

**CRIMINAL CODE EVALUATION COMMISSION  
REVIEW OF CRIMINAL CODE**

**INTRODUCTION**

**AND**

**OVERVIEW**

*Submitted by CCEC Work Group  
July 2012*

# CRIMINAL CODE EVALUATION COMMISSION REVIEW OF CRIMINAL CODE

## Introduction and Overview

### ***Creation of the Commission:***

The Criminal Code Evaluation Commission (“CCEC”) was established by HEA 1001, 2009, for the broad purpose of “evaluating the criminal laws of Indiana.” The Commission was originally to meet each summer from 2009 through 2011, and produce a “final report of the results of its study” to the Legislative Council before November 1, 2011. The Commission’s life was later extended by the General Assembly for an additional year. The Indiana Criminal Justice Institute was assigned to provide staff support to the Commission, in addition to the role of the Legislative Services Agency, whose role was to advise on legal matters and provide legislative drafting assistance.

### ***Criminal Code Review Process:***

In 2010, when the Commission was under the chairmanship of Representative Matt Pierce, basic principles of the review were agreed upon by representatives of the Indiana Prosecuting Attorneys Council (“IPAC”), the Indiana Public Defender Council (“IPDC”) and the Indiana Judicial Center, represented by Judge John Marnocha of St. Joseph County. Those basic principles were:

- Consistency
- Proportionality of penalties
- Like sentences for like crimes
- Elimination of duplication
- Increased certainty regarding the length of sentence to be served
- Sentencing scheme designed to keep dangerous offenders in prison but avoid using scarce state prison space for nonviolent offenders

Work began on the overall review of the criminal code called for by the General Assembly in HEA 1001, 2009, in the summer of 2010.

During this same time period, the CCEC reviewed the findings of a bi-partisan task force with representation from all three branches of government, aided by the Council of State Governments and the Pew Foundation, a project partially sponsored by the U.S. Department of Justice (the “Justice Reinvestment Project”). The Justice Reinvestment Project proposed to make certain targeted changes to Indiana law with the purpose of enhancing public safety by managing lower-level offenders in the community, freeing up prison space for more dangerous offenders, and re-investing the savings from the project in the communities to fund improved probation practices for lower-level offenders. While the recommendations stemming from this effort were adopted by the CCEC in December 2010, no legislation was passed in 2011 establishing the recommended changes. Some limited legislation was passed in 2012 that reflected certain recommendations of the Justice Reinvestment Project in relation to the use of probation practices including swift and certain sanctions for violations of probation conditions;

improved victim notification; and improved abstracts of judgment to better inform DOC and the public of information about the convicted offender.

Opposition to legislation in the 2011 session of the Indiana General Assembly was in part based on the fact that, at that point, the comprehensive review of the Criminal Code anticipated as a result of the creation of the CCEC had not yet been completed.

In early 2011, a team of attorneys was convened to provide staffing for the CCEC as required by HEA 1001, 2009. The project was partially funded by the Indiana Criminal Justice Institute (“ICJI”), charged by statute with the duty of staffing the CCEC. The Indiana Judicial Center (“IJC”) collaborated with ICJI, serving as the agency that contracted with three (3) outside attorneys who formed part of what became known as the CCEC Work Group. Rounding out the team of lawyers were representatives of IPAC, IPDC and IJC. The Office of the Indiana Attorney General, who is a statutory member of the CCEC, provided legal interns to assist with research, as did IPDC. In the summer of 2012, additional interns from IPAC, IPDC, OAG and IJC assisted with the preparation of this report.

The CCEC Work Group participants included:

Deborah J. Daniels, Krieg DeVault LLP (Chair)  
Larry Brodeur, Indiana Prosecuting Attorneys Council  
Andrew Cullen, Indiana Public Defender Council  
Molly Johnson, Molly Johnson Law Office  
Michael McMahon, Indiana Judicial Center  
Suzanne O’Malley, Indiana Prosecuting Attorneys Council  
Victoria Ursulskis, Attorney at Law

The experience of this group is broad and deep:

**Deborah Daniels** is a former Chief Counsel to the Marion County Prosecutor, former United States Attorney for the Southern District of Indiana, and former Assistant Attorney General, U.S. Department of Justice.

**Larry Brodeur** has spent most of his professional career prosecuting drug crimes in the Marion County Prosecutor’s Office. He now conducts all training for the Indiana Prosecuting Attorneys Council and provides advice and assistance to individual prosecutors around the State on a routine basis.

**Andrew Cullen** has worked closely with both the Indiana Public Defender Council and the Indiana General Assembly over the last several years, and has significant knowledge of the recent history of the Indiana Criminal Code. He previously served on the staff of both the Indiana House of Representatives and the United States Senate.

**Molly Johnson** has worked in the Office of the Attorney General pursuing white collar crime, followed by work in a large private firm, and now is a sole practitioner with a criminal defense practice.

**Michael McMahon** has been with IJC for 32 years, and is recognized for his significant knowledge of the Indiana Criminal Code and case law explaining the Code.

*Suzanne O'Malley* now is Assistant Executive Director of the Indiana Prosecuting Attorneys Council. She formerly spent several years prosecuting child abuse and sex crimes as a Deputy Marion County Prosecutor, and served for two years as Executive Director of the Marion County Child Advocacy Center.

*Victoria Ursulskis* spent a number of years as a Deputy Prosecutor in the Marion County Prosecutor's Office, and as an Assistant United States Attorney in the Southern District of Indiana. She has also served as a Deputy Marion County Public Defender, and now has a private practice consisting primarily of federal appellate work.

In addition to this team of attorneys, the following legal interns have provided legal research, including research into the case law surrounding certain aspects of the Indiana Criminal Code and research into the laws of other states and the American Law Institute's Model Penal Code to inform the overall Indiana Criminal Code review. They have also provided assistance in the preparation of this report.

***Office of the Indiana Attorney General:***

Keenan Fennimore  
Leif Johnson  
Sean McGoff  
Andrew Padgett  
Chris Pierce

***Indiana Prosecuting Attorneys Council***

James Inman  
Jessica Williams

***Indiana Public Defender Council***

Marc Daniels  
Justin Swanson

***Indiana Judicial Center***

Kimberly Gajewski

The CCEC Work Group met approximately 43 times between March 2011 and July 2012, and – excluding countless hours of research by the legal interns – expended well over 1,000 hours in review and research activity to produce the recommendations presented in this report.

***Format of the Report:***

With respect to both the substantive criminal law provisions (Title 35, Articles 42-49) and the sentencing provisions (Title 35, Article 50), the report provides:

An *Overview* that explains what the law currently provides, including the definition of the offense and the penalty/ies for the offense

A list of *Issues* raised in the discussion.

A corresponding list of *Recommendations* made for amendments to each section.

A description of the Work Group's *Rationale* underlying its recommendations.

A brief description of the *Workgroup Position*. Generally, recommendations are made by consensus, though occasionally a representative of either IPAC or IPDC expressed a reservation. It is important to note that the IPAC and IPDC members speak only for themselves when they either agree with the consensus recommendation or express a reservation; the boards of the two entities have not yet considered the various recommendations as of the time of the preparation of this report.

The full text of the *Current Statute* in its 2012 form.

### ***Scope of the Report:***

#### **1. Specific Offenses Reviewed**

##### **a. Felonies only (Title 35, Articles 42-49):**

Beginning with the basic principles described on page 1 above, the CCEC Work Group addressed its attention to all felony offenses contained in Title 35, Articles 42-49 – the bulk of the felony offenses in the Criminal Code with the exception of traffic related offenses. Statutes within the Articles reviewed that impose only misdemeanor penalties were not considered; as a general rule, no changes were deemed necessary to existing misdemeanors. However, any misdemeanor that is enhanced to a felony level under any circumstances was considered; and in at least one case (Battery, IC 35-42-2-1), it has been recommended that the lowest level of the offense be increased from a Class B misdemeanor to a Class A misdemeanor.

##### **b. Traffic Offenses Excluded**

The review by the CCEC Work Group did not include traffic offenses. It is noted that the original 3-person advisory group representing IPAC, IPDC and IJC suggested a review of the Habitual Traffic Offender law, as follows:

Indiana's Habitual Traffic Offender law should be revisited to determine its appropriateness. A review of 2009 data from DOC indicates that 226 individuals were incarcerated in DOC for the offense of Operating a Motor Vehicle While an Habitual Traffic Offender. (*August 9, 2010 document entitled, "Criminal Code Evaluation Commission: Work Group Consensus on Issues to be Addressed"*)

The CCEC Work Group has not addressed this issue. The Indiana Prosecuting Attorneys Council has offered to conduct a review and provide recommendations relating to the totality of Title 9's traffic provisions to the CCEC.

**c. Provisions of Title 42, Article 38 Excluded**

The Indiana Prosecuting Attorneys Council has offered to develop recommendations relating to the provisions of Title 42, Article 38, relating to conditions of probation and other procedural matters relating to the period after a person's conviction of a crime.

**2. Sentencing Provisions (Title 35, Article 50)**

The CCEC Work Group has reviewed in detail, and provided recommendations relating to, the following:

**a. Suspension; Probation (IC 35-50-2-2)**

The CCEC Work Group has studied IC 35-50-2-2 at length and has provided several recommendations relating to it. See the portion of the report bearing this title.

**b. Classes of Felonies; Sentencing Ranges (IC 35-50-2-(3-7))**

In the August 9, 2010 document entitled "*Criminal Code Evaluation Commission: Work Group Consensus on Issues to be Addressed*", it was stated that

Currently, Indiana has only four (4) classes of crimes – plus Murder, which is in its own class – with sentencing parameters as indicated below.

The sentencing parameters for each class of offense are as follows:

- Murder: 45 to 65 years (advisory sentence 55 years)
- Class A Felony: 20 to 50 years (advisory sentence 30 years)
- Class B Felony: 6 to 20 years (advisory sentence 10 years)
- Class C Felony: 2 to 8 years (advisory sentence 4 years)
- Class D Felony: 6 months to 3 years (advisory sentence 1 ½ years)

In particular, drug offenses do not fit well into this limited number of categories. Possession with intent to deliver only three (3) grams of cocaine, for example, is categorized as a Class A Felony, a penalty more severe than that for rape (Class B felony). In addition, the mere possession of 3 grams of cocaine (without the need to prove intent to deliver) is a Class A felony if it occurs within 1,000 feet of a school, a public park, a family housing complex or a youth program center; and the delivery of any amount of cocaine (less than 3 grams) is a Class A felony if it occurs within 1,000 feet of any of the above sites.

Consideration should be given to broadening the classes of felonies in order to assign punishments appropriate to the level of crime committed and reserve the higher classes of felonies, with lengthier sentences, for the most serious/dangerous offenders.

The concept of an increased number of felony levels has been discussed by prosecutors, public defenders, judges, and members of the General Assembly for a number of years. Many stakeholders in the criminal justice system, as well as many legislators, believe that Indiana may benefit from broadening the classes of felonies to encompass at least 6 classes, or levels, of felony in addition to Murder.

The CCEC Work Group has created a proposed sentencing “grid” consisting of 6 felony classes in addition to Murder, which the Work Group recommends should remain in its own class as currently is the case. The levels correspond to the existing 4 classes of felonies in the following manner:

Level 1 felony	Class A felony (higher end of range)
Level 2 felony	Class A felony (lower end of range)
Level 3 felony	Class B felony (higher end of range)
Level 4 felony	Class B felony (lower end of range)
Level 5 felony	Class C felony
Level 6 felony	Class D felony

The Work Group has reviewed each felony offense to determine where it ought to fit on this “grid”. Generally, Class D felonies translate directly to Level 6 felonies, which are anticipated to have the same sentencing range as the current Class D felony. Similarly, Class C felonies generally translate directly to Level 5 felonies, which are anticipated to have the same sentencing range as the current Class C felony. Class B felonies are then divided into two levels, so that the more serious Class B felonies can be differentiated from those likely to be sentenced at the lower end of the Class B range. The same holds true for the current Class A felonies. For example, a conviction of Child Molesting under IC 35-42-4-3 involving intercourse with a child under age 14 by a person over age 21 (currently a Class A felony) is proposed to be categorized in Level 2, while intercourse by any person 18 or over with a child under 14, using force, a weapon, a drug, or causing serious bodily injury (also currently a Class A felony) is proposed for Level 1 – the most serious level of felony short of Murder. Burglary of a dwelling resulting in bodily injury to the victim (a current Class A felony) is proposed for Level 2, while burglary of a dwelling resulting in serious bodily injury to the victim (a current Class A felony) is proposed for Level 1.

In limited situations, the CCEC Work Group has recommended that the penalty for an offense be either increased or decreased. In the case of Child Molesting, for example, it has been recommended that Child Molesting under IC 35-42-4-3 involving fondling of a child under age 14, currently a Class C felony, be increased to a Level 4 felony (equivalent to the lower part of the current Class B felony range).

The broader range of sentencing levels is particularly helpful in determining how to array the sentences for drug offenses. The CCEC Work Group has prepared a descriptive piece for this report outlining the proposed changes to the penalties for drug offenses and the rationale for those changes; they, like all other felony offenses reviewed, are entered on the proposed 6-level sentencing grid to facilitate understanding of the “stair-stepping” approach taken. Of note is that the penalty for a person convicted of drug dealing or drug possession who has any prior drug dealing conviction increases to a higher level. The same is true in the event of other sentencing enhancement factors already included in the drug statutes. This should be considered in conjunction with the reduced sentences for certain drug-related offenses; the defendant, for example, who possesses small amounts of cocaine will be punished more severely if he has a history of drug dealing than the defendant convicted of the same offense who has not previously been convicted of drug dealing.

- c. **Habitual Offender (IC 35-50-2-8)**  
**Life Without Parole Habitual Offender (IC 35-50-2-8.5)**  
**Habitual Substance Offender (IC 35-50-2-10)**

The CCEC Work Group considered carefully the Habitual Offender related laws listed above, as well as the evolution of these laws over time since the passage of the 1977 Penal Code (the most recent comprehensive revision of Indiana’s criminal statutes). The Work Group has made several specific recommendations that are found in its report on this subject which is a part of this overall report.

- d. **Sentencing Enhancements (IC 35-50-2-11, 13, 14, 15, 16)**

Several specific enhancements to the sentences for offenses throughout the Criminal Code are provided in Sections 11-16 of IC 35-50-2, as follows:

- Section 11 Additional penalty for use of firearm*
- Section 13 Use of firearm in controlled substance offense*
- Section 14 Repeat sexual offenders*
- Section 15 Criminal gang sentence*
- Section 16 Murder or Attempted Murder causing termination of human pregnancy*

The CCEC Work Group has recommended no changes to Sections 11, 13, 14 or 16, but has recommended certain amendments to Section 15 that are described in the section of this report entitled “Criminal Gang Activity, Intimidation, Recruitment (IC 35-49-5-3, 4, 5); Criminal Gang Sentencing Enhancement (IC 35-50-2-15)”.

e. **Credit Time (IC 35-50-6)**

The CCEC Work Group examined the two types of credit time: the credit time received based on classification of the inmate, and educational and programmatic credit time; and has made certain recommendations which can be found in the section of this report entitled, “Credit Time (IC 35-50-6)”.

The CCEC Work Group also reviewed the **Consecutive and Concurrent Sentencing** provisions found in **IC 35-50-1-2**, but has made no recommendations for change.

***Matters Remaining Unaddressed by the CCEC Work Group:***

Certain matters were not addressed by the CCEC Work Group but should be considered by the General Assembly. They include:

1. **Penalty Ranges**

While the CCEC Work Group proposes that the recommended Level 6 felony carry the same penalty as the current Class D felony, and the recommended Level 5 felony carry the same penalty as the current Class C felony, it has not made a specific recommendation as to the ranges for the remaining levels (4, 3, 2 and 1). Those levels correspond to the current Class B (Level 4, Level 3) and Class A (Level 2, Level 1) felonies, and it is anticipated that the General Assembly will assign ranges that resemble the ranges for Class B (6 to 20 years) and Class A (20-50 years); but no recommendation is made as to specific ranges that should be assigned to those higher levels (Levels 1-4). The Work Group will be happy to work with the CCEC to help develop an ultimate recommendation regarding penalty ranges.

2. **Time Off for Good Behavior**

While the CCEC Work Group has made specific recommendations regarding the current DOC Classification Level 4 (credit restricted felon), which it proposes should be repealed, and educational credit time, which it proposes should be limited (see explanation in the portion of the report entitled, “Credit Time (IC 35-50-6)”), the Work Group makes no recommendation with respect to the percentage of his sentence an offender should earn in exchange for good behavior in the prison system. See the explanation in the “Credit Time” portion of the report.

3. **Ancillary Penalties**

The CCEC Work Group notes that certain offenses carry ancillary penalties such as the suspension of driving privileges. While in some cases, such as Driving Under the Influence, such a suspension makes sense, there are other situations in which the suspension of driving privileges does not necessarily make the public safer but simply serves as an additional punishment to the offender. Given the desire of society that ex-offenders hold jobs, and the fact that automobiles are sometimes the only practical means

of transportation, some of these restrictions may need to be revisited. The CCEC Work Group will be happy to review and comment on such penalties at the request of the CCEC.

4. **Title 9 (Traffic Related Offenses)**

As indicated above, IPAC has offered to conduct a review of Title 9 and make recommendations for amendments to the traffic related statutes in the Indiana Code.

5. **Title 35, Article 38**

There have been many good ideas discussed by the CCEC in the past two years regarding how to improve on community supervision, thus increasing public safety by reducing repeat victimizations. These ideas have included transferring savings from DOC, which may be realized through reductions in the overall population of lower level felons, to counties to assist them in closer supervision; adoption by community supervision authorities of evidence-based practices and swift and certain sanctions for probation violations; and closer coordination between probation departments and community corrections agencies. While the improvement of community supervision is a highly laudable goal, it has not been the focus of the CCEC Work Group, which has instead focused its attention on the substantive crimes and sentencing aspects of the Indiana Code.

***Potential for Fiscal Impact:***

It will be necessary carefully to consider the potential fiscal impact of various recommendations. Some will likely result in increased sentences being served for certain offenses; but some, by reducing other sentences or affecting the suspendibility of Class D felonies, will mitigate the effects of those increases on the DOC population. Some of the recommendations that may result in a fiscal impact are:

**Potential for increased cost to State:**

- Some increases in child abuse sentences
- Some aspects of the Habitual Offender recommendations, including the proposed repeal of the Habitual Substance Offender statute and return of substance offenders to the traditional Habitual Offender statute (but see below for mitigating recommendations)
- Overall sentencing ranges, depending on what decisions are made in terms of the ranges that should be assigned to each felony level
- Decisions that may be made with regard to “good time” credit and the percentage of the offender’s sentence that must be served

**Potential for decreased cost to State:**

- Recommendation that Level 6 felonies (the current Class D felonies) be suspendible at the Court's discretion
- Proposed \$750 threshold for felony theft
- Recommended sentencing levels for various drug offenses, resulting in reduced sentences for lower-level offenders (tempered with sentence increases for a prior drug dealing conviction)
- Recommended changes in the Habitual Offender statute that would exclude from eligibility a person with a Level 6 (Class D) felony as the crime of conviction, and require a Level 5 (Class C) offender who had no prior convictions at a higher level than Level 5 to accumulate 3, rather than 2, prior offenses at a Level 5 or 6 in order to be eligible for Habitual Offender treatment

***Conclusion:***

The CCEC Work Group hereby presents this collection of carefully-considered recommendations for amendment of the Indiana Criminal Code. The Work Group looks forward to working with the CCEC members and other legislators, as well as stakeholders such as prosecutors, defense attorneys and judges, to arrive at an improved Criminal Code that will achieve the basic principles outlined by the stakeholders at the outset of its work and found on page 1 of this Introduction and Overview.

I.C. 35-42

OFFENSES AGAINST THE PERSON

## MURDER/MURDER CONSPIRACY (35-42-1-1)

### ***Overview:***

Murder has its own penalty above Class A felonies. Conspiracy to commit Murder is a Class A felony, as is attempt to commit murder.

### ***Issue(s):***

1. Should murder remain in a class of its own above other felonies?
2. Should Felony-Murder have a lesser penalty?
3. Is a Class A felony an appropriate penalty for Conspiracy to Commit Murder?
4. Is a Class A felony an appropriate penalty for Attempted Murder?

### ***Recommendation:***

1. Yes. The CCEC Staff Workgroup does not recommend a change to the placement of murder.
2. No. The CCEC Staff Workgroup does not recommend a change to the penalty for the crime of Felony-Murder.
3. Conspiracy to Commit Murder should be a Level 2 felony and Conspiracy to Commit Murder resulting in death should be a Level 1 felony.
4. Attempted Murder should be a Level 2 felony.

### ***Rationale:***

Members of the CCEC Staff Workgroup researched and debated the issues of Murder and Felony-Murder extensively.

### ***Indiana Case Law:***

In *Thomas v. State*, the Indiana Supreme Court stated that, for purposes of felony murder, "the State need not prove that the defendant acted with any particular mental state--the killing could be totally accidental--so long as the State does prove that the killing occurred while the defendant was committing (or attempting to commit) a specified felony." 827 N.E.2d 1131, 1132-33 (Ind. 2005).

In *Palmer v. State*, the Indiana Supreme Court held that the statutory language "kills another human being while committing" does not restrict the felony murder provision only to instances in which the felon is the killer, but may also apply equally when, in committing any of the designated felonies, the felon contributes to the death of any person. 704 N.E.2d 124 (Ind. 1999). In this case, the Indiana Supreme Court upheld the felony murder conviction of the defendant when his co-perpetrator was shot and killed by a correctional officer during a kidnapping.

### ***Workgroup Position:***

Recommended with reservations expressed in the minutes by IPDC and IPAC representatives. IPDC expressed a desire to abolish felony murder or lessen the penalty for Felony-Murder. IPAC expressed a desire to have Murder be the first felony level and then have six felony levels lower than it.

### ***Current Statute:***

Sec. 1. A person who:

- (1) knowingly or intentionally kills another human being;
- (2) kills another human being while committing or attempting to commit arson, burglary, child molesting, consumer product tampering, criminal deviate conduct, kidnapping, rape, robbery, human trafficking, promotion of human trafficking, sexual trafficking of a minor, or carjacking;
- (3) kills another human being while committing or attempting to commit:

- (A) dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1);
  - (B) dealing in or manufacturing methamphetamine (IC 35-48-4-1.1);
  - (C) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
  - (D) dealing in a schedule IV controlled substance (IC35-48-4-3); or
  - (E) dealing in a schedule V controlled substance; or
- (4) knowingly or intentionally kills a fetus that has attained viability (as defined in IC 16-18-2-365); commits murder, a felony.

**CAUSING SUICIDE**  
**(I.C. 35-42-1-2)**

***Overview:***

Causing Suicide is currently a Class B felony which involves causing a person to commit suicide by force, duress, or deception.

***Issue(s):***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 3.

***Rationale:***

Causing Suicide is proportional to Feticide, another level 3 felony.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 2. A person who intentionally causes another human being, by force, duress, or deception, to commit suicide commits causing suicide, a Class B felony.

*As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.26.*

**ASSISTING SUICIDE  
(I.C. 35-42-1-2.5)**

**Overview:**

Assisting Suicide is currently a Class C felony which involves providing the physical means by which another person attempts or commits suicide or participates in a physical act by which the other person commits suicide.

**Issue(s):**

1. In which felony level does this crime belong?

**Recommendation:**

1. Felony level 5.

**Rationale:**

Assisting Suicide is proportional to other level 5 felonies, such as Involuntary Manslaughter and Reckless Homicide.

**Workgroup Position:**

Consensus recommendation.

**Current Statute:**

Sec. 2.5. (a) This section does not apply to the following:

(1) A licensed health care provider who administers, prescribes, or dispenses medications or procedures to relieve a person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, unless such medications or procedures are intended to cause death.

(2) The withholding or withdrawing of medical treatment or life-prolonging procedures by a licensed health care provider, including pursuant to IC 16-36-4 (living wills and life-prolonging procedures), IC 16-36-1 (health care consent), or IC 30-5 (power of attorney).

(b) A person who has knowledge that another person intends to commit or attempt to commit suicide and who intentionally does either of the following commits assisting suicide, a Class C felony:

(1) Provides the physical means by which the other person attempts or commits suicide.

(2) Participates in a physical act by which the other person attempts or commits suicide.

*As added by P.L.246-1993, SEC.1. Amended by P.L.1-1994, SEC.167.*

**IC 16-36-1-1**

**Health care defined**

Sec. 1. As used in this chapter, "health care" means any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition. The term includes admission to a health care facility.

*As added by P.L.2-1993, SEC.19.*

**IC 16-36-4-1**

**Life prolonging procedure defined**

Sec. 1. (a) As used in this chapter, "life prolonging procedure" means any medical procedure, treatment, or intervention that does the following:

(1) Uses mechanical or other artificial means to sustain, restore, or supplant a vital function.

(2) Serves to prolong the dying process.

(b) The term does not include the performance or provision of any medical procedure or medication necessary to provide comfort care or to alleviate pain.

*As added by P.L.2-1993, SEC.19. Amended by P.L.99-1994, SEC.1.*

**VOLUNTARY MANSLAUGHTER**  
**(I.C. 35-42-1-3)**

***Overview:***

Voluntary manslaughter is currently a Class B Felony for the knowing or intentional killing of a human being or a fetus that has attained viability while acting under sudden heat. However, the crime is a Class A Felony if a deadly weapon is used.

***Issue(s):***

1. In which felony level does this crime belong?
2. Is the enhancement for use of a deadly weapon necessary?

***Recommendation:***

1. Felony level 2.
2. The deadly weapon enhancement should be eliminated.

*The following is language recommended by the workgroup:*

(a) A person who knowingly or intentionally kills another human being or kills a fetus that has attained viability (as defined in IC 16-18-2-365) while acting under sudden heat commits voluntary manslaughter, a ~~Class B Level 2~~ **Level 2** felony. ~~However, the offense is a Class A felony if it is committed by means of a deadly weapon.~~

(b) The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter.

***Rationale:***

As an intentional killing, the basic crime should be punished more harshly than a Class B felony. The use of a deadly weapon in this crime is not indicative of an increased level of culpability. For example, if someone is pushed out of a window in sudden heat, why should that be treated as less of a crime than if someone were shot in sudden heat? The outcome is the same, and the criminal intent is the same. Therefore, the enhancement for the use of a deadly weapon is not necessary. By placing the crime in the **Level 2** Felony, it creates a slight penalty increase for the base crime with a slight decrease for the enhanced crime.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

(a) A person who knowingly or intentionally kills another human being or kills a fetus that has attained viability (as defined in IC 16-18-2-365) while acting under sudden heat commits voluntary manslaughter, a Class B felony. However, the offense is a Class A felony if it is committed by means of a deadly weapon.

(b) The existence of sudden heat is a mitigating factor that reduces what otherwise would be murder under section 1(1) of this chapter to voluntary manslaughter.

**IC 16-18-2-365**

**Viability**

Sec. 365. "Viability", for purposes of IC 16-34, means the ability of a fetus to live outside the mother's womb.

*As added by P.L.2-1993, SEC.*

**INVOLUNTARY MANSLAUGHTER**  
**(I.C. 35-42-1-4)**

***Overview:***

Involuntary Manslaughter is currently a Class C felony, unless the killing results from the operation of a vehicle, which makes it a Class D felony. If the person kills a fetus or is Operating a Vehicle While Intoxicated, it is a Class C felony. If a child care provider, as defined by statute, recklessly supervises a child and the child dies as a result, it is Involuntary Manslaughter and a Class D felony.

***Issue(s):***

1. In which felony level does this crime belong?
2. Should changes be made to the statute's child care provider provisions so that death of a child while under the supervision of a child care worker be categorized as Recklessness, Child Neglect or Reckless Supervision? Should each be classified as a Class D felony if the child dies or a Class A or Class B misdemeanor if the child survives?

***Recommendation:***

1. Felony level 5; regardless of whether the crime involves the use of a motor vehicle.
2. Involuntary Manslaughter by a child care provider should be moved to fit under Child Neglect or Recklessness. Another idea is to create a separate statute (35-46-4.1 for reckless supervision by a child care provider), with the offense level being a Class B misdemeanor normally, a Class A misdemeanor if substantial bodily injury occurs, and a Level 6 felony if death occurs.

***Rationale:***

1. There should be no distinction in the statute for the use of a vehicle.
2. Based on the culpability level associated with the death of a child while the care provider is "providing reckless supervision", such child deaths should be moved from Involuntary Manslaughter (in which the perpetrator must be attempting to commit another crime, thus having the intent to do so) to one of the suggested statutes (Child Neglect or Recklessness).

***Workgroup Position:***

Recommended with reservations expressed by IPDC's representative that driving while intoxicated causing death should be treated more severely than simply driving while distracted (e.g., by texting while driving).

***Current Statute:***

Sec. 4. (a) As used in this section, "child care provider" means a person who provides child care in or on behalf of:

- (1) a child care center (as defined in IC 12-7-2-28.4); or
- (2) a child care home (as defined in IC 12-7-2-28.6);

regardless of whether the child care center or child care home is licensed.

(b) As used in this section, "fetus" means a fetus that has attained viability (as defined in IC 16-18-2-365).

- (c) A person who kills another human being while committing or attempting to commit:
  - (1) a Class C or Class D felony that inherently poses a risk of serious bodily injury;
  - (2) a Class A misdemeanor that inherently poses a risk of serious bodily injury; or
  - (3) battery;

commits involuntary manslaughter, a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony.

(d) A person who kills a fetus while committing or attempting to commit:  
(1) a Class C or Class D felony that inherently poses a risk of serious bodily injury;  
(2) a Class A misdemeanor that inherently poses a risk of serious bodily injury;  
(3) battery; or  
(4) a violation of IC 9-30-5-1 through IC 9-30-5-5 (operating a vehicle while intoxicated);  
commits involuntary manslaughter, a Class C felony. However, if the killing results from the operation of a vehicle, the offense is a Class D felony.

(e) If:  
(1) a child care provider recklessly supervises a child; and  
(2) the child dies as a result of the child care provider's reckless supervision;  
the child care provider commits involuntary manslaughter, a Class D felony.  
*As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.28; P.L.261-1997, SEC.5; P.L.133-2002, SEC.65; P.L.7-2010, SEC.1.*

#### **IC 12-7-2-28.4**

##### **Child care center**

Sec. 28.4. "Child care center", for purposes of IC 12-17.2, means a nonresidential building where at least one (1) child receives child care from a provider:

(1) while unattended by a parent, legal guardian, or custodian;  
(2) for regular compensation; and  
(3) for more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding intervening Saturdays, Sundays, and holidays.

*As added by P.L.20-1992, SEC.8; P.L.81-1992, SEC.8. Amended by P.L.1-1993, SEC.72; P.L.136-1993, SEC.1; P.L.1-1994, SEC.48; P.L.247-2001, SEC.4.*

#### **IC 12-7-2-28.6**

##### **Child care home**

Sec. 28.6. (a) "Child care home", for purposes of IC 12-17.2, means a residential structure in which at least six (6) children (not including the children for whom the provider is a parent, stepparent, guardian, custodian, or other relative or any child who is at least fourteen (14) years of age and does not require child care) at any time receive child care from a provider:

(1) while unattended by a parent, legal guardian, or custodian;  
(2) for regular compensation; and  
(3) for more than four (4) hours but less than twenty-four (24) hours in each of ten (10) consecutive days per year, excluding intervening Saturdays, Sundays, and holidays.

(b) The term includes:  
(1) a class I child care home; and  
(2) a class II child care home.

*As added by P.L.20-1992, SEC.9 and P.L.81-1992, SEC.9. Amended by P.L.1-1993, SEC.73; P.L.136-1993, SEC.2; P.L.124-2007, SEC.1.*

**RECKLESS HOMICIDE**  
**(I.C. 35-42-1-5)**

***Overview:***

Reckless Homicide is currently a Class C felony which involves a person recklessly killing another human being.

***Issue(s):***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 5.

***Rationale:***

The penalty for Reckless Homicide is proportional to other level 5 felonies such as Involuntary Manslaughter and Assisting Suicide.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 5. A person who recklessly kills another human being commits reckless homicide, a Class C felony.  
*As added by Acts 1976, P.L. 148, SEC.2. Amended by Acts 1977, P.L.340, SEC.29; Acts 1980, P.L.83, SEC.6.*

**FETICIDE**  
**(I.C. 35-42-1-6)**

***Overview:***

Feticide is currently a Class B felony which involves a person who knowingly or intentionally kills a human fetus other than to produce a live birth, to remove a dead fetus, or to perform an abortion as permitted under state statute.

***Issue(s):***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 3.

***Rationale:***

Feticide is proportional to other level 3 felonies such as Aggravated Battery and Causing Suicide.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 6. A person who knowingly or intentionally terminates a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus commits feticide, a Class B felony. This section does not apply to an abortion performed in compliance with:

- (1) IC 16-34; or
- (2) IC 35-1-58.5 (before its repeal).

*As added by Acts 1979, P.L.153, SEC.3. Amended by P.L.2-1995, SEC.126; P.L.40-2009, SEC.1*

## TRANSFERRING CONTAMINATED BODY FLUIDS (35-42-1-7)

### ***Overview:***

Transferring Contaminated Body Fluids occurs when a person recklessly, knowingly, or intentionally donates, sells, or transfers blood, a blood component, or semen for artificial insemination that contains the human immunodeficiency virus. "Component" is defined as plasma, platelets, or serum of a human being. Currently, the "basic" version of this offense is a Class C felony. However, if it results in the transmission of the human immunodeficiency virus (HIV) to any person other than the defendant, it is a Class A felony.

### ***Issue(s):***

1. In which felony level does this crime belong?
2. In which felony level does this crime belong, if the victim is infected with HIV?
3. Is this crime in the appropriate section of the Indiana Criminal Code?

### ***Recommendation:***

1. Felony level 5.
2. Felony level 3.
3. This crime should be combined with other crimes dealing with HIV/AIDS and put into a public health chapter under Title 35. The group of crimes should be moved to Article 45 (Offenses Against Public Health, Order, and Decency). Other crimes of a similar nature that should be moved to Article 45 are: IC 35-42-1-8 (Sale of AIDS Testing Equipment); IC 35-42-1-9 (Failure to Warn of Communicable Disease); IC 35-42-2-7 (Tattooing Without Parental Permission); IC 35-42-2-8 (Interference with Medical Services); IC 35-45-19- 1,2,3 (Failure to Report a Dead Body); and IC 35-45-20-1,2 (Dispensing Contact Lenses Without Prescription).

### ***The following is language is recommended:***

- Sec. 7. (a) As used in this section, "component" means plasma, platelets, or serum of a human being.
- (b) A person who recklessly, knowingly, or intentionally donates, sells, or transfers blood, a blood component, or semen for artificial insemination (as defined in IC 16-41-14-2) that contains the human immunodeficiency virus (HIV) commits transferring contaminated body fluids, a ~~Class C~~ **Level 5** felony.
- (c) However, the offense is a ~~Class A~~ **Level 3** felony if it results in the transmission of the human immunodeficiency virus (HIV) to any person other than the defendant.
- (d) This section does not apply to:
- (1) a person who, for reasons of privacy, donates, sells, or transfers blood or a blood component at a blood center (as defined in IC 16-41-12-3) after the person has notified the blood center that the blood or blood component must be disposed of and may not be used for any purpose; or
  - (2) a person who transfers blood, a blood component, semen, or another body fluid that contains the human immunodeficiency virus (HIV) for research purposes.

### ***Rationale:***

Infection with HIV virus may no longer be a virtual death sentence, so the crime should not rise to the level of a current Class A felony; a Level 3 is appropriate and proportional. This change reflects the current state of medical science. Statute was originally passed in 1988, before recent advancements in medical science allowed people to live a long life though infected with HIV.

***Workgroup Position:***

IPAC's representative expresses a reservation on the basis that current medicines may be losing their effectiveness; and HIV affects a person's life significantly.

***Current Statute:***

- Sec. 7. (a) As used in this section, "component" means plasma, platelets, or serum of a human being.
- (b) A person who recklessly, knowingly, or intentionally donates, sells, or transfers blood, a blood component, or semen for artificial insemination (as defined in IC 16-41-14-2) that contains the human immunodeficiency virus (HIV) commits transferring contaminated body fluids, a Class C felony.
- (c) However, the offense is a Class A felony if it results in the transmission of the human immunodeficiency virus (HIV) to any person other than the defendant.
- (d) This section does not apply to:
- (1) a person who, for reasons of privacy, donates, sells, or transfers blood or a blood component at a blood center (as defined in IC 16-41-12-3) after the person has notified the blood center that the blood or blood component must be disposed of and may not be used for any purpose; or
  - (2) a person who transfers blood, a blood component, semen, or another body fluid that contains the human immunodeficiency virus (HIV) for research purposes.

**FAILURE OF CARRIERS OF DANGEROUS COMMUNICABLE DISEASES TO WARN  
PERSONS AT RISK  
(35-42-1-9)**

***Overview:***

IC 16-41-7-1 describes a carriers' duty to warn persons at risk. The communicable diseases that this section applies to are acquired immune deficiency syndrome (AIDS), Human immunodeficiency virus (HIV), and Hepatitis B. A person who knowingly violates IC 16-41-7-1 commits a Class D felony.

***Issue(s):***

1. In which felony level does this crime belong?
2. Is this crime in the appropriate section of the Indiana Criminal Code?

***Recommendation:***

1. Felony level 6.
2. This crime should be combined with other crimes dealing with HIV/AIDS and put into a public health chapter under Title 35. The crimes should be moved to Article 45 (Offenses Against Public Health, Order, and Decency). Other crimes of a similar nature that should be moved to Article 45 are: IC 35-42-1-7 (Transferring Contaminated Body Fluids); IC 35-42-1-8 (Sale of AIDS Testing Equipment); IC 35-42-2-7 (Tattooing Without Parental Permission); IC 35-42-2-8 (Interference with Medical Services); IC 35-45-19- 1,2,3 (Failure to Report a Dead Body); and IC 35-45-20-1,2 (Dispensing Contact Lenses Without Prescription).

***Rationale:***

1. This penalty level is appropriate and proportional.
2. The group of crimes described are all related to public health and would be easier to find if they were contained in a single chapter.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

- Sec. 9. (a) Except as provided in this section, a person who recklessly violates or fails to comply with IC 16-41-7 commits a Class B misdemeanor.
- (b) A person who knowingly or intentionally violates or fails to comply with IC 16-41-7-1 commits a Class D felony.
- (c) Each day a violation described in this section continues constitutes a separate offense.

**BATTERY**  
**(I.C. 35-42-2-1)**

***Overview:***

Battery is the touching of another person in a rude, insolent or angry manner. The base offense is a Class B Misdemeanor.

The penalty increases to a Class A Misdemeanor if the offense results in bodily injury to another person OR is committed against six enumerated categories of individuals who are involved in various aspects of public safety or the criminal justice system.

The penalty increases to a Class D Felony if there is bodily injury to a list of 14 enumerated categories of individuals (expanded beyond those listed for a Class A Misdemeanor) OR if there was a previous conviction involving the same perpetrator and the same victim.

The offense is a Class C Felony if there is serious bodily injury to another person or a deadly weapon is used OR there is serious bodily injury to an endangered adult OR there is bodily injury to a pregnant woman and the perpetrator knows the woman is pregnant.

The offense is a Class B Felony if the offense is committed by a person 18 or older with resulting serious bodily injury to a person under 14 OR an endangered adult dies.

The battery is a Class A Felony if committed by a person 18 or older and a person under 14 dies.

***Issues:***

1. Should the battery statute follow the more simplified structure set out in the 1977 version?
2. Correspondingly, should any of the “special classes” of persons added since 1977 be eliminated from the statutory scheme?
3. Is the penalty for the base battery offense (Class B Misdemeanor) too low?
4. What factor(s) should cause the base offense penalty for a battery to increase in severity?
5. Can Battery by Bodily Waste (I.C. 35-42-2-6) and Strangulation (I.C. 35-42-2-9) be incorporated into the main battery statute? Should Domestic Battery (I.C. 35-42-2-1.3) and Aggravated Battery (I.C. 35-42-2-1.5) be incorporated into the main battery statute?
6. Are there other steps that could be taken to streamline or clarify the terms of the statute?

***Recommendations:***

1. The battery statute should be streamlined to simplify the offense.
2. Certain special classes of persons should be eliminated from the statute’s listing of enhancement reasons, and only persons/professions requiring special protection should remain. Those include: community policing volunteer; employee of a school corporation; health care provider; and the state chemist or his agent.
3. The beginning penalty is too low and should begin at a Class A Misdemeanor.
4. Factors causing increases in penalty should include those typically used throughout the Indiana Penal Code and would include injury and its nature, use of a deadly weapon, injury to certain classes of persons (e.g., young persons, endangered adults), repeat offenses, death.
5. The concepts encompassed in Battery by Bodily Waste should be incorporated into the main battery statute, and the Battery by Bodily Waste statute (IC 35-42-2-6) should be repealed. Domestic Battery, Strangulation, and Aggravated Battery should remain as stand-alone offenses.
6. A new definition of “public safety official” is recommended to include several categories of victims in relation to whom the penalties for battery are enhanced.

*The following language is recommended. NOTE: The following is not a complete legislative draft, but simply an effort to point out where language may be recommended for addition or deletion. For a definition of "bodily fluid," see draft for Malicious Mischief (IC 35-45-16-2).*

#### **I.C. 35-42-2-1**

##### **Battery**

(a) A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner **or knowingly or intentionally in a rude, insolent, or angry manner places any body fluid or waste on another person** commits battery, a ~~Class B~~ **Class A** misdemeanor. However, the offense is:

(1) a ~~Class A misdemeanor~~ **Level 6 felony** if:

(A) it results in bodily injury to ~~another~~ **any other** person;

~~(B) it is committed against a law enforcement officer or against a person summoned and directed by the officer while the officer is engaged in the execution of the officer's official duty;~~

**(B) it is committed against a public safety official while the public safety official is engaged in the execution of his official duty;**

(C) it is committed against a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;

(D) it is committed against a person of any age who has a mental or physical disability and is committed by a person having the care of the person with a mental or physical disability, whether the care is assumed voluntarily or because of a legal obligation;

(E) it is committed against an endangered adult (as defined in IC 12-10-3-2); or

~~(F) an employee of the department of correction while the employee is engaged in the execution of the employee's official duty;~~

~~———— (G) an employee of a school corporation while the employee is engaged in the execution of the employee's official duty;~~

~~———— (H) a correctional professional while the correctional professional is engaged in the execution of the correctional professional's official duty;~~

~~———— (I) a person who is a health care provider (as defined in IC 16-18-2-163) while the health care provider is engaged in the execution of the health care provider's official duty;~~

~~———— (J) an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty;~~

~~———— (K) a firefighter (as defined in IC 9-18-34-1) while the firefighter is engaged in the execution of the firefighter's official duty;~~

~~———— (L) a community policing volunteer:~~

~~———— (i) while the volunteer is performing the duties described in IC 35-41-1-4.7; or~~

~~———— (ii) because the person is a community policing volunteer;~~

~~(F) it is committed against the state chemist or the state chemist's agent while the state chemist or the state chemist's agent is performing a duty under IC 15-16-5;~~

~~(N) a department of child services employee while the employee is engaged in the execution of the employee's official duty;~~

**(M) (F) a family or household member (as defined in IC 35-41-1-10.6) if the person who committed the offense:**

(i) is at least eighteen (18) years of age; and

(ii) committed the offense in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense; or

(2) a ~~Class C felony~~ **Level 5 felony** if it results in serious bodily injury to any other person or if it is committed by means of a deadly weapon; if it results in bodily injury to a pregnant woman and the person knew the woman was pregnant; or if the person who commits the battery was previously convicted of a battery in which the victim was the other person;

(3) **A Level 6 felony if the person knew or recklessly failed to know that the bodily fluid or waste placed on another person was infected with hepatitis, tuberculosis or human immunodeficiency virus [HIV], and a Level 5 felony if the person on whom the bodily fluid or waste is placed is a public safety official.**

~~(3)~~ (4) a ~~Class C felony~~ **Level 5 felony** if it results in bodily injury and is committed against:

(i) **a public safety official while the public safety official is engaged in the execution of his official duty;**

(ii) **a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;**

(iii) **a person of any age who has a mental or physical disability and is committed by a person having the care of the person with a mental or physical disability, whether the care is assumed voluntarily or because of a legal obligation;**

(iv) **an endangered adult (as defined in IC 12-10-3-2); or**

~~(vi) in serious bodily injury to a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age; or~~

~~(vii) in serious bodily injury to an endangered adult (as defined in IC 12-10-3-2).~~

(5) **A Class C felony Level 4 felony if it results in serious bodily injury to an endangered adult (as defined in IC 12-10-3-2);**

(6) **A Class B felony Level 3 felony if it results in serious bodily injury to a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;**

(4) a ~~Class A felony~~ **Level 2 felony** if it results in the death of a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age or if it results in the death of an endangered adult (as defined in IC 12-10-3-2).

~~(b) For purposes of this section:~~

~~(1) "law enforcement officer" includes an alcoholic beverage enforcement officer; and~~

~~(2) "correctional professional" means a:~~

~~(A) probation officer;~~

~~(B) parole officer;~~

~~(C) community corrections worker; or~~

~~(D) home detention officer.~~

(b) For purposes of this section, "public safety official" means a(n):

(1) **law enforcement officer, including an alcoholic beverage enforcement officer;**

(2) **employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71);**

(3) **employee of the department of correction;**

(4) **probation officer;**

(5) **parole officer;**

(6) **community corrections worker;**

(7) **home detention officer; or**

(8) **department of child services employee.**

**RECOMMEND REPEAL OF BATTERY BY BODILY WASTE STATUTE (IC 35-42-2-6)**

***Rationale:***

Based on a proportionality review of the Criminal Code, it is suggested that the penalty of a Class B Misdemeanor (the current level for basic battery) is too low. This has likely resulted in the extensive efforts to increase the penalty for certain classes of persons. Therefore, the recommendation is to raise the basic penalty for battery to a Class A misdemeanor. This will result in an increase at almost every other level (e.g., causing bodily injury will become a Level 6 felony rather than a Class A misdemeanor). This will apply regardless of the victim. The proposed changes remove the requirement of bodily injury in order to reach the felony level in the case of certain special classes of individuals: those who are most vulnerable to battery due to their status (young/elderly/disabled) or by the nature of their employment in the statutorily defined arena of public safety officials. It is also recommended that the crime of “Battery by Body Waste” be incorporated into the overall battery statute. The penalties are appropriate for any battery by body waste, and the method of body waste should be included in the general concept of battery—a rude, insolent, or angry touching. Consequently, using bodily waste as a means of committing a battery against anyone should be included within the confines of the general battery statute and penalized accordingly in the scheme of punishment developed for all types of battery situations. “Strangulation” and “Domestic Battery” are specifically left as stand alone offenses in order to be able to capture the nature of the battery in criminal history reviews. This is especially needed and helpful in determining eligibility to possess a firearm after a conviction for “Domestic Battery.”

***Workgroup Position:***

Recommended with reservations expressed by IPDC, on the basis that IPDC believes that enhancements should only apply to batteries committed against individuals who are part of a vulnerable population.

***Current Statute:***

**I.C. 35-42-2-1**

**Battery**

(a) A person who knowingly or intentionally touches another person in a rude, insolent, or angry manner commits battery, a Class B misdemeanor. However, the offense is:

(1) a Class A misdemeanor if:

(A) it results in bodily injury to any other person;

(B) it is committed against a law enforcement officer or against a person summoned and directed by the officer while the officer is engaged in the execution of the officer's official duty;

(C) it is committed against an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty;

(D) it is committed against a firefighter (as defined in IC 9-18-34-1) while the firefighter is engaged in the execution of the firefighter's official duty;

(E) it is committed against a community policing volunteer:

(i) while the volunteer is performing the duties described in IC 35-41-1-4.7; or

(ii) because the person is a community policing volunteer; or

(F) it is committed against the state chemist or the state chemist's agent while the state chemist or the state chemist's agent is performing a duty under IC 15-16-5;

(2) a Class D felony if it results in bodily injury to:

(A) a law enforcement officer or a person summoned and directed by a law enforcement officer while the officer is engaged in the execution of the officer's official duty;

(B) a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;

(C) a person of any age who has a mental or physical disability and is committed by a person having the care of the person with a mental or physical disability, whether the care is assumed voluntarily or because of a legal obligation;

- (D) the other person and the person who commits the battery was previously convicted of a battery in which the victim was the other person;
- (E) an endangered adult (as defined in IC 12-10-3-2);
- (F) an employee of the department of correction while the employee is engaged in the execution of the employee's official duty;
- (G) an employee of a school corporation while the employee is engaged in the execution of the employee's official duty;
- (H) a correctional professional while the correctional professional is engaged in the execution of the correctional professional's official duty;
- (I) a person who is a health care provider (as defined in IC 16-18-2-163) while the health care provider is engaged in the execution of the health care provider's official duty;
- (J) an employee of a penal facility or a juvenile detention facility (as defined in IC 31-9-2-71) while the employee is engaged in the execution of the employee's official duty;
- (K) a firefighter (as defined in IC 9-18-34-1) while the firefighter is engaged in the execution of the firefighter's official duty;
- (L) a community policing volunteer:
  - (i) while the volunteer is performing the duties described in IC 35-41-1-4.7; or
  - (ii) because the person is a community policing volunteer;
- (M) a family or household member (as defined in IC 35-41-1-10.6) if the person who committed the offense:
  - (i) is at least eighteen (18) years of age; and
  - (ii) committed the offense in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense; or
- (N) a department of child services employee while the employee is engaged in the execution of the employee's official duty;
  - (3) a Class C felony if it results in serious bodily injury to any other person or if it is committed by means of a deadly weapon;
  - (4) a Class B felony if it results in serious bodily injury to a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;
  - (5) a Class A felony if it results in the death of a person less than fourteen (14) years of age and is committed by a person at least eighteen (18) years of age;
  - (6) a Class C felony if it results in serious bodily injury to an endangered adult (as defined in IC 12-10-3-2);
  - (7) a Class B felony if it results in the death of an endangered adult (as defined in IC 12-10-3-2);
- and
  - (8) a Class C felony if it results in bodily injury to a pregnant woman and the person knew the woman was pregnant.
- (b) For purposes of this section:
  - (1) "law enforcement officer" includes an alcoholic beverage enforcement officer; and
  - (2) "correctional professional" means a:
    - (A) probation officer;
    - (B) parole officer;
    - (C) community corrections worker; or
    - (D) home detention officer.

**I.C. 35-42-2-6**

**Battery by body waste**

- (a) As used in this section, "corrections officer" includes a person employed by:
  - (1) the department of correction;
  - (2) a law enforcement agency;

- (3) a probation department;
- (4) a county jail; or
- (5) a circuit, superior, county, probate, city, or town court.
- (b) As used in this section, "firefighter" means a person who is a:
  - (1) full-time, salaried firefighter;
  - (2) part-time, paid firefighter; or
  - (3) volunteer firefighter (as defined in IC 36-8-12-2).
- (c) As used in this section, "first responder" means a person who:
  - (1) is certified under IC 16-31 and who meets the Indiana emergency medical services commission's standards for first responder certification; and
  - (2) responds to an incident requiring emergency medical services.
- (d) As used in this section, "human immunodeficiency virus (HIV)" includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.
  - (e) A person who knowingly or intentionally in a rude, insolent, or angry manner places blood or another body fluid or waste on a law enforcement officer, firefighter, first responder, corrections officer, or department of child services employee, identified as such and while engaged in the performance of official duties, or coerces another person to place blood or another body fluid or waste on the law enforcement officer, firefighter, first responder, corrections officer, or department of child services employee, commits battery by body waste, a Class D felony. However, the offense is:
    - (1) a Class C felony if the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with:
      - (A) hepatitis B or hepatitis C;
      - (B) HIV; or
      - (C) tuberculosis;
    - (2) a Class B felony if:
      - (A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with hepatitis B or hepatitis C and the offense results in the transmission of hepatitis B or hepatitis C to the other person; or
      - (B) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and
    - (3) a Class A felony if:
      - (A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with HIV; and
      - (B) the offense results in the transmission of HIV to the other person.
  - (f) A person who knowingly or intentionally in a rude, an insolent, or an angry manner places human blood, semen, urine, or fecal waste on another person commits battery by body waste, a Class A misdemeanor. However, the offense is:
    - (1) a Class D felony if the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with:
      - (A) hepatitis B or hepatitis C;
      - (B) HIV; or
      - (C) tuberculosis;
    - (2) a Class C felony if:
      - (A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with hepatitis B or hepatitis C and the offense results in the transmission of hepatitis B or hepatitis C to the other person; or
      - (B) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and
    - (3) a Class B felony if:

- (A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with HIV; and
- (B) the offense results in the transmission of HIV to the other person.

**DOMESTIC BATTERY**  
**(I.C. 35-42-2-1.3)**

***Overview:***

Domestic battery is battery that occurs between persons who have a relationship defined by statute as including spouses, spouse-like relationships, and children in common with one another. The offense is a Class A misdemeanor, and is enhanced to a Class D felony upon a repeat offense including the same parties or when committed in the presence of a child less than 16 years of age, knowing that the child is present.

***Issues:***

1. In what penalty level(s) does this crime belong?
2. Should this statute be incorporated into the Battery statute?

***Recommendations:***

1. This offense should remain a Class A misdemeanor, enhanced to a Level 6 felony under the circumstances described above.
2. This offense should be a stand-alone statute.

***Rationale:***

1. The penalties are appropriate and proportional.
2. This statute describes detailed requirements to establish the relationship that would constitute a “domestic” one, and, thus, would not belong in a streamlined battery statute as recommended in I.C. 35-42-2-1. Even more importantly, Domestic Battery must be clearly identified so that the laws applicable to the ability to have a firearm after conviction for Domestic Battery can be applied correctly.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

- (a) A person who knowingly or intentionally touches an individual who:
  - (1) is or was a spouse of the other person;
  - (2) is or was living as if a spouse of the other person as provided in subsection (c); or
  - (3) has a child in common with the other person;in a rude, insolent, or angry manner that results in bodily injury to the person described in subdivision (1), (2), or (3) commits domestic battery, a Class A misdemeanor.
- (b) However, the offense under subsection (a) is a Class D felony if the person who committed the offense:
  - (1) has a previous, unrelated conviction:

- (A) under this section (or IC 35-42-2-1(a)(2)(E) before its repeal); or
- (B) in any other jurisdiction, including a military court, in which the elements of the crime for which the conviction was entered are substantially similar to the elements described in this section; or
- (2) committed the offense in the physical presence of a child less than sixteen (16) years of age, knowing that the child was present and might be able to see or hear the offense.
- (c) In considering whether a person is or was living as a spouse of another individual in subsection (a)(2), the court shall review the following:
  - (1) the duration of the relationship;
  - (2) the frequency of contact;
  - (3) the financial interdependence;
  - (4) whether the two (2) individuals are raising children together;
  - (5) whether the two (2) individuals have engaged in tasks directed toward maintaining a common household; and
  - (6) other factors the court considers relevant.

**AGGRAVATED BATTERY**  
**(I.C. 35-42-2-1.5)**

***Overview:***

Aggravated battery is battery that causes a serious risk of death or significant damage to a person's body, or loss of a fetus. The offense is a Class B felony.

***Issues:***

1. In what felony level does this crime belong?
2. Should a provision be added to apply to an aggravated battery that results in the death of a child under 14?
3. Should this statute be incorporated into the Battery statute?

***Recommendations:***

1. This offense should be a Level 3 felony.
2. Aggravated battery resulting in the death of a child under age 14 should be Level 1 felony.
3. This offense should be a stand-alone statute.

***Rationale:***

1. The recommended penalties are appropriate and proportional.
2. See Battery statute (IC 35-42-2-1), in which the penalty for death of a child under 14 is recommended as a Level 2 felony (it is currently a Class A felony). It is recommended that in the event of aggravated battery that results in death, the offense should be at the highest level other than Murder, or Level 1 felony.
3. This statute addresses situations creating certain risks or losses that are more serious than most in the battery statute and are different in type and kind. These harms differ enough from the basic battery statute's language and structure that a stand-alone statute becomes more appropriate for ease of understanding and application.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

A person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death or causes:

- (1) serious permanent disfigurement;
- (2) protracted loss or impairment of the function of a bodily member or organ; or
- (3) the loss of a fetus;

commits aggravated battery, a Class B felony.

**Criminal Recklessness**  
**(35-42-2-2)**

***Overview:***

Criminal Recklessness, which currently includes Hazing, is a Class B misdemeanor, with enhancements up to C and D felonies.

***Issue(s):***

1. Where in the Indiana Criminal Code is the most appropriate placement for the crime of hazing?
2. In which felony level(s) does the crime of Criminal Recklessness belong?

***Recommendation:***

1. Hazing should be a separate statute. All hazing language should be removed from the criminal recklessness statute. Hazing will remain a Class B misdemeanor with enhancements.
2. The penalty should be a Class B misdemeanor for basic Criminal Recklessness; a Level 6 for recklessness with a deadly weapon, or aggressive driving resulting in serious bodily injury; and a Level 5 for aggressive driving resulting in death, or shooting into an inhabited dwelling or a building where people are likely to gather.

*The following is language recommended by the workgroup:*

Hazing

(a) As used in this section, "hazing" means forcing or requiring another person:

- (1) with or without the consent of the other person; and
  - (2) as a condition of association with a group or organization;
- to perform an act that creates a substantial risk of bodily injury.

(b) A person, other than a person who has committed an offense under this section or a delinquent act that would be an offense under this section if the violator was an adult, who:

- (1) makes a report of hazing in good faith;
- (2) participates in good faith in a judicial proceeding resulting from a report of hazing;
- (3) employs a reporting or participating person described in subdivision (1) or (2); or
- (4) supervises a reporting or participating person described in subdivision (1) or (2); is not liable for civil damages or criminal penalties that might otherwise be imposed because of the report or participation.

(c) Hazing is a Class B misdemeanor.

(d) A person who recklessly, knowingly, or intentionally performs hazing that results in serious bodily injury to a person commits a Level 6 felony. However, the offense is a Level 5 felony if committed by means of a deadly weapon.

(e) A person described in subsection (b)(1) or (b)(2) is presumed to act in good faith.

(f) A person described in subsection (b)(1) or (b)(2) may not be treated as acting in bad faith solely because the person did not have probable cause to believe that a person committed:

- (1) an offense under this section; or
- (2) a delinquent act that would be an offense under this section if the offender was an adult.

### **Criminal Recklessness**

(a) A person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person commits criminal recklessness. Except as otherwise provided, criminal recklessness is a Class B misdemeanor.

(b) A person who recklessly, knowingly, or intentionally inflicts serious bodily injury on another person commits criminal recklessness, a Level 6 felony. However, the offense is a Level 5 felony if committed by means of a deadly weapon.

(c) The offense of criminal recklessness is:

(1) a Class A misdemeanor if the conduct includes the use of a vehicle;

(2) a Class 6 felony if:

(A) it is committed while armed with a deadly weapon; or

(B) the person committed aggressive driving (as defined in IC 9-21-8-55) that results in serious bodily injury to another person; or

(3) a Class 5 felony if:

(A) it is committed by shooting a firearm into an inhabited dwelling or other building or place where people are likely to gather; or

(B) the person committed aggressive driving (as defined in IC 9-21-8-55) that results in the death of another person.

(d) A person who recklessly, knowingly, or intentionally inflicts serious bodily injury on another person commits criminal recklessness, a Level 6 felony. However, the offense is a Level 5 felony if committed by means of a deadly weapon.

#### ***Rationale:***

Hazing should be separated into a separate statute since it is not the same type of offense as criminal recklessness. Seemingly for lack of a more appropriate place to put the crime of hazing, it is currently included in the Criminal Recklessness statute. Hazing deserves its own place in the criminal code. The victims of hazing suffer an array of damages from emotional distress to death. The issue of vicarious liability attributable to national organizations is being litigated in civil courts, as is the culpability of individuals and various representatives of the larger organization. To understand and accommodate the growth of the crime, hazing needs parceled out into its own code section.

#### ***Workgroup Position:***

Consensus recommendation

#### ***Current Statute:***

Sec. 2. (a) As used in this section, "hazing" means forcing or requiring another person:

(1) with or without the consent of the other person; and

(2) as a condition of association with a group or organization;

to perform an act that creates a substantial risk of bodily injury.

(b) A person who recklessly, knowingly, or intentionally performs:

(1) an act that creates a substantial risk of bodily injury to another person; or

(2) hazing;

commits criminal recklessness. Except as provided in subsection (c), criminal recklessness is a Class B misdemeanor.

(c) The offense of criminal recklessness as defined in subsection (b) is:

(1) a Class A misdemeanor if the conduct includes the use of a vehicle;

(2) a Class D felony if:

(A) it is committed while armed with a deadly weapon; or

(B) the person committed aggressive driving (as defined in IC 9-21-8-55) that results in serious bodily injury to another person; or

- (3) a Class C felony if:
  - (A) it is committed by shooting a firearm into an inhabited dwelling or other building or place where people are likely to gather; or
  - (B) the person committed aggressive driving (as defined in IC 9-21-8-55) that results in the death of another person.
- (d) A person who recklessly, knowingly, or intentionally:
  - (1) inflicts serious bodily injury on another person; or
  - (2) performs hazing that results in serious bodily injury to a person; commits criminal recklessness, a Class D felony. However, the offense is a Class C felony if committed by means of a deadly weapon.
- (e) A person, other than a person who has committed an offense under this section or a delinquent act that would be an offense under this section if the violator was an adult, who:
  - (1) makes a report of hazing in good faith;
  - (2) participates in good faith in a judicial proceeding resulting from a report of hazing;
  - (3) employs a reporting or participating person described in subdivision (1) or (2); or
  - (4) supervises a reporting or participating person described in subdivision (1) or (2); is not liable for civil damages or criminal penalties that might otherwise be imposed because of the report or participation.
- (f) A person described in subsection (e)(1) or (e)(2) is presumed to act in good faith.
- (g) A person described in subsection (e)(1) or (e)(2) may not be treated as acting in bad faith solely because the person did not have probable cause to believe that a person committed:
  - (1) an offense under this section; or
  - (2) a delinquent act that would be an offense under this section if the offender was an adult.

**OBSTRUCTION OF TRAFFIC**  
**(35-42-2-4)**

***Overview:***

In 1988, the Indiana General Assembly created the crime of Obstruction of Traffic and it has not been amended since its inception.

***Issue(s):***

1. Does the current crime of Obstruction of Traffic belong in the section of the Indiana Criminal Code defining the crime of Battery and other offense against the person?
2. In which felony level does this crime belong if it results in serious bodily injury or death? (\*Note that “death” is not currently in the statute with SBI.)

***Recommendation:***

1. This offense is more properly placed in the section of the Indiana Criminal Code dealing with Governmental Operations.
2. Felony level 6 if it results in SBI or death.

***Rationale:*** Governmental Operations is a more appropriate section due to the nature of the offense. The workgroup has added “death” as an enhancement to be consistent with the Code.

*The following is language recommended by the workgroup:*

Sec. 4. (a) A person who recklessly, knowingly, or intentionally obstructs vehicular or pedestrian traffic commits obstruction of traffic, a Class B misdemeanor.

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

- (1) a Class A misdemeanor if the offense includes the use of a motor vehicle; and
- (2) a ~~Class D~~ **Level 6** felony if the offense results in serious bodily injury **or death**.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 4. (a) A person who recklessly, knowingly, or intentionally obstructs vehicular or pedestrian traffic commits obstruction of traffic, a Class B misdemeanor.

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

- (1) a Class A misdemeanor if the offense includes the use of a motor vehicle; and
- (2) a Class D felony if the offense results in serious bodily injury.

**OVERPASS MISCHIEF**  
**(35-42-2-5)**

***Overview:***

A person who knowingly, intentionally, or recklessly drops, causes to drop, or throws an object from an overpass, or with intent that the object fall, places on an overpass an object that falls off the overpass causing bodily injury to another person commits Overpass Mischief, a Class C felony. However, the offense is a Class B felony if it results in serious bodily injury to another person. "Overpass" means a bridge or other structure designed to carry vehicular or pedestrian traffic over any roadway, railroad track, or waterway.

***Issue(s):***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 5. It should be a Felony level 4 if it results in serious bodily injury.

***Rationale:***

Placement into Felony levels 5 and 4 is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 5. (a) As used in this section, "overpass" means a bridge or other structure designed to carry vehicular or pedestrian traffic over any roadway, railroad track, or waterway.

(b) A person who knowingly, intentionally, or recklessly:

- (1) drops, causes to drop, or throws an object from an overpass; or
- (2) with intent that the object fall, places on an overpass an object that falls off the overpass; causing bodily injury to another person commits overpass mischief, a Class C felony. However, the offense is a Class B felony if it results in serious bodily injury to another person.

**RAILROAD MISCHIEF**  
**(35-42-2-5.5)**

***Overview:***

Railroad Mischief is currently under Article 42, Chapter 2, "Battery and Related Offenses" The basic crime is a Class D felony, but it is a Class C felony if it results in serious bodily injury and a Class B felony if it results in death.

***Issue(s):***

1. Can Railroad Mischief be consolidated along with Cemetery Mischief, Unlawful Acts Relating to Caves and Computer Tampering under the Criminal Mischief Statute in Article 43?
2. In which felony level does this crime belong?

***Recommendation:***

1. Railroad Mischief should be consolidated with the other crimes described in Issue 1 and moved under the Criminal Mischief Statute.
2. Felony level 6. However, the offense should be a Level 5 felony if it results in serious bodily injury to another person and a Level 2 felony if it results in the death of another person.

*The following is language recommended by the workgroup:*

Railroad Mischief (I.C. 35-43-1-2.3) -- NEW section  
Sec. 2.3. (a) A person who:

- (1) recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent and
  - i. the property damaged was a locomotive, a railroad car, a train, or equipment of a railroad company being operated on a railroad right-of-way; or
  - ii. the property damaged was a part of any railroad signal system, train control system, centralized dispatching system, or highway railroad grade crossing warning signal on a railroad right-of-way owned, leased, or operated by a railroad company; or
  - iii. the property damaged was any rail, switch, roadbed, viaduct, bridge, trestle, culvert, or embankment on a right-of-way owned, leased, or operated by a railroad company;commits railroad mischief, a Level 6 felony. However, the offense is a Level 5 felony if it results in serious bodily injury to another person and a Level 2 felony if it results in the death of another person.

***Rationale:***

The work group believes the statute should be streamlined and made consistent with the DUI/causing death and reckless homicide statutes, all based on actions without specific intent to cause the eventual result.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 5.5. A person who recklessly, knowingly, or intentionally:

- (1) removes an appurtenance from a railroad signal system, resulting in damage or impairment of the operation of the railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal on a railroad owned,

leased, or operated by a railroad carrier without consent of the railroad carrier involved;

(2) tampers with or obstructs a switch, a frog, a rail, a roadbed, a crosstie, a viaduct, a bridge, a trestle, a culvert, an embankment, a structure, or an appliance pertaining to or connected with a railroad carrier without consent of the railroad carrier involved; or

(3) steals, removes, alters, or interferes with a journal bearing, a brass, a waste, a packing, a triple valve, a pressure cock, a brake, an air hose, or another part of the operating mechanism of a locomotive, an engine, a tender, a coach, a car, a caboose, or a motor car used or capable of being used by a railroad carrier in Indiana without consent of the railroad carrier;

commits railroad mischief, a Class D felony. However, the offense is a Class C felony if it results in serious bodily injury to another person and a Class B felony if it results in the death of another person.

