1-3-27-15, AS ADDED BY P.L.109-2013, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 15. (a) An artisan distiller's permit shall be issued for a period of two (2) years.

(b) The commission shall charge a permit fee of two hundred fifty dollars ($250) annually to the holder of an artisan distiller's permit. The holder of an artisan distiller's permit shall pay the permit fee to the chairman on the anniversary of the date of the issuance of the original permit.

(c) A person who knowingly or intentionally engages in an activity requiring an artisan distiller's permit without possessing a valid permit commits a Class B misdemeanor.

SECTION 15. IC 7.1-5-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. **(a)** ~~Prohibition Against Commercial Purposes.~~ It is unlawful for a person to manufacture for sale, bottle, sell, barter, import, transport, deliver, furnish, or possess, alcohol or alcoholic beverages, malt, malt syrup, malt extract, liquid malt or wort, for commercial purposes except as authorized in this title.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 16. IC 7.1-5-1-8 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 8. General Penalty Provision. A person who violates a provision of this title for which no other penalty is provided commits a Class B misdemeanor.~~

SECTION 17. IC 7.1-5-1-9 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~A person who knowingly violates IC 7.1-5-4-3, IC 7.1-5-4-6, or IC 7.1-5-6-4 commits a Level 6 felony.~~

SECTION 18. IC 7.1-5-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. **(a)** It is unlawful for a person to advertise the proof or the amount or percentage of alcohol in beer or wine. It is lawful for a person to advertise the proof or the amount or percentage of alcohol in liquor.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 19. IC 7.1-5-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. ~~Signs Regulated.~~ **(a)** It is unlawful for the holder of a retailer's or dealer's permit of any type to display, keep, have, or maintain, a sign, advertisement, poster or design, obstruction to view, device or equipment contrary to the provisions of this title, or to a rule or regulation of the commission, in, about, or in connection with his business authorized by his permit.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 20. IC 7.1-5-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. ~~Gift of Outside Sign Prohibited.~~ **(a)** It is unlawful for a manufacturer of alcoholic beverages or other permittee authorized to sell and deliver alcoholic beverages to give, supply, furnish, or grant, to the holder of a retailer's or dealer's permit a sign, poster, or

advertisement for use, or intended to be used, outside of or on the exterior of the licensed premises or on a building situated on the licensed premises or in connection with them, or on premises adjacent to the licensed premises.

(b) It is unlawful ~~also,~~ for a retail or dealer permittee to receive or accept, or to display or permit to be displayed, a sign, poster, or advertisement given in violation of ~~this section.~~ **subsection (a).**

(c) A person who violates subsections (a) or (b) commits a Class C infraction. A person commits a separate violation for each day during which a violation of subsections (a) or (b) continues.

SECTION 21. IC 7.1-5-2-6 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 6. A person who violates section 4 of this chapter commits a Class C infraction. Each day during which a violation of that section continues is a separate infraction.~~

SECTION 22. IC 7.1-5-2-7, AS AMENDED BY P.L.15-2011, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) The term "premises" as used in this subsection does not include a facility (as defined in IC 7.1-2-3-16.5). A primary source of supply, wholesaler, or salesman of alcoholic beverages, or the agent or representative of a primary source of supply, wholesaler, or salesman of alcoholic beverages may not directly or indirectly place, display, or maintain or cause to be placed, displayed, or maintained a sign advertising alcoholic beverages by brand name within two hundred (200) feet of a premises having a retailer or dealer permit to sell alcoholic beverages. The distance must be determined by measuring between the nearest point on the licensed premises to the nearest point of the sign.

(b) A sign advertising alcoholic beverages by brand name may not indicate by arrows, hands, or other similar devices a particular retailer or dealer premises.

(c) Notwithstanding subsection (a), a primary source of supply, wholesaler, or salesman of alcoholic beverages, or the agent or representative of a primary source of supply, wholesaler, or salesman of alcoholic beverages may place, display, maintain or cause to be placed, displayed, or maintained temporary banners or pennants advertising alcoholic beverages by brand name on or within two hundred (200) feet of a retailer or dealer premises if the banners or pennants commemorate a sporting event, festival, or holiday held in Indiana. The banners or pennants may be displayed under this subsection beginning twenty-one (21) days before the sporting event, festival, or holiday and ending five (5) days after the close of the sporting event, festival, or holiday.

(d) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 23. IC 7.1-5-3-1, AS AMENDED BY P.L.6-2012, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) This section does not apply to the following:

(1) An establishment where alcoholic beverages are sold that is owned, in whole

or part, by an entity that holds a brewer's permit for a brewery described under IC 7.1-3-2-7(5).

(2) An establishment where alcoholic beverages are sold that is owned, in whole or part, by a statewide trade organization consisting of members, each of whom holds a brewer's permit for a brewery described under IC 7.1-3-2-7(5).

(b) **Except as provided in section 6 of this chapter,** it is unlawful to sell beer in this state at retail in a bottle, can, or other container, unless the bottle, can, or other container was packaged and sealed by the brewer at the brewer's bottling house contiguous or adjacent to the brewery in which the beer was produced.

(c) A person who knowingly or intentionally violates subsection (b) commits a Class B misdemeanor.

SECTION 24. IC 7.1-5-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. ~~Sale from Original Container Only.~~ **(a) Except as provided in section 6 of this chapter,** it is unlawful for a person to sell, dispense, give away, furnish, or supply or serve to a person, an alcoholic beverage, from a container other than the original container in which the liquor was contained at the time it was purchased by the seller, dispenser, giver, or person serving it.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 25. IC 7.1-5-3-4, AS AMENDED BY P.L.6-2012, SECTION 62, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) This section does not apply to the following:

(1) The necessary refilling of a container by a person holding a permit that authorizes the person to manufacture, rectify, or bottle liquor.

(2) An establishment where alcoholic beverages are sold that is owned, in whole or part, by an entity that holds a brewer's permit for a brewery described under IC 7.1-3-2-7(5).

(3) An establishment where alcoholic beverages are sold that is owned, in whole or part, by a statewide trade organization consisting of members, each of whom holds a brewer's permit for a brewery described under IC 7.1-3-2-7(5).

(b) **Except as provided in section 6 of this chapter,** it is unlawful for a person to:

(1) refill a bottle or container, in whole or in part, with an alcoholic beverage; or

(2) knowingly possess a bottle or container that has been refilled, in whole or in part, with an alcoholic beverage;

after the container of liquor has been emptied in whole or in part.

(c) A person who knowingly or intentionally violates subsections (a) or (b) commits a Class B misdemeanor.

SECTION 26. IC 7.1-5-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. ~~Possession of Untaxed Beverages Prohibited.~~ It is a Class C misdemeanor

for a person to sell, barter, give away, or possess, an alcoholic beverage, knowing that all taxes due the state on it are not paid.

SECTION 27. IC 7.1-5-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. ~~Unlawful Furnishing of Evidence of Payment of Tax Prohibited.~~ **(a)** It is unlawful for a person, other than an officer of the state lawfully entitled to do so, to furnish evidence of the payment of the excise tax, or to execute or issue a permit of any type, to another person.

(b) A person who knowingly or intentionally violates subsection (a) commits a Level 6 felony.

SECTION 28. IC 7.1-5-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. ~~Possession of Counterfeit Permit Prohibited.~~ **(a)** It is unlawful for a person to possess an article, instrument, imitation, or counterfeit of a permit, other than one lawfully issued to ~~him~~ **the person** and which ~~he~~ **the person** is lawfully entitled to possess.

(b) It is unlawful ~~also,~~ for a person to display an imitation or counterfeit of a permit for the purpose of defrauding the state of the payment of a tax or license fee imposed by this title.

(c) A person who knowingly or intentionally violates subsections (a) or (b) commits a Class A misdemeanor.

SECTION 29. IC 7.1-5-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. ~~Fraudulent Statement Prohibited.~~ **(a)** It is unlawful for a person to make a statement, written or oral, as to payment to, or the receipt by, the state, for the purpose of defrauding the state of a tax or license fee imposed by this title.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Level 6 felony if the tax or license fee is seven hundred fifty dollars ($750) or more.

SECTION 30. IC 7.1-5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. ~~Issuance of Permits: Illegal Influence Prohibited.~~ **(a) This section does not apply to an officer or employee of the commission, or to a member of a local board. This section does not prohibit the employment of an attorney by a permittee or applicant in obtaining the issuance or renewal of a permit or in preventing the suspension or revocation of a permit.**

(b) It is unlawful for a permittee, or an applicant for a permit, to **knowingly or intentionally** solicit or accept the assistance of an officer or employee of the state, or of one (1) of its political subdivisions or municipal corporations, or of the United States, or of a political party or political committee, in obtaining the issuance or renewal of a permit or in preventing the suspension or revocation of a permit. ~~This section shall have no application to an officer or employee of the commission nor to a member of a local board. This section does not prohibit the employment of an attorney, regardless of political affiliations, by a permittee or applicant, in obtaining the issuance or renewal of a permit or in preventing the suspension or revocation of a permit.~~

SECTION 31. IC 7.1-5-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2014]: Sec. 2. ~~Commission: Receiving Gifts Prohibited.~~ **(a)** It is unlawful for a commissioner, an officer or employee of the commission, or a member of a local board, to receive a gratuity, commission, or profit of any kind from a person applying for or receiving a permit under this title.

(b) A person who knowingly or intentionally violates subsection (a) commits a Level 6 felony.

(c) In addition to any other penalty provided for a violation of this section, a person who violates ~~the provisions of~~ this section ~~also~~ shall be dismissed as provided in this title.

SECTION 32. IC 7.1-5-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. ~~Illegal Influence Prohibited.~~ **(a)** It is unlawful for the holder of a manufacturer's permit of any type, a wholesaler's permit of any type, or an officer, employee, agent or other representative of a surety company which has executed a bond for a permittee under this title to seek to influence or recommend or solicit the appointment of a member of a local board, or of an officer, appointee or employee under this title, or meet with, consult, or advise a member of a local board concerning the issuance of a permit of any type.

(b) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 33. IC 7.1-5-5-7, AS AMENDED BY P.L.233-2007, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. (a) It is unlawful for a permittee in a sale or contract to sell alcoholic beverages to discriminate between purchasers by granting a price, discount, allowance, or service charge which is not available to all purchasers at the same time. However, this section does not authorize or require a permittee to sell to a person to whom the permittee is not authorized to sell under this title.

(b) A premises that operates at least two (2) restaurants that are separate and distinct from each other on the same premises may provide for a different schedule of prices in each restaurant if each restaurant conforms to all other laws and rules of the commission regarding pricing and price discrimination in its separate and distinct areas.

(c) This section does not apply to the holder of a gaming site permit that complies with IC 7.1-3-17.5-6.

(d) Notwithstanding subsection (a), a beer wholesaler may offer a special discount price to a beer dealer or beer retailer for beer or flavored malt beverage, if the beer or flavored malt beverage:

(1) is a brand or package the beer wholesaler has discontinued; or

(2) will expire in not more than:

(A) twenty (20) days for packaged beer or packaged flavored malt beverage; and

(B) ten (10) days for draft beer or draft flavored malt beverage.

(e) The special discount under subsection (d) only applies to beer or flavored malt beverage that will expire and be subject to removal from retailer or dealer shelves in accordance with the primary source of supply's coding data clearly identified on the container.

(f) Any beer or flavored malt beverage sold at a special discount price under subsection (d) shall be accompanied by an invoice clearly designating, in addition to all other information required by law, all the following information:

(1) The date of delivery.

(2) The expiration date of each brand, package type, and quantity delivered.

(3) The per unit price for each package.

(g) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 34. IC 7.1-5-5-9, AS AMENDED BY P.L.94-2008, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. (a) This section does not apply to product management (as described in 905 IAC 1-5.2-15) by a permittee.

(b) It is unlawful for a permittee to knowingly or intentionally coerce, or attempt to coerce, or persuade another permittee to enter into an agreement, or to take an action, which would violate a provision of this title or of the rules and regulations of the commission.

(c) It is unlawful for a beer wholesaler or a primary source of supply to cancel or terminate an agreement or contract between a beer wholesaler and a primary source of supply for the sale of beer, unfairly and without due regard for the equities of the other party.

(d) A person who knowingly or intentionally violates subsections (b) or (c) commits a Class B misdemeanor.

SECTION 35. IC 7.1-5-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. ~~Acceptance of Gift by Retailer Prohibited.~~ **(a)** It is unlawful for a person who holds a retailer's or dealer's permit of any type to receive or accept from a manufacturer of alcoholic beverages, or from a permittee authorized to sell and deliver alcoholic beverages, a rebate, sum of money, accessory, furniture, fixture, loan of money, concession, privilege, use, title, interest, or lease, rehabilitation, decoration, improvement or repair of premises.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Level 6 felony if the value received or accepted is seven hundred fifty dollars ($750) or more.

SECTION 36. IC 7.1-5-5-11, AS AMENDED BY P.L.224-2005, SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. (a) Except as provided in subsections (c) and (d), it is unlawful for a manufacturer of alcoholic beverages or a permittee authorized to sell and deliver alcoholic beverages to:

(1) give, supply, furnish, or grant to another permittee who purchases alcoholic beverages from him a rebate, sum of money, accessory, furniture, fixture, loan of money, concession, privilege, use, title, interest, lease, or rental of premises; or

(2) except as provided in IC 7.1-3-2-9 and IC 7.1-3-3-5(f), have a business dealing with the other permittee.

(b) This section shall not apply to the sale and delivery and collection of the sale price of an alcoholic beverage in the ordinary course of business.

(c) If the promotional program is approved under the rules adopted by the commission and is conducted in all wholesaler establishments through which the manufacturer distributes alcoholic beverages in Indiana, a manufacturer of alcoholic beverages may award bona fide promotional prizes and awards to any of the following:

(1) A person with a wholesaler's permit issued under IC 7.1-3.

(2) An employee of a person with a wholesaler's permit issued under IC 7.1-3.

(d) A manufacturer may offer on a nondiscriminatory basis bona fide incentives to wholesalers when the incentives are determined based on sales to retailers or dealers occurring during specified times for specified products. The incentive may be conditioned on the wholesaler selling a:

(1) specified product at a specified price or less than a specified price; or

(2) minimum quantity of a specified product to a single customer in a single transaction.

The incentive may not be conditioned on a wholesaler having total sales of a minimum quantity of a specified product during the applicable period.

(e) A person who knowingly or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Level 6 felony if the value given is seven hundred fifty dollars ($750) or more.

SECTION 37. IC 7.1-5-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. ~~Amateur Athletics: Soliciting Assistance Prohibited.~~ **(a)** It is unlawful for a permittee who sponsors an amateur athletic contest, team, or sporting contest to solicit or accept assistance, either financial or otherwise, from another permittee for the purpose of promoting the amateur athletic contest, team, or sporting event.

(b) It ~~also~~ is unlawful for a permittee who is solicited in violation of ~~this section~~ **subsection (a)** to give that assistance.

(c) A person who knowingly or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Level 6 felony if the assistance is seven hundred fifty dollars ($750) or more.

SECTION 38. IC 7.1-5-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. ~~Making Alcoholic Beverages Without Permit Prohibited.~~ **(a)** It is a Class C misdemeanor for a person to knowingly own, have in ~~his~~ **the person's** possession or under ~~his~~ **the person's** control, or use a still or distilling apparatus for the manufacture of liquor, except as otherwise provided in this title.

(b) It ~~also~~ is a Class C misdemeanor for a person to knowingly own, have in ~~his~~ **the person's** possession or under ~~his~~ **the person's** control, or use brewing or wine-making ~~appratus,~~ **apparatus,** for the manufacture for commercial purposes of beer or wine, except as otherwise provided in this title.

SECTION 39. IC 7.1-5-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. ~~Acting As Salesman Without Permit Prohibited.~~ **(a)** It is unlawful for a person to act as a ~~salesman~~ **salesperson**, regardless of whether the sale is to be made by a seller

within this state, to a buyer within or without this state, or by a seller outside this state for delivery to a buyer within this state, or whether the sale otherwise may be legal or illegal, unless that person has applied for and been issued a salesman's permit.

(b) It ~~also~~ is unlawful for a buyer in this state to give an order, bargain, contract or agreement to a ~~salesman~~ **salesperson** who does not have a salesman's permit. This section ~~shall~~ **does** not apply to a permittee of any type, ~~his~~ **a permittee's** ~~agents~~ **agent**, or employees working or acting on the licensed premises of the ~~permitted.~~ **permittee.**

(c) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 40. IC 7.1-5-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) It is unlawful for a person to act as a clerk in a package liquor store, or as a bartender, waiter, waitress, or manager for a retailer permittee unless that person has applied for and been issued the appropriate permit. This section does not apply to dining car or boat employees or to a person described in IC 7.1-3-18-9(d). **A person who knowingly or intentionally violates this subsection commits a Class B misdemeanor.**

(b) It is a defense to a charge under this section if, ~~within~~ **not later than** thirty (30) days after being cited by the commission, the person who was cited produces evidence that the appropriate permit was issued by the commission on the date of the citation.

(c) It is a defense to a charge under this section for a new applicant for a permit if, ~~within~~ **not later than** thirty (30) days after being cited by the commission, the new applicant who was cited produces a receipt for a cashier's check or money order showing that an application for the appropriate permit was applied for on the date of the citation.

SECTION 41. IC 7.1-5-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. ~~Falsification of Record Prohibited.~~ **(a)** It is unlawful for a person to falsify, or cause to be falsified, an entry, statement, account, recital, or computation, or an application for a permit, or an instrument, or paper required to be filed in connection with the application, or in connection with the revocation, or proposed revocation, or a permit.

(b) It is unlawful ~~also,~~ for a person to enter, or cause to be entered, a false entry, statement, account, recital, computation, or representation of a fact in a book, document, account, order, paper, or statement required to be kept or filed, or made or furnished to the commission under the provisions of this title or a rule or regulation of the commission.