**INTERFERENCE WITH MEDICAL SERVICES**  
**(I.C. 35-42-2-8)**

***Overview:***

Interference with Medical Services involves a person knowingly or intentionally interfering with the delivery or administration of a prescription drug by physical interruption, obstruction, or alteration. It is a Class A misdemeanor if it is committed without the prescription or order of a health care practitioner as defined by statute, but it becomes a Class D felony if bodily injury is caused to the patient when said interference is committed without the prescription or order of a practitioner. Interference with Medical Services is a Class C felony if it is committed by a person who is a licensed health care provider or licensed health care professional, a Class B felony if interference by a licensed health care provider or professional causes serious bodily injury to a patient, and a Class A felony if said interference results in the death of the patient. A licensed health care provider or professional who acted in good faith within the scope of the person's practice or employment or a lay person who is rendering emergency care at the scene of an emergency or accident in a good faith attempt to avoid or minimize serious bodily injury to the patient is exempted from criminal liability.

***Issue(s):***

1. In which felony level does this crime belong?
2. Should the statute be moved to another area of the Code?

***Recommendation:***

1. Felony level 6 if it results in bodily injury of the patient; Felony level 5 if it is committed by a licensed health care professional; Felony level 3 if it results in substantial bodily injury to the patient, and Felony level 2 if it results in death of the patient.
2. This crime should be moved to Article 45 (Offenses Against Public Health, Order, and Decency). Other crimes of a similar nature that should be moved to Article 45 are: IC 35-42-1-7 (Transferring Contaminated Body Fluids); IC 35-42-1-8 (Sale of AIDS Testing Equipment); IC 35-42-2-7 (Tattooing Without Parental Permission); IC 35-42-2-8 (Interference with Medical Services); IC 35-45-19- 1,2,3 (Failure to Report a Dead Body); and IC 35-45-20-1,2 (Dispensing Contact Lenses Without Prescription).

***Rationale:***

1. Interference with Medical Services is based on intentional actions, indicating the level of seriousness of the crime. Further, a crime that results in serious bodily injury or death of a person should result in enhanced criminal penalties, as should a crime committed by a licensed health care provider who is in a position of great power, authority, and trust.
2. The group of crimes described are all related to public health and would be easier to find if they were contained in a single chapter.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 8. (a) The following definitions apply throughout this section:

- (1) "Health care provider" refers to a health care provider (as defined in IC 16-18-2-163(a), IC 16-18-2-163(b), or IC 16-18-2-163(c)) or a qualified medication aide as described in IC 16-28-1-11.
- (2) "Licensed health professional" has the meaning set forth in IC 25-23-1-27.1.
- (3) "Practitioner" has the meaning set forth in IC 16-42-19-5. However, the term does not include a veterinarian.
- (4) "Prescription drug" has the meaning set forth in IC 35-48-1-25.

(b) A person who knowingly or intentionally physically interrupts, obstructs, or alters the delivery or administration of a prescription drug:

- (1) prescribed or ordered by a practitioner for a person who is a patient of the practitioner; and
- (2) without the prescription or order of a practitioner;

commits interference with medical services, a Class A misdemeanor. However, the offense is a Class D felony if the offense results in bodily injury to the patient.

(c) However, an offense described in subsection (b) is:

(1) a Class C felony if it is committed by a person who is a licensed health care provider or licensed health professional;

(2) a Class B felony if it results in serious bodily injury to the patient; and

(3) a Class A felony if it results in the death of the patient.

(d) A person is justified in engaging in conduct otherwise prohibited under this section if the conduct was performed by:

(1) a health care provider or licensed health professional who acted in good faith within the scope of the person's practice or employment; or

(2) a person who was rendering emergency care at the scene of an emergency or accident in a good faith attempt to avoid or minimize serious bodily injury to the patient.

As added by P.L.154-2001, SEC.1.

### **IC 16-18-2-163**

#### **Health care provider**

Sec. 163. (a) "Health care provider", for purposes of IC 16-21 and IC 16-41, means any of the following:

(1) An individual, a partnership, a corporation, a professional corporation, a facility, or an institution licensed or legally authorized by this state to provide health care or professional services as a licensed physician, a psychiatric hospital, a hospital, a health facility, an emergency ambulance service (IC 16-31-3), a dentist, a registered or licensed practical nurse, a midwife, an optometrist, a pharmacist, a podiatrist, a chiropractor, a physical therapist, a respiratory care practitioner, an occupational therapist, a psychologist, a paramedic, an emergency medical technician, an emergency medical technician-basic advanced, an emergency medical technician-intermediate, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person's employment.

(2) A college, university, or junior college that provides health care to a student, a faculty member, or an employee, and the governing board or a person who is an officer, employee, or agent of the college, university, or junior college acting in the course and scope of the person's employment.

(3) A blood bank, community mental health center, community mental retardation center, community health center, or migrant health center.

(4) A home health agency (as defined in IC 16-27-1-2).

(5) A health maintenance organization (as defined in IC 27-13-1-19).

(6) A health care organization whose members, shareholders, or partners are health care providers under subdivision (1).

(7) A corporation, partnership, or professional corporation not otherwise qualified under this subsection that:

(A) provides health care as one (1) of the corporation's, partnership's, or professional corporation's functions;

(B) is organized or registered under state law; and

(C) is determined to be eligible for coverage as a health care provider under IC 34-18 for the corporation's, partnership's, or professional corporation's health care function.

Coverage for a health care provider qualified under this subdivision is limited to the health care provider's health care functions and does not extend to other causes of action.

(b) "Health care provider", for purposes of IC 16-35, has the meaning set forth in subsection (a).

However, for purposes of IC 16-35, the term also includes a health facility (as defined in section 167 of this chapter).

(c) "Health care provider", for purposes of IC 16-36-5, means an individual licensed or authorized by this state to provide health care or professional services as:

- (1) a licensed physician;
- (2) a registered nurse;
- (3) a licensed practical nurse;
- (4) an advanced practice nurse;
- (5) a licensed nurse midwife;
- (6) a paramedic;
- (7) an emergency medical technician;
- (8) an emergency medical technician-basic advanced;
- (9) an emergency medical technician-intermediate; or
- (10) a first responder, as defined under IC 16-18-2-131.

The term includes an individual who is an employee or agent of a health care provider acting in the course and scope of the individual's employment.

(d) "Health care provider", for purposes of IC 16-40-4, means any of the following:

(1) An individual, a partnership, a corporation, a professional corporation, a facility, or an institution licensed or authorized by the state to provide health care or professional services as a licensed physician, a psychiatric hospital, a hospital, a health facility, an emergency ambulance service (IC 16-31-3), an ambulatory outpatient surgical center, a dentist, an optometrist, a pharmacist, a podiatrist, a chiropractor, a psychologist, or a person who is an officer, employee, or agent of the individual, partnership, corporation, professional corporation, facility, or institution acting in the course and scope of the person's employment.

(2) A blood bank, laboratory, community mental health center, community mental retardation center, community health center, or migrant health center.

(3) A home health agency (as defined in IC 16-27-1-2).

(4) A health maintenance organization (as defined in IC 27-13-1-19).

(5) A health care organization whose members, shareholders, or partners are health care providers under subdivision (1).

(6) A corporation, partnership, or professional corporation not otherwise specified in this subsection that:

(A) provides health care as one (1) of the corporation's, partnership's, or professional corporation's functions;

(B) is organized or registered under state law; and

(C) is determined to be eligible for coverage as a health care provider under IC 34-18 for the corporation's, partnership's, or professional corporation's health care function.

(7) A person that is designated to maintain the records of a person described in subdivisions (1) through (6).

(e) "Health care provider", for purposes of IC 16-45-4, has the meaning set forth in 47 CFR 54.601(a). *As added by P.L.2-1993, SEC.1. Amended by P.L.26-1994, SEC.7; P.L.188-1995, SEC.1; P.L.1-1998, SEC.116; P.L.148-1999, SEC.6; P.L.205-2003, SEC.17; P.L.95-2005, SEC.1; P.L.108-2007, SEC.2.*

#### **IC 35-48-1-25**

##### **"Prescription drug" defined**

Sec. 25. "Prescription drug" means a controlled substance or a legend drug (as defined in IC 16-18-2-199).

*As added by P.L.5-1988, SEC.205. Amended by P.L.2-1993, SEC.191.*

## **STRANGULATION (I.C. 35-42-2-9)**

### ***Overview:***

Strangulation criminalizes a particular manner of committing the offense. It is a touching by the application of pressure to the neck or by obstructing the nose or mouth of a person.

### ***Issues:***

1. In which felony level should this crime belong?
2. Should this statute be incorporated into the Battery statute?

### ***Recommendation:***

1. This offense should be a Level 6 felony.
2. This offense should be a stand-alone statute.

### ***Rationale:***

1. The penalty is appropriate and proportional.
2. This particular method of committing battery is often seen in domestic battery situations. Identifying the method by a separate statute assists various participants in the criminal justice system to identify the nature of the relationship between the perpetrator and the victim and then handle the prosecution/disposition appropriately. This is especially significant if the incident in question did not include a separate count of Domestic Battery.

### ***Workgroup Position:***

The IPDC representative expressed the reservation that he believes strangulation is a form of aggravated battery and should not be its own crime.

### ***Current Statute:***

- (a) This section does not apply to a medical procedure.
- (b) A person who, in a rude, angry, or insolent manner, knowingly or intentionally:
  - (1) applies pressure to the throat or neck of another person; or
  - (2) obstructs the nose or mouth of the another person;in a manner that impedes the normal breathing or the blood circulation of the other person commits strangulation, a Class D felony.

**KIDNAPPING**  
**(I.C. 35-42-3-2)**

***Overview:***

Kidnapping is committed by either removing or confining a person with the intent to achieve one or more of four enumerated objectives. Each manner of kidnapping is a Class A felony.

***Issue(s):***

1. Should the “removing” and “confining” language (which appears in both the kidnapping and criminal confinement statutes as various ways to commit the described offense) be separated to clarify the manner in which each of the offenses may be committed?

***Recommendation:***

1. The two statutes should be rewritten to clarify the manner in which the offenses may be committed by reserving “removing” language for Kidnapping and by reserving “confining” language for Criminal Confinement.

*The following language is recommended:*

**I.C. 35-42-3-2**

**Kidnapping**

**[STRIKE current Subsection (a)]**

(a) A person who knowingly or intentionally removes another person, by deceit, force, or threat of force, from one (1) place to another commits kidnapping, a Class 6 felony.

(b) The offense of kidnapping defined in subsection (a) is:

(1) a Class 5 felony if:

(A) the person removed is less than fourteen (14) years of age and is not the removing person's child;

(B) it is committed by using a vehicle; or

(C) it results in bodily injury to a person other than the removing person; and

(2) a Class 3 felony if it:

(A) is committed while armed with a deadly weapon;

(B) results in serious bodily injury to a person other than the removing person; or

(C) is committed on an aircraft.

(3) a Class 2 felony, if it is committed:

(A) with intent to obtain ransom;

(B) while hijacking a vehicle;

(C) with intent to obtain the release, or intent to aid in the escape, of any person from lawful detention; or

(D) with intent to use the person removed as a shield or hostage.

***Rationale:***

The separation of the concepts of “removing” and “confining” and placing only one concept per statutory offense conforms to the natural and common-sense understanding of what constitutes kidnapping or

confinement. Defining each statute by the act itself rather than the purpose behind the act will eliminate confusion. Currently, kidnapping includes both confining a person with intent to accomplish certain goals and removal of the person for the accomplishment of the same goals. This proposed change provides the same elevation of penalties for the intent to accomplish those goals in both the confinement and kidnapping statutes, while clarifying the difference between the two acts. *See also* Criminal Confinement (IC 35-42-3-3).

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

**I.C. 35-42-3-2**

**Kidnapping**

(a) A person who knowingly or intentionally confines another person:

- (1) with intent to obtain ransom;
  - (2) while hijacking a vehicle;
  - (3) with intent to obtain the release, or intent to aid in the escape, of any person from lawful detention; or
  - (4) with intent to use the person confined as a shield or hostage;
- commits kidnapping, a Class A felony.

(b) A person who knowingly or intentionally removes another person, by fraud, enticement, force, or threat of force, from one place to another:

- (1) with intent to obtain ransom;
  - (2) while hijacking a vehicle;
  - (3) with intent to obtain the release, or intent to aid in the escape, of any person from lawful detention; or
  - (4) with intent to use the person removed as a shield or hostage;
- commits kidnapping, a Class A felony.

**CONFINEMENT**  
**(I.C. 35-42-3-3)**

**Overview:**

Criminal Confinement is committed by either removing or confining a person in one of two separate ways. The crime is a Class D felony. Under additional factual circumstances, the offense can elevate to either a Class C felony or Class B felony.

**Issue(s):**

1. Should the “removing” and “confining” language (which appears in both the kidnapping and criminal confinement statutes as various ways to commit the described offense) be separated to clarify the manner in which each of the offenses may be committed?

**Recommendation:**

1. The two statutes should be rewritten to clarify the manner in which the offenses may be committed by reserving “removing” language for Kidnapping and by reserving “confining” language for Criminal Confinement.

*The following language is recommended:*

**I.C. 35-42-3-3**

**Criminal Confinement**

(a) A person who knowingly or intentionally confines another person without the other person's consent [*DELETE “or removes another person...”*] commits criminal confinement, a Class 6 felony.

(b) The offense of criminal confinement defined in subsection (a) is:

(1) a Class 5 felony if:

(A) the person confined is less than fourteen (14) years of age and is not the confining person's child;

(B) it is committed by using a vehicle; or

(C) it results in bodily injury to a person other than the confining person; and

(2) a Class 4 felony if it:

(A) is committed while armed with a deadly weapon;

(B) results in serious bodily injury to a person other than the confining person; or

(C) is committed on an aircraft.

(3) a Class 2 felony, if it is committed:

(A) with intent to obtain ransom;

(B) while hijacking a vehicle;

(C) with intent to obtain the release, or intent to aid in the escape, of any person from lawful detention; or

(D) with intent to use the person confined as a shield or hostage.

**Rationale:**

The separation of the concepts of “removing” and “confining” and placing only one concept per statutory offense conforms to the natural and common-sense understanding of what constitutes kidnapping or confinement. Defining each statute by the act itself rather than the purpose behind the act will eliminate confusion. Currently, kidnapping includes both confining a person with intent to accomplish certain goals and removal of the person for the accomplishment of the same goals. This proposed change provides the same elevation of penalties for the intent to accomplish those goals in both the confinement

and kidnapping statutes, while clarifying the difference between the two acts. *See also* Kidnapping (IC 35-42-3-2).

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

**I.C. 35-42-3-3**

**Criminal Confinement**

(a) A person who knowingly or intentionally:

(1) confines another person without the other person's consent; or

(2) removes another person, by fraud, enticement, force, or threat of force, from one (1) place to another;

commits criminal confinement. Except as provided in subsection (b), the offense of criminal confinement is a Class D felony.

(b) The offense of criminal confinement defined in subsection (a) is:

(1) a Class C felony if:

(A) the person confined or removed is less than fourteen (14) years of age and is not the confining or removing person's child;

(B) it is committed by using a vehicle; or

(C) it results in bodily injury to a person other than the confining or removing person; and

(2) a Class B felony if it:

(A) is committed while armed with a deadly weapon;

(B) results in serious bodily injury to a person other than the confining or removing person; or

(C) is committed on an aircraft.

**INTERFERENCE WITH CUSTODY**  
**(I.C. 35-42-3-4)**

**Overview:**

Interference with Custody of a Child involves a person knowingly or intentionally depriving another person of their legal child custody rights. It is a Class D felony if the person is a parent who removes a person under 18 years old to a state other than Indiana or fails to return a person less than 18 years old to Indiana. It is a Class C felony if the person who deprives another of their child custody rights is not the child's parent and the child is less than 14 years old. It is a Class B felony if the offense is committed while armed with a deadly weapon or results in serious bodily injury to another person. Additionally, if a person knowingly or intentionally takes, knowingly or intentionally detains, or knowingly or intentionally conceals a person less than 18 years old, it is a Class C misdemeanor. It becomes a Class B misdemeanor, however, if said taking, concealment, or detention is in violation of a court order. A defense to Interference with Custody of a Child is if the accused person was threatened or reasonably believed the child was threatened, resulting in the child not being returned to the other parent resulting in violation of a court order.

**Issue(s):**

1. In which felony level does this crime belong?

**Recommendation:**

1. Felony level 6 if it involves removal of the child from Indiana, Felony level 5 if it involves the person not being the child's parent and the child being under 14 years of age, and Felony level 4 if it involves the use of a deadly weapon or substantial bodily injury to the child results.

**Rationale:**

This crime is more serious if the person committing the offense is not the child's parent and the child is of an age younger than 14 due to the fact that the person has less "authorization" than a non-custodial parent and a younger child is more susceptible to injury or harm. The workgroup also believes that the crime is even more serious if it involves substantial bodily injury to the child or use of a deadly weapon, as violent crimes should yield enhanced status and penalties.

**Workgroup Position:**

Consensus recommendation.

**Current Statute:**

Sec. 4. (a) A person who, with the intent to deprive another person of child custody rights, knowingly or intentionally:

(1) removes another person who is less than eighteen (18) years of age to a place outside Indiana when the removal violates a child custody order of a court; or

(2) violates a child custody order of a court by failing to return a person who is less than eighteen (18) years of age to Indiana;

commits interference with custody, a Class D felony. However, the offense is a Class C felony if the other person is less than fourteen (14) years of age and is not the person's child, and a Class B felony if the offense is committed while armed with a deadly weapon or results in serious bodily injury to another person.

(b) A person who with the intent to deprive another person of custody or parenting time rights:

(1) knowingly or intentionally takes;

(2) knowingly or intentionally detains; or

(3) knowingly or intentionally conceals;

a person who is less than eighteen (18) years of age commits interference with custody, a Class C misdemeanor. However, the offense is a Class B misdemeanor if the taking, concealment, or detention is in violation of a court order.

(c) With respect to a violation of this section, a court may consider as a mitigating circumstance the accused person's return of the other person in accordance with the child custody order or parenting time order within seven (7) days after the removal.

(d) The offenses described in this section continue as long as the child is concealed or detained or both.

(e) If a person is convicted of an offense under this section, a court may impose against the defendant reasonable costs incurred by a parent or guardian of the child because of the taking, detention, or concealment of the child.

(g) It is a defense to a prosecution under this section that the accused person:

(1) was threatened; or

(2) reasonably believed the child was threatened;

which resulted in the child not being timely returned to the other parent resulting in a violation of a child custody order.

*As added by P.L. 49-1989, SEC.22. Amended by P.L.162-1990, SEC.1; P.L.68-2005, SEC.60; P.L.164-2007, SEC.2.*

**HUMAN TRAFFICKING**  
**(35-42-3.5-1)**

**Overview:**

In 2012, a new statute was passed as a part of HEA 1080, which among other things amended the Human Trafficking statute, IC 35-42-3.5-1. This was completed prior to the 2012 Super bowl in Indianapolis.

**Issue(s):**

1. In which felony level does this crime belong?
2. In which felony level does sexual trafficking of a minor belong?
3. In which felony level does promotion of human trafficking of a minor belong?
4. In which felony level does promotion of human trafficking belong?

**Recommendation:**

1. Felony level 5.
2. Felony level 2.
3. Felony level 3.
4. Felony level 4.

**Rationale:**

In the current statute, promotion of human trafficking and promotion of human trafficking of a minor have the same penalty. It is recommended that promotion of human trafficking of a minor should be penalized as a Level 3 felony and promotion of human trafficking as a Level 4 felony since trafficking of minors is a more heinous offense.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

Sec. 1. (a) A person who, by force, threat of force, or fraud, knowingly or intentionally recruits, harbors, or transports another person:

- (1) to engage the other person in:
  - (A) forced labor; or
  - (B) involuntary servitude; or
- (2) to force the other person into:
  - (A) marriage; or
  - (B) prostitution; or
  - (C) participating in sexual conduct (as defined by IC 35-42-4-4); commits promotion of human trafficking, a Class B felony.

(b) A person who knowingly or intentionally recruits, harbors, or transports a child less than sixteen (16) years of age with the intent of:

- (1) engaging the child in:
  - (A) forced labor; or
  - (B) involuntary servitude; or
- (2) inducing or causing the child to:
  - (A) engage in prostitution; or
  - (B) participate in sexual conduct (as defined by IC 35-42-4-4); commits promotion of human trafficking of a minor, a Class B felony. It is not a defense to a prosecution under this subsection that the child consented to engage in prostitution or to participate in sexual conduct.

(c) A person who is at least (18) years of age who knowingly or intentionally sells or transfers custody of the a child less than sixteen (16) years of age for the purpose of prostitution or participating in sexual conduct (as defined by IC 35-42-4-4) commits sexual trafficking of a minor, a Class A felony.

(d) A person who knowingly or intentionally pays, offers to pay, or agrees to pay money or other property to another person for an individual who the person knows has been forced into:

- (1) forced labor;
- (2) involuntary servitude; or
- (3) prostitution;

commits human trafficking, a Class C felony.

**RAPE**  
**(I.C. 35-42-4-1)**

**Overview:**

Rape involves forcing another to have sexual intercourse or having sexual intercourse with another who is, for various reasons, incapable of giving consent. Rape is currently a Class B felony for knowingly or intentionally having sexual intercourse with a member of the opposite sex when the other person is forced to do so or believes force is imminent, when the other person is unaware that the sex is occurring (i.e., passed out or unconscious), or the other person is so mentally disabled that the individual could not legally consent to sex. However, the crime is a Class A felony if it is committed by using or threatening use of deadly force, committed while armed with a deadly weapon, it results in serious bodily injury to someone other than the rapist, or the rape is facilitated by providing the victim, without the victim's knowledge, with a drug or controlled substance or knowing the victim was furnished with a drug or controlled substance without the victim's knowledge.

**Issue(s):**

1. In which felony level does this crime belong?

**Recommendation:**

1. For rape using deadly force, a deadly weapon, causing serious bodily injury, or using a drug, Level 1 felony; for the base offense of rape without aggravating factors, Level 3 felony.

**Rationale:**

The workgroup believes that the statute is appropriate as codified. The conversion to the 6-Level Felony Proportionality will more appropriately coincide with the nature of the crime.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

(a) Except as provided in subsection (b), a person who knowingly or intentionally has sexual intercourse with a member of the opposite sex when:

- (1) the other person is compelled by force or imminent threat of force;
- (2) the other person is unaware that the sexual intercourse is occurring; or
- (3) the other person is so mentally disabled or deficient that consent to sexual intercourse cannot be given;

commits rape, a Class B felony.

(b) An offense described in subsection (a) is a Class A felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon;
- (3) it results in serious bodily injury to a person other than a defendant; or
- (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

**CRIMINAL DEVIATE CONDUCT**  
**(I.C. 35-42-4-2)**

**Overview:**

Criminal deviate conduct involves oral sex, anal sex, and sodomy (as defined in I.C. 35-41-1-9). Criminal deviate conduct is currently a Class B felony if one knowingly or intentionally causes another person to perform or submit to deviate sexual conduct when the other person is compelled by force or imminent threat of force, the other person is unaware the conduct is occurring, or the other person is so mentally disabled or deficient that consent to the conduct cannot be given. However, the crime is a Class A felony if it is committed by using or threatening use of deadly force, committed while armed with a deadly weapon, it results in serious bodily injury to someone other than the defendant, or commission of the offense is facilitated by providing the victim, without the victim's knowledge, with a drug or controlled substance or knowing the victim was furnished with a drug or controlled substance without the victim's knowledge.

**Issue(s):**

1. In which felony level does this crime belong?

**Recommendation:**

1. Criminal deviate conduct: Level 3 felony; criminal deviate conduct with aggravating factors (deadly force or threat of deadly force, deadly weapon, injury, using drugs): Level 1 felony

**Rationale:**

The Criminal Deviate Conduct statute is sufficient as written and the Level 3 and Level 1 felony classifications are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

(a) A person who knowingly or intentionally causes another person to perform or submit to deviate sexual conduct when:

- (1) the other person is compelled by force or imminent threat of force;
- (2) the other person is unaware that the conduct is occurring; or
- (3) the other person is so mentally disabled or deficient that consent to the conduct cannot be given;

commits criminal deviate conduct, a Class B felony.

(b) An offense described in subsection (a) is a Class A felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon;
- (3) it results in serious bodily injury to any person other than a defendant; or
- (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

**CHILD MOLESTING**  
**(I.C. 35-42-4-3)**

**Overview:**

A person who, with a child under 14 years of age, performs or submits to any fondling or touching, of either the child or the older person, commits Child Molesting, a Class C felony. The offense is a Class B felony if a person performs or submits to sexual intercourse or deviate sexual conduct with a child under the age of fourteen (14). The offense is enhanced to a Class A felony if the offense was committed by a person age 21 or older; or by using or threatening the use of deadly force; or giving the victim a drug or controlled substance without the victim's knowledge; or knowing the victim was given a drug or controlled substance without the victim's knowledge.

**Issue:**

1. In which felony level(s) does this crime belong?

**Recommendations:**

1. The penalty for Child Molesting (fondling) should be a Level 4 felony, enhanced to a Level 2 felony for fondling using deadly force, while armed with a deadly weapon, or using a drug. The offense should be at a Level 3 felony if it involves intercourse or deviate sexual conduct; and a Level 2 felony if intercourse/deviate sexual conduct is perpetrated by a person age 21 or older. Further, the penalty should be at a Level 1 felony if deadly force is used, the crime is committed while armed with a deadly weapon, the offense results in serious bodily injury; or a drug is used in the course of the offense.

**Rationale:**

1. These penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation.

**Current Statute:**

(a) A person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class B felony.

However, the offense is a Class A felony if:

- (1) it is committed by a person at least twenty-one (21) years of age;
- (2) it is committed by using or threatening the use of deadly force or while armed with a deadly weapon;
- (3) it results in serious bodily injury; or
- (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony. However, the offense is a Class A felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) It is a defense that the accused person reasonably believed that the child was sixteen (16) years of age or older at the time of the conduct, unless:

(1) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon;

(2) the offense results in serious bodily injury; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

As added by Acts 1976, P.L.148, SEC.2. Amended by Acts 1977, P.L.340, SEC.38; Acts 1978, P.L.82, SEC.2; Acts 1981, P.L.301, SEC.1; P.L.79-1994, SEC.12; P.L.33-1996, SEC.8; P.L.216-1996, SEC.18; P.L.31-1998, SEC.5; P.L.216-2007, SEC.42.

**CHILD EXPLOITATION; POSSESSION OF CHILD PORNOGRAPHY; VIOLATION  
CLASSIFICATION; EXEMPTION; DEFINITIONS; DEFENSES  
(I.C. 35-42-4-4)**

***Overview:***

A person who knowingly or intentionally manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under 18 years old, disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under 18 years old, or makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen 18 years of age, commits Child Exploitation, a Class C felony.

A person who knowingly or intentionally possesses a picture, drawing, photograph, negative image, undeveloped film, motion picture, videotape, digitized image, or any pictorial representation that depicts or describes sexual conduct by a child who the person knows is less than 16 years old or who appears to be less than 16 years old, and that lacks serious literary, artistic, political, or scientific value, commits possession of child pornography, a Class D felony.

These sections do not apply to a qualifying school, museum, or public library, or an employee of such institution acting within the scope of his or her employment, when the possession of the listed materials is for legitimate scientific or educational purposes. It is a defense to a prosecution under this section that the person is a school employee and the acts constituting the elements of the offense were performed solely within the scope of the person's employment as a school employee. There is also a "Romeo and Juliet" defense, if the image was possessed via a cell phone, other wireless device, or a social networking site, the defendant is within 4 years of age of the person depicted in the image or who received the image, the relationship between the defendant and person who received the image or is depicted in the image was a dating relationship or an ongoing personal relationship (excluding family relationships), the defendant is less than 22 years old, and the person receiving the image or depicted in the image acquiesced to the defendant's conduct. The Romeo and Juliet defense does not apply if the person who receives the image disseminates it to a person other than the person who sent the image or who is depicted in the image, the image is of a person other than the person who sent the image or received the image, or the dissemination of the image violates a protective, restraining, no contact, or similar order under the Indiana Code or a substantially similar code of another state or Indian authority.

***Issues:***

1. In which felony level does the crime belong?
2. Are the definitions for child exploitation up to date?

***Recommendation:***

1. Child Exploitation should be a Level 5 felony and Possession of Child Pornography should be a Level 6 felony.
2. The term "sexual conduct" currently does not include a display or portrayal of the female breast. Twenty states include in their definition the term "breasts" or "female breasts". It has been suggested by some that this language should be added to the definition of "sexual conduct". No recommendation is made. However, it is recommended that the definitions subsection should be moved to the end of the code section to be consistent with the organization of other sections of the Indiana Code.

**Rationale:**

The substantive provisions of the code section are believed to be sufficient, and the penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

(a) The following definitions apply throughout this section:

- (1) "Disseminate" means to transfer possession for free or for a consideration.
- (2) "Matter" has the same meaning as in IC 35-49-1-3.
- (3) "Performance" has the same meaning as in IC 35-49-1-7.
- (4) "Sexual conduct" means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who knowingly or intentionally:

- (1) manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;
- (2) disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or
- (3) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age;

commits child exploitation, a Class C felony.

(c) A person who knowingly or intentionally possesses:

- (1) a picture;
- (2) a drawing;
- (3) a photograph;
- (4) a negative image;
- (5) undeveloped film;
- (6) a motion picture;
- (7) a videotape;
- (8) a digitized image; or
- (9) any pictorial representation;

that depicts or describes sexual conduct by a child who the person knows is less than sixteen (16) years of age or who appears to be less than sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

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

(e) It is a defense to a prosecution under this section that:

- (1) the person is a school employee; and
- (2) the acts constituting the elements of the offense were performed solely within the scope of the person's employment as a school employee.

(f) Except as provided in subsection (g), it is a defense to a prosecution under subsection (b)(1), subsection (b)(2), or subsection (c) if all of the following apply:

- (1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to possess, produce, or disseminate the image.
  - (2) The defendant is not more than four (4) years older or younger than the person who is depicted in the image or who received the image.
  - (3) The relationship between the defendant and the person who received the image or who is depicted in the image was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term “ongoing personal relationship” does not include a family relationship.
  - (4) The crime was committed by a person less than twenty-two (22) years of age.
  - (5) The person receiving the image or who is depicted in the image acquiesced in the defendant's conduct.
- (g) The defense to a prosecution described in subsection (f) does not apply if:
- (1) the person who receives the image disseminates it to a person other than the person:
    - (A) who sent the image; or
    - (B) who is depicted in the image;
  - (2) the image is of a person other than the person who sent the image or received the image; or
  - (3) the dissemination of the image violates:
    - (A) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
    - (B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
    - (C) a workplace violence restraining order issued under IC 34-26-6;
    - (D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
    - (E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
    - (F) a no contact order issued as a condition of probation;
    - (G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
    - (H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
    - (I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;
    - (J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);
    - (K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:
      - (i) tribe;
      - (ii) band;
      - (iii) pueblo;
      - (iv) nation; or
      - (v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

- (L) an order issued under IC 35-33-8-3.2; or
- (M) an order issued under IC 35-38-1-30.

**VICARIOUS SEXUAL GRATIFICATION; FONDLING IN THE PRESENCE OF A MINOR  
(I.C. 35-42-4-5)**

***Overview:***

A person 18 years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age 16 to touch or fondle himself/herself or another child under the age of 16 with intent to arouse or satisfy the sexual desires of a child or the older person commits Vicarious Sexual Gratification, a Class D felony. However, the offense is a Class C felony if a child involved in the offense is under the age of 14. The offense is a Class B felony if the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon or the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug or a controlled substance or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge. The offense is a Class A felony if it results in serious bodily injury.

A person 18 years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of 16 to engage in sexual intercourse with another child under sixteen 16 years of age, engage in sexual conduct with an animal other than a human being, or engage in deviate sexual conduct with another person with intent to arouse or satisfy the sexual desires of a child or the older person, commits Vicarious Sexual Gratification, a Class C felony. However, the offense is a Class B felony if any child involved in the offense is less than 14 years of age. The offense is a Class A felony if the offense is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug or a controlled substance or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

A person 18 years of age or older who knowingly or intentionally engages in sexual intercourse, engages in deviate sexual conduct, or touches or fondles the person's own body in the presence of a child less than 14 years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits Performing Sexual Conduct in the Presence of a Minor, a Class D felony.

***Issue:***

1. In which felony level(s) does this crime belong?

***Recommendation:***

1. The penalties should be as follows:

Direct touching/fondling w/ child under 16: Level 5 felony

Direct touching/fondling w/ child under 14: Level 4 felony

Direct touching/fondling w/ child under 16 w/ aggravating factors: Level 3 felony

Direct intercourse w/ child under 16: Level 4 felony

Direct intercourse w/ child under 14: Level 3 felony

Direct intercourse w/ child under 16 w/ use/threat of force, use of deadly weapon, drugs involved, or serious bodily injury: Level 2 felony

Sexual activity in presence of minor: Level 6 felony

***Rationale:***

The recommended penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

(a) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to touch or fondle himself or another child under the age of sixteen (16) with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class D felony. However, the offense is:

(1) a Class C felony if a child involved in the offense is under the age of fourteen (14);

(2) a Class B felony if:

(A) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon; or

(B) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

(3) a Class A felony if it results in serious bodily injury.

(b) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to:

(1) engage in sexual intercourse with another child under sixteen (16) years of age;

(2) engage in sexual conduct with an animal other than a human being; or

(3) engage in deviate sexual conduct with another person;

with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class C felony. However, the offense is a Class B felony if any child involved in the offense is less than fourteen (14) years of age, and it is a Class A felony if the offense is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) A person eighteen (18) years of age or older who knowingly or intentionally:

(1) engages in sexual intercourse;

(2) engages in deviate sexual conduct; or

(3) touches or fondles the person's own body;

in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits performing sexual conduct in the presence of a minor, a Class D felony.

*As added by P.L.183-1984, SEC.4. Amended by P.L.79-1994, SEC.13; P.L.31-1998, SEC.6; P.L.118-2002, SEC.1; P.L.123-2003, SEC.1*

**CHILD SOLICITATION**  
**(I.C. 35-42-4-6)**

**Overview:**

A person age 18 or older who asks a child under the age of 14, or who he believes to be under age 14, to engage in sexual intercourse, deviate sexual conduct, or any fondling or touching, commits Child Solicitation, a Class D felony. The offense is also a Class D felony if the perpetrator is at least 21 years old and solicits a child of 14 or 15 years of age. The penalty is enhanced to a Class C felony if committed using a computer network, and a Class B felony if committed using a computer network and the individual has a previous unrelated conviction for committing the same offense using a computer network.

**Issues:**

1. In which felony level does this crime belong?
2. Is the definition section appropriately placed? Are all definitions clear?
3. Does the statute's current language re: prior unrelated convictions cover prior convictions from other states? Should this subsection of the section be kept?
4. Should the penalty be higher when the offense is committed using a computer?

**Recommendation:**

1. The offense should be a Level 5 felony, an increase of one level from the current penalty.
2. Move the definition section to the end of the statute (i.e., following subsection (d)). If the subsection providing enhanced penalty for previous convictions is kept, language should be added to ensure that previous unrelated convictions from other states are included.
3. A non-unanimous recommendation is made in favor of eliminating the prior conviction enhancement due to the availability of other sentencing enhancements (e.g., Repeat Sexual Offender, IC 35-50-2-14).
4. It is recommended that the higher penalty for use of a computer be repealed, based on the fact that computers are now the preferred method of accomplishing this offense.

*The following language is recommended:*

(a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (1) in person;
- (2) by telephone ~~or~~ *or wireless device*;
- (3) in writing;
- (4) by using a computer network (as defined in IC 35-43-2-3(a));
- (5) by advertisement of any kind; or
- (6) by any other means;

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a ~~Class D-Level 5~~ felony. ~~However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)), and a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).~~

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

~~commits child solicitation, a Class D-Level 5 felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)), and a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).~~

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

***Rationale:***

1. A Level 5 felony is appropriate and proportional for this offense. No enhancement for use of a computer is necessary or appropriate, based on the fact that in today's world computers are routinely used to commit the offense. Other sentencing enhancements (e.g., Repeat Sexual Offender, IC 35-50-2-14) are sufficient to increase the penalty for a prior unrelated offense.

***Workgroup Position:***

Reservations were expressed by the IPAC representative regarding the proposed elimination of the enhancement for a second offense.

***Current Statute:***

(a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (1) in person;
- (2) by telephone;
- (3) in writing;
- (4) by using a computer network (as defined in IC 35-43-2-3(a));
- (5) by advertisement of any kind; or
- (6) by any other means;

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)), and a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)), and a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

As added by P.L.183-1984, SEC.5. Amended by P.L.11-1994, SEC.16; P.L.79-1994, SEC.14; P.L.216-1996, SEC.20; P.L.118-2002, SEC.2; P.L.124-2005, SEC.1; P.L.216-2007, SEC.44.

**CHILD SEDUCTION**  
**(I.C. 35-42-4-7)**

**Overview:**

A person who is at least 18 years old and is the guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of, or child care worker for, or a military recruiter attempting to enlist a child at least 16 years old but less than 18 years old, and who engages with the child in sexual intercourse, deviate sexual conduct, or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult, commits Child Seduction, a Class D felony.

**Issues:**

1. In which felony level(s) does this crime belong?
2. Should the statute be divided, making the commission of the offense via fondling a Level 6 felony, while making the commission of the offense involving intercourse or deviate sexual conduct a Level 5 felony?

**Recommendations:**

1. It is recommended that the offense, if involving fondling, should be a Level 6 felony, and that if it involves intercourse, it should be a Level 5 felony (note that currently both are Class D felonies).
2. The statute should be divided, making clear the difference between the two acts, which should be treated separately.

**Rationale:**

The recommended penalties are appropriate and proportional to other offenses of a similar nature. The segregation into two subsections would be consistent with the treatment of all other such crimes in the criminal code.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

- (a) As used in this section, “adoptive parent” has the meaning set forth in IC 31-9-2-6.
- (b) As used in this section, “adoptive grandparent” means the parent of an adoptive parent.
- (c) As used in this section, “charter school” has the meaning set forth in IC 20-18-2-2.5.
- (d) As used in this section, “child care worker” means a person who:
  - (1) provides care, supervision, or instruction to a child within the scope of the person's employment in a shelter care facility;
  - (2) is employed by a:
    - (A) school corporation;
    - (B) charter school;
    - (C) nonpublic school; or
    - (D) special education cooperative;attended by a child who is the victim of a crime under this chapter; or
  - (3) is:
    - (A) affiliated with a:
      - (i) school corporation;
      - (ii) charter school;

- (iii) nonpublic school; or
- (iv) special education cooperative;
  - attended by a child who is the victim of a crime under this chapter, regardless of how or whether the person is compensated;
  - (B) in a position of trust in relation to a child who attends the school or cooperative;
  - (C) engaged in the provision of care or supervision to a child who attends the school or cooperative; and
  - (D) at least four (4) years older than the child who is the victim of a crime under this chapter.

The term does not include a student who attends the school or cooperative.

(e) As used in this section, “custodian” means any person who resides with a child and is responsible for the child's welfare.

(f) As used in this section, “military recruiter” means a member of the armed forces of the United States (as defined in IC 20-33-10-2) or the Indiana National Guard whose primary job function, classification, or specialty is recruiting individuals to enlist with the armed forces of the United States or the Indiana National Guard.

(g) As used in this section, “nonpublic school” has the meaning set forth in IC 20-18-2-12.

(h) As used in this section, “school corporation” has the meaning set forth in IC 20-18-2-16.

(i) As used in this section, “special education cooperative” has the meaning set forth in IC 20-35-5-1.

(j) As used in this section, “stepparent” means an individual who is married to a child's custodial or noncustodial parent and is not the child's adoptive parent.

(k) If a person who:

(1) is at least eighteen (18) years of age; and

(2) is:

(A) the:

(i) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or

(ii) child care worker for; or

(B) a military recruiter who is attempting to enlist;

a child at least sixteen (16) years of age but less than eighteen (18) years of age; engages with the child in sexual intercourse, deviate sexual conduct (as defined in IC 35-41-1-9), or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult, the person commits child seduction, a Class D felony.

**SEXUAL BATTERY**  
**(I.C. 35-42-4-8)**

**Overview:**

A person who, with intent to arouse or satisfy his own sexual desires or the sexual desires of another person, touches another person when that person is either compelled to submit to the touching by force or imminent threat of force or so mentally disabled or deficient that consent cannot be given, or touches another person's genitals, pubic area, buttocks, or female breast when that person is unaware that the touching is occurring, commits Sexual battery, a Class D felony . However, the offense is a Class C felony if committed using or threatening use of deadly force, committed while armed with a deadly weapon, or the commission is facilitated by furnishing the victim, without the victim's knowledge, with a drug or controlled substance or knowing that the victim was furnished such a drug or substance without the victim's knowledge.

**Issue:**

1. In which felony level does this crime belong?

**Recommendation:**

1. Sexual battery should be a Level 6 felony, enhanced to a Level 4 felony if the offense is committed using or threatening use of deadly force, committed while armed with a deadly weapon, or the commission is facilitated by furnishing the victim, without the victim's knowledge, with a drug or controlled substance or knowing that the victim was furnished such a drug or substance without the victim's knowledge.

**Rationale:**

The recommended penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

(a) A person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person, touches another person when that person is:

(1) compelled to submit to the touching by force or the imminent threat of force;

or

(2) so mentally disabled or deficient that consent to the touching cannot be given;

commits sexual battery, a Class D felony.

(b) An offense described in subsection (a) is a Class C felony if:

(1) it is committed by using or threatening the use of deadly force;

(2) it is committed while armed with a deadly weapon; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

**This statute was amended in 2012 by HEA 1080 to read as follows [effective July 1, 2012]:**

(a) A person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person:

(1) touches another person when that person is:

~~(1)~~(A) compelled to submit to the touching by force or the imminent threat of force; or

~~(2)~~(B) so mentally disabled or deficient that consent to the touching cannot be given; or

**(2) touches another person's genitals, pubic area, buttocks, or female breast when that person is unaware that the touching is occurring;**  
commits sexual battery, a Class D felony.

(b) An offense described in subsection (a) is a Class C felony if:

(1) it is committed by using or threatening the use of deadly force;

(2) it is committed while armed with a deadly weapon; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

**SEXUAL MISCONDUCT WITH A MINOR  
(I.C. 35-42-4-9)**

***Overview:***

A person at least 18 years old who performs or submits to sexual intercourse or deviate sexual conduct with a child at least 14 years old but less than 16 years old commits Sexual Misconduct with a Minor, a Class C felony. However, the offense is a Class B felony if committed by a person at least 21 years old and a Class A felony if committed by using or threatening use of deadly force, committed while armed with a deadly weapon, if it results in serious bodily injury, or if commission was facilitated by furnishing the victim, without the victim's knowledge, a drug or controlled substance or knowing that the victim was furnished with such drug or controlled substance without the victim's knowledge.

A person at least 18 years old who performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person with a child at least 14 years old but less than 16 years old, commits Sexual Misconduct with a Minor, a Class D felony. However, the offense is a Class C felony if committed by a person at least 21 years old and a Class B felony if committed by using or threatening use of deadly force, committed while armed with a deadly weapon, if it results in serious bodily injury, or if commission was facilitated by furnishing the victim, without the victim's knowledge, a drug or controlled substance or knowing that the victim was furnished with such drug or controlled substance without the victim's knowledge.

It is a defense that the accused person reasonably believed that the child was at least 16 years old at the time of the conduct. However, this subsection does not apply to an offense committed by using or threatening use of deadly force, committed while armed with a deadly weapon, if it results in serious bodily injury, or if commission was facilitated by furnishing the victim, without the victim's knowledge, a drug or controlled substance or knowing that the victim was furnished with such drug or controlled substance without the victim's knowledge.

There is also a "Romeo and Juliet" defense if the person is not more than 4 years older than the victim, the relationship between the person and the victim was a dating relationship or an ongoing personal relationship (not including a family relationship), the crime was not committed by a person who is at least 21 years old, was not committed by using or threatening the use of deadly force, was not committed while armed with a deadly weapon, did not result in serious bodily injury, was not facilitated by furnishing the victim, without the victim's knowledge, a drug or controlled substance or knowing that the victim was furnished with such drug or controlled substance without the victim's knowledge, was not committed by a person having a position of authority or substantial influence over the victim, and the person has not committed another sex offense.

***Issue:***

1. In which felony level(s) does this crime belong?

***Recommendation:***

1. The levels of offense should be as follows:

Intercourse/criminal deviate conduct (defendant under age 21): Level 5

Intercourse/criminal deviate conduct (defendant over age 21): Level 4  
Intercourse/criminal deviate conduct with aggravators: Level 1  
Fondling (defendant under age 21): Level 6  
Fondling (defendant over age 21): Level 5  
Fondling (age irrelevant) with aggravators: Level 2

***Rationale:***

The classifications proposed are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

(a) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits sexual misconduct with a minor, a Class C felony. However, the offense is:

- (1) a Class B felony if it is committed by a person at least twenty-one (21) years of age; and
- (2) a Class A felony if it is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Class D felony. However, the offense is:

- (1) a Class C felony if it is committed by a person at least twenty-one (21) years of age; and
- (2) a Class B felony if it is committed by using or threatening the use of deadly force, while armed with a deadly weapon, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) It is a defense that the accused person reasonably believed that the child was at least sixteen (16) years of age at the time of the conduct. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(d) It is a defense that the child is or has ever been married. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(e) It is a defense to a prosecution under this section if all the following apply:

- (1) The person is not more than four (4) years older than the victim.

(2) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term “ongoing personal relationship” does not include a family relationship.

(3) The crime:

(A) was not committed by a person who is at least twenty-one (21) years of age;

(B) was not committed by using or threatening the use of deadly force;

(C) was not committed while armed with a deadly weapon;

(D) did not result in serious bodily injury;

(E) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

(F) was not committed by a person having a position of authority or substantial influence over the victim.

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

**UNLAWFUL EMPLOYMENT NEAR CHILDREN BY A SEXUAL PREDATOR  
(I.C. 35-42-4-10)**

**Overview:**

Unlawful employment near children by a sexual predator is currently a Class D felony for knowingly or intentionally working (either for pay or as a volunteer) on school property, at a youth program center, or at a public park. However, the offense is a Class C felony if the person has a prior unrelated conviction based on the person's failure to comply with any requirements imposed under Indiana's sex offender registry statutes (IC 11-8-8).

**Issue(s):**

1. In which felony level does this crime belong?

**Recommendation:**

1. Unlawful employment near children: Level 6 felony; unlawful employment near children w/ prior unrelated conviction: Level 5 felony

**Rationale:**

Indiana's unlawful employment near children statute is sufficient as written and the felony classifications recommended are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

(a) As used in this section, "offender against children" means a person who is an offender against children under IC 35-42-4-11.

(b) As used in this section, "sexually violent predator" means a person who is a sexually violent predator under IC 35-38-1-7.5.

(c) A sexually violent predator or an offender against children who knowingly or intentionally works for compensation or as a volunteer:

- (1) on school property;
- (2) at a youth program center; or
- (3) at a public park;

commits unlawful employment near children by a sexual predator, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction based on the person's failure to comply with any requirement imposed on an offender under IC 11-8-8.

**SEX OFFENDER RESIDENCY RESTRICTIONS**  
**(I.C. 35-42-4-11)**

**Overview:**

A Sex Offender Residency Offense occurs when an offender against children knowingly or intentionally resides within a 1000 feet of school property, youth program center, public park or within one mile of victim. Sex Offender Residency Offense is a Class D felony.

**Issue:**

1. In which felony level does this crime belong?

**Recommendation:**

1. Felony level 6.

**Rationale:**

A placement into Felony Level 6 is appropriate and proportional.

**Workgroup Position:**

Consensus Recommendation

**Current Statute:**

- (a) As used in this section, and except as provided in subsection (d), "offender against children" means a person required to register as a sex or violent offender under IC 11-8-8 who has been:
  - (1) found to be a sexually violent predator under IC 35-38-1-7.5; or
  - (2) convicted of one (1) or more of the following offenses:
    - (A) Child molesting (IC 35-42-4-3).
    - (B) Child exploitation (IC 35-42-4-4(b)).
    - (C) Child solicitation (IC 35-42-4-6).
    - (D) Child seduction (IC 35-42-4-7).
    - (E) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age and the person is not the child's parent or guardian.
    - (F) Attempt to commit or conspiracy to commit an offense listed in clauses (A) through (E).
    - (G) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (F).

A person is an offender against children by operation of law if the person meets the conditions described in subdivision (1) or (2) at any time.

- (b) As used in this section, "reside" means to spend more than three (3) nights in:
  - (1) a residence; or
  - (2) if the person does not reside in a residence, a particular location; in any thirty (30) day period.
- (c) An offender against children who knowingly or intentionally:
  - (1) resides within one thousand (1,000) feet of:

- (A) school property, not including property of an institution providing post-secondary education;
    - (B) a youth program center; or
    - (C) a public park; or
  - (2) establishes a residence within one (1) mile of the residence of the victim of the offender's sex offense;
- commits a sex offender residency offense, a Class D felony.

- (d) This subsection does not apply to an offender against children who has two (2) or more unrelated convictions for an offense described in subsection (a). A person who is an offender against children may petition the court to consider whether the person should no longer be considered an offender against children. The person may file a petition under this subsection not earlier than ten (10) years after the person is released from incarceration, probation, or parole, whichever occurs last. A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered an offender against children. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person should no longer be considered an offender against children. If a court finds that the person should no longer be considered an offender against children, the court shall send notice to the department of correction that the person is no longer considered an offender against children.

P.L.6-2006, § 8; P.L.140-2006, § 32; P.L.173-2006, § 32; P.L.216-2007, § 47, emergency eff. July 1, 2007.

**SEX OFFENDER INTERNET OFFENSE**  
**(I.C. 35-42-4-12)**

***Overview:***

A Sex Offender Internet Offense is when a person who is a registered sex offender or a registered violent offender knowingly or intentionally uses a social networking web site or an instant messaging or chat room program that the offender knows allows a person who is less than eighteen (18) years of age to access or use the web site or program. Sex Offender Internet Offense is a Class A misdemeanor, and may be enhanced to a Class D felony if the person has a prior unrelated conviction under this section.

***Issue:***

1. In which penalty levels does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor, enhanced to Felony level 6 for a prior conviction.

***Rationale:***

The Class A misdemeanor offense, enhanced to a Level 6 Felony for a prior conviction, is appropriate and proportional.

***Workgroup Position:***

Consensus Recommendation

***Current Statute:***

- (a) This section does not apply to a person to whom all of the following apply:
  - (1) The person is not more than:
    - (A) four (4) years older than the victim if the offense was committed after June 30, 2007; or
    - (B) five (5) years older than the victim if the offense was committed before July 1, 2007.
  - (2) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.
  - (3) The crime:
    - (A) was not committed by a person who is at least twenty-one (21) years of age;
    - (B) was not committed by using or threatening the use of deadly force;
    - (C) was not committed while armed with a deadly weapon;
    - (D) did not result in serious bodily injury;
    - (E) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

- (F) was not committed by a person having a position of authority or substantial influence over the victim.
- (b) This section applies only to a person required to register as a sex or violent offender under IC 11-8-8 who has been:
  - (1) found to be a sexually violent predator under IC 35-38-1-7.5; or
  - (2) convicted of one (1) or more of the following offenses:
    - (A) Child molesting (IC 35-42-4-3).
    - (B) Child exploitation (IC 35-42-4-4(b)).
    - (C) Possession of child pornography (IC 35-42-4-4(c)).
    - (D) Vicarious sexual gratification (IC 35-42-4-5(a) or IC 35-42-4-5(b)).
    - (E) Sexual conduct in the presence of a minor (IC 35-42-4-5(c)).
    - (F) Child solicitation (IC 35-42-4-6).
    - (G) Child seduction (IC 35-42-4-7).
    - (H) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age and the person is not the child's parent or guardian.
    - (I) Attempt to commit or conspiracy to commit an offense listed in clauses (A) through (H).
    - (J) An offense in another jurisdiction that is substantially similar to an offense described in clauses (A) through (H).
- (c) As used in this section, "instant messaging or chat room program" means a software program that requires a person to register or create an account, a username, or a password to become a member or registered user of the program and allows two (2) or more members or authorized users to communicate over the Internet in real time using typed text. The term does not include an electronic mail program or message board program.
- (d) As used in this section, "social networking web site" means an Internet web site that:
  - (1) facilitates the social introduction between two (2) or more persons;
  - (2) requires a person to register or create an account, a username, or a password to become a member of the web site and to communicate with other members;
  - (3) allows a member to create a web page or a personal profile; and
  - (4) provides a member with the opportunity to communicate with another person.

The term does not include an electronic mail program or message board program.

- (e) A person described in subsection (b) who knowingly or intentionally uses:
  - (1) a social networking web site; or
  - (2) an instant messaging or chat room program;

that the offender knows allows a person who is less than eighteen (18) years of age to access or use the web site or program commits a sex offender Internet offense, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

- (f) It is a defense to a prosecution under this section that the person:
  - (1) did not know that the web site or program allowed a person who is less than eighteen (18) years of age to access or use the web site or program; and
  - (2) upon discovering that the web site or program allows a person who is less than eighteen (18) years of age to access or use the web site or program, immediately ceased further use or access of the web site or program.

P.L.119-2008, § 18, eff. July 1, 2008.

**ROBBERY**  
**(35-42-5-1)**

***Overview:***

Basic robbery, the taking of property from another person using force, the threat of force, or putting the person in fear, is a Class C felony. Robbery is a Class B felony if it is committed with a deadly weapon or bodily injury results. Finally, robbery is a Class A felony if it results in serious bodily injury.

***Issue(s):***

1. In which felony level does robbery belong?
2. In which felony level does robbery committed with a deadly weapon or which results in bodily injury belong?
3. In which felony level does robbery that results in serious bodily injury belong?

***Recommendation:***

1. Felony level 5.
2. Robbery committed with a deadly weapon or results in bodily injury should be a Level 3 felony.
3. Robbery resulting in serious bodily injury should be a Level 2 felony.

***Rationale:***

The penalty levels proposed are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 1. A person who knowingly or intentionally takes property from another person or from the presence of another person:

(1) by using or threatening the use of force on any person; or

(2) by putting any person in fear;

commits robbery, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant, and a Class A felony if it results in serious bodily injury to any person other than a defendant.

**CARJACKING**  
**(I.C. 35-42-5-2)**

***Overview:***

Carjacking is a Class B felony which involves a person knowingly or intentionally taking a motor vehicle from another person or from the presence of another person by using or threatening to use force on that person or putting that person in fear.

***Issue(s):***

1. Should Carjacking be repealed based on the rationale that it is already covered by the state's Robbery statute?

***Recommendation:***

1. The Carjacking statute should be repealed.

***Rationale:***

The Carjacking statute should be repealed since it is already covered under the state's Robbery statute.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 2. A person who knowingly or intentionally takes a motor vehicle from another person or from the presence of another person:

- (1) by using or threatening the use of force on any person; or
- (2) by putting any person in fear;

commits carjacking, a Class B felony.

*As added by P.L.230-1993, SEC.3.*

I.C. 35-43

OFFENSES AGAINST PROPERTY

## ARSON (35-43-1-1)

### *Overview:*

Arson, the damaging of property by use of fire, explosive, or destructive device, is currently a Class B felony. However, arson is a Class A felony if it results in bodily injury or serious bodily injury. Arson for hire is a class B felony, but the offense is a Class A felony if it results in bodily injury. Arson with intent to defraud is a Class C felony. Arson which results in a pecuniary loss greater than \$250 but less than \$5,000, is a Class D felony.

Arson is a property crime; so the crime is technically against the property. This also explains why the number of victims is irrelevant if there is only one building burned down. However, multiple deaths as a result of arson qualify as multiple felony murders since arson is a felony murder crime. *Mathews v. State*, 849 NE 2d 578, involved an arson that killed one person and injured several. The Supreme Court upheld the murder count and one arson count. The additional A and B arson counts were dismissed because the court concluded that there was only one act of arson. Thus, if a person burned an apartment, and no one died but all five inhabitants were seriously injured, only one Class A felony could be charged.

### *Issue(s):*

1. Should the arson statute be amended so that a separate offense can be charged for each person whose serious bodily injury is caused by the violation of the statute?
2. Are the current penalties for arson sufficient?

### *Recommendation:*

1. The arson statute should be amended to include a section (e) "A person who violates subsections (a)-(d) commits a separate offense for each person whose serious bodily injury is caused by the violation of subsections (a)-(d)."
2. The penalty for Arson and Arson for Hire should be a Level 4 felony. However, it should be a Level 3 felony if it results in bodily injury. Arson resulting in serious bodily injury should rise to the level of a Level 2 felony. Arson with intent to defraud should be a Level 5 felony. Arson which results in a pecuniary loss greater than \$250 but less than \$5,000, should be penalized as a Level 6 felony.

### *The following is language recommended by the workgroup:*

Sec. 1. (a) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages:

- (1) a dwelling of another person without the other person's consent;
- (2) property of any person under circumstances that endanger human life;
- (3) property of another person without the other person's consent if the pecuniary loss is at least five thousand dollars (\$5,000); or
- (4) a structure used for religious worship without the consent of the owner of the structure;

commits arson, a ~~Class-B~~ **Level 4** felony. However, the offense is a ~~Class-A~~ **Level 3** felony if it results in ~~either~~ bodily injury **or a Level 2 Felony if there is** serious bodily injury to any person other than a defendant.

- (b) A person who commits arson for hire commits a ~~Class-B~~ **Level 4** felony. However, the offense is a ~~Class-A~~ **Level 3** felony if it results in bodily injury to any other person, **and a Level 2 felony if it results in serious bodily injury to any other person.**
- (c) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages property of any person with intent to defraud commits arson, a ~~Class-C~~ **Level 5** felony.
- (d) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally

damages property of another person without the other person's consent so that the resulting pecuniary loss is at least two hundred fifty dollars (\$250) but less than five thousand dollars (\$5,000) commits arson, a ~~Class D~~ **Level 6** felony.

**(e) A person who violates subsections (a)-(d) commits a separate offense for each person whose serious bodily injury is caused by the violation of subsections (a)-(d).**

***Rationale:***

The statute should be amended in order to allow for multiple convictions for multiple victims suffering serious bodily injuries: based on the *Mathews* decision, that is not currently possible. Arson and arson for hire should be Level 4 felonies. Arson for hire was added to the Criminal Code in 1978. In 1978, both Arson and arson for hire were treated as Class B felonies; but arson for hire was made nonsuspendible. In order to be proportional to the penalties for other offenses, arson and arson for hire should be penalized as a Level 3 felony if it results in bodily injury and penalized as a Level 2 felony if it results in serious bodily injury.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 1. (a) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages:

- (1) a dwelling of another person without the other person's consent;
- (2) property of any person under circumstances that endanger human life;
- (3) property of another person without the other person's consent if the pecuniary loss is at least five thousand dollars (\$5,000); or
- (4) a structure used for religious worship without the consent of the owner of the structure;

commits arson, a Class B felony. However, the offense is a Class A felony if it results in either bodily injury or serious bodily injury to any person other than a defendant.

(b) A person who commits arson for hire commits a Class B felony. However, the offense is a Class A felony if it results in bodily injury to any other person.

(c) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages property of any person with intent to defraud commits arson, a Class C felony.

(d) A person who, by means of fire, explosive, or destructive device, knowingly or intentionally damages property of another person without the other person's consent so that the resulting pecuniary loss is at least two hundred fifty dollars (\$250) but less than five thousand dollars (\$5,000) commits arson, a Class D felony.

**MISCHIEF**  
**(35-43-1-2)**

**Overview:**

A person who recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent, or knowingly or intentionally causes another to suffer pecuniary loss by deception or by an expression of intention to injure another person or to damage the property or to impair the rights of another person, commits Criminal Mischief, a Class B misdemeanor. The offense is a Class D Felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500), the damage causes a substantial interruption or impairment of utility service rendered to the public, the damage is to a public record, or the damage is to a law enforcement animal (as defined in IC 35-46-3-4.5). A person who recklessly, knowingly, or intentionally damages a structure used for religious worship, a school or community center, or the grounds adjacent to and owned or rented in common with such a structure or personal property contained such a structure without the consent of the owner, possessor, or occupant of the property that is damaged, commits institutional Criminal Mischief, a Class A misdemeanor. The offense is a Class D felony if the pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500), and a Class C felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).

**Issue(s):**

1. Should a separate chapter be created for all mischief-related crimes?
2. Should certain parts of the Mischief statute be revised?
3. Are the current penalties under the Mischief Statute appropriate?

**Recommendation:**

1. Mischief-related offenses should be moved out of the Arson chapter and into their own new chapter.
2. Certain parts of the statute should be revised. See recommended language.
3. Institutional criminal mischief should be a Level 6 felony if the pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500), and a Level 5 felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500). Criminal Mischief should be a a Level 6 felony if: the pecuniary loss is at least two thousand five hundred dollars (\$2,500); the damage causes a substantial interruption or impairment of utility service rendered to the public; the damage is to a public record; or the damage is to a law enforcement animal (as defined in IC 35-46-3-4.5).

*The following is language recommended:*

**Criminal mischief; penalties**

Sec. 2. (a) A person who recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent commits criminal mischief, a Class B misdemeanor. However, the offense is:

- (1) a Class A misdemeanor if the pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500);
  - (2) a Level 6 felony if:
    - (A) the pecuniary loss is at least two thousand five hundred dollars (\$2,500);
    - (B) the damage causes a substantial interruption or impairment of utility service rendered to the public;
    - (C) the damage is to a public record; or
    - (D) the damage is to a law enforcement animal (as defined in IC 35-46-3-4.5).
- (b) A person who recklessly, knowingly, or intentionally damages:

- (1) a structure used for religious worship;
  - (2) a school or community center;
  - (3) the grounds:
    - (A) adjacent to; and
    - (B) owned or rented in common with; a structure or facility identified in subdivision (1) or (2); or
  - (4) personal property contained in a structure or located at a facility identified in subdivision (1) or (2);
- without the consent of the owner, possessor, or occupant of the property that is damaged, commits institutional criminal mischief, a Class A misdemeanor. However, the offense is a Level 6 felony if the pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500), and a Level 5 felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).
- (c) If a person is convicted of an offense under this section that involves the use of graffiti, the court may, in addition to any other penalty, order that the person's license or permit be suspended or invalidated by the bureau of motor vehicles for not more than one (1) year.
- (d) The court may rescind an order for suspension or invalidation under subsection (c) and allow the person to receive a license or permit before the period of suspension or invalidation ends if the court determines that the person has removed or painted over the graffiti or has made other suitable restitution

***Rationale:***

The mischief statute should be updated, streamlined, and moved to its own section. The updates and changes include deleting (a)(2) which was originally intended to cover practical joke gone bad. The reference to “moving motor vehicle” should be stricken, since the pecuniary loss in such cases will be over \$250. It is recommended that all except the dollar range for Class A misdemeanor be deleted (delete “moving motor vehicle,” “paint”, etc.) For the Class D felony: Deletion of (v) and (vii) is recommended on the basis that the pecuniary loss in such cases would be expected to reach \$2500. Deletion of subsection (d)(2) is recommended, as the decision to rescind suspension of the operator’s license should be within the discretion of the courts rather than within the purview of the victim’s authority.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 2. (a) A person who:

- (1) recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent; or
- (2) knowingly or intentionally causes another to suffer pecuniary loss by deception or by an expression of intention to injure another person or to damage the property or to impair the rights of another person;

commits criminal mischief, a Class B misdemeanor. However, the offense is:

- (A) a Class A misdemeanor if:
  - (i) the pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500);
  - (ii) the property damaged was a moving motor vehicle;
  - (iii) the property damaged contained data relating to a person required to register as a sex or violent offender under IC 11-8-8 and the person is not a sex or violent offender or was not required to register as a sex or violent offender;
  - (iv) the property damaged was a locomotive, a railroad car, a train, or

equipment of a railroad company being operated on a railroad right-of-way;

(v) the property damaged was a part of any railroad signal system, train control system, centralized dispatching system, or highway railroad grade crossing warning signal on a railroad right-of-way owned, leased, or operated by a railroad company;

(vi) the property damaged was any rail, switch, roadbed, viaduct, bridge, trestle, culvert, or embankment on a right-of-way owned, leased, or operated by a railroad company; or

(vii) the property damage or defacement was caused by paint or other markings; and

(B) a Class D felony if:

(i) the pecuniary loss is at least two thousand five hundred dollars (\$2,500);

(ii) the damage causes a substantial interruption or impairment of utility service rendered to the public;

(iii) the damage is to a public record;

(iv) the property damaged contained data relating to a person required to register as a sex or violent offender under IC 11-8-8 and the person is a sex or violent offender or was required to register as a sex or violent offender;

(v) the damage causes substantial interruption or impairment of work conducted in a scientific research facility;

(vi) the damage is to a law enforcement animal (as defined in IC 35-46-3-4.5); or

(vii) the damage causes substantial interruption or impairment of work conducted in a food processing facility.

(b) A person who recklessly, knowingly, or intentionally damages:

(1) a structure used for religious worship;

(2) a school or community center;

(3) the grounds:

(A) adjacent to; and

(B) owned or rented in common with;

a structure or facility identified in subdivision (1) or (2); or

(4) personal property contained in a structure or located at a facility identified in subdivision (1) or (2);

without the consent of the owner, possessor, or occupant of the property that is damaged, commits institutional criminal mischief, a Class A misdemeanor. However, the offense is a Class D felony if the pecuniary loss is at least two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500), and a Class C felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).

(c) If a person is convicted of an offense under this section that involves the use of graffiti, the court may, in addition to any other penalty, order that the person's operator's license be suspended or invalidated by the bureau of motor vehicles for not more than one (1) year.

(d) The court may rescind an order for suspension or invalidation under subsection (c) and allow the person to receive a license or permit before the period of suspension or invalidation ends if the court determines that:

(1) the person has removed or painted over the graffiti or has made other suitable restitution; and

(2) the person who owns the property damaged or defaced by the criminal mischief or

institutional criminal mischief is satisfied with the removal, painting, or other restitution performed by the person.

**CEMETERY MISCHIEF**  
**(35-43-1-2.1)**

***Overview:***

A person who recklessly, knowingly, or intentionally damages a cemetery, a burial ground, or a facility used for memorializing the dead or damages the grounds owned or rented by a cemetery or facility used for memorializing the dead or disturbs, defaces, or damages a cemetery monument, grave marker, grave artifact, grave ornamentation, or cemetery enclosure commits Cemetery Mischief, a Class A misdemeanor. The offense is a Class D felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).

***Issue(s):***

1. Should Cemetery Mischief, Unlawful Acts Relating to Caves, Railroad Mischief and Computer Tampering, Tampering with water Supply, and Altering Historic Property be consolidated under Criminal Mischief?
2. In which felony level does Cemetery Mischief resulting in at least a \$2,500 loss belong?

***Recommendation:***

1. Cemetery Mischief, Unlawful Acts Relating to Caves, Railroad Mischief and Computer Tampering, Tampering with Water Supply, and Altering Historic Property should be consolidated under Criminal Mischief.
2. Felony Level 6.

***Rationale:***

No changes to the language of the statute are recommended, besides converting the Class D felony to a Level 6 felony. However, it is recommended that this statute be relocated within this chapter and placed with similar offenses nearer to Criminal Mischief.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 2.1. (a) This section does not apply to the following:

- (1) A person who acts in a proper and acceptable manner as authorized by IC 14-21 other than a person who disturbs the earth for an agricultural purpose under the exemption to IC 14-21 that is provided in IC 14-21-1-24.
  - (2) A person who acts in a proper and acceptable manner as authorized by IC 23-14.
- (b) A person who recklessly, knowingly, or intentionally:
- (1) damages a cemetery, a burial ground (as defined in IC 14-21-1-3), or a facility used for memorializing the dead;
  - (2) damages the grounds owned or rented by a cemetery or facility used for memorializing the dead; or
  - (3) disturbs, defaces, or damages a cemetery monument, grave marker, grave artifact, grave ornamentation, or cemetery enclosure; commits cemetery mischief, a Class A misdemeanor. However, the offense is a Class D felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500).

## COMPUTER TAMPERING (35-43-1-4)

### **Overview:**

A person who knowingly or intentionally alters or damages a computer program or data commits Computer Tampering, a Class D Felony. The offense is a C Felony if the offense is committed for the purpose of terrorism, and a Class B felony if committed for the purpose of terrorism and results in serious bodily injury to a person.

### **Issue(s):**

1. Should the Indiana General Assembly repeal its current computer crimes statutes and enact similar to Florida's statute?
2. If the current computer crimes statutes are not repealed and Florida's statute enacted, should alternative recommendations be adopted?

### **Recommendation:**

The following recommendations are made:

1. **Primary Recommendation:** Indiana's General Assembly should repeal its current computer crimes statutes and enact Florida's statute, found at FL Statutes Title XLVI, Sections 815.04 and 815.06. The Florida statute is easy to understand, and closes the gap in our current law.
2. **Alternative Recommendation:** The group does not recommend changing the offense level for currently existing crimes, but –if the CCEC does not wish to accept the primary recommendation of the group and simply substitute the Florida language on computer crimes (see above) – makes the following alternative recommendations:
  - a. The obtaining of data intended to be private should be a Level 6 felony, unless it is done with (using the Florida statutory language) “the purpose of devising or executing any scheme or artifice to defraud or to obtain any property”, in which case it should be a Level 5 felony.
  - b. The term “property” in the Indiana code should include “data”, which also would need to be defined. We recommend using the Florida definition of “data”, which is as follows:

*“a representation of information, knowledge, facts, concepts, computer software, computer programs, or instructions. Data may be in any form, in storage media or stored in the memory of the computer, or in transit or presented on a display device.”*

- i. Indiana's code should continue to include a single universal definition of “property” (see IC 35-41-1-23), but include a subsection 15 adding the term “data” to the definition; and also define “data” in the definitions sections of the Code (IC 35-41-1-1 et seq.) using the language indicated above.

- ii. Indiana's computer tampering statute does include a definition of data. The group recommends repeal of that language in favor of a separate definition of "data" in the definitions sections (IC 35-41-1-1 et seq.).
- iii. The group also recommends moving the definitions of "computer program," "computer system," "computer network," "access," and "hoarding program" to the definitions section in the front of the criminal code (IC 35-41-1-1 et seq.).
- c. Indiana's code also does not provide a specific penalty for disrupting or denying or causing the denial of system service to an authorized user. See Florida statutes, Title XLVI, Section 815.06(b). We recommend including a penalty for a person who:

*"disrupts or denies or causes the denial of computer system services to an authorized user of such computer system service, which, in whole or part, is owned by, under contract to, or operated for, on behalf, or in conjunction with another."*

- d. Indiana should clearly include as a crime the introduction of a contaminant (e.g., worm) into another's computer, using words similar to Florida's statute: Title XLVI, Section 815.06(e): *"Introduces any computer contaminant into any computer, computer system, or computer network"*.

***Rationale:***

The Florida statute is easy to understand, and would modernize Indiana's current law. There are several areas noted in the recommendations that would improve the computer crimes statute in Indiana. Some problems with the current Indiana statute is that there should be an enhancement related to the level of loss, or disruption (e.g., identity theft), threat to public safety (shutting down state computer network). Additionally, the enhancements, currently related solely to terrorism, are largely irrelevant. It should be pointed out that there is a gap in the Indiana statute relating to the obtaining of private identification information through computer hacking.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 4. (a) As used in this section:

"Computer network" and "computer system" have the meanings set forth in IC 35-43-2-3.

"Computer program" means an ordered set of instructions or statements that, when executed by a computer, causes the computer to process data.

"Data" means a representation of information, facts, knowledge, concepts, or instructions that:

- (1) may take any form, including computer printouts, magnetic storage media, punched cards, or stored memory;
- (2) has been prepared or is being prepared; and
- (3) has been processed, is being processed, or will be processed;

in a computer system or computer network.

- (b) A person who knowingly or intentionally alters or damages a computer program or data, which comprises a part of a computer system or computer network without the consent of the owner of the computer system or computer network commits computer tampering, a Class D

felony. However, the offense is a:

- (1) Class C felony if the offense is committed for the purpose of terrorism; and
- (2) Class B felony if the offense is committed for the purpose of terrorism and results in serious bodily injury to a person.

**TAMPERING WITH WATER SUPPLY; POISONING**  
**(35-43-1-5)**

**Overview:**

This statute, enacted in 2007, makes it a Class B felony to tamper with a water supply, a water treatment plant, or a water distribution system with the intent to cause serious bodily injury. The offense is a Class A felony if the tampering results in the death of any person. The statute also makes it a Class B felony to recklessly, knowingly, or intentionally poison a public water supply with the intent to cause serious bodily injury.

**Issue(s):**

1. Should Cemetery Mischief, Unlawful Acts Relating to Caves, Railroad Mischief and Computer Tampering, Tampering with water Supply, and Altering Historic Property be consolidated under Criminal Mischief?
2. Should this offense should be altered so as to clearly apply to the tampering or poisoning of any water or water system used for human consumption? Should the penalty for poisoning resulting in death be the same as for tampering resulting in death?
3. In which felony level do these crimes belong?

**Recommendation:**

1. Cemetery Mischief, Unlawful Acts Relating to Caves, Railroad Mischief and Computer Tampering, Tampering with water Supply, and Altering Historic Property should be consolidated under Criminal Mischief.
2. This statute should be amended so as to clearly apply to the tampering or poisoning of any water or water system used for human consumption. The penalty for poisoning resulting in death should be the same as for tampering resulting in death.
3. Tampering with or poisoning a water supply should be a Felony level 4, and the offense should be a Felony level 2 if it results in death.

**Language recommended:**

Sec. 5. ~~(a)~~ A person who, with the intent to cause serious bodily injury, tampers with **or poisons any a:**

- (1) water supply;
- (2) **system for the provision to the public of water for human consumption through pipes or other constructed conveyances, including any water treatment plant** ~~(as defined in IC 13-11-2-264);~~ or
- (3) water distribution system ~~(as defined in IC 13-11-2-259)~~ **regardless of system size;**

commits tampering with **or poisoning** a water supply, a ~~Class B~~ **Level 4** felony. However, the offense is a **Level 3 felony if it results in serious bodily injury to any person, and a**

Class **A Level 2** felony if it results in the death of any person.

~~(b) A person who recklessly, knowingly, or intentionally poisons a public water supply with the intent to cause serious bodily injury commits poisoning, a Class B felony.~~

**Rationale:**

This statute manages to utilize no fewer than three distinct terms for the item it criminalizes tampering with or poisoning:

1. "water supply," used in the first subpart of the tampering branch of the statute,

2. "public water system" as incorporated in the definitions of "water treatment plant" and "water distribution system" in the second and third parts of the tampering branch of the statute, and
3. "public water supply," used in the poisoning branch of the statute.

There is no statutory definition of "water supply." There is no statutory definition of "public water supply."

"Public water system" is defined, for purposes of the Title 13 definitions of "water treatment plant" and "water distribution system," as having "the meaning set forth in 42 U.S.C. 300f." IC 13-11-2-177.3. 42 U.S.C. 300f has the following basic definition:

The term "public water system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. So under the "tampering" portion of 35-43-1-5, tampering with either a "water treatment plant" or a "water distribution system" requires the plant or system to be part of a "public water system" having at least fifteen service connections or regularly serving at least twenty-five individuals.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 5. (a) A person who, with the intent to cause serious bodily injury, tampers with a:

- (1) water supply;
- (2) water treatment plant (as defined in IC 13-11-2-264); or
- (3) water distribution system (as defined in IC 13-11-2-259);

commits tampering with a water supply, a Class B felony. However, the offense is a Class A felony if it results in the death of any person.

(b) A person who recklessly, knowingly, or intentionally poisons a public water supply with the intent to cause serious bodily injury commits poisoning, a Class B felony.

## **BURGLARY** **(I.C. 35-43-2-1)**

### ***Overview:***

Burglary involves a person breaking and entering the building or structure of another person with the intent to commit a felony in it. Burglary is a Class C felony. However, it is a Class B felony if the person committing the act is armed with a deadly weapon or the building or structure which has been burglarized is either a dwelling or a structure used for religious worship. Burglary is a Class A felony if the defendant's act results in bodily injury or serious bodily injury to a person other than the defendant.

### ***Issue(s):***

1. In which felony level(s) does this crime belong?
2. Should it be necessary to prove specific intent in order to convict a person of Burglary?
3. Does the type of building being burglarized matter when determining what level of offense it is?
4. Should it matter whether or not the building is occupied when it is being burglarized when determining the level of offense?
5. Should the status and penalties for Burglary increase based on the presence of aggravators such as the building being a dwelling or church or the use of a deadly weapon or bodily injury or substantial bodily injury occurring?

### ***Recommendations:***

1. Burglary should be a Level 5 felony; Level 4 felony for Burglary of a dwelling or church; Level 3 felony for Burglary involving bodily injury, and Level 2 felony for Burglary involving the use of a deadly weapon or resulting in serious bodily injury. Burglary of a dwelling resulting in serious bodily injury should be a Level 1.
2. The current statute requires proof of intent to commit a felony when entering the building. The statute should apply not only to breaking and entering with intent to commit a felony but also to breaking and entering coupled with the commission of a felony after entering.
3. Burglary of a dwelling should be considered a more serious crime than Burglary of another structure. Churches should not be distinguished from other non-dwellings when determining the level of offense for Burglary.
4. Whether or not the building is occupied at the time of the burglary should not be relevant.
5. The outcome (such as violence, another crime occurring, bodily injury, or use of a deadly weapon) should increase the penalty for Burglary.

### ***Rationale:***

The statute now requires proof of intent to commit a felony at the time of the entry. In some cases, the courts have found insufficient proof of intent to commit the particular felony alleged as of the time of the break-in. See *Richards v. State*, 681 N.E. 2d 208 (Ind. S.Ct. 1997). It makes logical sense to enhance the penalty for burglarizing a dwelling, as opposed to any other structure, due to the invasion of "a man's castle" and likelihood of injury to the residents. Whether or not a building is occupied at the time of the burglary should not be relevant. Use of a deadly weapon or the causation of bodily injury or substantial bodily injury should result in enhancement of the penalties for committing Burglary because violent crimes are more harmful to society.

### ***Workgroup Position:***

Recommended by consensus.

### ***Current Statute:***

Sec. 1. A person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony. However, the offense is:

- (1) a Class B felony if:
  - (A) it is committed while armed with a deadly weapon; or
  - (B) the building or structure is a:
    - (i) dwelling; or
    - (ii) structure used for religious worship; and
- (2) a Class A felony if it results in:
  - (A) bodily injury; or
  - (B) serious bodily injury;to any person other than a defendant.

**RESIDENTIAL ENTRY**  
**(I.C. 35-43-2-1.5)**

***Overview:***

Residential Entry is a Class D felony which involves a person intentionally breaking and entering the dwelling of another person. It only applies to dwellings and does not require the presence of an intent to commit a felony inside; hence it is a different crime than Burglary.

***Issue(s):***

1. In which felony level does this crime belong?
2. Does it make sense to have a separate crime for Residential Entry than for Burglary?

***Recommendations:***

1. Felony level 6.
2. There should be a separate crime for Residential Entry than Burglary under the current system.

***Rationale:***

Residential Entry is a less serious crime than burglary due to the lack of necessary intent to commit a felony inside. As long as burglary requires proof of an intent to commit a felony inside, it makes sense to have a separate crime for Residential Entry.

***Workgroup Position:***

Recommendation by consensus.

***Current Statute:***

Sec. 1.5. A person who knowingly or intentionally breaks and enters the dwelling of another person commits residential entry, a Class D felony.

*As added by P.L.215-1991, SEC.1.*

**THEFT; RECEIVING STOLEN PROPERTY**  
**(I.C. 35-43-4-2)**

***Overview:***

Theft, a Class D felony, is exerting unauthorized control over the property of another person with the intent to permanently deprive the person of any part of its value or use. It is enhanced to a Class C felony when the fair market value is \$100,000 or more OR the object taken is a valuable metal and there is a risk of substantial bodily injury because that metal has been taken.

Receiving, retaining, or disposing of the property of another person that has been the subject of theft is Receiving Stolen Property, a Class D felony. This offense is enhanced to a Class C felony on the same basis that Theft is enhanced.

***Issues:***

1. Should the statute be revised to base all penalties on the monetary value of the property taken with corresponding changes to the penalties imposed?
2. Are there other changes to Indiana law implicated by a potential misdemeanor version of Theft?
3. Should the offense of Receiving Stolen Property be repealed?

***Recommendations:***

1. Additional values of property should be added to the statute, and there should be a corresponding differentiation in the penalty levels imposed. Theft of property of a fair market value less than \$750 should be a Class A misdemeanor, with enhancements to a Level 6 felony for a prior conviction under this statute or if the fair market value of the property taken is at least \$750. If a valuable metal is taken or the fair market value of the property is at least \$50,000, then the penalty should be enhanced to a Level 5 felony. This cuts in half the monetary value required to make the offense a Level 5 felony (equivalent of a Class C felony).
2. Amendments should be made to the laws relating to Burglary (breaking and entering with intent to commit a felony therein; must be amended to include “or theft”) and arrest (ability of police to make a warrantless arrest for misdemeanor theft without having observed the offense in progress). In addition, language should be added making it possible to aggregate multiple thefts in order to achieve the enhancement to the Class D and Class C felony levels, and language should be added to clarify the method of valuation of property. Both of these approaches are employed in many other states. These amendments were approved by the Criminal Code Evaluation Commission on July 27, 2011.
3. The offense of Receiving Stolen property (“A person who knowingly or intentionally receives, retains, or disposes of the property of another person that has been the subject of theft...”) should be repealed. [Note: For the same reason (see below), the separate statute of Failure to Return or Pay for (Borrowed Items), IC 35-43-4-3.5 should be repealed.]

***Rationale:***

Every other state in the U.S. uses monetary value to differentiate between levels of theft, and every other state's lowest penalty for lower-dollar theft is a misdemeanor. The monetary threshold ranges between \$200 and \$2500, with the most prevalent at \$1,500. A threshold of \$750 (50% of the most prevalent threshold level in the country) is again recommended (as in 2011 and 2012) for felony theft. This will require amendments to the Burglary statute and the power of law enforcement to make a warrantless arrest, as indicated above, for the purpose of preserving public order and ensuring the prosecutability of those who break and enter buildings or structures with the intent to commit theft inside.

To clarify the meaning of the "fair market value" of the theft, the recommended language regarding valuation and aggregation should be added to the statute.

The threshold for the enhancement to a Class C felony is too high at \$100,000 in fair market value. It is recommended that this threshold be reduced to \$50,000.

Receiving Stolen Property is, by its very nature, "exerting unauthorized control over the property of another person with the intent to permanently deprive the person of any part of its value or use. Thus, it is covered by the definition of Theft and should be repealed. For the same reason, the other offenses listed in Recommendation 3 should be repealed.

*The following language is recommended for the Theft statute:*

(a) A person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft, a ~~Class D felony~~ **Class A misdemeanor**. However, the offense is a **Level 6 felony if the fair market value of the property is at least seven hundred fifty dollars (\$750) or if the person has a prior unrelated conviction for conversion or theft, and a Class C felony Level 5 felony** if:

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

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

(A) relates to transportation safety;

(B) relates to public safety; or

(C) is taken from a:

(i) hospital or other health care facility;

(ii) telecommunications provider;

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

(iv) key facility;

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

~~—(b) A person who knowingly or intentionally receives, retains, or disposes of the property of another person that has been the subject of theft commits receiving stolen property, a Class D felony. However, the offense is a Class C felony if:~~

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

~~or~~

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

~~— (A) relates to transportation safety;~~

~~— (B) relates to public safety; or~~

~~— (C) is taken from a:~~

~~— (i) hospital or other health care facility;~~

~~— (ii) telecommunications provider;~~

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

~~— (iv) key facility;~~

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

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

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

***Workgroup Position:***

Reservations were expressed by the IPAC representative regarding the proposed creation of a dollar threshold for felony theft, below which the offense would be a misdemeanor, on the basis that Indiana can make use of the Conversion statute (IC 35-43-4-3), which provides, “A person who knowingly or intentionally exerts unauthorized control over property of another person commits Conversion, a class A misdemeanor.” Conversion is similar to theft but without the intent to permanently deprive the other person of any part of the property’s value or use.

***Current Statute:***

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

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

or

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

(A) relates to transportation safety;

(B) relates to public safety; or

(C) is taken from a:

(i) hospital or other health care facility;

(ii) telecommunications provider;

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

(iv) key facility;

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

(b) A person who knowingly or intentionally receives, retains, or disposes of the property of another person that has been the subject of theft commits receiving stolen property, a Class D felony. However, the offense is a Class C felony if:

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

or

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

(A) relates to transportation safety;

(B) relates to public safety; or

(C) is taken from a:

(i) hospital or other health care facility;

(ii) telecommunications provider;

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

(iv) key facility;

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

*As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.45; Acts 1979, P.L.300, SEC.2; P.L.320-1985, SEC.1; P.L.158-2009, SEC.8.*

**DEALING IN ALTERED PROPERTY**  
**(I.C. 35-43-4-2.3)**

***Overview:***

Dealing in Altered Property is a Class A misdemeanor and is committed when a person who sells or buys personal property alters, removes, defaces, or obliterates identification numbers. It is a Class D felony if the person has been previously convicted under this statute or the fair market value of the property is at least \$1000.

***Issue:***

1. In what penalty level(s) does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor, enhanced to a Level 6 felony under the circumstances described.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

(a) As used in this section, "dealer" means a person who buys or sells, or offers to buy or sell, personal property. The term does not include the original retailer of personal property.

(b) A dealer who recklessly, knowingly, or intentionally buys or sells personal property in which the identification number or manufacturer's serial number has been removed, altered, obliterated, or defaced commits dealing in altered property, a Class A misdemeanor. However the offense is a Class D felony if the dealer has a prior conviction of an offense under this chapter or if the fair market value of the property is at least one thousand dollars (\$1,000).

*As added by P.L.294-1989, SEC.2.*

**AUTO THEFT; RECEIVING STOLEN AUTO PARTS**  
**(I.C. 35-43-4-2.5)**

***Overview:***

A person who exerts unauthorized control over the motor vehicle of another person, with intent to deprive the owner of the vehicle's value or use or over a component part of the vehicle commits Auto Theft, a Class D felony. The offense is a Class C felony if the person has a prior conviction for Auto Theft or Receiving Stolen Auto Parts.

***Issue:***

1. In what penalty level(s) does this crime belong?
2. Should the \$750 theft threshold, if adopted, be applied to this offense as well as other Theft?

***Recommendation:***

1. The offense should be a Level 6 felony, with enhancement to a Level 5 felony if the perpetrator has a prior conviction for Auto Theft or Receiving Stolen Auto Parts.
2. Auto Theft and Receiving Stolen Auto Parts should remain at an equivalent level to its current penalty levels, and the \$750 level should not be applied.

***Rationale:***

These penalty levels are appropriate and proportional. Because Auto Theft and the trade in stolen auto parts is a significant problem for law enforcement and the law-abiding public, and because most autos stolen will have a value of over \$750, it is recommended that the lower penalty remain at the Class 6 felony level.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

- (a) As used in this section, "motor vehicle" has the meaning set forth in IC 9-13-2-105(a).
- (b) A person who knowingly or intentionally exerts unauthorized control over the motor vehicle of another person, with intent to deprive the owner of:
  - (1) the vehicle's value or use; or
  - (2) a component part (as defined in IC 9-13-2-34) of the vehicle;commits auto theft, a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection or subsection (c).
- (c) A person who knowingly or intentionally receives, retains, or disposes of a motor vehicle or any part of a motor vehicle of another person that has been the subject of theft commits receiving stolen auto parts, a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection or subsection (b).

*As added by P.L.321-1985, SEC.1. Amended by P.L.136-1987, SEC.6; P.L.2-1991, SEC.106.*

**UNLAWFUL ENTRY OF MOTOR VEHICLE  
(I.C. 35-43-4-2.7)**

***Overview:***

A person who enters an automobile without permission or having a contractual interest in it commits a Class B misdemeanor. It is enhanced to a Class A misdemeanor if there is visible column damage or ignition switch alteration. It is a Class D felony if a person occupies the motor vehicle while the motor vehicle is used to further the commission of a crime, if the person knew or should have known that a person intended to use the motor vehicle in the commission of a crime.

***Issue:***

1. In what penalty level(s) does this crime belong?

***Recommendation:***

1. The offense should be remain a Class B misdemeanor, enhanced to a Class A misdemeanor if there is visible column damage or ignition switch alteration and to a Level 6 felony if a person occupies the motor vehicle while the motor vehicle is used to further the commission of a crime, if the person knew or should have known that a person intended to use the motor vehicle in the commission of a crime.

***Rationale:***

The recommended penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

(a) This section does not apply to the following:

(1) A public safety officer (as defined in IC 35-47-4.5-3) or state police motor carrier inspector acting within the scope of the officer's or inspector's duties.

(2) A motor vehicle that must be moved because the motor vehicle is abandoned, inoperable, or improperly parked.

(3) An employee or agent of an entity that possesses a valid lien on a motor vehicle who is expressly authorized by the lienholder to repossess the motor vehicle based upon the failure of the owner or lessee of the motor vehicle to abide by the terms and conditions of the loan or lease agreement.

(b) As used in this section, "authorized operator" means a person who is authorized to operate a motor vehicle by an owner or a lessee of the motor vehicle.

(c) As used in this section, "motor vehicle" has the meaning set forth in IC 9-13-2-105(a).

(d) A person who:

(1) enters a motor vehicle knowing that the person does not have the permission of an owner, a lessee, or an authorized operator of the motor vehicle to enter the motor vehicle; and  
(2) does not have a contractual interest in the motor vehicle;  
commits unauthorized entry of a motor vehicle, a Class B misdemeanor.

(e) The offense under subsection (d) is:

(1) a Class A misdemeanor if the motor vehicle has visible steering column damage or ignition switch alteration as a result of an act described in subsection (d)(1); or

(2) a Class D felony if a person occupies the motor vehicle while the motor vehicle is used to further the commission of a crime, if the person knew or should have known that a person intended to use the motor vehicle in the commission of a crime.

(f) It is a defense to a prosecution under this section that the accused person reasonably believed that the person's entry into the vehicle was necessary to prevent bodily injury or property damage.

(g) There is a rebuttable presumption that the person did not have the permission of an owner, a lessee, or an authorized operator of the motor vehicle to enter the motor vehicle if the motor vehicle has visible steering column damage or ignition switch alteration.

*As added by P.L. 143-2005, SEC.1.*

**CONVERSION**  
**(I.C. 35-43-4-3)**

***Overview:***

A person who exerts unauthorized control over property of another person commits criminal conversion, a Class A misdemeanor. It is a Class D felony if the property is a motor vehicle and the person intends to use the motor vehicle to assist him in the commission of a crime, or the person acquires a motor vehicle by lease and fails to return the property as required. It is a Class C felony if the person exerts unauthorized control over a motor vehicle and uses the vehicle to assist him in the commission of a felony.

***Issue:***

1. In what penalty level(s) does this crime belong?

***Recommendation:***

1. The offense level should remain a Class A misdemeanor, with enhancement to a Level 6 felony if the property is a motor vehicle and the person intends to use the motor vehicle to assist him in the commission of a crime, or the person acquires a motor vehicle by lease and fails to return the property as required. The offense should be a Level 5 felony if the person exerts unauthorized control over a motor vehicle and uses the vehicle to assist him in the commission of a felony.

***Rationale:***

The penalty levels are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

(a) A person who knowingly or intentionally exerts unauthorized control over property of another person commits criminal conversion, a Class A misdemeanor.

(b) The offense under subsection (a) is a Class D felony if committed by a person who exerts unauthorized control over the motor vehicle of another person with the intent to use the motor vehicle to assist the person in the commission of a crime.

(c) The offense under subsection (a) is a Class C felony if:

(1) committed by a person who exerts unauthorized control over the motor vehicle of another person; and

(2) the person uses the motor vehicle to assist the person in the commission of a felony.

(d) The offense under subsection (a) is a Class D felony if:

(1) the person acquires the property by lease;

(2) the property is a motor vehicle;

(3) the person signs a written agreement to return the property to a specified location within a specified time; and

(4) the person fails to return the property:

(A) within thirty (30) days after the specified time; or

(B) within three (3) days after a written demand for return of the property is either:

(i) personally served on the person; or

(ii) sent by registered mail to the person's address that is provided by the person in the written agreement.

*As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.46; P.L.143-2005, SEC.2; P.L.227-2011, SEC.1.*

**COUNTERFEITING; FORGERY; APPLICATION FRAUD**  
**(I.C. 35-43-5-2)**

***Overview:***

Counterfeiting is the uttering, making, or possession of an instrument which exists in an altered state or an unauthorized manner. This offense is a Class D felony. Forgery is similar, but adds the requirement that the person commit the act “with the intent to defraud” and makes the offense a Class C felony. Application Fraud deals with driver’s license or state identification applications on which false statements or omissions are made; these two offenses are Class D felonies.

***Issues:***

1. In which penalty level(s) does this crime belong?
2. Should Application Frauds be combined into one subsection?
3. Should any other changes be made to clarify the meaning of the law?
4. Should any other existing statutes be consolidated into this statute?

***Recommendations:***

1. All offenses in this statute should be a Level 6 felony.
2. The Application Frauds should be combined into one subsection.
3. It is recommended that the language “or otherwise commits fraud” in subsection (c) be removed.
4. It is recommended that the following statutes be combined into IC 35-43-5-2:
  - Possession of a Fraudulent Sales Document (IC 35-43-5-14)
  - Making a False Sales Document (IC 35-43-5-16)
  - Delivery of a False Sales Document (IC 35-43-5-17)

*The following language is recommended:*

(a) A person who knowingly or intentionally:

(1) makes or utters a written instrument in such a manner that it purports to have been made:

- (A) by another person;
- (B) at another time;
- (C) with different provisions; or
- (D) by authority of one who did not give authority; or

(2) possesses more than one (1) written instrument knowing that the written instruments were made in a manner that they purport to have been made:

- (A) by another person;
- (B) at another time;
- (C) with different provisions; or
- (D) by authority of one who did not give authority;

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

(b) A person who, with intent to defraud,

(1) makes or delivers to another person:

- (i.) a false sales receipt;
  - (ii.) a duplicate of a sales receipt;
  - (iii.) a label or other item with a false universal product code (UPC) or other product identification code ; or
  - (2) places a false universal product code (UPC) or another product identification code on property displayed or offered for sale;
- commits making or delivering a false sales document, a Level 6 felony.
- (c) A person who, with intent to defraud, possesses:
- (1) a retail sales receipt;
  - (2) a label or other item with a universal product code (UPC); or
  - (3) a label or other item that contains a product identification code that applies to an item other than the items to which the label or other item applies;
- commits possession of a fraudulent sales document, a Class A misdemeanor. However, the offense is a Level 6 felony if the person possesses at least fifteen (15):
- (1) retail sales receipts;
  - (2) labels containing a universal product code (UPC);
  - (3) labels containing another product identification code; or
  - (4) of any combination of the items described in subdivisions (1) through (3).
- (b) (d) A person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made:
- (1) by another person;
  - (2) at another time;
  - (3) with different provisions; or
  - (4) by authority of one who did not give authority;
- commits forgery, a ~~Class C~~ **Level 6** felony.
- (e) (e) This subsection applies to a person who applies for a driver's license (as defined in IC 9-13-2-48) or a state identification card (as issued under IC 9-24-16). A person who:
- (1) knowingly or intentionally uses a false or fictitious name or gives a false or fictitious address in an application for a driver's license or a state identification card or for a renewal or a duplicate of a driver's license or a state identification card; or
  - (2) knowingly or intentionally makes a false statement or conceals a material fact or otherwise commits fraud in an application for a driver's license or a state identification card;
- commits application fraud, a ~~Class D~~ **Level 6** felony.
- ~~(d) This subsection applies to a person who applies for a state identification card (as issued under IC 9-24-16). A person who:~~
- ~~— (1) knowingly or intentionally uses false information in an application for an identification card or for a renewal or duplicate of an identification card; or~~
  - ~~— (2) knowingly or intentionally makes a false statement or otherwise commits fraud in an application for an identification card;~~
- ~~commits application fraud, a Class D felony.~~

***Rationale:***

1. The recommended penalty is appropriate and proportional. Forgery should be penalized as a Level 6 felony in order for there to be proportionality between that offense, Counterfeiting, and the crime of Theft. All these offenses deal with the same harm, which is the taking of (or, in the

case of Forgery and Counterfeiting, at least the intention to take) something of value from another person.

2. Application Fraud should be combined into one section for streamlining purposes. It will thus cover both driver's license application and (other) state identification application.

3. The language "or otherwise commits fraud" in subsection (c) relates to the application fraud portion of the statute. Indiana's code does not define fraud, and the fraud statute is primarily in relation to the use of credit cards. It should be sufficient to indicate that either deliberately using false information or omitting information, or making a false statement, in connection with obtaining a driver's license or state identification card, constitutes the commission of this crime.

4. The 3 additional statutes proposed for consolidation with the Forgery; Counterfeiting; Application Fraud statute are similar in nature and level of seriousness with the offenses currently included in the statute and should be consolidated in order to simplify and clarify the criminal code.

***Workgroup Position:***

The IPAC representative expresses personal reservations about reducing the penalty for Forgery from today's Class C felony to the same penalty level as Counterfeiting, a Level 6 felony (equivalent of a Class D felony in current Criminal Code), on the basis that Forgery, as written, has the additional element of "with intent to defraud". The remainder of the proposed changes are a consensus recommendation.

***Current Statute:***

(a) A person who knowingly or intentionally:

(1) makes or utters a written instrument in such a manner that it purports to have been made:

(A) by another person;

(B) at another time;

(C) with different provisions; or

(D) by authority of one who did not give authority; or

(2) possesses more than one (1) written instrument knowing that the written instruments were made in a manner that they purport to have been made:

(A) by another person;

(B) at another time;

(C) with different provisions; or

(D) by authority of one who did not give authority;

commits counterfeiting, a Class D felony.

(b) A person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made:

(1) by another person;

(2) at another time;

(3) with different provisions; or

(4) by authority of one who did not give authority;

commits forgery, a Class C felony.

(c) This subsection applies to a person who applies for a driver's license (as defined in IC 9-13-2-48). A person who:

(1) knowingly or intentionally uses a false or fictitious name or gives a false or fictitious address in an application for a driver's license or for a renewal or a duplicate of a driver's license; or

(2) knowingly or intentionally makes a false statement or conceals a material fact or otherwise commits fraud in an application for a driver's license; commits application fraud, a Class D felony.

(d) This subsection applies to a person who applies for a state identification card (as issued under IC 9-24-16). A person who:

(1) knowingly or intentionally uses false information in an application for an identification card or for a renewal or duplicate of an identification card; or

(2) knowingly or intentionally makes a false statement or otherwise commits fraud in an application for an identification card; commits application fraud, a Class D felony.

As added by Acts 1976, P.L.148, SEC.3. Amended by Acts 1977, P.L.340, SEC.50; P.L.45-2005, SEC.2; P.L.106-2006, SEC.3.

**IDENTITY DECEPTION**  
**(35-43-5-3.5)**

**Overview:**

A person who knowingly or intentionally obtains, possesses, transfers, or uses the identifying information of another person without the other person's consent and with intent to harm or defraud another person, assumes another person's identity, or professes to be another person commits Identity Deception, a Class D felony. The offense is a C Felony if it involves more than 100 people, an amount over \$50,000, or the identity taken is of a person less than 18 who is the offender's child, ward, or dependent.

**Issue(s):**

1. In which felony level does this crime belong?

**Recommendation:**

1. The basic version of identity deception should be a Felony level 6. The enhancements involving more than 100 people, an offense over \$50,000 and the taking/transferring of the identity of a person less than 18 who is the offender's child, ward, dependent, of the offender is the guardian, should be a Level 5 felony.

**Rationale:**

The only proposed changes to the identity deception statute are the conversions of Class C and Class D felonies to Level 5 and Level 6 felonies. These penalty levels are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

Sec. 3.5. (a) Except as provided in subsection (c), a person who knowingly or intentionally obtains, possesses, transfers, or uses the identifying information of another person, including the identifying information of a person who is deceased:

- (1) without the other person's consent; and
- (2) with intent to:
  - (A) harm or defraud another person;
  - (B) assume another person's identity; or
  - (C) profess to be another person;

commits identity deception, a Class D felony.

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

- (1) a person obtains, possesses, transfers, or uses the identifying information of more than one hundred (100) persons;
- (2) the fair market value of the fraud or harm caused by the offense is at least fifty thousand dollars (\$50,000); or
- (3) a person obtains, possesses, transfers, or uses the identifying information of a person who is less than eighteen (18) years of age and is:
  - (A) the person's son or daughter;
  - (B) a dependent of the person;
  - (C) a ward of the person; or
  - (D) an individual for whom the person is a guardian.

(c) The conduct prohibited in subsections (a) and (b) does not apply to:

- (1) a person less than twenty-one (21) years of age who uses the identifying information of another person to acquire an alcoholic beverage (as defined in IC 7.1-1-3-5);

(2) a minor (as defined in IC 35-49-1-4) who uses the identifying information of another person to acquire:

(A) a cigarette or tobacco product (as defined in IC 6-7-2-5);

(B) a periodical, a videotape, or other communication medium that contains or depicts nudity (as defined in IC 35-49-1-5);

(C) admittance to a performance (live or film) that prohibits the attendance of the minor based on age; or

(D) an item that is prohibited by law for use or consumption by a minor; or

(3) any person who uses the identifying information for a lawful purpose.

(d) It is not a defense in a prosecution under subsection (a) or (b) that no person was harmed or defrauded.

**TERRORISTIC DECEPTION**  
**(35-43-5-3.6)**

***Overview:***

A person who uses the identifying information of another person with intent to commit terrorism or obtain a weapon of mass destruction commits Terroristic Deception. a Class C felony.

***Issue(s):***

1. In which felony level does this crime belong?
2. Should this be a subsection of the Identity Deception statute (IC 35-43-5-3.5)?

***Recommendation:***

1. Felony level 5.
2. It is recommended that this statute be included in the Identity Deception statute (IC 35-43-5-3.5) as subsection (e).

***Rationale:***

A Class C felony is the equivalent of a Level 5 felony. The workgroup recommends no further changes.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 3.6. A person who knowingly or intentionally obtains, possesses, transfers, or uses the identifying information of another person with intent to:

- (1) commit terrorism; or
- (2) obtain or transport a weapon of mass destruction;

commits terroristic deception, a Class C felony.

**SYNTHETIC IDENTITY DECEPTION**  
**(35-43-5-3.8)**

**Overview:**

A person who knowingly or intentionally obtains, possesses, transfers, or uses the synthetic identifying information of another person without the other person's consent and with intent to harm or defraud another person, assume another person's identity, or profess to be another person commits Synthetic Identity Deception, a Class D felony. The offense is a Class C Felony if it involves more than 100 people or an amount over \$50,000. "Synthetic identifying information" identifies either one or a combination of a false or fictitious person or a person other than the person who is using the information.

**Issue(s):**

1. In which felony level does this crime belong?

**Recommendation:**

1. Felony level 6. However, synthetic identity deception should be Level 5 felony if the information used is from more than 100 persons or the harm is greater than \$50,000.

**Rationale:**

A Class C felony is the equivalent of a Level 5 felony and a Class D felony is equivalent to a Level 6 felony; the penalties are appropriate and proportional. Synthetic Identity Deception is a necessary part of the Indiana Criminal Code due to Indiana case law holding that identity deception applies only when an existing person is the victim of the deception.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

Sec. 3.8. (a) A person who knowingly or intentionally obtains, possesses, transfers, or uses the synthetic identifying information:

- (1) with intent to harm or defraud another person;
- (2) with intent to assume another person's identity; or
- (3) with intent to profess to be another person;

commits synthetic identity deception, a Class D felony.

- (b) The offense under subsection (a) is a Class C felony if:

- (1) a person obtains, possesses, transfers, or uses the synthetic identifying information of more than one hundred (100) persons; or
- (2) the fair market value of the fraud or harm caused by the offense is at least fifty thousand dollars (\$50,000).

- (c) The conduct prohibited in subsections (a) and (b) does not apply to:

- (1) a person less than twenty-one (21) years of age who uses the synthetic identifying information of another person to acquire an alcoholic beverage (as defined in IC 7.1-1-3-5); or
- (2) a minor (as defined in IC 35-49-1-4) who uses the synthetic identifying information of another person to acquire:
  - (A) a cigarette or tobacco product (as defined in IC 6-7-2-5);
  - (B) a periodical, a videotape, or other communication medium that contains or depicts nudity (as defined in IC 35-49-1-5);
  - (C) admittance to a performance (live or on film) that prohibits the attendance of

the minor based on age; or

(D) an item that is prohibited by law for use or consumption by a minor.

(d) It is not a defense in a prosecution under subsection (a) or (b) that no person was harmed or defrauded.

**FRAUD**  
**(35-43-5-4)**

**Overview:**

Fraud is a Class D felony. (See language of current statute, below.)

**Issue(s):**

1. In which felony level does this crime belong?
2. Should Fraud penalties be proportionate to the proposed Theft penalties (misdemeanor if under \$750, etc.)?

**Recommendation:**

1. Felony level 6.
2. It is not recommended that penalties for Fraud be tied to the amount of the loss.

**Rationale:**

1. A Class D felony is equivalent to a Level 6 felony and is thus appropriate and proportional.
2. The Fraud statute describes crimes that do not have a dollar value. The crime can be committed even if nothing of value is actually obtained.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

Sec. 4. A person who:

- (1) with intent to defraud, obtains property by:
  - (A) using a credit card, knowing that the credit card was unlawfully obtained or retained;
  - (B) using a credit card, knowing that the credit card is forged, revoked, or expired;
  - (C) using, without consent, a credit card that was issued to another person;
  - (D) representing, without the consent of the credit card holder, that the person is the authorized holder of the credit card; or
  - (E) representing that the person is the authorized holder of a credit card when the card has not in fact been issued;
- (2) being authorized by an issuer to furnish property upon presentation of a credit card, fails to furnish the property and, with intent to defraud the issuer or the credit card holder, represents in writing to the issuer that the person has furnished the property;
- (3) being authorized by an issuer to furnish property upon presentation of a credit card, furnishes, with intent to defraud the issuer or the credit card holder, property upon presentation of a credit card, knowing that the credit card was unlawfully obtained or retained or that the credit card is forged, revoked, or expired;
- (4) not being the issuer, knowingly or intentionally sells a credit card;
- (5) not being the issuer, receives a credit card, knowing that the credit card was unlawfully obtained or retained or that the credit card is forged, revoked, or expired;
- (6) with intent to defraud, receives a credit card as security for debt;
- (7) receives property, knowing that the property was obtained in violation of subdivision (1) of this section;
- (8) with intent to defraud the person's creditor or purchaser, conceals, encumbers, or transfers property;
- (9) with intent to defraud, damages property; or
- (10) knowingly or intentionally:

- (A) sells;
- (B) rents;
- (C) transports; or
- (D) possesses;

a recording for commercial gain or personal financial gain that does not conspicuously display the true name and address of the manufacturer of the recording;  
commits fraud, a Class D felony.

**POSSESSION OF CARD SKIMMER  
(I.C. 35-43-5-4.3)**

***Overview:***

Unlawful Possession of a Card Skimmer involves possession of a device designed to read, record, or transmit information encoded on a credit card directly from a credit card or from another device that reads information directly from a credit card. It is a Class D felony if done with intent to commit Identity Deception, Synthetic Identity Deception, or Fraud, and a Class C felony if done with intent to commit Terroristic Deception.

***Issue(s):***

1. In which felony level does this crime belong?

***Recommendations:***

1. Felony level 6 if there is intent to commit any offense other than Terroristic Deception; Felony level 5 if there is intent to commit Terroristic Deception.

***Rationale:***

The penalties for Unlawful Possession of a Card Skimmer should reflect the intent of the crime the person is attempting to commit, as they do currently. The proposed penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 4.3. (a) As used in this section, "card skimming device" means a device that is designed to read information encoded on a credit card. The term includes a device designed to read, record, or transmit information encoded on a credit card:

- (1) directly from a credit card; or
- (2) from another device that reads information directly from a credit card.

(b) A person who possesses a card skimming device with intent to commit:

- (1) identity deception (IC 35-43-5-3.5);
- (2) synthetic identity deception (IC 35-43-5-3.8);
- (3) fraud (IC 35-43-5-4); or
- (4) terroristic deception (IC 35-43-5-3.6);

commits unlawful possession of a card skimming device. Unlawful possession of a card skimming device under subdivision (1), (2), or (3) is a Class D felony. Unlawful possession of a card skimming device under subdivision (4) is a Class C felony.

*As added by P.L.125-2006, SEC.10. Amended by P.L.137-2009, SEC.16.*

## **INSURANCE FRAUD (I.C. 35-43-5-4.5)**

### ***Overview:***

Insurance Fraud involves a person knowingly, and with intent to defraud, making false, incomplete, or misleading information concerning an insurance claim, or unlawfully removes or diverts funds in connection to insurance. Insurance Fraud is a Class D felony. However, it is a Class C felony if the person who commits the offense has a prior unrelated conviction under this section or the value of the property, services, or other benefits obtained or attempted to be obtained or resulting economic loss is at least \$2,500. Additionally, it is Insurance Application Fraud, a Class A misdemeanor, if a person knowingly and with intent to defraud makes a material misstatement in support of an application for the issuance of an insurance policy

### ***Issue(s):***

1. In which felony level(s) does this crime belong?
2. Should Insurance Fraud be merged or incorporated into the statute regarding Fraud or the Statute regarding Theft or Deception?
3. Should Insurance Application Fraud be merged or incorporated into the statute for Insurance Fraud or Deception?

### ***Recommendations:***

1. Felony level 6; Felony level 5 if the defendant has a prior conviction or the value of the property, services, or other benefits obtained or attempted to be obtained or resulting economic loss is at least \$2,500.
2. Insurance Fraud could possibly be merged in the statute regarding Fraud, Theft, or Deception following more research, but it is not recommended that this be done as part of the current Criminal Code revision.
3. Insurance Application Fraud could possibly be merged into the statute for Insurance Fraud or Deception following more research, but it is not recommended that this be done as part of the current Criminal Code revision.

### ***Rationale:***

The workgroup believes that the presence of aggravators such as the amount of money involved in the insurance fraud and a defendant's prior convictions should make insurance fraud a more serious offense than without these aggravators present. It would make it easier for people to understand the statutes if Insurance Fraud is merged into the statute regarding Fraud, Theft, or Deception, but more research needs to be done to figure out how to incorporate a change like this one. It would also make it easier for people to understand the statutes if Insurance Application Fraud is merged into the statute for Insurance Fraud or Deception, but more research also needs to be done to figure out how to incorporate a change like this one.

### ***Workgroup Position:***

Recommendation by consensus.

### ***Current Statute:***

Sec. 4.5. (a) A person who, knowingly and with intent to defraud:

- (1) makes, utters, presents, or causes to be presented to an insurer or an insurance claimant, a claim statement that contains false, incomplete, or misleading information concerning the claim;
- (2) presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, an oral, a written, or an electronic statement that the person knows to contain materially false information as part of, in support of, or concerning a fact that is material to:

- (A) the rating of an insurance policy;
  - (B) a claim for payment or benefit under an insurance policy;
  - (C) premiums paid on an insurance policy;
  - (D) payments made in accordance with the terms of an insurance policy;
  - (E) an application for a certificate of authority;
  - (F) the financial condition of an insurer; or
  - (G) the acquisition of an insurer;
- or conceals any information concerning a subject set forth in clauses (A) through (G);
- (3) solicits or accepts new or renewal insurance risks by or for an insolvent insurer or other entity regulated under IC 27;
- (4) removes:
- (A) the assets;
  - (B) the record of assets, transactions, and affairs; or
  - (C) a material part of the assets or the record of assets, transactions, and affairs;
- of an insurer or another entity regulated under IC 27, from the home office, other place of business, or place of safekeeping of the insurer or other regulated entity, or conceals or attempts to conceal from the department of insurance assets or records referred to in clauses (A) through (B); or
- (5) diverts funds of an insurer or another person in connection with:
- (A) the transaction of insurance or reinsurance;
  - (B) the conduct of business activities by an insurer or another entity regulated under IC 27; or
  - (C) the formation, acquisition, or dissolution of an insurer or another entity regulated under IC 27;
- commits insurance fraud. Except as provided in subsection (b), insurance fraud is a Class D felony.
- (b) An offense described in subsection (a) is a Class C felony if:
- (1) the person who commits the offense has a prior unrelated conviction under this section; or
  - (2) the:
    - (A) value of property, services, or other benefits obtained or attempted to be obtained by the person as a result of the offense; or
    - (B) economic loss suffered by another person as a result of the offense;is at least two thousand five hundred dollars (\$2,500).
  - (c) A person who knowingly and with intent to defraud makes a material misstatement in support of an application for the issuance of an insurance policy commits insurance application fraud, a Class A misdemeanor.

*As added by P.L.181-2005, SEC.7.*

**CHECK DECEPTION**  
**(I.C. 35-43-5-5)**

***Overview:***

Check Deception involves a person knowingly or intentionally issuing or delivering a check, a draft, or an order on a credit institution for the payment of or to acquire money or other property knowing that it will not be paid or honored by the credit institution. In other words, Check Deception involves knowingly writing a "bad check." Check Deception is a Class A misdemeanor if it is committed in the usual course of business. However, it is a Class D felony if the amount of the check, draft, or order is at least \$2,500 and the property acquired by the person was a motor vehicle.

***Issue(s):***

1. In which penalty level(s) does this crime belong?

***Recommendations:***

1. The penalties for check deception should track the penalties for Theft (IC 35-43-2-2).

***Rationale:***

The use of a check to obtain property constitutes the exertion of unauthorized control over that property. It is the equivalent of other forms of theft, and it involves the taking of property with a specific dollar value (unlike fraud). Thus, the penalty level(s) should mirror the penalties for Theft as determined by the General Assembly.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 5. (a) A person who knowingly or intentionally issues or delivers a check, a draft, or an order on a credit institution for the payment of or to acquire money or other property, knowing that it will not be paid or honored by the credit institution upon presentment in the usual course of business, commits check deception, a Class A misdemeanor. However, the offense is a Class D felony if the amount of the check, draft, or order is at least two thousand five hundred dollars (\$2,500) and the property acquired by the person was a motor vehicle.

(b) An unpaid and dishonored check, a draft, or an order that has the drawee's refusal to pay and reason printed, stamped, or written on or attached to it constitutes prima facie evidence:

- (1) that due presentment of it was made to the drawee for payment and dishonor thereof; and
- (2) that it properly was dishonored for the reason stated.

(c) The fact that a person issued or delivered a check, a draft, or an order, payment of which was refused by the drawee, constitutes prima facie evidence that the person knew that it would not be paid or honored. In addition, evidence that a person had insufficient funds in or no account with a drawee credit institution constitutes prima facie evidence that the person knew that the check, draft, or order would not be paid or honored.

(d) The following two (2) items constitute prima facie evidence of the identity of the maker of a check, draft, or order if at the time of its acceptance they are obtained and recorded, either on the check, draft, or order itself or on file, by the payee:

- (1) Name and residence, business, or mailing address of the maker.
- (2) Motor vehicle operator's license number, Social Security number, home telephone number, or place of employment of the maker.

(e) It is a defense under subsection (a) if a person who:

- (1) has an account with a credit institution but does not have sufficient funds in that account; and
- (2) issues or delivers a check, a draft, or an order for payment on that credit institution;

pays the payee or holder the amount due, together with protest fees and any service fee or charge, which may not exceed the greater of twenty-seven dollars and fifty cents (\$27.50) or five percent (5%) (but not more than two hundred fifty dollars (\$250)) of the amount due, that may be charged by the payee or holder, within ten (10) days after the date of mailing by the payee or holder of notice to the person that the check, draft, or order has not been paid by the credit institution. Notice sent in the manner set forth in IC 26-2-7-3 constitutes notice to the person that the check, draft, or order has not been paid by the credit institution. The payee or holder of a check, draft, or order that has been dishonored incurs no civil or criminal liability for sending notice under this subsection.

(f) A person does not commit a crime under subsection (a) when:

(1) the payee or holder knows that the person has insufficient funds to ensure payment or that the check, draft, or order is postdated; or

(2) insufficiency of funds or credit results from an adjustment to the person's account by the credit institution without notice to the person.

*As added by Acts 1978, P.L.144, SEC.6. Amended by Acts 1981, P.L.303, SEC.1; P.L.268-1983, SEC.2; P.L.328-1983, SEC.1; P.L.298-1989, SEC.1; P.L.42-1993, SEC.96; P.L.300-1995, SEC.1; P.L.85-2003, SEC.1.*

**SALE OF KIT OR DEVICE FOR UNAUTHORIZED USE OF  
CABLE TELEVISION SERVICES SYSTEM  
(I.C. 35-43-5-6.5)**

**Overview:**

A person who manufactures, distributes, sells, leases, or offers for sale or lease a device or a kit to construct a device that is designed to use cable television without full payment to the cable company commits the Sale of a Kit or Device for Unauthorized Use of Cable Television, a Class D felony. Sale or distribution by a person of such a device or kit is sufficient to prove a violation if, before or at the time of sale or distribution, the person advertised or indicated that such a device or assembled kit would allow a person to receive cable television without paying the cable company.

**Issue(s):**

1. In which felony level does this crime belong?

**Recommendation:**

1. Level 6 felony.

**Rationale:**

The penalty is appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

(a) A person who manufactures, distributes, sells, leases, or offers for sale or lease:

- (1) a device; or
- (2) a kit of parts to construct a device;

designed in whole or in part to intercept, unscramble, or decode a transmission by a cable television system with the intent that the device or kit be used to obtain cable television system services without full payment to the cable television system commits a Class D felony.

(b) The sale or distribution by a person of:

- (1) any device; or
- (2) a kit of parts to construct a device;

described in subsection (a) constitutes prima facie evidence of a violation of subsection (a) if, before or at the time of sale or distribution, the person advertised or indicated that the device or the assembled kit will enable a person to receive cable television system service without making full payment to the cable television system.

**WELFARE FRAUD**  
**(I.C. 35-43-5-7)**

***Overview:***

Welfare fraud, a Class A misdemeanor, is knowingly or intentionally (1) obtaining welfare by fraudulent means, (2) acquiring, possessing, using, transferring, selling, trading, issuing, or disposing of welfare or welfare authorization documents in a manner other than authorized, (3) using, transferring, acquiring, issuing, or possessing a blank or incomplete welfare authorization document in a manner other than authorized, (4) counterfeiting or altering a welfare authorization document welfare or knowingly using, transferring, acquiring, or possessing a counterfeit or altered welfare authorization document, or (5) concealing information for the purpose of receiving welfare to which the person is not entitled. However, the offense is a Class D felony if the amount of welfare involved is more than \$250 but less than \$2,500 or the amount involved is not more than \$250 and the person has a prior conviction of welfare fraud. The offense is a Class C felony if the amount of welfare involved is \$2,500 or more, regardless of prior convictions

***Issue(s):***

1. In which felony level does this crime belong?
2. Should the dollar amount of public relief or assistance involved be changed to coincide with the dollar amounts in the theft statute (I.C. 35-43-4-2)?

***Recommendation:***

1. The penalties should mirror those in the Theft statute (current proposal is Class A misdemeanor; Class D felony if theft reaches \$750; Class C felony if theft reaches \$50,000).
2. The dollar amounts should coincide with the Theft statute.

***Rationale:***

Welfare fraud is a form of theft, and the penalties are reliant on dollar amounts. Therefore, the penalties should mirror those in the Theft statute.

***Workgroup Position:***

IPAC's representative expresses reservations based on the fact that it is not necessary that the fraud be successful, i.e., the money be obtained, in order for a person to have committed this offense. The IPAC representative believes that this statute should track the Fraud statute rather than the Theft statute for that reason. Others suggest that this would be the equivalent of Attempted Theft, which is punished in the same way as Theft.

***Current Statute:***

- (a) A person who knowingly or intentionally:
  - (1) obtains public relief or assistance by means of impersonation, fictitious transfer, false or misleading oral or written statement, fraudulent conveyance, or other fraudulent means;
  - (2) acquires, possesses, uses, transfers, sells, trades, issues, or disposes of:
    - (A) an authorization document to obtain public relief or assistance; or
    - (B) public relief or assistance;except as authorized by law;
  - (3) uses, transfers, acquires, issues, or possesses a blank or incomplete authorization document to participate in public relief or assistance programs, except as authorized by law;

- (4) counterfeits or alters an authorization document to receive public relief or assistance, or knowingly uses, transfers, acquires, or possesses a counterfeit or altered authorization document to receive public relief or assistance; or
- (5) conceals information for the purpose of receiving public relief or assistance to which he is not entitled;

commits welfare fraud, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense is:

(1) a Class D felony if:

(A) the amount of public relief or assistance involved is more than two hundred fifty dollars (\$250) but less than two thousand five hundred dollars (\$2,500); or

(B) the amount involved is not more than two hundred fifty dollars (\$250) and the person has a prior conviction of welfare fraud under this section; and

(2) a Class C felony if the amount of public relief or assistance involved is two thousand five hundred dollars (\$2,500) or more, regardless of whether the person has a prior conviction of welfare fraud under this section.

(c) Whenever a person is convicted of welfare fraud under this section, the clerk of the sentencing court shall certify to the appropriate state agency and the appropriate agency of the county of the defendant's residence:

(1) his conviction; and

(2) whether the defendant is placed on probation and restitution is ordered under IC 35-38-2.

**MEDICAID FRAUD**  
**(I.C. 35-43-5-7.1)**

**Overview:**

Medicaid fraud, a Class D felony, is knowingly or intentionally (1) filing a Medicaid claim in violation of the Medicaid portion of the Indiana Code (IC 12-15), (2) obtaining a Medicaid payment by false, misleading, or other fraudulent means, (3) acquiring a provider number under the Medicaid program in a manner other than authorized by law, (4) altering with intent to defraud or falsifying documents/records of a provider that are required to be kept under the Medicaid program, or (5) concealing information in order to apply for or receive unauthorized Medicaid payments. However, the offense is a Class C felony if the fair market value of the offense is at least \$100,000.

**Issue(s):**

1. In which felony level(s) does this crime belong?
2. Should Medicaid fraud mirror welfare fraud and other kinds of theft?

**Recommendation:**

1. Medicaid fraud should mirror the Welfare Fraud statute. This would suggest that the offense should be a Class A misdemeanor in any situation in which no funds are actually received or the dollar amount does not cross a threshold (currently \$250 in the Welfare Fraud statute, but recommendation with regard to Welfare Fraud is to mirror the Theft statute). The offense should then rise to a Level 6 felony at \$750 and a Level 5 felony at \$50,000.
2. See Recommendation #1, above.

**Rationale:**

The intent and harm in this situation are the same as those in the Welfare Fraud statute, and the two crimes should be treated the same.

**Workgroup Position:**

IPAC's representative expresses reservations based on the fact that it is not necessary that the fraud be successful, i.e., the money be obtained, in order for a person to have committed this offense. The IPAC representative believes that this statute should track the Fraud statute rather than the Theft statute for that reason. Others suggest that this would be the equivalent of Attempted Theft, which is punished in the same way as Theft.

**Current Statute:**

- (a) Except as provided in subsection (b), a person who knowingly or intentionally:
- (1) files a Medicaid claim, including an electronic claim, in violation of IC 12-15;
  - (2) obtains payment from the Medicaid program under IC 12-15 by means of a false or misleading oral or written statement or other fraudulent means;
  - (3) acquires a provider number under the Medicaid program except as authorized by law;
  - (4) alters with the intent to defraud or falsifies documents or records of a provider (as defined in 42 CFR 1000.30) that are required to be kept under the Medicaid program; or
  - (5) conceals information for the purpose of applying for or receiving unauthorized payments from the Medicaid program;

commits Medicaid fraud, a Class D felony.

(b) The offense described in subsection (a) is a Class C felony if the fair market value of the offense is at least one hundred thousand dollars (\$100,000).

**INSURANCE FRAUD**  
**(I.C. 35-43-5-7.2)**

***Overview:***

[Children's Health] insurance fraud is currently a Class D felony for knowingly or intentionally (1) filing a children's health insurance program (CHIP) in violation of the Children's Health Insurance Program portion of the Indiana Code (IC 12-17.6), (2) obtaining payment from the CHIP by means of false or misleading oral or written statements or other fraudulent means, (3) acquiring a provider number under the CHIP in a manner other than authorized by law, (4) altering with intent to defraud or falsify documents or records of a provider that are required to be kept under the CHIP, or (5) concealing information for the purpose of applying for or receiving unauthorized payments from the CHIP. However, the offense is a Class C felony if the fair market value of the offense is at least \$100,000.

***Issue(s):***

1. In which penalty level does this crime belong?
2. Should [children's health] insurance fraud mirror welfare fraud and other kinds of theft?
3. Should [children's health] insurance fraud be incorporated into the Medicaid Fraud statute?

***Recommendation:***

1. [Children's Health] Insurance Fraud should mirror the Welfare Fraud statute. This would suggest that the offense should be a Class A misdemeanor in any situation in which no funds are actually received or the dollar amount does not cross a threshold (currently \$250 in the Welfare Fraud statute, but recommendation with regard to Welfare Fraud is to mirror the Theft statute). The offense should then rise to a Level 6 felony at \$750 and A Level 5 felony at \$50,000.
2. See Recommendation #1, above.
3. The [Children's Health] Insurance Fraud statute should be incorporated into the Medicaid Fraud statute.

***Rationale:***

The intent and harm in this situation are the same as those in the Welfare Fraud statute, and the two crimes should be treated the same. Further, the [Children's Health] Insurance statute is identical to the Medicaid Fraud statute; the CHIP program is a Medicaid program; and thus the two statutes should be merged.

***Workgroup Position:***

IPAC's representative expresses reservations based on the fact that it is not necessary that the fraud be successful, i.e., the money be obtained, in order for a person to have committed this offense. The IPAC representative believes that this statute should track the Fraud statute rather than the Theft statute for that reason. Others suggest that this would be the equivalent of Attempted Theft, which is punished in the same way as Theft.

***Current Statute:***

- (a) Except as provided in subsection (b), a person who knowingly or intentionally:
  - (1) files a children's health insurance program claim, including an electronic claim, in violation of IC 12-17.6;
  - (2) obtains payment from the children's health insurance program under IC 12-17.6 by means of a false or misleading oral or written statement or other fraudulent means;
  - (3) acquires a provider number under the children's health insurance program except as authorized by law;

(4) alters with intent to defraud or falsifies documents or records of a provider (as defined in 42 CFR 1002.301) that are required to be kept under the children's health insurance program; or

(5) conceals information for the purpose of applying for or receiving unauthorized payments from the children's health insurance program;

commits insurance fraud, a Class D felony.

(b) The offense described in subsection (a) is a Class C felony if the fair market value of the offense is at least one hundred thousand dollars (\$100,000).

**FRAUD ON FINANCIAL INSTITUTIONS**  
**(I.C. 35-43-5-8)**

**Overview:**

A person who knowingly executes or attempts to execute a plan to defraud a state or federally chartered/insured financial institution or to obtain any of the money, assets, or property owned by or under the custody/control of a state or federally chartered/insured financial institution by means of false or fraudulent pretenses, representations, or promises commits fraud on a financial institution, commits Fraud on financial institutions, currently a Class C felony.

**Issue(s):**

1. In which felony level does this crime belong?
2. Should fraud on a financial institution remain a Class C (Level 5) felony, or should it start as a Class D (Level 6) felony with dollar amount enhancements?

**Recommendation:**

1. Level 5 felony
2. The penalty should remain proportional to the current penalty (Level 5).

**Rationale:**

Fraud on a financial institution should mirror the other fraud-related statutes, which carry a Class D (Level 6) penalty. However, fraud on a financial institution potentially involves risk to the greater population of depositors whose savings are insured by financial institutions. The greater risk of harm merits a higher level of felony penalty.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

(a) A person who knowingly executes, or attempts to execute, a scheme or artifice:

- (1) to defraud a state or federally chartered or federally insured financial institution; or
- (2) to obtain any of the money, funds, credits, assets, securities, or other property owned by or under the custody or control of a state or federally chartered or federally insured financial institution by means of false or fraudulent pretenses, representations, or promises;

commits a Class C felony.

(b) As used in this section, the term "state or federally chartered or federally insured financial institution" means:

- (1) an institution with accounts insured by the Federal Deposit Insurance Corporation;
- (2) a credit union with accounts insured by the National Credit Union Administration Board;
- (3) a federal home loan bank or a member, as defined in Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), as in effect on December 31, 1990, of the Federal Home Loan Bank System; or
- (4) a bank, banking association, land bank, intermediate credit bank, bank for cooperatives, production credit association, land bank association, mortgage association, trust company, savings bank, or other banking or financial institution organized or operating under the laws of the United States or of the state.

The term does not include a lender licensed under IC 24-4.5.

**FALSELY REPRESENTING ENTITY AS DISADVANTAGED OR WOMEN OWNED  
BUSINESS ENTERPRISE  
(I.C. 35-43-5-9)**

***Overview:***

A person who falsely represents any entity to qualify for certification as a disadvantaged business enterprises or women owned business and obtain contracts with public agencies under those false certifications commits this offense, which is a Class D felony.

***Issues:***

1. In which felony level does this crime belong?
2. Is it necessary to have a standalone statute or could this be covered by a current statute?

***Recommendation:***

1. Felony level 6.
2. Repeal this statute and add the following language to Deception as a new subsection:

**Deception**

(I.C. 35-43-5-3)

***(b) A person who knowingly or intentionally falsely represents:***

***1. any entity as a disadvantaged business enterprise (as defined in IC 5-16-6.5-1) or a women owned business enterprise (as defined in IC 5-16-6.5-3) in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5-2) designed to assist disadvantaged business enterprises or women owned business enterprises in obtaining contracts with public agencies for the provision of goods and services; or***

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

***commits a Class D felony.***

***Rationale:***

1. Placement in Felony level 6 is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Proposed Language for Revised Deception Statute:***

**Deception**  
(I.C. 35-43-5-3)

Sec. 3. (a) A person who:

- (1) being an officer, manager, or other person participating in the direction of a credit institution, knowingly or intentionally receives or permits the receipt of a deposit or other investment, knowing that the institution is insolvent;
- (2) knowingly or intentionally makes a false or misleading written statement with intent to obtain property, employment, or an educational opportunity;
- (3) misapplies entrusted property, property of a governmental entity, or property of a credit institution in a manner that the person knows is unlawful or that the person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted;
- (4) knowingly or intentionally, in the regular course of business, either:
  - (A) uses or possesses for use a false weight or measure or other device for falsely determining or recording the quality or quantity of any commodity; or
  - (B) sells, offers, or displays for sale or delivers less than the represented quality or quantity of any commodity;
- (5) with intent to defraud another person furnishing electricity, gas, water, telecommunication, or any other utility service, avoids a lawful charge for that service by scheme or device or by tampering with facilities or equipment of the person furnishing the service;
- (6) with intent to defraud, misrepresents the identity of the person or another person or the identity or quality of property;
- (7) with intent to defraud an owner of a coin machine, deposits a slug in that machine;
- (8) with intent to enable the person or another person to deposit a slug in a coin machine, makes, possesses, or disposes of a slug;
- (9) disseminates to the public an advertisement that the person knows is false, misleading, or deceptive, with intent to promote the purchase or sale of property or the acceptance of employment;
- (10) with intent to defraud, misrepresents a person as being a physician licensed under IC 25-22.5; ~~or~~
- (11) knowingly and intentionally defrauds another person furnishing cable TV service by avoiding paying compensation for that service by any scheme or device or by tampering with facilities or equipment of the person furnishing the service; *or*

*(12) knowingly or intentionally provides false information to a governmental entity to obtain a contract from the governmental entity;*

*commits deception, a Class A misdemeanor. However, the offense is a Class D felony if it is committed under subsection (12) and the provision of false information results in financial loss to the governmental entity.*

*(b) A person who knowingly or intentionally falsely represents:*

*1. any entity as a disadvantaged business enterprise (as defined in IC 5-16-6.5-1) or a women owned business enterprise (as defined in IC 5-16-6.5-3) in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5-2) designed to assist disadvantaged business enterprises or women owned business enterprises in obtaining contracts with public agencies for the provision of goods and services; or*

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

*commits a Class D felony.*

~~(b)~~ (c) In determining whether an advertisement is false, misleading, or deceptive under subsection (a)(9), there shall be considered, among other things, not only representations contained or suggested in the advertisement, by whatever means, including device or sound, but also the extent to which the advertisement fails to reveal material facts in the light of the representations.

***Current Statute:***

(a) A person who knowingly or intentionally falsely represents any entity as a disadvantaged business enterprise (as defined in IC 5-16-6.5-1) or a women owned business enterprise (as defined in IC 5-16-6.5-3) in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5-2) designed to assist disadvantaged business enterprises or women owned business enterprises in obtaining contracts with public agencies for the provision of goods and services commits a Class D felony.

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

P.L.7 0-1987, § 2; P.L.71-1989, § 3.

**GOVERNMENT CONTRACT PROCUREMENT THROUGH FALSE INFORMATION  
(I.C. 35-43-5-11)**

**Overview:**

This crime is committed by a person who knowingly or intentionally provides false information to a governmental entity to obtain a contract from the governmental entity. The penalty is a Class A misdemeanor, but it becomes a Class D felony if it results in a financial loss to a governmental entity.

**Issue(s):**

1. In which felony level does this crime belong?
2. Is it necessary to have a standalone statute or could this be covered by the current statute?

**Recommendation:**

1. Felony level 6.
2. Making the crime of Government Contract Procurement through False Information part of the crime of Deception would simplify IC 35-45-5. Repeal IC 35-43-5-11, and add the following language to Deception under a new subsection:

**Deception**  
(I.C. 35-43-5-3)

Sec. 3. (a) A person who:

*(12) knowingly or intentionally provides false information to a governmental entity to obtain a contract from the governmental entity;*

*commits deception, a Class A misdemeanor. However, the offense is a Class D felony if it is committed under subsection (12) and the provision of false information results in financial loss to the governmental entity.*

**Rationale:**

The change simplifies the Criminal Code while preserving the crime. The penalty is appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

Proposed language:

The following amendments to IC 35-43-5-3, including not only the language of IC 35-43-5-11, but also IC 35-43-5-9 (Falsely representing Entity as Disadvantaged Business Enterprise).