(c) A person who knowingly or intentionally violates this section commits a Level 6 felony.

SECTION 42. IC 7.1-5-7-0.3 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 0.3. Notwithstanding the amendments made to section 13 of this chapter by P.L.204-2001, not later than July 1, 2002, the commission shall adopt the rules required by section 13(b)(1), as amended by P.L.204-2001.~~

SECTION 43. IC 7.1-5-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. It is a Class C misdemeanor for a person to sell, give, or furnish to a minor false or fraudulent evidence of majority or identity with the intent to violate **or assist in**

the violation of a provision of this title.

SECTION 44. IC 7.1-5-7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. Except as provided in section 13 of this chapter, it is a Class B misdemeanor for a person to **knowingly or intentionally** employ a minor in or about a place where alcoholic beverages are sold, furnished, or given away for consumption either on or off the licensed premises, in a capacity which requires or allows the minor to sell, furnish, or otherwise deal in alcoholic beverages.

SECTION 45. IC 7.1-5-7-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. ~~Notice From Parents.~~ It is a Class B misdemeanor for a permittee to **knowingly or intentionally** permit a minor to be in or around the licensed premises after receiving written notice from the parent, guardian, or other person having custody of the minor that the ~~person~~ **minor** is in fact a minor and directing that ~~he~~ **the minor** be excluded from the licensed premises.

SECTION 46. IC 7.1-5-8-4, AS AMENDED BY P.L.94-2008, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. (a) It is ~~unlawful~~ **a Class B misdemeanor** for a person who owns or operates a private or public restaurant or place of public or private entertainment to **knowingly or intentionally** permit another person to come into the establishment with an alcoholic beverage for sale or gift, or for consumption in the establishment by that person or another, or to serve a setup to a person who comes into the establishment. However, the provisions of this section ~~shall~~ **do** not apply to the following:

(1) A private room hired by a guest of a bona fide club or hotel that holds a retail permit.

(2) A facility that is used in connection with the operation of a paved track that is used primarily in the sport of auto racing.

(3) An outdoor place of public entertainment that:

(A) has an area of at least four (4) acres and not more than six (6) acres;

(B) is located within one (1) mile of the White River;

(C) is owned and operated by a nonprofit corporation exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code; and

(D) is used primarily in connection with live music concerts.

(b) An establishment operated in violation of this section is declared to be a public nuisance and subject to abatement as other public nuisances are abated under the provisions of this title.

SECTION 47. IC 7.1-5-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. ~~Purchase of Beer from Un-Bonded Brewery Prohibited.~~ It is unlawful for a permittee to **knowingly or intentionally** purchase, receive, or import beer from a brewer or other person located outside this state unless the bond and agreement required by ~~the provisions of IC 1971, 7.1-3-2,~~ **this title** have been accepted by the commission and are currently effective.

SECTION 48. IC 7.1-5-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2014]: Sec. 1. ~~Commission: Prohibited Interests.~~ **(a)** It is unlawful for a commissioner, an officer or employee of the commission, or a member of a local board, to have an interest, either ~~proprietory~~ **proprietary** or by means of a loan, mortgage, or lien, or in any other manner, or to own stock in a corporation which has an interest, in the premises where alcoholic beverages are manufactured or sold, or in a business wholly or partially devoted to the manufacture, sale, transportation or storage of alcoholic beverages. The prohibition contained in this section shall not apply to an expert or professional employee employed by the commission only for a special undertaking. A person who violates a provision of this section also shall be dismissed as provided in this title.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 49. IC 7.1-5-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) Except as provided in subsection (c), it is unlawful for the holder of a brewer's permit or for a brewer located outside Indiana that meets the requirements of IC 7.1-3-2-4 and IC 7.1-3-2-5 to hold, acquire, possess, own, or control, or to have an interest, claim, or title, in or to an establishment, company, or corporation holding or applying for a beer wholesaler's permit under this title, or in its business.

(b) Except as provided in subsection (c), it is unlawful for the holder of a vintner's permit or for a vintner located outside Indiana to hold, acquire, possess, own, or control, or to have an interest, claim, or title in or to, an establishment, company, or corporation holding or applying for a wine wholesaler's permit under this title, or in its business.

(c) A brewer covered by subsection (a) may provide financial assistance to the holder of a beer wholesaler's permit. A vintner covered by subsection (b) may provide financial assistance to the holder of the wine wholesaler's permit. The following conditions apply to the provision of financial assistance under this subsection:

(1) The brewer may not require that the holder of the beer wholesaler's permit, and the vintner may not require that the holder of a wine wholesaler's permit, accept the financial assistance.

(2) The financial assistance may be unsecured or secured.

(3) If the financial assistance is secured, it may be secured only by a security interest in the following property of the holder of the wholesaler's permit:

(A) Inventory of the products of the brewer or vintner.

(B) Premises or equipment, if the premises or equipment is used in the business of the holder of the wholesaler's permit.

(4) If the financial assistance is secured, the value of the property in which the security interest lies may not substantially exceed the debt secured.

(5) Except as provided in IC 7.1-3-2-9, the brewer or the vintner may not use financial assistance to acquire complete or partial control of the business of the holder of the wholesaler's permit.

(6) Except as provided in IC 7.1-3-2-9, the brewer or vintner must make

available to all wholesalers (of any of its products) any assistance that it offers to any one (1) wholesaler of any of its products. This assistance must be provided on substantially identical terms. The brewer or vintner may not discriminate among wholesalers of any of its products in the enforcement of any terms related to assistance under this section.

(7) The brewer or vintner must report to the commission any assistance that it offers to a wholesaler under this section. It must make this report promptly after the assistance is offered.

(d) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 50. IC 7.1-5-9-3, AS AMENDED BY P.L.71-2012, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) This section applies to a brewer that manufactures more than thirty thousand (30,000) barrels of beer in a calendar year for sale or distribution within Indiana.

(b) It is unlawful for the holder of a brewer's or beer wholesaler's permit to have an interest in a liquor permit of any type under this title.

(c) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 51. IC 7.1-5-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. **(a)** Except as provided in IC 7.1-3-3-4, an applicant for a beer wholesaler's permit shall have no interest in the following:

(1) A permit to manufacture or to sell at retail alcoholic beverages of any kind.

(2) Any other permit to wholesale alcoholic beverages.

(3) Through stock ownership or otherwise, a partnership, limited liability company, or corporation that holds:

(A) a permit to manufacture or to sell at retail alcoholic beverages of any kind; or

(B) any other permit to wholesale alcoholic beverages of any kind.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 52. IC 7.1-5-9-6, AS AMENDED BY P.L.109-2013, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. **(a)** It is unlawful for the holder of a distiller's, rectifier's, or liquor wholesaler's permit to have an interest in a beer permit of any type under this title. This section does not apply to the holder of an artisan distiller's permit that has an interest in a brewer's permit under IC 7.1-3-2-7(5).

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B infraction.

SECTION 53. IC 7.1-5-9-7, AS AMENDED BY P.L.109-2013, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. **(a)** It is unlawful for the holder of an artisan distiller's, a distiller's, or a rectifier's permit to own, acquire, possess

or cause to be transferred to the holder shares of stock of a corporation that holds an Indiana permit to sell alcoholic beverages at retail, or in a permit to sell at retail in this state, or to own or acquire an interest in the business being conducted under the permit, or in or to shares of stock in a corporation that owns a permit to sell at retail.

(b) A person who knowingly or intentionally violates this subsection (a) commits a Class B misdemeanor.

SECTION 54. IC 7.1-5-9-8, AS AMENDED BY P.L.109-2013, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. **(a)** The holder of an artisan distiller's permit, a distiller's permit, or a rectifier's permit may not own, acquire, or possess a permit to sell liquor at wholesale. A distiller or rectifier may not have an interest in the business of a permittee who is authorized to sell beer, liquor, or wine at wholesale or retail.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 55. IC 7.1-5-9-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. ~~Wholesaler's Interests Limited.~~ **(a)** It is unlawful for a person who has an interest in a beer wholesaler's permit to acquire, hold, own, or possess an interest of any type in a beer dealer's or retailer's permit.

(b) It is unlawful ~~also,~~ for a person who has an interest in a liquor wholesaler's permit to acquire, hold, own, or possess an interest of any type in a liquor dealer's or retailer's permit.

(c) A person who knowingly or intentionally violates subsections (a) or (b) commits a Class B misdemeanor.

SECTION 56. IC 7.1-5-9-10, AS AMENDED BY P.L.71-2012, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. (a) Except as provided in subsection (b), it is unlawful for a holder of a retailer's permit of any type to acquire, hold, own, or possess an interest of any type in a manufacturer's or wholesaler's permit of any type.

(b) It is lawful for a holder of a retailer's permit of any type to acquire, hold, own, or possess an interest of any type in a brewer's permit for a brewery that manufactures not more than thirty thousand (30,000) barrels of beer in a calendar year for sale or distribution within Indiana.

(c) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 57. IC 7.1-5-9-13, AS AMENDED BY P.L.109-2013, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. **(a) A:**

(1) ~~The~~ proprietor of a drug store; ~~a~~

(2) corporation holding:

(A) an artisan distiller's permit;

(B) a distiller's permit; ~~or~~

(C) a brewer's permit;

(D) ~~or~~ a wholesaler's permit; or

(E) a permit to retail or deal in alcoholic beverages; **or**

(3) a wholesale drug company **or** a person who is the proprietor of a wholesale drug company;

may not own or control or participate in the permit of a package liquor store, or in its business, or in its establishment.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 58. IC 7.1-5-9-14, AS AMENDED BY P.L.94-2008, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. **(a)** It is unlawful for the holder of a brewer's, distiller's, rectifier's, or a wholesaler's permit of any type to sell an alcoholic beverage to a person who does not hold an appropriate permit under this title, ~~However, this section shall not apply to~~ **unless the sale is** the sale of an alcoholic beverage to a consumer or employee as expressly authorized in this title.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 59. IC 7.1-5-9-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 15. (a) The commission shall establish a manager's questionnaire for managers of licensed premises for the sale of alcoholic beverages.

(b) It is unlawful for a person to:

(1) manage; or

(2) buy when the transfer of the permit is contingent upon terms of a contract or an agreement;

a licensed premises for the sale of alcoholic beverages, unless the person has filed a valid manager's questionnaire with the commission.

(c) The filing of a manager's questionnaire under this section:

(1) is in addition to other requirements for managers under this title; and

(2) does not exempt the filer from IC 7.1-5-6-3.

(d) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 60. IC 7.1-5-10-1, AS AMENDED BY P.L.10-2010, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. (a) Except as provided in ~~subsection (c)~~ **subsection (d)**, it is unlawful to sell alcoholic beverages at the following times:

(1) At a time other than that made lawful by the provisions of IC 7.1-3-1-14.

(2) On Christmas Day and until 7:00 o'clock in the morning, prevailing local time, the following day.

(b) During the time when the sale of alcoholic beverages is unlawful, no alcoholic beverages shall be sold, dispensed, given away, or otherwise disposed of on the licensed premises and the licensed premises shall remain closed to the extent that the nature of the business carried on at the premises, as at a hotel or restaurant, permits.

(c) **A person who knowingly or intentionally violates this section commits a Class B misdemeanor.**

(d) It is lawful for the holder of a valid beer, wine, or liquor wholesaler's permit to sell to the holder of a valid retailer's or dealer's permit at any time.

SECTION 61. IC 7.1-5-10-2 IS AMENDED TO READ AS FOLLOWS: Sec. 2. ~~Unauthorized Sales Prohibited.~~ **(a)** It is unlawful for a permittee to recklessly sell, keep for sale, barter, furnish, or give away an alcoholic beverage which ~~he~~ **the permitee** is not entitled to sell, keep for sale, barter, furnish, or give away under ~~his~~ **the** permit.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 62. IC 7.1-5-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. ~~Unauthorized Dealings Prohibited.~~ **(a)** It is unlawful for a person who is not a permittee to recklessly give away or furnish, to a person other than a guest or a member of ~~his~~ **the permittee's** family, or to recklessly sell, barter, or exchange, an alcoholic beverage unless ~~he~~ **the permittee** is expressly authorized to do so by this title.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 63. IC 7.1-5-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. ~~Sale of Untaxed Alcoholic Beverages Prohibited.~~ **(a)** It is unlawful for a person to recklessly sell, give, withdraw for sale or gift, offer for sale, display, barter, exchange, purchase, receive, possess, transport, or store an alcoholic beverage upon which the appropriate excise tax and applicable license fee have not been paid.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 64. IC 7.1-5-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. ~~Sale Without Permit Prohibited.~~ **(a)** It is unlawful for a person, except as otherwise permitted by this title, to purchase, receive, manufacture, import, or transport, or cause to be imported or transported from another state, territory, or country, into this state, or transport, ship, barter, give away, exchange, furnish, or otherwise handle, or dispose of an alcoholic beverage, or to possess an alcoholic beverage for purpose of sale.

(b) It is unlawful ~~also,~~ for a person knowingly to receive or acquire an alcoholic beverage from a person who does not hold, unrevoked, the appropriate permit under this title to sell, deliver, furnish, or give the alcoholic beverage to ~~him~~ **the person**.

(c) A person who knowingly or intentionally violates subsections (a) or (b) commits a Class B misdemeanor.

SECTION 65. IC 7.1-5-10-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. ~~Sale of Adulterated or Misbranded Beverage Prohibited.~~ **(a)** It is unlawful for a person to sell, offer or expose for sale, or have in ~~his~~ **the person's** possession with

intent to sell, an alcoholic beverage that is adulterated or misbranded.

(b) It is unlawful ~~also,~~ for a person to alter or change a brand, label, mark, design, device, or inscription that has reference to the kind, brand, age, quality, quantity, or other description of the alcoholic beverage contents of a bottle or container.

(c) The possession of an adulterated or misbranded alcoholic beverage by a permittee, or other person engaged in the manufacture or traffic in alcoholic beverages, is prima facie evidence of knowledge of the misbranding or adulteration and of an intent to violate a provision of this section.

(d) The possession by a permittee, or other person engaged in the alcoholic beverage traffic, of a bottle or container used, or intended to be used, for containing an alcoholic beverage on which a label, brand, mark, design, or device has been altered or changed is prima facie evidence of an intent to violate a provision of this section.

(e) A person who knowingly or intentionally violates subsections (a) or (b) commits a Class B misdemeanor.

SECTION 66. IC 7.1-5-10-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. ~~Solicitation of Certain Orders Prohibited.~~ **(a)** It is unlawful for a person to solicit or receive, or to allow his employee to solicit or receive, an order for an alcoholic beverage from another person in violation of a provision of this title.

(b) It is unlawful ~~also,~~ for a person to give information of how an alcoholic beverage may be obtained in violation of a provision of this title.

(c) A person who knowingly or intentionally violates subsections (a) or (b) commits a Class B misdemeanor.

SECTION 67. IC 7.1-5-10-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. ~~Alcoholic Content Regulation.~~ **(a)** It is unlawful, except as otherwise authorized in this title, for a person to sell, give away, barter, furnish, or exchange, or to possess or keep for a prohibited purpose, alcohol as a beverage, or a beverage or liquid likely to be used or intended to be used as a beverage, which has a content of alcohol that is higher than is permitted by the rules and regulation of the commission.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 68. IC 7.1-5-10-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. ~~Sale of Cold Beer Prohibited.~~ **(a)** It is unlawful for the holder of a beer dealer's permit to offer or display for sale, or sell, barter, exchange or give away a bottle, can, container, or package of beer that was iced or cooled by the permittee before or at the time of the sale, exchange, or gift.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 69. IC 7.1-5-10-12, AS AMENDED BY P.L.109-2013, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. **(a) Except as**

provided in subsections (b) through (d), it is unlawful for a permittee to sell, offer to sell, purchase or receive, an alcoholic beverage for anything other than cash. A permittee who extends credit in violation of this section shall have no right of action on the claim.

(b) ~~This section shall not prohibit~~ A permittee ~~from crediting~~ **may credit** to a purchaser the actual price charged for a package or an original container returned by the original purchaser as a credit on a sale, ~~This section shall not prohibit a permittee from refunding~~ **and refund** to a purchaser the amount paid by the purchaser for a container, or as a deposit on a container, if it is returned to the permittee.

(c) ~~This section shall not prohibit~~ A manufacturer ~~from extending~~ **may extend** usual and customary credit for alcoholic beverages sold to a customer who maintains a place of business outside this state when the alcoholic beverages are actually shipped to a point outside this state.

(d) ~~This section shall not prohibit~~ An artisan distiller, a distiller, or a liquor or wine wholesaler ~~from extending~~ **may extend** credit on liquor, flavored malt beverages, and wine sold to a permittee for a period of fifteen (15) days from the date of invoice, date of invoice included. However, if the fifteen (15) day period passes without payment in full, the wholesaler shall sell to that permittee on a cash on delivery basis only.

(e) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 70. IC 7.1-5-10-13, AS AMENDED BY P.L.44-2009, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. **(a)** A permittee who holds a permit to sell at retail shall not cash a check issued by the county office of the division of family resources or by a charitable organization if any part of the proceeds of the check are to be used to purchase an alcoholic beverage.

(b) A permittee who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 71. IC 7.1-5-10-14 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 14. Sales to Habitual Drunkards Prohibited. It is unlawful for a permittee to sell, barter, exchange, give, provide, or furnish an alcoholic beverage to a person whom he knows to be a habitual drunkard.~~

SECTION 72. IC 7.1-5-10-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 15. (a) ~~It is unlawful for a person to sell, barter, deliver, or give away~~ **A person who, knowing that another person is intoxicated, sells, barters, delivers, or gives away** an alcoholic beverage to ~~another~~ **the intoxicated** person ~~who is in a state of intoxication if the person knows that the other person is intoxicated.~~ **commits a Class B misdemeanor.**

(b) In any civil proceeding in which damages are sought from a permittee or a permittee's agent for the refusal to serve a person an alcoholic beverage, it is a complete defense if the permittee or agent reasonably believed that the person was intoxicated or was otherwise not entitled to be served an alcoholic beverage.