**IC 35-43-5-3**

**Deception**

Sec. 3. (a) A person who:

- (1) being an officer, manager, or other person participating in the direction of a credit

institution, knowingly or intentionally receives or permits the receipt of a deposit or other investment, knowing that the institution is insolvent;

(2) knowingly or intentionally makes a false or misleading written statement with intent to obtain property, employment, or an educational opportunity;

(3) misapplies entrusted property, property of a governmental entity, or property of a credit institution in a manner that the person knows is unlawful or that the person knows involves substantial risk of loss or detriment to either the owner of the property or to a person for whose benefit the property was entrusted;

(4) knowingly or intentionally, in the regular course of business, either:

(A) uses or possesses for use a false weight or measure or other device for falsely determining or recording the quality or quantity of any commodity; or

(B) sells, offers, or displays for sale or delivers less than the represented quality or quantity of any commodity;

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

(6) with intent to defraud, misrepresents the identity of the person or another person or the identity or quality of property;

(7) with intent to defraud an owner of a coin machine, deposits a slug in that machine;

(8) with intent to enable the person or another person to deposit a slug in a coin machine, makes, possesses, or disposes of a slug;

(9) disseminates to the public an advertisement that the person knows is false, misleading, or deceptive, with intent to promote the purchase or sale of property or the acceptance of employment;

(10) with intent to defraud, misrepresents a person as being a physician licensed under IC 25-22.5; ~~or~~

(11) knowingly and intentionally defrauds another person furnishing cable TV service by avoiding paying compensation for that service by any scheme or device or by tampering with facilities or equipment of the person furnishing the service; *or*

***(12) knowingly or intentionally provides false information to a governmental entity to obtain a contract from the governmental entity;***

commits deception, a Class A misdemeanor. ***However, the offense is a Class D felony if it is committed under subsection (12) and the provision of false information results in financial loss to the governmental entity.***

***(b) A person who knowingly or intentionally falsely represents:***

***(1) any entity as a disadvantaged business enterprise (as defined in IC 5-16-6.5-1) or a women owned business enterprise (as defined in IC 5-16-6.5-3) in order to qualify for certification as such an enterprise under a program conducted by a public agency (as defined in IC 5-16-6.5)-designed to assist disadvantaged business enterprises or women***

*owned business enterprises in obtaining contracts with public agencies for the provision of goods and services; or*

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

*commits a Class D felony.*

(b) (c) In determining whether an advertisement is false, misleading, or deceptive under subsection (a)(9), there shall be considered, among other things, not only representations contained or suggested in the advertisement, by whatever means, including device or sound, but also the extent to which the advertisement fails to reveal material facts in the light of the representations.

***Current Statute:***

Sec. 11 A person who knowingly or intentionally provides false information to a governmental entity to obtain a contract from the governmental entity commits a Class A misdemeanor. However, the offense is a Class D felony if the provision of false information results in financial loss to the governmental entity.

P.L.2 9-1993, § 5.

**CHECK FRAUD**  
**(IC 35-43-5-12)**

***Overview:***

Check fraud is the obtaining of property through a scheme or artifice to defraud, using a check, draft, or electronic payment. It is a Class D felony, but becomes a Class C felony if the person has a prior unrelated under this section or the aggregate amount of property obtained is at least twenty-five thousand dollars (\$25,000).

***Issue(s):***

1. In which felony level does this crime belong?
2. Should check fraud start at a D felony/Level 6 felony?
3. Should it be combined with Fraud on a Financial Institution?

***Recommendations:***

1. Felony level 5 for prior conviction and greater than \$25,000, otherwise, Felony level 6.
2. The penalty for check fraud should mirror other theft, so this recommendation may be subject to change depending on what penalties the General Assembly chooses to assign for theft.
3. This offense should not be combined with Fraud on a Financial Institution.

***Rationale:***

The recommended felony levels are appropriate and proportional. However, as indicated under Recommendations, the penalties may need to be revised to track the penalties for Theft, if those change.

***Workgroup Position:***

Consensus Recommendation

***Current Statute:***

(a) As used in this section, "financial institution" refers to a state or federally chartered bank, savings bank, savings association, or credit union.

(b) A person who knowingly or intentionally obtains property, through a scheme or artifice, with intent to defraud:

(1) by issuing or delivering a check, a draft, an electronic debit, or an order on a financial institution:

(A) knowing that the check, draft, order, or electronic debit will not be paid or honored by the financial institution upon presentment in the usual course of business;

(B) using false or altered evidence of identity or residence;

(C) using a false or an altered account number; or

(D) using a false or an altered check, draft, order or electronic instrument;

(2) by:

(A) depositing the minimum initial deposit required to open an account; and

(B) either making no additional deposits or making insufficient additional deposits to insure debits to the account; or

(3) by opening accounts with more than one (1) financial institution in either a consecutive or concurrent time period;

commits check fraud, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this section or the aggregate amount of property obtained is at least twenty-five thousand dollars (\$25,000).

As added by P.L.161-1994, SEC.1. Amended by P.L.79-1998, SEC.105.

**POSSESSION OF FRAUDULENT SALES DOCUMENT  
(I.C. 35-43-5-14)**

**Overview:**

A person with intent to defraud and possession of a sales receipt, Universal Product Code or a label with a product identification code that does not match the item accompanying it commits Possession of Fraudulent Sales Document. The penalty is a Class A misdemeanor; however, it may be enhanced to a Class D felony if the person has intent to defraud and has possession of at least fifteen, in any combination, of retail sales receipts, Universal Product Code or mismatch label code and item.

**Issues:**

1. In which felony level does this crime belong?
2. Should multiple statutes be merged into the Forgery statute?

**Recommendations:**

1. Felony level 6 if the person possesses more than 15 documents.
2. The following statutes should be merged into Forgery (not Fraud): Delivery of a False Sales Document; Making False Sales Documents, and Possession of a Fraudulent Sales Document.

*The following language is recommended:*

Add the following language to the new/merged Forgery; Counterfeiting; Application Fraud statute (IC 35-43-5-2) and repeal IC 35-43-5-14.

- (c) A person who, with intent to defraud, possesses:**
- (1) a retail sales receipt;**
  - (2) a label or other item with a universal product code (UPC); or**
  - (3) a label or other item that contains a product identification code that applies to an item other than the items to which the label or other item applies;**
- commits possession of a fraudulent sales document, a Class A misdemeanor.**
- However, the offense is a Level 6 felony if the person possesses at least fifteen (15):**
- (1) retail sales receipts;**
  - (2) labels containing a universal product code (UPC);**
  - (3) labels containing another product identification code; or**
  - (4) of any combination of the items described in subdivisions (1) through (3).**

See Forgery statute (IC 35-43-5-2) for entirety of recommended language.

**Rationale:**

These penalty levels are appropriate and proportional. Combining overlapping statutes will simplify Title 35.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

- (a) A person who, with intent to defraud, possesses:
- (1) a retail sales receipt;
  - (2) a label or other item with a universal product code (UPC); or
  - (3) a label or other item that contains a product identification code that applies to an item other than the items to which the label or other item applies;
- commits possession of a fraudulent sales document, a Class A misdemeanor.

- (b) The offense under subsection (a) is a Class D felony if the person possesses at least fifteen (15):
- (1) retail sales receipts;
  - (2) labels containing a universal product code (UPC);
  - (3) labels containing another product identification code; or
  - (4) of any combination of the items described in subdivisions (1) through (3).

As added by P.L.84-2001, SEC.3.

**MAKING A FALSE SALES DOCUMENT  
(IC 35-43-5-16)**

**Overview:**

A person who with intent to defraud makes a false sales receipt or puts a false Universal Product Code on a product or mismatches product identification code and item commits Making a False Sales Document, a Class D felony.

**Issues:**

1. In which felony level does this crime belong?
2. Should this statute stand alone, or be incorporated into another existing statute?

**Recommendations:**

1. Felony level 6.
2. This offense and others should be incorporated into the Forgery statute, thus simplifying IC 35-43-5-2 (Counterfeiting, Forgery, Application Fraud). Add the language of IC 35-43-5-16 and IC 35-43-5-17 to the Forgery; Counterfeiting; Application Fraud under a new subsection and repeal IC 35-43-5-16. See also Delivery of a False Sales Document (IC 35-43-5-17) and Forgery; Counterfeiting; Application Fraud (IC 35-43-5-2).

*The following language is recommended:*

Add the following language to the Forgery; Counterfeiting/Application Fraud statute (IC 35-43-5-2) and repeal IC 35-43-5-16.

- (b) A person who, with intent to defraud,  
(1) makes or delivers to another person:  
    (i.) a false sales receipt;  
    (ii.) a duplicate of a sales receipt;  
(iii.) a label or other item with a false universal product code (UPC) or other product identification code ; or  
(2) places a false universal product code (UPC) or another product identification code on property displayed or offered for sale;  
    commits making or delivering a false sales document, a Level 6 felony.*

See Forgery; Counterfeiting; Application Fraud (IC 35-43-5-2) for entirety of proposed amendments to that statute.

**Rationale:**

A level 6 felony is appropriate and proportional. This statute is aligned with other fraudulent document statutes, and it will simplify the Code if all are incorporated into the Forgery (and similar crimes) statute.

**Workgroup Position:**

Consensus recommendation.

**Current Statute:**

A person who, with intent to defraud:

- (1) makes or puts a false universal product code (UPC) or another product identification code on property displayed or offered for sale; or
  - (2) makes a false sales receipt;
- commits making a false sales document, a ~~Class D~~ **Level 6** felony.

As added by P.L.84-2001, SEC.5.

**DELIVERY OF FALSE SALES DOCUMENT  
(IC 35-43-5-17)**

**Overview:**

A person who, with intent to defraud, delivers a false sales receipt, duplicate sales receipt or label with universal product code or product identification code to another person. Commits Delivery of a false sales document, a Class D felony.

**Issue(s):**

1. In which felony level does this crime belong?
2. Is it necessary to have a standalone statute, or can this be incorporated into another existing statute?

**Recommendations:**

1. Felony level 6.
2. This offense should be added to the Forgery statute (IC 35-43-5-2) in order to simplify IC 35-43-5-2. The following language should be added to the Forgery statute under a new subsection, and IC 35-43-5-17 should be repealed.

*(b) A person who, with intent to defraud,*  
*(1) makes or delivers to another person:*  
*(i.) a false sales receipt;*  
*(ii.) a duplicate of a sales receipt;*  
*(iii.) a label or other item with a false universal product code (UPC) or other product identification code ; or*  
*(2) places a false universal product code (UPC) or another product identification code on property displayed or offered for sale;*  
*commits making or delivering a false sales document, a Level 6 felony.*

See Forgery; Counterfeiting; Application Fraud statute (IC 35-43-5-2) for entirety of proposed language.

**Rationale:**

A level 6 felony is appropriate and proportional. Combining overlapping/closely related statutes will simplify Title 35.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

A person who, with intent to defraud, delivers a:

- (1) false sales receipt;
- (2) duplicate of a sales receipt; or
- (3) label or other item with a false universal product code (UPC) or other product identification code;

to another person commits delivery of a false sales document, a Class D felony.

As added by P.L.84-2001, SEC.6.

**INMATE FRAUD**  
**(I.C. 35-43-5-20)**

***Overview:***

Inmate Fraud is a Class C felony which involves a person confined in the custody of the department of correction, a sheriff, a county jail, or a secure juvenile facility, knowingly or intentionally making a misrepresentation to a person (or through a misrepresentation made by another person) who is not an inmate, in an attempt to obtain money or other property from the person who is not an inmate.

***Issue(s):***

1. In which felony level does this crime belong?
2. Should Inmate Fraud be merged or incorporated into the statute for Fraud?
3. Should the statute be amended?

***Recommendations:***

1. Felony level 5 for persons incarcerated after having been convicted of a crime; but Level 6 for pre-trial detainees.
2. Inmate Fraud should stand alone, not be incorporated into the broader Fraud statute.
3. There should be a distinction between pre-trial detainees and post-conviction detainees (see #1 above).

***Rationale:***

The offense was reportedly made a Class C felony because post-trial detainees in DOC were not dissuaded by a lower level of penalty. However, the offense generally should be penalized at the Class D (Level 6) level. A greater penalty is justified for post-conviction DOC inmates to preserve internal order at DOC and deter the commission of additional crimes by inmates.

***Workgroup Position:***

Recommendation by consensus.

***Current Statute:***

Sec. 20. (a) As used in this section, "inmate" means a person who is confined in:

- (1) the custody of:
  - (A) the department of correction; or
  - (B) a sheriff;
- (2) a county jail; or
- (3) a secure juvenile facility.

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

- (1) makes a misrepresentation to a person who is not an inmate and obtains or attempts to obtain money or other property from the person who is not an inmate; or
  - (2) obtains or attempts to obtain money or other property from the person who is not an inmate through a misrepresentation made by another person;
- commits inmate fraud, a Class C felony.

*As added by P.L.81-2008, SEC.5.*

## HOME IMPROVEMENT FRAUD

(I.C. 35-43-6-12 and 13)

### *Overview:*

Home Improvement Fraud, a Class B misdemeanor, is knowingly using a misrepresentation of a material fact to enter into a home improvement contract. It becomes a Class A misdemeanor if the contract price reaches \$1,000 (also under certain other circumstances) and a Class D felony if the contract price is more than \$10,000 (also under certain other circumstances). It is a Class C felony if the consumer defrauded is at least 60 years of age and the home improvement contract price is more than \$10,000 (also under certain other circumstances).

### *Issue(s):*

1. In which felony level does this crime belong?

### *Recommendations:*

1. Felony level 6 if the price of the home improvement contract is for more than \$10,000; Felony level 5 if the price of the home improvement contract is more than \$10,000 and the consumer defrauded is over 60 years of age.

### *Rationale:*

The penalties for the crime should be more severe if the person defrauded has been defrauded of more money; and the recommended penalties are appropriate and proportional.

### *Workgroup Position:*

Consensus Recommendation.

### *Current Statute:*

Sec. 12. (a) A home improvement supplier who enters into a home improvement contract and knowingly:

(1) misrepresents a material fact relating to:

(A) the terms of the home improvement contract; or

(B) a preexisting or existing condition of any part of the property involved, including a

misrepresentation concerning the threat of:

(i) fire; or

(ii) structural damage;

if the property is not repaired;

(2) creates or confirms a consumer's impression that is false and that the home improvement supplier does not believe to be true;

(3) promises performance that the home improvement supplier does not intend to perform or knows will not be performed;

(4) uses or employs any deception, false pretense, or false promise to cause a consumer to enter into a home improvement contract;

(5) enters into an unconscionable home improvement contract with a home improvement contract price of four thousand dollars (\$4,000) or more, but less than seven thousand dollars (\$7,000);

(6) misrepresents or conceals the home improvement supplier's:

(A) real name;

(B) business name;

(C) physical or mailing business address; or

(D) telephone number;

(7) upon request by the consumer, fails to provide the consumer with any copy of a written warranty or guarantee that states:

(A) the length of the warranty or guarantee;  
(B) the home improvement that is covered by the warranty or guarantee; or  
(C) how the consumer could make a claim for a repair under the warranty or guarantee;  
(8) uses a product in a home improvement that has been diluted, modified, or altered in a manner that would void the manufacturer's warranty of the product without disclosing to the consumer the reasons for the dilution, modification, or alteration and that the manufacturer's warranty may be compromised; or  
(9) falsely claims to a consumer that the home improvement supplier:  
(A) was referred to the consumer by a contractor who previously worked for the consumer;  
(B) is licensed, certified, or insured; or  
(C) has obtained all necessary permits or licenses before starting a home improvement;  
commits home improvement fraud, a Class B misdemeanor, except as provided in section 13 of this chapter.

(b) A home improvement supplier who, with the intent to enter into a home improvement contract, knowingly:

(1) damages the property of a consumer;  
(2) does work on the property of a consumer without the consumer's prior authorization;  
(3) misrepresents that the supplier or another person is an employee or agent of the federal government, the state, a political subdivision of the state, or any other governmental agency or entity; or  
(4) misrepresents that the supplier or another person is an employee or agent of any public or private utility;  
commits a Class A misdemeanor, except as provided in section 13(b) of this chapter.

*As added by P.L.251-1987, SEC.4. Amended by P.L.81-2006, SEC.1.*

#### **IC 35-43-6-13**

##### **Enhanced offenses**

Sec. 13. (a) The offense in section 12(a) of this chapter is a Class A misdemeanor:

(1) in the case of an offense under section 12(a)(1) through 12(a)(4) or 12(a)(6) through 12(a)(9), if the home improvement contract price is one thousand dollars (\$1,000) or more;  
(2) for the second or subsequent offense under this chapter or in another jurisdiction for an offense that is substantially similar to another offense described in this chapter;  
(3) if two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention; or  
(4) if, in a violation of section 12(a)(5) of this chapter, the home improvement contract price is at least seven thousand dollars (\$7,000), but less than ten thousand dollars (\$10,000).

(b) The offense in section 12 of this chapter is a Class D felony:

(1) if, in a violation of section 12(a)(5) of this chapter, the home improvement contract price is more than ten thousand dollars (\$10,000);

(2) if, in a violation of:

(A) section 12(a)(1) through 12(a)(5); or

(B) section 12(a)(7) through 12(a)(9);

of this chapter, the consumer is at least sixty (60) years of age and the home improvement contract price is ten thousand dollars (\$10,000) or less;

(3) if, in a violation of section 12(b) of this chapter, the consumer is at least sixty (60) years of age;  
or

(4) if the home improvement supplier violates more than one (1) subdivision of section 12(a) of this chapter.

(c) The offense in section 12(a) of this chapter is a Class C felony:

(1) if, in a violation of:

(A) section 12(a)(1) through 12(a)(5); or

(B) section 12(a)(7) through 12(a)(9);

of this chapter, the consumer is at least sixty (60) years of age and the home improvement contract

price is more than ten thousand dollars (\$10,000); or

(2) if, in a violation of:

(A) section 12(a)(1) through 12(a)(4); or

(B) section 12(a)(7) through 12(a)(9);

of this chapter, the consumer is at least sixty (60) years of age, and two (2) or more home improvement contracts exceed an aggregate amount of one thousand dollars (\$1,000) and are entered into with the same consumer by one (1) or more suppliers as part of or in furtherance of a common fraudulent scheme, design, or intention.

*As added by P.L.251-1987, SEC.4. Amended by P.L.81-2006, SEC.2; P.L.1-2007, SEC.232.*

**TIMBER SPIKING**  
**(I.C. 35-43-8-2 and 3)**

**Overview:**

Timber Spiking involves a person recklessly, knowingly, or intentionally, without the permission of the owner, putting a device of metal, ceramic, or other hard substance into a piece of timber with the intent to hinder the felling, logging, or processing of timber. Timber Spiking is a Class C felony if the crime causes bodily injury to another person. It is a Class D felony if the crime does not cause bodily injury to another person. Additionally, a person who commits Timber Spiking may be ordered by the court to pay attorney's fees and restitution to the owner of the property they damaged.

**Issue(s):**

1. In which felony level does this crime belong?
2. Should these two statutes be consolidated?

**Recommendations:**

1. Felony level 6; Felony level 5 if a person suffers bodily injury as a result of the crime.
2. The penalty statute (IC 35-43-8-3) should be combined with the substantive crime (IC 35-43-8-2).

**Rationale:**

A crime that causes a person bodily injury should carry enhanced status, and the penalties recommended are appropriate and proportional. For streamlining purposes, the two statutes should be combined.

**Workgroup Position:**

Consensus Recommendation.

**Current Statutes:**

Sec. 2. A person who recklessly, knowingly, or intentionally, without claim or right or consent of the owner, drives, places, or fastens in timber a device of metal, ceramic, or other substance sufficiently hard to damage equipment used in the processing of timber into wood products, with the intent to hinder the felling, logging, or processing of timber, is guilty of a crime and may be sentenced under this chapter.  
*As added by P.L.139-1992, SEC.1.*

Sec. 3. (a) A person who violates section 2 of this chapter commits a Class C felony if the violation causes bodily injury to another person.

(b) A person who violates section 2 of this chapter commits a Class D felony if the violation does not cause bodily injury to another person.

(c) In addition to a penalty imposed under subsection (a) or (b), the court may order a person convicted of violating section 2 of this chapter to pay attorney's fees and restitution to the owner of property damaged because of the action of the person.

*As added by P.L.139-1992, SEC.1.*

**IC 35-43-8-1**

**"Timber" defined**

Sec. 1. As used in this chapter, "timber" includes standing or felled trees and logs that can be used for any of the following:

- (1) Sawing or processing into lumber for building or structural purposes.
- (2) Posts, poles, bolts, pulpwood, or cordwood.
- (3) The manufacture of wood products.

*As added by P.L.139-1992, SEC.1.*

**CONVERSION OR MISAPPROPRIATION OF TITLE INSURANCE ESCROW FUNDS  
(I.C. 35-43-9-7)**

***Overview:***

Misuse of Title Insurance involves an officer, director, or employee of a title insurer, independent contractor associated with a title insurer, or a title insurance agent knowingly or intentionally converting or misappropriating money held in a title insurance escrow account or receives or conspires to receive money from a title insurance escrow account. It is a Class D felony if the amount of money misused is \$10,000 or less, a Class C felony if the amount of money is more than \$10,000 but less than \$100,000, and a Class B felony if the amount of money is at least \$100,000.

***Issue(s):***

1. In which felony level(s) does this crime belong?

***Recommendations:***

1. Felony level 6 if the amount of money in question is \$10,000 or less; Felony level 5 if the amount of money is more than \$10,000 but less than \$100,000; Felony level 4 if the amount of money is at least \$100,000.

***Rationale:***

The penalty for this crime is appropriate and proportional, with necessary enhancements if the crime involves a greater amount of money.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 7. (a) An officer, a director, or an employee of a title insurer, an individual associated with the title insurer as an independent contractor, or a title insurance agent who knowingly or intentionally:

- (1) converts or misappropriates money received or held in a title insurance escrow account; or
- (2) receives or conspires to receive money described in subdivision (1);

commits a Class D felony, except as provided in subsection (b).

(b) The offense is:

- (1) a Class C felony if the amount of money:

- (A) converted, misappropriated, or received; or
- (B) for which there is a conspiracy;

is more than ten thousand dollars (\$10,000) but less than one hundred thousand dollars (\$100,000);

and

- (2) a Class B felony if the amount of money:

- (A) converted, misappropriated, or received; or
- (B) for which there is a conspiracy;

is at least one hundred thousand dollars (\$100,000).

*As added by P.L.300-1995, SEC.2.*

**IC 35-43-9-4**

**"Title insurance agent" defined**

Sec. 4. As used in this chapter, "title insurance agent" means a person who holds a limited lines producer's license issued under IC 27-1-15.6-18(4) and disburses funds from a title insurance escrow account to a party in connection with a residential real property transaction.

*As added by P.L.300-1995, SEC.2. Amended by P.L.132-2001, SEC.25; P.L.178-2003, SEC.97.*

**IC 35-43-9-5**

**"Title insurance escrow account" defined**

Sec. 5. As used in this chapter, "title insurance escrow account" means an account in which written instruments, money, or other items are deposited and held in escrow or trust for disbursement to a party in connection with a residential real property transaction upon the performance of a specified condition or the happening of a certain event.

As added by P.L.300-1995, SEC.2.

**LEGEND DRUG DECEPTION**  
**(I.C. 35-43-10-3 and 4)**

**Overview:**

Legend Drug Deception involves a person knowingly or intentionally possessing, selling, delivering, forging, counterfeiting, falsely creating a label for, manufacturing, purchasing, selling, delivering, or bringing a contraband legend drug into Indiana. It is a Class D felony, but a Class A felony if it results in another individual's death.

**Issue(s):**

1. In which felony level does this crime belong?

**Recommendations:**

1. Felony level 6; Felony level 2 if it results in a person's death.

**Rationale:**

A crime resulting in a person's death should carry enhanced status and penalties which are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation.

**Current Statute:**

Sec. 3. A person who knowingly or intentionally:

- (1) possesses a contraband legend drug;
  - (2) sells, delivers, or possesses with intent to sell or deliver a contraband legend drug;
  - (3) forges, counterfeits, or falsely creates a label for a legend drug or falsely represents a factual matter contained on a label of a legend drug; or
  - (4) manufactures, purchases, sells, delivers, brings into Indiana, or possesses a contraband legend drug;
- commits legend drug deception, a Class D felony.

*As added by P.L.212-2005, SEC.76.*

Sec. 4. A person:

(1) who knowingly or intentionally manufactures, purchases, sells, delivers, brings into Indiana, or possesses a contraband legend drug; and

(2) whose act under subdivision (1) results in the death of an individual;  
commits legend drug deception resulting in death, a Class A felony.

*As added by P.L.212-2005, SEC.76.*

I.C. 35-44.1  
(Formerly I.C.35-44)  
(Repealed and Recodified by P.L. 126, 2012, Sec. 54)

## OFFENSES AGAINST PUBLIC ADMINISTRATION

**OFFICIAL MISCONDUCT**  
**(Formerly I.C. 35-44-1-2)**  
**(Now I.C. 35-44.1-1-1)**

***Overview:***

A public servant who knowingly or intentionally commits an offense in the performance of the public servant's official duties, solicits, accepts, or agrees to accept from an appointee or employee any property other than what the public servant is authorized by law to accept as a condition of continued employment, acquires or divests himself or herself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of the public servant's office that official action that has not been made public is contemplated, or fails to deliver public records and property in the public servant's custody to the public servant's successor in office when that successor qualifies commits Official Misconduct, a Class D felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 6.

***Rationale:***

A Class D felony is equivalent to a Level 6 felony; this penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 2. A public servant who knowingly or intentionally:

- (1) commits an offense in the performance of the public servant's official duties;
- (2) solicits, accepts, or agrees to accept from an appointee or employee any property other than what the public servant is authorized by law to accept as a condition of continued employment;
- (3) acquires or divests himself or herself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of the public servant's office that official action that has not been made public is contemplated; or
- (4) fails to deliver public records and property in the public servant's custody to the public servant's successor in office when that successor qualifies;

commits official misconduct, a Class D felony.

**BRIBERY**  
**(Formerly I.C. 35-44-1-1)**  
**(Now I.C. 35-44.1-1-2)**

***Overview:***

A person who offers a public official a bribe, a public official who takes a bribe, an athletic official who takes a bribe, a person who offers an athletic official a bribe, or a person who offers a witness a bribe commits Bribery, a Class C felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 5.

***Rationale:***

The penalty level is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 1. (a) A person who:

- (1) confers, offers, or agrees to confer on a public servant, either before or after the public servant becomes appointed, elected, or qualified, any property except property the public servant is authorized by law to accept, with intent to control the performance of an act related to the employment or function of the public servant or because of any official act performed or to be performed by the public servant, former public servant, or person selected to be a public servant;
- (2) being a public servant, solicits, accepts, or agrees to accept, either before or after the person becomes appointed, elected, or qualified, any property, except property the person is authorized by law to accept, with intent to control the performance of an act related to the person's employment or function as a public servant;
- (3) confers, offers, or agrees to confer on a person any property, except property the person is authorized by law to accept, with intent to cause that person to control the performance of an act related to the employment or function of a public servant;
- (4) solicits, accepts, or agrees to accept any property, except property the person is authorized by law to accept, with intent to control the performance of an act related to the employment or function of a public servant;
- (5) confers, offers, or agrees to confer any property on a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, with intent that the person will fail to use the person's best efforts in connection with that contest, event, or exhibition;
- (6) being a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, solicits, accepts, or agrees to accept any property with intent that the person will fail to use the person's best efforts in connection with that contest, event, or exhibition;
- (7) being a witness or informant in an official proceeding or investigation, solicits, accepts, or agrees to accept any property, with intent to:
  - (A) withhold any testimony, information, document, or thing;
  - (B) avoid legal process summoning the person to testify or supply evidence; or

- (C) absent the person from the proceeding or investigation to which the person has been legally summoned;
- (8) confers, offers, or agrees to confer any property on a witness or informant in an official proceeding or investigation, with intent that the witness or informant:
  - (A) withhold any testimony, information, document, or thing;
  - (B) avoid legal process summoning the witness or informant to testify or supply evidence; or
  - (C) absent himself or herself from any proceeding or investigation to which the witness or informant has been legally summoned; or
- (9) confers or offers or agrees to confer any property on an individual for:
  - (A) casting a ballot or refraining from casting a ballot; or
  - (B) voting for a political party, for a candidate, or for or against a public question;

in an election described in IC 3-5-1-2 or at a convention of a political party authorized under IC 3;

commits bribery, a Class C felony.

(b) It is no defense that the person whom the accused person sought to control was not qualified to act in the desired way.

**GHOST EMPLOYMENT**  
**(Formerly I.C. 35-44-2-4)**  
**(Now I.C. 35-44.1-1-3)**

***Overview:***

Ghost Employment involves a public servant knowingly or intentionally hires an employee and does not assign the employee any duties or any duties that are related to the operation of the governmental entity. The public servant who hires the person who is assigned no duties is always liable for Ghost Employment. The person assigned no duties is liable as well if he or she accepts property or payment in return for his or her ghost employment "job."

***Issue:***

1. In which felony level does this crime belong?

***Recommendations:***

1. Felony level 6.

***Rationale:***

The penalties are appropriate and proportional for this crime.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 4. (a) A public servant who knowingly or intentionally:

(1) hires an employee for the governmental entity that he serves; and

(2) fails to assign to the employee any duties, or assigns to the employee any duties not related to the operation of the governmental entity;  
commits ghost employment, a Class D felony.

(b) A public servant who knowingly or intentionally assigns to an employee under his supervision any duties not related to the operation of the governmental entity that he serves commits ghost employment, a Class D felony.

(c) A person employed by a governmental entity who, knowing that he has not been assigned any duties to perform for the entity, accepts property from the entity commits ghost employment, a Class D felony.

(d) A person employed by a governmental entity who knowingly or intentionally accepts property from the entity for the performance of duties not related to the operation of the entity commits ghost employment, a Class D felony.

(e) Any person who accepts property from a governmental entity in violation of this section and any public servant who permits the payment of property in violation of this section are jointly and severally liable to the governmental entity for that property. The attorney general may bring a civil action to recover that property in the county where the governmental entity is located or the person or public servant resides.

(f) For the purposes of this section, an employee of a governmental entity who voluntarily performs services:

(1) that do not:

(A) promote religion;

(B) attempt to influence legislation or governmental policy; or

(C) attempt to influence elections to public office;

(2) for the benefit of:

(A) another governmental entity; or

(B) an organization that is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;

(3) with the approval of the employee's supervisor; and

(4) in compliance with a policy or regulation that:

(A) is in writing;

(B) is issued by the executive officer of the governmental entity; and

(C) contains a limitation on the total time during any calendar year that the employee may spend performing the services during normal hours of employment; is considered to be performing duties related to the operation of the governmental entity.

**CONFLICT OF INTEREST**  
**(Formerly I.C. 35-44-1-3)**  
**(Now I.C. 35.44.1-1-4)**

***Overview:***

A public servant who knowingly or intentionally has a pecuniary interest in, or derives a profit from, a contract or purchase connected with an action by the governmental entity served by the public servant commits Conflict of Interest, a Class D felony.

***Issue(s):***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 6.

***Rationale:***

A Class D felony is equivalent to a Level 6 felony; this penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

**IC 35-44.1-1-4**

**Conflict of interest**

Sec. 4. (a) The following definitions apply throughout this section:

- 
- (1) "Dependent" means any of the following:
- (A) The spouse of a public servant.
  - (B) A child, stepchild, or adoptee (as defined in IC 31-9-2-2) of a public servant who is:
    - (i) unemancipated; and
    - (ii) less than eighteen (18) years of age.
  - (C) An individual more than one-half (1/2) of whose support is provided during a year by the public servant.
- (2) "Governmental entity served by the public servant" means the immediate governmental entity being served by a public servant.
- (3) "Pecuniary interest" means an interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of:
- (A) the public servant; or
  - (B) a dependent of the public servant who:
    - (i) is under the direct or indirect administrative control of the public servant; or
    - (ii) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant.
- (b) A public servant who knowingly or intentionally:
- (1) has a pecuniary interest in; or
  - (2) derives a profit from;

a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.

(c) It is not an offense under this section if any of the following apply:

(1) The public servant or the public servant's dependent receives compensation through salary or an employment contract for:

(A) services provided as a public servant; or

(B) expenses incurred by the public servant as provided by law.

(2) The public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars (\$250) or less.

(3) The contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government.

(4) The public servant:

(A) acts in only an advisory capacity for a state supported college or university; and

(B) does not have authority to act on behalf of the college or university in a matter involving a contract or purchase.

(5) A public servant under the jurisdiction of the state ethics commission (as provided in IC 4-2-6-2.5) obtains from the state ethics commission, following full and truthful disclosure,

written approval that the public servant will not or does not have a conflict of interest in connection with the contract or purchase under IC 4-2-6 and this section. The approval required under this subdivision must be:

(A) granted to the public servant before action is taken in connection with the contract or purchase by the governmental entity served; or

(B) sought by the public servant as soon as possible after the contract is executed or the purchase is made and the public servant becomes aware of the facts that give rise to a question of conflict of interest.

(6) A public servant makes a disclosure that meets the requirements of subsection (d) or (e) and is:

(A) not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity, and functions and performs duties for the governmental entity unrelated to the contract or purchase;

(B) appointed by an elected public servant;

(C) employed by the governing body of a school corporation and the contract or purchase involves the employment of a dependent or the payment of fees to a dependent;

(D) elected; or

(E) a member of, or a person appointed by, the board of trustees of a state supported college or university.

(7) The public servant is a member of the governing board of, or is a physician employed or contracted by, a hospital organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1.

(d) A disclosure must:

(1) be in writing;

(2) describe the contract or purchase to be made by the governmental entity;

(3) describe the pecuniary interest that the public servant has in the contract or purchase;

(4) be affirmed under penalty of perjury;

(5) be submitted to the governmental entity and be accepted by the governmental entity in a public meeting of the governmental entity before final action on the contract or purchase;

(6) be filed within fifteen (15) days after final action on the contract or purchase with:

(A) the state board of accounts; and

(B) if the governmental entity is a governmental entity other than the state or a state supported college or university, the clerk of the circuit court in the county where the governmental entity takes final action on the contract or purchase; and

(7) contain, if the public servant is appointed, the written approval of the elected public servant (if any) or the board of trustees of a state supported college or university (if any) that

appointed the public servant.

(e) This subsection applies only to a person who is a member of, or a person appointed by, the board of trustees of a state supported college or university. A person to whom this subsection applies complies with the disclosure requirements of this chapter with respect to the person's pecuniary interest in a particular type of contract or purchase which is made on a regular basis from a particular vendor if the individual files with the state board of accounts and the board of trustees a statement of pecuniary interest in that particular type of contract or purchase made with that particular vendor. The statement required by this subsection must be made on an annual basis.

*As added by P.L. 126-2012, SEC. 54.*

**PROFITEERING FROM PUBLIC SERVICE; PECUNIARY INTEREST; APPLICATION**  
**(Formerly I.C. 35-44-1-7)**  
**(Now I.C. 35-44.1-1-5)**

***Overview:***

Profiteering from Public Service is a Class D felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 6.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 7. (a) As used in this section, "pecuniary interest" has the meaning set forth in section 3(a)(3) of this chapter.

(b) A person who knowingly or intentionally:

- (1) obtains a pecuniary interest in a contract or purchase with an agency within one (1) year after separation from employment or other service with the agency; and
- (2) is not a public servant for the agency but who as a public servant approved, negotiated, or prepared on behalf of the agency the terms or specifications of:
  - (A) the contract; or
  - (B) the purchase;

commits profiteering from public service, a Class D felony.

(c) This section does not apply to negotiations or other activities related to an economic development grant, loan, or loan guarantee.

(d) This section does not apply if the person receives less than two hundred fifty dollars (\$250) of the profits from the contract or purchase.

(e) It is a defense to a prosecution under this section that:

- (1) the person was screened from any participation in the contract or purchase;
- (2) the person has not received a part of the profits of the contract or purchase; and
- (3) notice was promptly given to the agency of the person's interest in the contract or purchase.

**PERJURY**  
**(Formerly I.C. 35-44-2-1)**  
**(Now I.C. 35-44.1-2-1)**

***Overview:***

A person who makes a false, material statement under oath or affirmation, knowing the statement to be false or not believing it to be true, or has knowingly made two (2) or more material statements, in a proceeding before a court or grand jury, which are inconsistent to the degree that one (1) of them is necessarily false, commits Perjury, a Class D felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 6.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 1. (a) A person who:

- (1) makes a false, material statement under oath or affirmation, knowing the statement to be false or not believing it to be true; or
- (2) has knowingly made two (2) or more material statements, in a proceeding before a court or grand jury, which are inconsistent to the degree that one (1) of them is necessarily false;

commits perjury, a Class D felony.

(b) In a prosecution under subsection (a)(2) of this section:

- (1) the indictment or information need not specify which statement is actually false; and
- (2) the falsity of a statement may be established sufficient for conviction, by proof that the defendant made irreconcilably contradictory statements which are material to the point in question.

**OBSTRUCTION OF JUSTICE**  
**(Formerly I.C. 35-44-3-4)**  
**(Now I.C. 35-44.1-2-2)**

***Overview:***

Obstruction is the hindrance of another in the discharge of his or her duty. Obstruction of justice is a Class D felony when a person (1) induces, by threat, coercion, or false statement, a witness or informant in an official proceeding or investigation to withhold or unreasonably delay in producing any testimony, information, document, or thing, avoid legal process summoning him to testify or supply evidence, or absent himself from a proceeding or investigation to which he has been legally summoned, (2) does any of these in an official criminal procedure or investigation, (3) alters, damages, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation, (4) makes, presents, or uses a false record, document, or thing with intent that the record, document, or thing, material to the point in question, appear in evidence in an official proceeding or investigation to mislead a public servant, or (5) communicates in any way with a juror otherwise than as authorized by law, with intent to influence the juror regarding any matter that is or may be brought before the juror.

Obstruction in a criminal proceeding or investigation by withholding or unreasonably delaying the production of any testimony, information, document, or thing after a court orders production (subsection (a)(2)(A) above) does not apply to a person who qualifies for a special privilege under the Disclosure of Information Source by Journalist chapter of the Indiana Code (IC 34-46-4), or a person who is privileged not to testify under IC 34-46-3-1 as an attorney, physician, clergy member, or husband or wife.

***Issue(s):***

1. In which penalty level does this crime belong?
2. Should the statute include positive inducements (i.e., an offer of reward), as well as negative inducements (i.e., threats)?

***Recommendation:***

1. Level 6 felony.
2. The statute should be amended to include the language “offer of goods, services or anything of value” to cover positive inducements.

*The following language is recommended:*

***Added text***

- (a) A person who:
- (1) knowingly or intentionally induces, by threat, coercion, or false statement, ***or offer of goods, services or anything of value***, a witness or informant in an official proceeding or investigation to:
    - (A) withhold or unreasonably delay in producing any testimony, information, document, or thing;
    - (B) avoid legal process summoning him to testify or supply evidence; or
    - (C) absent himself from a proceeding or investigation to which he has been legally summoned;
  - (2) knowingly or intentionally in an official criminal proceeding or investigation:
    - (A) withholds or unreasonably delays in producing any testimony, information, document, or thing after a court orders him to produce the testimony, information, document, or thing;

- (B) avoids legal process summoning him to testify or supply evidence; or
- (C) absents himself from a proceeding or investigation to which he has been legally summoned;

- (3) alters, damages, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation;
- (4) makes, presents, or uses a false record, document, or thing with intent that the record, document, or thing, material to the point in question, appear in evidence in an official proceeding or investigation to mislead a public servant; or
- (5) communicates, directly or indirectly, with a juror otherwise than as authorized by law, with intent to influence the juror regarding any matter that is or may be brought before the juror;

commits obstruction of justice, a ~~Class-D~~ **Level 6** felony.

(b) Subdivision (a)(2)(A) does not apply to:

- (1) a person who qualifies for a special privilege under IC 34-46-4 with respect to the testimony, information, document, or thing; or
- (2) a person who, as an:
  - (A) attorney;
  - (B) physician;
  - (C) member of the clergy; or
  - (D) husband or wife;

is not required to testify under IC 34-46-3-1.

***Rationale:***

The penalties are appropriate and proportional.

With respect to the proposed new language: In *Brown v. State*, 859 N.E.2d 1269 (Ind. Ct. App. 2007), *trans. denied*, defendant in a domestic violence case contacted victim from jail to attempt to convince her not to testify. Instead of threatening her physical safety, he promised her sexual favors if she did not testify. The Court ruled that, in light of the statute's language, the coercion must be negative (the statute language limited obstruction of justice to "threat, coercion or false statement"). In a similar case, the Indiana Court of Appeals stated that the standard for coercive behavior is a declaration of consequences that would follow for *failure* to comply. The statement Brown made in *Brown v. State* was a declaration of what would happen if the victim did comply. Because there was no indication of what would happen if she did not comply, the statement was not coercive. See *Sheppard v. State*, 484 N.E.2d 984 (Ind. Ct. App. 1985).

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

- (a) A person who:
  - (1) knowingly or intentionally induces, by threat, coercion, or false statement, a witness or informant in an official proceeding or investigation to:
    - (A) withhold or unreasonably delay in producing any testimony, information, document, or thing;
    - (B) avoid legal process summoning him to testify or supply evidence; or
    - (C) absent himself from a proceeding or investigation to which he has been legally summoned;
  - (2) knowingly or intentionally in an official criminal proceeding or investigation:

(A) withholds or unreasonably delays in producing any testimony, information, document, or thing after a court orders him to produce the testimony, information, document, or thing;

(B) avoids legal process summoning him to testify or supply evidence; or

(C) absents himself from a proceeding or investigation to which he has been legally summoned;

(3) alters, damages, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any official proceeding or investigation;

(4) makes, presents, or uses a false record, document, or thing with intent that the record, document, or thing, material to the point in question, appear in evidence in an official proceeding or investigation to mislead a public servant; or

(5) communicates, directly or indirectly, with a juror otherwise than as authorized by law, with intent to influence the juror regarding any matter that is or may be brought before the juror;

commits obstruction of justice, a Class D felony.

(b) Subdivision (a)(2)(A) does not apply to:

(1) a person who qualifies for a special privilege under IC 34-46-4 with respect to the testimony, information, document, or thing; or

(2) a person who, as an:

(A) attorney;

(B) physician;

(C) member of the clergy; or

(D) husband or wife;

is not required to testify under IC 34-46-3-1.

**FALSE REPORTING**  
**(Formerly I.C. 35-44-2-2)**  
**(Now I.C. 35-44.1-2-3)**

***Overview:***

A person who makes a false bomb or explosive threat, a false threat of having tampered with a consumer product, or a false threat of a weapon of mass destruction in a building or place of assembly commits False Reporting, a Class D felony. In addition, a person who makes a false crime or police report, a false fire alarm, a false request for ambulance service, a false complaint against a police officer, or a false report of a missing person or child, knowing it to be false, commits a Class B misdemeanor. However, filing a false missing person or missing child report is a Class A misdemeanor if it substantially hinders the law enforcement process or causes harm to an innocent person.

***Issues:***

1. In which felony level does this crime belong?
2. Should the term “innocent person” or the term “another person” be used in the final sentence of the statute?

***Recommendations:***

1. Felony level 6.
2. The term “another person” should be used in the last sentence of the statute, rather than the term “innocent person.”

***Rationale:***

The term “another person” should be used after subsection (d)(6), rather than “innocent person” in order to maintain consistency with the rest of the statute.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 2. (a) As used in this section, "consumer product" has the meaning set forth in IC 35-45-8-1.

(b) As used in this section, "misconduct" means a violation of a departmental rule or procedure of a law enforcement agency.

(c) A person who reports, by telephone, telegraph, mail, or other written or oral communication, that:

(1) the person or another person has placed or intends to place an explosive, a destructive device, or other destructive substance in a building or transportation facility;

(2) there has been or there will be tampering with a consumer product introduced into commerce; or

(3) there has been or will be placed or introduced a weapon of mass destruction in a building or a place of assembly;

knowing the report to be false commits false reporting, a Class D felony.

(d) A person who:

(1) gives a false report of the commission of a crime or gives false information in the official investigation of the commission of a crime, knowing the report or information to be false;

(2) gives a false alarm of fire to the fire department of a governmental entity, knowing the alarm to be false;

(3) makes a false request for ambulance service to an ambulance service provider, knowing the request to be false;

(4) gives a false report concerning a missing child (as defined in IC 10-13-5-4) or missing endangered adult (as defined in IC 12-7-2-131.3) or gives false information in the official investigation of a missing child or missing endangered adult knowing the report or information to be false;

(5) makes a complaint against a law enforcement officer to the state or municipality (as defined in IC 8-1-13-3) that employs the officer:

(A) alleging the officer engaged in misconduct while performing the officer's duties; and

(B) knowing the complaint to be false; or

(6) makes a false report of a missing person, knowing the report or information is false; commits false informing, a Class B misdemeanor. However, the offense is a Class A misdemeanor if it substantially hinders any law enforcement process or if it results in harm to an innocent person.

**ASSISTING A CRIMINAL**  
**(Formerly I.C. 35-44-3-2)**  
**(Now I.C. 35-44.1-2-5)**

***Overview:***

Assisting a Criminal, a Class A misdemeanor, involves a person harboring, concealing, or otherwise assisting a person who has committed a crime with intent to hinder the apprehension or punishment of the other person when the person is not the parent, child, or spouse, of the person who has committed the crime. However, it is a Class D felony if the person assisted has committed a Class B, C, or D felony and a Class C felony if the person assisted has committed murder or a Class A felony or if the assistance involved providing a deadly weapon. It is not a defense that the criminal has not been prosecuted for the offense or has been acquitted of the offense by reason of insanity. In contrast, it is a defense if the criminal has been acquitted for any reason other than insanity.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendations:***

1. The offense should remain a Class A misdemeanor. The penalty should be a Level 6 felony if the criminal receiving assistance has committed a Level 3, 4, 5 or 6 felony; and a Level 5 felony if the criminal receiving assistance has committed a Level 1 or 2 felony or the person providing assistance is providing a deadly weapon.

***Rationale:***

The penalties are appropriate and proportional for this crime.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 2. (a) A person not standing in the relation of parent, child, or spouse to another person who has committed a crime or is a fugitive from justice who, with intent to hinder the apprehension or punishment of the other person, harbors, conceals, or otherwise assists the person commits assisting a criminal, a Class A misdemeanor. However, the offense is:

- (1) a Class D felony if the person assisted has committed a Class B, Class C, or Class D felony; and
  - (2) a Class C felony if the person assisted has committed murder or a Class A felony, or if the assistance was providing a deadly weapon.
- (b) It is not a defense to a prosecution under this section that the person assisted:
- (1) has not been prosecuted for the offense;
  - (2) has not been convicted of the offense; or
  - (3) has been acquitted of the offense by reason of insanity.

However, the acquittal of the person assisted for other reasons may be a defense.

**IMPERSONATION OF PUBLIC SERVANT**  
**(Formerly I.C. 35-44-2-3)**  
**(Now I.C. 35-44.1-2-6)**

***Overview:***

Impersonation of a Public Servant, a Class A misdemeanor, involves a person falsely representing himself or herself as a public servant with intent to mislead and induce another person to submit to false official authority or otherwise act to the person's detriment by relying on the false representation. The offense is a Class D felony if the person committing the impersonation falsely represents that he or she is a law enforcement officer or an agent or employee of the department of state revenue. The person must collect property from another person to be guilty of impersonating an agent or employee of the department of state revenue.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendation:***

1. Class A misdemeanor, with enhancement to Felony level 6.

***Rationale:***

The penalties described are appropriate and proportional for this crime.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 3. A person who falsely represents that the person is a public servant, with intent to mislead and induce another person to submit to false official authority or otherwise to act to the other person's detriment in reliance on the false representation, commits impersonation of a public servant, a Class A misdemeanor. However, a person who falsely represents that the person is:

(1) a law enforcement officer; or

(2) an agent or employee of the department of state revenue, and collects any property from another person;  
commits a Class D felony.

**UNLAWFUL SALE OF POLICE OR FIRE INSIGNIA**  
**(Formerly I.C. 35-44-2-5)**  
**(Now I.C. 35-44.1-2-8)**

***Overview:***

A person who knowingly or intentionally manufactures and offers for sale an official badge used by a state law enforcement agency or fire department or a document that purports to be an official employment identification used by a state law enforcement agency or fire department commits Unlawful Sale of Police or Fire Insignia, a Class A misdemeanor. The offense is a Class D felony if the person commits the offense with the knowledge or intent to commit Impersonation of a Public Servant (under IC 35-44-2-3), and a Class B felony if the person commits the offense with the knowledge or intent to commit a Terroristic Act (under IC 35-47-12). It is a defense if the false badge is less than half the size or more than one-and-a-half times the size of a real badge.

***Issue:***

1. In which felony level does this crime belong?

***Recommendations:***

1. The penalty should be a Level 6 felony if it is committed with the knowledge or intent to commit Impersonation of a Public Servant (IC 35-44-2-3); and a Level 4 felony if the person commits the offense with the knowledge or intent to commit a Terroristic Act (IC 35-47-12).

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 5. (a) A person who knowingly or intentionally manufactures and sells or manufactures and offers for sale:

(1) an official badge or a replica of an official badge that is currently used by a law enforcement agency or fire department of the state or of a political subdivision of the state; or

(2) a document that purports to be an official employment identification that is used by a law enforcement agency or fire department of the state or of a political subdivision of the state; without the written permission of the chief executive officer of the law enforcement agency commits unlawful manufacture or sale of a police or fire insignia, a Class A misdemeanor.

(b) However, the offense described in subsection (a) is:

(1) a Class D felony if the person commits the offense with the knowledge or intent that the badge or employment identification will be used to further the commission of an offense under IC 35-44-2-3; and

(2) a Class B felony if the person commits the offense with the knowledge or intent that the badge or employment identification will be used to further the commission of an offense under IC 35-47-12.

(c) It is a defense to a prosecution under subsection (a)(1) if the area of the badge or replica that is manufactured and sold or manufactured and offered for sale as measured by multiplying the greatest length of the badge by the greatest width of the badge is:

(1) less than fifty percent (50%); or

(2) more than one hundred fifty percent (150%);

of the area of an official badge that is used by a law enforcement agency or fire department of the state or a political subdivision of the state as measured by multiplying the greatest length of the official badge by the greatest width of the official badge.

**FAILURE TO APPEAR**  
**(Formerly I.C. 35-44-3-6)**  
**(Now I.C. 35-44.1-2-9)**

***Overview:***

A person who, having been released from lawful detention on condition that he appear at a specified time and place in connection with a charged crime, intentionally fails to appear at that specified time and place, commits Failure to appear, a Class A misdemeanor. The offense is a Class D felony if the charged crime was a felony. It is not a defense that the accused was not convicted of the crime charged. Additionally, the section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Failure to appear (felony charge): Level 6 felony  
Failure to appear (misdemeanor charge): Class A misdemeanor

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

(a) A person who, having been released from lawful detention on condition that he appear at a specified time and place in connection with a charge of a crime, intentionally fails to appear at that time and place commits failure to appear, a Class A misdemeanor. However, the offense is a Class D felony if the charge was a felony charge.

(b) It is no defense that the accused person was not convicted of the crime with which he was originally charged.

(c) This section does not apply to obligations to appear incident to release under suspended sentence or on probation or parole.

**RESISTING LAW ENFORCEMENT**  
**(Formerly I.C. 35-44-3-3)**  
**(Now I.C. 35-44.1—3-1)**

***Overview:***

A person who knowingly or intentionally (1) resists, obstructs, or interferes with an officer or person assisting the officer in the performance of the officer's duties, (2) resists, obstructs, or interferes with the authorized service of civil process, execution of a warrant, or other order of a court, or (3) flees from an officer after the officer has identified himself/herself (including use of siren and/or emergency lights) and ordered the person to stop, commits Resisting a Law Enforcement Officer, a Class A misdemeanor. The offense is a Class D felony if the person (1) flees using a vehicle, or (2) draws/uses a deadly weapon, inflicts bodily injury on or otherwise causes bodily injury to another person, or operates a vehicle in a manner that creates substantial risk of bodily injury to another person commits any of the offenses in commission of the offense. The offense is a Class C felony if the person operates a vehicle in a manner that causes serious bodily injury to another person while committing the offense. The offense is a Class B felony if the person operates a vehicle in a manner that causes the death another person while committing the offense. The offense is a Class A felony if the person operates a vehicle in a manner that causes the death of an officer (while the officer is engaged in his or her official duties) while committing the offense.

Various felony offenses above, including drawing or using a deadly weapon while resisting law enforcement and causing risk of serious bodily injury or death or causing actual bodily injury or death while using a motor vehicle to resist law enforcement, carry mandatory, minimum, non-suspendible sentences of 30 days if the person does not have a prior unrelated conviction under this section, 180 days if the person has one prior unrelated conviction under this section, and one year if the person has two or more prior unrelated convictions under this section. These offenses may result in the suspension or revocation of the person's driver's license.

***Issues:***

1. In which penalty level(s) does this crime belong?
2. Should a nonsuspendibility provision be included?

***Recommendation:***

1. Using vehicle, deadly weapon, or causing bodily injury: Level 6 felony  
Using vehicle and causing serious bodily injury: Level 5 felony  
Using vehicle and causing death of another person: Level 3 felony  
Using vehicle and causing death of officer engaged in official duties: Level 2 felony
2. No recommendation provided regarding suspendibility; the suspension of driving privileges provision should be examined for possible repeal.

***Rationale:***

The penalties are appropriate and proportional. A question exists whether the statute should include mandatory minimum sentencing language for a misdemeanor offense, which is found in very few statutes. A reasonable alternative may be to provide enhancements for repeat offenders, but not specific minimum sentences. This may result in striking subsection (d), as enhancements are already provided for (up to a Class A felony) in subsection (b). No final recommendation is made on this point; though a general recommendation is made to review all provisions that result in the suspension of driving privileges and strike those that do not have a direct relationship to public safety, such as driving while intoxicated.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

(a) A person who knowingly or intentionally:

(1) forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties;

(2) forcibly resists, obstructs, or interferes with the authorized service or execution of a civil or criminal process or order of a court; or

(3) flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement officer's siren or emergency lights, identified himself or herself and ordered the person to stop;

commits resisting law enforcement, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense under subsection (a) is a:

(1) Class D felony if:

(A) the offense is described in subsection (a)(3) and the person uses a vehicle to commit the offense; or

(B) while committing any offense described in subsection (a), the person draws or uses a deadly weapon, inflicts bodily injury on or otherwise causes bodily injury to another person, or operates a vehicle in a manner that creates a substantial risk of bodily injury to another person;

(2) Class C felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes serious bodily injury to another person;

(3) Class B felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes the death of another person; and

(4) Class A felony if, while committing any offense described in subsection (a), the person operates a vehicle in a manner that causes the death of a law enforcement officer while the law enforcement officer is engaged in the officer's official duties.

(c) For purposes of this section, a law enforcement officer includes an enforcement officer of the alcohol and tobacco commission and a conservation officer of the department of natural resources.

(d) If a person uses a vehicle to commit a felony offense under subsection (b)(1)(B), (b)(2), (b)(3), or (b)(4), as part of the criminal penalty imposed for the offense, the court shall impose a minimum executed sentence of at least:

(1) thirty (30) days, if the person does not have a prior unrelated conviction under this section;

(2) one hundred eighty (180) days, if the person has one (1) prior unrelated conviction under this section; or

(3) one (1) year, if the person has two (2) or more prior unrelated convictions under this section.

(e) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, the mandatory minimum sentence imposed under subsection (d) may not be suspended.

(f) If a person is convicted of an offense involving the use of a motor vehicle under:

(1) subsection (b)(1)(A), if the person exceeded the speed limit by at least twenty (20) miles per hour while committing the offense;

(2) subsection (b)(2); or

(3) subsection (b)(3);

the court may notify the bureau of motor vehicles to suspend or revoke the person's driver's license and all certificates of registration and license plates issued or registered in the person's name in accordance with IC 9-30-4-6(b)(3) for the period described in IC 9-30-4-6(d)(4) or IC 9-30-4-6(d)(5). The court shall inform the bureau whether the person has been sentenced to a term of incarceration. At the time of conviction, the court may obtain the person's current driver's license and return the license to the bureau of motor vehicles.

**DISARMING AN OFFICER**  
**(Formerly I.C. 35-44-3-3.5)**  
**(Now I.C. 35-44.1-3-2)**

***Overview:***

A person commits the offense of Disarming a law enforcement officer, a Class C felony, when the person knows that another person is an officer and takes or attempts to take a firearm or weapon that the officer is authorized to carry from the officer or from the immediate proximity of the officer without the consent of the officer and while the officer is engaged in the performance of his or her official duties. The penalty increases to a Class B felony if serious bodily injury to the officer occurs, and a Class A felony if the officer dies as a result or if the firearm was successfully taken and the offense results in serious bodily injury to the officer.

***Issues:***

1. In which felony levels does this crime belong?
2. Should the serious bodily injury element of the last sentence in the offense (IC 35-44-3-3.5) be stricken or amended, as committing the crime and causing serious bodily injury is already a separate offense (classified as a B felony)?

***Recommendation:***

1. Disarming a law enforcement officer should be penalized as a Level 5 felony. The offense should be enhanced to a Level 3 felony if it results in serious bodily injury to an officer; enhanced to a Level 2 felony if the officer's weapon is obtained and used to inflict serious bodily injury on any officer; and enhanced to a Level 1 felony if the offense results in the death of a law enforcement officer. The last sentence of the statute should be amended to specify that if the weapon taken from an officer causes serious bodily to any law enforcement officer, the penalty should be a Level 2.

***Rationale:***

This code section was enacted in 2009 to fill a gap in the Indiana Code. Current law deems the offense a Class A felony whether the officer is killed *or* his gun is taken *and* he is seriously injured. The serious bodily injury element of the last sentence in the offense (IC 35-44-3-3.5) should be amended to create a distinction between serious bodily injury and death of a law enforcement officer in this situation. The proposed change makes it clear that if the officer's gun is successfully obtained by the perpetrator and used to inflict serious bodily injury on that officer or any other officer, the penalty should be enhanced to a Level 2 felony. This results in a proportional escalation of penalties. It also expands the definition of the offense to include injury to an officer in the vicinity of the officer whose gun was taken.

*Specific language has not been recommended; the Work Group will work with the Legislative Services Agency on proposed language.*

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

- (a) As used in this section, "officer" includes the following:
  - (1) A person employed by:
    - (A) the department of correction;
    - (B) a law enforcement agency;
    - (C) a probation department;
    - (D) a county jail; or
    - (E) a circuit, superior, county, probate, city, or town court;

who is required to carry a firearm in performance of the person's official duties.

(2) A law enforcement officer.

(b) A person who:

(1) knows that another person is an officer; and

(2) knowingly or intentionally takes or attempts to take a firearm (as defined in IC 35-47-1-5) or weapon that the officer is authorized to carry from the officer or from the immediate proximity of the officer:

(A) without the consent of the officer; and

(B) while the officer is engaged in the performance of his or her official duties;

commits disarming a law enforcement officer, a Class C felony. However, the offense is a Class B felony if it results in serious bodily injury to the officer, and the offense is a Class A felony if it results in death to the officer or if a firearm (as defined in IC 35-47-1-5) was taken and the offense results in serious bodily injury to the officer.

**ESCAPE; FAILURE TO RETURN TO LAWFUL DETENTION**  
**(Formerly I.C. 35-44-3-5)**  
**(Now I.C. 35-44.1-3-4)**

***Overview:***

A person who violates a home detention order or removes an electronic monitoring device or GPS tracking device commits Escape, a Class D felony. A person who intentionally flees from lawful detention commits a Class C felony; the offense is a Class B felony if the individual draws or uses a deadly weapon or inflicts bodily injury on another person while committing the offense.

A person who fails to return to lawful detention following temporary leave granted for a specific purpose or limited period (e.g., death of an immediate relative) commits Failure to Return to Lawful Detention, a Class D felony. The offense is a Class C felony if the individual draws or uses a deadly weapon or inflicts bodily injury on another person while committing the offense.

***Issue:***

1. In which felony level(s) does this crime belong?

***Recommendation:***

1. The penalties should be as follows:

Escape (fleeing from detention): Level 5 felony, enhanced to a Level 4 felony if the individual draws or uses a deadly weapon or inflicts bodily injury on another person while committing the offense

Escape (violating home detention): Level 6 felony

Failure to return to detention after leave: Level 6 felony, enhanced to a Level 5 felony if the person draws or uses a deadly weapon or inflicts bodily injury on another person while committing the offense

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

(a) A person, except as provided in subsection (b), who intentionally flees from lawful detention commits escape, a Class C felony. However, the offense is a Class B felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

(b) A person who knowingly or intentionally violates a home detention order or intentionally removes an electronic monitoring device or GPS tracking device commits escape, a Class D felony.

(c) A person who knowingly or intentionally fails to return to lawful detention following temporary leave granted for a specified purpose or limited period commits failure to return to lawful detention, a Class D felony. However, the offense is a Class C felony if, while committing it, the person draws or uses a deadly weapon or inflicts bodily injury on another person.

**TRAFFICKING WITH AN INMATE OR CHILD**  
**(Formerly I.C. 35-44-3-9)**  
**(Now I.C. 35-44.1-3-5)**

***Overview:***

A person who carries, receives or delivers an article, alcohol, controlled substance or a deadly weapon (1) to a child within a juvenile facility; or (2) an adult within a penal facility, commits Trafficking with a Child or Inmate, a Class A misdemeanor. The offense is a Class C felony if the article is a controlled substance, a deadly weapon, a cell phone, or another cellular or wireless communication device.

***Issues:***

1. In which felony level does this crime belong?
2. Should the statute be rewritten to clarify treatment of controlled substances, deadly weapons and cellular devices?

***Recommendations:***

1. Trafficking with an inmate should remain a Class A misdemeanor, enhanced to a Level 5 felony under the circumstances described in the statute that currently enhance the penalty to a Class C felony.
2. The statute should be clarified by striking subsection (b)(4) and placing it in subsection (d).

*The following language is proposed:*

**Trafficking with an Inmate**  
**(I.C. 35-44-3-9)**

Sec. 9. (a) As used in this section, "juvenile facility" means the following:

(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(b) Except as provided in subsection (d), a person who, without the prior authorization of the person in charge of a penal facility or juvenile facility knowingly or intentionally:

(1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility;

(2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility;

(3) delivers, or carries to a worksite with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew; or

~~(4) possesses in or carries into a penal facility or a juvenile facility:~~

~~(A) a controlled substance; or~~

~~(B) a deadly weapon;~~  
commits trafficking with an inmate, a Class A misdemeanor.

(c) If the person who committed the offense under subsection (b) is an employee of:

- (1) the department of correction; or
- (2) a penal facility;

and the article is a cigarette or tobacco product (as defined in

IC 6-7-2-5), the court shall impose a mandatory five thousand dollar (\$5,000) fine under IC 35-50-3-2, in addition to any term of imprisonment imposed under IC 35-50-3-2.

~~(d) The offense under subsection (b) is a Class C felony if the article is:~~

***a person who, without the prior authorization of the person in charge of a penal facility or juvenile facility knowingly or intentionally possesses in, or carries or causes to be brought into a penal facility or a juvenile facility:***

- (1) a controlled substance;
- (2) a deadly weapon; or
- (3) a cellular telephone or other wireless or cellular communications device.

***commits trafficking with an inmate, a Class C felony.***

***Rationale:***

These penalties are appropriate and proportional. The other changes simply clarify the meaning of the statute.

***Workgroup Position***

Consensus Recommendation

***Current Statute:***

(a) As used in this section, "juvenile facility" means the following:

(1) A secure facility (as defined in IC 31-9-2-114) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child.

(2) A shelter care facility (as defined in IC 31-9-2-117) in which a child is detained under IC 31 or used for a child awaiting adjudication or adjudicated under IC 31 as a child in need of services or a delinquent child

(b) Except as provided in subsection (d), a person who, without the prior authorization of the person in charge of a penal facility or juvenile facility knowingly or intentionally:

- (1) delivers, or carries into the penal facility or juvenile facility with intent to deliver, an article to an inmate or child of the facility;
- (2) carries, or receives with intent to carry out of the penal facility or juvenile facility, an article from an inmate or child of the facility;
- (3) delivers, or carries to a worksite with the intent to deliver, alcoholic beverages to an inmate or child of a jail work crew or community work crew; or
- (4) possesses in or carries into a penal facility or a juvenile facility:

(A) a controlled substance; or

(B) a deadly weapon;

commits trafficking with an inmate, a Class A misdemeanor.

(c) If the person who committed the offense under subsection (b) is an employee of:

- (1) the department of correction; or
- (2) a penal facility;

and the article is a cigarette or tobacco product (as defined in IC 6-7-2-5), the court shall impose a mandatory five thousand dollar (\$5,000) fine under IC 35-50-3-2, in addition to any term of imprisonment imposed under IC 35-50-3-2.

(d) The offense under subsection (b) is a Class C felony if the article is:

- (1) a controlled substance;
- (2) a deadly weapon; or
- (3) a cellular telephone or other wireless or cellular communications device.

**TRAFFICKING WITH AN INMATE OUTSIDE A FACILITY**  
**(Formerly I.C. 35-44-3-9)**  
**(Now I.C. 35-44.1-3-6)**

***Overview:***

A person who, with the intent of providing contraband to an inmate, delivers contraband (alcohol, tobacco product, controlled substance or an item that may be used as a weapon) to an inmate outside a facility, or places it where the inmate could obtain it, commits Trafficking with an Inmate Outside a Facility, a Class A misdemeanor. The offense is a Class D felony if the item is a controlled substance, and a Class C felony if the item is one that may be used as a weapon.

***Issue:***

1. In which felony level(s) does this crime belong?

***Recommendations:***

1. Trafficking with an Inmate Outside a Facility should remain a Class A misdemeanor, enhanced to a Level 6 felony if the item is a controlled substance and to a Level 5 felony if the item is one that may be used as a weapon.

***Rationale:***

These penalties are appropriate and proportional.

***Workgroup Position***

Consensus Recommendation

***Current Statute:***

**IC 35-44.1-3-6**

**Trafficking with an inmate outside a facility**

Sec. 6. (a) As used in this section, "contraband" means the following:

- (1) Alcohol.
- (2) A cigarette or tobacco product.
- (3) A controlled substance.
- (4) An item that may be used as a weapon.

(b) As used in this section, "inmate outside a facility" means a person who is incarcerated in a penal facility or detained in a juvenile facility on a full-time basis as the result of a conviction or a juvenile adjudication but who has been or is being transported to another location to participate in or prepare for a judicial proceeding. The term does not include the following:

- (1) An adult or juvenile pretrial detainee.
- (2) A person serving an intermittent term of imprisonment or detention.
- (3) A person serving a term of imprisonment or detention as:
  - (A) a condition of probation;
  - (B) a condition of a community corrections program;
  - (C) part of a community transition program;
  - (D) part of a reentry court program;

(E) part of a work release program; or  
(F) part of a community based program that is similar to a program described in clauses (A) through (E).

(4) A person who has escaped from incarceration or walked away from secure detention.

(5) A person on temporary leave (as described in IC 11-10-9) or temporary release (as described in IC 11-10-10).

(c) A person who, with the intent of providing contraband to an inmate outside a facility:

(1) delivers contraband to an inmate outside a facility; or

(2) places contraband in a location where an inmate outside a facility could obtain the contraband;

commits trafficking with an inmate outside a facility, a Class A misdemeanor. However, the offense is a Class D felony if the contraband is an item described in subsection (a)(3), and a Class C felony if the contraband is an item described in subsection (a)(4).

*As added by P.L.126-2012, SEC.54.*

**POSSESSION OF DEVICE BY INMATE**  
**(Formerly I.C. 35-44-3-9.5)**  
**(Now I.C. 35-44.1-3-7)**

***Overview:***

A person incarcerated in a penal facility who knowingly or intentionally possesses a device, piece of equipment, a chemical substance, or other material that is used or intended to be used in a manner that can cause bodily injury commits Possession of a Device by an Inmate, a Class C felony. The offense is a Class B felony if the device, equipment, chemical substance or other material is a deadly weapon.

***Issue:***

1. In which felony levels does this crime belong?

***Recommendation:***

1. The offense should be a Level 5 felony, with enhancement to a Level 4 felony if the device, equipment, chemical substance or other material is a deadly weapon.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position***

Consensus recommendation

***Current Statute:***

A person who knowingly or intentionally while incarcerated in a penal facility possesses a device, equipment, a chemical substance, or other material that:

(1) is used; or

(2) is intended to be used;

in a manner that is readily capable of causing bodily injury commits a Class C felony. However, the offense is a Class B felony if the device, equipment, chemical substance, or other material is a deadly weapon.

**VIOLATION OF LIFETIME PAROLE WITH A MINOR**  
**(Formerly I.C. 35-44-3-13)**  
**(Now I.C. 35-44.1-3-9)**

***Overview:***

Violation of Lifetime Parole occurs when an individual on lifetime parole knowingly or intentionally violates a condition of his parole by having direct or indirect contact with a child less than 16 years of age or with the victim of the parolee's crime. The penalty for Violation of Lifetime Parole is a Class D felony, enhanced to a Class C felony if the individual's lifetime parole has been revoked two or more times or the individual has completed his sentence, including any credit time he may have earned.

***Issue:***

1. In which felony level does this crime belong?

***Recommendations:***

1. The offense should be a Level 6 felony, enhanced to a Level 5 felony for prior Violation of Lifetime Parole as described above.

***Rationale:***

1. These penalties are appropriate and proportional.

***Workgroup Position***

Consensus recommendation

***Current Statute:***

(a) A person who is being supervised on lifetime parole (as described in IC 35-50-6-1) and who knowingly or intentionally violates a condition of lifetime parole that involves direct or indirect contact with a child less than sixteen (16) years of age or with the victim of a crime that was committed by the person commits a Class D felony if, at the time of the violation:

(1) the person's lifetime parole has been revoked two (2) or more times; or

(2) the person has completed the person's sentence, including any credit time the person may have earned.

(b) The offense described in subsection (a) is a Class C felony if the person has a prior unrelated conviction under this section.

**SEXUAL MISCONDUCT BY SERVICE PROVIDER WITH DETAINEE**  
**(Formerly I.C. 35-44-1-5)**  
**(Now I.C. 35-44.1-3-10)**

***Overview:***

A public servant or other person employed by a governmental entity, or another person who provides goods or services to a person who is subject to lawful detention, who knowingly or intentionally engages in sexual intercourse or deviate sexual conduct with a person who is subject to lawful detention, commits Sexual Misconduct, a Class C felony. The offense is a Class B felony if the service provider is at least eighteen (18) years of age and the detainee is less than eighteen (18) years of age.

***Issue(s):***

1. Are the age ranges of at least 18 years old age and less than 18 appropriate?
2. Are the Class C felony and Class B felony appropriate penalties?

***Recommendation:***

1. The offense should be punishable as a Level 4 felony if the service provider is over 18 and the person subject to lawful detention is less than 18.
2. All other violations of this statute should be a Level 5 felony.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 5. (a) As used in this section, "service provider" means a public servant or other person employed by a governmental entity or another person who provides goods or services to a person who is subject to lawful detention.

(b) A service provider who knowingly or intentionally engages in sexual intercourse or deviate sexual conduct with a person who is subject to lawful detention commits sexual misconduct, a Class C felony.

(c) A service provider at least eighteen (18) years of age who knowingly or intentionally engages in sexual intercourse or deviate sexual conduct with a person who is:

- (1) less than eighteen (18) years of age; and
- (2) subject to lawful detention;

commits sexual misconduct, a Class B felony.

(d) It is not a defense that an act described in subsection (b) or (c) was consensual.

(e) This section does not apply to sexual intercourse or deviate sexual conduct between spouses.

**IMPERSONATING A FIREFIGHTER AT AN EMERGENCY INCIDENT AREA**  
**(Formerly I.C. 35-44-4-7)**  
**(Now I.C. 35-44.1-4-7)**

***Overview:***

A person who enters an emergency incident area while wearing, transporting or otherwise possessing a uniform, fire protective clothing or fire protective gear, with the intent to mislead as to his status, commits Impersonating a Dispatched Firefighter, a Class A misdemeanor. The offense is a Class D felony if a firefighter or person suffers bodily injury as a proximate cause of the non-firefighter entering the emergency incident area.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor, enhanced to a Level 6 felony if a firefighter or other person suffers bodily injury as a proximate cause of the non-firefighter entering the emergency incident area.

***Rationale:***

A level 6 felony enhancement is appropriate and proportional.

***Workgroup Position***

Consensus Recommendation.

***Current Statute:***

A person other than a firefighter who, with intent to mislead a firefighter or law enforcement officer as to the person's status as a dispatched firefighter, knowingly or intentionally enters an emergency incident area while wearing, transporting, or otherwise possessing a uniform, fire protective clothing, or fire protective gear commits a Class A misdemeanor. However, the offense is a Class D felony if, as a proximate result of the person entering the emergency incident area, a person or firefighter suffers bodily injury.

**TRANSPORTING AN ILLEGAL ALIEN**  
**(Formerly I.C. 35-44-5-3)**  
**(Now I.C. 35-44.1-5-3)**

***Overview:***

A person who transports or moves an illegal alien for the purpose of commercial or private financial gain and knowing or recklessly disregarding the fact that the alien has come into the United States and remained here in violation of the law commits Transporting an Illegal Alien, a Class A misdemeanor. The penalty is enhanced to a Class D felony if the individual is moving or transport more than nine illegal aliens.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor, enhanced to a Level 6 felony for transporting more than 9 illegal aliens.

***Rationale:***

1. A Level 6 felony enhancement is appropriate and proportional.

***Workgroup Position:***

Consensus Recommendation

***Current Statute:***

- (a) A person who knowingly or intentionally:

- (1) transports; or
- (2) moves;

an alien, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of the law commits transporting an illegal alien, a Class A misdemeanor.

- (b) If a violation under this section involves more than nine (9) aliens, the violation is a Class D felony.

**HARBORING AN ILLEGAL ALIEN**  
**(Formerly I.C. 35-44-5-4)**  
**(Now I.C. 35-44.1-5-4)**

***Overview:***

A person who knowingly or intentionally conceals, harbors or shields an alien from detection in any place, building or means of transportation for the purpose of commercial or financial gain and disregards the fact that the alien has entered into the United States and remained here in violation of the law, commits Harboring an Illegal Alien, a Class A misdemeanor. The penalty is enhanced to a Class D felony if a person conceals, harbors or shields more than nine aliens.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor and be enhanced to Felony level 6 if a person conceals, harbors or shields more than nine aliens.

***Rationale:***

A level 6 felony enhancement is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

- (a) A person who knowingly or intentionally:

- (1) conceals;
- (2) harbors; or
- (3) shields from detection;

an alien in any place, including a building or means of transportation, for the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law, commits harboring an illegal alien, a Class A misdemeanor.

- (b) If a violation under this section involves more than nine (9) aliens, the violation is a Class D felony.
- (c) A landlord that rents real property to a person who is an alien does not violate this section as a result of renting the property to the person.

I.C. 35-45

OFFENSES AGAINST PUBLIC HEALTH,  
ORDER, AND DECENCY

**RIOTING**  
**(I.C. 35-45-1-2)**

***Overview:***

Rioting occurs when a person who, being a member of an unlawful assembly, recklessly, knowingly, or intentionally engages in tumultuous conduct. It is a Class A misdemeanor. However, it is a Class D felony if committed while armed with a deadly weapon.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 6 if the person is armed with a deadly weapon.

***Rationale:***

The penalties are appropriate and proportional for this crime.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 2. A person who, being a member of an unlawful assembly, recklessly, knowingly, or intentionally engages in tumultuous conduct commits rioting, a Class A misdemeanor. However, the offense is a Class D felony if it is committed while armed with a deadly weapon.

*As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.69.*

**DISORDERLY CONDUCT**  
**(I.C. 35-45-1-3)**

**Overview:**

Disorderly conduct involves a person recklessly, knowingly, or intentionally engages in fighting or tumultuous conduct, makes unreasonable noise and continues to do so after being asked to stop, or disrupts a lawful assembly of persons. It is a Class B misdemeanor. However, Disorderly Conduct is a Class D felony if it committed in an airport or on the premises of an airport, or if it is committed within 500 feet of a funeral, burial, or memorial service.

**Issue:**

1. In which felony level does this crime belong?

**Recommendations:**

1. Felony level 6.

**Rationale:**

The penalties are appropriate and proportional for this crime.

**Workgroup Position:**

Consensus Recommendation.

**Current Statute:**

Sec. 3. (a) A person who recklessly, knowingly, or intentionally:

- (1) engages in fighting or in tumultuous conduct;
- (2) makes unreasonable noise and continues to do so after being asked to stop; or
- (3) disrupts a lawful assembly of persons;

commits disorderly conduct, a Class B misdemeanor.

(b) The offense described in subsection (a) is a Class D felony if it:

- (1) adversely affects airport security; and
- (2) is committed in an airport (as defined in IC 8-21-1-1) or on the premises of an airport, including in a parking area, a maintenance bay, or an aircraft hangar.

(c) The offense described in subsection (a) is a Class D felony if it:

- (1) is committed within five hundred (500) feet of:
  - (A) the location where a burial is being performed;
  - (B) a funeral procession, if the person described in subsection (a) knows that the funeral procession is taking place; or

(C) a building in which:

- (i) a funeral or memorial service; or
- (ii) the viewing of a deceased person;

is being conducted; and

- (2) adversely affects the funeral, burial, viewing, funeral procession, or memorial service.

*As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.70; P.L.92-1988, SEC.8; P.L.123-2002, SEC.40; P.L.3-2006, SEC.1.*

**INTIMIDATION**  
**(I.C. 35-45-2-1)**

**Overview:**

A person who communicates a threat to another person with the intent the other person will engage in conduct against their will or with the intent the other person will be in fear of retaliation for a prior lawful act or with the intent of causing a dwelling, a building, or another structure, or vehicle to be evacuated, commits Intimidation, a Class A misdemeanor.

Intimidation may be enhanced to a Class D felony if (1) the threat is to commit a forcible felony; (2) the person to whom the threat is communicated is a law enforcement officer, a judge or bailiff of any court, a witness (or the spouse or child of a witness) in any pending criminal proceeding against the person making the threat; (3) an employee of a school corporation, a community policing volunteer, an employee of the court, an employee of a probation department or an employee of a community corrections program.

Intimidation may be enhanced to a Class D felony if (1) the person communicating the threat has a prior unrelated conviction for an offense under this section concerning the same victim; or (2) the threat is communicated using property, including electric equipment or systems, of a school corporation or other governmental entity.

Intimidation may be enhanced to a Class C felony if, when communicating the threat, the person draws or uses a deadly weapon.

**Issue:**

1. In which felony level does this crime belong?

**Recommendations:**

1. Felony level 5 for Intimidation (using a deadly weapon), Felony level 6 for Intimidation (all other enhancements).

**Rationale:**

The penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

- (a) A person who communicates a threat to another person, with the intent:
  - (1) that the other person engage in conduct against the other person's will;
  - (2) that the other person be placed in fear of retaliation for a prior lawful act; or
  - (3) of causing:
    - (A) a dwelling, a building, or another structure; or
    - (B) a vehicle;to be evacuated; commits intimidation, a Class A misdemeanor.
- (b) However, the offense is a:
  - (1) Class D felony if:
    - (A) the threat is to commit a forcible felony;
    - (B) the person to whom the threat is communicated:
      - (i) is a law enforcement officer;
      - (ii) is a judge or bailiff of any court;
      - (iii) is a witness (or the spouse or child of a witness) in any pending criminal proceeding against the person making the threat;

- (iv) is an employee of a school corporation;
- (v) is a community policing volunteer;
- (vi) is an employee of a court;
- (vii) is an employee of a probation department; or
- (viii) is an employee of a community corrections program.

(C) the person has a prior unrelated conviction for an offense under this section concerning the same victim; or

(D) the threat is communicated using property, including electronic equipment or systems, of a school corporation or other governmental entity; and

(2) Class C felony if, while committing it, the person draws or uses a deadly weapon.

(c) "Threat" means an expression, by words or action, of an intention to:

- (1) unlawfully injure the person threatened or another person, or damage property;
- (2) unlawfully subject a person to physical confinement or restraint;
- (3) commit a crime;
- (4) unlawfully withhold official action, or cause such withholding;
- (5) unlawfully withhold testimony or information with respect to another person's legal claim or defense, except for a reasonable claim for witness fees or expenses;
- (6) expose the person threatened to hatred, contempt, disgrace, or ridicule;
- (7) falsely harm the credit or business reputation of the person threatened; or
- (8) cause the evacuation of a dwelling, a building, another structure, or a vehicle.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.71; Acts 1981, P.L.300, SEC.3; P.L.183-1984, SEC.6; P.L.325-1985, SEC.1; P.L.242-1993, SEC.3; P.L.164-1993, SEC.12; P.L.1-1994, SEC.169; P.L.241-2001, SEC.3; P.L.175-2003, SEC.3; P.L.3-2006, SEC.2, eff. March 2, 2006.

**PUBLIC INDINCENY**  
**(I.C. 35-45-4-1)**

**Overview:**

1. Public indecency occurs when a person knowingly or intentionally:
  - a. engages in sexual intercourse, or deviant sexual misconduct, or is naked with the intent to arouse himself or another or fondles his own genitals or someone else's genitals, in a public place (a Class A misdemeanor); or
  - b. when a person who is over 18, knowingly or intentionally appears in public in state of nudity to be seen by a person younger than 16 years of age (a Class A misdemeanor); or
  - c. when a person has the intent to be seen by persons other than invites or occupants in the act of sexual intercourse, deviate sexual conduct, fondling their own genital or the genitals of someone else or appears in a state of nudity (a Class C misdemeanor). The penalty may be enhanced to a Class D felony if the offender has a prior unrelated conviction.

**Issue:**

1. In which felony level does this crime belong?

**Recommendation:**

1. Felony level 6 if there is a prior conviction.

**Rationale:**

The penalties are appropriate and proportional.

**Workgroup Position:**

Consensus Recommendation

**Current Statute:**

- (a) A person who knowingly or intentionally, in a public place:
  - (1) engages in sexual intercourse;
  - (2) engages in deviate sexual conduct;
  - (3) appears in a state of nudity with the intent to arouse the sexual desires of the person or another person; or
  - (4) fondles the person's genitals or the genitals of another person;commits public indecency, a Class A misdemeanor.
- (b) A person at least eighteen (18) years of age who knowingly or intentionally, in a public place, appears in a state of nudity with the intent to be seen by a child less than sixteen (16) years of age commits public indecency, a Class A misdemeanor.
- (c) However, the offense under subsection (a) or subsection (b) is a Class D felony if the person who commits the offense has a prior unrelated conviction:
  - (1) under subsection (a) or (b); or
  - (2) in another jurisdiction, including a military court, that is substantially equivalent to an offense described in subsection (a) or (b).
- (d) As used in this section, "nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.
- (e) A person who, in a place other than a public place, with the intent to be seen by persons other than invitees and occupants of that place:

- (1) engages in sexual intercourse;
  - (2) engages in deviate sexual conduct;
  - (3) fondles the person's genitals or the genitals of another person; or
  - (4) appears in a state of nudity;
- where the person can be seen by persons other than invitees and occupants of that place commits indecent exposure, a Class C misdemeanor.

As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.76; P.L.189-1984, SEC.1; P.L.215-1997, SEC.1; P.L.121-2000, SEC.1; P.L.123-2003, SEC.2.

Definition:

Nudity means exposure of the human male or female genitals, pubic area, buttocks or female breast, specifically any part of the nipple, with less than fully opaque covering or showing of a covered male genital in a discernibly turgid state.

**PUBLIC NUILITY**  
**(I.C. 35-45-4-1.5)**

**Overview:**

A person who knowingly or intentionally appears in a public place in a state of nudity commits Public Nudity, which is a Class C misdemeanor. The offense becomes a Class B misdemeanor when the person has the intent to be seen by other people, and a Class A misdemeanor if the person appears in a state of nudity on school grounds or a public park. The crime is enhanced to a Class D felony if the person has a prior conviction under this statute.

**Issue(s):**

1. In which penalty level(s) does this crime belong?
2. Should the statute be streamlined for clarity?

**Recommendations:**

1. Recommend retaining the current misdemeanor penalties, with an enhancement to a Level 6 Felony if the person has a prior unrelated conviction.
2. The statute should be rewritten to strike redundant language.

*The following language is recommended:*

(a) As used in this section, "nudity" has the meaning set forth in section 1(d) [IC 35-45-4-1(d)] of this chapter.

(b) A person who knowingly or intentionally appears in a public place in a state of nudity commits public nudity, a Class C misdemeanor.

(c) A person who knowingly or intentionally appears in a public place in a state of nudity with the intent to be seen by another person commits a Class B misdemeanor.

~~However, the offense is a Class D felony if the person has a prior unrelated conviction under this subsection or under subsection (d).~~

(d) A person who knowingly or intentionally appears in a state of nudity:

(1) in or on school grounds;

(2) in a public park; or

(3) with the intent to arouse the sexual desires of the person or another person, in a department of natural resources owned or managed property;  
commits a Class A misdemeanor.

~~(e) However, the offense is a Class D felony if the person has a prior unrelated conviction under this subsection or under subsection (c) or (d).~~

**Rationale:**

The penalties are appropriate and proportional. However, the statute can be made more clear by striking redundant language.

**Workgroup Position:**

Consensus Recommendation

**Current Statute:**

(a) As used in this section, "nudity" has the meaning set forth in section 1(d) [IC 35-45-4-1(d)] of this chapter.

(b) A person who knowingly or intentionally appears in a public place in a state of nudity commits public nudity, a Class C misdemeanor.

(c) A person who knowingly or intentionally appears in a public place in a state of nudity with the intent to be seen by another person commits a Class B misdemeanor.

However, the offense is a Class D felony if the person has a prior unrelated conviction under this subsection or under subsection (d).

(d) A person who knowingly or intentionally appears in a state of nudity:

(1) in or on school grounds;

(2) in a public park; or

(3) with the intent to arouse the sexual desires of the person or another person, in a department of natural resources owned or managed property;

commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this subsection or under subsection (c).

***Definition:***

Nudity means exposure of the human male or female genitals, pubic area, buttocks or female breast, specifically any part of the nipple, with less than a fully opaque covering or showing of a covered male genital in a discernibly turgid state.

**PROSTITUTION**  
**(35-45-4-2)**

***Overview:***

Prostitution is a Class A misdemeanor. However, it is a Class D felony if the person has two prior convictions under the section.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor, with enhancement to Felony level 6 for two prior convictions.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 2. A person who knowingly or intentionally:

(1) performs, or offers or agrees to perform, sexual intercourse or deviate sexual conduct; or

(2) fondles, or offers or agrees to fondle, the genitals of another person;

for money or other property commits prostitution, a Class A misdemeanor. However, the offense is a Class D felony if the person has two (2) prior convictions under this section.

**PATRONIZING A PROSTITUTE**  
**(35-45-4-3)**

***Overview:***

Patronizing a Prostitute is a Class A misdemeanor. However, it is a Class D felony if the person has two prior convictions under the section.

***Issue:***

1. In which penalty level does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor, with an enhancement to Felony Level 6 for two prior convictions.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 3. A person who knowingly or intentionally pays, or offers or agrees to pay, money or other property to another person:

- (1) for having engaged in, or on the understanding that the other person will engage in, sexual intercourse or deviate sexual conduct with the person or with any other person; or
- (2) for having fondled, or on the understanding that the other person will fondle, the genitals of the person or any other person;

commits patronizing a prostitute, a Class A misdemeanor. However, the offense is a Class D felony if the person has two (2) prior convictions under this section.

**PROMOTING PROSTITUTION**  
**(35-45-4-4)**

***Overview:***

A person who compels, procures or controls prostitution of another person or persons commits Promoting Prostitution, a Class C felony. However, it is a Class B felony if the person enticed or compelled to become a prostitute is under 18 years of age.

***Issue:***

1. In which penalty levels does this crime belong?

***Recommendation:***

1. Level 5 Felony; and Level 4 Felony when the person compelled is under 18.

***Rationale:***

These penalties are appropriate and proportional with the human trafficking statute.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 4. A person who:

- (1) knowingly or intentionally entices or compels another person to become a prostitute;
- (2) knowingly or intentionally procures, or offers or agrees to procure, a person for another person for the purpose of prostitution;
- (3) having control over the use of a place, knowingly or intentionally permits another person to use the place for prostitution;
- (4) receives money or other property from a prostitute, without lawful consideration, knowing it was earned in whole or in part from prostitution; or
- (5) knowingly or intentionally conducts or directs another person to a place for the purpose of prostitution;

commits promoting prostitution, a Class C felony. However, the offense is a Class B felony under subdivision (1) if the person enticed or compelled is under eighteen (18) years of age.

**VOYEURISM; PUBLIC VOYEURISM**  
**(35-45-4-5)**

**Overview:**

A person who knowingly or intentionally peeps or goes upon the land of another with the intent to peep into an occupied dwelling of another person, or peeps into an area where an occupant of the area reasonably can be expected to disrobe, including restrooms, baths, showers, and dressing rooms, without the consent of the other person commits Voyeurism, a Class B misdemeanor. However, the offense is a Class D felony if committed with a camera or the person has a prior conviction under this section. Public Voyeurism is a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior conviction or transmits/publishes the image to another person.

**Issue(s):**

1. Is a Class D/Level 6 felony an appropriate penalty for Voyeurism when the offense is committed with a camera or the person has a prior conviction under this section?
2. Is a Class D felony/Level 6 an appropriate penalty for Public Voyeurism if the person has a prior conviction or transmits/publishes the image to another person?

**Recommendation:**

1. The crime should be a Level 6 felony.
2. The crime should be a Level 6 felony.

**Rationale:**

The penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

Sec. 5. (a) The following definitions apply throughout this section:

- (1) "Camera" means a camera, a video camera, a device that captures a digital image, or any other type of video recording device.
- (2) "Peep" means any looking of a clandestine, surreptitious, prying, or secretive nature.
- (3) "Private area" means the naked or undergarment clad genitals, pubic area, or buttocks of an individual.

(b) A person:

- (1) who knowingly or intentionally:
  - (A) peeps; or
  - (B) goes upon the land of another with the intent to peep; into an occupied dwelling of another person; or
- (2) who knowingly or intentionally peeps into an area where an occupant of the area reasonably can be expected to disrobe, including:
  - (A) restrooms;
  - (B) baths;
  - (C) showers; and
  - (D) dressing rooms;

without the consent of the other person, commits voyeurism, a Class B misdemeanor.

(c) However, the offense under subsection (b) is a Class D felony if:

- (1) it is knowingly or intentionally committed by means of a camera; or
- (2) the person who commits the offense has a prior unrelated conviction:

- (A) under this section; or
- (B) in another jurisdiction, including a military court, for an offense that is substantially similar to an offense described in this section.

(d) A person who:

- (1) without the consent of the individual; and
- (2) with intent to peep at the private area of an individual; peeps at the private area of an individual and records an image by means of a camera commits public voyeurism, a Class A misdemeanor.

(e) The offense under subsection (d) is a Class D felony if the person has a prior unrelated conviction under this section or in another jurisdiction, including a military court, for an offense that is substantially similar to an offense described in this section, or if the person:

- (1) publishes the image;
- (2) makes the image available on the Internet; or
- (3) transmits or disseminates the image to another person.

(f) It is a defense to a prosecution under subsection (d) that the individual deliberately exposed the individual's private area.

**UNLAWFUL GAMBLING**  
**(I.C. 35-45-5-2)**

**Overview:**

Unlawful Gambling involves a person knowingly or intentionally engaging in gambling. It is a Class B misdemeanor. However, it is a Class D felony if it involves a person knowingly or intentionally using the Internet to engage in Unlawful Gambling in Indiana or with a person located in Indiana.

**Issue:**

1. In which felony level does this crime belong?

**Recommendations:**

1. Felony level 6 if it involves using the Internet in Indiana or with a person located in Indiana.

**Rationale:**

The penalties are appropriate and proportional for this crime.

**Workgroup Position:**

Consensus Recommendation.

**Current Statute:**

Sec. 2. (a) A person who knowingly or intentionally engages in gambling commits unlawful gambling.

(b) Except as provided in subsection (c), unlawful gambling is a Class B misdemeanor.

(c) An operator who knowingly or intentionally uses the Internet to engage in unlawful gambling:

(1) in Indiana; or

(2) with a person located in Indiana;

commits a Class D felony.

*As added by Acts 1976, P.L. 148, SEC.5. Amended by Acts 1977, P.L.340, SEC.81; P.L.70-2005, SEC.3*

(d) "Gambling" means risking money or other property for gain, contingent in whole or in part upon lot, chance, or the operation of a gambling device, but it does not include participating in:

(1) bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries; or

(2) bona fide business transactions that are valid under the law of contracts.

**PROFESSIONAL GAMBLING**  
**(I.C. 35-45-5-3)**

**Overview:**

Professional Gambling involves a person knowingly or intentionally operating a professional gambling operation, including operating over the Internet. It is a Class C felony if the person has a prior unrelated conviction for Professional Gambling.

**Issue:**

1. In which felony level does this crime belong?

**Recommendations:**

1. Felony level 6; Felony level 5 if the person has a prior conviction.

**Rationale:**

The penalties are appropriate and proportional for this crime.

**Workgroup Position:**

Consensus Recommendation.

**Current Statute:**

Sec. 3. (a) A person who knowingly or intentionally:

- (1) engages in pool-selling;
- (2) engages in bookmaking;
- (3) maintains, in a place accessible to the public, slot machines, one-ball machines or variants thereof, pinball machines that

award anything other than an immediate and unrecorded right of replay, roulette wheels, dice tables, or money or merchandise pushcards, punchboards, jars, or spindles;

- (4) conducts lotteries or policy or numbers games or sells chances therein;
- (5) conducts any banking or percentage games played with cards, dice, or counters, or accepts any fixed share of the stakes therein; or

(6) accepts, or offers to accept, for profit, money, or other property risked in gambling; commits professional gambling, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this subsection.

(b) An operator who knowingly or intentionally uses the Internet to:

- (1) engage in pool-selling:
  - (A) in Indiana; or
  - (B) in a transaction directly involving a person located in Indiana;
- (2) engage in bookmaking:
  - (A) in Indiana; or
  - (B) in a transaction directly involving a person located in Indiana;
- (3) maintain, on an Internet site accessible to residents of Indiana, the equivalent of:
  - (A) slot machines;
  - (B) one-ball machines or variants of one-ball machines;
  - (C) pinball machines that award anything other than an immediate and unrecorded right of replay;
  - (D) roulette wheels;
  - (E) dice tables; or
  - (F) money or merchandise pushcards, punchboards, jars, or spindles;
- (4) conduct lotteries or policy or numbers games or sell chances in lotteries or policy or numbers games:

- (A) in Indiana; or

- (B) in a transaction directly involving a person located in Indiana;
- (5) conduct any banking or percentage games played with the computer equivalent of cards, dice, or counters, or accept any fixed share of the stakes in those games:
  - (A) in Indiana; or
  - (B) in a transaction directly involving a person located in Indiana; or
- (6) accept, or offer to accept, for profit, money or other property risked in gambling:
  - (A) in Indiana; or
  - (B) in a transaction directly involving a person located in Indiana;

commits professional gambling over the Internet, a Class D felony.

*As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.82; P.L.70-2005, SEC.4; P.L.227-2007, SEC.65.*

(d) "Gambling" means risking money or other property for gain, contingent in whole or in part upon lot, chance, or the operation of a gambling device, but it does not include participating in:

- (1) bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries; or
- (2) bona fide business transactions that are valid under the law of contracts.

**MAINTAINING A GAMBLING SITE  
(I.C. 35-45-5-3.5)**

**Overview:**

A person who knowingly or intentionally accepts or offers to accept for profit, money, or other property risked in gambling on an electronic gaming device possessed by the person commits Maintaining a Professional Gambling Site, a Class D felony. However, it is a Class C felony if the person has a prior unrelated conviction for this crime. A person who has an antique slot machine (one that is at least 40 years old and is possessed and used for decorative, historic, or nostalgic purposes) in his home and does not use it for profit is exempt from criminal liability under the statute.

**Issue:**

1. In which felony level(s) does this crime belong?

**Recommendations:**

1. The offense should be a Level 6 felony, enhanced to a Level 5 felony if the person has a prior conviction for Maintaining a Professional Gambling Site.

**Rationale:**

The penalties are appropriate and proportional for this crime.

**Workgroup Position:**

Consensus recommendation.

**Current Statute:**

Sec. 3.5. (a) Except as provided in subsection (c), a person who possesses an electronic gaming device commits a Class A infraction.

(b) A person who knowingly or intentionally accepts or offers to accept for profit, money, or other property risked in gambling on an electronic gaming device possessed by the person commits maintaining a professional gambling site, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this subsection.

(c) Subsection (a) does not apply to a person who:

- (1) possesses an antique slot machine;
- (2) restricts display and use of the antique slot machine to the person's private residence; and
- (3) does not use the antique slot machine for profit.

(d) As used in this section, "antique slot machine" refers to a slot machine that is:

- (1) at least forty (40) years old; and
- (2) possessed and used for decorative, historic, or nostalgic purposes.

*As added by P.L.227-2007, SEC.66.*

(d) "Gambling" means risking money or other property for gain, contingent in whole or in part upon lot, chance, or the operation of a gambling device, but it does not include participating in:

- (1) bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries; or
- (2) bona fide business transactions that are valid under the law of contracts.

(b) "Electronic gaming device" means any electromechanical device, electrical device, or machine that satisfies at least one (1) of the following requirements:

- (1) It is a contrivance which for consideration affords the player an opportunity to obtain money or other items of value, the award of which is determined by chance even if accomplished by some skill, whether or not the prize is automatically paid by the contrivance.

(2) It is a slot machine or any simulation or variation of a slot machine.

(3) It is a matchup or lineup game machine or device operated for consideration, in which two (2) or more numerals, symbols, letters, or icons align in a winning combination on one (1) or more lines vertically, horizontally, diagonally, or otherwise, without assistance by the player. The use of a skill stop is not considered assistance by the player.

(4) It is a video game machine or device operated for consideration to play poker, blackjack, any other card game, keno, or any simulation or variation of these games, including any game in which numerals, numbers, pictures, representations, or symbols are used as an equivalent or substitute for the cards used in these games.

The term does not include a toy crane machine or any other device played for amusement that rewards a player exclusively with a toy, a novelty, candy, other noncash merchandise, or a ticket or coupon redeemable for a toy, a novelty, or other noncash merchandise that has a wholesale value of not more than the lesser of ten (10) times the amount charged to play the amusement device one (1) time or twenty-five dollars (\$25).

**PROMOTING PROFESSIONAL GAMBLING**  
**(I.C. 35-45-5-4)**

***Overview:***

A person who manufactures, possesses, buys, sells, leases, repairs, offers, or solicits an interest in a gambling device, or transmits or receives or maintains equipment for transmitting or receiving gambling information, commits Promoting Professional Gambling. A person who has control over a place or venue and allows that place or venue to be used for professional gambling also commits the offense, which is a Class D felony. It is a Class C felony if the person has a prior conviction for Promoting Professional Gambling. A boat manufacturer who has a gambling device in a boat and does not make it available to the public to use for profit is exempt from criminal liability under the statute. A person who has an antique slot machine (one that is at least 40 years old and is possessed and used for decorative, historic, or nostalgic purposes) in his home and does not use it for profit is also exempt from criminal liability under the statute.

***Issue:***

1. In which felony level does this crime belong?

***Recommendations:***

1. Felony level 6; Felony level 5 if the person has a prior conviction for Promoting Professional Gambling.

***Rationale:***

The penalties are appropriate and proportional for this crime.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 4. (a) Except as provided in subsections (b) and (d), a person who:

(1) knowingly or intentionally owns, manufactures, possesses, buys, sells, rents, leases, repairs, or transports a gambling device, or offers or solicits an interest in a gambling device;

(2) before a race, game, contest, or event on which gambling may be conducted, knowingly or intentionally transmits or receives gambling information by any means, or knowingly or intentionally installs or maintains equipment for the transmission or receipt of gambling information; or

(3) having control over the use of a place, knowingly or intentionally permits another person to use the place for professional gambling;

commits promoting professional gambling, a Class D felony. However, the offense is a Class C felony if the person has a prior unrelated conviction under this section.

(b) Subsection (a)(1) does not apply to a boat manufacturer who:

(1) transports or possesses a gambling device solely for the purpose of installing that device in a boat that is to be sold and transported to a buyer; and

(2) does not display the gambling device to the general public or make the device available for use in Indiana.

(c) When a public utility is notified by a law enforcement agency acting within its jurisdiction that any service, facility, or equipment furnished by it is being used or will be used to violate this section, it shall discontinue or refuse to furnish that service, facility, or equipment, and no damages, penalty, or forfeiture, civil or criminal, may be found against a public utility for an act done in compliance with such a notice.

This subsection does not prejudice the right of a person affected by it to secure an appropriate determination, as otherwise provided by law, that the service, facility, or equipment should not be discontinued or refused, or should be restored.

(d) Subsection (a)(1) does not apply to a person who:

- (1) possesses an antique slot machine;
- (2) restricts display and use of the antique slot machine to the person's private residence; and
- (3) does not use the antique slot machine for profit.

(e) As used in this section, "antique slot machine" refers to a slot machine that is:

- (1) at least forty (40) years old; and
- (2) possessed and used for decorative, historic, or nostalgic purposes.

*As added by Acts 1976, P.L.148, SEC.5. Amended by Acts 1977, P.L.340, SEC.83; P.L.164-1990, SEC.1; P.L.20-1995, SEC.19; P.L.227-2007, SEC.67.*

(d) "Gambling" means risking money or other property for gain, contingent in whole or in part upon lot, chance, or the operation of a gambling device, but it does not include participating in:

- (1) bona fide contests of skill, speed, strength, or endurance in which awards are made only to entrants or the owners of entries; or
- (2) bona fide business transactions that are valid under the law of contracts.

(e) "Gambling device" means:

- (1) a mechanism by the operation of which a right to money or other property may be credited, in return for consideration, as the result of the operation of an element of chance;
- (2) a mechanism that, when operated for a consideration, does not return the same value or property for the same consideration upon each operation;
- (3) a mechanism, furniture, fixture, construction, or installation designed primarily for use in connection with professional gambling;
- (4) a policy ticket or wheel; or
- (5) a subassembly or essential part designed or intended for use in connection with such a device, mechanism, furniture, fixture, construction, or installation.

In the application of this definition, an immediate and unrecorded right to replay mechanically conferred on players of pinball machines and similar amusement devices is presumed to be without value.

(f) "Gambling information" means:

- (1) a communication with respect to a wager made in the course of professional gambling; or
- (2) information intended to be used for professional gambling.

**RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO)**  
**(I.C. 35-45-6-2)**

***Overview:***

A person who receives proceeds derived from a pattern of racketeering activity and who uses or invests those proceeds to acquire an interest in property or to operate an enterprise; or who acquires an interest in or control of property of an enterprise through a pattern of racketeering activity; or who, as a person associated with an enterprise, participates in the activities of that enterprise through a pattern of racketeering activity; commits Corrupt Business Influence, a Class C felony.

***Issue:***

1. What is the proper felony level for this crime?

***Recommendation:***

1. The offense should be penalized as a Level 5 felony.

***Rationale:***

This penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

(c) "Enterprise" means:

(1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or

(2) a union, an association, or a group, whether a legal entity or merely associated in fact.

(d) "Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

(e) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

(1) A provision of IC 23-19, or of a rule or order issued under IC 23-19.

(2) A violation of IC 35-45-9.

(3) A violation of IC 35-47.

(4) A violation of IC 35-49-3.

(5) Murder (IC 35-42-1-1).

- (6) Battery as a Class C felony (IC 35-42-2-1).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Human and sexual trafficking crimes (IC 35-42-3.5).
- (9) Child exploitation (IC 35-42-4-4).
- (10) Robbery (IC 35-42-5-1).
- (11) Carjacking (IC 35-42-5-2).
- (12) Arson (IC 35-43-1-1).
- (13) Burglary (IC 35-43-2-1).
- (14) Theft (IC 35-43-4-2).
- (15) Receiving stolen property (IC 35-43-4-2).
- (16) Forgery (IC 35-43-5-2).
- (17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).
- (18) Bribery (IC 35-44-1-1).
- (19) Official misconduct (IC 35-44-1-2).
- (20) Conflict of interest (IC 35-44-1-3).
- (21) Perjury (IC 35-44-2-1).
- (22) Obstruction of justice (IC 35-44-3-4).
- (23) Intimidation (IC 35-45-2-1).
- (24) Promoting prostitution (IC 35-45-4-4).
- (25) Professional gambling (IC 35-45-5-3).
- (26) Maintaining a professional gambling site (IC 35-45-5-3.5(b)).
- (27) Promoting professional gambling (IC 35-45-5-4).
- (28) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (29) Dealing in or manufacturing methamphetamine (IC 35-48-4-1.1).
- (30) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (31) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (32) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (33) Dealing in marijuana, hash oil, hashish, salvia, or a synthetic cannabinoid (IC 35-48-4-10).
- (34) Money laundering (IC 35-45-15-5).
- (35) A violation of IC 35-47.5-5.
- (36) A violation of any of the following:
  - (A) IC 23-14-48-9.
  - (B) IC 30-2-9-7(b).
  - (C) IC 30-2-10-9(b).
  - (D) IC 30-2-13-38(f).
- (37) Practice of law by a person who is not an attorney (IC 33-43-2-1).

Sec. 2. A person:

- (1) who has knowingly or intentionally received any proceeds directly or indirectly derived from a pattern of racketeering activity, and who uses or invests those proceeds or the proceeds derived from them to acquire an interest in property or to establish or to operate an enterprise;
- (2) who through a pattern of racketeering activity, knowingly or intentionally acquires or maintains, either directly or indirectly, an interest in or control of property or an enterprise; or
- (3) who is employed by or associated with an enterprise, and who knowingly or

intentionally conducts or otherwise participates in the activities of that enterprise through a pattern of racketeering activity;  
commits corrupt business influence, a Class C felony.

## **LOANSHARKING (I.C. 35-45-7-2)**

**Overview:**

A person who knowingly or intentionally loans property at a rate of consideration more than two times the rate specified by Indiana Statute (IC 24-4.5-3-508(2)(a)(i)) commits Loansharking, a Class D felony. However, Loansharking is a Class C felony if force or the threat of force is used to collect or to attempt to collect any of the property loaned or for the consideration of the loan.

**Issue(s):**

1. In which felony level does this crime belong?

**Recommendations:**

1. Felony level 6; Felony level 5 if force or the threat of force is involved.

**Rationale:**

The penalties are appropriate and proportional for this crime.

**Workgroup Position:**

Consensus Recommendation.

**Current Statute:**

Sec. 2. A person who, in exchange for the loan of any property, knowingly or intentionally receives or contracts to receive from another person any consideration, at a rate greater than two (2) times the rate specified in IC 24-4.5-3-508(2)(a)(i), commits loansharking, a Class D felony. However, loansharking is a Class C felony if force or the threat of force is used to collect or to attempt to collect any of the property loaned or any of the consideration for the loan.

*As added by Acts 1980, P.L.207, SEC.1.*

### **IC 35-45-7-1**

#### **Definitions**

Sec. 1. As used in this chapter:

"Loan" means any transaction described in section 3 of this chapter, whether or not the transaction is in the form of a loan as defined in IC 24-4.5-3-106, and without regard to whether the person making the loan is regularly engaged in making consumer loans, consumer credit sales, or consumer leases.

"Principal" includes the monetary value of property which has been loaned from one (1) person to another person.

"Rate" means the monetary value of the consideration received per annum or due per annum, calculated according to the actuarial method on the unpaid balance of the principal.

*As added by Acts 1980, P.L.207, SEC.1. Amended by P.L.247-1983, SEC.24.*

**CONSUMER PRODUCT TAMPERING; OFFENSES**  
**(35-45-8-3)**

***Overview:***

A person who recklessly, knowingly, or intentionally introduces a poison, a harmful substance, or a harmful foreign object into a consumer product, or with intent to mislead a consumer of a consumer product, tampers with the labeling of a consumer product that has been introduced into commerce commits Consumer Product Tampering, a Class D felony. However, the offense is a Class C felony if it results in harm to another person, and it is Class B felony if it results in serious bodily injury.

***Issue:***

1. In which felony level(s) does this crime belong?

***Recommendation:***

1. Felony level 6. However, the offense should be a Level 5 felony if it results in harm to another person. The offense should be a Level 4 felony if it results in serious bodily injury.

***Rationale:***

The recommended penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 3. A person who:

- (1) recklessly, knowingly, or intentionally introduces a poison, a harmful substance, or a harmful foreign object into a consumer product; or
- (2) with intent to mislead a consumer of a consumer product, tampers with the labeling of a consumer product;

that has been introduced into commerce commits consumer product tampering, a Class D felony. However, the offense is a Class C felony if it results in harm to a person, and it is a Class B felony if it results in serious bodily injury to another person.

**CRIMINAL GANG ACTIVITY, INTIMIDATION, RECRUITMENT**  
**(I.C. 35-45-9-3, 4, 5)**  
**CRIMINAL GANG SENTENCING ENHANCEMENT**  
**(I.C. 35-50-2-15)**

***Overview:***

Criminal Gang Activity: A person who knowingly or intentionally actively participates in a criminal gang commits criminal gang activity, a Class D felony. (I.C. 35-45-9-3)

Criminal Gang Intimidation: A person who threatens another person because the other person refuses to join a criminal gang, or has withdrawn from a criminal gang, commits criminal gang intimidation, a Class C felony. (I.C. 35-45-9-4)

Criminal Gang Recruitment: A person who knowingly or intentionally solicits, recruits, entices, or intimidates another individual to join a criminal gang commits criminal gang recruitment, a Class D felony. However, the offense is a Class C felony if it occurs within 1,000 feet of a school, or the person recruited is under age 18. (I.C. 35-45-9-5)

Criminal Gang Sentencing Enhancement: A person who has committed a felony (other than Criminal Gang Activity) may see his sentence enhanced if the State can prove that the person was a member of a criminal gang when he committed the offense, and that he committed it at the direction of or in affiliation with a criminal gang. If the court or jury makes this finding, the court must sentence the defendant to an additional, consecutive sentence equal to the sentence for the single felony of which he was convicted in the underlying case; or sentence the defendant to an additional, consecutive sentence equal to the longest sentence he receives for multiple felonies of which he was convicted in the underlying case. (I.C. 35-50-2-15)

***Issues:***

1. In what penalty level(s) do these crimes belong?
2. Can the statutes be clarified in such a way that evidence of the relationship between the commission of crimes and gang activity can be more clearly understood to constitute gang-related activity?
3. Are there any gaps in the statutes in terms of actions that should be punished as gang activity but are currently not included?

***Recommendations:***

1. Participation in a criminal gang should be a Level 6 felony. Criminal gang intimidation should be a Level 5 felony. Criminal gang recruitment should be a Level 6 felony, enhanced to a level 5 felony if the offense occurs within one thousand (1,000) feet of school property; or the individual who is solicited, recruited, enticed, or intimidated is less than 18 years of age.
2. Language should be added providing that proof that the criminal activity promoted or furthered the interests of a criminal gang would provide sufficient evidence of gang-related activity, both in the Criminal Gang Activity statute and in the Sentencing Enhancement statute.
3. I.C. 35-45-9-4 should be amended to include a person who threatens another person not only because he has withdrawn from a gang, but also because he wishes to withdraw. Similarly, I.C.

35-45-9-5 should be amended to include a person who recruits or intimidates another person not only to join a criminal gang, but also to remain in a criminal gang.

*The following language is suggested:*

#### **IC 35-45-9-3**

##### **Participation in criminal gang; offense**

Sec. 3. A person who knowingly or intentionally actively participates in ~~a criminal gang, an activity committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purposes of increasing a person's own standing or position within a criminal gang,~~ commits criminal gang activity, a ~~Class-D~~ **Level 6** felony.

#### **IC 35-45-9-4**

##### **Criminal gang intimidation**

Sec. 4. A person who threatens another person because the other person:

- (1) refuses to join a criminal gang; or
  - (2) has withdrawn **or wishes to withdraw** from a criminal gang;
- commits criminal gang intimidation, a ~~Class-C~~ **Level 5** felony.

#### **IC 35-45-9-5**

##### **Criminal gang recruitment**

Sec. 5. (a) Except as provided in subsection (b), an individual who knowingly or intentionally solicits, recruits, entices, or intimidates another individual to join a criminal gang **or remain in a criminal gang** commits criminal gang recruitment, a ~~Class-D~~ **Level 6** felony.

(b) The offense under subsection (a) is a ~~Class-C~~ **Level 5** felony if:

- (1) the solicitation, recruitment, enticement, or intimidation occurs within one thousand (1,000) feet of school property; or
- (2) the individual who is solicited, recruited, enticed, or intimidated is less than eighteen (18) years of age.

#### **IC 35-50-2-15**

##### **Criminal gang enhancement**

Sec. 15. (a) This section does not apply to an individual who is convicted of a felony offense under IC 35-45-9-3.

(b) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed a felony offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person ~~knowingly or intentionally~~:

- (1) **knowingly or intentionally** was a member of a criminal gang while committing the offense; and
- ~~(2)~~
  - (i) committed the felony offense at the direction of or in affiliation with a criminal gang, or
  - (ii) **committed the felony offense with the intent to benefit, promote, or further the interests of a criminal gang, or for the purposes of increasing the person's own standing or position within a criminal gang.**

***Rationale:***

The penalties are appropriate and proportional. However, the statutes can be improved to better capture the activities that are in fact gang-related activities, as well as to capture additional behavior in Sections 4 and 5 that are not currently covered.

Concern has been expressed by prosecutors that the statute is difficult to use and could be more clearly defined; it is difficult to prove that a person is an active participant in a gang without greater clarity of language in the statute. The cases of *G.R. v. State*, 893 N.E.2<sup>nd</sup> 774 (Ind.Ct.App., 2001) and *Ferrell v. State*, 746 N.E.2<sup>nd</sup> 48 (Ind.S.Ct., 2001) have found evidence insufficient to support a conviction for Criminal Gang Activity where, for example, a defendant had a Vice Lords tattoo, but was not found to be acting in furtherance of the goals of the gang when he committed the underlying criminal offense (*Ferrell v. State, supra*).

The statutes of other states (in particular California, Michigan, Illinois and Florida, all of which have large urban centers with a great deal of criminal gang activity) were studied in an effort to improve on Indiana's statute. The State of Florida, in particular, was a source of the improvements that are being recommended for IC 35-45-9-3 and IC 35-50-2-15.

It has also been suggested that language be added to indicate that when the activities are committed with the effect of benefiting the gang, as opposed to intent to benefit the gang, they should also be penalized as criminal gang activity. However, this approach could result in punishing as gang-related activity actions that inadvertently benefit a gang. For example, a person might receive a gang-related sentence enhancement for shooting a person who is a principal in a gang for reasons unrelated to his gang membership (e.g., a lovers' triangle situation), which activity would have the effect of benefiting a different gang though it was not intended by the offender to do so.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

**IC 35-45-9-1**

**"Criminal gang"**

Sec. 1. As used in this chapter, "criminal gang" means a group with at least three (3) members that specifically:

(1) either:

(A) promotes, sponsors, or assists in; or

(B) participates in; or

(2) requires as a condition of membership or continued membership;

the commission of a felony or an act that would be a felony if committed by an adult or the offense of battery (IC 35-42-2-1).

*As added by P.L.180-1991, SEC.11. Amended by P.L.140-1994, SEC.5; P.L.192-2007, SEC.9.*

### **IC 35-45-9-2**

#### **"Threatens"**

Sec. 2. As used in this chapter, "threatens" includes a communication made with the intent to harm a person or the person's property or any other person or the property of another person.

*As added by P.L.180-1991, SEC.11.*

### **IC 35-45-9-3**

#### **Participation in criminal gang; offense**

Sec. 3. A person who knowingly or intentionally actively participates in a criminal gang commits criminal gang activity, a Class D felony.

*As added by P.L.180-1991, SEC.11.*

### **IC 35-45-9-4**

#### **Threats; refusal to join or withdrawal from gang; intimidation offense**

Sec. 4. A person who threatens another person because the other person:

- (1) refuses to join a criminal gang; or
- (2) has withdrawn from a criminal gang;

commits criminal gang intimidation, a Class C felony.

*As added by P.L.180-1991, SEC.11.*

### **IC 35-45-9-5**

#### **Criminal gang recruitment**

Sec. 5. (a) Except as provided in subsection (b), an individual who knowingly or intentionally solicits, recruits, entices, or intimidates another individual to join a criminal gang commits criminal gang recruitment, a Class D felony.

(b) The offense under subsection (a) is a Class C felony if:

- (1) the solicitation, recruitment, enticement, or intimidation occurs within one thousand (1,000) feet of school property; or
- (2) the individual who is solicited, recruited, enticed, or intimidated is less than eighteen (18) years of age.

*As added by P.L.192-2007, SEC.10.*

### **IC 35-50-2-15**

#### **Criminal gang enhancement**

Sec. 15. (a) This section does not apply to an individual who is convicted of a felony offense under IC 35-45-9-3.

(b) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed a felony offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally:

- (1) was a member of a criminal gang while committing the offense; and
- (2) committed the felony offense at the direction of or in affiliation with a criminal gang.

(c) If the person is convicted of the felony offense in a jury trial, the jury shall reconvene to hear evidence in the enhancement hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the enhancement hearing.

(d) If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds

that the state has proved beyond a reasonable doubt that the person knowingly or intentionally was a member of a criminal gang while committing the felony offense and committed the felony offense at the direction of or in affiliation with a criminal gang as described in subsection (b), the court shall:

(1) sentence the person to an additional fixed term of imprisonment equal to the sentence imposed for the underlying felony, if the person is sentenced for only one (1) felony; or

(2) sentence the person to an additional fixed term of imprisonment equal to the longest sentence imposed for the underlying felonies, if the person is being sentenced for more than one (1) felony.

(e) A sentence imposed under this section shall run consecutively to the underlying sentence.

(f) A term of imprisonment imposed under this section may not be suspended.

(g) For purposes of subsection (c), evidence that a person was a member of a criminal gang or committed a felony at the direction of or in affiliation with a criminal gang may include expert testimony pursuant to the Indiana Rules of Evidence that may be admitted to prove that particular conduct, status, and customs are indicative of criminal gang activity. The expert testimony may include the following:

(1) Characteristics of persons who are members of criminal gangs.

(2) Descriptions of rivalries between criminal gangs.

(3) Common practices and operations of criminal gangs.

(4) Behavior of criminal gangs.

(5) Terminology used by members of criminal gangs.

(6) Codes of conduct, including criminal conduct, of particular criminal gangs.

(7) Types of crimes that are likely to be committed by a particular criminal gang.

*As added by P.L.109-2006, SEC.3.*

**STALKING**  
**(35-45-10-5)**

***Overview:***

A person who engages in a knowing or intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened commits Stalking, a Class D felony. The offense is a Class C felony if the person stalks a victim and makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of sexual battery, serious bodily injury, or death, violates a no contact order or protective order, or the stalking occurs after a criminal complaint has been filed and the person has actual notice of the complaint. Stalking is a Class B felony if the acts were committed with a deadly weapon or there is an unrelated conviction for an offense under this same section against the same victim. Additionally, the court can reduce a Class D felony to a Class A misdemeanor for sentencing purposes. The court can also reduce a Class C felony to a Class D felony.

***Issues:***

1. Should the court have the ability to reduce penalties?
2. Are the current penalties for stalking appropriate?
3. Would it be more appropriate to use the term “Native American” rather than “Indian”?

***Recommendation:***

1. The language giving the court the authority to reduce the penalties for this offense should be stricken from the statute.
2. The penalty for the offense should be a Level 6 felony, enhanced to a Level 5 felony in the case of the enhancements now resulting in a Class C felony, and enhanced to a Level 4 felony for a prior offense or use of a deadly weapon.
3. It is recommended that the Legislative Services Agency ensure consistency in the use of the term “Indian” or “Native American” throughout the entire Indiana Code.

*The following language is recommended:*

- Sec. 5. (a) A person who stalks another person commits stalking, a ~~Class D~~ **Level 6** felony.
- (b) The offense is a ~~Class C~~ **Level 5** felony if at least one (1) of the following applies:
- (1) A person:
    - (A) stalks a victim; and
    - (B) makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of:
      - (i) sexual battery (as defined in IC 35-42-4-8);
      - (ii) serious bodily injury; or
      - (iii) death.
  - (2) A protective order to prevent domestic or family violence, a no contact order, or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:
    - (A) IC 31-15 and IC 34-26-5 or IC 31-1-11.5 before its repeal (dissolution of marriage and legal separation).
    - (B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal (delinquent children and children in need of services).

- (C) IC 31-32 or IC 31-6-7 before its repeal (procedure in juvenile court).
  - (D) IC 34-26-5 or IC 34-26-2 and IC 34-4-5.1 before their repeal (protective order to prevent abuse).
  - (E) IC 34-26-6 (workplace violence restraining orders).
- (3) The person's stalking of another person violates an order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion if the person has been given actual notice of the order.
- (4) The person's stalking of another person violates a no contact order issued as a condition of probation if the person has been given actual notice of the order.
- (5) The person's stalking of another person violates a protective order issued under IC 31-14-16-1 and IC 34-26-5 in a paternity action if the person has been given actual notice of the order.
- (6) The person's stalking of another person violates an order issued in another state that is substantially similar to an order described in subdivisions (2) through (5) if the person has been given actual notice of the order.
- (7) The person's stalking of another person violates an order that is substantially similar to an order described in subdivisions (2) through (5) and is issued by an Indian:
- (A) tribe;
  - (B) band;
  - (C) pueblo;
  - (D) nation; or
  - (E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians if the person has been given actual notice of the order.
- (8) A criminal complaint of stalking that concerns an act by the person against the same victim or victims is pending in a court and the person has been given actual notice of the complaint.
- (c) The offense is a ~~Class B~~ **Level 4** felony if:
- (1) the act or acts were committed while the person was armed with a deadly weapon; or
  - (2) the person has an unrelated conviction for an offense under this section against the same victim or victims.
- ~~(d) Notwithstanding subsection (a), the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly if the court finds mitigating circumstances. The court may consider the mitigating circumstances in IC 35-38-1-7.1(c) in making a determination under this subsection. However, the criteria listed in IC 35-38-1-7.1(c) do not limit the matters the court may consider in making its determination.~~
- ~~(e) Notwithstanding subsection (b), the court may enter judgment of conviction of a Class D felony and sentence accordingly if the court finds mitigating circumstances. The court may consider the mitigating circumstances in IC 35-38-1-7.1(c) in making a determination under this subsection. However, the criteria listed in IC 35-38-1-7.1(c) do not limit the matters the court may consider in making its determination.~~

***Rationale:***

The proposed changes streamline the statute and is consistent with the goal of making criminal penalties more predictable. The recommendation related to striking the sentence reduction is made because the courts should not have the authority under this statute to reduce the penalties as currently indicated in the statute. The penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

- Sec. 5. (a) A person who stalks another person commits stalking, a Class D felony.
- (b) The offense is a Class C felony if at least one (1) of the following applies:
- (1) A person:
    - (A) stalks a victim; and
    - (B) makes an explicit or an implicit threat with the intent to place the victim in reasonable fear of:
      - (i) sexual battery (as defined in IC 35-42-4-8);
      - (ii) serious bodily injury; or
      - (iii) death.
  - (2) A protective order to prevent domestic or family violence, a no contact order, or other judicial order under any of the following statutes has been issued by the court to protect the same victim or victims from the person and the person has been given actual notice of the order:
    - (A) IC 31-15 and IC 34-26-5 or IC 31-1-11.5 before its repeal (dissolution of marriage and legal separation).
    - (B) IC 31-34, IC 31-37, or IC 31-6-4 before its repeal (delinquent children and children in need of services).
    - (C) IC 31-32 or IC 31-6-7 before its repeal (procedure in juvenile court).
    - (D) IC 34-26-5 or IC 34-26-2 and IC 34-4-5.1 before their repeal (protective order to prevent abuse).
    - (E) IC 34-26-6 (workplace violence restraining orders).
  - (3) The person's stalking of another person violates an order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion if the person has been given actual notice of the order.
  - (4) The person's stalking of another person violates a no contact order issued as a condition of probation if the person has been given actual notice of the order.
  - (5) The person's stalking of another person violates a protective order issued under IC 31-14-16-1 and IC 34-26-5 in a paternity action if the person has been given actual notice of the order.
  - (6) The person's stalking of another person violates an order issued in another state that is substantially similar to an order described in subdivisions (2) through (5) if the person has been given actual notice of the order.
  - (7) The person's stalking of another person violates an order that is substantially similar to an order described in subdivisions (2) through (5) and is issued by an Indian:
    - (A) tribe;
    - (B) band;
    - (C) pueblo;
    - (D) nation; or
    - (E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians if the person has been given actual notice of the order.
  - (8) A criminal complaint of stalking that concerns an act by the person against the same

victim or victims is pending in a court and the person has been given actual notice of the complaint.

(c) The offense is a Class B felony if:

- (1) the act or acts were committed while the person was armed with a deadly weapon; or
- (2) the person has an unrelated conviction for an offense under this section against the same victim or victims.

(d) Notwithstanding subsection (a), the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly if the court finds mitigating circumstances. The court may consider the mitigating circumstances in IC 35-38-1-7.1(c) in making a determination under this subsection. However, the criteria listed in IC 35-38-1-7.1(c) do not limit the matters the court may consider in making its determination.

(e) Notwithstanding subsection (b), the court may enter judgment of conviction of a Class D felony and sentence accordingly if the court finds mitigating circumstances. The court may consider the mitigating circumstances in IC 35-38-1-7.1(c) in making a determination under this subsection. However, the criteria listed in IC 35-38-1-7.1(c) do not limit the matters the court may consider in making its determination.

**ABUSE OF CORPSE**  
**(35-45-11-2)**

***Overview:***

A person who knowingly or intentionally mutilates a corpse, has sexual intercourse or sexual deviate conduct with the corpse, or opens a casket with the intent to commit the act commits Abuse of Corpse, a Class D felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 6.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 2. A person who knowingly or intentionally:

(1) mutilates a corpse;

(2) has sexual intercourse or sexual deviate conduct with the corpse; or

(3) opens a casket with the intent to commit an act described in subdivision (1) or (2);

commits abuse of a corpse, a Class D felony.

**UNAUTHORIZED USE OF TELECOMMUNICATIONS SERVICES  
(I.C. 35-45-13-7)**

**Overview:**

There are three kinds or groups of actions, any of which consist of unauthorized use of telecommunication services. Broadly, these offenses consist of knowingly or intentionally: (1) making, distributing, possessing, using, or assembling an unlawful device to illegally gain telecommunications service or conceal the existence, origin, or destination of telecommunications, (2) selling, possessing, distributing, giving, transporting, or otherwise transferring to another such a device, plans or instructions for such a device, or the parts for such a device described in part (1), or (3) publishing numbers or codes of telephone numbers or credit numbers or the method by which telecommunications companies code or number telephone numbers or credit numbers in order to avoid paying for services. Commission of any of these actions is a Class A misdemeanor. However, if commission of the offense involves at least five unlawful telecommunications devices, the offense is a Class D felony.

**Issue:**

1. In which felony level does this crime belong?
2. Is this code section the most appropriate place for proscribing the listed conduct?

**Recommendation:**

1. Level 6 felony (at least five unlawful telecom devices)

**Rationale:**

The penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

A person who knowingly or intentionally:

(1) makes, distributes, possesses, uses, or assembles an unlawful telecommunications device that is designed, adapted, or used to:

(A) commit a theft of telecommunications service;

(B) acquire or facilitate the acquisition of telecommunications service without the consent of the telecommunications service provider; or

(C) conceal, or assist another in concealing, from a telecommunication services provider or authority, or from another person with enforcement authority, the existence or place of origin or destination of telecommunications;

(2) sells, possesses, distributes, gives, transports, or otherwise transfers to another or offers or advertises for sale:

(A) an unlawful telecommunications device, with the intent to use the unlawful telecommunications device or allow the device to be used for a purpose described in subdivision (1), or while knowing or having reason to believe that the device is intended to be so used;

(B) plans or instructions for making or assembling an unlawful telecommunications device, knowing or having reason to believe that the plans or instructions are intended to be used for making or assembling an unlawful telecommunications device; or

(C) material, including hardware, cables, tools, data, computer software, or other information or equipment, knowing that the purchaser or a third

person intends to use the material in the manufacture of an unlawful telecommunications device; or

(3) publishes:

(A) the number or code of an existing, a canceled, a revoked, or a nonexistent telephone number, credit number, or other credit device; or

(B) the method of numbering or coding that is employed in the issuance of telephone numbers, credit numbers, or other credit devices; with knowledge or reason to believe that the information may be used to avoid the payment of a lawful telephone or telegraph toll charge;

commits unauthorized use of telecommunication services, a Class A misdemeanor. However, if the commission of the offense involves at least five (5) unlawful telecommunications devices the offense is a Class D felony.

**MONEY LAUNDERING; DEFENSES**  
**(I.C. 35-45-15-5)**

**Overview:**

It is currently a Class D felony for a person to knowingly or intentionally acquire or maintain an interest in, receive, conceal, possess, transfer or transport the proceeds of criminal activity, conduct supervise, or facilitate a transaction involving the proceeds of criminal activity, or invest, expend, receive, or offer to invest, expend or receive the proceeds of a criminal activity. However, the offense is a Class C felony if the value of the proceeds is at least \$50,000, a Class C felony if the offense is committed with the intent to commit or promote terrorism or obtain or transport a weapon of mass destruction (WMD), and a Class B felony if the value of the proceeds is at least \$50,000 *and* the person intends to commit or promote terrorism or obtain or transport a WMD.

It is a defense to prosecution that the person acted with the intent to facilitate the lawful seizure, forfeiture, or disposition of funds or other legitimate law enforcement purpose under Indiana or United States law. It is also a defense to prosecution that the transaction was necessary to preserve a person's right to representation as guaranteed by the 6<sup>th</sup> Amendment or Article 1, Section 13 of the Indiana Constitution, or the funds were received as bona fide legal fees by an attorney and, at the time of receiving the funds, the attorney had no actual knowledge that the funds were derived from criminal activity.

**Issue(s):**

1. In which felony level does this crime belong?

**Recommendation:**

1. Money laundering base offense: Level 6 felony; money laundering (> \$50,000 *or* terroristic intent/obtain or transport a WMD): Level 5 felony; money laundering (> \$50,000 *and* terroristic intent/obtain or transport a WMD): Level 4 felony

**Rationale:**

The penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

- (a) A person that knowingly or intentionally:
  - (1) acquires or maintains an interest in, receives, conceals, possesses, transfers, or transports the proceeds of criminal activity;
  - (2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; or
  - (3) invests, expends, receives, or offers to invest, expend, or receive, the proceeds of criminal activity or funds that are the proceeds of criminal activity, and the person knows that the proceeds or funds are the result of criminal activity;commits money laundering, a Class D felony. However, the offense is:
  - (A) a Class C felony if the value of the proceeds or funds is at least fifty thousand dollars (\$50,000);
  - (B) a Class C felony if a person commits the crime with the intent to:
    - (i) commit or promote an act of terrorism; or
    - (ii) obtain or transport a weapon of mass destruction; and
  - (C) a Class B felony if the value of the proceeds or funds is at least fifty thousand dollars (\$50,000) and a person commits the crime with the intent to:

- (i) commit or promote an act of terrorism; or
- (ii) obtain or transport a weapon of mass destruction.

(b) It is a defense to prosecution under this section that the person acted with intent to facilitate the lawful seizure, forfeiture, or disposition of funds or other legitimate law enforcement purpose under Indiana or United States law.

(c) It is a defense to prosecution under this section that:

- (1) the transaction was necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment of the United States Constitution or Article 1, Section 13, of the Constitution of the State of Indiana; or
- (2) the funds were received as bona fide legal fees by a licensed attorney and, at the time of the receipt of the funds, the attorney did not have actual knowledge that the funds were derived from criminal activity.

**MALICIOUS MISCHIEF**  
**(I.C. 35-45-16-2)**

**Overview:**

Malicious mischief is currently divided into two sections dealing with bodily fluids/waste (blood, semen, urine, or feces): 1.) placement of the fluids/waste with intent that another comes into contact with them; and 2.) placement of the fluids/waste with the intent that another ingests them. The base offense for the reckless, knowing, or intentional placement of human blood, semen, urine, or feces in a location with the intent that another will involuntarily touch the matter is a Class B misdemeanor. However, the offense is a Class D felony if the person knew or should have known the matter was infected with hepatitis B, HIV, or tuberculosis. If another person is then infected with hepatitis B or tuberculosis, the offense is a Class C felony. If another person is then infected with HIV, the offense is a Class B felony. The base offense for the reckless, knowing, or intentional placement of human blood, semen, urine, or feces in a location with the intent that another will ingest the matter is a Class A misdemeanor. However, the offense is a Class D felony if the person knew or should have known the matter was infected with hepatitis B, HIV, or tuberculosis. If another person is then infected with hepatitis B or tuberculosis, the offense is a Class C felony. If another person is then infected with HIV, the offense is a Class B felony.

**Issues:**

1. In which felony level does this crime belong?
2. Is the placement of this code section within the Indiana Code the most appropriate place for the code section to appear?
3. Should the statutory language be updated to reflect current medical science?

**Recommendation:**

1. Malicious mischief (sample infected with Hepatitis B, HIV, or tuberculosis): Level 6  
Malicious mischief (transmission of Hepatitis B or tuberculosis): Level 5  
Malicious mischief (transmission of HIV): Level 4  
Malicious mischief with food (sample infected with Hepatitis B, HIV, or tuberculosis): Level 6  
Malicious mischief with food (transmission of Hepatitis B or tuberculosis): Level 5  
Malicious mischief with food (transmission of HIV): Level 4
2. Combine and consolidate this code section with other sections on HIV/AIDS and place all code sections together in a public health chapter under Title 35.
3. The statutory language should be updated to reflect current medical science.

*The following language is recommended:*

Sec. 2. (a) A person who recklessly, knowingly, or intentionally places human:

- (1) ~~blood;~~ **body fluid;** or
- (2) ~~semen;~~ **fecal waste**
- (3) ~~urine;~~ or
- (4) ~~fecal waste;~~

in a location with the intent that another person will involuntarily touch the ~~blood, semen, urine,~~ **body fluid** or fecal waste commits malicious mischief, a Class B misdemeanor.