(c) After charges have been filed against a person for a violation of subsection (a), the prosecuting attorney shall notify the commission of the charges filed.

SECTION 73. IC 7.1-5-10-16 IS REPEALED [EFFECTIVE JULY 1, 2014]. ~~Sec. 16. Sale to Inmate Prohibited. It is a Class C infraction for a person to furnish an alcoholic beverage to a person confined in a penal facility. It is unlawful, also, for a person who has charge of a penal facility to knowingly permit a prisoner confined within his jurisdiction to receive an alcoholic beverage unless it has been prescribed by a physician as medicine for the prisoner.~~

SECTION 74. IC 7.1-5-10-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 17. ~~Sales at Fair Grounds Prohibited. It is unlawful to sell or dispense~~ **A person who knowingly or intentionally sells or dispenses** an alcoholic beverage on the Indiana State Fair Grounds during the period of the Indiana state fair **commits a Class B misdemeanor.**

SECTION 75. IC 7.1-5-10-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 18. ~~Taking Beverage from Train Prohibited.~~ **(a)** It is unlawful for the holder of a dining car permit to sell an alcoholic beverage to a person for the purpose of its being carried off the train.

(b) It ~~also~~ is unlawful for a person to carry an alcoholic beverage off ~~a~~ **the** train ~~that was purchased on it.~~ **where it was purchased.**

(c) A person who knowingly or intentionally violates subsections (a) or (b) commits a Class B misdemeanor.

SECTION 76. IC 7.1-5-10-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 19. ~~Taking Beverage from Boat Prohibited.~~ **(a)** It is unlawful for the holder of a boat permit to sell an alcoholic beverage to a person for the purpose of its being carried off the boat.

(b) It ~~also~~ is unlawful for a person to carry an alcoholic beverage off ~~a~~ **the** boat ~~that was purchased on it.~~ **where it was purchased.**

SECTION 77. IC 7.1-5-10-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 20. (a) It is unlawful for a holder of a retailer's permit to do any of the following:

(1) Sell alcoholic beverages during a portion of the day at a price that is reduced from the usual, customary, or established price that the permittee charges during the remainder of that day.

(2) Furnish two (2) or more servings of an alcoholic beverage upon the placing of an order for one (1) serving to one (1) person for that person's personal consumption.

(3) Charge a single price for the required purchase of two (2) or more servings of an alcoholic beverage.

(b) Subsection (a) applies to private clubs but does not apply to private functions that are not open to the public.

(c) Notwithstanding subsection (a)(1), it is lawful for a holder of a retailer's permit to sell alcoholic beverages during a portion of the day at a price that is increased from the usual, customary, or established price that the permittee charges during the remainder of that day as long as the price increase is charged when the permittee provides paid live entertainment not

incidental to the services customarily provided.

(d) Notwithstanding subsection (a), section 12 of this chapter, and IC 7.1-5-5-7, it is lawful for a hotel, in an area of the hotel in which alcoholic beverages are not sold, to make available to its registered guests and their guests alcoholic beverages at no additional charge beyond what is to be paid by the registered guests as the room rate.

(e) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 78. IC 7.1-5-10-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 22. **(a)** It is unlawful for a retailer or dealer to sell a flavored malt beverage except under the same conditions that a retailer or dealer is permitted to sell beer or other alcoholic beverages obtained by the fermentation of an infusion or decoction of barley malt or other cereal and hops in water.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 79. IC 7.1-5-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. ~~Importation Limited.~~ **A person who knowingly or intentionally** It ~~is unlawful for a person to import~~ **imports** liquor into this state ~~unless he is specifically authorized to do so by this title.~~ **without specific authorization under this title commits a Class B misdemeanor.**

SECTION 80. IC 7.1-5-11-1.5, AS AMENDED BY P.L.165-2006, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1.5. (a) Except as provided in IC 7.1-3-26, it is unlawful for a person in the business of selling alcoholic beverages in Indiana or outside Indiana to ship or cause to be shipped an alcoholic beverage directly to a person in Indiana who does not hold a valid wholesaler permit under this title. This includes the ordering and selling of alcoholic beverages over a computer network (as defined by IC 35-43-2-3(a)).

(b) **A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.**

(c) Upon a determination by the commission that a person has violated subsection (a), a wholesaler may not accept a shipment of alcoholic beverages from the person for a period of up to one (1) year as determined by the commission.

~~(c)~~ **(d)** The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 81. IC 7.1-5-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. ~~Transportation Limited.~~ **(a)** It is unlawful for a carrier who is required to obtain a carrier's alcoholic permit by ~~IC 1971,~~ **IC** 7.1-3-18 to transport alcoholic beverages over or along a public highway within this state unless ~~he~~ **the person** has ~~applied for, and~~ been issued a carrier's alcoholic permit.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 82. IC 7.1-5-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2014]: Sec. 3. ~~Transportation in Non-Registered Vehicles Prohibited.~~ **(a)** It is unlawful for the holder of a carrier's alcoholic permit to import or transport alcoholic beverages in a vehicle that has not been registered with the commission as required by this title.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 83. IC 7.1-5-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 4. ~~Deliveries Limited.~~ **(a)** It is unlawful for an officer, agent, or employee of a railroad company, express company, or other common carrier to recklessly deliver:

(1) an alcoholic beverage to a person other than the person to whom it is consigned;

(2) it without a written order by the consignee; or

(3) it to a person when the alcoholic beverage has been consigned to a fictitious person or a person under a fictitious name.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 84. IC 7.1-5-11-5, AS AMENDED BY P.L.158-2013, SECTION 129, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. ~~It is a Level 6 felony for a person to transport~~

(a) This section does not apply to a permittee, or a duly licensed carrier for a permittee, who is lawfully entitled to hold or possess an alcoholic beverage without the payment of the excise tax on it prior to the time that it is withdrawn for sale.

(b) A person who transports an alcoholic beverage on a public highway, knowing that any of the taxes due the state on it ~~are~~ **have not been** not paid, **commits a Level 6 felony**. ~~This section does not apply to a permittee, or a duly licensed carrier for a permittee, who is lawfully entitled to hold or possess an alcoholic beverage without the payment of the excise tax on it prior to the time that it is withdrawn for sale.~~

SECTION 7. IC 7.1-5-11-6 IS AMENDED TO READ AS FOLLOWS: Sec. 6. ~~Devious Transportation Prohibited.~~ **(a)** It is unlawful for a person to use or employ, or agree to use or employ, a method of transportation, or device, or fictitious name, or fictitious routing, or to enter into a scheme or method of transportation, or to resort to a trick or device, with the intent to evade, avoid, or defeat the collection of a tax imposed by this title, or to evade or prevent the enforcement of a provision of this title.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 85. IC 7.1-5-11-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 7. ~~False Shipments Prohibited.~~ **(a)** It is unlawful for a consignee to accept or receive a package that contains an alcoholic beverage upon which appears a statement, label, address, superscription, shipping direction, legend, or design which ~~is known to him to be~~ **the person knows is** false or misleading.

(b) It is unlawful ~~also,~~ for a carrier, or other person, to consign, ship, transport, or deliver

a package that contains an alcoholic beverage ~~knowing~~ **if the person knows that** a statement label, address, superscription, shipping direction, legend, or design on it ~~to be~~ **is** false or misleading.

(c) A person who knowingly or intentionally violates subsections (a) or (b) commits a Class B misdemeanor.

SECTION 86. IC 7.1-5-11-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. ~~Delivery to Non-Consignee Prohibited.~~ **(a)** It is unlawful for a person to present or tender for transportation to a carrier or a person acting or assuming to act for a carrier an alcoholic beverage:

(1) for delivery to a person other than the consignee designated by the person offering the alcoholic beverage for shipment; or

(2) for the purpose of effecting a delivery of the alcoholic beverage to a person not permitted to receive it as consignee:

(A) under the provisions of this title; ~~or~~

(B) under the provisions of a rule ~~and regulation~~ of the commission; or

(C) ~~to a~~ **because the** person **is** not the bona fide consignee of the shipment.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 87. IC 7.1-5-11-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. ~~Violation of Transportation Contract Prohibited.~~ **(a)** It is unlawful for a carrier or a person acting or assuming to act for a carrier, to deliver an alcoholic beverage in this state to a person, or at a place, other than the person, or place, or both, designated in the bill of lading or transportation contract.

(b) It is unlawful~~, also,~~ for a person to accept for transportation a shipment containing an alcoholic beverage, knowing that the shipment is intended for a person not permitted to receive it under the provisions of this title, or ~~of~~ **under** a rule ~~or regulation~~ of the commission.

(c) A person who knowingly or intentionally violates subsections (a) or (b) commits a Class B misdemeanor.

SECTION 88. IC 7.1-5-11-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 10. ~~Transportation of Liquor Limited.~~ **(a)** It is unlawful for a person to transport liquor or cause it to be transported upon a public highway into this state from another state, territory, or country, or to transport or cause it to be transported along or over a public highway in this state, unless there is displayed on the outside of the package, in plain view, a mark or label of identification ~~as the commission, by rule or regulation, may require.~~ **required by a rule adopted by the commission.**

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 89. IC 7.1-5-11-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 11. ~~Bill of Lading Required.~~ **(a)** It is unlawful for a person to transport into this state upon a public highway of this state, an alcoholic beverage from another state, territory or country, unless the person accompanying, or in charge of the shipment, ~~shall have~~ **has** present and available for exhibition a bill of lading, or other evidence of ownership or shipment ~~as~~ **required by a rule adopted by the** the commission.~~; by rule or regulation, may require.~~

(b) It is unlawful~~; also,~~ for a person to refuse to exhibit, or permit to be read or examined, the bill of lading or other evidence of ownership or shipment upon a lawful demand of the chairman, or of a police officer of the state, or of a governmental subdivision of it.

(c) A person who knowingly or intentionally violates subsections (a) or (b) commits a Class B misdemeanor.

SECTION 90. IC 7.1-5-11-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. ~~Use of Highway for Evasion Prohibited.~~ **(a)** It is unlawful for a person to use or employ a public highway in this state for the purpose of evading a provision of this title.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class B misdemeanor.

SECTION 91. IC 7.1-5-11-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 13. ~~Keeping of Record Required.~~ **(a)** A railroad company, an express company, and a common carrier shall keep in the office at which delivery of an alcoholic beverage to a consignee is made, a separate record in which shall be entered the information required by this title for the shipment of an alcoholic beverage.

(b) This record shall be open to the inspection of the chairman.

(c) It ~~is unlawful for~~ An agent, officer, or employee of a railroad company, express company, or common carrier ~~to violate a provision of~~ **who knowingly or intentionally violates** this section **commits a Class B misdemeanor**.

SECTION 92. IC 7.1-5-11-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. ~~False Statement Prohibited.~~ **(a)** It is unlawful for a person to make a false statement to a railroad, express, or transportation company for the purpose of obtaining an alcoholic beverage.

(b) It is unlawful~~; also,~~ for a person to make a false statement to a person engaged in the business of transporting goods, wares, and merchandise for the purpose of obtaining the shipment, transportation, or delivery of an alcoholic beverage.

(c) A person who knowingly or intentionally violates subsections (a) or (b) commits a Class B misdemeanor.

SECTION 93. IC 7.1-5-11-15, AS AMENDED BY P.L.165-2006, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 15. ~~It is unlawful for a person to import or transport an alcoholic beverage that is not at that time the absolute property of an authorized permittee under this title.~~ **(a)** This section ~~shall~~ **does** not apply to the shipment of an alcoholic beverage from another state in continuous transit through this state into another

state unless the shipment is intended to evade a provision of this title.

(b) This section ~~shall~~ **does** not prohibit a person, other than permittee, from bringing into this state a quantity of:

(1) wine not exceeding eighteen (18) liters; or

(2) liquor not exceeding one (1) quart;

if the person is a traveler in the ordinary course of travel and if it is not intended for sale to another person.

(c) It is unlawful for a person to import or transport an alcoholic beverage that is not at that time the absolute property of an authorized permittee under this title.

(d) A person who knowingly or intentionally violates this section commits a Class B misdemeanor.

SECTION 94. IC 7.1-5-11-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 16. ~~Transportation on Sunday Prohibited.~~ It is a Class C misdemeanor for a person to **knowingly or intentionally** deliver or transport an alcoholic beverage to the holder of a retailer's or dealer's permit of any type, except a temporary beer or wine permit, on Sunday.

Exhibit 3 CLSP 8/15

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U.S. Supreme Court

Morissette v. United States, 342 U.S. 246 (1952)

Morissette v. United States

No. 12

Argued October 9-10, 1951

Decided January 7, 1952

342 U.S. 246

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Syllabus

1. A criminal intent is an essential element of an offense under 18 U.S.C. § 641, which provides that "whoever embezzles, steals, purloins, or knowingly converts" property of the United States is punishable by fine and imprisonment. Pp. 342 U. S. 247-273.

(a) Mere omission from § 641 of any mention of intent is not to be construed as eliminating that element from the crimes defined. *United States v. Behrman,* 258 U. S. 280, and *United States v. Balint,* 258 U. S. 250, distinguished. Pp. 342 U. S. 250-263.

(b) The history and purposes of § 641 afford no ground for inferring any affirmative instruction from Congress to eliminate intent from the offense of "knowingly converting" or stealing government property. Pp. 342 U. S. 263-273.

2. Where intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury for determination in the light of all relevant evidence, and the trial court may not withdraw or prejudge the issue by instructing the jury that the law raises a presumption of intent from a single act. Pp. 342 U. S. 273-276.

187 F. 2d 427, reversed.

Petitioner was convicted of a violation of 18 U.S.C. § 641. The Court of Appeals affirmed. 187 F. 2d 427. This Court granted certiorari. 341 U.S. 925. *Reversed,* p. 342 U. S. 276.

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MR. JUSTICE JACKSON delivered the opinion of the Court.

This would have remained a profoundly insignificant case to all except its immediate

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parties had it not been so tried and submitted to the jury as to raise questions both fundamental and far-reaching in federal criminal law, for which reason we granted certiorari. [Footnote 1]

On a large tract of uninhabited and untilled land in a wooded and sparsely populated area of Michigan, the Government established a practice bombing range over which the Air Force dropped simulated bombs at ground targets. These bombs consisted of a metal cylinder about forty inches long and eight inches across, filled with sand and enough black powder to cause a smoke puff by which the strike could be located. At various places about the range, signs read "Danger -- Keep Out -- Bombing Range." Nevertheless, the range was known as good deer country, and was extensively hunted.

Spent bomb casings were cleared from the targets and thrown into piles "so that they will be out of the way." They were not sacked or piled in any order, but were dumped in heaps, some of which had been accumulating for four years or upwards, were exposed to the weather and rusting away.

Morissette, in December of 1948, went hunting in this area but did not get a deer. He thought to meet expenses of the trip by salvaging some of these casings. He loaded three tons of them on his truck and took them to a nearby farm, where they were flattened by driving a tractor over them. After expending this labor and trucking them to market in Flint, he realized $84.

Morissette, by occupation, is a fruit stand operator in summer and a trucker and scrap iron collector in winter. An honorably discharged veteran of World War II,

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he enjoys a good name among his neighbors and has had no blemish on his record more disreputable than a conviction for reckless driving.

The loading, crushing and transporting of these casings were all in broad daylight, in full view of passers-by, without the slightest effort at concealment. When an investigation was started, Morissette voluntarily, promptly and candidly told the whole story to the authorities, saying that he had no intention of stealing. but thought the property was abandoned, unwanted and considered of no value to the Government. He was indicted, however, on the charge that he "did unlawfully, wilfully and knowingly steal and convert" property of the United States of the value of $84, in violation of 18 U.S.C. § 641, which provides that "whoever embezzles, steals, purloins, or knowingly converts" government property is punishable by fine and imprisonment. [Footnote 2] Morissette was convicted and sentenced to imprisonment for two months or to pay a fine of $200. The Court of Appeals affirmed, one judge dissenting. [Footnote 3]

On his trial, Morissette, as he had at all times told investigating officers, testified that, from appearances, he believed the casings were cast-off and abandoned, that he did not intend to steal the property, and took it with no

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wrongful or criminal intent. The trial court, however, was unimpressed, and ruled:

"[H]e took it because he thought it was abandoned and he knew he was on government property. . . . That is no defense. . . . I don't think anybody can have the defense they thought the property was abandoned on another man's piece of property."

The court stated: "I will not permit you to show this man thought it was abandoned. . . . I hold in this case that there is no question of abandoned property." The court refused to submit or to allow counsel to argue to the jury whether Morissette acted with innocent intention. It charged:

"And I instruct you that if you believe the testimony of the government in this case, he

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intended to take it. . . . He had no right to take this property. . . . [A]nd it is no defense to claim that it was abandoned because it was on private property. . . . And I instruct you to this effect: that if this young man took this property (and he says he did), without any permission (he says he did), that was on the property of the United States Government (he says it was), that it was of the value of one cent or more (and evidently it was), that he is guilty of the offense charged here. If you believe the government, he is guilty. . . . The question on intent is whether or not he intended to take the property. He says he did. Therefore, if you believe either side, he is guilty."

Petitioner's counsel contended, "But the taking must have been with a felonious intent." The court ruled, however: "That is presumed by his own act."

The Court of Appeals suggested that "greater restraint in expression should have been exercised," but affirmed the conviction because, "As we have interpreted the statute, appellant was guilty of its violation beyond a shadow of doubt, as evidenced even by his own admissions." Its construction of the statute is that it creates several separate and distinct offenses, one being knowing

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conversion of government property. The court ruled that this particular offense requires no element of criminal intent. This conclusion was thought to be required by the failure of Congress to express such a requisite and this Court's decisions in *United States v. Behrman,* 258 U. S. 280, and *United States v. Balint,* 258 U. S. 250.