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

- (1) ~~Class D~~ **Level 6** felony if the person knew or recklessly failed to know that the ~~blood, urine,~~ **body fluid** or waste was infected with:
  - (A) **infectious** hepatitis B;

- (B) HIV; or
- (C) tuberculosis;
- (2) ~~Class C~~ **Level 5** felony if:
  - (A) the person knew or recklessly failed to know that the ~~blood, urine,~~ **body fluid** or waste was infected with **infectious** hepatitis ~~B~~ and the offense results in the transmission of hepatitis ~~B~~ to the other person; or
  - (B) the person knew or recklessly failed to know that the waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and
- (3) ~~Class B~~ **Level 4** felony if:
  - (A) the person knew or recklessly failed to know that the waste was infected with HIV; and
  - (B) the offense results in the transmission of HIV to the other person.
- (c) A person who recklessly, knowingly, or intentionally places human:
  - ~~(1) blood;~~
  - ~~(2) (1)~~ **(1)** body fluid; or
  - ~~(3) (2)~~ **(2)** fecal waste;
 in a location with the intent that another person will ingest the ~~blood,~~ body fluid, or fecal waste, commits malicious mischief with food, a Class A misdemeanor.
- (d) An offense described in subsection (c) is:
  - (1) a ~~Class D~~ **Level 6** felony if the person knew or recklessly failed to know that the ~~blood,~~ body fluid, or fecal waste was infected with:
    - (A) **infectious** hepatitis ~~B~~;
    - (B) HIV; or
    - (C) tuberculosis;
  - (2) a ~~Class C~~ **Level 5** felony if:
    - (A) the person knew or recklessly failed to know that the ~~blood,~~ body fluid, or fecal waste was infected with **infectious** hepatitis ~~B~~ and the offense results in the transmission of hepatitis ~~B~~ to the other person; or
    - (B) the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and
  - (3) a Class B **Level 4** felony if:
    - (A) the person knew or recklessly failed to know that the ~~blood,~~ body fluid, or fecal waste was infected with HIV; and
    - (B) the offense results in the transmission of HIV to the other person.
- (e) *As used in this section,*
  - (1) *“Body fluid” means blood, saliva, sputum, semen, vaginal secretions, milk, urine, sweat, tears, or any other liquid produced by the body and any aerosol generated forms of such liquids.*
  - (2) *“Infectious hepatitis” means Hepatitis A, Hepatitis B, Hepatitis C, Hepatitis D, Hepatitis E, or Hepatitis G.*

**Rationale:**

This code section should be combined under a new public health chapter with the following other sections:

- I.C. 35-42-1-7: Transferring contaminated body fluids
- I.C. 35-42-1-8: Sale of AIDS testing equipment
- I.C. 35-42-1-9: Failure of carriers to warn
- I.C. 35-42-2-7: Tattooing without parental permission
- I.C. 35-42-2-8: Obstruction of delivery of prescription drug
- I.C. 35-45-19: Failure to report a dead body
- I.C. 35-45-20: Dispensing contact lenses without a prescription

These code sections belong together due to their related content. The recommended language above better covers the acts sought to be prohibited, with updated and medically correct transmission methods for the various diseases. The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

**IC 35-45-16-2**

**Malicious mischief**

Sec. 2. (a) A person who recklessly, knowingly, or intentionally places human:

- (1) blood;
- (2) semen;
- (3) urine; or
- (4) fecal waste;

in a location with the intent that another person will involuntarily touch the blood, semen, urine, or fecal waste commits malicious mischief, a Class B misdemeanor.

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

(1) Class D felony if the person knew or recklessly failed to know that the blood, urine, or waste was infected with:

- (A) hepatitis B;
- (B) HIV; or
- (C) tuberculosis;

(2) Class C felony if:

(A) the person knew or recklessly failed to know that the blood, urine, or waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or

(B) the person knew or recklessly failed to know that the waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) Class B felony if:

- (A) the person knew or recklessly failed to know that the waste was infected with HIV; and
- (B) the offense results in the transmission of HIV to the other person.

(c) A person who recklessly, knowingly, or intentionally places human:

- (1) blood;
- (2) body fluid; or
- (3) fecal waste;

in a location with the intent that another person will ingest the blood, body fluid, or fecal waste, commits malicious mischief with food, a Class A misdemeanor.

(d) An offense described in subsection (c) is:

(1) a Class D felony if the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with:

- (A) hepatitis B;
- (B) HIV; or
- (C) tuberculosis;

(2) a Class C felony if:

(A) the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or

(B) the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person;

and

(3) a Class B felony if:

- (A) the person knew or recklessly failed to know that the blood, body fluid, or fecal waste was

infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

*As added by P.L. 88-2002, SEC. 2.*

**UNLAWFUL PROMOTION OR ORGANIZATION OF COMBATIVE FIGHTING  
(I.C. 35-45-18-3)**

***Overview:***

Unlawful Promotion or Organization of Combative Fighting is a Class A misdemeanor. However, unlawful promotion or organization of combative fighting is a Class D felony if the offender has a prior unrelated conviction under this section within the five preceding years. As used in the statute, combative fighting includes a match, contest, or exhibition that involves at least two contestants, with or without gloves or protective headgear, in which the contestants use their hands, feet, or both to strike each other and compete for money or other prize. The term does not include boxing, sparring, or unarmed combat, mixed martial arts, martial arts, professional wrestling, or a match, contest, or game in which an unplanned, spontaneous fight breaks out that is not intended as part of the match, contest, or game.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor, with enhancement to a Level 6 felony with a prior conviction in the designated time period.

***Rationale:***

A Level 6 felony for a prior conviction is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 2. A person who knowingly or intentionally participates in combative fighting commits unlawful combative fighting, a Class C misdemeanor.

Sec. 3. A person who knowingly or intentionally promotes or organizes combative fighting commits unlawful promotion or organization of combative fighting, a Class A misdemeanor. However, the offense is a Class D felony if, within the five (5) years preceding the commission of the offense, the person had a prior unrelated conviction under this section.

I.C. 35-46

MISCELLANEOUS OFFENSES

**BIGAMY**  
**(I.C. 35-46-1-2)**

***Overview:***

A person who is married and who remarries knowing that his spouse is alive commits Bigamy, a Class D felony.

***Issue:***

1. What is the proper felony level for this crime?

***Recommendation:***

1. The offense should be penalized as a Level 6 felony.

***Rationale:***

This penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 2. (a) A person who, being married and knowing that his spouse is alive, marries again commits bigamy, a Class D felony.

(b) It is a defense that the accused person reasonably believed that he was eligible to remarry.

**INCEST**  
**(I.C. 35-46-1-3)**

***Overview:***

A person age 18 or older who has sex with a biologically related relative who is a parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew commits Incest, a Class C felony. However, the offense is a Class B felony if the other person is less than 16 years old. It is a defense that the accused person's otherwise incestuous relation with the other person was based on their marriage, if the marriage was valid where entered into.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Level 5 felony; Level 4 felony if the offense is committed with a child less than 16 years old.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

(a) A person eighteen (18) years of age or older who engages in sexual intercourse or deviate sexual conduct with another person, when the person knows that the other person is related to the person biologically as a parent, child, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew, commits incest, a Class C felony. However, the offense is a Class B felony if the other person is less than sixteen (16) years of age.

(b) It is a defense that the accused person's otherwise incestuous relation with the other person was based on their marriage, if it was valid where entered into.

**NEGLECT OF A DEPENDENT; CHILD SELLING**  
**(I.C. 35-46-1-4)**

**Overview:**

A person having the care of a dependent (either assumed voluntarily or because of a legal obligation) who knowingly or intentionally places the dependent in a situation that endangers the dependent's life or health, abandons or cruelly confines the dependent, deprives the dependent of necessary support, or deprives the dependent of education as required by law, commits Neglect of a Dependent, a Class D felony. However, the offense is a Class C felony if it results in bodily injury or is committed in a location where a person is delivering, financing, or manufacturing cocaine, methamphetamine, or another narcotic. The offense is a Class B felony if it results in serious bodily injury. The offense is a Class A felony if it is committed by a person at least 18 years old and results in the death of a dependent less than 14 years old. The offense is a Class C felony if the person abandons or cruelly confines the dependent and it results in deprivation of necessary food, water or sanitary facilities, confinement in an area not intended for human habitation, or the child is bound or physically restrained.

It is a defense to prosecution of Neglect of a Dependent based on an alleged act under this section that the accused person left a dependent child who was, at the time the alleged act occurred, not more than 30 days of age with an emergency medical provider who took custody of the child when the prosecution is based solely on the alleged act of leaving the child with the emergency medical services provider and the alleged act did not result in bodily injury or serious bodily injury to the child, or the accused person, in the legitimate practice of the accused person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the accused person's dependent.

A person who transfers or receives any property in consideration for the termination of the care, custody, or control of a person's dependent child, unless specifically allowed by law (e.g., a divorce custody proceeding), commits Child Selling, a Class D felony.

**Issue(s):**

1. In which felony level(s) does this crime belong?
2. Is the Class D felony classification too low for child selling?

**Recommendations:**

1. The penalties should be as follows:
  - The offense of Neglect of a Dependent should be a Level 6 felony.
  - Neglect of a Dependent involving cruel confinement, bodily injury, or if the person is manufacturing/selling drugs should be a Level 5 felony.
  - Neglect of a Dependent resulting in serious bodily injury should be a Level 3 felony.
  - Neglect of a Dependent (under age 14, perpetrated by a person over age 18) resulting in death should be a Level 1 felony.
  - Child Selling should be a Level 6 felony.
2. The classification for child selling should remain the equivalent of a Class D felony, which under the proposed 6-level sentencing scheme would be a Level 6 felony.

**Rationale:**

The proposed penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

***Current Statute:***

(a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:

- (1) places the dependent in a situation that endangers the dependent's life or health;
- (2) abandons or cruelly confines the dependent;
- (3) deprives the dependent of necessary support; or
- (4) deprives the dependent of education as required by law;

commits neglect of a dependent, a Class D felony.

(b) However, the offense is:

(1) a Class C felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and:

(A) results in bodily injury; or

(B) is:

(i) committed in a location where a person is violating IC 35-48-4-1 (delivery, financing, or manufacture of cocaine, methamphetamine, or a narcotic drug); or

(ii) the result of a violation of IC 35-48-4-1 (delivery, financing, or manufacture of cocaine, methamphetamine, or a narcotic drug);

(2) a Class B felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and results in serious bodily injury;

(3) a Class A felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) by a person at least eighteen (18) years of age and results in the death of a dependent who is less than fourteen (14) years of age; and

(4) a Class C felony if it is committed under subsection (a)(2) and consists of cruel confinement or abandonment that:

(A) deprives a dependent of necessary food, water, or sanitary facilities;

(B) consists of confinement in an area not intended for human habitation; or

(C) involves the unlawful use of handcuffs, a rope, a cord, tape, or a similar device to physically restrain a dependent.

(c) It is a defense to a prosecution based on an alleged act under this section that:

(1) the accused person left a dependent child who was, at the time the alleged act occurred, not more than thirty (30) days of age with an emergency medical provider who took custody of the child under IC 31-34-2.5 when:

(A) the prosecution is based solely on the alleged act of leaving the child with the emergency medical services provider; and

(B) the alleged act did not result in bodily injury or serious bodily injury to the child; or

(2) the accused person, in the legitimate practice of the accused person's religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to the accused person's dependent.

(d) Except for property transferred or received:

(1) under a court order made in connection with a proceeding under IC 31-15, IC 31-16, IC 31-17, or IC 31-35 (or IC 31-1-11.5 or IC 31-6-5 before their repeal); or

(2) under section 9(b) of this chapter;

a person who transfers or receives any property in consideration for the termination of the care, custody, or control of a person's dependent child commits child selling, a Class D felony.

**NONSUPPORT OF A CHILD**  
**(I.C. 35-46-1-5)**

***Overview:***

A person who knowingly or intentionally fails to provide support for the person's dependent child commits Nonsupport of a Child, a Class D felony. However, the offense is a Class C felony if the total amount of unpaid support due for one or more children is at least \$15,000. There are three defenses to the offense: (1) if the child abandoned the home of his family without the consent of the parent or on the order of a court (but not if the abandonment was the fault of the parent), (2) if the accused provided treatment by spiritual means through prayer in lieu of medical care to the dependent child because of genuine practice of religious beliefs, and (3) if the accused person was unable to provide support.

***Issues:***

1. In which felony level does this crime belong?
2. Does the language of the statute appropriately convey legislative intent?

***Recommendations:***

1. The penalty for the offense should be a Level 6 felony, enhanced to a Level 5 felony if the total amount of unpaid support is at least \$15,000.
2. Clarification of the language is necessary in order to appropriately convey the legislative intent.

***Rationale:***

Nonsupport of a defendant is typically charged in cases in which a noncustodial parent fails to make child support payments. As drafted, the statute applies when a person fails to provide "support." The term "support" is defined by IC 35-46-1-1 to include only food, clothing, shelter or medical care. To clarify the legislative intent to penalize failure to provide financially for a person's dependent children, language should be added to specify that the offense includes the failure to provide economic support. The penalties proposed are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

(a) A person who knowingly or intentionally fails to provide support to the person's dependent child commits nonsupport of a child, a Class D felony. However, the offense is a Class C felony if the total amount of unpaid support that is due and owing for one (1) or more children is at least fifteen thousand dollars (\$15,000).

(b) It is a defense that the child had abandoned the home of his family without the consent of his parent or on the order of a court, but it is not a defense that the child had abandoned the home of his family if the cause of the child's leaving was the fault of his parent.

(c) It is a defense that the accused person, in the legitimate practice of his religious belief, provided treatment by spiritual means through prayer, in lieu of medical care, to his dependent child.

(d) It is a defense that the accused person was unable to provide support.

**NONSUPPORT OF A SPOUSE**  
**(I.C. 35-46-1-6)**

***Overview:***

A person who fails to provide support to his spouse, when the spouse needs support, commits Nonsupport of a Spouse, a Class D felony. It is a defense that the person is unable to provide support.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Nonsupport of a spouse should be a Level 6 felony.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

(a) A person who knowingly or intentionally fails to provide support to his spouse, when the spouse needs support, commits nonsupport of a spouse, a Class D felony.

(b) It is a defense that the accused person was unable to provide support.

**CONTRIBUTING TO THE DELINQUENCY OF A MINOR  
(I.C. 35-46-1-8)**

**Overview:**

A person at least 18 years old who knowingly or intentionally encourage, aids, induce, or cause a person less than 18 years old to commit an act of delinquency commits Contributing to the Delinquency of a Minor, a Class A misdemeanor. The offense is a Class C felony if the person committing the offense is at least 21 years old and knowingly or intentionally furnishes alcohol or a controlled substance/drug to a person less than 18 years old when the person knew or reasonably should have known that the person furnished the alcohol was less than 18 years old and the consumption, ingestion, or use of the alcohol or substance/drug is the proximate cause of the death of any person, or if the person committing the offense knowingly or intentionally encourages, aids, induces, or causes a person less than 18 years old to commit drug dealing or manufacturing charge that would be a felony if committed by an adult.

**Issue(s):**

1. In which penalty level(s) does this crime belong?
2. Should the offense be amended to make it a Level 6 felony to encourage or assist a minor to deal in or manufacture drugs, to differentiate from the Class C/Level 5 penalty for causing death?

**Recommendations:**

1. The offense should remain a Class A misdemeanor with enhancements as described below.
2. The penalty should be enhanced to a Level 6 felony for encouraging the dealing or manufacturing of drugs, and remain at the same level it currently is (Level 5 felony) for furnishing alcohol or drugs that results in death.

**Rationale:**

It is appropriate and proportional to penalize a person for encouraging a minor to deal or manufacture drugs at a Level 6 felony (equivalent of current Class D) and penalizing the furnishing of alcohol or drugs to a minor that results in death at a Level 5 felony (current Class C).

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

(a) A person at least eighteen (18) years of age who knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act of delinquency (as defined by IC 31-37-1 or IC 31-37-2) commits contributing to delinquency, a Class A misdemeanor.

(b) However, the offense described in subsection (a) is a Class C felony:

(1) if:

(A) the person committing the offense is at least twenty-one (21) years of age and knowingly or intentionally furnishes:

- (i) an alcoholic beverage to a person less than eighteen (18) years of age in violation of IC 7.1-5-7-8 when the person committing the offense knew or reasonably should have known that the person furnished the alcoholic beverage was less than eighteen (18) years of age; or
- (ii) a controlled substance (as defined in IC 35-48-1-9) or a drug (as defined in IC 9-13-2-49.1) in violation of Indiana law; and

(B) the consumption, ingestion, or use of the alcoholic beverage, controlled substance, or drug is the proximate cause of the death of any person; or

(2) if the person committing the offense knowingly or intentionally encourages, aids, induces, or causes a person less than eighteen (18) years of age to commit an act that would be a felony if committed by an adult under any of the following:

- (A) IC 35-48-4-1.
- (B) IC 35-48-4-1.1.
- (C) IC 35-48-4-2.
- (D) IC 35-48-4-3.
- (E) IC 35-48-4-4.
- (F) IC 35-48-4-4.5.
- (G) IC 35-48-4-4.6.
- (H) IC 35-48-4-5.

**PROFITING FROM AN ADOPTION**  
**(I.C. 35-46-1-9)**

**Overview:**

A person who, with respect to an adoption, transfers or receives any property in connection with the waiver/termination of parental rights or the consent to/petition for adoption, commits Profiting from an Adoption, a Class D felony.

**Issue:**

1. In which felony level does this crime belong?

**Recommendation:**

1. Level 6 felony

**Rationale:**

The penalty is appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

(a) Except as provided in subsection (b), a person who, with respect to an adoption, transfers or receives any property in connection with the waiver of parental rights, the termination of parental rights, the consent to adoption, or the petition for adoption commits profiting from an adoption, a Class D felony.

(b) This section does not apply to the transfer or receipt of:

- (1) reasonable attorney's fees;
- (2) hospital and medical expenses concerning childbirth and pregnancy incurred by the adopted person's birth mother;
- (3) reasonable charges and fees levied by a child placing agency licensed under IC 31-27 or the department of child services;
- (4) reasonable expenses for psychological counseling relating to adoption incurred by the adopted person's birth parents;
- (5) reasonable costs of housing, utilities, and phone service for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth;
- (6) reasonable costs of maternity clothing for the adopted person's birth mother;
- (7) reasonable travel expenses incurred by the adopted person's birth mother that relate to the pregnancy or adoption;
- (8) any additional itemized necessary living expenses for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth, not listed in subdivisions (5) through (7) in an amount not to exceed one thousand dollars (\$1,000); or
- (9) other charges and fees approved by the court supervising the adoption, including reimbursement of not more than actual wages lost as a result of the inability of the adopted person's birth mother to work at her regular, existing employment due to a medical condition, excluding a psychological condition, if:
  - (A) the attending physician of the adopted person's birth mother has ordered or recommended that the adopted person's birth mother discontinue her employment; and

(B) the medical condition and its direct relationship to the pregnancy of the adopted person's birth mother are documented by her attending physician. In determining the amount of reimbursable lost wages, if any, that are reasonably payable to the adopted person's birth mother under subdivision (9), the court shall offset against the reimbursable lost wages any amounts paid to the adopted person's birth mother under subdivisions (5) and (8) and any unemployment compensation received by or owed to the adopted person's birth mother.

(c) Except as provided in this subsection, payments made under subsection (b)(5) through (b)(9) may not exceed three thousand dollars (\$3,000) and must be disclosed to the court supervising the adoption. The amounts paid under subsection (b)(5) through (b)(9) may exceed three thousand dollars (\$3,000) to the extent that a court in Indiana with jurisdiction over the child who is the subject of the adoption approves the expenses after determining that:

- (1) the expenses are not being offered as an inducement to proceed with an adoption; and
- (2) failure to make the payments may seriously jeopardize the health of either the child or the mother of the child and the direct relationship is documented by a licensed social worker or the attending physician.

(d) The payment limitation under subsection (c) applies to the total amount paid under subsection (b)(5) through (b)(9) in connection with an adoption from all prospective adoptive parents, attorneys, and licensed child placing agencies.

(e) An attorney or licensed child placing agency shall inform a birth mother of the penalties for committing adoption deception under section 9.5 of this chapter before the attorney or agency transfers a payment for adoption related expenses under subsection (b) in relation to the birth mother.

(f) The limitations in this section apply regardless of the state or country in which the adoption is finalized.

**EXPLOITATION OF DEPENDENT OR ENDANGERED ADULT  
(I.C. 35-46-1-12)**

**Overview:**

It is a Class A misdemeanor for a person to recklessly, knowingly, or intentionally exert unauthorized use of the personal services or property of an endangered adult or dependent age 18 or older for the person's own profit or advantage or for the profit or advantage of another. However, the offense is a Class D felony if the fair market value of the personal services or property is more than \$10,000 or the endangered adult or dependent is at least 60 years old.

The offense is a Class A misdemeanor when a person recklessly, knowingly, or intentionally deprives an endangered adult or a dependent of their Social Security benefits or other retirement program the division of family resources has budgeted for the endangered adult or dependent's health care. However, the offense is a Class D felony if the fair market value of the personal services or property is more than \$10,000 or the endangered adult or dependent is at least 60 years old.

It is *not* a defense to the 60 years of age enhancement that the accused person reasonably believed the endangered adult or dependent was less than 60 years of age at the time of the offense. It *is* a defense to any of the above offenses if the accused person has been granted power of attorney or has been appointed a legal guardian of the endangered adult or dependent, and was acting within the scope of their fiduciary responsibilities.

**Issue:**

1. In which penalty level(s) does this crime belong?

**Recommendation:**

1. It is recommended that the penalty remain as a Class A misdemeanor, with an enhancement to a Level 6 felony for exploitation of dependent/endangered adult (amount > \$10,000 or person > age 60).

**Rationale:**

The penalties are appropriate and proportional both to other crimes and to the current penalty levels.

**Workgroup Position:**

The IPAC representative expresses a reservation with regard to the penalty level, suggesting that it should potentially be increased due to the vulnerability of the population.

**Current Statute:**

(a) Except as provided in subsection (b), a person who recklessly, knowingly, or intentionally exerts unauthorized use of the personal services or the property of:

- (1) an endangered adult; or
- (2) a dependent eighteen (18) years of age or older;

for the person's own profit or advantage or for the profit or advantage of another person commits exploitation of a dependent or an endangered adult, a Class A misdemeanor.

(b) The offense described in subsection (a) is a Class D felony if:

- (1) the fair market value of the personal services or property is more than ten thousand dollars (\$10,000); or
- (2) the endangered adult or dependent is at least sixty (60) years of age.

(c) Except as provided in subsection (d), a person who recklessly, knowingly, or intentionally deprives an endangered adult or a dependent of the proceeds of the endangered adult's or the dependent's benefits under the Social Security Act or other retirement program that the division of family resources has budgeted for the endangered adult's or dependent's health care commits financial exploitation of an endangered adult or a dependent, a Class A misdemeanor.

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

- (1) the amount of the proceeds is more than ten thousand dollars (\$10,000); or
- (2) the endangered adult or dependent is at least sixty (60) years of age.

(e) It is not a defense to an offense committed under subsection (b)(2) or (d)(2) that the accused person reasonably believed that the endangered adult or dependent was less than sixty (60) years of age at the time of the offense.

- (f) It is a defense to an offense committed under subsection (a), (b), or (c) if the accused person:
- (1) has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or a dependent; and
  - (2) was acting within the scope of the accused person's fiduciary responsibility.

**INVASION OF PRIVACY  
(I.C. 35-46-1-15.1)**

***Overview:***

Invasion of privacy is currently a Class A misdemeanor when a person knowingly or intentionally violates a protective order to prevent domestic or family violence, an ex parte protective order, a workplace violence restraining order, a no contact order that orders the person to refrain from contact with a child in need of services or a delinquent child, a no contact order issued as a condition of pretrial release or pretrial diversion, a no contact order issued as a condition of probation, a protective order to prevent domestic or family violence, a no contact order issued under a child in need of services proceeding or under a juvenile delinquency proceeding, an order issued in another state that is substantially similar to an order described above, an order that is substantially similar to an order described above that has been issued by an Indian tribe, band, pueblo, nation, or organized group or community, including an Alaska Native village that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians, an order issued as condition of bail, or an order issued as a condition of sentence. However, the offense is a Class D felony if the person has a prior unrelated conviction for an offense listed above.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. The penalty should remain a Class A misdemeanor and be enhanced to a Level 6 felony if the person has a prior unrelated conviction under this statute.

***Rationale:***

A Level 6 felony is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

A person who knowingly or intentionally violates:

- (1) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
- (2) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
- (3) a workplace violence restraining order issued under IC 34-26-6;
- (4) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
- (5) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
- (6) a no contact order issued as a condition of probation;
- (7) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
- (8) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
- (9) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;

(10) an order issued in another state that is substantially similar to an order described in subdivisions (1) through (9);

(11) an order that is substantially similar to an order described in subdivisions (1) through (9) and is issued by an Indian:

(A) tribe;

(B) band;

(C) pueblo;

(D) nation; or

(E) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

(12) an order issued under IC 35-33-8-3.2; or

(13) an order issued under IC 35-38-1-30;

commits invasion of privacy, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction for an offense under this section.

**ABANDONMENT OR NEGLECT OF VERTEBRATE ANIMAL  
(I.C 35-46-3-7)**

***Overview:***

A person who knowingly, intentionally or recklessly abandons or neglects a vertebrate animal in that person's custody commits Abandonment or Neglect of a Vertebrate Animal, a Class A misdemeanor. The offense is enhanced to a Class D felony if the offender has a prior unrelated conviction under this chapter.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendation:***

1. The misdemeanor penalty should be retained, and enhanced to a Level 6 Felony for a prior conviction under this chapter.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus Recommendation

***Current Statute:***

(a) A person who:

(1) has a vertebrate animal in the person's custody; and

(2) recklessly, knowingly, or intentionally abandons or neglects the animal;

commits cruelty to an animal, a Class A misdemeanor. However, except for a conviction under section 1 [IC 35-46-3-1] of this chapter, the offense is a Class D felony if the person has a prior unrelated conviction under this chapter.

(b) It is a defense to a prosecution for abandoning a vertebrate animal under this section that the person who had the animal in the person's custody reasonably believed that the vertebrate animal was capable of surviving on its own.

(c) For purposes of this section, an animal that is feral is not in a person's custody.

**PURCHASE OR POSSESSION OF ANIMALS FOR FIGHTING CONTESTS  
(I.C. 35-46-3-8)**

***Overview:***

A person who knowingly or intentionally purchases or possesses an animal for the purpose of using the animal in an animal fighting contest commits a Class D felony.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendation:***

1. The offense should be penalized as a Level 6 felony.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus Recommendation

***Current Statute:***

Sec. 8. A person who knowingly or intentionally purchases or possesses an animal for the purpose of using the animal in an animal fighting contest commits a Class D felony.

**ANIMAL FIGHTING CONTESTS**  
**(I.C. 35-46-3-9)**

***Overview:***

A person who promotes or stages an animal fighting contest, uses an animal in a fighting contest, or attends an animal fighting contest while having an animal in the person's possession commits a Class D felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Level 6 felony.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

A person who knowingly or intentionally:

- (1) Promotes or stages an animal fighting contest;
  - (2) Uses an animal in a fighting contest; or
  - (3) Attends an animal fighting contest having an animal in the person's possession;
- commits a Class D felony.

**PROMOTING AN ANIMAL FIGHTING CONTEST  
(I.C. 35-46-3-9.5)**

**Overview:**

A person who possesses animal fighting paraphernalia with the intent to promote or stage an animal fighting contest, use an animal in an animal fighting contest, or attend an animal fighting contest with an animal in the person's possession and who possesses, harbors, or trains a dog, cock, fowl, or bird bearing a scar, wound, or an injury consistent with participation in or training for an animal fighting contest commits Promoting an Animal Fighting Contest, a Class D felony.

**Issue:**

1. In which felony level does this crime belong?

**Recommendations:**

1. Level 6 felony.

**Rationale:**

The penalty is appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

A person who knowingly or intentionally:

(1) possesses animal fighting paraphernalia with the intent to commit a violation of section 9 [IC 35-46-3-9] of this chapter; and

(2) possesses, harbors, or trains a dog, cock, fowl, or bird bearing:

(A) a scar;

(B) a wound; or

(C) an injury;

consistent with participation in or training for an animal fighting contest; commits promoting an animal fighting contest, a Class D felony.

**ATTENDANCE AT [ANIMAL] FIGHTING CONTEST  
(I.C. 35-46-3-10)**

***Overview:***

A person who knowingly or intentionally attends an animal fighting contest (e.g., cock fighting or dog fighting) commits Attendance at [Animal] Fighting Contest, a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this chapter, unless the conviction is for harboring a non-immunized animal.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor, enhanced to a Level 6 felony with prior unrelated conviction under the chapter.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

A person who knowingly or intentionally attends a fighting contest involving animals commits cruelty to an animal, a Class A misdemeanor. However, except for a conviction under section 1 of this chapter, the offense is a Class D felony if the person has a prior unrelated conviction under this chapter.

**LAW ENFORCEMENT ANIMAL; MISTREATMENT OR INTERFERENCE  
(I.C. 35-46-3-11)**

**Overview:**

It is a Class A misdemeanor for a person to knowingly or intentionally strike, torment, injure, or otherwise mistreat a law enforcement animal, or interfere with the actions of a law enforcement animal while the animal is engaged in assisting a law enforcement officer in the performance of the officer's duties. The offense is a Class D felony if the striking, tormenting, or injuring of the animal results in serious permanent disfigurement, unconsciousness, permanent or prolonged loss or impairment of the function of a limb or organ, or death of the animal. In addition to any jail time or fines imposed for conviction under this section, a court may order the convicted person to pay for incurred veterinary bills or the replacement cost(s) of the animal if the animal is disabled or killed.

**Issue:**

1. In which penalty level(s) does this crime belong?

**Recommendation:**

1. The offense should remain a Class A misdemeanor, enhanced to a Level 6 felony if the violation results in serious permanent disfigurement, unconsciousness, loss of use of limb/organ, or death of the animal.

**Rationale:**

The penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

- (a) A person who knowingly or intentionally:
  - (1) strikes, torments, injures, or otherwise mistreats a law enforcement animal; or
  - (2) interferes with the actions of a law enforcement animal while the animal is engaged in assisting a law enforcement officer in the performance of the officer's duties;commits a Class A misdemeanor.
- (b) An offense under subsection (a)(1) is a Class D felony if the act results in:
  - (1) serious permanent disfigurement;
  - (2) unconsciousness;
  - (3) permanent or protracted loss or impairment of the function of a bodily member or organ; or
  - (4) death;of the law enforcement animal.
- (c) It is a defense that the accused person:
  - (1) engaged in a reasonable act of training, handling, or discipline; and
  - (2) acted as an employee or agent of a law enforcement agency.
- (d) In addition to any sentence or fine imposed for a conviction of an offense under this section, the court may order the person convicted to make restitution to the person or law enforcement agency owning the animal for reimbursement of:
  - (1) veterinary bills; and
  - (2) replacement costs of the animal if the animal is disabled or killed.

**INTERFERENCE WITH OR MISTREATMENT OF A SEARCH AND RESCUE DOG  
(I.C. 35-46-3-11.3)**

***Background:***

A person who knowingly or intentionally interferes with the actions of a search and rescue dog while the dog is performing or is attempting to perform a search and rescue task, or a person who knowingly or intentionally strikes, torments, injures, or otherwise mistreats a search and rescue dog, commits Mistreating a Search and Rescue Dog, a Class A misdemeanor. The offense is a Class D felony if a person causes serious permanent disfigurement, unconsciousness or permanent or protracted loss or impairment of the function of a bodily member or organ or death of the dog.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor, enhanced to Felony level 6 when there is injury or death to the search and rescue dog.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus Recommendation

***Current Statute:***

(a) As used in this section, "search and rescue dog" means a dog that receives special training to locate or attempt to locate by air scent or ground or water tracking a person who is an offender or is lost, trapped, injured, or incapacitated.

(b) A person who knowingly or intentionally:

(1) interferes with the actions of a search and rescue dog while the dog is performing or is attempting to perform a search and rescue task; or

(2) strikes, torments, injures, or otherwise mistreats a search and rescue dog;  
commits a Class A misdemeanor.

(c) An offense under subsection (b)(2) is a Class D felony if the act results in:

(1) serious permanent disfigurement;

(2) unconsciousness;

(3) permanent or protracted loss or impairment of the function of a bodily member or organ; or

(4) death;

of the search and rescue dog.

(d) It is a defense that the accused person:

(1) engaged in a reasonable act of training, handling, or disciplining the search and rescue dog; or

(2) reasonably believed the conduct was necessary to prevent injury to the accused person or another person.

(e) In addition to any sentence or fine imposed for a conviction of an offense under this section, the court may order the person to make restitution to the person who owns the search and rescue dog for reimbursement of:

(1) veterinary bills; and

(2) replacement costs of the dog if the dog is disabled or killed.

**SERVICE ANIMAL – INTERFERENCE WITH ASSISTANCE TO IMPAIRED PERSONS  
(I.C. 35-46-3-11.5)**

***Overview:***

A person who interferes with the actions of a service animal while it is performing duties for its impaired human or who strikes, torments, injures, or otherwise mistreatment of a service animal commits Mistreatment of a Service Animal, a Class A misdemeanor. The offense is a Class D felony if it causes serious permanent disfigurement, unconsciousness, permanent or protracted loss or impairment of the function of a bodily member or organ, or death to the service animal.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendations:***

1. The offense should remain a Class A misdemeanor, with an enhancement to Felony Level 6 for injury or death of the service animal.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus Recommendation

***Current Statute:***

(a) As used in this section, "service animal" means an animal that a person who is impaired by:

- (1) blindness or any other visual impairment;
- (2) deafness or any other aural impairment;
- (3) a physical disability; or
- (4) a medical condition;

relies on for navigation, assistance in performing daily activities, or alert signals regarding the onset of the person's medical condition.

(b) A person who knowingly or intentionally:

- (1) interferes with the actions of a service animal; or
- (2) strikes, torments, injures, or otherwise mistreats a service animal;

while the service animal is engaged in assisting an impaired person described in subsection (a) commits a Class A misdemeanor.

(c) An offense under subsection (b)(2) is a Class D felony if the act results in the:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (4) death;

of the service animal.

(d) It is a defense that the accused person:

- (1) engaged in a reasonable act of training, handling, or disciplining the service animal; or
- (2) reasonably believed the conduct was necessary to prevent injury to the accused person or another person.

**CRUELTY TO AN ANIMAL AND TORTURING OR MUTILATING AN ANIMAL  
(I.C. 35-46-3-12)**

***Overview:***

A person who beats an invertebrate animal commits Cruelty to an Animal, a Class A misdemeanor. The offense is a Class D felony if the person has a prior unrelated conviction under this section, or the person's intent was to threaten, intimidate, coerce, harass, or terrorize a family or household member. A person who tortures or mutilates an animal commits Torturing or Mutilating an Animal, a Class D felony.

***Issue:***

1. In which penalty level(s) do these crimes belong?

***Recommendation:***

1. The penalty for Cruelty to an Animal should remain a Class A misdemeanor, enhanced to a Level 6 felony if the person has a prior conviction under this section, or his intent was to threaten, coerce, harass or terrorize a family or household member. The penalty for Torturing or Mutilating an Animal should be a Level 6 felony.

***Rationale:***

These penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

(a) This section does not apply to a person who euthanizes an injured, a sick, a homeless, or an unwanted domestic animal if:

(1) the person is employed by a humane society, an animal control agency, or a governmental entity operating an animal shelter or other animal impounding facility; and

(2) the person euthanizes the domestic animal in accordance with guidelines adopted by the humane society, animal control agency, or governmental entity operating the animal shelter or other animal impounding facility.

(b) A person who knowingly or intentionally beats a vertebrate animal commits cruelty to an animal, a Class A misdemeanor. However, the offense is a Class D felony if:

(1) the person has a previous, unrelated conviction under this section; or

(2) the person committed the offense with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member.

(c) A person who knowingly or intentionally tortures or mutilates a vertebrate animal commits torturing or mutilating a vertebrate animal, a Class D felony.

(d) As used in this subsection, "domestic animal" means an animal that is not wild. The term is limited to:

(1) cattle, calves, horses, mules, swine, sheep, goats, dogs, cats, poultry, ostriches, rhea, and emus; and

(2) an animal of the bovine, equine, ovine, caprine, porcine, canine, feline, camelid, cervidae, or bison species.

A person who knowingly or intentionally kills a domestic animal without the consent of the owner of the domestic animal commits killing a domestic animal, a Class D felony.

(e) It is a defense to a prosecution under this section that the accused person:

(1) reasonably believes the conduct was necessary to:

- (A) prevent injury to the accused person or another person;
- (B) protect the property of the accused person from destruction or substantial damage; or
- (C) prevent a seriously injured vertebrate animal from prolonged suffering; or

(2) engaged in a reasonable and recognized act of training, handling, or disciplining the vertebrate animal.

(f) When a court imposes a sentence or enters a dispositional decree under this section, the court:

(1) shall consider requiring:

(A) a person convicted of an offense under this section; or

(B) a child adjudicated a delinquent child for committing an act that would be a crime under this section if committed by an adult;  
to receive psychological, behavioral, or other counseling as a part of the sentence or dispositional decree;  
and

(2) may order an individual described in subdivision (1) to receive psychological, behavioral, or other counseling as a part of the sentence or dispositional decree.

**DOMESTIC VIOLENCE ANIMAL CRUELTY**  
**(I.C. 35-46-3-12.5)**

***Overview:***

A person who kills a vertebrate animal with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member commits Domestic Violence Animal Cruelty, a Class D felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Level 6 felony.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

A person who knowingly or intentionally kills a vertebrate animal with the intent to threaten, intimidate, coerce, harass, or terrorize a family or household member commits domestic violence animal cruelty, a Class D felony.

**BESTIALITY**  
**(I.C. 35-46-3-14)**

***Overview:***

1. Bestiality is a knowing or intentional act involving a sex organ of a person and the mouth or anus of an animal or the sex organ of an animal and the mouth or anus of a person or any penetration of a human female sex organ by an animal's sex organ or any penetration of an animal's sex organ by the human male sex organ. The offense is a Class D felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Level 6 felony.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

A person who knowingly or intentionally performs an act involving:

- (1) a sex organ of a person and the mouth or anus of an animal;
- (2) a sex organ of an animal and the mouth or anus of a person;
- (3) any penetration of the human female sex organ by an animal's sex organ; or
- (4) any penetration of an animal's sex organ by the human male sex organ;

commits bestiality, a Class D felony.

**FAILURE TO DISCLOSE RECRUITMENT  
(I.C. 35-46-4-4)**

***Overview:***

A person who enters into an agent contract, an endorsement contract, or a professional sports services contract with a student athlete without giving 10 days' notice to the athletic department of the student's school commits Failure to Disclose Recruitment, a Class D felony.

***Issue:***

1. Should this act be criminalized, and penalized as a felony?

***Recommendation:***

1. It is recommended that this statute be repealed, along with I.C. 35-46-4-1, 2 and 3, which are definitional sections accompanying Section 4, the substantive criminal statute.

***Rationale:***

This section criminalizes actions or omissions related to a business arrangement. The offense is not proportional to the various offenses that are assigned Class D felony penalties in the Indiana Criminal Code. At most, it should be an infraction with a significant fine; but it is suggested that civil remedies should suffice for such misconduct.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

**IC 35-46-4-1**

**"Agent contract"**

Sec. 1. As used in this chapter, "agent contract" means a contract or agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete:

- (1) an agreement with a professional sports team for:

- (A) the employment of the student athlete by a professional sports team or organization;

or

- (B) the employment of the student athlete as a professional athlete; or

- (2) an endorsement contract.

*As added by P.L.184-1988, SEC.1. Amended by P.L.54-2001, SEC.7.*

**IC 35-46-4-1.5**

**"Endorsement contract"**

Sec. 1.5. As used in this chapter, "endorsement contract" means an agreement under which a student athlete is employed or receives consideration to use, on behalf of the other party, any value that the student athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance. The term includes the value of any part of the student athlete's right of publicity (as defined in IC 32-36-1-7).

*As added by P.L.54-2001, SEC.8. Amended by P.L.1-2003, SEC.96.*

**IC 35-46-4-2**

**"Professional sports services contract"**

Sec. 2. As used in this chapter, "professional sports services contract" means a contract or agreement in which a person is employed or agrees to render services:

- (1) as a player on a professional sports team;
- (2) as a professional athlete; or
- (3) with a professional sports organization.

*As added by P.L.184-1988, SEC.1. Amended by P.L.54-2001, SEC.9.*

**IC 35-46-4-3**

**"Student athlete"**

Sec. 3. As used in this chapter, "student athlete" means a person who is:

- (1) enrolled or intends to enroll in a course of study in a public or private college or university; and
- (2) eligible to engage in, or may be eligible in the future to engage in, an intercollegiate sporting event, contest, exhibition, or program for the college or university in which the person is enrolled or intends to enroll.

*As added by P.L.184-1988, SEC.1. Amended by P.L.54-2001, SEC.10.*

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**IC 35-46-4-4**

**Failure to disclose recruitment**

Sec. 4. A person who knowingly or intentionally:

- (1) enters into an agent contract, an endorsement contract, or a professional sports services contract with a student athlete; and
- (2) no later than ten (10) days before the contract is executed, fails to give written notice to the head of the athletic department for the college or university in which the student athlete is enrolled as a student or intends to enroll as a student that identifies:
  - (A) the name and business address of each party to the contract;
  - (B) whether the contract is an agent contract, an endorsement contract, or a professional sports services contract; and
  - (C) the date that the contract will be executed;

commits failure to disclose recruitment, a Class D felony.

*As added by P.L.184-1988, SEC.1. Amended by P.L.54-2001, SEC.11.*

**UNLAWFUL TRANSFER OF HUMAN TISSUE**  
**(I.C. 35-46-5-1)**

**Overview:**

A person who intentionally acquires, receives, sells, or transfers a human organ for use in human organ transplantation or fetal tissue for an item of value commits Unlawful Transfer of Human Tissue, a Class C felony.

**Issue:**

1. In which felony level does this crime belong?

**Recommendation:**

1. Level 5 felony.

**Rationale:**

The penalty is appropriate and proportional for this crime.

**Workgroup Position:**

Consensus recommendation.

**Current Statute:**

Sec. 1. (a) As used in this section, "fetal tissue" means tissue from an infant or a fetus who is stillborn or aborted.

(b) As used in this section, "human organ" means the kidney, liver, heart, lung, cornea, eye, bone marrow, bone, pancreas, or skin of a human body.

(c) As used in this section, "item of value" means money, real estate, funeral related services, and personal property. "Item of value" does not include:

(1) the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ; or

(2) the reimbursement of travel, housing, lost wages, and other expenses incurred by the donor of a human organ related to the donation of the human organ.

(d) A person who intentionally acquires, receives, sells, or transfers in exchange for an item of value:

(1) a human organ for use in human organ transplantation; or

(2) fetal tissue;

commits unlawful transfer of human tissue, a Class C felony.

*As added by P.L.131-1992, SEC.2. Amended by P.L.217-1997, SEC.1.*

**UNLAWFUL PARTICIPATION IN HUMAN CLONING**  
**(I.C. 35-46-5-2)**

***Overview:***

Unlawful Participation in Human Cloning is a Class D felony which involves a person who participates in cloning, implants or attempts to implant a cloned human embryo into a uterine environment to initiate a pregnancy, or ships or receives a cloned human embryo. It does not apply to in vitro fertilization.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 6.

***Rationale:***

The penalty is appropriate and proportional for this crime.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 2. (a) This section does not apply to in vitro fertilization.

(b) As used in this section, "cloning" has the meaning set forth in IC 16-18-2-56.5.

(c) A person who knowingly or intentionally:

(1) participates in cloning;

(2) implants or attempts to implant a cloned human embryo into a uterine environment to initiate a pregnancy; or

(3) ships or receives a cloned human embryo;

commits unlawful participation in human cloning, a Class D felony.

*As added by P.L. 126-2005, SEC. 9.*

**UNLAWFUL TRANSFER OF HUMAN ORGANISMS**  
**(I.C. 35-46-5-3)**

**Overview:**

A person who knowingly or intentionally purchases or sells a human ovum, zygote, embryo, or fetus commits Unlawful Transfer of Human Organisms is a Class C felony. It does not apply to a woman donor of an ovum for purposes of in vitro fertilization, gamete intrafallopian transfer, or zygote intrafallopian transfer. It also does not apply to adult stem cell research or fetal stem cell research, if the parent of the fetus has given permission for the use of the fetal stem cells.

**Issue:**

1. In which felony level does this crime belong?

**Recommendation:**

1. Level 5 felony.

**Rationale:**

The penalty is appropriate and proportional for this crime.

**Workgroup Position:**

Consensus recommendation.

**Current Statute:**

Sec. 3. (a) A person who knowingly or intentionally purchases or sells a human ovum, zygote, embryo, or fetus commits unlawful transfer of a human organism, a Class C felony.

(b) This section does not apply to the following:

(1) The transfer to or receipt by a woman donor of an ovum of an amount for:

(A) earnings lost due to absence from employment;

(B) travel expenses;

(C) hospital expenses;

(D) medical expenses; and

(E) recovery time in an amount not to exceed three thousand dollars (\$3,000);

concerning a treatment or procedure to enhance human reproductive capability through in vitro fertilization, gamete intrafallopian transfer, or zygote intrafallopian transfer.

(2) The following types of stem cell research:

(A) Adult stem cell.

(B) Fetal stem cell, as long as the biological parent has given written consent for the use of the fetal stem cells.

As added by P.L.126-2005, SEC.10.

I.C. 35-47

REGULATIONS OF WEAPONS  
AND  
INSTRUMENTS OF VIOLENCE

## **VIOLATIONS OF VARIOUS HANDGUN-RELATED OFFENSES (35-47-2-23)**

### ***Overview:***

This statute describes penalties for violations of IC 35-47-2, describing various handgun-related offenses. Specifically, IC 35-47-2-7 prohibits the sales or transfers of ownership of a handgun or assault weapon to any person under eighteen (18) years of age. It is also unlawful to sell, give, or in any manner transfer a handgun to another person who the person has reasonable cause to believe has been convicted of a felony or is a drug abuser or is mentally incompetent. 35-47-2-17 prohibits giving false information or offering false evidence of identity to purchase or obtain a firearm. 35-47-2-18 prohibits obliterating identification marks on handgun or possession of such handguns. 35-47-2-22 prohibits the use of an unlawful handgun-carrying license to obtain a handgun. IC 35-47-2-23 assigns the penalties for all offenses included elsewhere in the chapter.

### ***Issues:***

1. What are the appropriate penalty levels for violating the various provisions of the chapter?
2. Should the chapter be reorganized to list the penalties within each specific section, rather than having a single penalty section at the end of the chapter referring back to various violations listed in other sections?

### ***Recommendations:***

1. The following penalties should be assigned to each section:
  - A violation of section 3, 4, 5, 14, 15 or 16 of IC 35-47-2 should be penalized as a Class B misdemeanor.
  - A violation of section 1 of IC 35-47-2 should be penalized as a Class A misdemeanor, enhanced to a Level 5 felony if the offense occurs within 1,000 feet of a school, on a school bus, or if the person committing the offense has a prior offense as described in IC 35-47-2-23(c)(2).
  - A violation of IC 35-47-2-7, IC 35-47-2-17, or IC 35-47-2-18 should be punished as a Level 5 felony.
  - A violation of section 22 of IC 35-47-2 should be punished as a Level 6 felony.
2. The use of a separate statute to assign penalties for violations of conduct defined in earlier statutes is confusing. Placement of penalty provisions in the sections specifying the conduct is recommended, and section 23 should be repealed.

### ***Rationale:***

The proposed penalties are appropriate and proportional. Placing penalties within the individual sections describing the criminal conduct will improve clarity of the criminal code and is consistent with the rest of Title 35.

### ***Workgroup Position:***

Consensus recommendation

### ***Current Statute:***

- Sec. 23. (a) A person who violates section 3, 4, 5, 14, 15, or 16 of this chapter commits a Class B misdemeanor.
- (b) A person who violates section 7, 17, or 18 of this chapter commits a Class C felony.
- (c) A person who violates section 1 of this chapter commits a Class A misdemeanor. However, the offense is a Class C felony:
- (1) if the offense is committed:
    - (A) on or in school property;

- (B) within one thousand (1,000) feet of school property; or
  - (C) on a school bus; or
- (2) if the person:
- (A) has a prior conviction of any offense under:
    - (i) this subsection; or
    - (ii) subsection (d); or
  - (B) has been convicted of a felony within fifteen (15) years before the date of the offense.
- (d) A person who violates section 22 of this chapter commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior conviction of any offense under this subsection or subsection (c), or if the person has been convicted of a felony within fifteen (15) years before the date of the offense.

**CRIMINAL HISTORY CHECK; FALSE STATEMENT ON CONSENT FORM  
(I.C. 35-47-2.5-12)**

***Overview:***

The offense of making a false statement on Form 4473 for a purchase of a handgun from a dealer occurs when a person knowingly or intentionally makes a materially false statement on the background check form. The offense is a Class D felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 6.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus Recommendation

***Current Statute:***

Sec. 12. A person who knowingly or intentionally makes a materially false statement on Form 4473 completed under section 3 of this chapter commits a Class D felony.

**PROVIDING A HANDGUN TO INELIGIBLE PURCHASER**  
**(35-47-2.5-14)**

***Overview:***

Providing a Handgun to an Ineligible Purchaser is a Class D felony. However, it is a Class C felony if the violation involves more than one handgun.

***Issue:***

1. In what felony level(s) does this offense belong?

***Recommendation:***

1. The offense should be a Level 6 felony, enhanced to a Level 5 felony if the violation involves more than one handgun.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 14. (a) This section does not apply to a person who provides a handgun to the following:

- (1) A child who is attending a hunters safety course or a firearms safety course or an adult who is supervising the child during the course.
- (2) A child engaging in practice in using a firearm for target shooting at an established range or in an area where the discharge of a firearm is not prohibited or is supervised by:
  - (A) a qualified firearms instructor; or
  - (B) an adult who is supervising the child while the child is at the range.
- (3) A child engaging in an organized competition involving the use of a firearm or participating in or practicing for a performance by an organized group under Section 501(c)(3) of the Internal Revenue Code that uses firearms as a part of a performance or an adult who is involved in the competition or performance.
- (4) A child who is hunting or trapping under a valid license issued to the child under IC 14-22.
- (5) A child who is traveling with an unloaded firearm to or from an activity described in this section.
- (6) A child who:
  - (A) is on real property that is under the control of the child's parent, an adult family member of the child, or the child's legal guardian; and
  - (B) has permission from the child's parent or legal guardian to possess a firearm.

(b) A person who purchases a handgun with the intent to:

- (1) resell or otherwise provide the handgun to another person who the person knows or has reason to believe is ineligible for any reason to purchase or otherwise receive from a dealer a handgun; or
- (2) transport the handgun out of the state to be resold or otherwise provided to another person who the transferor knows is ineligible to purchase or otherwise receive a firearm; commits a Class D felony.

(c) If the violation of this section involves a transfer of more than one (1) handgun, the offense is a Class C felony.

**INELIGIBLE PURCHASER ATTEMPTING TO PURCHASE HANDGUN; VIOLATION  
(35-47-2.5-15)**

***Overview:***

A person ineligible to purchase a firearm who assists or employs any person to illegally resell or transport a firearm in violation of 35-47-2.5-14 commits a Class D felony. However, if the violation involves more than one handgun it is a Class C felony.

***Issue:***

1. In which felony level(s) does this offense belong?

***Recommendation:***

1. The offense should be a Level 6 felony, enhanced to a Level 5 felony if the violation involves more than one handgun.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 15.(a) A person who is ineligible to purchase or otherwise receive or possess a handgun in Indiana who knowingly or intentionally solicits, employs, or assists any person in violating section 14 of this chapter commits a Class D felony.  
(b) If the violation involves a transfer of more than one (1) handgun, the offense is a Class C felony.

**UNLAWFUL DELIVERY OF CONFISCATED FIREARM  
(35-47-3-4)**

***Overview:***

A person who knowingly or intentionally delivers a confiscated firearm to a person convicted of a felony; delivers a confiscated firearm to another with knowledge that there is a rightful owner to whom the firearm must be returned; or fails to deliver a confiscated firearm to the sheriff's department, a city or town police force, the state police department laboratory or a forensic laboratory under this chapter, the state, or for disposition after a determination that the rightful owner of the firearm cannot be ascertained; or is no longer entitled to possess the confiscated firearm, commits Unlawful Delivery of Confiscated Firearm, a Class D felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 6.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 4. A person who knowingly or intentionally:

- (1) delivers a confiscated firearm to a person convicted of a felony:
    - (A) involving use of a firearm; and
    - (B) which is the basis of the confiscation;
  - (2) delivers a confiscated firearm to another with knowledge that there is a rightful owner to whom the firearm must be returned; or
  - (3) fails to deliver a confiscated firearm to the sheriff's department, a city or town police force, the state police department laboratory or a forensic laboratory under this chapter, the state under IC 14-22-39-6, or for disposition after a determination that the rightful owner of the firearm cannot be ascertained or is no longer entitled to possess the confiscated firearm;
- commits a Class D felony.

**POINTING FIREARM AT ANOTHER PERSON**  
**(35-47-4-3)**

**Overview:**

A person who knowingly or intentionally points a firearm at another person commits a Class D felony. However, the offense is a Class A misdemeanor if the firearm was not loaded.

**Issue:**

1. In which penalty levels does this crime belong?

**Recommendation:**

1. Felony level 6, while the penalty should remain a Class A misdemeanor if the firearm was not loaded.

*The following is language recommended by the workgroup:*

Sec. 3. (a) This section does not apply to a law enforcement officer who is acting within the scope of the law enforcement officer's official duties or to a person who is justified in using reasonable force against another person under:

- (1) IC 35-41-3-2; or
- (2) IC 35-41-3-3.

(b) A person who knowingly or intentionally points a firearm at another person commits a ~~Class D~~ **Level 6** felony. However, the offense is a Class A misdemeanor if the firearm was not loaded.

**Rationale:**

The penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

Sec. 3. (a) This section does not apply to a law enforcement officer who is acting within the scope of the law enforcement officer's official duties or to a person who is justified in using reasonable force against another person under:

- (1) IC 35-41-3-2; or
- (2) IC 35-41-3-3.

(b) A person who knowingly or intentionally points a firearm at another person commits a Class D felony. However, the offense is a Class A misdemeanor if the firearm was not loaded.

**UNLAWFUL POSSESSION OF FIREARM BY SERIOUS VIOLENT FELON  
(35-47-4-5)**

**Overview:**

A serious violent felon who knowingly or intentionally possesses a firearm commits Unlawful Possession of a Firearm by a Serious Violent Felon, a Class B felony.

**Issue:**

1. In which felony level does this crime belong?

**Recommendation:**

1. Felony level 4.

**Rationale:**

The penalty is appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

Sec. 5. (a) As used in this section, "serious violent felon" means a person who has been convicted of:

- (1) committing a serious violent felony in:
  - (A) Indiana; or
  - (B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of a serious violent felony; or
- (2) attempting to commit or conspiring to commit a serious violent felony in:
  - (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2; or
  - (B) any other jurisdiction in which the elements of the crime for which the conviction was entered are substantially similar to the elements of attempting to commit or conspiring to commit a serious violent felony.

(b) As used in this section, "serious violent felony" means:

- (1) murder (IC 35-42-1-1);
- (2) voluntary manslaughter (IC 35-42-1-3);
- (3) reckless homicide not committed by means of a vehicle (IC 35-42-1-5);
- (4) battery as a:
  - (A) Class A felony (IC 35-42-2-1(a)(5));
  - (B) Class B felony (IC 35-42-2-1(a)(4)); or
  - (C) Class C felony (IC 35-42-2-1(a)(3));
- (5) aggravated battery (IC 35-42-2-1.5);
- (6) kidnapping (IC 35-42-3-2);
- (7) criminal confinement (IC 35-42-3-3);
- (8) rape (IC 35-42-4-1);
- (9) criminal deviate conduct (IC 35-42-4-2);
- (10) child molesting (IC 35-42-4-3);
- (11) sexual battery as a Class C felony (IC 35-42-4-8);
- (12) robbery (IC 35-42-5-1);
- (13) carjacking (IC 35-42-5-2);
- (14) arson as a Class A felony or Class B felony (IC 35-43-1-1(a));
- (15) burglary as a Class A felony or Class B felony (IC 35-43-2-1);

- (16) assisting a criminal as a Class C felony (IC 35-44-3-2);
- (17) resisting law enforcement as a Class B felony or Class C felony (IC 35-44-3-3);
- (18) escape as a Class B felony or Class C felony (IC 35-44-3-5);
- (19) trafficking with an inmate as a Class C felony (IC 35-44-3-9);
- (20) criminal gang intimidation (IC 35-45-9-4);
- (21) stalking as a Class B felony or Class C felony (IC 35-45-10-5);
- (22) incest (IC 35-46-1-3);
- (23) dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1);
- (24) dealing in methamphetamine (IC 35-48-4-1.1);
- (25) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
- (26) dealing in a schedule IV controlled substance (IC 35-48-4-3); or
- (27) dealing in a schedule V controlled substance (IC 35-48-4-4).

(c) A serious violent felon who knowingly or intentionally possesses a firearm commits unlawful possession of a firearm by a serious violent felon, a Class B felony.

**POSSESSION OF KNIFE ON SCHOOL PROPERTY OR SCHOOL BUS  
(I.C. 35-47-5-2.5)**

**Overview:**

It is currently a Class B misdemeanor for a person to recklessly, knowingly, or intentionally possess a knife on school property, on a school bus, or on a special purpose bus used by a school. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under the section, and a Class D felony if the offense results in bodily injury or serious bodily injury. The section does not apply to a person who possesses a knife if the knife is provided by/authorized by the school and the person uses the knife for a purpose authorized by the school or if the knife is secured in a motor vehicle. "Knife" is defined as an instrument that consists of a sharp edged or sharp pointed blade capable of inflicting cutting, stabbing, or tearing wounds, and is intended to be used as a weapon, including a dagger, dirk, poniard, stiletto, switchblade knife, or gravity knife.

**Issue(s):**

1. In which felony level(s) does this crime belong?
2. "Bodily injury" and "serious bodily injury" are combined in this statute. Should the two be separated, with an enhanced penalty for "serious bodily injury?"

**Recommendation:**

1. The offense should remain at its current level as a Class B misdemeanor, with enhancement to a Class A if the person has a prior unrelated conviction, and to a Level 6 felony if the offense results in bodily injury.
2. Strike the language "or serious bodily injury."

**Rationale:**

Both "bodily injury" and "serious bodily injury" are combined in this statute and both are currently a Class D felony. The statute is aimed at the act of possession and the consequent fact that someone gets hurt, as opposed to the (deliberate) commission of aggravated battery (a Class B felony). Consequently, the workgroup recommends striking the language "serious bodily injury" rather than changing the felony classifications/adding an enhancement, since the General Assembly appears to have intended the statute be directed at possession and subsequent injury rather than enhancing the offense. The penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

- (a) As used in this section, "knife" means an instrument that:
  - (1) consists of a sharp edged or sharp pointed blade capable of inflicting cutting, stabbing, or tearing wounds; and
  - (2) is intended to be used as a weapon.
- (b) The term includes a dagger, dirk, poniard, stiletto, switchblade knife, or gravity knife.
- (c) A person who recklessly, knowingly, or intentionally possesses a knife on:
  - (1) school property (as defined in IC 35-41-1-24.7);
  - (2) a school bus (as defined in IC 20-27-2-8); or
  - (3) a special purpose bus (as defined in IC 20-27-2-10);

commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this section and a Class D felony if the offense results in bodily injury or serious bodily injury to another person.

- (d) This section does not apply to a person who possesses a knife:

- (1) if:
  - (A) the knife is provided to the person by the school corporation or possession of the knife is authorized by the school corporation; and
  - (B) the person uses the knife for a purpose authorized by the school corporation;or
- (2) if the knife is secured in a motor vehicle.

**SAWED OFF SHOTGUN  
(I.C. 35-47-5-4.1)**

**Overview:**

A person who manufactures, causes to be manufactured, imports into Indiana, keeps for sale, offers or exposes for sale, or gives/lends/possesses any sawed-off shotgun commits Dealing in a Sawed-Off Shotgun, a Class D felony. The presence of a sawed-off shotgun in a vehicle creates an inference that the weapon is in the possession of the persons occupying the vehicle. However, the inference doesn't apply to all the person occupying the vehicle if the weapon is found upon, or under the control of, one of the occupants. Additionally, the inference doesn't apply to a licensed cab driver who finds the weapon in his vehicle if properly pursuing his trade. The section doesn't apply to a law enforcement officer who is acting in the course of his official duties or to a person who makes or sells a sawed-off shotgun to a law enforcement agency.

**Issue:**

1. In which felony level does this crime belong?

**Recommendation:**

1. Level 6 felony

**Rationale:**

The penalty is appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

**IC 35-47-5-4.1**

**Sawed-off shotgun**

Sec. 4.1. (a) A person who:

- (1) manufactures;
- (2) causes to be manufactured;
- (3) imports into Indiana;
- (4) keeps for sale;
- (5) offers or exposes for sale; or
- (6) gives, lends, or possesses;

any sawed-off shotgun commits dealing in a sawed-off shotgun, a Class D felony.

(b) The presence of a weapon referred to in subsection (a) in a motor vehicle (as defined under IC 9-13-2-105(a)) except for school buses and a vehicle operated in the transportation of passengers by a common carrier (as defined in IC 8-2.1-17-4) creates an inference that the weapon is in the possession of the persons occupying the motor vehicle. However, the inference does not apply to all the persons occupying the motor vehicle if the weapon is found upon, or under the control of, one (1) of the occupants. In addition, the inference does not apply to a duly licensed driver of a motor vehicle for hire who finds the weapon in the licensed driver's motor vehicle in the proper pursuit of the licensed driver's trade.

(c) This section does not apply to a law enforcement officer who is acting in the course of the officer's official duties or to a person who manufactures or imports for sale or sells a sawed-off shotgun to a law enforcement agency.

*As added by P.L.1-1990, SEC.351. Amended by P.L.2-1991, SEC.107.*

**OWNING/POSSESSING A MACHINE GUN; OPERATING A LOADED MACHINE GUN  
(I.C. 35-47-5-8; I.C. 35-47-5-9)**

***Overview:***

**OWNING/POSSESSING A MACHINE GUN (IC 35-47-5-8):**

It is currently a Class C felony for a person to own or possess a machine gun. Under SEA 26, effective July 1, 2012, a machine gun is defined as a weapon that shoots or can be readily restored to shoot automatically more than one shot, without manual reloading, by a single function of the trigger.

**OPERATING A LOADED MACHINE GUN (IC 35-47-5-9)**

A person who fires a loaded machine gun commits a Class B felony.

***Issue:***

1. In which felony level does each of these crimes belong?  
    Owning/Possessing a Machine Gun: Level 5 felony  
    Operating a Loaded Machine Gun: Level 4 felony

***Recommendation:***

1. Owning/possessing machine gun: Level 5 felony  
Firing loaded machine gun: Level 4 felony

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statutes:***

IC 35-47-5-8: A person who owns or possesses a machine gun commits a Class C felony.

*As added by P.L.311-1983, SEC.32. Amended by P.L.104-2000, SEC.3; P.L.123-2002, SEC.43.*

IC 35-47-5-9: A person who operates a loaded machine gun commits a Class B felony.

*As added by P.L.311-1983, SEC.32. Amended by P.L.104-2000, SEC.4; P.L.123-2002, SEC.44.*

**“ARMOR-PIERCING HANDGUN AMMUNITION” DEFINED; RELATED OFFENSES  
(I.C. 35-47-5-11)**

***Overview:***

It is a Class C felony for a person to knowingly or intentionally manufacture, possess, transfer possession of, or offer to transfer possession of armor-piercing handgun ammunition. Armor-piercing handgun ammunition means a cartridge that can be fired in a handgun and will, upon firing, expel a projectile that has a metal core and an outer coating of plastic. The section does not apply to nylon coated ammunition, plastic shot capsules, or ammunition designed for rifles or shotguns. Additionally, the section does not apply to a law enforcement officer acting in the course of his official duties or to a person who manufactures or imports for sale or sells armor-piercing handgun ammunition to a law enforcement agency.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Level 5 felony

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

**IC 35-47-5-11**

**"Armor-piercing handgun ammunition" defined; related offenses**

Sec. 11. (a) As used in this section, "armor-piercing handgun ammunition" means a cartridge that:

- (1) can be fired in a handgun; and
- (2) will, upon firing, expel a projectile that has a metal core and an outer coating of plastic.

(b) A person who knowingly or intentionally:

- (1) manufactures;
- (2) possesses;
- (3) transfers possession of; or
- (4) offers to transfer possession of;

armor-piercing handgun ammunition commits a Class C felony.

(c) This section does not apply to nylon coated ammunition, plastic shot capsules, or ammunition designed to be used in rifles or shotguns.

(d) This section does not apply to a law enforcement officer who is acting in the course of the officer's official duties or to a person who manufactures or imports for sale or sells armor-piercing handgun ammunition to a law enforcement agency.

*As added by P.L.332-1983, SEC.1. Amended by P.L.327-1987, SEC.2.*

**UNLAWFUL USE OF BODY ARMOR**  
**(I.C. 35-47-5-13)**

***Overview:***

A person who knowingly or intentionally uses body armor while committing a felony commits Unlawful Use of Body Armor, a Class D felony. "Body armor" is defined as bullet resistant metal or other material (e.g., Kevlar) worn by a person to provide protection from weapons or bodily injury.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Level 6 felony

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

**IC 35-47-5-13**

**Unlawful use of body armor**

Sec. 13. (a) As used in this section, "body armor" means bullet resistant metal or other material worn by a person to provide protection from weapons or bodily injury.

(b) A person who knowingly or intentionally uses body armor while committing a felony commits unlawful use of body armor, a Class D felony.

*As added by P.L.227-1996, SEC.1.*

**FIREARM, EXPLOSIVE OR DEADLY WEAPON  
POSSESSION IN COMMERCIAL OR CHARTERED AIRCRAFT  
(I.C. 35-47-6-1)**

***Overview:***

It is a Class C felony for a person to board a commercial or charter aircraft while possessing a firearm, explosive, or any other deadly weapon.

***Issues:***

1. In which felony levels does this crime belong?
2. Should the penalty for this offense be enhanced in light of the events of September 11, 2001?

***Recommendation:***

1. Possessing firearm/weapon on a plane: Level 5 felony; possessing firearm/weapon on a plane with intent to disrupt/cause harm: Level 4 felony
2. It is recommended that the statute be reworded such that the base offense of carrying a firearm, explosive, or weapon onto an aircraft is a Level 5 felony, while doing so with intent to disrupt/cause harm is a Level 4 felony.

*The following language is recommended:*

(a) A person who boards a commercial or charter aircraft having in his possession:

- (1) a firearm;
- (2) an explosive; or
- (3) any other deadly weapon;

commits a ~~Class C~~Level 5 felony.

***(b) A person who commits the offense listed in subsection (a) with the intent to disrupt the operation of the aircraft or cause harm to another individual commits a Level 4 felony.***

***Rationale:***

This statute was passed in 1983. It may be outdated in the post-9/11 era. It is appropriate and proportional to apply these penalties, enhancing the penalty in the event of intent to disrupt the operation of the aircraft or harm any other person.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

A person who boards a commercial or charter aircraft having in his possession:

- (1) a firearm;
- (2) an explosive; or
- (3) any other deadly weapon;

commits a Class C felony.

**DISRUPTING THE OPERATION OF AN AIRCRAFT;  
HIJACK OF AN AIRCRAFT IN FLIGHT  
(I.C. 35-47-6-1.6)**

**Overview:**

It is a Class B felony for a person to knowingly or intentionally use force or violence or the threat of force or violence to disrupt the operation of an aircraft. It is a Class A felony for a person to knowingly or intentionally use force or violence or the threat of force or violence to hijack an aircraft in flight. For the purposes of this code section, an aircraft is considered to be “in flight” while the aircraft is on the ground in Indiana after the doors of the aircraft are closed for takeoff and until the aircraft takes off, in the airspace above Indiana, or on the ground in Indiana after the aircraft lands and before the doors of the aircraft are opened after landing.