I

In those cases, this Court did construe mere omission from a criminal enactment of any mention of criminal intent as dispensing with it. If they be deemed precedents for principles of construction generally applicable to federal penal statutes, they authorize this conviction. Indeed, such adoption of the literal reasoning announced in those cases would do this and more -- it would sweep out of all federal crimes, except when expressly preserved, the ancient requirement of a culpable state of mind. We think a resume of their historical background is convincing that an effect has been ascribed to them more comprehensive than was contemplated and one inconsistent with our philosophy of criminal law.

The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil. [Footnote 4] A relation between some mental element and punishment for a

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harmful act is almost as instinctive as the child's familiar exculpatory "But I didn't mean to," and has afforded the rational basis for a tardy and unfinished substitution of deterrence and reformation in place of retaliation and vengeance as the motivation for public prosecution. [Footnote 5] Unqualified acceptance of this doctrine by English common law in the Eighteenth Century was indicated by Blackstone's sweeping statement that to constitute any crime there must first be a "vicious will." [Footnote 6] Common law commentators of the Nineteenth Century early pronounced the same principle, [Footnote 7] although a few exceptions not relevant to our present problem came to be recognized. [Footnote 8]

Crime, as a compound concept, generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand, was congenial to an intense individualism

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and took deep and early root in American soil. [Footnote 9] As the state codified the

common law of crimes, even if their enactments were silent on the subject, their courts assumed that the omission did not signify disapproval of the principle, but merely recognized that intent was so inherent in the idea of the offense that it required no statutory affirmation. Courts, with little hesitation or division, found an implication of the requirement as to offenses that were taken over from the common law. [Footnote 10] The unanimity with which they have adhered to the central thought that wrongdoing must be conscious to be criminal is emphasized by the variety, disparity and confusion of their definitions of the requisite but elusive mental element. However, courts of various jurisdictions, and for the purposes of different offenses, have devised working formulae, if not scientific ones, for the instruction of juries around such terms as "felonious intent," "criminal intent," "malice aforethought," "guilty knowledge," "fraudulent intent," "willfulness," "scienter," to denote guilty knowledge, or "*mens rea,*" to signify an evil purpose or mental culpability. By use or combination of these various tokens, they have sought to protect those who were not blameworthy in mind from conviction of infamous common law crimes.

However, the *Balint* and *Behrman* offenses belong to a category of another character, with very different antecedents and origins. The crimes there involved depend

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on no mental element, but consist only of forbidden acts or omissions. This, while not expressed by the Court, is made clear from examination of a century-old but accelerating tendency, discernible both here [Footnote 11] and in England, [Footnote 12] to call into existence new duties and crimes which disregard any ingredient of intent. The industrial revolution

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multiplied the number of workmen exposed to injury from increasingly powerful and complex mechanisms, driven by freshly discovered sources of energy, requiring higher precautions by employers. Traffic of velocities, volumes and varieties unheard of came to subject the wayfarer to intolerable casualty risks if owners and drivers were not to observe new cares and uniformities of conduct. Congestion of cities and crowding of quarters called for health and welfare regulations undreamed of in simpler times. Wide distribution of goods became an instrument of wide distribution of harm when those who dispersed food, drink, drugs, and even securities, did not comply with reasonable standards of quality, integrity, disclosure and care. Such dangers have engendered increasingly numerous and detailed regulations which heighten the duties of those in control of particular industries, trades, properties or activities that affect public health, safety or welfare.

While many of these duties are sanctioned by a more strict civil liability, [Footnote 13] lawmakers, whether wisely or not, [Footnote 14]

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have sought to make such regulations more effective by invoking criminal sanctions to be applied by the familiar technique of criminal prosecutions and convictions. This has confronted the courts with a multitude of prosecutions, based on statutes or administrative regulations, for what have been aptly called "public welfare offenses." These cases do not fit neatly into any of such accepted classifications of common law offenses, such as those against the state, the person, property, or public morals. Many of these offenses are not in the nature of positive aggressions or invasions, with which the common law so often dealt, but are in the nature of neglect where the law requires care, or inaction where it imposes a duty. Many

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violations of such regulations result in no direct or immediate injury to person or property, but merely create the danger or probability of it which the law seeks to minimize. While such offenses do not threaten the security of the state in the manner of treason, they may be regarded as offenses against its authority, for their occurrence impairs the efficiency of controls deemed essential to the social order as presently constituted. In this respect, whatever the intent of the violator, the injury is the same, and the consequences are injurious or not according to fortuity. Hence, legislation applicable to such offenses, as a matter of policy, does not specify intent as a necessary element. The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities. Also, penalties commonly are relatively small, and conviction does not grave damage to an offender's reputation. Under such considerations, courts have turned to construing statutes and regulations which make no mention of intent as dispensing with it and holding that the guilty act alone makes out the crime. This has not, however, been without expressions of misgiving.

The pilot of the movement in this country appears to be a holding that a tavernkeeper could be convicted for selling liquor to an habitual drunkard even if he did not know the buyer to be such. *Barnes v. State,* 19 Conn. 398 (1849). Later came Massachusetts holdings that convictions for selling adulterated milk in violation of statutes forbidding such sales require no allegation or proof that defendant knew of the adulteration: *Commonwealth v. Farren,* 9 Allen 489 (1864); *Commonwealth v. Nichols,* 10 Allen 199 (1865); *Commonwealth v. Waite,* 11 Allen 264 (1865). Departures from the common law tradition,

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mainly of these general classes, were reviewed and their rationale appraised by Chief Justice Cooley, as follows:

"I agree that as a rule there can be no crime without a criminal intent, but this is not by any means a universal rule. . . . Many statutes which are in the nature of police regulations, as this is, impose criminal penalties irrespective of any intent to violate them, the purpose being to require a degree of diligence for the protection of the public which shall render violation impossible."

People v. Roby, 52 Mich. 577, 579, 18 N.W. 365, 366 (1884).

After the turn of the Century, a new use for crimes without intent appeared when New York enacted numerous and novel regulations of tenement houses, sanctioned by money penalties. Landlords contended that a guilty intent was essential to establish a violation. Judge Cardozo wrote the answer:

"The defendant asks us to test the meaning of this statute by standards applicable to statutes that govern infamous crimes. The analogy, however, is deceptive. The element of conscious wrongdoing, the guilty mind accompanying the guilty act, is associated with the concept of crimes that are punished as infamous. . . . Even there, it is not an invariable element. . . . But, in the prosecution of minor offenses, there is a wider range of practice and of power. Prosecutions for petty penalties have always constituted in our law a class by themselves. . . . That is true though the prosecution is criminal in form."

Tenement House Department of City of New York v. McDevitt, 215 N.Y. 160, 168, 109 N.E. 88, 90 (1915).

Soon, employers advanced the same contention as to violations of regulations prescribed by a new labor law. Judge Cardozo, again for the court, pointed out, as a basis

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for penalizing violations whether intentional or not, that they were punishable only by fine "moderate in amount", but cautiously added that, in sustaining the power so to fine unintended violations "we are not to be understood as sustaining to a like length the power to imprison. We leave that question open." *People ex rel. Price v. Sheffield Farms Co.*, 1918, 225 N.Y. 25, 32-33, 121 N.E. 474, 476, 477.

Thus, for diverse but reconcilable reasons, state courts converged on the same result, discontinuing inquiry into intent in a limited class of offenses against such statutory regulations.

Before long, similar questions growing out of federal legislation reached this Court. Its judgments were in harmony with this consensus of state judicial opinion, the existence of which may have led the Court to overlook the need for full exposition of their rationale in the context of federal law. In overruling a contention that there can be no conviction on an indictment which makes no charge of criminal intent but alleges only making of a sale of a narcotic forbidden by law, Chief Justice Taft, wrote:

"While the general rule at common law was that the *scienter* was a necessary element in the indictment and proof of every crime, and this was followed in regard to statutory crimes even where the statutory definition did not, in terms, include it . . . , there has been a modification of this view in respect to prosecutions under statutes the purpose of which would be obstructed by such a requirement. It is a question of legislative intent to be construed by the court. . . ."

United States v. Balint, supra, 258 U. S. 251-252.

He referred, however, to

"regulatory measures in the exercise of what is called the police power where the emphasis

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of the statute is evidently upon achievement of some social betterment, rather than the punishment of the crimes, as in cases of *mala in se,*"

and drew his citation of supporting authority chiefly from state court cases dealing with regulatory offenses. *Id.* at 258 U. S. 252.

On the same day, the Court determined that an offense under the Narcotic Drug Act does not require intent, saying,

"If the offense be a statutory one, and intent or knowledge is not made an element of it, the indictment need not charge such knowledge or intent."

United States v. Behrman, supra, at 258 U. S. 288.

Of course, the purpose of every statute would be "obstructed" by requiring a finding of intent, if we assume that it had a purpose to convict without it. Therefore, the obstruction rationale does not help us to learn the purpose of the omission by Congress. And since no federal crime can exist except by force of statute, the reasoning of the *Behrman* opinion, if read literally, would work far-reaching changes in the composition of all federal crimes. Had such a result been contemplated, it could hardly have escaped mention by a Court which numbered among its members one especially interested and informed concerning the importance of intent in common law crimes. [Footnote 15] This might be the more expected since the *Behrman* holding did call forth his dissent, in which Mr. Justice McReynolds and Mr. Justice Brandeis joined, omitting any such mention.

It was not until recently that the Court took occasion more explicitly to relate

abandonment of the ingredient of intent not merely with considerations of expediency in obtaining convictions, nor with the *malum prohibitum* classification of the crime, but with the peculiar nature and quality of the offense. We referred to " . . . a now familiar type of legislation whereby penalties serve as

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effective means of regulation", and continued,

"such legislation dispenses with the conventional requirement for criminal conduct -- awareness of some wrongdoing. In the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger."

But we warned: "Hardship there doubtless may be under a statute which thus penalizes the transaction though consciousness of wrongdoing be totally wanting." *United States v. Dotterweich,* 320 U. S. 277, 320 U. S. 280-281, 320 U. S. 284. [Footnote 16]

Neither this Court nor, so far as we are aware, any other has undertaken to delineate a precise line or set forth comprehensive criteria for distinguishing between crimes that require a mental element and crimes that do not. We attempt no closed definition, for the law on the subject is neither settled nor static. The conclusion reached in the *Balint* and *Behrman* cases has our approval and adherence for the circumstances to which it was there applied. A quite different question here is whether we will expand the doctrine of crimes without intent to include those charged here.

3

Stealing, larceny, and its variants and equivalents were among the earliest offenses known to the law that existed before legislation; [Footnote 17] they are invasions of rights of property which stir a sense of insecurity in the whole community and arouse public demand for retribution, the penalty is high and, when a sufficient amount is involved, the infamy is that of a felony, which, says Maitland, is ". . . as bad a word as you can give to man or thing." [Footnote 18] State courts of last resort, on whom fall the heaviest burden

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of interpreting criminal law in this country, have consistently retained the requirement of intent in larceny-type offenses. [Footnote 19] If any state has deviated, the exception has neither been called to our attention nor disclosed by our research.

Congress, therefore, omitted any express prescription of criminal intent from the enactment before us in the light of an unbroken course of judicial decision in all

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constituent states of the Union holding intent inherent in this class of offense, even when not expressed in a statute. Congressional silence as to mental elements in an Act merely adopting into federal statutory law a concept of crime already so well defined in common law and statutory interpretation by the states may warrant quite contrary inferences than the same silence in creating an offense new to general law, for whose definition the courts have no guidance except the Act. Because the offenses before this Court in the *Balint* and *Behrman* cases were of this latter class, we cannot accept them as authority for eliminating intent from offenses incorporated from the common law. Nor do exhaustive studies of state court cases disclose any well considered decisions applying the doctrine of crime without intent to such enacted common law offenses, [Footnote 20] although a few deviations are notable as illustrative of the danger inherent in the Government's contentions here. [Footnote 21]

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The Government asks us by a feat of construction radically to change the weights and

balances in the scales of justice. The purpose and obvious effect of doing away with the requirement of a guilty intent is to ease the prosecution's path to conviction, to strip the defendant of such benefit as he derived at common law from innocence of evil purpose, and to circumscribe the freedom heretofore allowed juries. Such a manifest impairment of the immunities of the individual should not be extended to common law crimes on judicial initiative.

The spirit of the doctrine which denies to the federal judiciary power to create crimes forthrightly [Footnote 22] admonishes that we should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute. And where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as a departure from them.

We hold that mere omission from § 641 of any mention of intent will not be construed as eliminating that element from the crimes denounced.

II

It is suggested, however, that the history and purposes of § 641 imply something more affirmative as to elimination of intent from at least one of the offenses charged under it in this case. The argument does not contest

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that criminal intent is retained in the offenses of embezzlement, stealing and purloining, as incorporated into this section. But it is urged that Congress joined with those, as a new, separate and distinct offense, knowingly to convert government property, under circumstances which imply that it is an offense in which the mental element of intent is not necessary.

Congress has been alert to what often is a decisive function of some mental element in crime. It has seen fit to prescribe that an evil state of mind, described variously in one or more such terms as "intentional," "willful," "knowing," "fraudulent" or "malicious," will make criminal an otherwise indifferent act, [Footnote 23] or increase the degree of the offense or its punishment. [Footnote 24] Also, it has

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at times required a specific intent or purpose which will require some specialized knowledge or design for some evil beyond the common law intent to do injury. [Footnote 25] The law under some circumstances recognizes good faith or blameless intent as a defense, partial defense, or as an element to be considered in mitigation of punishment. [Footnote 26] And treason -- the one crime deemed grave enough for definition in our Constitution itself -- requires not only the duly witnessed overt act of aid and comfort to the enemy but also the mental element of disloyalty or adherence to the enemy. [Footnote 27] In view of the care that has been bestowed upon the subject, it is significant that we have not found, nor has our attention been directed to, any instance in which Congress has expressly eliminated the mental element from a crime taken over from the common law.

The section with which we are here concerned was enacted in 1948, as a consolidation of four former sections of Title 18, as adopted in 1940, which, in turn, were derived from two sections of the Revised Statutes. T he pertinent legislative and judicial history of these antecedents,

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as well as of § 641, is footnoted. [Footnote 28] We find no other purpose in the 1948 reenactment than to collect from scattered sources crimes so kindred as to belong in

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one category. Not one of these had been interpreted to be a crime without intention, and no purpose to differentiate between them in the matter of intent is disclosed.

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No inference that some were and some were not crimes of intention can be drawn from any difference in classification or punishment. Not one fits the congressional classification of the petty offense; each is, at its least, a misdemeanor, and if the amount involved is one hundred

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or more dollars each is a felony. [Footnote 29] If one crime without intent has been smuggled into a section whose dominant offenses do require intent, it was put in ill-fitting and compromising company. The Government apparently did not believe that conversion stood so alone when it

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drew this one-count indictment to charge that Morissette "did unlawfully, wilfully and knowingly steal and convert to his own use." [Footnote 30]

Congress, by the language of this section, has been at pains to incriminate only "knowing" conversions. But, at common law, there are unwitting acts which constitute conversions. In the civil tort, except for recovery of exemplary damages, the defendant's knowledge, intent, motive, mistake, and good faith are generally irrelevant. [Footnote 31] If one takes property which turns out to belong to another, his innocent intent will not shield him from making restitution or indemnity, for his well meaning may not be allowed to deprive another of his own.

Had the statute applied to conversions without qualification, it would have made crimes of all unwitting, inadvertent and unintended conversions. Knowledge, of course, is not identical with intent, and may not have been the most apt words of limitation. But knowing conversion

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requires more than knowledge that defendant was taking the property into his possession. He must have had knowledge of the facts, though not necessarily the law, that made the taking a conversion. In the case before us, whether the mental element that Congress required be spoken of as knowledge or as intent, would not seem to alter its bearing on guilt, for it is not apparent how Morissette could have knowingly or intentionally converted property that he did not know could be converted, as would be the case if it was, in fact, abandoned, or if he truly believed it to be abandoned and unwanted property.

It is said, and at first blush the claim has plausibility, that, if we construe the statute to require a mental element as part of criminal conversion, it becomes a meaningless duplication of the offense of stealing, and that conversion can be given meaning only by interpreting it to disregard intention. But here again a broader view of the evolution of these crimes throws a different light on the legislation.

It is not surprising if there is considerable overlapping in the embezzlement, stealing, purloining, and knowing conversion grouped in this statute. What has concerned codifiers of the larceny-type offense is that gaps or crevices have separated particular

crimes of this general class, and guilty men have escaped through the breaches. The books contain a surfeit of cases drawing fine distinctions between slightly different circumstances under which one may obtain wrongful advantages from another's property. The codifiers wanted to reach all such instances. Probably every stealing is a conversion, but certainly not every knowing conversion is a stealing. "To steal means to *take away from one* in lawful possession without right with the intention to keep wrongfully." (Italics added.) *Irving Trust Co. v. Leff,* 253 N.Y. 359, 364, 171 N.E. 569, 571. Conversion, however, may be consummated without

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any intent to keep and without any wrongful taking, where the initial possession by the converter was entirely lawful. Conversion may include misuse or abuse of property. It may reach use in an unauthorized manner or to an unauthorized extent of property placed in one's custody for limited use. Money rightfully taken into one's custody may be converted without any intent to keep or embezzle it merely by commingling it with the custodian's own, if he was under a duty to keep it separate and intact. It is not difficult to think of intentional and knowing abuses and unauthorized uses of government property that might be knowing conversions but which could not be reached as embezzlement, stealing or purloining. Knowing conversion adds significantly to the range of protection of government property without interpreting it to punish unwitting conversions.

The purpose which we here attribute to Congress parallels that of codifiers of common law in England [Footnote 32] and in the States, [Footnote 33] and demonstrates that the serious problem

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in drafting such a statute is to avoid gaps and loopholes between offenses. It is significant that the English and State codifiers have tried to cover the same type of conduct that we are suggesting as the purpose of Congress here, without, however, departing from the common law tradition that these are crimes of intendment.

We find no grounds for inferring any affirmative instruction from Congress to eliminate intent from any offense with which this defendant was charged.

III

As we read the record, this case was tried on the theory that, even if criminal intent were essential, its presence (a) should be decided by the court (b) as a presumption

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of law, apparently conclusive, (c) predicated upon the isolated act of taking, rather than upon all of the circumstances. In each of these respects we believe the trial court was in error.

Where intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury. State court authorities cited to the effect that intent is relevant in larcenous crimes are equally emphatic and uniform that it is a jury issue. The settled practice and its reason are well stated by Judge Andrews in *People v. Flack,* 125 N.Y. 324, 334, 26 N.E. 267, 270, 11 L.R.A. 807:

"It is alike the general rule of law and the dictate of natural justice that, to constitute guilt, there must be not only a wrongful act, but a criminal intention. Under our system (unless in exceptional cases), both must be found by the jury to justify a conviction for crime. However clear the proof may be, or however incontrovertible may seem to the judge to be the inference of a criminal intention, the question of intent can never be ruled as a question of law, but must always be submitted to the jury. Jurors may be perverse, the ends of justice may be defeated by unrighteous verdicts; but so long as

the functions of the judge and jury are distinct, the one responding to the law, the other to the facts, neither can invade the province of the other without destroying the significance of trial by court and jury. . . ."

It follows that the trial court may not withdraw or prejudge the issue by instruction that the law raises a presumption of intent from an act. It often is tempting to cast in terms of a "presumption" a conclusion which a court thinks probable from given facts. The Supreme Court of Florida, for example, in a larceny case, from selected circumstances which are present in this case, has

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declared a presumption of exactly opposite effect from the one announced by the trial court here:

". . . But where the taking is open and there is no subsequent attempt to conceal the property, and no denial, but an avowal, of the taking, a strong presumption arises that there was no felonious intent, which must be repelled by clear and convincing evidence before a conviction is authorized. . . ."

Kemp v. State, 146 Fla. 101, 104, 200 So. 368, 369.

We think presumptive intent has no place in this case. A conclusive presumption which testimony could not overthrow would effectively eliminate intent as an ingredient of the offense. A presumption which would permit but not require the jury to assume intent from an isolated fact would prejudge a conclusion which the jury should reach of its own volition. A presumption which would permit the jury to make an assumption which all the evidence considered together does not logically establish would give to a proven fact an artificial and fictional effect. [Footnote 34] In either case, this presumption would conflict with the overriding presumption of innocence with which the law endows the accused and which extends to every element of the crime. Such incriminating presumptions are not to be improvised by the judiciary. Even congressional power to facilitate convictions by substituting presumptions for proof is not without limit. *Tot v. United States,* 319 U. S. 463.

Moreover, the conclusion supplied by presumption in this instance was one of intent to steal the casings, and it was based on the mere fact that defendant took them. The court thought the only question was, "Did he intend

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to take the property?" That the removal of them was a conscious and intentional act was admitted. But that isolated fact is not an adequate basis on which the jury should find the criminal intent to steal or knowingly convert, that is, wrongfully to deprive another of possession of property. Whether that intent existed, the jury must determine, nor only from the act of taking, but from that together with defendant's testimony and all of the surrounding circumstances.

Of course, the jury, considering Morissette's awareness that these casings were on government property, his failure to seek any permission for their removal, and his self-interest as a witness, might have disbelieved his profession of innocent intent and concluded that his assertion of a belief that the casings were abandoned was an afterthought. Had the jury convicted on proper instructions it would be the end of the matter. But juries are not bound by what seems inescapable logic to judges. They might have concluded that the heaps of spent casings left in the hinterland to rust away presented an appearance of unwanted and abandoned junk, and that lack of any conscious deprivation of property or intentional injury was indicated by Morissette's good character, the openness of the taking, crushing and transporting of the casings, and the candor with which it was all admitted. They might have refused to brand

Morissette as a thief. Had they done so, that too would have been the end of the matter.

Reversed.

MR. JUSTICE DOUGLAS concurs in the result.

MR. JUSTICE MINTON took no part in the consideration or decision of this case.

[Footnote 1]

341 U.S. 925.

[Footnote 2]

18 U.S.C. § 641, so far as pertinent, reads:

"Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof;"

"* * * *"

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both."

[Footnote 3]

Morissette v. United States, 187 F.2d 427, 431.

[Footnote 4]

For a brief history and philosophy of this concept in Biblical, Greek, Roman, Continental and Anglo-American law *see* Radin, Intent, Criminal, 8 Encyc.Soc.Sci. 126. For more extensive treatment of the development in English Law, *see* 2 Pollock and Maitland, History of English Law, 448-511.

"Historically, our substantive criminal law is based upon a theory of punishing the vicious will. It postulates a free agent confronted with a choice between doing right and doing wrong and choosing freely to do wrong."

Pound, Introduction to Sayre, Cases on Criminal Law (1927).

[Footnote 5]

In *Williams v. New York,* 337 U. S. 241, 337 U. S. 248, we observed that

"Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence."

We also there referred to " . . . a prevalent modern philosophy of penology that the punishment should fit the offender and not merely the crime." *Id.* at 337 U. S. 247. Such ends would seem illusory if there were no mental element in crime.

[Footnote 6]

4 Bl.Comm. 21.

[Footnote 7]

Examples of these texts and their alterations in successive editions in consequence of evolution in the law of "public welfare offenses," as hereinafter recited, are traced in Sayre, Public Welfare Offenses, 33 Col.L.Rev. 55, 66.

[Footnote 8]

Exceptions came to include sex offenses, such as rape, in which the victim's actual age was determinative despite defendant's reasonable belief that the girl had reached age of consent. Absence of intent also involves such considerations as lack of understanding because of insanity, subnormal mentality, or infancy, lack of volition due to some actual compulsion, or that inferred from doctrines of coverture. Most extensive inroads upon the requirement of intention, however, are offenses of negligence, such as involuntary manslaughter or criminal negligence and the whole range of crimes arising from omission of duty. *Cf. Commonwealth v. Welansky,* 316 Mass. 383, 55 N.E.2d 902 (1944).

[Footnote 9]

Holmes, The Common Law, considers intent in the chapter on The Criminal Law, and earlier makes the pithy observation: "Even a dog distinguishes between being stumbled over and being kicked." P. 3. Radin, Intent, Criminal, 8 Encyc.Soc.Sci. 126, 127, points out that in American law "*mens rea* is not so readily constituted from any wrongful act" as elsewhere.

[Footnote 10]

In the *Balint* case, Chief Justice Taft recognized this, but rather overstated it by making no allowance for exceptions such as those mentioned in n 8.

[Footnote 11]

This trend and its causes, advantages and dangers have been considered by Sayre, Public Welfare Offenses, 33 Col.L.Rev. 55; Hall, Prolegomena to a Science of Criminal Law, 89 U. of Pa.L.Rev. 549; Hall, Interrelations of Criminal Law and Torts, 43 Col.L.Rev. 753, 967.

[Footnote 12]

The changes in English law are illustrated by Nineteenth Century English cases. In 1814, it was held that one could not be convicted of selling impure foods unless he was aware of the impurities. *Rex v. Dixon,* 3 M. & S. 11 (K.B.1814). However, thirty-two years later, in an action to enforce a statutory forfeiture for possession of adulterated tobacco, the respondent was held liable even though he had no knowledge of, or cause to suspect, the adulteration. Countering respondent's arguments, Baron Parke said,

"It is very true that, in particular instances, it may produce mischief, because an innocent man may suffer from his want of care in not examining the tobacco he has received, and not taking a warranty; but the public inconvenience would be much greater if, in every case, the officers were obliged to prove knowledge. They would be very seldom able to do so."

Regina v. Woodrow, 15 M. & W. 404, 417 (Exch. 1846). Convenience of the prosecution thus emerged as a rationale. In 1866, a quarry owner was held liable for the nuisance caused by his workmen dumping refuse into a river, in spite of his plea that he played no active part in the management of the business and knew nothing about the dumping involved. His knowledge or lack of it was deemed irrelevant. *Regina v. Stephens,* L.R. 1 Q.B. 702 (1866). Bishop, referring to this decision, says,

"The doctrine of this English case may almost be deemed new in the criminal law. . . . And, properly limited, the doctrine is eminently worthy to be followed hereafter."

1 Bishop, New Criminal Law (8th ed. 1892) § 1076. After these decisions, statutes prohibiting the sale of impure or adulterated food were enacted. Adulteration of Food Act (35 & 36 Vict. c. 74, § 2 (1872)); Sale of Food and Drugs Act of 1875 (38 & 39 Vict. c. 63). A conviction under the former was sustained in a holding that no guilty knowledge or intent need be proved in a prosecution for the sale of adulterated butter, *Fizpatrick v. Kelly,* L.R. 8 Q.B. 337 (1873), and in *Betts v. Armstead,* L.R. 20 Q.B.D.

771 (1888), involving the latter statute, it was held that there was no need for a showing that the accused had knowledge that his product did not measure up to the statutory specifications.

[Footnote 13]

The development of strict criminal liability regardless of intent has been roughly paralleled by an evolution of a strict civil liability for consequences regardless of fault in certain relationships, as shown by Workmen's Compensation Acts, and by vicarious liability for fault of others as evidenced by various Motor Vehicle Acts.

[Footnote 14]

Consequences of a general abolition of intent as an ingredient of serious crimes have aroused the concern of responsible and disinterested students of penology. Of course, they would not justify judicial disregard of a clear command to that effect from Congress, but they do admonish us to caution in assuming that Congress, without clear expression, intends in any instance to do so.

Radin, Intent, Criminal, 8 Encyc.Soc.Sci. 126, 130, says,

". . . as long as in popular belief intention and the freedom of the will are taken as axiomatic, no penal system that negates the mental element can find general acceptance. It is vital to retain public support of methods of dealing with crime."

Again,

"The question of criminal intent will probably always have something of an academic taint. Nevertheless, the fact remains that the determination of the boundary between intent and negligence spells freedom or condemnation for thousands of individuals. The watchfulness of the jurist justifies itself at present in its insistence upon the examination of the mind of each individual offender."

Sayre, Public Welfare Offenses, 33 Col.L.Rev. 55, 56, says:

"To inflict substantial punishment upon one who is morally entirely innocent, who caused injury through reasonable mistake or pure accident, would so outrage the feelings of the community as to nullify its own enforcement."

Hall, Prolegomena to a Science of Criminal Law, 89 U. of Pa.L.Rev. 549, 569, appears somewhat less disturbed by the trend, if properly limited, but, as to so-called public welfare crimes, suggests that

"There is no reason to continue to believe that the present mode of dealing with these offenses is the best solution obtainable, or that we must be content with this sacrifice of established principles. *The raising of a presumption of knowledge might be an improvement.*"

(Italics added.)

In *Felton v. United States,* 96 U. S. 699, the Court said,

"But the law at the same time is not so unreasonable as to attach culpability, and consequently to impose punishment, where there is no intention to evade its provisions. . . ."

[Footnote 15]

Holmes, The Common Law.

[Footnote 16]

For the place of the mental element in offenses against the revenues, *see Spies v. United States,* 317 U. S. 492; *United States v. Scharton,* 285 U. S. 518.

[Footnote 17]

2 Russell on Crime (10th ed., Turner, 1950) 1037.

[Footnote 18]

2 Pollock & Maitland, History of English Law, 465.

[Footnote 19]

Examples of decision in diverse jurisdictions may be culled from any digest. Most nearly in point are *Johnson v. State,* 36 Tex. 375, holding that to take a horse running at large on the range is not larceny in the absence of an intent to deprive an owner of his property; *Jordan v. State,* 107 Tex.Cr.R. 414, 296 S.W. 585, that, if at the time of taking parts from an automobile, the accused believed that the car had been abandoned by its owner, he should be acquitted; *Fetkenhauer v. State,* 112 Wis. 491, 88 N.W. 294, that an honest, although mistaken, belief by defendant that he had permission to take property should be considered by the jury; and *Devine v. People,* 20 Hun, N.Y., 98, holding that a claim that an act was only a practical joke must be weighed against an admitted taking of property.

Others of like purport are *Farzley v. State,* 231 Ala. 60, 163 So. 394; *Nickerson v. State,* 22 Ala.App. 640, 119 So. 243; *People v. Williams,* 73 Cal.App.2d 154, 166 P.2d 63; *Schiff v. People,* 111 Colo. 333, 141 P.2d 892; *Kemp v. State,* 146 Fla. 101, 200 So. 368; *Perdew v. Commonwealth,* 260 Ky. 638, 86 S.W.2d 534, holding that appropriation by a finder of lost property cannot constitute larceny in the absence of intent; *People v. Shaunding,* 268 Mich. 218, 255 N.W. 770; *People v. Will,* 289 N.Y. 413, 46 N.E.2d 498; *Van Vechten v. American Eagle Fire Ins. Co.,* 239 N.Y. 303, 146 N.E. 432; *Thomas v. Kessler,* 334 Pa. 7, 5 A.2d 187; *Barnes v. State,* 145 Tex.Cr.R. 131, 166 S.W.2d 708; *Sandel v. State,* 131 Tex.Cr.R. 132, 97 S.W.2d 225; *Weeks v. State,* 114 Tex.Cr.R. 406, 25 S.W.2d 855; *Heskew v. State,* 18 Tex.App. 275; *Page v. Commonwealth,* 148 Va. 733, 138 S.E. 510, holding reversible error to exclude evidence having a tendency to throw light on the question of the bona fides of one accused of larceny; *Butts v. Commonwealth,* 145 Va. 800, 133 S.E. 764; *State v. Levy,* 113 Vt. 459, 35 A.2d 853, holding that the taking of another's property in good faith by inadvertence or mistake does not constitute larceny.

[Footnote 20]

Sayre, Public Welfare Offenses, 33 Col.L.Rev. 55, 73, 84, cites and classifies a large number of cases and concludes that they fall roughly into subdivisions of (1) illegal sales of intoxicating liquor, (2) sales of impure or adulterated food or drugs, (3) sales of misbranded articles, (4) violations of anti-narcotic Acts, (5) criminal nuisances, (6) violations of traffic regulations, (7) violations of motor vehicle laws, and (8) violations of general police regulations, passed for the safety, health or wellbeing of the community.

[Footnote 21]

Sayre points out that, in criminal syndicalism or sedition cases, where the pressure to convict is strong, it has been accomplished by dispensing with the element of intent, in some instances by analogy with the public welfare offense. Examples are *State v. Hennessy,* 114 Wash. 351, 195 P. 211; *People v. Ruthenberg,* 229 Mich. 315, 201 N.W. 358; *State v. Kahn,* 56 Mont. 108, 182 P. 107; *State v. Smith,* 57 Mont. 563, 190 P. 107. *Compare People v. McClennegen,* 195 Cal. 445, 234 P. 91. This although intent is of the very essence of offenses based on disloyalty. *Cf. Cramer v. United States,* 325 U. S. 1; *Haupt v. United States,* 330 U. S. 631, where innocence of intention will defeat a charge even of treason.

[Footnote 22]

United States v. Hudson and Goodwin, 7 Cranch 32; *United States v. Gooding,* 12

Wheat. 460.

[Footnote 23]

18 U.S.C. § 81, *Arson:* " . . . willfully and maliciously . . . "; 18 U.S.C. § 113, *Assault:* " (a) . . . with intent to commit murder or rape. . . . (b) . . . with intent to commit any felony, except murder or rape . . . "; 18 U.S.C. § 152, *Bankruptcy -- concealment of assets, false oaths and claims, bribery:* " . . . knowingly and fraudulently . . . "; 18 U.S.C. § 201, *Bribery and Graft:* " . . . with intent to influence . . . "; 18 U.S.C. § 471, *Counterfeiting and Forgery:* " . . . with intent to defraud . . . "; 18 U.S.C. § 594, *Intimidation of voters:* " . . . for the purpose of . . . "; 18 U.S.C. § 1072, *Concealing escaped prisoner:* " . . . willfully . . . "; 61 Stat. 151, 29 U.S.C. § 162, *Interference with a member of the National Labor Relations Board or an agent of the Board in his performance of his duties:* " . . . willfully . . . "; 52 Stat. 1069, 29 U.S.C. § 216(a), *Violations of provisions of Fair Labor Standards Act:* " . . . willfully . . . "; 37 Stat. 251, 21 U.S.C. § 23, *Packing or selling misbranded barrels of apples:* " . . . knowingly. . . ."

[Footnote 24]

18 U.S.C. § 1112, Manslaughter, " . . . the unlawful killing of a human being without malice", if voluntary, carries a maximum penalty of imprisonment not to exceed ten years. If the killing is "with malice aforethought", the crime is murder, 18 U.S.C. § 1111, and, if of the first degree, punishable by death or life imprisonment, or, if of the second degree, punishable by imprisonment for any term of years or life.

[Footnote 25]

18 U.S.C. § 242; *Screws v. United States*, 325 U. S. 91.

[Footnote 26]

I.R.C. §§ 145(a), 145(b), 53 Stat. 62, as amended, 26 U.S.C. §§ 145(a), 145(b), as construed in *Spies v. United States*, 317 U. S. 492; 52 Stat. 1069, 29 U.S.C. § 216(a), stating the criminal sanctions for violations of the Fair Labor Standards Act, provides that:

"No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection."

N.Y. Penal Law § 1306 provides that,

"Upon an indictment for larceny, it is a sufficient defense that the property was appropriated openly and avowedly, under a claim of title preferred in good faith, even though such claim is untenable."

[Footnote 27]

U.S.Const. Art. III, § 3, cl. 1.