**Issue:**

1. In which felony level(s) does this crime belong?

**Recommendation:**

1. The following penalty levels are recommended:
  - Disrupting operation of an aircraft: Level 4 felony
  - Hijacking an aircraft: Level 2 felony

**Rationale:**

The penalty levels are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

(a) A person who knowingly or intentionally uses force or violence or the threat of force or violence to disrupt the operation of an aircraft commits a Class B felony.

(b) A person who knowingly or intentionally uses force or violence or the threat of force or violence to hijack an aircraft in flight commits a Class A felony.

(c) For purposes of this section, an aircraft is considered to be in flight while the aircraft is:

- (1) on the ground in Indiana:
  - (A) after the doors of the aircraft are closed for takeoff; and
  - (B) until the aircraft takes off;
- (2) in the airspace above Indiana; or
- (3) on the ground in Indiana:
  - (A) after the aircraft lands; and
  - (B) before the doors of the aircraft are opened after landing.

## STUN GUNS

(I.C. 35-47-8-5)

### *Overview:*

It is legal for an individual eighteen years of age or older to purchase or possess a stun gun, defined as any mechanism designed to emit an electronic, magnetic, or other type of charge that equals or does not exceed the equivalency of a five milliamp sixty hertz shock and is used for the purpose of temporarily incapacitating a person. It is a Class B misdemeanor for a person to sell or furnish a stun gun to a person under the age of eighteen. It is a Class A misdemeanor for a person to use a stun gun in the commission of a crime. It is a Class D felony for a person to use a stun gun on a law enforcement officer while the officer is performing his or her official duties.

### *Issue:*

1. In which penalty level(s) does this crime belong?

### *Recommendation:*

1. The Misdemeanor penalties should remain as they are in current law. Using a stun gun on a law enforcement officer should be a Level 6 felony

### *Rationale:*

The penalties are appropriate and proportional.

### *Workgroup Position:*

Consensus recommendation

### *Current Statute:*

**IC 35-47-8-5**

**Stun guns; purchase, possession, and sale; use in commission of crime; use on law enforcement officer**

Sec. 5. (a) A person eighteen (18) years of age or over may purchase or possess a stun gun.

(b) A person who sells or furnishes a stun gun to a person who is less than eighteen (18) years of age commits a Class B misdemeanor.

(c) A person who uses a stun gun in the commission of a crime commits a Class A misdemeanor.

(d) A person who uses a stun gun on a law enforcement officer while the officer is performing the officer's duties commits a Class D felony.

*As added by P.L. 318-1985, SEC.3.*

**POSSESSION OF FIREARMS ON SCHOOL PROPERTY, AT SCHOOL FUNCTION, OR ON  
SCHOOL BUS  
(I.C. 35-47-9-2)**

***Overview:***

It is a Class D felony for a person to possess a firearm on school property, on property being used by a school for a school function, or on a school bus.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Level 6 felony

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

**IC 35-47-9-2**

**Possession of firearms on school property, at school function, or on school bus; felony**

Sec. 2. A person who possesses a firearm:

(1) in or on school property;

(2) in or on property that is being used by a school for a school function; or

(3) on a school bus;

commits a Class D felony.

*As added by P.L.140-1994, SEC.11.*

**DANGEROUS POSSESSION OF A FIREARM  
(I.C. 35-47-10-5)**

***Overview:***

A child who possesses a firearm for any purpose other than a legally authorized purpose, or who provides a firearm to another child with or without remuneration for any purpose other than a legally authorized purpose, commits Dangerous Possession of a Firearm, a Class A misdemeanor. The offense is a Class C felony if the child has a prior conviction for the same offense.

***Issues:***

1. In which penalty level(s) does this crime belong?
2. Is it clear that the child should be charged with the equivalent of a Class C felony if he has been previously adjudicated as a juvenile delinquent based on the offense that would be a Class A misdemeanor if he were charged as an adult?

***Recommendations:***

1. The offense should remain a Class A misdemeanor, enhanced to a Level 5 felony if the child has a prior conviction.
2. It is possible that the language should be clarified to reflect the General Assembly's intent with respect to how a child should be charged.

***Rationale:***

The penalties are appropriate and proportional. It would seem that these offenses would normally be brought against the child as juvenile offenses and adjudicated as such. It is not clear that a prior juvenile adjudication for the Class A misdemeanor would serve under this statute as a predicate for a Class C felony charge. This should be clarified to reflect legislative intent.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 5. A child who knowingly, intentionally, or recklessly:

- (1) possesses a firearm for any purpose other than a purpose described in section 1 of this chapter; or
- (2) provides a firearm to another child with or without remuneration for any purpose other than a purpose described in section 1 of this chapter;

commits dangerous possession of a firearm, a Class A misdemeanor. However, the offense is a Class C felony if the child has a prior conviction under this section.

**DANGEROUS CONTROL OF A FIREARM**  
**(I.C. 35-47-10-6)**

***Overview:***

An adult who knowingly, intentionally, or recklessly provides a firearm to any child without a legally authorized purpose commits Dangerous Control of a Firearm, a Class C felony. However, if the adult has a prior conviction under this section, it becomes a Class B felony.

***Issue(s):***

1. In which felony level does this crime belong?

***Recommendations:***

1. Felony level 5; Felony level 4 if the person has a prior conviction.

***Rationale:***

Dangerous Control of a Firearm is similar and proportional to Dangerous Control of a Child, which is also a level 5 felony enhanced to a level 4 felony if the person has a prior conviction.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 6. An adult who knowingly, intentionally, or recklessly provides a firearm to a child for any purpose other than those described in section 1 of this chapter, with or without remuneration, commits dangerous control of a firearm, a Class C felony. However, the offense is a Class B felony if the adult has a prior conviction under this section.

*As added by P.L.140-1994, SEC.12. Amended by P.L.203-1996, SEC.5.*

**DANGEROUS CONTROL OF A CHILD**  
**(I.C. 35-47-10-7)**

***Overview:***

The parent or legal guardian of a child who intentionally, knowingly, or recklessly permits the child to possess a firearm commits Dangerous Control of a Child, a Class C felony. The parent or legal guardian must be aware of a substantial risk that the child will use the firearm to commit a felony and fail to make reasonable efforts to prevent the use of the firearm by the child to commit a felony. It is also Dangerous Control of a Child for a parent or legal guardian to permit a child to possess a firearm if the child has been convicted of a crime of violence or adjudicated as a juvenile for an offense that would constitute a crime of violence if the child were an adult.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 5; Felony level 4 if the person has a prior conviction.

***Rationale:***

Dangerous Control of a Child is similar and proportional to Dangerous Control of a Firearm, which is also a level 5 felony enhanced to a level 4 felony if the person has a prior conviction

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 7. A child's parent or legal guardian who knowingly, intentionally, or recklessly permits the child to possess a firearm:

(1) while:

(A) aware of a substantial risk that the child will use the firearm to commit a felony; and

(B) failing to make reasonable efforts to prevent the use of a firearm by the child to commit a felony; or

(2) when the child has been convicted of a crime of violence or has been adjudicated as a juvenile for an offense that would constitute a crime of violence if the child were an adult; commits dangerous control of a child, a Class C felony. However, the offense is a Class B felony if the child's parent or legal guardian has a prior conviction under this section.

*As added by P.L. 140-1994, SEC.12. Amended by P.L.203-1996, SEC.6.*

**POSSESSION/USE OF WEAPON OF MASS DESTRUCTION WITH INTENT TO CARRY OUT  
TERRORISM  
(I.C 35-47-12-1)**

***Overview:***

A person who knowingly or intentionally possesses, manufactures, places, disseminates or detonates a weapon of mass destruction with the intent to carry out terrorism commits a Class B felony. The penalty is enhanced to a Class A felony if the action of the accused results in serious bodily injury to or the death of any person.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. The penalty should be a Level 3 felony, enhanced to a Level 2 felony if the action results in serious bodily injury or death.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus Recommendation

***Current Statute:***

A person who knowingly or intentionally:

- (1) possesses;
- (2) manufactures;
- (3) places;
- (4) disseminates; or
- (5) detonates;

a weapon of mass destruction with the intent to carry out terrorism commits a Class B felony. However, the offense is a Class A felony if the conduct results in serious bodily injury or death of any person.

**AGRICULTURAL TERRORISM**  
**(I.C 35-47-12-2)**

***Overview:***

A person who knowingly or intentionally possesses, manufactures, places, disseminates, or detonates weapon of mass destruction with the intent to damage, destroy, sicken, or kill crops or livestock without the consent of the owner of the crops or livestock commits Agricultural Terrorism, a Class C felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendations:***

1. Felony level 5.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus Recommendation

***Current Statute:***

A person who knowingly or intentionally:

- (1) possesses;
- (2) manufactures;
- (3) places;
- (4) disseminates; or
- (5) detonates;

a weapon of mass destruction with the intent to damage, destroy, sicken, or kill crops or livestock of another person without the consent of the other person commits agricultural terrorism, a Class C felony.

**TERRORISTIC MISCHIEF**  
**(I.C. 35-47-12-3)**

**Overview:**

A person who knowingly or intentionally places or disseminates a device or substance with the intent to cause a reasonable person to believe that the device or substance is a weapon of mass destruction commits terroristic mischief, a Class C felony. However, the offense is a Class B felony if, as a result of the terroristic mischief, a person (other than the perpetrator) requires medical attention by a physician or if a person suffers serious bodily injury.

**Issue:**

1. In which felony level(s) does this crime belong?

**Recommendation:**

1. The offense should be a Level 5 felony, enhanced to a Level 4 felony if any person requires medical attention by a physician as a result of the offense or if it results in serious bodily injury to any person.

**Rationale:**

The penalties are appropriate and proportional for this crime

**Workgroup Position:**

Consensus Recommendation

**Current Statute:**

Sec. 3. A person who knowingly or intentionally places or disseminates a device or substance with the intent to cause a reasonable person to believe that the device or substance is a weapon of mass destruction (as defined in IC 35-31.5-2-354) commits terroristic mischief, a Class C felony. However, the offense is a Class B felony if, as a result of the terroristic mischief:

(1) a physician prescribes diagnostic testing or medical treatment for any person other than the person who committed the terroristic mischief; or

(2) a person suffers serious bodily injury.

*As added by P.L.123-2002, SEC.49. Amended by P.L.114-2012, SEC.142.*

IC 35-31.5-2-354

"Weapon of mass destruction"

Sec. 354. "Weapon of mass destruction" means any chemical device, biological device or organism, or radiological device that is capable of being used for terrorism.

*As added by P.L.114-2012, SEC.67.*

I.C. 35-47.5

## CONTROLLED EXPLOSIVES

**POSSESSION OF DESTRUCTIVE DEVICE**  
**(I.C. 35-47.5-5-2)**

***Background:***

It is a Class C felony for a person to knowingly or intentionally possess, manufacture, transport, distribute, possess with the intent to distribute, or offer to distribute a destructive device, unless authorized by law.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 5.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 2. A person who knowingly or intentionally:

- (1) possesses;
- (2) manufactures;
- (3) transports;
- (4) distributes;
- (5) possesses with the intent to distribute; or
- (6) offers to distribute;

a destructive device, unless authorized by law, commits a Class C felony.

*As added by P.L.123-2002, SEC.50.*

**POSSESSION OF EXPLOSIVE BY FELON  
(I.C. 35-47.5-5-3)**

**Overview:**

A person who knowingly or intentionally possesses, manufactures, transports, distributes, possesses with intent to distribute, or offers to distribute a regulated explosive commits Possession of an Explosive by a Felon, a Class C felony. The offense is a Class B felony if the person has been convicted of a prior unrelated offense under this section.

**Issue:**

1. In which felony level does this crime belong?

**Recommendation:**

1. Felony level 5; Felony level 4 if the person has a prior conviction.

**Rationale:**

The penalties are appropriate and proportional.

**Workgroup Position:**

Consensus Recommendation.

**Current Statute:**

Sec. 3. A person who has been convicted of a felony by an Indiana court or a court of any other state, the United States, or another country and knowingly or intentionally:

- (1) possesses;
- (2) manufactures;
- (3) transports;
- (4) distributes;
- (5) possesses with the intent to distribute; or
- (6) offers to distribute;

a regulated explosive commits a Class C felony. However, the offense is a Class B felony if the person has a prior unrelated conviction for an offense under this section.

*As added by P.L.123-2002, SEC.50.*

**IC 35-47.5-5-1**

**Application**

Sec. 1. Sections 2, 3, 4, 5, and 6 of this chapter do not apply to the following:

(1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under Indiana law when the person is acting in accordance with the laws, regulations, and rules issued under federal or Indiana law.

(2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.

(3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.

(4) A law enforcement agency, a fire service agency, the department of homeland security, or an emergency management agency of Indiana, an agency or an authority of a political subdivision of the state or the United States, and an employee or authorized agent of the United States while in performance of official duties.

(5) A law enforcement officer, a fire official, or an emergency management official of the United

States or any other state if that person is attending training in Indiana.

(6) The armed forces of the United States or of Indiana.

(7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:

(A) authorized by the chief executive officer of the educational institution or the officer's designee; or

(B) conducted under the policy of the educational institution;  
and conducted in accordance with the laws of the United States and Indiana.

(8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.

(9) Small arms ammunition and reloading components of small arms ammunition.

(10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers intended to be used solely for sporting, recreational, or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in legitimate agricultural or business activities.  
*As added by P.L.123-2002, SEC.50. Amended by P.L.1-2006, SEC.545.*

**DISTRIBUTION OF REGULATED EXPLOSIVES TO A FELON**  
**(I.C. 35-47.5-5-4)**

***Overview:***

A person who knowingly or intentionally distributes a regulated explosive to a person who has been convicted of a felony by an Indiana court or a court of another state, the United States, or another country commits Distribution of Regulated Explosives to a Felon, a Class C felony.

***Issue(s):***

1. In which felony level does this crime belong?

***Recommendations:***

1. Level 5 felony.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 4. A person who knowingly or intentionally distributes a regulated explosive to a person who has been convicted of a felony by an Indiana court or a court of another state, the United States, or another country commits a Class C felony.

*As added by P.L.123-2002, SEC.50.*

**DISTRIBUTION OF DESTRUCTIVE DEVICE, EXPLOSIVE, OR DETONATOR TO A MINOR  
(I.C. 35-47.5-5-5)**

***Overview:***

A person who knowingly or intentionally distributes a destructive device, explosive, or detonator to a person who is less than 18 years old commits Distribution of a Destructive Device, Explosive, or Detonator to a Minor, a Class B felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendations:***

1. Level 4 felony.

***Rationale:***

Distribution of Regulated Explosives to a Minor is more serious than level 5 felonies, such as Distribution of Regulated Explosives to a Felon, such as Possession of a Destructive Device, Possession of an Explosive by a Felon, and Dangerous Control of a Firearm due to the fact that it endangers a child.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 5. A person who knowingly or intentionally distributes or offers to distribute:

- (1) a destructive device;
- (2) an explosive; or
- (3) a detonator;

to a person who is less than eighteen (18) years of age commits a Class B felony.

*As added by P.L.123-2002, SEC.50.*

**MANUFACTURING OR POSSESSING A HOAX DEVICE OR REPLICA  
(I.C. 35-47.5-5-6)**

***Overview:***

A person who manufactures, possesses, transports, distributes, or uses a hoax device or replica with the intent to cause another to believe that the hoax device or replica is a destructive device or detonator commits Manufacturing or Possessing a Hoax Device or Replica, a Class D felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendations:***

1. Felony level 6.

***Rationale:***

Possession of a Hoax Device or Replica is less serious than other similar level 4 and level 5 crimes regarding explosives and destructive devices because the item involved is not an actual explosive or destructive device.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 6. A person who:

- (1) manufactures;
- (2) possesses;
- (3) transports;
- (4) distributes; or
- (5) uses;

a hoax device or replica with the intent to cause another to believe that the hoax device or replica is a destructive device or detonator commits a Class D felony.

*As added by P.L. 123-2002, SEC.50.*

**HINDERING OR OBSTRUCTING DETECTION, DISARMING, OR DESTRUCTION OF  
DESTRUCTIVE DEVICE  
(I.C. 35-47.5-5-7)**

***Overview:***

A person who knowingly or intentionally hinders or obstructs a law enforcement officer, fire official, emergency management official, an animal trained to detect destructive devices, or a robot or mechanical device designed or used by a law enforcement officer, fire official, or emergency management official of Indiana or the United States in detecting, disarming, or destroying a destructive device commits this offense, which is a Class B felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 4.

***Rationale:***

Hindering or Obstructing Detection, Disarming, or Destruction of a Destructive Device is comparable and proportional to another level 4 felony, Disrupting Operation of an Aircraft.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 7. A person who knowingly or intentionally hinders or obstructs:

- (1) a law enforcement officer;
- (2) a fire official;
- (3) an emergency management official;
- (4) an animal trained to detect destructive devices; or
- (5) a robot or mechanical device designed or used by a law enforcement officer, fire official, or

emergency management official;

of Indiana or of the United States in the detection, disarming, or destruction of a destructive device commits a Class B felony.

*As added by P.L.123-2002, SEC.50.*

**POSSESSING DESTRUCTIVE DEVICE TO KILL, INJURE, INTIMIDATE, OR TO DESTROY PROPERTY**

**(I.C. 35-47.5-5-8)**

***Overview:***

A person who possesses, transports, receives, places, or detonates a destructive device or explosive with the knowledge or intent that it will be used to kill, injure, or intimidate an individual or to destroy property commits a Class A felony.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 2.

***Rationale:***

This crime involves intent to cause harm to people or property, hence its placement as a level 2 felony. It is more serious than crimes involving explosive or destructive devices that do not involve intent to cause harm or destruction to people or property per se. It is proportional and comparable to the level 2 felony of Hijacking an Aircraft.

***Workgroup Position:***

Consensus Recommendation.

***Current Statute:***

Sec. 8. A person who:

- (1) possesses;
- (2) transports;
- (3) receives;
- (4) places; or
- (5) detonates;

a destructive device or explosive with the knowledge or intent that it will be used to kill, injure, or intimidate an individual or to destroy property commits a Class A felony.

*As added by P.L. 123-2002, SEC.50.*

**USE OF OVERPRESSURE DEVICE**  
**(I.C. 35-47.5-5-9)**

***Background:***

It is a Class A misdemeanor for a person to knowingly or intentionally use an overpressure device. However, it is a Class D felony if the person has a prior unrelated conviction for an offense under this section.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendations:***

The penalty should remain a misdemeanor, enhanced to a Level 6 felony if the person has a prior unrelated conviction for an offense under this section.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 9. A person who knowingly or intentionally uses an overpressure device commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction for an offense under this section.

*As added by P.L.123-2002, SEC.50.*

**DEPLOYING A BOOBY TRAP**  
**(I.C. 35-47.5-5-10)**

***Overview:***

Deploying a booby trap is a Class D felony which involves a person setting off a booby trap, a certain form of destructive or explosive device.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. Felony level 6.

***Rationale:***

The penalty is appropriate and proportional for this crime.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 10. A person who knowingly or intentionally deploys a booby trap commits a Class D felony.  
*As added by P.L. 123-2002, SEC.50.*

**USE OF REGULATED EXPLOSIVE IN VIOLATION OF COMMISSION RULE  
(I.C. 35-47.5-5-11)**

***Overview:***

A person who recklessly violates a rule regarding the use of a regulated explosive adopted by the Firefighting and Building Safety Commission commits Use of a Regulated Explosive in Violation of a Commission Rule, a Class A misdemeanor. The offense is a Class D felony if the offense proximately causes bodily injury or death.

***Issues:***

1. In which penalty level(s) does this crime belong?
2. Should the offense be enhanced beyond the current Class D felony for causing death?

***Recommendations:***

1. The offense should remain a Class A misdemeanor, enhanced to a Level 6 felony if bodily injury occurs and a Level 5 felony if death occurs.
2. This offense should be enhanced to a Level 5 felony if the offense proximately causes death.

***Rationale:***

Use of a Regulated Explosive in Violation of a Commission Rule belongs in class 5 if death is caused. This would be proportional to Driving a Motor Vehicle Causing Death.

***Workgroup Position:***

Consensus recommendation.

***Current Statute:***

Sec. 11. A person who recklessly violates a rule regarding the use of a regulated explosive adopted by the commission under IC 35-47.5-4-4.5 commits a Class A misdemeanor. However, the offense is a Class D felony if the violation of the rule proximately causes bodily injury or death.

I.C. 35-48

CONTROLLED SUBSTANCES

## PENALTIES FOR DRUG/CONTROLLED SUBSTANCE OFFENSES (I.C. 35-48)

### ***Overview:***

Indiana's drug/controlled substance laws are located in Title 35, Article 48 and encompass the entire Article. This description specifically addresses the penalties for cocaine and methamphetamine possession (both Schedule II drugs) and sale, and marijuana/hashish possession and sale, as exemplary of the recommended changes in penalty. The penalties for dealing and possession of cocaine and methamphetamine are as follows:

Dealing in Cocaine (IC 35-48-4-1) is a Class B felony, enhanced to a Class A felony if the amount is 3 grams or more; or the drug (in an amount under 3 grams) was delivered to a person under 18 at least 3 years younger than the offender; or the drug was delivered on a school bus or within 1,000 feet of a school, a public park, a family housing complex, or a youth program center (collectively referred to hereinafter as "a protected zone").

Possession of Cocaine (IC 35-48-4-6) is a Class D felony. However, the offense is a Class C felony if the amount is 3 grams or more, or the person was also in possession of a firearm. The offense is a Class B felony if the amount is under 3 grams but it is possessed within a protected zone, and a Class A felony if the amount is 3 grams or more and the possession occurs within a protected zone.

Dealing in Methamphetamine (IC 35-48-4-1.1) is a Class B felony. Like dealing in cocaine, the offense rises to the level of a Class A felony if the amount is 3 grams or more or it is delivered to someone under 18 and at least 3 years younger than the offender, or within a protected zone.

Possession of Methamphetamine (IC 35-48-4-6.1) tracks the Possession of Cocaine statute: it is a Class D felony, but is enhanced to a Class B and then Class A felony under the same circumstances as obtain in the Possession of Cocaine statute.

The penalties for dealing in and possession of marijuana are as follows. Only the penalty for marijuana is described, as it is measured in a different way than hashish, synthetic drugs, etc., which are covered by the same statute. The marijuana provisions are described here exclusively for ease of comprehension of the proposed changes.

Dealing in Marijuana (IC 35-48-4-10) is a Class A misdemeanor. However, it is a Class D felony if the recipient is under 18; the amount is 30 grams or more but less than 10 pounds, or the person has a prior conviction relating to marijuana or one of the other drugs included in this section. The offense is a Class C felony if the amount involved is 10 pounds or more or the delivery was within a protected zone.

Possession of Marijuana (IC 35-48-4-11), including the growing of marijuana, is a Class A misdemeanor. However, the offense is a Class D felony if the amount involved is 30 grams or more, or the person has a prior conviction of any offense involving marijuana, hashish or the other drugs listed in this section.

***Issues:***

1. What penalty/ies should apply to cocaine and methamphetamine dealing and possession?
2. What penalty/ies should apply to marijuana dealing and possession?
3. Should there be any other amendments to the drug laws?

***Recommendation:***

1. Please see the overall felony sentencing chart (Levels 1-6), beginning on page 8, which includes proposed penalties for drug offenses other than marijuana. A separate chart with proposed penalties for marijuana violations appears at the end of this section.

Dealing in Cocaine: It is recommended that dealing in cocaine begin at a Level 5 felony; and that amounts from 3 to 10 grams, OR dealing less than that amount to a person under 18, or with a gun, or within 1,000 feet of a school, or with a prior conviction for any offense involving dealing in a controlled substance, be penalized at Level 4. With 10 or more but under 28 grams, OR dealing 3 grams or more with any of the same enhancing factors, the penalty would be Level 3; and dealing over 28 grams OR dealing from 10 to 28 grams with the enhancing factors would be penalized at Level 2.

Dealing in Methamphetamine: The same stair-step approach is recommended for dealing in or manufacturing methamphetamine, beginning at a Level 5 felony for dealing/manufacturing under 3 grams of methamphetamine with the penalty rising based on the same amounts and other factors to a maximum Level 2 felony. In addition, it is recommended that a methamphetamine lab explosion that causes serious bodily injury to any person other than the offender who is manufacturing methamphetamine, or causing property damage of over \$10,000, be penalized as a Level 1 felony.

Possession of Cocaine: It is recommended that possession of less than 3 grams of cocaine be penalized as a Level 6 felony. Possession of 3 or more, but less than 10 grams of cocaine, or possession of less than 3 grams within a protected zone, with a gun, or with a prior conviction of dealing in any controlled substance, would be a Level 5 felony. Possession of 10 or more, but less than 28 grams, or possession of less than 10 grams with any of the listed enhancing factors, would be a Level 4 felony; and possession of 28 or more grams, or possession of less than 28 grams with any of the listed enhancing factors, would be a Level 3.

Possession of Methamphetamine: The same stair-step approach is recommended for possession of methamphetamine, beginning at a Level 6 felony for possessing under 3 grams of methamphetamine with the penalty rising based on the same amounts and other factors to a maximum Level 3 felony.

2. Please see the separate chart provided that outlines recommended marijuana and hashish penalties, as well as drug paraphernalia penalties. It is recommended that possession of marijuana, hash oil, or hashish will not rise above the misdemeanor level, reaching a Class A misdemeanor at its highest point (over 10 pounds). It is recommended that dealing in marijuana, hash oil, or hashish will begin at a Class B misdemeanor, and rise to a maximum level 5 felony for amounts over 10 pounds (the equivalent of today's Class C felony). For growing

(manufacturing) marijuana, the penalty would begin as a Class A misdemeanor and rise to a Level 5 felony.

3. These additional recommendations are made:

- Possession of drug paraphernalia should be a Class C infraction (subject to fines), rising to a Class B infraction in the event the offender has a prior citation for the same offense.
- The “reckless” element for possession of paraphernalia should be stricken.
- It is recommended that the driver’s license suspension related to drug crimes (I.C. 35-48-4-15) be repealed.
- It is recommended that all drug crimes should be suspendible except under the provisions of IC 35-50-2-2 (general non-suspendibility statute).

***Rationale:***

For many years, practitioners throughout the criminal justice system have expressed concern about the very low threshold of 3 grams that increases possession of cocaine or methamphetamine to a Class B felony if within a protected zone; and increases dealing in cocaine or methamphetamine to a Class A felony under those same circumstances. This is in large part the reason that many practitioners have favored a broader sentencing structure encompassing more than 4 classes of felonies. The proposed structure preserves the seriousness of these offenses while more gradually increasing the penalties. It also increases the penalty one level in each case when the offender has a prior conviction for any drug dealing offense. In the case of marijuana, no recommended possession offense is higher than a Class A misdemeanor; and dealing or growing (manufacturing) rises to felony levels equivalent to today’s sentencing scheme. With respect to the final recommendations: possession of paraphernalia should not itself constitute a crime; and modern science is capable of detecting trace amounts of drugs on pipes, etc., resulting in a possession of drugs charge. It is not possible to “recklessly” possess paraphernalia; the act must by its nature be knowing or intentional. The driver’s license suspension for these offenses is not useful or related to the nature of the offense, unlike Driving While Intoxicated. Finally, while the general non-suspendibility statute should still obtain, and the Habitual Offender statute applies to drug crimes, there is no need to have additional non-suspendibility provisions in the statute.

***Workgroup Position:***

Consensus recommendation on most of the provisions. IPDC expresses reservations about the geographic enhancements (e.g., within 1,000 feet of a school). IPDC opposes all such enhancements based on IPDC’s belief that the enhancements have not been effective in their intended purposes of protecting children from the dangers of illegal drug activity and have only resulted in random penalty increases based on geography.

***Current Statutes:***

**IC 35-48-4-1**

**Dealing in cocaine or narcotic drug**

Sec. 1. (a) A person who:

- (1) knowingly or intentionally:
  - (A) manufactures;
  - (B) finances the manufacture of;

(C) delivers; or  
(D) finances the delivery of;  
cocaine or a narcotic drug, pure or adulterated, classified in schedule I or II; or  
(2) possesses, with intent to:  
(A) manufacture;  
(B) finance the manufacture of;  
(C) deliver; or  
(D) finance the delivery of;  
cocaine or a narcotic drug, pure or adulterated, classified in schedule I or II;  
commits dealing in cocaine or a narcotic drug, a Class B felony, except as provided in subsection  
(b).

(b) The offense is a Class A felony if:  
(1) the amount of the drug involved weighs three (3) grams or more;  
(2) the person:  
(A) delivered; or  
(B) financed the delivery of;  
the drug to a person under eighteen (18) years of age at least three (3) years junior to the  
person; or  
(3) the person manufactured, delivered, or financed the delivery of the drug:  
(A) on a school bus; or  
(B) in, on, or within one thousand (1,000) feet of:  
(i) school property;  
(ii) a public park;  
(iii) a family housing complex; or  
(iv) a youth program center.

### **IC 35-48-4-1.1**

#### **Dealing in methamphetamine**

Sec. 1.1. (a) A person who:  
(1) knowingly or intentionally:  
(A) manufactures;  
(B) finances the manufacture of;  
(C) delivers; or  
(D) finances the delivery of;  
methamphetamine, pure or adulterated; or  
(2) possesses, with intent to:  
(A) manufacture;  
(B) finance the manufacture of;  
(C) deliver; or  
(D) finance the delivery of;  
methamphetamine, pure or adulterated;  
commits dealing in methamphetamine, a Class B felony, except as provided in subsection (b).  
(b) The offense is a Class A felony if:  
(1) the amount of the drug involved weighs three (3) grams or more;  
(2) the person:

- (A) delivered; or
  - (B) financed the delivery of;
- the drug to a person under eighteen (18) years of age at least three (3) years junior to the person; or
- (3) the person manufactured, delivered, or financed the delivery of the drug:
    - (A) on a school bus; or
    - (B) in, on, or within one thousand (1,000) feet of:
      - (i) school property;
      - (ii) a public park;
      - (iii) a family housing complex; or
      - (iv) a youth program center.

**IC 35-48-4-6**

**Possession of cocaine or narcotic drug**

Sec. 6. (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses cocaine (pure or adulterated) or a narcotic drug (pure or adulterated) classified in schedule I or II, commits possession of cocaine or a narcotic drug, a Class D felony, except as provided in subsection (b).

(b) The offense is:

- (1) a Class C felony if:
  - (A) the amount of the drug involved (pure or adulterated) weighs three (3) grams or more; or
  - (B) the person was also in possession of a firearm (as defined in IC 35-47-1-5);
- (2) a Class B felony if the person in possession of the cocaine or narcotic drug possesses less than three (3) grams of pure or adulterated cocaine or a narcotic drug:
  - (A) on a school bus; or
  - (B) in, on, or within one thousand (1,000) feet of:
    - (i) school property;
    - (ii) a public park;
    - (iii) a family housing complex; or
    - (iv) a youth program center; and
- (3) a Class A felony if the person possesses the cocaine or narcotic drug in an amount (pure or adulterated) weighing at least three (3) grams:
  - (A) on a school bus; or
  - (B) in, on, or within one thousand (1,000) feet of:
    - (i) school property;
    - (ii) a public park;
    - (iii) a family housing complex; or
    - (iv) a youth program center.

**IC 35-48-4-6.1**

**Possession of methamphetamine**

Sec. 6.1. (a) A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses

methamphetamine (pure or adulterated) commits possession of methamphetamine, a Class D felony, except as provided in subsection (b).

(b) The offense is:

(1) a Class C felony if:

(A) the amount of the drug involved (pure or adulterated) weighs three (3) grams or more; or

(B) the person was also in possession of a firearm (as defined in IC 35-47-1-5);

(2) a Class B felony if the person in possession of the methamphetamine possesses less than three (3) grams of pure or adulterated methamphetamine:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park;

(iii) a family housing complex; or

(iv) a youth program center; and

(3) a Class A felony if the person possesses the methamphetamine in an amount (pure or adulterated) weighing at least three (3) grams:

(A) on a school bus; or

(B) in, on, or within one thousand (1,000) feet of:

(i) school property;

(ii) a public park;

(iii) a family housing complex; or

(iv) a youth program center.

#### **IC 35-48-4-10**

#### **Dealing in marijuana, hash oil, hashish, salvia, or a synthetic drug**

Sec. 10. (a) A person who:

(1) knowingly or intentionally:

(A) manufactures;

(B) finances the manufacture of;

(C) delivers; or

(D) finances the delivery of;

marijuana, hash oil, hashish, salvia, or a synthetic drug, pure or adulterated; or

(2) possesses, with intent to:

(A) manufacture;

(B) finance the manufacture of;

(C) deliver; or

(D) finance the delivery of;

marijuana, hash oil, hashish, salvia, or a synthetic drug, pure or adulterated;

commits dealing in marijuana, hash oil, hashish, salvia, or a synthetic drug, a Class A misdemeanor, except as provided in subsection (b).

(b) The offense is:

(1) a Class D felony if:

(A) the recipient or intended recipient is under eighteen (18) years of age;

(B) the amount involved is:

(i) more than thirty (30) grams but less than ten (10) pounds of marijuana or more than two (2) grams but less than three hundred (300) grams of hash oil, hashish, or salvia; or

(ii) more than two (2) grams of a synthetic drug; or

(C) the person has a prior conviction of an offense involving marijuana, hash oil, hashish, salvia, or a synthetic drug; and

(2) a Class C felony if:

(A) the amount involved is ten (10) pounds or more of marijuana or three hundred (300) or more grams of hash oil, hashish, or salvia, or the person delivered or financed the delivery of marijuana, hash oil, hashish, or salvia:

(i) on a school bus; or

(ii) in, on, or within one thousand (1,000) feet of, school property, a public park, a family housing complex, or a youth program center; or

(B) the amount involved is more than two (2) grams of a synthetic drug and the person delivered or financed the delivery of the synthetic drug:

(i) on a school bus; or

(ii) in, on, or within one thousand (1,000) feet of school property, a public park, a family housing complex, or a youth program center.

#### **IC 35-48-4-11**

#### **Possession of marijuana, hash oil, hashish, salvia, or a synthetic drug**

Sec. 11. A person who:

(1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, hashish, salvia, or a synthetic drug;

(2) knowingly or intentionally grows or cultivates marijuana; or

(3) knowing that marijuana is growing on the person's premises, fails to destroy the marijuana plants;

commits possession of marijuana, hash oil, hashish, salvia, or a synthetic drug, a Class A misdemeanor. However, the offense is a Class D felony if the amount involved is more than thirty (30) grams of marijuana or two (2) grams of hash oil, hashish, salvia, or a synthetic drug, or if the person has a prior conviction of an offense involving marijuana, hash oil, or hashish, salvia, or a synthetic drug.

**MANUFACTURE OF PARAPHERNALIA**  
**(I.C. 35-48-4-8.1)**

***Overview:***

Manufacture of paraphernalia is manufacturing, financing the manufacturing of, or designing an instrument, a device, or other object that is intended for the primary use of introducing into the human body a controlled substance, testing the strength, effectiveness, or purity of a controlled substance, enhancing the effect of a controlled substance. It is a Class A infraction, enhanced to a Class D felony if the perpetrator has a previous judgment for violation of this section.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendations:***

1. The offense should remain a Class A infraction, enhanced to a Level 6 felony if the perpetrator has a previous judgment for violation of the section.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

A person who manufactures, finances the manufacture of, or designs an instrument, a device, or other object that is intended to be used primarily for:

- (1) introducing into the human body a controlled substance;
- (2) testing the strength, effectiveness, or purity of a controlled substance; or
- (3) enhancing the effect of a controlled substance;

in violation of this chapter commits a Class A infraction for manufacturing paraphernalia.

(b) A person who:

- (1) knowingly or intentionally violates this section; and
- (2) has a previous judgment for violation of this section;

commits manufacture of paraphernalia, a Class D felony.

As added by Acts 1980, P.L.115, SEC.2. Amended by P.L.202-1989, SEC.3; P.L.165-1990, SEC.10.

**POSSESSION OF PARAPHERNALIA  
(I.C. 35-48-4-8.3)**

**Overview:**

A person who knowingly or intentionally possesses a raw material, instrument, or device that the person intends to use to ingest, test the strength of, or enhance the effect of a controlled substance, commits a Class A misdemeanor. If the person “recklessly” possesses paraphernalia that “is to be used primarily for” the stated purposes commits a Class B misdemeanor. The lesser civil offense of a Class A infraction applies in the absence of the culpability level required for the Class A misdemeanor. The offense is a Class D felony if the person has a prior unrelated conviction or judgment under this section.

**Issue:**

1. In which penalty level(s) does this crime belong?
2. Should the culpability level of “recklessly” possessing paraphernalia (the Class B misdemeanor) be repealed?

**Recommendations:**

1. The offense should remain a Class A infraction, enhanced to a Class A misdemeanor with the culpability levels indicated; and a Level 6 felony if the perpetrator has a previous judgment or conviction for violation of the section.
2. The Class B misdemeanor offense should be repealed.

*The following language is recommended:*

Sec. 8.3. (a) A person who possesses a raw material, an instrument, a device, or other object that the person intends to use for:

- (1) introducing into the person's body a controlled substance;
- (2) testing the strength, effectiveness, or purity of a controlled substance; or
- (3) enhancing the effect of a controlled substance;

in violation of this chapter commits a Class A infraction for possessing paraphernalia.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated judgment or conviction under this section.

~~(c) A person who recklessly possesses a raw material, an instrument, a device, or other object that is to be used primarily for:~~

- ~~(1) introducing into the person's body a controlled substance;~~
- ~~(2) testing the strength, effectiveness, or purity of a controlled substance; or~~
- ~~(3) enhancing the effect of a controlled substance;~~

~~in violation of this chapter commits reckless possession of paraphernalia, a Class B misdemeanor.~~

~~However, the offense is a Class D felony if the person has a previous judgment or conviction under this section.~~

**Rationale:**

The penalties are appropriate and proportional. With regard to the Class B misdemeanor, it is suggested that it is not possible to “recklessly” (see IC 35-41-2-2(c) possess paraphernalia that “is to be used primarily” for the purposes described. Either a person knows or does not know the purpose for which the paraphernalia is to be used; and a lack of culpability should result in an infraction as provided in the statute.

**Workgroup Position:**

Consensus recommendation

***Current Statute:***

Sec. 8.3. (a) A person who possesses a raw material, an instrument, a device, or other object that the person intends to use for:

- (1) introducing into the person's body a controlled substance;
- (2) testing the strength, effectiveness, or purity of a controlled substance; or
- (3) enhancing the effect of a controlled substance;

in violation of this chapter commits a Class A infraction for possessing paraphernalia.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated judgment or conviction under this section.

(c) A person who recklessly possesses a raw material, an instrument, a device, or other object that is to be used primarily for:

- (1) introducing into the person's body a controlled substance;
- (2) testing the strength, effectiveness, or purity of a controlled substance; or
- (3) enhancing the effect of a controlled substance;

in violation of this chapter commits reckless possession of paraphernalia, a Class B misdemeanor.

However, the offense is a Class D felony if the person has a previous judgment or conviction under this section.

**DEALING IN PARAPHERNALIA**  
**(I.C. 35-48-4-8.5)**

***Overview:***

A person who plays a role in the sale of drug paraphernalia (a material, instrument or device that is designed or marketed to be used primarily for ingesting, testing the strength of, enhancing the effect of, manufacturing, or adulterating a controlled substance) commits a Class A misdemeanor. The offense is a Class A infraction if the person does not have the requisite level of culpability. The offense is a Class D felony if the person has a prior conviction or judgment under this section. A person who “recklessly” commits the offense commits a Class B misdemeanor, also enhanced to a Class D felony if the person has a prior conviction or judgment under this section.

***Issues:***

1. In which penalty level(s) does this crime belong?
2. Should the provision creating a Class B misdemeanor for “reckless” commission of the offense be repealed?

***Recommendations:***

1. The offense should remain a Class A misdemeanor; and a Level 6 felony if the perpetrator has a previous judgment for violation of the section.
2. The provision creating a Class B misdemeanor for “reckless” commission of the offense should be repealed.

***The following language is recommended:***

Sec. 8.5. (a) A person who keeps for sale, offers for sale, delivers, or finances the delivery of a raw material, an instrument, a device, or other object that is intended to be or that is designed or marketed to be used primarily for:

(1) ingesting, inhaling, or otherwise introducing into the human body marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(2) testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(3) enhancing the effect of a controlled substance;

(4) manufacturing, compounding, converting, producing, processing, or preparing marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(5) diluting or adulterating marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance by individuals; or

(6) any purpose announced or described by the seller that is in violation of this chapter; commits a Class A infraction for dealing in paraphernalia.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated judgment or conviction under this section.

~~(c) A person who recklessly keeps for sale, offers for sale, or delivers an instrument, a device, or other object that is to be used primarily for:~~

~~— (1) ingesting, inhaling, or otherwise introducing into the human body marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;~~

~~— (2) testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;~~

~~— (3) enhancing the effect of a controlled substance;~~

~~— (4) manufacturing, compounding, converting, producing, processing, or preparing marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;~~

~~— (5) diluting or adulterating marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance by individuals; or~~

~~— (6) any purpose announced or described by the seller that is in violation of this chapter; commits reckless dealing in paraphernalia, a Class B misdemeanor. However, the offense is a Class D felony if the person has a previous judgment or conviction under this section.~~

~~—(d) (c) This section does not apply to the following:~~

~~(1) Items marketed for use in the preparation, compounding, packaging, labeling, or other use of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance as an incident to lawful research, teaching, or chemical analysis and not for sale.~~

~~(2) Items marketed for or historically and customarily used in connection with the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling of tobacco or any other lawful substance.~~

***Rationale:***

The penalties are appropriate and proportional. With regard to the Class B misdemeanor, it is suggested that it is not possible to “recklessly” (see IC 35-41-2-2(c) participate in selling paraphernalia that “is to be used primarily” for the purposes described. Either a person knows or does not know the purpose for which the paraphernalia he is selling is intended to be used. If it is not a knowing or intentional act, it is suggested that no criminal penalty should attach to it.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 8.5. (a) A person who keeps for sale, offers for sale, delivers, or finances the delivery of a raw material, an instrument, a device, or other object that is intended to be or that is designed or marketed to be used primarily for:

(1) ingesting, inhaling, or otherwise introducing into the human body marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(2) testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(3) enhancing the effect of a controlled substance;

(4) manufacturing, compounding, converting, producing, processing, or preparing marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(5) diluting or adulterating marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance by individuals; or

(6) any purpose announced or described by the seller that is in violation of this chapter; commits a Class A infraction for dealing in paraphernalia.

(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated judgment or conviction under this section.

(c) A person who recklessly keeps for sale, offers for sale, or delivers an instrument, a device,

or other object that is to be used primarily for:

(1) ingesting, inhaling, or otherwise introducing into the human

body marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(2) testing the strength, effectiveness, or purity of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(3) enhancing the effect of a controlled substance;

(4) manufacturing, compounding, converting, producing, processing, or preparing marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance;

(5) diluting or adulterating marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance by individuals; or

(6) any purpose announced or described by the seller that is in violation of this chapter; commits reckless dealing in paraphernalia, a Class B misdemeanor. However, the offense is a Class D felony if the person has a previous judgment or conviction under this section.

(d) This section does not apply to the following:

(1) Items marketed for use in the preparation, compounding, packaging, labeling, or other use of marijuana, hash oil, hashish, salvia, a synthetic drug, or a controlled substance as an incident to lawful research, teaching, or chemical analysis and not for sale.

(2) Items marketed for or historically and customarily used in connection with the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling of tobacco or any other lawful substance.

**VISITING OR MAINTAINING A COMMON NUISANCE  
(I.C. 35-48-4-13)**

***Overview:***

A person who visits a building, structure, vehicle or other place used by any person to use unlawfully a controlled substance commits Visiting a Common Nuisance, a Class B misdemeanor. A person who maintains such a place that is used at least once either for the use of a controlled substance or the manufacture, sale or related activities in connection with a controlled substance commits Maintaining a Common Nuisance, a Class D felony. The case law in relation to Visiting a Common Nuisance (but not Maintaining a Common Nuisance) requires that the place be used multiple times in violation of the drug laws before a person can be convicted of the offense for visiting it.

***Issue:***

1. In what penalty level(s) do these crimes belong?

***Recommendation:***

1. The penalty for Visiting a Common Nuisance should remain a Class B misdemeanor, and the penalty for Maintaining a Common Nuisance should be a Level 6 felony.

***Rationale:***

These penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

**IC 35-48-4-13**

**Visiting or maintaining a common nuisance**

Sec. 13. (a) A person who knowingly or intentionally visits a building, structure, vehicle, or other place that is used by any person to unlawfully use a controlled substance commits visiting a common nuisance, a Class B misdemeanor.

(b) A person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used one (1) or more times:

- (1) by persons to unlawfully use controlled substances; or
- (2) for unlawfully:
  - (A) manufacturing;
  - (B) keeping;
  - (C) offering for sale;
  - (D) selling;
  - (E) delivering; or
  - (F) financing the delivery of;

controlled substances, or items of drug paraphernalia as described in IC 35-48-4-8.5; commits maintaining a common nuisance, a Class D felony.

**TAKING JUVENILE OR ENDANGERED ADULT TO LOCATION USED  
FOR DRUG SALE, MANUFACTURE OR POSSESSION  
(I.C. 35-48-4-13.3)**

***Overview:***

A person who takes a person under 18 or an endangered adult into a building, structure, vehicle or other place used by any person to unlawfully use, manufacture, sell, etc. a controlled substance commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

***Issue:***

1. In what penalty level(s) do these crimes belong?

***Recommendation:***

1. The penalty should remain a Class A misdemeanor, enhanced to a Level 6 felony for a prior conviction.

***Rationale:***

These penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

**IC 35-48-4-13.3**

**Taking juvenile or endangered adult to location used for drug sale, manufacture, or possession**

Sec. 13.3. A person who recklessly, knowingly, or intentionally takes a person less than eighteen (18) years of age or an endangered adult (as defined in IC 12-10-3-2) into a building, structure, vehicle, or other place that is being used by any person to:

- (1) unlawfully possess drugs or controlled substances; or
- (2) unlawfully:
  - (A) manufacture;
  - (B) keep;
  - (C) offer for sale;
  - (D) sell;
  - (E) deliver; or
  - (F) finance the delivery of;

drugs or controlled substances;

commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction under this section.

*As added by P.L.225-2003, SEC.4.*

**OFFENSES RELATING TO REGISTRATION, LABELING AND PRESCRIPTION FORMS  
(I.C. 35-48-4-14)**

***Overview:***

Offenses relating to registration labeling and prescription forms occur when a registrant recklessly, knowingly, or intentionally commits various acts in the manufacture, distribution, record-keeping or labeling of controlled substances. The offense also occurs when a person acquires a controlled substance by misrepresentation, fraud, forgery, deception, alteration of a prescription, use of a false name, or other acts. The offense additionally occurs when a person falsely labels a controlled substance package or duplicates, reproduces, or prints prescription pads without a practitioner's written consent. The offense is a Class D felony and is enhanced to a Class C felony if the person has a prior conviction of an offense under this subsection.

***Issue:***

1. In which felony level does this crime belong?

***Recommendation:***

1. The offense should be a Level 6 felony, enhanced to a Level 5 felony if the person has a prior conviction of an offense under this subsection.

***Rationale:***

1. The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

- (a) A person who:
  - (1) is subject to IC 35-48-3 and who recklessly, knowingly, or intentionally distributes or dispenses a controlled substance in violation of IC 35-48-3;
  - (2) is a registrant and who recklessly, knowingly, or intentionally:
    - (A) manufactures; or
    - (B) finances the manufacture of;a controlled substance not authorized by his registration or distributes or dispenses a controlled substance not authorized by his registration to another registrant or other authorized person;
  - (3) recklessly, knowingly, or intentionally fails to make, keep, or furnish a record, a notification, an order form, a statement, an invoice, or information required under this article; or
  - (4) recklessly, knowingly, or intentionally refuses entry into any premises for an inspection authorized by this article;commits a Class D felony.
- (b) A person who knowingly or intentionally:
  - (1) distributes as a registrant a controlled substance classified in schedule I or II, except under an order form as required by IC 35-48-3;
  - (2) uses in the course of the:
    - (A) manufacture of;
    - (B) the financing of the manufacture of; or
    - (C) distribution of;a controlled substance a federal or state registration number that is fictitious, revoked, suspended, or issued to another person;

(3) furnishes false or fraudulent material information in, or omits any material information from, an application, report, or other document required to be kept or filed under this article; or

(4) makes, distributes, or possesses a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or a likeness of any of the foregoing on a drug or container or labeling thereof so as to render the drug a counterfeit substance;  
commits a Class D felony.

(c) A person who knowingly or intentionally acquires possession of a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, alteration of a prescription order, concealment of a material fact, or use of a false name or false address commits a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection.

(d) A person who knowingly or intentionally affixes any false or forged label to a package or receptacle containing a controlled substance commits a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection. This subsection does not apply to law enforcement agencies or their representatives while engaged in enforcing IC 16-42-19 or this chapter (or IC 16-6-8 before its repeal).

(e) A person who duplicates, reproduces, or prints any prescription pads or forms without the prior written consent of a practitioner commits a Class D felony. However, the offense is a Class C felony if the person has a prior conviction of an offense under this subsection. This subsection does not apply to the printing of prescription pads or forms upon a written, signed order placed by a practitioner or pharmacist, by legitimate printing companies.

**POSSESSION OR SALE OF DRUG PRECURSORS**  
**(I.C. 35-48-4-14.5)**

**Overview:**

This statute makes it a Class D felony to possess certain drug precursors; the offense level in each case is enhanced based on certain aggravating factors. See "Current Statute", below.

**Issue:**

1. In which penalty level(s) does this crime belong?

**Recommendation:**

1. The Class D felony provisions should be converted to Level 6 felonies. The Class C felony provisions should be converted to Level 5 felonies.

**Rationale:**

The penalties are appropriate and proportional.

**Workgroup Position:**

Consensus recommendation

**Current Statute:**

Sec. 14.5. (a) As used in this section, "chemical reagents or precursors" refers to one (1) or more of the following:

- (1) Ephedrine.
- (2) Pseudoephedrine.
- (3) Phenylpropanolamine.
- (4) The salts, isomers, and salts of isomers of a substance identified in subdivisions (1) through (3).
- (5) Anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1).
- (6) Organic solvents.
- (7) Hydrochloric acid.
- (8) Lithium metal.
- (9) Sodium metal.
- (10) Ether.
- (11) Sulfuric acid.
- (12) Red phosphorous.
- (13) Iodine.
- (14) Sodium hydroxide (lye).
- (15) Potassium dichromate.
- (16) Sodium dichromate.
- (17) Potassium permanganate.
- (18) Chromium trioxide.
- (19) Benzyl cyanide.
- (20) Phenylacetic acid and its esters or salts.
- (21) Piperidine and its salts.
- (22) Methylamine and its salts.
- (23) Isosafrole.
- (24) Safrole.
- (25) Piperonal.

- (26) Hydriodic acid.
- (27) Benzaldehyde.
- (28) Nitroethane.
- (29) Gamma-butyrolactone.
- (30) White phosphorus.
- (31) Hypophosphorous acid and its salts.
- (32) Acetic anhydride.
- (33) Benzyl chloride.
- (34) Ammonium nitrate.
- (35) Ammonium sulfate.
- (36) Hydrogen peroxide.
- (37) Thionyl chloride.
- (38) Ethyl acetate.
- (39) Pseudoephedrine hydrochloride.

(b) A person who possesses more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated, commits a Class D felony. However, the offense is a Class C felony if the person possessed:

- (1) a firearm while possessing more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated; or
- (2) more than ten (10) grams of ephedrine, pseudoephedrine, or phenylpropanolamine, pure or adulterated, in, on, or within one thousand (1,000) feet of:
  - (A) school property;
  - (B) a public park;
  - (C) a family housing complex; or
  - (D) a youth program center.

(c) A person who possesses anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with the intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6, commits a Class D felony. However, the offense is a Class C felony if the person possessed:

- (1) a firearm while possessing anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6; or
- (2) anhydrous ammonia or ammonia solution (as defined in IC 22-11-20-1) with intent to manufacture methamphetamine or amphetamine, schedule II controlled substances under IC 35-48-2-6, in, on, or within one thousand (1,000) feet of:
  - (A) school property;
  - (B) a public park;
  - (C) a family housing complex; or
  - (D) a youth program center.

(d) Subsection (b) does not apply to a:

- (1) licensed health care provider, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier or an agent of any of these persons if the possession is in the regular course of lawful business activities; or
- (2) person who possesses more than ten (10) grams of a substance described in subsection (b) if the substance is possessed under circumstances consistent with typical medicinal or household use, including:

- (A) the location in which the substance is stored;
- (B) the possession of the substance in a variety of:
  - (i) strengths;
  - (ii) brands; or
  - (iii) types; or

- (C) the possession of the substance:
  - (i) with different expiration dates; or
  - (ii) in forms used for different purposes.

(e) A person who possesses two (2) or more chemical reagents or precursors with the intent to manufacture a controlled substance commits a Class D felony.

(f) An offense under subsection (e) is a Class C felony if the person possessed:

(1) a firearm while possessing two (2) or more chemical reagents or precursors with intent to manufacture a controlled substance; or

(2) two (2) or more chemical reagents or precursors with intent to manufacture a controlled substance in, on, or within one thousand (1,000) feet of:

- (A) school property;
- (B) a public park;
- (C) a family housing complex; or
- (D) a youth program center.

(g) A person who sells, transfers, distributes, or furnishes a chemical reagent or precursor to another person with knowledge or the intent that the recipient will use the chemical reagent or precursors to manufacture a controlled substance commits unlawful sale of a precursor, a Class D felony.

PROPOSED  
MARIJUANA PENALTIES

# Marijuana Proportionality Proposal

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

Crime	Aggravator	New Class
Manufacturing in Marijuana (as a separate, new crime)	> 50 plants	Level 5
Manufacturing in Marijuana	< 50 plants but > 10 plants + prior (35-48-4-10, 11)	Level 5
Manufacturing in Marijuana	< 50 plants but > 10 plants	Level 6
Manufacturing in Marijuana	< 10 plants + prior (35-48-4-10, 11)	Level 6
Manufacturing in Marijuana	< 10 plants	A Misd
Dealing in Marijuana, Hash Oil, or Hashish	> 50 pounds	Level 5
Dealing in Marijuana, Hash Oil, or Hashish	Intended recipient is less than 18 (dealing any amount)	Level 6
Dealing in Marijuana, Hash Oil, or Hashish	> 10 pounds but < 50 pounds	Level 6
Dealing in Marijuana, Hash Oil, or Hashish	> 30 grams but < 10 pounds + prior (35-48-4-10,11)	Level 6
Dealing in Marijuana, Hash Oil, or Hashish	> 30 grams but < 10 pounds	A Misd
Dealing in Marijuana, Hash Oil, or Hashish	< 30 grams + prior (35-48-4-10,11)	A Misd
Dealing in Marijuana, Hash Oil, or Hashish	< 30 grams	B Misd
Possession of Marijuana, Hash Oil, or Hashish	> 10 pounds	A Misd
Possession of Marijuana, Hash Oil, or Hashish	> 30 grams but < 10 pounds	B Misd
Possession of Marijuana, Hash Oil, or Hashish	< 30 grams + prior (35-48-4-10,11)	B Misd
Possession of Marijuana, Hash Oil, or Hashish	< 30 grams	C Misd
Manufacture in Papaphernalia	prior conviction	Level 6
Manufacture in Papaphernalia		A Misd
Dealing in Paraphernalia	prior conviction	Level 6
Dealing in Paraphernalia		B Misd
Possession of Paraphernalia	prior citation	B Infraction
Possession of Paraphernalia		C Infraction
<u>NOTES:</u>		
Weights for Hash Oil, Hashish will be listed as proportional to Marijuana		
Eliminate reckless element for possession of paraphernalia		
Eliminate drivers license suspension, geographic issues		
All crimes suspendible unless non suspendible due to provisions of 35-50-2-2 (Non Suspendibility Statute)		

I.C. 35-49

OBSCENITY AND PORNOGRAPHY

**SALE OR DISTRIBUTION OR EXHIBITION OF OBSCENE MATTER  
(I.C. 35-49-3-1)**

***Overview:***

Sale or distribution or exhibition of obscene matter is the knowing or intentional sending or bringing into Indiana of obscene matter for sale or distribution; or offering to distribute, distributing or exhibiting to another person obscene matter. The offense is a Class A misdemeanor, enhanced to a Class D felony if the obscene matter depicts or describes sexual conduct involving any person who is or appears to be under sixteen (16) years of age.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor, enhanced to a Level 6 felony if the obscene matter depicts or describes sexual conduct involving any person who is or appears to be under sixteen (16) years of age.

***Rationale:***

The penalty levels are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

A person who knowingly or intentionally:

- (1) sends or brings into Indiana obscene matter for sale or distribution; or
- (2) offers to distribute, distributes, or exhibits to another person obscene matter;

commits a Class A misdemeanor. However, the offense is a Class D felony if the obscene matter depicts or describes sexual conduct involving any person who is or appears to be under sixteen (16) years of age.

As added by P.L.311-1983, SEC.33.

**OBSCENE PERFORMANCE**  
**(I.C. 35-49-3-2)**

***Overview:***

A person who knowingly or intentionally engages in, participates in, manages, produces, sponsors, presents, exhibits, photographs, or videotapes any obscene performance commits a Class A misdemeanor. The offense is enhanced to a Class D felony if the obscene performance depicts or describes sexual conduct involving any person who is or appears to be under sixteen (16) years of age.

***Issue:***

1. In which penalty level(s) does this crime belong?

***Recommendation:***

1. The offense should remain a Class A misdemeanor, with enhancement to a Level 6 felony if the obscene performance depicts or describes sexual conduct involving any person who is or appears to be under sixteen (16) years of age.

***Rationale:***

The penalties are appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

A person who knowingly or intentionally engages in, participates in, manages, produces, sponsors, presents, exhibits, photographs, films, or videotapes any obscene performance commits a Class A misdemeanor. However, the offense is a Class D felony if the obscene performance depicts or describes sexual conduct involving any person who is or appears to be under sixteen (16) years of age.

As added by P.L.311-1983, SEC.33.

**DISSEMINATION OF MATERIAL HARMFUL TO MINORS  
(I.C. 35-49-3-3)**

***Overview:***

A person who knowingly or intentionally displays or disseminates material harmful to minors, or conducts a performance harmful to minors in an area accessible to minors, or assists a minor in accessing an area where such material is being shown by misrepresenting that he is the minor's parent or guardian, commits a Class D felony.

***Issue:***

1. In which penalty level does this crime belong?

***Recommendation:***

- I. The offense should be penalized as a Level 6 felony.

***Rationale:***

The penalty is appropriate and proportional.

***Workgroup Position:***

Consensus recommendation

***Current Statute:***

Sec. 3. (a) Except as provided in subsection (b), a person who knowingly or intentionally:

- (1) disseminates matter to minors that is harmful to minors;
  - (2) displays matter that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;
  - (3) sells, rents, or displays for sale or rent to any person matter that is harmful to minors within five hundred (500) feet of the nearest property line of a school or church;
  - (4) engages in or conducts a performance before minors that is harmful to minors;
  - (5) engages in or conducts a performance that is harmful to minors in an area to which minors have visual, auditory, or physical access, unless each minor is accompanied by the minor's parent or guardian;
  - (6) misrepresents the minor's age for the purpose of obtaining admission to an area from which minors are restricted because of the display of matter or a performance that is harmful to minors; or
  - (7) misrepresents that the person is a parent or guardian of a minor for the purpose of obtaining admission of the minor to an area where minors are being restricted because of display of matter or performance that is harmful to minors;
- commits a Class D felony.

(b) This section does not apply if a person disseminates, displays, or makes available the matter described in subsection (a) through the Internet, computer electronic transfer, or a computer network unless:

- (1) the matter is obscene under IC 35-49-2-1;
- (2) the matter is child pornography under IC 35-42-4-4; or
- (3) the person distributes the matter to a child less than eighteen (18) years of age believing or intending that the recipient is a child less than eighteen (18) years of age.

## **I.C. 35-50**

### **SENTENCES**

- 1. Suspension; Probation (IC 35-50-2-2)**
- 2. Habitual Offenders (IC 35-50-2-8, 8.5, 10)**
- 3. Credit Time (IC 35-50-6)**

**SUSPENSION OF SENTENCE; LIMITATIONS  
(I.C. 35-50-2-2)**

***Overview:***

The statute governing when a sentence may be suspended begins with the basic rule that the court may suspend any part of a sentence for a felony, except as provided within this section or section 2.1 of the chapter (Suspension for Adult with Juvenile Record). The statute lists the circumstances under which the sentence is “nonsuspendible” – that is, the court must sentence the convicted defendant to serve at least the minimum statutory sentence for the offense, and may only suspend that portion which exceeds the minimum.

The first circumstance in which an offense is “nonsuspendible”, as defined above, is if the defendant has previously been convicted of a felony. If his current offense is a Class A or Class B felony, the sentence is nonsuspendible. The sentence is also nonsuspendible if the defendant’s current offense of conviction is a Class C felony, and less than 7 years have passed since his discharge from the sentence for a prior felony conviction; or the defendant’s current offense of conviction is a Class D felony and less than 3 years have passed since his discharge from the sentence for a prior felony conviction.

The statute also lists certain specific offenses for which the sentence is nonsuspendible regardless of the prior criminal history of the defendant. The full statute, including that list of offenses, appears below.

***Issues:***

1. Should the defendant’s sentence be nonsuspendible in every case in which he has previously been convicted of a felony as indicated in the statute? Specifically, should the court have discretion to determine, in the case of the lowest class of felony, whether or not to suspend all or a portion of the minimum sentence? Similarly, if the current offense is at a higher level but the only felony of which the defendant has previously been convicted is a Class D (Level 6) felony, should the court have the discretion to determine whether to suspend any part of the minimum sentence for the instant offense?
2. Should the list of specific felonies the sentences for which are nonsuspendible be amended to include additional felonies?
3. Should the list of specific felonies the sentences for which are nonsuspendible be amended to exclude certain felonies now listed?

***Recommendations:***

1. The sentences for Level 1, 2, 3 and 4 felonies (the equivalent of the current Class A and Class B felonies) should remain nonsuspendible, unless the defendant’s only prior felony conviction was for a Level 6 felony (Class D felony under the current criminal code). The court should have the discretion to suspend all or a portion of the defendant’s sentence for a Level 6 felony, even if he has been convicted of another felony at any point in the past. Level 5 felonies should remain nonsuspendible if less than 7 years have passed since the defendant’s discharge from a prior felony, unless that prior felony was a Class

D or Level 6 felony, in which case the court should have discretion to suspend all or a portion of the sentence for the Level 5 felony.

2. The list of felonies which by definition are nonsuspendible should be expanded to include:

Attempted Murder

Conspiracy to Commit Murder

Voluntary Manslaughter

Battery (IC 35-42-2-1) Causing Death

Neglect of a Dependent as a Level 1 or Level 2 felony

Disarming a Law Enforcement Officer as a Level 1, 2, 3 or 4 felony

In addition, it is recommended that the statute be clarified to ensure that all sentence enhancements provided for in IC 35-50-2 are nonsuspendible. This includes, but is not limited to, such sentencing enhancements as that in IC 35-50-2-11 for using a firearm while dealing most illegal drugs.

3. The list of felonies which by definition are nonsuspendible should be amended to strike:

Battery with a Deadly Weapon

Sexual Battery with a Deadly Weapon

Child Molesting as a Level 4 felony (on the lower end of the current Class B felony range)

Dangerous Control of a Firearm (IC 35-47-10-6; providing a firearm to a child)

Possession of cocaine, a Schedule I or II drug, or methamphetamine while also in possession of a firearm

Dealing in various controlled substances under certain circumstances (see strikeouts in recommended language, below)

*The following language is recommended. Note: The language below reflects only the sections in which changes are recommended. Subsections (c) through (g) of the current statute, while not included immediately below, are proposed to be retained in the statute without change.*

#### **IC 35-50-2-2**

#### **Suspension of sentence; limitations**

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

(b) Except as provided in subsection (i), with respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7.

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

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

sentenced.

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

~~(4) (3) Notwithstanding the other provisions of this subsection, the felony committed was:~~

- ~~(A) murder (IC 35-42-1-1);~~
- ~~(B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death *attempted murder (IC 35-41-5-1, IC 35-42-1-1);*~~
- ~~(C) sexual battery (IC 35-42-4-8) with a deadly weapon *conspiracy to commit murder (IC 35-41-5-2, IC 35-42-1-1);*~~
- ~~(D) *voluntary manslaughter (IC 35-42-1-3)*~~
- ~~(E) *battery (IC 35-42-2-1 causing death;*~~
- ~~(F)(D) kidnapping (IC 35-42-3-2);~~
- ~~(G)(E) confinement (IC 35-42-3-3) with a deadly weapon;~~
- ~~(H)(F) rape (IC 35-42-4-1) as a *Class A Level 1* felony;~~
- ~~(I)(G) criminal deviate conduct (IC 35-42-4-2) as a *Class A Level 1* felony;~~
- ~~(J) *neglect of a dependent (IC 35-46-1-4) as a Level 1 or 2 felony;*~~
- ~~(K)(H) except as provided in subsection (i), child molesting (IC 35-42-4-3) as a *Class A or Class B Level 1, Level 2, or Level 3* felony, unless:
  - ~~(i) the felony committed was child molesting as a *Class B Level 3* felony;~~
  - ~~(ii) the victim was not less than twelve (12) years old at the time the offense was committed;~~
  - ~~(iii) the person is not more than four (4) years older than the victim, or more than five (5) years older than the victim if the relationship between the person and the victim was a dating relationship or an ongoing personal relationship (not including a family relationship);~~
  - ~~(iv) the person did not have a position of authority or substantial influence over the victim; and~~
  - ~~(v) the person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person;~~~~
- ~~(L)(I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;~~
- ~~(M)(J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;~~
- ~~(N)(K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;~~
- ~~(O)(L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;~~
- ~~(P)(M) escape (IC 35-44-3-5) with a deadly weapon;~~
- ~~(Q)(N) rioting (IC 35-45-1-2) with a deadly weapon~~
- ~~(O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:
  - ~~(i) school property;~~
  - ~~(ii) a public park;~~~~

- (iii) a family housing complex; or
- (iv) a youth program center;

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

- ~~(i) school property;~~
- ~~(ii) a public park;~~
- ~~(iii) a family housing complex; or~~
- ~~(iv) a youth program center;~~

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

- ~~(i) school property;~~
- ~~(ii) a public park;~~
- ~~(iii) a family housing complex; or~~
- ~~(iv) a youth program center;~~

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

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

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

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

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

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

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

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

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

**(g) An additional term of imprisonment imposed under IC 35-50-2 may not be suspended.**

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

(i) **(h)** If a person is:

(1) convicted of child molesting (IC 35-42-4-3) as a ~~Class A felony~~ **Level 1 or 2 felony** against a victim less than twelve (12) years of age; and

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

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

***Rationale:***

The courts should have the discretion to determine, based on the facts of the case and the offender's criminal history, whether to suspend the sentence for a Level 6 felony. The courts should also have the discretion to suspend a sentence which would be otherwise suspendible if the defendant has previously been convicted of a Class D or Level 6 felony.