This provision was to prevent incrimination of mere mental operations such as "compassing" the death of the King. *See Cramer v. United States*, 325 U. S. 1. To hold that a mental element is necessary to a crime is, of course, not to say that it is all that is necessary.

[Footnote 28]

The Reviser's Note to 18 U.S.C. § 641 states that it is derived from 18 U.S.C. (1940 ed.) §§ 82, 87, 100, and 101 which, in turn, are from Rev.Stat. §§ 5438 and 5439. We shall consider only the 1940 code sections and their interpretations.

18 U.S.C. (1940 ed.) § 82 reads:

"Whoever shall take and carry away or take for his use, or for the use of another, with intent to steal or purloin . . . any property of the United States . . . shall be punished as

follows. . . ."

In *United States v. Anderson,* 45 F.Supp. 943, a prosecution for conspiracy to violate that section, District Judge Yankwich said:

"It has been before the courts in very few cases. But such courts as have had cases under it, including our own Ninth Circuit Court of Appeals, have held that the object of the section is to introduce the crime of larceny into the Federal Criminal Code."

"In *Frach v. Mass,* 9 Cir., 1939, 106 F.2d 820, 821, we find these words: 'Larceny of property of the United States is made a crime by 18 U.S.C. § 82.'"

"This means of course, that, in interpreting the statute, we may apply the principles governing the common law crime of larceny, as interpreted by the courts of various states."

45 F.Supp. at 945.

United States v. Trinder, 1 F.Supp. 659, was a prosecution of a group of boys, under § 82, for "stealing" a government automobile. They had taken it for a joy ride without permission, fully intending to return it when they were through. Their plans went awry when the auto came to grief against a telephone pole. In dismissing the complaint, the District Judge said:

"Upon principle and authority, there was no stealing, but merely trespass; secret borrowing. At common law and likewise by the federal statute (18 U.S.C. § 82) adopting common law terms, stealing in general imports larceny; that is, felonious taking and intent to permanently deprive the owner of his property."

1 F.Supp. at 660.

18 U.S.C. (1940 ed.) § 87, entitled "Embezzling arms and stores", provides:

"Whoever shall steal, embezzle, or knowingly apply to his own use, or unlawfully sell, convey, or dispose of, any ordnance, arms, ammunition, clothing, subsistence, stores, money, or other property of the United States, furnished or to be used for the military or naval service, shall be punished as prescribed in sections 80 and 82 to 86 of this title."

No cases appear to have been decided relating to the element of intent in the acts proscribed in that section.

18 U.S.C. (1940 ed.) § 100, "Embezzling public moneys or other property", states that:

"Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be fined not more than $5,000, or imprisoned not more than five years, or both."

The only noted case of consequence is *Crabb v. Zerbst,* 99 F.2d 562, to which the dissent below referred at some length. The appellant there was convicted of feloniously taking and carrying away certain personal property of the United States in violation of § 46 of the Criminal Code, 18 U.S.C. (1940 ed.) § 99, and had been sentenced to seven years' imprisonment. He argued that the five-year limitation of sentence in 18 U.S.C. (1940 ed.) § 100 for stealing property of the United States reduced the ten-year limitation in § 99 for feloniously taking and carrying away property of the United States to five years also.

The Court of Appeals rejected his argument, holding that the crime of "stealing" in § 100 was separate and distinct from the offense specified in § 99, on the ground that § 100 was a broadening of the common law crime of larceny to foreclose any avenue by which one might, in the process of pleading, escape conviction for one offense by

proving that he had committed another only a hair's breadth different.

In the course of its opinion, it advanced the following pertinent observations:

"That felonious taking and carrying away of property which may be the subject of the offense constitutes the common law offense of larceny cannot be disputed. . . . However, it is doubtful if at common law any fixed definition or formula (as to the meaning of 'larceny') was not strained in its application to some of the cases clearly constituting the offense. Modern criminal codes treat the offense in various ways. Some define the offense by following the old cases, and are merely declaratory of the common law, while others have broadened the offense to include offenses previously known as embezzlement, false pretenses, and even felonious breaches of trust."

"As pointed out above, the modern tendency is to broaden the offense of larceny, by whatever name it may be called, to include such related offenses as would tend to complicate prosecutions under strict pleading and practice. In some of these statutes, the offense is denominated 'theft' or 'stealing.' No statute offers a clearer example of compromise between the common law and the modern code than the two sections here involved. Section 46 [18 U.S.C. § 99 (1940 ed.)] deals with robbery and larceny, the description of the latter being taken from the common law. Section 47 [18 U.S.C. § 100 (1940 ed.)] denounces the related offenses which might be included with those described in section 46 under a code practice seeking to avoid the pitfalls of technical pleading. In it, the offense of embezzlement is included by name, without definition. Then, to cover such cases as may shade into larceny, as well as any new situation which may arise under changing modern conditions and not envisioned under the common law, it adds the words steal or purloin. . . . Stealing, having no common law definition to restrict its meaning as an offense, is commonly used to denote any dishonest transaction whereby one person obtains that which rightfully belongs to another and deprives the owner of the rights and benefits of ownership, but may or may not involve the element of stealth usually attributed to the word *purloin*. . . . Thus, in any case involving larceny as defined by the common law, section 46 [18 U.S.C. § 99 (1940 ed.)] would apply. Where the offense is embezzlement, or its nature so doubtful as to fall between larceny and embezzlement, it may be prosecuted under section 47 [18 U.S.C. § 100 (1940 ed.)]."

99 F.2d at 564-565.

The reference in *Crabb v. Zerbst* to 18 U.S.C. (1940 ed.) § 99, the robbery and larceny statute then operative, suggests examination of its successor in today's code. For purpose of clarification, that section states that:

"Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than $5,000, or imprisoned not more than ten years, or both."

The Reviser's Note to 18 U.S.C. § 641, makes no mention of it as a successor to that section. The present robbery statute is 18 U.S.C. § 2112, "Personal property of United States", providing that:

"Whoever robs another of any kind or description of personal property belonging to the United States, shall be imprisoned not more than fifteen years."

The Reviser's Note to that section recites that it is derived from § 99 of the 1940 Code, and "That portion of said section 99 relating to felonious taking was omitted as covered by section 641 of this title", which makes it clear that, notwithstanding the absence of any reference to 18 U.S.C. (1940 ed.) § 99 in the Note to 18 U.S.C. § 641, the crime of larceny by a felonious taking and carrying away has been transported directly from the former into the latter.

18 U.S.C. (1940 ed.) § 101 is the forerunner of that part of present § 641 dealing with receiving stolen property, and has no application to the problem at hand.

The history of § 641 demonstrates that it was to apply to acts which constituted larceny or embezzlement at common law and also acts which shade into those crimes but which, most strictly considered, might not be found to fit their fixed definitions. It is also pertinent to note that it renders one subject to its penalty who "knowingly converts to his use" property of the United States. The word "converts" does not appear in any of its predecessors. 18 U.S.C. (1940 ed.) § 82 is applicable to

"Whoever shall take and carry away or take for his use, or for the use of another, with intent to steal or purloin . . . any property of the United States . . . shall be punished as follows. . . ."

18 U.S.C. (1940 ed.) § 87 uses the words "knowingly apply to his own use". Neither 18 U.S.C. (1940 ed.) §§ 99, 100, nor 101 has any words resembling "knowingly converts to his own use." The 1948 Revision was not intended to create new crimes, but to recodify those then in existence. We find no suggestion that a guilty intent was not a part of each crime now embodied in § 641.

[Footnote 29]

18 U.S.C. §§ 1, 641.

[Footnote 30]

Had the indictment been limited to a charge in the words of the statute, it would have been defective if, in the light of the common law, the statute itself failed to set forth expressly, fully, and clearly all elements necessary to constitute the offense. *United States v. Carll,* 105 U. S. 611.

[Footnote 31]

Harker v. Dement, 9 Gill (Md.), 7, 52 Am.Dec. 670 (1850); *Railroad Co. v. O'Donnell,* 49 Ohio St. 489, 32 N.E. 476 (1892). The rationale underlying such cases is that, when one clearly assumes the rights of ownership over property of another, no proof of intent to convert is necessary. It has even been held that one may be held liable in conversion even though he reasonably supposed that he had a legal right to the property in question. *Row v. Home Sav. Bank,* 306 Mass. 522, 29 N.E.2d 552 (1940). For other cases in the same vein, *see* those collected in 53 Am.Jur. 852-854. These authorities leave no doubt that Morissette could be held liable for a civil conversion for his taking of the property here involved, and the instructions to the jury might have been appropriate in such a civil action. This assumes, of course, that actual abandonment was not proven, a matter which petitioner should be allowed to prove if he can.

[Footnote 32]

The Larceny Act of 1916, 6 & 7 Geo. V, c. 50, an Act "to consolidate and simplify the Law relating to Larceny triable on Indictment and Kindred Offences," provides:

"1. For the purposes of this Act -- "

"(1) A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent, at the time of such taking, permanently to deprive the owner thereof:"

"Provided that a person may be guilty of stealing any such thing notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner. . . ."

For the growth and development of the crime of larceny in England, *see* 2 Russell on Crime (10th ed., Turner, 1950), 1037-1222, from which the material above was taken.

[Footnote 33]

N.Y.Penal Code, § 1290, defines larceny as follows:

"A person who, with the intent to deprive or defraud another of the use and benefit of property or to appropriate the same to the use of the taker, or of any other person other than the true owner, wrongfully takes, obtains or withholds, by any means whatever, from the possession of the true owner or of any other person any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind, steals such property, and is guilty of larceny."

The same section provides further that it shall be no defense to a prosecution that:

"2. The accused in the first instance obtained possession of, or title to, such property lawfully, provided he subsequently wrongfully withheld or appropriated such property to his own use or the use of any person not entitled to the use and benefit of such property. . . ."

The Historical Note to that section discloses that it represents an attempt to abolish the distinctions between kinds of larcenies. Laws 1942, c. 732, § 1, provided:

"It is hereby declared as the public policy of the state that the best interests of the people of the state will be served, and confusion and injustice avoided, by eliminating and abolishing the distinctions which have hitherto differentiated one sort of theft from another, each of which, under section twelve hundred and ninety of the penal law, was denominated a larceny, to-wit: common law larceny by asportation, common law larceny by trick and device, obtaining property by false pretenses, and embezzlement."

[Footnote 34]

Cf. Morgan, Instructing the Jury Upon Presumptions and Burden of Proof, 47 Harv.L.Rev. 59; Morgan, Some Observations Concerning Presumption, 44 Harv.L.Rev. 906.

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Exhibit 4
CLSP
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Eddie Dean Gregory v. State of Indiana

No. 171S1

SUPREME COURT OF INDIANA

259 Ind. 652; 291 N.E.2d 67; 1973 Ind. LEXIS 593

January 9, 1973, Filed

PRIOR HISTORY: [***1] From the Marion Criminal Court, Division Two, *Robert J. Fink*, Special Judge.

Appellant was charged with robbery, but the trial judge directed a verdict of acquittal as to robbery, and the case was submitted to the jury upon the included theft offense. Defendant was convicted and appeals.

DISPOSITION: *Affirmed.*

COUNSEL: *Palmer K. Ward*, of Indianapolis, for appellant.

Theodore L. Sendak, Attorney General, *Michael Schaefer*, Deputy Attorney General, for appellee.

JUDGES: Perntice, J. Arterburn, C.J., and DeBruler, Givan and Hunter, JJ., concur.

OPINION BY: PRENTICE

OPINION

[*653] [**68] Defendant (Appellant) was charged with Robbery in violation of Acts of 1941, ch. 148, § 6, Burns Ind. Stat. Ann. § 10-4101 (1956 Repl.), IC 1971, 35-13-4-6. At the close of the State's case in chief, the trial judge directed a verdict of acquittal as to robbery, and the case was submitted to the jury upon the included theft offenses. He was convicted of theft, not from the person, of a sum less than $ 100.00, in violation of Acts of 1963 (Spec. Sess.), ch. 10, § 3, Burns Ind. Stat. Ann. § 10-3030 (1956 Repl.), IC 1971, 35-17-5-3 and Acts of 1963 (Spec. Sess.), ch. 10, § 12, Burns Ind. [***2] Stat. Ann. § 10-3039, IC 1971, 35-17-5-12, as a lesser included offense, and sentenced to imprisonment for not less than one nor more than five years and fined $ 500.00 and costs.

[*654] This appeal challenges the verdict as being contrary to law in that (1) the affidavit contains no allegation that the defendant "intended" to deprive the owner of the money allegedly taken, whereas such intent is an essential element of the crime, as defined by the statutes; and in that (2) the affidavit alleged that the money taken was the property of George Robertson, whereas the evidence disclosed that it, in fact, belonged to one Carolyn Alexander. The issues will be treated in that order.

The evidence, when viewed most favorably to the State, disclosed that the prosecuting witness, George Robertson, was approached, as he entered his automobile, first by Alfred Henry, a co-defendant, and immediately thereafter by the defendant, both of whom requested a ride. Henry was in the vehicle with Robertson, but the defendant was standing beside the vehicle. Henry brandished a pistol and said, "Hold it George, I don't want to hurt you." Whereupon, Robertson said, "Awe, man, what's this?" Henry [***3] said, "You know what it

is," and began going through Robertson's pockets and asked where it was. Robertson replied, "Where's what at?", to which Henry answered, "The drugs." The defendant, during this time, was issuing instructions to Henry and said, "Well, have he got any money." Henry continued his search of Robertson, and found and took $ 106.00 from his pocket. Thereupon, Henry exited from the automobile and both he and the defendant ran away.

(1) Although the defendant, under this proposition, does not make a frontal attack, his argument is an oblique charge that theft is not an included offense in a charge of robbery, in that the "intent to deprive" is specified by statute as an element of theft but not as an element of robbery. We hold that in this case theft was a properly included offense in the robbery charged and that the failure to specifically allege an "intent to deprive" in the charging affidavit did not preclude a verdict of guilty of such lesser included offense.

[*655] Although the statute defining robbery does not use the word "intent", it is there by irrefutable inference. In Indiana, all crimes are statutory, but this does not render merely *malum prohibitum* [***4] those crimes that are, and always were, *malum in se*. That which is merely malum prohibitum, i.e. an offense only because prohibited by statute, does not require intent and knowledge, unless specified by the prohibiting statute. However, that which is malum in se, i.e. inherently and naturally evil as adjudged by the senses of a civilized society, is wrong and criminal by reason of such knowledge or intent; and such crimes taken over from the common law, -- the traditional crimes, including robbery and theft -- have always included the *mens rea* as an element. It follows, and has been so held, that the omission of such words as "knowingly" and "intent" from a statute defining a crime is not conclusive on whether or not guilty knowledge is an essential element of such crime. Whether or not criminal intent is an element of a statutory crime is a matter of statutory construction and must be determined in view of the legislative intent. Corpus Juris Secundum, *Criminal Law* § 30.

[**69] The statute prohibiting robbery, as well as the offense against property statutes, as they apply to thefts, are adoptive of the common law. Both require criminal intent and knowledge. [***5] whether specified by the wording of the statute or not.

Was the affidavit, set out below in pertinent parts adequate?

> "BE IT REMEMBERED. That, on this day before me, NOBLE R. PEARCY Prosecuting Attorney of the Nineteenth Judicial Circuit, personally came GEORGE ROBERTSON, JR. who, being duly sworn, upon his oath says that ALFRED HENRY and EDDIE DEAN GREGORY on or about the 8th day of APRIL, A.D. 1970, at and in the County of Marion in the State of Indiana, did then and there unlawfully, feloniously, forcibly by violence and putting GEORGE ROBERTSON, JR. in fear, take from the person and possession of the said GEORGE ROBERTSON, JR., [*656] money, then and there of the value of One Hundred Five Dollars ($ 105.00), in lawful money, which property the said GEORGE ROBERTSON, JR. then and there lawfully held in his possession and was then and there the property of GEORGE ROBERTSON, JR. then and there being . . . ."

We answer in the affirmative. As a charge of robbery, it was substantially in the words of the statute. The requisite felonious intent is inferred by the allegations of violence, putting in fear and taking from the person, just as it is inferred in the statute. [***6] What is the felonious intent inferred? Obviously, it is the intent to take the property, thereby depriving the owner of its use and possession. The intent requisite to the crime of theft then, is also requisite to the crime of robbery. Although not faced with the specific issue presented here, we have previously held a theft from the person to be an offense included in robbery. *Hitch v. State (1972), 259 Ind. 1, 284 N. E. 2d 783.* And under the case law prior to the adoption of the aforementioned Burns §§ 10-3030 and 10-3039, larcenies were held to be included in robbery. *Jacoby v. State (1936), 210 Ind. 49, 199 N. E. 2d 563; Hickey v. The State (1864), 23 Ind. 21; Rains v. The State (1893), 137 Ind. 83, 36 N. E. 532.*

In *Hamilton v. State (1895), 142 Ind. 276, 41 N. E. 588*, the information upon which the appellant was prosecuted for larceny was challenged for failure to allege that the money was taken with intent to deprive the owner of it. We there held that the allegation that the

appellant did "unlawfully and feloniously take, etc." was the equivalent and that it supplied the criminal intent. We conclude that the statutory requisites [***7] of *force, violence, and fear* and the allegations of such in the affidavit likewise supply the requisite criminal "intent to deprive".

(2) It was not required that the evidence prove George Robertson to be the owner, in the title sense, of the money [*657] taken from him. This point is clearly covered by statute. Acts of 1963 (Spec. Sess.), ch. 10, § 13, p. 10, 1972 Supp. Burns Ind. Stat. Ann. § 10-3040. IC 1971, 35-17-5-13, wherein it is declared that "owner" means a person, other than the actor, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the actor has no authority to obtain or exert the complained of control over the property. Further, we have, on many occasions, held that to support a charge of larceny it need only be shown that possession of property was taken from one lawfully entitled thereto. *Sneed, Lockridge v. State (1956), 235 Ind. 198, 130 N. E. 2d 32; Rhoades v. State (1946), 224 Ind. 569, 70 N. E. 2d 27; Smith v. State (1918), 187 Ind. 253, 118 N. E. 954.*

The evidence disclosed not only that the money taken was not the property [***8] of the defendant but also that the prosecuting [**70] witness was in possession of the same and lawfully entitled thereto.

Finding no error, the judgment is affirmed.

Arterburn, C.J., and DeBruler, Givan and Hunter, JJ., concur.

Exhibit 5
CLSP
8/15

LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
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FISCAL IMPACT STATEMENT

LS 6305
BILL NUMBER: HB 1006

NOTE PREPARED: May 3, 2013
BILL AMENDED: Apr 26, 2013

SUBJECT: Various Changes to the Criminal Code.

FIRST AUTHOR: Rep. Steuerwald
FIRST SPONSOR: Sen. Steele

BILL STATUS: Enrolled

FUNDS AFFECTED: X **GENERAL**
X **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

A. It makes various changes to the criminal code, including changes to the law concerning community corrections, probation, sentencing, probation funding, drug and alcohol program funding, involuntary manslaughter, communicable disease crimes, battery, hazing, obstruction of traffic crimes, interference with medical services crimes, kidnapping, confinement, criminal mischief, railroad mischief, computer crimes, theft, deception and fraud crimes, timber spiking, offenses against general public administration, criminal gang activity crimes, stalking, offenses against public health, child care provider crimes, weapon crimes, drug crimes, protection zones, and rape.
B. It repeals the law concerning criminal deviate conduct, and consolidates the crime of criminal deviate conduct into the crime of rape. It changes the phrase "deviate sexual conduct" to "other sexual conduct".
C. It repeals laws concerning carjacking, and failure of a student athlete to disclose recruitment.
D. It removes the current four-level felony penalty classification and replaces that classification with a six-level felony penalty classification. It assigns new felony penalties to each crime.
E. It permits a judge to contact the local Department of Child Services directly to report suspected cases of child abuse or neglect under certain conditions, and provides that a child who lives in the same household as a person charged with and awaiting trial for certain sex offenses is a child in need of services.
F. It removes the misdemeanor penalty for the entry or attempted entry by a person under the age of 21 into certain facilities that permit gambling and makes the violation an infraction.
G. It urges the Legislative Council to: (1) require an existing study committee to evaluate the criminal law

statutes in IC 7.1 and IC 9 and to make recommendations to the General Assembly for the modification of the criminal law statutes in those titles; (2) study recidivism in Indiana; (3) study criminal justice funding issues; (4) study advisory sentences; and (5) study the suspendibility of sentences.

H. It makes technical corrections and conforming amendments.

(The introduced version of this bill was prepared by the Criminal Code Evaluation Commission.)

Effective Date: July 1, 2013; July 1, 2014.

Explanation of State Expenditures: *Summary* – The sentencing changes in this bill are estimated to reduce the prison population in the next biennium and through 2020. The following table summarizes the provisions in the bill. (The following table has been revised to reflect the reclassification of marijuana offenses.)

Summary of Fiscal Effects of HB 1006

		2015	2016	2017	2018	2019	2020	*2025*	*2030*	*2035*
Offenders Affected	Reclassification, Recalculating Release Date Based on Earned Credit Time	130	(648)	(1,284)	(1,502)	(1,639)	(1,084)	1,028	1,012	1,151
	Earned Credit Time Cap 4 Years to 2 Years		58	58	58	58	58	*58*	*58*	*58*
Total Effect on DOC Facilities		130	(590)	(1,226)	(1,444)	(1,581)	(1,026)	*1,086*	*1,070*	*1,209*
Estimated Marginal Costs ($8.86/day)		$0.42	($1.91)	($3.96)	($4.67)	($5.11)	($3.32)	*$3.51*	*$3.46*	*$3.91*
Cost in County Jails ($35/day)		$1.7	($7.5)	($15.7)	($18.5)	($20.2)	($13.1)	*$13.9*	*$13.7*	*$15.4*

Additional Information-

Reclassifying Four Felony Classes to Six Felony Levels and Recalculating Release Date– The following table shows the proposed changes in sentencing. Class A felonies would become either Levels 1 or 2, and Class B felonies would become either Levels 3 or 4. As amended, advisory sentences would be removed from sentencing statutes.

Felony Class				Felony Level			
	Minimum	Advisory[1]	Maximum		Minimum	Advisory[1]	Maximum
A	20 years	30 years	50 years	1	20 years	30 years	50 years
				2	10 years	17.5 years	30 years
B	6 years	10 years	20 years	3	3 years	6 years	20 years
				4	2 years	4 years	12 years
C	2 years	4 years	8 years	5	1 years	2 years	6 years
D	6 months	1.5 years	3 years	6	6 mos.	1 year	30 months

[1]An advisory sentence is a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence (IC 35-50-2-1.3).

Based on the changes proposed in the previous table, LSA assigned felony classes to felony levels as shown in the table below as an illustration of how these offenders might be distributed. The number of offenders are based on the annual average of full-time equivalent offenders who were committed to the DOC between CY 2008 and CY 2012. This is the same data base that DOC uses in making predictions in its model.

Full-Time Equivalent Offenders Affected Based on Average Annual Commitments Between CY 2008 and 2012							
		Current Felony Class					
	Class or Level	Class A	Class B	Class C	Class D	Murder	Grand Total
Proposed Felony Level	1	134					134
	2	134	227				361
	3	74	581				655
	4	59	399	138			596
	5	2	1,062	2,009	342		3,415
	6		1	89	2,613		2,703
	Misdemeanor				603		603
	Murder					75	75
	Grand Total	403	2,270	2,236	3,558	75	8,542

Estimating the Changes in Offender Population – To estimate how this bill might affect DOC's offender population, LSA used commitment data between CY 2008 and CY 2012 as the basis of this analysis. LSA categorized offenders by felony class and offense (example – Class A Robbery) and assigned these categories as felony levels based on the levels specified in the bill (as in this example – Level 2 Robbery). In some cases, the bill adds new felony levels for drug offenses and theft. In these cases, LSA assumed that there was an even distribution between the various levels. [Examples of how these assignments were made for various drug

offenses and theft crimes are shown in a later section of this fiscal note.]

Under current law and as proposed by this bill, offenders would receive time off of their incarceration for complying with facility rules and regulations (good time credit). LSA factored into the release date the amount of added time that offenders would spend in DOC facilities based on the changes in good time credit according to the following table.

Good Time Credit By Credit Class			
Convictions Before June 30, 2014		Convictions After June 30, 2014	
Class I	One day for each day served	Class A	One day for every three days served
Class II	One day for every two days served	Class B	One day for every six days served
Class III	No credit time	Class C	No credit time
Class IV	One day for every six days served	Class B	One day for every six days served

While exact sentencing patterns cannot be predicted, LSA multiplied the ratio of the current sentence to the current maximum sentence by the new maximum sentence to estimate what the new sentence would be. The number of offenders is increased by 2% in each ensuing year.

Projected Offender Population Changes Based on All Sentences Being Proportionate To Maximum Sentences by Fiscal Year									
	2015	2016	2017	2018	2019	2020	2025	2030	2035
Change in Population	130	(648)	(1,284)	(1,502)	(1,639)	(1,084)	1,028	1,012	1,151

Note on Avoided Costs – On February 20, 2013, DOC's facilities had 29,012 beds and an offender population of 27,647. If the DOC population approaches 29,000 offenders, DOC will likely request money to build a new prison. DOC projects that if no change occurs to current sentencing laws, the DOC population will reach 29,000 by 2020.

LSA uses the Miami Correctional Facility, which has a current bed capacity of 3,188, as an example of the operating costs that the state could avoid. Miami's population on February 20, 2013, was 3,127 offenders and had an operating budget of $32 M in FY 2013.

LSA estimates that the changes proposed under this bill would permit the offender population to remain under the 29,000 offender level until 2022.

Judicial Center Drug and Alcohol Programs Fund (IC 12-23-14-17) – Under current law, the Judicial Center Drug and Alcohol Programs Fund is used to administer, certify, and support alcohol and drug service programs. As proposed, the Indiana Judicial Center could award a grant from the fund to a probation department or a community corrections program to increase substance abuse treatment access for individuals on probation or individuals placed in a community corrections program who are under court supervision and

who have been diagnosed with a substance abuse disorder or co-occurring disorder. The Judicial Center would consult with the Division of Mental Health and Addiction and local probation departments or community corrections programs in determining the amounts of the grants. Any mental health and substance abuse counseling services provided by the grants would be provided by certified mental health or addiction providers as determined by the Division of Mental Health and Addiction.

Neglect Causing Death or Serious Bodily Injury (IC 35-50-2-2) – Any added prison population due to the increased stays in prison will depend on the number of offenders who are assigned to Level 1 or Level 2 felonies and the new minimum sentences that they would receive. This provision would likely increase the number of offenders who have extended stays because the offenders would have to be incarcerated for a mandatory minimum time.

To estimate the added number of offenders who might be affected, LSA assumed that in future years a portion of offenders who might otherwise receive a sentence that was less than the mandatory minimum sentence would now serve the mandatory minimum sentence.

Between 2007 and 2012, about 20% of Class A felony offenders received a prison sentence that was less than the mandatory minimum of 20 years (7 out of 36 offenders), while 31% of Class B felons (38 out of 123) received a prison sentence that was less than 6 years. Any added offenders will depend on the sentencing lengths associated with the felony levels.

Earned Credit Time (IC 35-50-6-3.3) – This provision will make five significant changes to how release dates will be affected, likely lengthening the stay of offenders who have accumulated earned credit time.

Under current law, offenders in DOC facilities can receive two types of credit time (called "time cuts") that can reduce their length of stay in DOC facilities. First, under IC 35-50-6-3, offenders in the Class I credit classification can receive up to one day off for each day they are compliant with facility rules ("good time" credit). Second, if they are in the Class I credit classification, they can also receive earned credit time by successfully completing educational programs, vocational and technical programs, substance abuse programs, basic life skills programs, and reformative programs.

The amount of earned credit time that an offender can receive is the lesser of four years or one-third of the person's total applicable credit time. Offenders successfully completing bachelor's degrees can earn two years credit time, and offenders completing associate's degrees can earn one year of credit time.

DOC currently calculates the release date for an offender by first applying the "good time" credit (generally 50%) and then subtracting the earned credit time.

This bill will make five significant changes to how release dates will be affected.

(1) The bill limits the amount of earned credit time that offenders can receive for successfully completing associate's and bachelor's degrees to one and two years, respectively. Consequently, offenders who have completed more than one associate's or bachelor's degree would be limited to receiving either one year of credit, even if the offender completed more than one associate's degree, or two years, even if the offender completed more than one bachelor's degree.

(2) The bill increases from six months to one year the amount of earned credit time that offenders can receive

for completing one or more career and technical or vocational education programs. This could reduce the length of stay for offenders who enroll in these types of programs.

(3) The bill specifies that earned credit time is to be directly proportional to time served. Depending on how DOC formulates the rules to implement this section, the length of stay for some offenders may increase.

(4) The bill changes how earned credit time is to be applied to determine the release date. Currently, any good time credit is subtracted from the length of stay, and then any earned credit time is applied. As proposed, earned credit time would be applied first, and then the good time credit is to be applied. Offenders with no earned credit time will not be affected by this provision. The length of stay of any offenders with earned credit time will be extended, depending on the amount of earned credit that they have available.

[Note: This change in how the earned credit time is applied is reflected in the summary table (*Reclassification, Recalculating Release Date Based on Earned Credit Time*).]

(5) The bill limits the maximum amount of earned credit time to the lesser of two years or one-third of the person's total applicable credit time. The current limit on earned credit time is the lesser of four years, or 1,460 days, or 1/3 of the person's applicable credit time. [Note: This change in how the earned credit time is applied is reflected in the summary table (*Reclassification, Recalculating Release Date Based on Earned Credit Time*).]

Applicable credit time is considered the total amount of earned credit time. Consequently, this provision would increase the length of stay of offenders who currently have more than two years of credit time.

DOC reported that between the 2010 and 2012 fiscal years, 171 of the offenders who were released accumulated more than two years of earned credit time. Consequently, roughly 57 offenders (171 offenders ÷ 3 years = 57 offenders) each year would be released at a later date. In the following table, a summary of the amount of earned credit time compiled illustrates the average amount of credit time earned by offenders between FY 2010 and 2012.

Time Cuts Earned by Offenders Released from DOC Facilities Between CY 2010 and 2012

Offenders NOT Affected by Reducing the Maximum from 4 years to 2 years						***Offenders Affected by Reducing the Maximum from 4 years to 2 years***			
30 Or Fewer	Between 30 and 60	Between 61 and 90	Between 91 and 183	Between 184 and 365	Between 366 and 730	***Between 731 and 1,095***	***Between 1,096 and 1,460***	***1,461 Or More***	Total Number of Offenders
23,746	375	2,083	5,863	2,480	1,761	***124***	***44***	***3***	36,479
36,308						***171***			
65%	1%	6%	16%	7%	5%	***0%***	***0%***	***0%***	100%

Examples of How Offenses Could be Reclassified – Since this bill significantly changes both drug and theft penalties, this portion of the fiscal note describes in more specific terms the assumptions that LSA made when determining how these offenses would be changed.

Drug Thresholds (IC 35-48) – This provision changes the enhancing circumstances and the weights of drugs to determine the felony level. Overall, the enhancing circumstances in this bill make the following changes:

(1) The enhancement could be applied when persons under 18 years of age can be reasonably expected to be present in either the park or the school property.

(2) The distance in the protective zones for schools and public parks would be reduced from 1,000 feet to 500 feet.

(3) Family housing complexes and youth program centers would not be included in the protective zone.

The following table compares and contrasts the current enhancements with the enhancing circumstances in the proposed bill.

Enhancing Circumstances as Factor in Determining Enhancement for a Drug Offense (IC 35-48-1-16.5)

Circumstance	In Existing Law?	In Proposed Bill?
Prior conviction for dealing in a controlled substance that is not marijuana, hashish, hash oil, salvia divinorum, or a synthetic drug	Limited to marijuana	Yes
On a School bus	Yes	Yes
Dealing to a Person under 18 or at least 3 years junior	Yes	Yes
Manufacturing or financing the manufacture of drug	Yes	Yes
Distance from school property or public park	1,000 feet	500 feet
Time Element	No	Offense occurred while person under 18 reasonably expected to be present
Distance from family housing project or youth program center	1,000 feet	No

"Drug offense" means a felony or misdemeanor involving the production, delivery, sale, or possession of a controlled substance.

The following tables describe in further detail the drug weights that are proposed by this bill as compared to current law.

Proposed Changes in Drug Dealing and Manufacturing Offenses for Cocaine, Methamphetamine, and Schedule I, II, or III Controlled Substances (IC 35-48-4-1, 1.1, and 2)					
			Average Number of Offenders Affected [1]		
	Felony Class	Felony Level	Involving Meth	Involving Cocaine	Involving Schedule I, II, III
Less than 3 grams	Class B	Level 5	256	606	220
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class A	Level 4	10	53	7
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class A	Level 3	10	53	7
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class A	Level 2	10	53	7
Manufacturing meth and causing explosion that results in serious bodily injury	Class A or B	Level 2	unknown		

[1] Based on commitments between CY 2008 and 2012.

Proposed Changes in Drug Dealing and Manufacturing Offenses for Schedule IV Controlled Substances (IC 35-48-4-3)			
	Felony Class	Felony Level	Offenders Affected[1]
Less than 3 grams	Class C	Level 6	29
Less than 3 grams and enhancing circumstance	Class B	Level 5	unknown
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class B	Level 5	2
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class B	Level 4	2
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class B	Level 3	2

[1] Based on average number of commitments between CY 2008 and 2012

Proposed Changes in Drug Dealing and Manufacturing Offenses for Schedule V Controlled Substances (IC 35-48-4-4)			
	Current Law	Proposed	Offenders Affected[1]
Less than 3 grams	Class D Felony	Class A Misdemeanor	2
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class B Felony	Level 6 Felony	1
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class B Felony	Level 5 Felony	1
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class B Felony	Level 4 Felony	1

[1] Based on average number of commitments between CY 2008 and 2012

Proposed Changes in Possession Offenses for Cocaine or Methamphetamine (IC 35-48-4-6, 6.1)			
	Current Law	Proposed	Offenders Affected
Less than 3 grams	Class D	Level 6	257
Less than 3 grams and enhancing circumstances	Class C or B	Level 4 or 5	226
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class A	Level 4	8
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class A	Level 3	

Proposed Changes in Possession Offenses for Schedule I, II, III, IV Controlled Substances (IC 35-48-4-7)			
	Current Law	Proposed	Offenders Affected[1]
Any amount	Class D Felony	Class A Misdemeanor	265
Any amount and enhancing circumstances	Class C	Level 6	46

[1] Based on average number of commitments between CY 2008 and 2012

Proposed Changes in Dealing Offenses for Marijuana, Hash Oil, Hashish, Salvia Divinorum, or Synthetic Drug (IC 35-48-4-10)			
	Current Law	Proposed	Offenders Affected[1]
Less than 30 grams (marijuana)	Class A Misdemeanor	no change	46
Between 30 grams and 10 pounds (marijuana)	Class D Felony	Level 6 Felony	
Prior conviction for drug offense and drug involved less than 30 grams (marijuana)	Class D Felony	Level 6 Felony	
More than 10 pounds (marijuana)	Class C Felony	Level 5 Felony	30
Recipient is a minor and any weight (marijuana)	Class D Felony	Level 5 Felony	
Prior conviction for drug offense and drug involved was greater than 10 pounds (marijuana)	Class C Felony	Level 5 Felony	

[1] Based on average number of commitments between CY 2008 and 2012.

Proposed Changes in Possession Offenses for Marijuana, Hash Oil, Hashish, Salvia Divinorum, or Synthetic Drug (IC 35-48-4-11)			
	Current Law	Proposed	Offenders Affected
Less than 30 grams of marijuana or 2 grams of hash oil, hashish, salvia divinorum, or synthetic drug	Class A Misdemeanor	Class B Misdemeanor	unknown
Possessing more than 30 grams (marijuana)	Class D Felony	Class A Misdemeanor	122
Prior drug offense and possessing more than 30 grams (marijuana)	Class D Felony	Level 6 Felony	100

[1] Based on average number of commitments between CY 2008 and 2012.

Theft Thresholds (IC 35-43-4-2) – Under current law, stealing any item can result in a Class D felony. As proposed, this bill would make stealing any item with a value of less than $750 a Class A misdemeanor. The following table describes in more detail how the new felony levels would be assigned by the value of the item that is stolen.

Value of Item Stolen	Current Law	Proposed	No. Affected[1]
Less than $750	Class D Felony	Class A Misdem.	549
Between $750 and $50,000 or < $750 and prior conviction	Class D Felony	Level 6 Felony	549
Between $50,000 and $100,000	Class D Felony	Level 5 Felony	549
More than $100,000	Class C Felony	Level 5 Felony	5

[1] Based on average number of commitments between CY 2008 and 2012.

Death Benefits for Community Corrections Officers (IC 5-10-10-4) – Under IC 5-10-10-6, $150,000 is to be paid in a lump sum from the Special Death Benefit Fund to the following relative of a public safety officer who dies in the line of duty: (1) the surviving spouse; (2) the surviving children (to be shared equally) if there is no surviving spouse, or (3) the parent or parents in equal shares if there is no surviving spouse and there are no surviving children.

Explanation of State Revenues:

Explanation of Local Expenditures: *Penalty Reductions for Marijuana Possession and Certain Crimes of Theft* – More individuals will likely be committed to either jails or assigned to probation or community corrections programs if these offenses are reclassified to be misdemeanors rather than felonies. The average number of offenders could be over 1,000, based on commitments to DOC between FY 2007 and 2012.

Explanation of Local Revenues:

State Agencies Affected: DOC; Indiana Judicial Center; Department of Mental Health and Addictions; Legislative Services Agency

Local Agencies Affected: County sheriffs, trial courts, probation offices, community corrections programs.

Information Sources: Department of Correction Offender Information System.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.

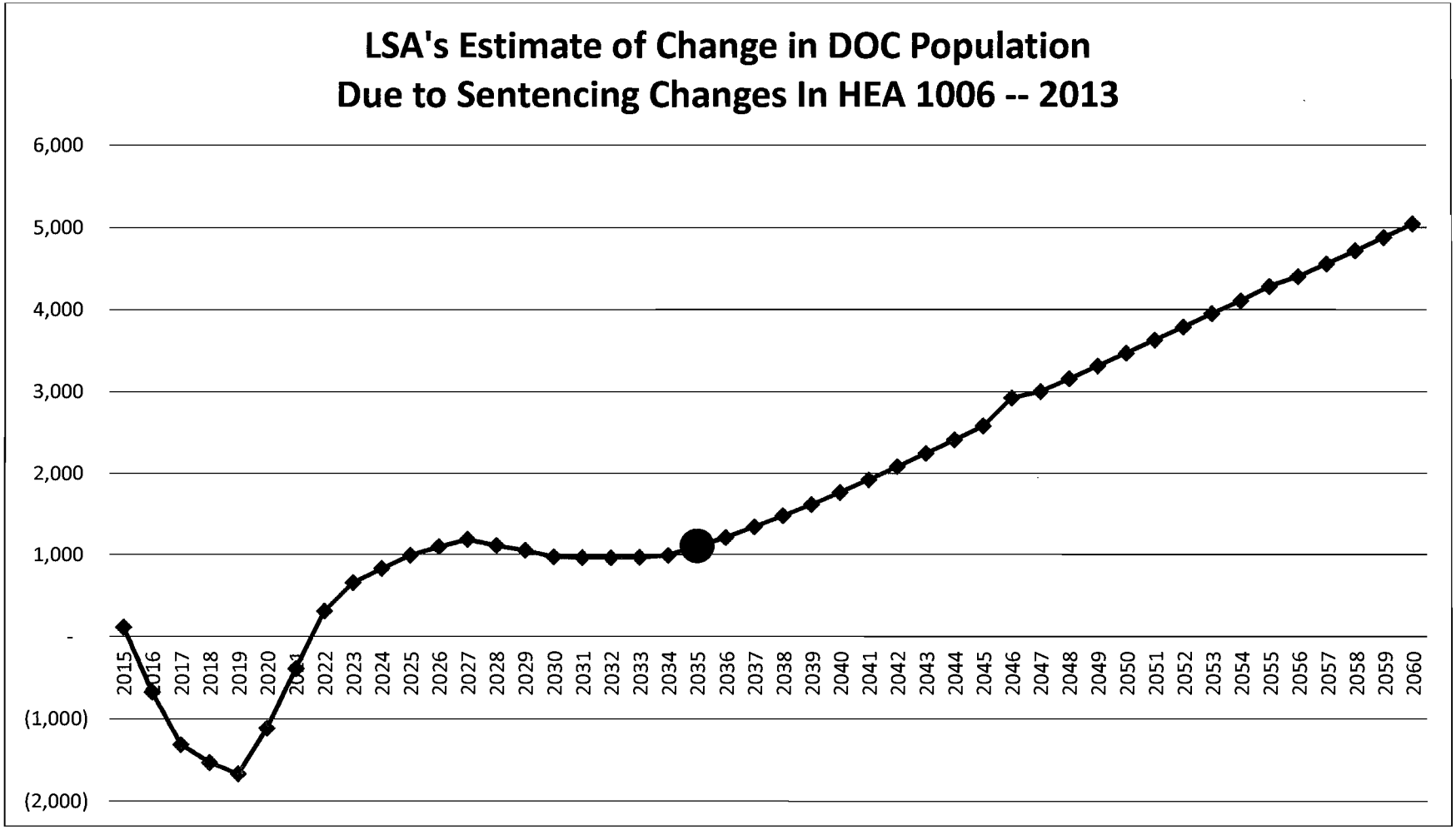
Exhibit 6 CLSP 8/15

Examples of How Lengths of Stay will Change for Offenders under HB 1006

	Offense	fail to reg as sex off	robbery	residential entry	dealing-coke/narcotc (> 28 grams)	voluntary manslaughter	sexual battery	child molesting	theft, rec stol prop
	Felony Class to Felony Level	Class C to Level 5	Class B to Level 3	Class D to Level 6	Class A to Level 2	Class A to Level 2	Class D to Level 6	Class C to Level 4	Class D to Level 6
	Number of Offenders in Cohort	12	346	103	40	23	28	119	1369
step one	Determine New Fixed Term of Incarceration (FTI)								
	Current FTI	3.92	11.6	1.73	28.89	33.06	2.06	5.3	1.62
	Current max sentence based on felony class	8	20	3	50	50	3	8	3
	percentage of max	0.49	0.58	0.58	0.58	0.66	0.69	0.66	0.54
	New max sentence based on felony level	6	20	2.5	30	30	2.5	12	2.5
	New FTI	2.94	11.6	1.45	17.4	19.8	1.73	7.92	1.35
step two	Determine Length of Stay Under Current Law and Year of Release								
	Current FTI	3.92	11.6	1.73	28.89	33.06	2.06	5.3	1.62
	Subtract half of FTI	1.96	5.8	0.865	14.445	16.53	1.03	2.65	0.81
	Difference	1.96	5.8	0.865	14.445	16.53	1.03	2.65	0.81
	Subtract Earned Credit Time	0.13	0.51	0.06	0.69	1.21	0.06	0.25	0.05
	current LOS	1.83	5.29	0.805	13.755	15.32	0.97	2.4	0.76
	year of release under current law for offenders committed to 2015	2016.8	2020.3	2015.8	2028.8	2030.3	2016	2017.4	2015.8

	New FTI	2.94	11.6	1.45	17.4	19.8	1.73	7.92	1.35
	Subtract Earned Credit Time	0.13	0.51	0.06	0.69	1.21	0.06	0.25	0.05
	Difference	2.81	11.09	1.39	16.71	18.59	1.67	7.67	1.3
	subtract 25% credit time	0.7	2.77	0.35	4.18	4.65	0.42	1.92	0.33
	New Length of Stay	2.11	8.32	1.04	12.53	13.94	1.25	5.75	0.97
	year of release under HB 1006 for offenders committed to 2015	2017.1	2023.3	2016	2027.5	2028.9	2016.3	2020.8	2016
	Change in Length of Stay	0.3	3	0.2	-1.3	-1.4	0.3	3.4	0.2

Exhibit 7
CLSP 8/15



Comparing Population Projections from DOC and LSA for HEA 1006 -- 2013

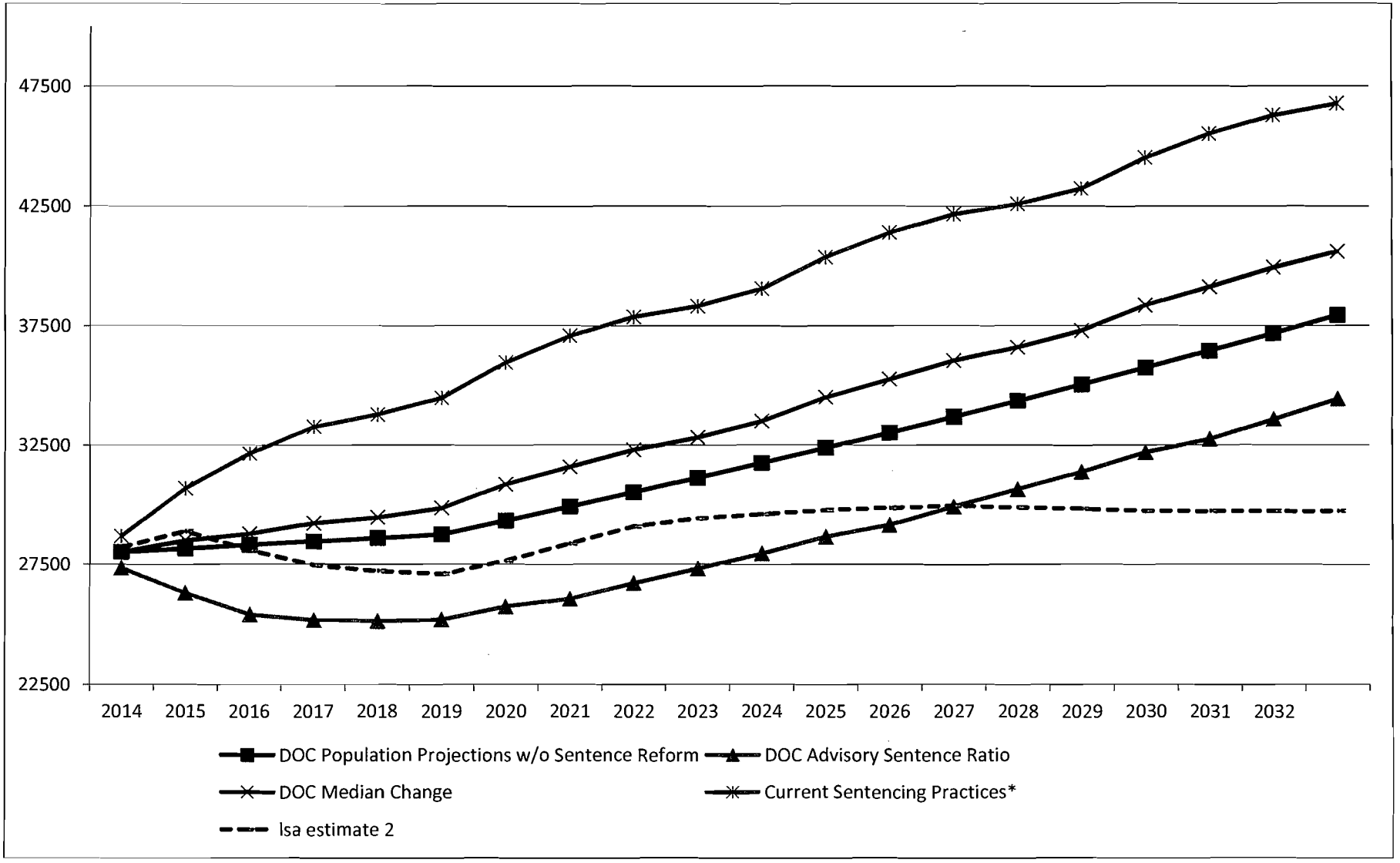


Exhibit 8
CLSP
8/15

STATEMENT OF WORK & SCOPE

FISCAL ANALYSIS AND IMPACT OF HEA 1006 & RELATED SUBSEQUENT LEGISLATION

WHEREAS: the Indiana General Assembly began the process of criminal code reform with the passage of House Enrolled Act (HEA) 1006 during the 2013 legislative session and the legislative is effective July 1, 2014;

WHEREAS: a more definite understanding of the fiscal impact on state and county level corrections, probation, community corrections, treatment programs and public safety professionals is desired by stakeholders and an objective study by an independent entity capable of analyzing and producing criminal justice modeling in needed to fully understand the impact of the current legislation; a study is therefore needed as follows.

PRIORITIES

1. **DEPARTMENT OF CORRECTIONS.** There is a need for an objective study and analysis as to the fiscal impact of HEA 1006 on the Indiana Department of Corrections. Will there be a need for additional prisons and when might that occur? Will there be a reduction in the state population and consequential reduction in staffing and facility type? Or, will the prison population remain essentially unaffected? HEA 1006 reduces good time to 25% and caps educational/treatment credit at 2 years, what impact, if any, will this have on the following:

    a. Plea agreements?

    b. Future health care costs?

    c. Will the reduction in drug penalties and property crimes offset increased penalties for violent and sex crimes?

2. **LOCAL GOVERNMENT.** A study including a sample of the impact on a small, medium and large Indiana county of the following factors:

    a. **COUNTY JAILS** (SHERIFF). The elected Sheriff is responsible for management of the various county jails in Indiana. There are roughly 25,000 beds. Many are overcrowded and most are experiencing increases costs, especially with medicine and inmate health care. Only a few county jails offer treatment programs for addictions, mental health or behavior. County jails are funded at the local level. The Department of Corrections does lease approximately 1,000 to 1,500 beds annually from the various sheriffs. Is current daily rate paid to the sheriff's by the Department of Corrections appropriate?

    b. **PROBATION**. Approximately, 180,000 people are on supervised and unsupervised probation each year in Indiana. Will HEA 1006 impact the number of people on

probation? Will the state or county need to increase or decrease the number of probation officers and what will it likely cost? Currently, the Indiana Judicial Center is developing a program to implement swift and certain sanctions within the probation system. The goal of swift and certain sanctions is to reduce recidivism. What fiscal impact might this program have within the corrections system?

c. **PAROLE.** What impact, if any, will HEA 1006 have on Indiana's current system of parole?

d. **COMMUNITY CORRECTIONS.** Local community corrections programing, are in part, funded by grants from the Indiana Department of Corrections. Is it likely or unlikely that HEA 1006 will increase the number of participants in community corrections programs, and what are the likely costs?

3. **TREATMENT PROVIDERS.** A very high percentage of probationers and offenders, who commit new offenses, suffer from substance abuse addictions, mental and behavioral health related issues. There is currently little or no state or local funding available for treatment programs for indigent defendants. As a consequence, a shortage of treatment providers exists in the state. If HEA 1006 is successful in reducing the number of drug offenders serving with the Department of Corrections what impact will this have on local sentencing systems, providers and recidivism. Is there a cost effective method for the state to fund treatment programs to reduce recidivism?

4. **TECHNOLOGY AND INFORMATION MANAGEMENT SYSTEMS.** HEA 1006 changes the current five (5) felony class system (Murder, A, B, C & D) to a new seven (7) felony class system (Murder, 1, 2, 3, 4, 5, & 6). The misdemeanor classes (A, B, C, & D) are unchanged. Current criminal offenses have shifted up and down with the new seven felony classes. Some offense are consolidated, amended and even eliminated by HEA 1006. Prior to any effective date, all stakeholders (Courts, Prosecutors, Public Defenders, Law Enforcement, & Corrections) will need to update and incorporate the new provisions within their various information management systems. How long will this take? What are the potential costs, if any, to the affected governmental units?

5. **COST – BENEFIT ANALYSIS.** What accountability measures should the legislature adopt and put into place to evaluate statewide implementation of criminal code reform and its impact on the following: crime rates, recidivism, justice agencies (judges, probation, community corrections, prosecutors, defense, sheriffs & police), victims' rights, offender medical care/treatment, equitable sentencing across jurisdictions, reformation and incarceration? How much will this realignment cost? Who should pay? What are the potential short-long term savings to state and local government, if any?

6. **LESSONS LEARNED, IF KNOWN, FROM OTHER STATES WHICH HAVE IMPLEMENTED CRIMINAL CODE REFORM.** In recent years, a number of states have implemented criminal code reform, many with truth and sentencing provisions, similar to HEA 1006. What lessons learned, if any,

regarding program funding at the state and local level were made? Are there identifiable problems and are there established programs and policies Indiana should emulate?

7. **ANALYSTS.** Lastly, can one specialized analyst complete this project or should it be divided up in a collaborative effort by two or more specialized analysts working together on different aspects of the project?

8. **TIMEFRAME.** The fiscal analysis must be completed by the end of calendar year 2013. The legislative session begins January 2014 and the results of this analysis will impact the work of the Indiana Legislature and any subsequent legislation needed to complete code reform. In the interim, a Legislative Summer Study Commission will meet beginning on August 15, 2013 and throughout the fall and will from time to time likely ask the specialized analysts to appear and provide preliminary results and findings regarding this fiscal analysis.

End of Summary and Scope of Work.