There are certain offenses that should be added to the list of nonsuspendible felonies by their nature, such as Attempted Murder and Conspiracy to Commit Murder, on the basis that if those who attempted or conspired to commit murder were successful, their conviction for Murder would be nonsuspendible. Similarly, other serious offenses such as Voluntary Manslaughter (knowing or intentional killing, but in a sudden heat) should be nonsuspendible. Crimes such as Battery with a Deadly Weapon and Sexual Battery with a Deadly Weapon are recommended for deletion, because if the victim is seriously injured, the case will be charged as Aggravated Battery. Because Aggravated Battery is currently a Class B felony and proposed as a Level 3 felony under the recommended 6-level sentencing system, Aggravated Battery would remain nonsuspendible under the recommendations made. Similarly, if Sexual Battery with a Weapon results in Rape or Criminal Deviate Conduct, it will still be nonsuspendible under the proposed recommendations.

***Workgroup Position:***

One representative of IPAC expressed reservations about the proposed deletion of Battery with a Deadly Weapon and Sexual Battery with a Deadly Weapon from the list of nonsuspendible offenses, as well as the provision that would give the courts discretion in the determination whether to suspend the sentences of Class D (Level 6) felons with a prior felony conviction or the sentences of those convicted of higher level felonies that have a prior conviction for an offense no higher than a Class D (Level 6) felony conviction.

***Current Statute:***

**IC 35-50-2-2**

**Suspension of sentence; limitations**

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

(b) Except as provided in subsection (i), with respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:

(1) The crime committed was a Class A felony or Class B felony and the person has a prior unrelated felony conviction.

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

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum

sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

- (A) murder (IC 35-42-1-1);
- (B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;
- (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- (D) kidnapping (IC 35-42-3-2);
- (E) confinement (IC 35-42-3-3) with a deadly weapon;
- (F) rape (IC 35-42-4-1) as a Class A felony;
- (G) criminal deviate conduct (IC 35-42-4-2) as a Class A

felony;

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

- (i) the felony committed was child molesting as a Class B felony;
- (ii) the victim was not less than twelve (12) years old at the time the offense was committed;
- (iii) the person is not more than four (4) years older than the victim, or more than five (5) years older than the victim if the relationship between the person and the victim was a dating relationship or an ongoing personal relationship (not including a family relationship);
- (iv) the person did not have a position of authority or substantial influence over the victim; and

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

- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44.1-3-1) with a deadly weapon;
- (M) escape (IC 35-44.1-3-4) with a deadly weapon;
- (N) rioting (IC 35-45-1-2) with a deadly weapon;
- (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the court finds the person

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

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

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

- (i) school property;
- (ii) a public park;

- (iii) a family housing complex; or
- (iv) a youth program center;

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

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

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

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

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

(U) disarming a law enforcement officer (IC 35-44.1-3-2).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

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

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

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

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

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

(i) If a person is:

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

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

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

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.115; Acts 1979, P.L.305, SEC.1; Acts 1982, P.L.204, SEC.39; P.L.334-1983, SEC.2; P.L.284-1985, SEC.3; P.L.211-1986, SEC.1; P.L.98-1988, SEC.9; P.L.351-1989(ss), SEC.4;*

*P.L.214-1991, SEC.2; P.L.240-1991(ss2), SEC.98; P.L.11-1994, SEC.17; P.L.203-1996, SEC.8; P.L.96-1996, SEC.7; P.L.220-1997, SEC.1; P.L.188-1999, SEC.8; P.L.17-2001, SEC.30; P.L.222-2001, SEC.6; P.L.238-2001, SEC.21; P.L.116-2002, SEC.25; P.L.224-2003, SEC.126; P.L.85-2004, SEC.11; P.L.213-2005, SEC.7; P.L.151-2006, SEC.28; P.L.140-2006, SEC.36 and P.L.173-2006, SEC.36; P.L.1-2007, SEC.236; P.L.216-2007, SEC.50; P.L.64-2008, SEC.2; P.L.126-2012, SEC.60*

**HABITUAL OFFENDER  
(I.C. 35-50-2-8)  
HABITUAL SUBSTANCE OFFENDERS  
(I.C. 35-50-2-10)  
LIFE WITHOUT PAROLE IMPRISONMENT  
(I.C. 35-50-2-8.5)**

***Overview:***

The original Habitual Offender statute provided that, upon a person's third conviction for any felony, an additional 30 years would be added to his sentence. Specifically, if a person were charged with a felony and had accumulated at least two prior unrelated felony convictions (each new crime committed after sentencing for prior conviction), 30 years would be added to his sentence upon proof of those facts. Soon after the 1977 Criminal Code was enacted and implemented, it became clear that in some cases, the 30 year additional sentence was too harsh (e.g., 3<sup>rd</sup> time theft conviction). The statute was then amended to provide that the court is to sentence a person found to be a habitual offender to an additional fixed term not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense; not to exceed a 30-year enhancement. There are certain restrictions on the State's ability to charge a person as an Habitual Offender; for example, if the instant offense is a Class A misdemeanor that was enhanced to a Class D felony for the sole reason that the defendant had a prior conviction.

In recent years, additional changes were made to the statute, creating a separate habitual offender status for persons convicted of drug crimes (IC 35-50-2-10) which provided for an increase of only 3-8 years on any 3<sup>rd</sup> drug dealing or possession offense and limiting the State's ability to charge a person with the standard Habitual Offender statute depending on the nature of the current and prior offenses of conviction. The language of the current statute has led to difficulties in interpretation, on the part not only of prosecutors but also the Indiana Court of Appeals and Supreme Court.

In addition, in recent years another statute was enacted, providing for a "life without parole" sentence for certain persons convicted of a third felony. IC 35-50-2-8.5 provides a sentence of life without parole if a person's offense of conviction is one of those listed in IC 35-50-2-2(b)(4), the list of specific felonies the sentence for which the sentence is nonsuspendible, and the two prior unrelated convictions are also listed in IC 35-50-2-2(b)(4). In addition, if a person commits a Class A felony child molest and has one prior unrelated Class A felony child molest conviction, he is eligible for life without parole sentencing under IC 35-50-2-8.5.

***Issues:***

1. Should any offenses be excluded from the Habitual Offender status?
2. Should there be any limitations on the use of the Habitual Offender statute at the lower felony levels?
3. Should Indiana have a Life Without Parole Habitual Offender statute?
4. Should there be a separate Habitual Substance Offender statute?
5. Is it sufficiently clear in the statute(s) that the Habitual Offender sentence is nonsuspendible?

***Recommendations:***

First, it is recommended that the basic underpinnings of IC 35-50-2-8 should remain as the statute now provides: That two prior unrelated felony convictions, coupled with a new conviction, make a person eligible for Habitual Offender status; and that such a finding should result in an additional sentence of from one to three times the advisory sentence for the offense of conviction, with a maximum additional sentence of 30 years. However, the following amendments are recommended to the three statutes:

1. It is recommended that all Level 6 offenses as the offense of conviction, and all drug possession offenses as the offense of conviction, be excluded from the application of the Habitual Offender statute (IC 35-50-2-8). However, drug dealing offenses as the offense of conviction would be eligible for Habitual offender status; and drug possession felony convictions would be eligible to be counted as prior unrelated convictions.

2. It is further recommended that certain additional amendments be made at the Level 5 and Level 6 felony levels, as follows:

Exclude from Habitual Offender eligibility a Level 5 offense if the defendant has no more than two prior unrelated convictions that constitute Level 5 or Level 6 (or Class C or Class D) felony offenses. Stated another way, it is recommended that at least 3 prior unrelated convictions be required for Habitual Offender eligibility in the case of a Level 5 felony offense of conviction and prior unrelated convictions that are Level 5 or Level 6 felonies, or Class C or Class D felonies. A Level 5 felony offense would qualify for Habitual Offender status with at least 3 prior unrelated convictions, all of which were Levels 5 or 6, or Class C or D, felonies. A Level 5 felony offense would qualify for Habitual Offender status with only two prior unrelated convictions if at least one of the prior unrelated offenses was for a Level 4 (or Class B) felony or above.

3. It is recommended that the Life Without Parole habitual offender statute (IC 35-50-2-8.5) be repealed.

4. It is recommended that, in concert with the recommended changes above with respect to lower-level felonies and the recommended penalty revisions for drug-related offenses found elsewhere in this report, the Habitual Substance Abuser statute (IC 35-50-2-10) be repealed and that drug offenses be re-incorporated into the standard Habitual Offender statute (IC 35-50-2-8) with the other changes recommended (e.g., exclusion of Level 6 felony and drug possession crimes as the instant offense).

5. The Habitual Offender statute (IC 35-50-2-8) should clearly state that the additional sentence for a conviction under the statute is nonsuspendible.

*No recommended draft language is provided; the language proposed by the above principles should be developed carefully and in close collaboration with LSA.*

***Rationale:***

The basic underpinnings of the statute are appropriate and proportional. However, it is suggested that, given certain other changes being recommended for amendment of the criminal code, the lowest level felonies (Level 6) and drug possession charges as the crime of conviction should be excluded altogether from operation of the Habitual Offender statute. Level 6 felonies would still count as prior unrelated felonies for an Habitual Offender conviction related to a Level 1-5 offense of conviction, as would drug possession charges. The reason for these suggested exclusions is that the Habitual Offender charge should be reserved for more serious felony offenders. The court, seeing an extensive record, can still sentence the offender at the high end of the range and will have other alternatives available depending on the circumstances of the crime of conviction. The escalating penalties in the drug sentencing proposal for prior offenses will increase the potential sentence sufficiently that the Habitual Offender should not be necessary to obtain an appropriate and proportionate sentence. It should be noted here that drug dealing offenses would not be affected by this proposed amendment: defendants charged with drug dealing offenses would still be eligible for treatment as habitual offenders if they had two prior felony convictions, taking into account the Level 5 felony recommendation in Point 2 above.

At a Level 5 felony, it should be obvious that either the defendant is a serious criminal who has committed felonies at a higher level than Level 5 in the past, or he has committed at least 3 Level 5 or 6 felonies prior to the offense of conviction before he reaches Habitual Offender status and receives the applicable sentence enhancement.

The Life Without Parole habitual offender statute (IC 35-50-2-8.5) is unnecessary. By the time an offender commits a Class A felony (which, under the recommended sentencing scheme, will become either a Level 1 or Level 2 felony), and has a prior Class A/Level 1 or 2 felony (of any nature, but in particular for child molestation), the offender will receive a sufficiently lengthy sentence that this statute is simply unnecessary.

The Habitual Substance Offender statute (IC 35-50-2-10), and the changes its passage wrought to the basic Habitual Offender statute (IC 35-50-2-8), have led to wholesale confusion among prosecutors, defense attorneys, and judges as to exactly when IC 35-50-2-8 applies and when it does not. It is believed that IC 35-50-2-10 and the concomitant changes to IC 35-50-2-8 were passed by the General Assembly because it was reported that the prisons were being filled with drug offenders. The escalating drug penalties included in the proposed 6-level sentencing scheme for prior unrelated convictions, and the more appropriate stair-stepping of penalties for increasing amounts of drugs, are expected to result in a more proportional approach to sentencing for drug-related crimes.

Finally, while it is understood that the General Assembly intends the Habitual Offender sentence to be nonsuspendible, and it generally is so in practice, the statute should make clear that the sentence received for Habitual Offender status is nonsuspendible.

***Workgroup Position:***

One representative of IPAC has expressed reservations relating to the proposed repeal of the Habitual Substance Offender statute in favor of the traditional Habitual Offender statute, and the recommendation that in order to qualify for treatment as an Habitual Offender, a person

convicted of a Level 5 felony who had no prior unrelated convictions higher than a Level 5 or Class C felony would have to have accumulated 3, rather than 2, prior unrelated convictions at those levels. The concern relates to individuals with multiple convictions for Operating a Vehicle While Intoxicated that rise to a level no higher than a Level 5; the recommended changes would lead to a requirement that such an offender receive one (1) more conviction before being treated as a Habitual Offender than currently required. Similarly, the concern was expressed that an individual who has been convicted once of Strangulation (current Class D felony) and once of Domestic Battery as a (current) Class D felony would not be treated as an habitual offender upon a later conviction for involuntary manslaughter (a current Class C felony, recommended to be a Level 5 felony).

***Current Statutes:***

**IC 35-50-2-8**

**Habitual offenders**

Sec. 8. (a) Except as otherwise provided in this section, the state may seek to have a person sentenced as a habitual offender for any felony by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions.

(b) The state may not seek to have a person sentenced as a habitual offender for a felony offense under this section if:

(1) the offense is a misdemeanor that is enhanced to a felony in the same proceeding as the habitual offender proceeding solely because the person had a prior unrelated conviction;

(2) the offense is an offense under IC 9-30-10-16 or IC 9-30-10-17; or

(3) all of the following apply:

(A) The offense is an offense under IC 16-42-19 or IC 35-48-4.

(B) The offense is not listed in section 2(b)(4) of this chapter.

(C) The total number of unrelated convictions that the person has for:

(i) dealing in or selling a legend drug under IC 16-42-19-27;

(ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);

(iii) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);

(iv) dealing in a schedule IV controlled substance (IC 35-48-4-3); and

(v) dealing in a schedule V controlled substance (IC

35-48-4-4);

does not exceed one (1).

(c) A person has accumulated two (2) prior unrelated felony convictions for purposes of this section only if:

(1) the second prior unrelated felony conviction was committed after sentencing for the first prior unrelated felony conviction; and

(2) the offense for which the state seeks to have the person sentenced as a habitual offender was committed after sentencing for the second prior unrelated felony conviction.

(d) A conviction does not count for purposes of this section as a prior unrelated felony conviction if:

(1) the conviction has been set aside;

(2) the conviction is one for which the person has been pardoned; or

(3) all of the following apply:

- (A) The offense is an offense under IC 16-42-19 or IC 35-48-4.
- (B) The offense is not listed in section 2(b)(4) of this chapter.
- (C) The total number of unrelated convictions that the person has for:
  - (i) dealing in or selling a legend drug under IC 16-42-19-27;
  - (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
  - (iii) dealing in a schedule I, II, III controlled substance (IC 35-48-4-2);
  - (iv) dealing in a schedule IV controlled substance (IC 35-48-4-3); and
  - (v) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1).

(e) The requirements in subsection (b) do not apply to a prior unrelated felony conviction that is used to support a sentence as a habitual offender. A prior unrelated felony conviction may be used under this section to support a sentence as a habitual offender even if the sentence for the prior unrelated offense was enhanced for any reason, including an enhancement because the person had been convicted of another offense. However, a prior unrelated felony conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed), or IC 9-12-3-2 (repealed) may not be used to support a sentence as a habitual offender.

(f) If the person was convicted of the felony in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing under IC 35-38-1-3.

(g) A person is a habitual offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated felony convictions.

(h) The court shall sentence a person found to be a habitual offender to an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three (3) times the advisory sentence for the underlying offense. However, the additional sentence may not exceed thirty (30) years.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.121; Acts 1980, P.L.210, SEC.1; P.L.335-1983, SEC.1; P.L.328-1985, SEC.2; P.L.1-1990, SEC.353; P.L.164-1993, SEC.13; P.L.140-1994, SEC.14; P.L.305-1995, SEC.1; P.L.166-2001, SEC.3; P.L.291-2001, SEC.226; P.L.71-2005, SEC.11.*

### **IC 35-50-2-8.5**

#### **Life imprisonment without parole upon third felony conviction or second sex offense against a child**

Sec. 8.5. (a) The state may seek to have a person sentenced to life imprisonment without parole for any felony described in section 2(b)(4) of this chapter by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated felony convictions described in section 2(b)(4) of this chapter.

(b) The state may seek to have a person sentenced to life imprisonment without parole for a Class A felony under IC 35-42-4 that is a sex offense against a child by alleging, on a page separate from the rest of the charging instrument, that the person has a prior unrelated Class A felony conviction under IC 35-42-4 that is a sex offense against a child.

(c) If the person was convicted of the felony in a jury trial, the jury shall reconvene to hear

evidence on the life imprisonment without parole allegation. If the person was convicted of the felony by trial to the court without a jury or if the judgment was entered to guilty plea, the court alone shall hear evidence on the life imprisonment without parole allegation.

(d) A person is subject to life imprisonment without parole if the jury (in a case tried by a jury) or the court (in a case tried by the court or on a judgment entered on a guilty plea) finds that the state has proved beyond a reasonable doubt that the person:

(1) has accumulated two (2) prior unrelated convictions for offenses described in section 2(b)(4) of this chapter; or

(2) has a prior unrelated Class A felony conviction under IC 35-42-4 that is a sex offense against a child.

(e) The court may sentence a person found to be subject to life imprisonment without parole under this section to life imprisonment without parole.

*As added by P.L.158-1994, SEC.6. Amended by P.L.53-2005, SEC.2.*

### **IC 35-50-2-10**

#### **Habitual substance offenders**

Sec. 10. (a) As used in this section:

(1) "Drug" means a drug or a controlled substance (as defined in IC 35-48-1).

(2) "Substance offense" means a Class A misdemeanor or a felony in which the possession, use, abuse, delivery, transportation, or manufacture of alcohol or drugs is a material element of the crime. The term includes an offense under IC 9-30-5 and an offense under IC 9-11-2 (before its repeal).

(b) The state may seek to have a person sentenced as a habitual substance offender for any substance offense by alleging, on a page separate from the rest of the charging instrument, that the person has accumulated two (2) prior unrelated substance offense convictions.

(c) After a person has been convicted and sentenced for a substance offense committed after sentencing for a prior unrelated substance offense conviction, the person has accumulated two (2) prior unrelated substance offense convictions. However, a conviction does not count for purposes of this subsection if:

(1) it has been set aside; or

(2) it is a conviction for which the person has been pardoned.

(d) If the person was convicted of the substance offense in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing, under IC 35-38-1-3.

(e) A person is a habitual substance offender if the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had accumulated two (2) prior unrelated substance offense convictions.

(f) The court shall sentence a person found to be a habitual substance offender to an additional fixed term of at least three (3) years but not more than eight (8) years imprisonment, to be added to the term of imprisonment imposed under IC 35-50-2 or IC 35-50-3. If the court finds that:

(1) three (3) years or more have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last prior unrelated substance offense conviction and the date the person committed the substance offense for which the person is being sentenced as a habitual substance offender; or

(2) all of the substance offenses for which the person has been convicted are substance offenses under IC 16-42-19 or IC 35-48-4, the person has not been convicted of a substance

offense listed in section 2(b)(4) of this chapter, and the total number of convictions that the person has for:

- (A) dealing in or selling a legend drug under IC 16-42-19-27;
- (B) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
- (C) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2);
- (D) dealing in a schedule IV controlled substance (IC 35-48-4-3); and
- (E) dealing in a schedule V controlled substance (IC 35-48-4-4);

does not exceed one (1);

then the court may reduce the additional fixed term. However, the court may not reduce the additional fixed term to less than one (1) year.

(g) If a reduction of the additional year fixed term is authorized under subsection (f), the court may also consider the aggravating or circumstances in IC 35-38-1-7.1(a) and the mitigating circumstances in IC 35-38-1-7.1(b) to:

- (1) decide the issue of granting a reduction; or
- (2) determine the number of years, if any, to be subtracted under subsection (f).

*As added by P.L.335-1983, SEC.2. Amended by P.L.327-1985, SEC.5; P.L.98-1988, SEC.11; P.L.1-1990, SEC.355; P.L.96-1996, SEC.8; P.L.97-1996, SEC.5; P.L.2-1997, SEC.77; P.L.291-2001, SEC.227; P.L.71-2005, SEC.12; P.L.213-2005, SEC.5; P.L.1-2006, SEC.551.*

## **CREDIT TIME (I.C. 35-50-6)**

### ***Overview:***

When determinate sentencing was created by the 1977 Criminal Code, the following “credit classes” were created to incentivize good behavior. Depending on the behavior of the inmate, he would be classified in one of the following categories:

Class I: Day for day

Class II: Two days served for one day credit

Class III: No good time credit

More recently, Class IV was added (credit-restricted felons), providing for one day of credit for every 6 days served for a certain limited class of inmates, based not on their behavior in prison, but on the nature of their offense of conviction.

The philosophical underpinnings of credit time have to do with incentive to behave in prison. An inmate will serve only half the time imposed by the court if he behaves in such a way to be classified, and remain classified, in Credit Class I. This sentencing scheme was created as part of the 1977 Indiana Criminal Code; sentences for crimes were doubled in order to allow inmates to earn their way back, via good behavior, to what was deemed the appropriate sentence for each offense. An unfortunate and unintended consequence of Credit Class III is that those inmates who are placed in Credit Class III may “max out” – that is, serve all the time to which they are sentenced and thus have no supervision upon release from prison. They are described by DOC as “ticking time bombs” in that they have no incentive to adhere to the norms of society upon release. All others serve some time on parole after release: there is a presumptive one-year parole for certain non-violent offenders, and all others serve a presumptive 2 years on parole following release.

Since the 1977 Criminal Code was created, other changes have occurred that have permitted reductions in time served well below the “day for day” effect of Credit Class I. Additional credit time has been granted under the law for education and other programmatic activities in which inmates participate, in order to encourage inmates to improve their behavior in anticipation of release, obtain needed substance abuse treatment, and make themselves marketable on the outside by increasing their educational attainment. (See IC 35-50-6-3.3.) The educational credit time, in particular, has led to unintended consequences in some cases in which it is perceived that inmates have manipulated the system. This has led to amendments of the credit time law, for example, to limit the number of degrees for which a person can obtain educational credit. However, opportunities to manipulate the terms of IC 35-50-6-3.3 remain. In particular, a recent case from Marion County involved a 10-year period of incarceration imposed by the court (along with 5 additional years suspended). Two years at the end of the executed sentence were to be served in community corrections, leaving 8 years to serve in DOC. The defendant qualified for Credit Class I, so he would have served 4 years of the 8 without additional programmatic credits. He obtained an Associate’s Degree through distance learning from a university in another state, using transferred credits earned years before which left very few additional credits needed to

obtain the degree; for which he earned one year, off the four year term of imprisonment (see below regarding 1999 change in statute). Then he earned his Bachelor's Degree while still in prison, taking two more years off the four year sentence.

The defendant in question served only about 20 months of an 8-year imposed sentence. This was particularly upsetting to many people because of the nature of the defendant's crime, but it is also exemplary of the unintended consequences of the current programmatic credit time statute.

Other programmatic credits include substance abuse treatment credit, for which an inmate may receive up to 6 months' credit; and other programs approved by the Commissioner (e.g., Cognitive Behavioral Therapy), which also qualify for up to 6 months of sentence credit.

There are certain "caps", or maximums, on the amount of programmatic credit time a person may earn. The first is by program: The cap depends on the program, e.g., up to 6 months for literacy training; up to 6 months for substance abuse treatment (at DOC discretion). "Thinking for a Change" is a cognitive behavioral therapy program. The statute allows up to 6 months' credit for behavioral modification programs, but DOC gives only 3 months due to the short duration of this particular program. Most of the substance abuse treatment programs are about one year long, and DOC gives this credit in phases, in order to encourage participation in each segment.

Second, there is an overall cap on educational/programmatic credits. The overall cap is the lesser of 4 years or 1/3 of the applicable sentence (e.g., 2 years on a 6-year sentence). If the overall sentence is more than 12 years, a 4-year overall cap on programmatic credit time applies (because 1/3 of a 12-year sentence is 4 years and the General Assembly determined that 4 years should be the maximum amount of credit received).

In 1999, the Community Transition Program (CTP) was created by the General Assembly, permitting early release for certain offenders if they were put into a community placement for their transition to a life of freedom. At the same time, another change was made. Originally, the credit time earned was deducted from the overall sentence imposed, but the amendment called for deducting it from the inmate's "period of incarceration" (that is, the time actually served taking into account the credit time classification of the inmate. The "period of incarceration", assuming the inmate is in Class I for purposes of computing "good time" credit, is 50% of the overall sentence imposed. Thus, a one-year educational credit applied to a person who received a sentence of 10 years reduces his sentence not to 4.5 years (result of deducting one year from 10 years, after which Class I credits are applied: 10 years less one year, x 50% = 4.5), but rather to 4 years (10 years x 50% less 1 year - 4).

***Issues:***

1. Should changes be made to the behavioral ("good time") credit system?
2. Should every inmate be required to serve some period of time on post-conviction supervision such as probation or parole?
3. Should there be additional amendments to the programmatic credit time requirements?

***Recommendations:***

1. Credit time classification: No specific recommendation is made concerning whether Indiana should have day-for-day credit time as the reward for good behavior, or to what extent credit time should be reduced for misbehavior in DOC. However, it is understood that if the amount of credit time awarded for good behavior is significantly reduced without any change in the sentences imposed, that will result in a significant impact on the state budget based on the vast increases in the time required to be served by all offenders.

Credit Restricted Felon: It is recommended that if the General Assembly wishes to increase the time served by certain offenders, it should not do so by creating a “credit-restricted felon” classification, not based on behavior but simply on the crime committed. If it is the will of the General Assembly to increase sentences served for certain crimes, the statutory sentence ranges for those offenses should be at a higher level than currently, rather than requiring certain offenders to serve 85% of the imposed sentence based solely on the crime committed. It is therefore recommended that the Credit Restricted Felon provisions in the former IC 35-41-1-5.5 (repealed and re-numbered by P.L. 114, 2012, Sec. 90) and IC 35-50-6-3(d) be repealed.

2. It is recommended that every inmate be required to serve some period of time on post-conviction release, in order that he be monitored for a period of time following release. This could be accomplished by requiring that every offender be sentenced to a “split sentence”, providing for at least some minimal period of probation supervision following the completion of his term; but there may be other methods of accomplishing the same end.
3. Changes should be made in the programmatic credit time statute, in the following ways: First, a return to the original language regarding programmatic credit time being deducted from the entire imposed sentence as opposed to the “period of incarceration” is recommended. *Note*: this will have some fiscal impact, which will require analysis by DOC and Legislative Services Agency (“LSA”). *Note also* that the proposed amendment can only apply prospectively in order to avoid an ex post facto effect; so the analysis must take this into account and avoid overestimating the impact.

Second, there should be a limitation on total education-related credits obtainable by a single individual in DOC. The current provision is this:

(c) The department of correction shall establish admissions criteria and other requirements for programs available for earning credit time under subsection (b). A person may not earn credit time under both subsections (a) and (b) for the same program of study.

(d) The amount of credit time a person may earn under this section is the following:

- (1) Six (6) months for completion of a state of Indiana general educational development (GED) diploma under IC 20-20-6 (before its repeal) or IC 22-4.1-18.
- (2) One (1) year for graduation from high school.
- (3) One (1) year for completion of an associate's degree.
- (4) Two (2) years for completion of a bachelor's degree.
- (5) Not more than a total of six (6) months of credit, as determined by the

department of correction, for the completion of one (1) or more career and technical education programs approved by the department of correction.

It is recommended that a cap of two years be placed on the total education credits obtainable.

Third, transferred credits should be permitted for the degrees for which credit will be offered, but an inmate should receive less credit if some of his credits were earned before he was an inmate. DOC should be permitted to award 6 months of credit for a GED (current law), and 6 months of credit for a vocational certification or an Associate's Degree. However, DOC should be able to award up to one year of credit for either an Associate's Degree or vocational certification all of which credit was earned while in DOC. This would give DOC the ability to limit credit time based partially on educational credits earned on the outside.

*Specific legislative language has not been proposed. It will be necessary to work with LSA to develop the appropriate legislative language that will accomplish the proposed ends.*

***Rationale:***

With regard to credit time classifications, it is suggested that some opportunity be provided to reduce an imposed sentence through good behavior. All offenders should be treated the same in this regard, so the Class IV "credit-restricted felon" classification should be abandoned in exchange for potentially increasing penalties for a limited number of extremely egregious crimes. It should be noted that very few offenses currently are categorized in Class IV, and that philosophy should apply as well to the small universe of offenses that are believed to be the most egregious, thus qualifying for the longest sentences. It is recognized that the resources of the State of Indiana are finite, so if the percentage of time earned for good behavior is reduced for all inmates, that will require the General Assembly to reduce all statutory sentences for various crimes accordingly.

It is important to supervise inmates upon their release from imprisonment, providing encouragement, assistance and supervision to induce them to embrace a crime-free life in the community.

While it is important for inmates to be able to earn a certain amount of time off their sentences for participation in educational and programmatic efforts to improve their behavior and educational levels, credit should be granted only for those degrees that the typical inmate needs in order to be marketable in the private sector upon release; and no one should be permitted to manipulate the system of educational credits, e.g., through the earning of degrees not needed by the defendant in order to make a living in the outside world. The proposed change in the computation of credit time from the "period of incarceration" to the "imposed sentence" will also help to limit the ability of a defendant like the one in the example above to reduce his sentence from 8 years to 20 months.

***Workgroup Position:***

Consensus recommendation

*Current Statutes:*

**IC 35-50-6**

**Chapter 6. Release From Imprisonment and Credit Time**

**IC 35-50-6-0.1**

**Application of certain amendments to chapter**

Sec. 0.1. The following amendments to this chapter apply as follows:

(1) The amendments made to section 1 of this chapter by P.L.11-1994 apply only to an offender (as defined in IC 5-2-12-4, as added by P.L.11-1994 and before its repeal) convicted after June 30, 1994.

(2) The amendments made to sections 3, 4, and 5 of this chapter by P.L.80-2008 apply only to persons convicted after June 30, 2008.

*As added by P.L.220-2011, SEC.639. Amended by P.L.63-2012, SEC.89.*

**IC 35-50-6-1**

**Parole; discharge to community transition program or probation; lifetime parole for sexually violent predators and murderers**

Sec. 1. (a) Except as provided in subsection (d) or (e), when a person imprisoned for a felony completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to that term, the person shall be:

(1) released on parole for not more than twenty-four (24) months, as determined by the parole board, unless:

(A) the person is being placed on parole for the first time;

(B) the person is not being placed on parole for a conviction for a crime of violence (as defined in IC 35-50-1-2);

(C) the person is not a sex offender (as defined in IC 11-8-8-4.5); and

(D) in the six (6) months before being placed on parole, the person has not violated a rule of the department of correction or a rule of the penal facility in which the person is imprisoned;

(2) discharged upon a finding by the committing court that the person was assigned to a community transition program and may be discharged without the requirement of parole; or

(3) released to the committing court if the sentence included a period of probation.

A person described in subdivision (1) shall be released on parole for not more than twelve (12) months, as determined by the parole board.

(b) This subsection does not apply to a person described in subsection (d), (e), or (f). A person released on parole remains on parole from the date of release until the person's fixed term expires, unless the person's parole is revoked or the person is discharged from that term by the parole board. In any event, if the person's parole is not revoked, the parole board shall discharge the person after the period set under subsection (a) or the expiration of the person's fixed term, whichever is shorter.

(c) A person whose parole is revoked shall be imprisoned for all or part of the remainder of the person's fixed term. However, the person shall again be released on parole when the person completes that remainder, less the credit time the person has earned since the revocation. The parole board may reinstate the person on parole at any time after the revocation.

(d) This subsection does not apply to a person who is a sexually violent predator under IC 35-38-1-7.5. When a sex offender (as defined in IC 11-8-8-4.5) completes the sex offender's fixed term of imprisonment, less credit time earned with respect to that term, the sex offender shall be

placed on parole for not more than ten (10) years.

(e) This subsection applies to a person who:

- (1) is a sexually violent predator under IC 35-38-1-7.5;
- (2) has been convicted of murder (IC 35-42-1-1); or
- (3) has been convicted of voluntary manslaughter (IC 35-42-1-3).

When a person described in this subsection completes the person's fixed term of imprisonment, less credit time earned with respect to that term, the person shall be placed on parole for the remainder of the person's life.

(f) This subsection applies to a parolee in another jurisdiction who is a person described in subsection (e) and whose parole supervision is transferred to Indiana from another jurisdiction. In accordance with IC 11-13-4-1(2) (Interstate Compact for Out-of-State Probationers and Parolees) and rules adopted under Article VII (d)(8) of the Interstate Compact for Adult Offender Supervision (IC 11-13-4.5), a parolee who is a person described in subsection (e) and whose parole supervision is transferred to Indiana is subject to the same conditions of parole as a person described in subsection (e) who was convicted in Indiana, including:

- (1) lifetime parole (as described in subsection (e)); and
- (2) the requirement that the person wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location, if applicable.

(g) If a person being supervised on lifetime parole as described in subsection (e) is also required to be supervised by a court, a probation department, a community corrections program, a community transition program, or another similar program upon the person's release from imprisonment, the parole board may:

- (1) supervise the person while the person is being supervised by the other supervising agency; or
- (2) permit the other supervising agency to exercise all or part of the parole board's supervisory responsibility during the period in which the other supervising agency is required to supervise the person, if supervision by the other supervising agency will be, in the opinion of the parole board:

(A) at least as stringent; and

(B) at least as effective;

as supervision by the parole board.

(h) The parole board is not required to supervise a person on lifetime parole during any period in which the person is imprisoned. However, upon the person's release from imprisonment, the parole board shall recommence its supervision of a person on lifetime parole.

(i) If a court orders the parole board to place a sexually violent predator whose sentence does not include a commitment to the department of correction on lifetime parole under IC 35-38-1-29, the parole board shall place the sexually violent predator on lifetime parole and supervise the person in the same manner in which the parole board supervises a sexually violent predator on lifetime parole whose sentence includes a commitment to the department of correction.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.132; Acts 1979, P.L.120, SEC.11; Acts 1981, P.L.298, SEC.7; P.L.240-1991(ss2), SEC.100; P.L.11-1994, SEC.18; P.L.273-1999, SEC.215; P.L.90-2000, SEC.20; P.L.238-2001, SEC.22; P.L.116-2002, SEC.26; P.L.139-2006, SEC.6; P.L.140-2006, SEC.38 and P.L.173-2006, SEC.38; P.L.1-2007, SEC.237; P.L.216-2007, SEC.51; P.L.105-2010, SEC.15.*

## **IC 35-50-6-2**

### **Discharge from imprisonment for a misdemeanor**

Sec. 2. A person imprisoned for a misdemeanor shall be discharged when he completes his fixed term of imprisonment, less the credit time he has earned with respect to that term.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.133.*

## **IC 35-50-6-3**

### **Credit time classes**

Sec. 3. (a) A person assigned to Class I earns one (1) day of credit time for each day the person is imprisoned for a crime or confined awaiting trial or sentencing.

(b) A person assigned to Class II earns one (1) day of credit time for every two (2) days the person is imprisoned for a crime or confined awaiting trial or sentencing.

(c) A person assigned to Class III earns no credit time.

(d) A person assigned to Class IV earns one (1) day of credit time for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.134; P.L.80-2008, SEC.2.*

## **IC 35-50-6-3.3**

### **Credit time for successful completion of educational degree or certificate**

Sec. 3.3. (a) In addition to any credit time a person earns under subsection (b) or section 3 of this chapter, a person earns credit time if the person:

(1) is in credit Class I;

(2) has demonstrated a pattern consistent with rehabilitation; and

(3) successfully completes requirements to obtain one (1) of the following:

(A) A general educational development (GED) diploma under IC 20-20-6 (before its repeal) or IC 22-4.1-18, if the person has not previously obtained a high school diploma.

(B) Except as provided in subsection (n), a high school diploma, if the person has not previously obtained a general educational development (GED) diploma.

(C) An associate's degree from an approved postsecondary educational institution (as defined under IC 21-7-13-6(a)).

(D) A bachelor's degree from an approved postsecondary educational institution (as defined under IC 21-7-13-6(a)).

(b) In addition to any credit time that a person earns under subsection (a) or section 3 of this chapter, a person may earn credit time if, while confined by the department of correction, the person:

(1) is in credit Class I;

(2) demonstrates a pattern consistent with rehabilitation; and

(3) successfully completes requirements to obtain at least one (1) of the following:

(A) A certificate of completion of a career and technical education program approved by the department of correction.

(B) A certificate of completion of a substance abuse program approved by the department of correction.

(C) A certificate of completion of a literacy and basic life skills program approved by the department of correction.

(D) A certificate of completion of a reformatory program approved by the department of

correction.

(c) The department of correction shall establish admissions criteria and other requirements for programs available for earning credit time under subsection (b). A person may not earn credit time under both subsections (a) and (b) for the same program of study.

(d) The amount of credit time a person may earn under this section is the following:

(1) Six (6) months for completion of a state of Indiana general educational development (GED) diploma under IC 20-20-6 (before its repeal) or IC 22-4.1-18.

(2) One (1) year for graduation from high school.

(3) One (1) year for completion of an associate's degree.

(4) Two (2) years for completion of a bachelor's degree.

(5) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more career and technical education programs approved by the department of correction.

(6) Not more than a total of six (6) months of credit, as determined by the department of correction, for the completion of one (1) or more substance abuse programs approved by the department of correction.

(7) Not more than a total of six (6) months credit, as determined by the department of correction, for the completion of one (1) or more literacy and basic life skills programs approved by the department of correction.

(8) Not more than a total of six (6) months credit time, as determined by the department of correction, for completion of one (1) or more reformatory programs approved by the department of correction. However, a person who is serving a sentence for an offense listed under IC 11-8-8-4.5 may not earn credit time under this subdivision.

However, a person who does not have a substance abuse problem that qualifies the person to earn credit in a substance abuse program may earn not more than a total of twelve (12) months of credit, as determined by the department of correction, for the completion of one (1) or more career and technical education programs approved by the department of correction. If a person earns more than six (6) months of credit for the completion of one (1) or more career and technical education programs, the person is ineligible to earn credit for the completion of one (1) or more substance abuse programs.

(e) Credit time earned by a person under this section is subtracted from the release date that would otherwise apply to the person after subtracting all other credit time earned by the person.

(f) A person does not earn credit time under subsection (a) unless the person completes at least a portion of the degree requirements after June 30, 1993.

(g) A person does not earn credit time under subsection (b) unless the person completes at least a portion of the program requirements after June 30, 1999.

(h) Credit time earned by a person under subsection (a) for a diploma or degree completed before July 1, 1999, shall be subtracted from:

(1) the release date that would otherwise apply to the person after subtracting all other credit time earned by the person, if the person has not been convicted of an offense described in subdivision (2); or

(2) the period of imprisonment imposed on the person by the sentencing court, if the person has been convicted of one (1) of the following crimes:

(A) Rape (IC 35-42-4-1).

(B) Criminal deviate conduct (IC 35-42-4-2).

(C) Child molesting (IC 35-42-4-3).

(D) Child exploitation (IC 35-42-4-4(b)).  
(E) Vicarious sexual gratification (IC 35-42-4-5).  
(F) Child solicitation (IC 35-42-4-6).  
(G) Child seduction (IC 35-42-4-7).  
(H) Sexual misconduct with a minor as a Class A felony, Class B felony, or Class C felony (IC 35-42-4-9).

(I) Incest (IC 35-46-1-3).  
(J) Sexual battery (IC 35-42-4-8).  
(K) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.  
(L) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.

(M) An attempt or a conspiracy to commit a crime listed in clauses (A) through (L).  
(i) The maximum amount of credit time a person may earn under this section is the lesser of:  
(1) four (4) years; or  
(2) one-third (1/3) of the person's total applicable credit time.  
(j) Credit time earned under this section by an offender serving a sentence for a felony against a person under IC 35-42 or for a crime listed in IC 11-8-8-5 shall be reduced to the extent that application of the credit time would otherwise result in:  
(1) postconviction release (as defined in IC 35-40-4-6); or  
(2) assignment of the person to a community transition program;  
in less than forty-five (45) days after the person earns the credit time.

(k) A person may earn credit time for multiple degrees at the same education level under subsection (d) only in accordance with guidelines approved by the department of correction. The department of correction may approve guidelines for proper sequence of education degrees under subsection (d).

(l) A person may not earn credit time:  
(1) for a general educational development (GED) diploma if the person has previously earned a high school diploma; or  
(2) for a high school diploma if the person has previously earned a general educational development (GED) diploma.

(m) A person may not earn credit time under this section if the person:  
(1) commits an offense listed in IC 11-8-8-4.5 while the person is required to register as a sex or violent offender under IC 11-8-8-7; and  
(2) is committed to the department of correction after being convicted of the offense listed in IC 11-8-8-4.5.

(n) For a person to earn credit time under subsection (a)(3)(B) for successfully completing the requirements for a high school diploma through correspondence courses, each correspondence course must be approved by the department before the person begins the correspondence course. The department may approve a correspondence course only if the entity administering the course is recognized and accredited by the department of education in the state where the entity is located.

*As added by P.L.243-1993, SEC.2. Amended by P.L.149-1995, SEC.17; P.L.148-1995, SEC.7; P.L.183-1999, SEC.3; P.L.243-1999, SEC.3; P.L.14-2000, SEC.78; P.L.90-2000, SEC.21; P.L.164-2003, SEC.1; P.L.1-2005, SEC.229; P.L.2-2007, SEC.380; P.L.234-2007, SEC.171; P.L.80-2008, SEC.3; P.L.42-2010, SEC.2; P.L.7-2011,*

*SEC.25; P.L.228-2011, SEC.2; P.L.147-2012, SEC.11.*

**IC 35-50-6-4**

**Credit time assignments**

Sec. 4. (a) A person who is not a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I.

(b) A person who is a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class IV. A credit restricted felon may not be assigned to Class I or Class II.

(c) A person who is not assigned to Class IV may be reassigned to Class II or Class III if the person violates any of the following:

- (1) A rule of the department of correction.
- (2) A rule of the penal facility in which the person is imprisoned.
- (3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to a lower credit time class, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

(d) A person who is assigned to Class IV may be reassigned to Class III if the person violates any of the following:

- (1) A rule of the department of correction.
- (2) A rule of the penal facility in which the person is imprisoned.
- (3) A rule or condition of a community transition program.

However, a violation of a condition of parole or probation may not be the basis for reassignment. Before a person may be reassigned to Class III, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether reassignment is an appropriate disciplinary action for the violation. The person may waive the right to the hearing.

(e) In connection with the hearing granted under subsection (c) or (d), the person is entitled to:

(1) have not less than twenty-four (24) hours advance written notice of the date, time, and place of the hearing, and of the alleged misconduct and the rule the misconduct is alleged to have violated;

(2) have reasonable time to prepare for the hearing;

(3) have an impartial decisionmaker;

(4) appear and speak in the person's own behalf;

(5) call witnesses and present evidence;

(6) confront and cross-examine each witness, unless the hearing authority finds that to do so would subject a witness to a substantial risk of harm;

(7) have the assistance of a lay advocate (the department may require that the advocate be an employee of, or a fellow prisoner in, the same facility or program);

(8) have a written statement of the findings of fact, the evidence relied upon, and the reasons for the action taken;

(9) have immunity if the person's testimony or any evidence derived from the person's testimony is used in any criminal proceedings; and

(10) have the person's record expunged of any reference to the charge if the person is found

not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

(f) A person may be reassigned from Class III to Class I, Class II, or Class IV, or from Class II to Class I. A person's assignment to Class III or Class II shall be reviewed at least once every six (6) months to determine if the person should be reassigned to a higher credit time class. A credit restricted felon may not be reassigned to Class I or Class II.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.135; Acts 1979, P.L.120, SEC.12; P.L.90-2000, SEC.22; P.L.80-2008, SEC.4.*

### **IC 35-50-6-5**

#### **Deprivation of credit time**

Sec. 5. (a) A person may, with respect to the same transaction, be deprived of any part of the credit time the person has earned for any of the following:

(1) A violation of one (1) or more rules of the department of correction.  
(2) If the person is not committed to the department, a violation of one (1) or more rules of the penal facility in which the person is imprisoned.

(3) A violation of one (1) or more rules or conditions of a:

- (A) community transition program; or
- (B) community corrections program.

(4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or groundless.

(5) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to register before being released from the department as required under IC 11-8-8-7.

(6) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction. However, the violation of a condition of parole or probation may not be the basis for deprivation. Whenever a person is deprived of credit time, the person may also be reassigned to Class II (if the person is not a credit restricted felon) or Class III.

(b) Before a person may be deprived of earned credit time, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether deprivation of earned credit time is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in section 4(e) of this chapter. The person may waive the person's right to the hearing.

(c) Any part of the credit time of which a person is deprived under this section may be restored.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.136; Acts 1979, P.L.120, SEC.13; P.L.146-1995, SEC.6; P.L.90-2000, SEC.23; P.L.140-2006, SEC.39 and P.L.173-2006, SEC.39; P.L.80-2008, SEC.5; P.L.105-2010, SEC.16.*

### **IC 35-50-6-5.5**

#### **Credit time appeals**

Sec. 5.5. A person who has been reassigned to a lower credit time class or has been deprived of earned credit time may appeal the decision to the commissioner of the department of

correction or the sheriff.

*As added by Acts 1979, P.L.120, SEC.14. Amended by P.L.204-1986, SEC.3.*

#### **IC 35-50-6-6**

##### **Degree of security, parole, or probation; imprisonment upon revocation of parole; days spent on parole outside institution**

Sec. 6. (a) A person imprisoned for a crime earns credit time irrespective of the degree of security to which he is assigned. Except as set forth under IC 35-38-2.5.-5, a person does not earn credit time while on parole or probation.

(b) A person imprisoned upon revocation of parole is initially assigned to the same credit time class to which he was assigned at the time he was released on parole.

(c) A person who, upon revocation of parole, is imprisoned on an intermittent basis does not earn credit time for the days he spends on parole outside the institution.

*As added by Acts 1976, P.L.148, SEC.8. Amended by Acts 1977, P.L.340, SEC.137; Acts 1979, P.L.120, SEC.15; P.L.166-2001, SEC.4.*

#### **IC 35-50-6-7**

##### **Charge of new crime or violation of rule while confined; effect on credit time; assignment to Class III**

Sec. 7. (a) A person under the control of a county detention facility or the department of correction who:

(1) has been charged with a new crime while confined; or

(2) has allegedly violated a rule of the department or county facility;

may be immediately assigned to Class III and may have all earned credit time suspended pending disposition of the allegation.

(b) A person assigned to Class III under subsection (a) shall be

denied release on parole or discharge until:

(1) he is in the actual custody of the department or the county detention facility to which he was sentenced; and

(2) he is granted a hearing concerning the allegations.

The department or sheriff may waive the hearing if the person is restored to his former credit time class and receives all previously earned credit time and any credit time that he would have earned if he had not been assigned to Class III.

(c) A person who is assigned to Class III under subsection (a) and later found not guilty of the alleged misconduct shall have all earned credit time restored and shall be reassigned to the same credit time class that he was in before his assignment to Class III. In addition, the person shall be credited with any credit time that he would have earned if he had not been assigned to Class III.

*As added by P.L.338-1983, SEC.1.*

#### **IC 35-50-6-8**

##### **Person serving sentence of life imprisonment without parole does not earn credit time**

Sec. 8. A person serving a sentence of life imprisonment without parole does not earn credit time under this chapter.

*As added by P.L.53-2005, SEC.3.*

**Former IC 35-41-1-5.5 (repealed and renumbered by P.L. 114, 2012, section 90)**

**Credit Restricted Felon**

Sec. 5.5. "Credit restricted felon" means a person who has been convicted of at least one (1) of the following offenses:

(1) Child molesting involving sexual intercourse or deviate sexual conduct (IC 35-42-4-3(a)), if:

(A) the offense is committed by a person at least twenty-one (21) years of age; and

(B) the victim is less than twelve (12) years of age.

(2) Child molesting (IC 35-42-4-3) resulting in serious bodily injury or death.

(3) Murder (IC 35-42-1-1), if:

(A) the person killed the victim while committing or attempting to commit child molesting (IC 35-42-4-3);

(B) the victim was the victim of a sex crime under IC 35-42-4 for which the person was convicted; or

(C) the victim of the murder was listed by the state or known by the person to be a witness against the person in a prosecution for a sex crime under IC 35-42-4 and the person committed the murder with the intent to prevent the person from testifying.

# 6-Level Felony Proportionality Proposal

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

	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
35-42-1-1	Conspiracy to commit murder causing death	Attempted murder or Conspiracy to commit murder				
35-42-1-2			Causing suicide			
35-42-1-2.5					Assisting suicide	
35-42-1-3		Voluntary manslaughter				
35-42-1-4					Involuntary manslaughter	
35-42-1-5					Reckless homicide	
35-42-1-6			Feticide			
35-42-1-7			Transferring contaminated body fluids (resulting in transfer of HIV)		Transfer of contaminated body fluids	
35-42-1-9						Failure to warn of disease
35-42-2-1		Battery (death of person <14)	Battery (SBI of person <14)		Battery (BI to known pregnant woman or endangered adult, DW)	Battery (BI to special class)
35-42-2-1.3						Domestic battery (in presence of person <16; prior conviction)
35-42-2-1.5	Aggravated battery (death)		Aggravated battery			
35-42-2-2					Criminal recklessness (aggressive driving resulting in death; shooting into building)	Criminal recklessness (DW, aggressive driving resulting in SBI)
35-42-2-4						Obstructing traffic (death or SBI)
35-42-2-5				Overpass mischief (SBI)	Overpass mischief	
35-42-2-5.5		Railroad mischief (death)			Railroad mischief (SBI)	Railroad mischief
35-42-2-6			Battery by body waste (results in transmission of HIV, hep, or TB to a special class)		Battery by body waste (results in transmission of HIV, hep, or TB OR knowingly using infected waste on a special class)	Battery by body waste (knowingly using infected waste OR on a special class)
35-42-2-8		Interference with medical services (death)	Interference with medical services (SBI)		Interference with medical services (committed by licensed healthcare provider)	Interference with medical services (BI)
35-42-2-9						Strangulation
35-42-3-2		Criminal Confinement (ransom, hijacking, demanding release of another, hostage)		Criminal Confinement (deadly weapon, SBI, aircraft)	Criminal Confinement (<14, vehicle, injury)	Criminal Confinement
35-42-3-3	Kidnapping (ransom, hijacking, demanding release of another, hostage)		Kidnapping (deadly weapon, SBI, aircraft)		Kidnapping (<14, vehicle, injury)	Kidnapping

# 6-Level Felony Proportionality Proposal

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

	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
35-42-3-4				Interference with Custody (DW, removal from IN, or SBI)	Interference with Custody (removal from IN and <14 and NOT person's child)	Interference with Custody (removal from IN)
35-42-3.5-1		Sexual trafficking of a minor	Promotion of human trafficking of a minor	Promotion of human trafficking	Human trafficking	
35-42-4-1	Rape (deadly force, weapon, SBI, drug)		Rape			
35-42-4-2	Criminal Deviate Conduct (deadly force, weapon, injury, drug)		Criminal Deviate Conduct			
35-42-4-3	Child Molesting (intercourse with force, weapon, SBI, drug)	Child Molesting (intercourse by person >21)	Child Molesting (intercourse)			
35-42-4-3		Child Molesting (fondling with deadly force, deadly weapon, drug)		Child Molesting (fondling)		
35-42-4-4						Possession of Child Pornography
35-42-4-4					Child Exploitation	
35-42-4-5		Vicarious Sexual Gratification (directs intercourse with force, weapon, injury, drug)	Vicarious Sexual Gratification (directs intercourse with child <14)	Vicarious Sexual Gratification (directs intercourse with child <16)		Performing Sexual Conduct in the Presence of a Minor
35-42-4-5			Vicarious Sexual Gratification (directs fondling with child <14 with force, weapon, injury, drug)	Vicarious Sexual Gratification (directs fondling with child <14)	Vicarious Sexual Gratification (directs fondling with child <16)	
35-42-4-6					Child Solicitation	
35-42-4-7					Child Seduction (intercourse)	Child Seduction (fondling)
35-42-4-8				Sexual Battery (force, weapon, injury, drug)		Sexual Battery
35-42-4-9	Sexual Misconduct with a Minor (intercourse with deadly force, weapon, injury, drug)			Sexual Misconduct with a Minor (intercourse by person >21)	Sexual Misconduct with a Minor (intercourse)	

# 6-Level Felony Proportionality Proposal

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

	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
35-42-4-9		Sexual Misconduct with a Minor (fondling with force, weapon, injury, drug)			Sexual Misconduct with a Minor (fondling by person >21)	Sexual Misconduct with a Minor (fondling)
35-42-4-10					Unlawful Employment Near Children (prior)	Unlawful Employment Near Children
35-42-4-11						Sex Offender Residency Offense Sex Offender Registry Offense
35-42-4-12						Sex offender internet offense (prior)
35-42-5-1		Robbery (SBI)	Robbery (DW or BI)		Robbery	
35-42-5-2				Carjacking (Repeal)		
35-43-1-1		Arson (SBI)	Arson (BI)	Arson (basic, for hire)	Arson (intent to defraud)	Arson (>250, <5000)
35-43-1-2						Mischief (<2500 and special classes)
35-43-1-2					Institutional crim mischief (<2500)	Institutional crim mischief (<250, >2500)
35-43-1-2.1						Cemetery mischief (>2500)
35-43-1-4				Computer tampering (terrorism & SBI)	Computer tampering (terrorism)	Computer tampering
35-43-1-5		Tampering with/poisoning water supply (death)	Tampering with/poisoning water supply (SBI)	Tampering with/poisoning water supply		
35-43-2-1	Burglary (dwelling AND SBI)	Burglary (DW, SBI)	Burglary (BI)	Burglary (dwelling, church)	Burglary	
35-43-2-1.5						Residential entry
35-43-2-2						Criminal trespass (prior, research facility)
35-43-4-2					Theft (>50,000)	Theft (>\$750)
35-43-4-2						
35-43-4-2.3						Dealing in altered property (prior, >1000)
35-43-4-2.5					Auto theft (prior)	Auto theft
35-43-4-2.5					Receiving stolen auto parts (prior)	Receiving stolen auto parts
35-43-4-2.7						Unauthorized entry of a motor vehicle (crime)
35-43-4-3					Criminal conversion (section c)	Criminal conversion (sections b & d)
35-43-5-2						Counterfeiting
35-43-5-2						Forgery
35-43-5-2						Application fraud
35-43-5-3.5					Identity deception (>100 people, >50,000, or dependent child)	Identity deception

# 6-Level Felony Proportionality Proposal

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	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
35-43-5-3.6					Terroristic deception	
35-43-5-3.8					Synthetic Identity Deception (>100 people, >50,000)	Synthetic Identity Deception
35-43-5-4						Fraud
35-43-5-4.3					Poss of card skimming device (intent to commit terroristic deception)	Poss of card skimming device
35-43-5-4.5					Insurance fraud (prior, or >2500)	Insurance fraud
35-43-5-5						Check deception (>2500 & motor vehicle)
35-43-5-6.5						Manufact/sale of illegal cable TV equip
35-43-5-7					Welfare fraud (>2500)	Welfare fraud (prior, >250 but <2500)
35-43-5-7.1					Medicaid fraud (>100,000)	Medicaid fraud
35-43-5-7.2					Insurance fraud (>100,000)	Insurance fraud (CHIP)
35-43-5-8					Defrauding financial institution	
35-43-5-9						False claim of women/disadv business
35-43-5-11						Providing false info to obtain gov't contract (financial loss to gov't)
35-43-5-12					Check fraud (prior, >2500)	Check fraud
35-43-5-14						Poss of fraudulent sales document (>15 docs)
35-43-5-16						Making false sales doc
35-43-5-17						Delivery of false sales doc
35-43-5-20					Inmate fraud (DOC Inmates)	Inmate fraud (pre-trial detainees)
35-43-6-13					Home improvement fraud (consumer >60, damages >10,000)	Home improvement fraud (>10,000)
35-43-8-3					Timber spiking (BI)	Timber spiking
35-43-9-7				Misuses of title insurance escrow account (>100,000)	Misuse of title insurance escrow account (>10,000, <100,000)	Misuse of title insurance escrow account
35-43-10-4		Legend drug deception resulting in death				Legend drug deception
35-44-1-1					Bribery	
35-44-1-2						Official misconduct

# 6-Level Felony Proportionality Proposal

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	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
35-43-1-3						Conflict of interest
35-44-1-5				Sexual misconduct (person >21 intercourse with person <16)	Sexual misconduct	
35-44-1-7						Profiteering from public service
35-44-2-1						Perjury
35-44-2-1						False reporting
35-44-2-3						Impersonation of public servant
35-44-2-4						Ghost employment
35-44-2-5				Unlawful Manu/Sale of Police Insignia (WMD)		Unlawful Manu/Sale of Police Insignia (impersonation)
35-44-3-2					Assisting a criminal (underlying is A or providing a DW)	Assisting a criminal (underlying is B,C, or D felony)
35-44-3-3		Resisting law enforcement (vehicle, death)	Resisting law enforcement (vehicle, death)		Resisting law enforcement (vehicle, SBI)	Resisting law enforcement (vehicle, DW, BI)
35-44-3-3.5	Disarming a law enforcement officer (death)	Disarm a law enforcement officer using a weapon (SBI)	Disarming of law enforcement officer (SBI)		Disarming of law enforcement officer	
35-44-3-4						Obstruction of justice
35-44-3-5				Escape (DW or BI)	Escape (flee)	Escape (home detention)
35-44-3-5					Fail to return to lawful detention (DW, BI)	Fail to return to lawful detention
35-44-3-6						Failure to appear (felony charge)
35-44-3-9					Trafficking with an inmate (basic and outside a facility) (contraband)	Trafficking with inmate outside a facility
35-44-3-9.5				Poss of device by incarcerated person (DW)	Poss of device by incarcerated person	
35-44-3-13					Violation of lifetime parole (prior)	Violation of lifetime parole
35-44-4-7						Impersonating a firefighter (BI)
35-44-5-3						Transporting an illegal alien (>9)
35-44-5-4						Harboring an illegal alien (>9)
35-45-1-2						Rioting (DW)
35-45-1-3						Disorderly Conduct (airport, funeral)
35-45-2-1					Intimidation (DW)	Intimidation (prior, special class, school, threat to commit force felony)
35-45-4-1						Public Indecency (prior)
35-45-4-1.5						Public Nudity (prior)
35-45-4-2						Prostitution (2 priors)

# 6-Level Felony Proportionality Proposal

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	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
35-45-4-3						Patronizing a Prostitute (2 priors)
35-45-4-4				Promoting prostitution (<18)	Promoting prostitution	
35-45-4-5						Voyeurism (prior or camera)
35-45-5-2						Unlawful gambling (internet in IN)
35-45-5-3					Professional gambling (prior)	Professional gambling
35-45-5-3						Professional gambling over internet
35-45-5-3.5					Maintaining a professional gambling site (prior)	Maintaining professional gambling site
35-45-5-4					Promoting professional gambling (prior)	Promoting professional gambling
35-45-6-2					Corrupt business influence	
35-45-7-2					Loansharking (force, threat of force)	Loansharking
35-45-8-3				Consumer product tampering (SBI)	Consumer product tampering (BI)	Consumer product tampering
35-45-9-4					Criminal gang intimidation	Criminal gang activity
35-45-9-5					Criminal gang recruitment (school, <18)	Criminal gang recruitment
35-45-10-5				Stalking (prior or DW)	Stalking (various aggravating circumstances)	Stalking
35-45-11-2						Abuse of a corpse
35-45-13-7						Unauthor use of telecomm service (>5)
35-45-15-5				Money laundering (>50,000 AND terroristic, WMD)	Money laundering (<50,000 OR terroristic, WMD)	Money laundering
35-45-16-2				Malicious mischief (transmission of HIV)	Malicious mischief (transmission of Hep B or TB)	Malicious mischief (sample Hep B, HIV, TB)
35-45-16-2				Malicious mischief with food (transmission of HIV)	Malicious mischief with food (transmission of Hep B or TB)	Malicious mischief with food(sample infected with Hep B, HIV, TB)
35-45-18-2						Unlawful promotion of combative fighting (prior)
35-46-1-3				Incest (person <16)	Incest	
35-46-1-4	Neglect of a dependent (death of person <14)		Neglect of dependent (SBI)		Neglect of a dependent (cruel confinement, OR BI, OR person is manufacturing/selling drugs)	Neglect of a dependent
35-46-1-4						Child selling
35-45-4-2						Prostitution (2 priors)

# 6-Level Felony Proportionality Proposal

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	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
35-46-1-6						Nonsupport of a spouse
35-46-1-8					Contributing to delinquency (furnishes alcohol/drugs and results in death)	Contributing to delinquency (encourages dealing/manufacturing of drugs)
35-46-1-9						Profiting from an adoption
35-46-1-12						Exploitation of dependent/endangered adult (>10,000 or person is >60 years old)
35-46-1-12						Financial exploitation of endangered adult/dependent (>10,000 or person is >60 years old)
35-46-1-15.1						Invasion of privacy (prior)
35-46-3-7						Cruelty to an animal (prior)
35-46-3-8.5						Possession of an animal for a fighting contest
35-46-3-9						Animal fighting contest (with dog)
35-46-3-9.5						Promoting animal fighting contest
35-46-3-10						Attending an animal fighting contest
35-46-3-11						Mistreating law enforcement animal (injury/death to animal)
35-46-3-11.3						Mistreating rescue animal (injury/death to animal)
35-46-3-11.5						Mistreating a service animal (injury/death to the animal)
35-46-3-12						Cruelty to an animal (prior for beating vertebrate)
35-46-3-12						Torturing or mutilating a vertebrae animal
35-46-3-12						Killing a domestic animal
35-46-3-12.5						Domestic violence animal cruelty
35-46-3-14						Bestiality
35-46-4-4						Failure to disclose recruitment
35-46-5-1					Unlawful transfer of human tissue	
35-46-5-2						Unlawful participation in human cloning
35-46-5-3					Unlawful transfer of a human organism	
35-47-2-23					Carrying a handgun w/o license (school or prior)	
35-47-2-23					Selling handgun to prohibited buyer	
35-47-2-23					False info to obtain firearm	
35-47-2-23					Obliterating ID marks on handgun	

# 6-Level Felony Proportionality Proposal

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	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
35-47-2-23						Unlawful use of handgun license
35-47-2.5-12						False statement on background check form
35-47-2.5-14					Handgun purchase with intent to transfer (>1)	Handgun purchase with intent to transfer
35-47-2.5-15					Assisting in handgun selling violation (>1)	Assisting in handgun selling violation
35-47-3-4						Unlawful disposal/delivery of confiscated firearm
35-47-4-3						Pointing a loaded firearm at a person
35-47-4-3				Unlawful possession of firearm (by serious violent felon)		
35-47-5-2.5						Unlawful possession of knife at school, bus (BI or SBI)
35-47-5-4.1						Dealing in sawed-off shotgun
35-47-5-8				Operating a machine gun	Owning or possessing machine gun	
35-47-5-11					Manufacturing/Owning armor piercing ammo	
35-47-5-13						Unlawful use of body armor
35-47-6-1				*Possessing firearm/weapon on a plane (with intent to disrupt)*proposed enhancement	Possessing firearm/weapon on a plane	
35-47-6-1.6		Hijacking an aircraft		Disrupting operation of an aircraft		
35-47-8-5						Use of stun gun (on LEO)
35-47-9-2						Possession of firearm on school property
35-47-10-6					Dangerous possession of a firearm (prior by child)	
35-47-10-8				Dangerous control of a firearm (prior by adult)	Dangerous control of a firearm (by adult)	
35-47-10-7				Dangerous control of child (prior)	Dangerous control of child	
35-47-12-1		WMD w/intent of terrorism (SBI or death)	WMD w/intent of terrorism		WMD w/intent of agricultural terrorism	
35-47-12-3				Terroristic mischief (SBI)	Terroristic mischief	
35-47.5-5-2					Possession of destructive device	
35-47.5-5-3				Possession of explosive by felon (prior)	Possession of explosive by felon	

# 6-Level Felony Proportionality Proposal

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

	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
35-47.5-5-4					Distributing explosives to felon	
35-47.5-5-5				Distributing destructive device to minor		
35-47.5-5-6						Manufacture/possession of hoax device
35-47.5-5-7				Hindering LEO in disarming destructive device		
35-47.5-5-8		Possessing destructive device				
35-47.5-5-9						Use of overpressure device (prior)
35-47.5-5-10						Deploying a booby trap
35-47.5-5-11					Violation of rules regarding explosives (death)	Violation of rules regarding explosives (BI)
35-48-4-1		<u>Dealing</u> > 28 grams of Coke/Narc <b>OR</b> dealing > 10 but < 28 grams <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> > 10 but < 28 grams of Coke/Narc <b>OR</b> dealing > 3 but < 10 grams <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> > 3 but < 10 grams of Coke/Narc <b>OR</b> dealing < 3 grams <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> < 3 grams of Cocaine	
35-48-4-6			<u>Possession</u> of > 28 grams of Coke/Narc <b>OR</b> possess > 10 but < 28 grams <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> > 10 but < 28 grams of Coke/Narc <b>OR</b> possess > 3 but < 10 grams <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> > 3 but < 10 grams of Coke/Narc <b>OR</b> possess < 3 grams <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> < 3 grams of Coke/Narc
35-48-4-1.1	<u>Manufacturing</u> - Meth Lab explosion causing serious bodily injury to someone other than the manufacturer <b>OR</b> causing property damage > \$10,000	<u>Dealing</u> > 28 grams of Meth <b>OR</b> dealing > 10 but < 28 grams <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> > 10 but < 28 grams of Meth <b>OR</b> dealing > 3 but < 10 grams <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> > 3 but < 10 grams of Meth <b>OR</b> deal < 3 grams <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> < 3 grams of Meth	

# 6-Level Felony Proportionality Proposal

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	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
35-48-4-6.1			<u>Possession</u> > 28 grams of Meth <b>OR</b> possess > 10 but < 28 grams <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> > 10 but < 28 grams of Meth <b>OR</b> possess > 3 but < 10 grams <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> > 3 but < 10 grams of Meth <b>OR</b> possess < 3 grams <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> < 3 grams of Meth
35-48-4-2		<u>Dealing</u> > 28 grams or > 560 pills of Sched I,II, or III <b>OR</b> dealing > 10 but < 28 grams or < 560 pills but > 200 pills <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> > 10 but < 28 grams or < 560 but < 200 pills of Sched I,II, or III <b>OR</b> dealing > 3 but < 10 grams or > 60 but < 200 pills <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> > 3 but < 10 grams or > 60 but < 200 pills of Sched I,II, or III <b>OR</b> dealing < 3 grams or < 60 pills <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> < 3 grams <b>OR</b> < 60 pills of Sched I,II, or III	
35-48-4-7			<u>Possession</u> of > 28 grams or > 560 pills of Sched I,II,or III <b>OR</b> possess > 10 but < 28 grams or < 560 but > 200 pills <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> > 10 but < 28 grams or < 560 but > 200 pills of Sched I,II, or III <b>OR</b> possess > 3 but < 10 grams or > 60 but < 200 pills <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> > 3 but < 10 grams or > 60 but < 200 pills of Sched I,II, or III <b>or</b> possess < 3 grams or < 60 pills but <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> < 3 grams <b>OR</b> < 60 pills of Sched I, II, or III

# 6-Level Felony Proportionality Proposal

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Level 1	Level 2	Level 3	Level 4	Level 5	Level 6
35-48-4-3		<u>Dealing</u> > 28 grams of Sched IV or V <b>OR</b> dealing > 10 but < 28 grams <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> > 10 but < 28 grams of Sched IV or V <b>OR</b> dealing > 3 but < 10 grams <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> > 3 but < 10 grams of Sched IV or V <b>OR</b> deal < 3 grams <b>AND</b> manufacturing, to person < 18, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Dealing</u> < 3 grams of Sched IV, or V
35-48-4-7			<u>Possession</u> of > 28 grams of Sched IV or V <b>OR</b> possess > 10 but < 28 grams <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> > 10 but < 28 grams of Sched IV or V <b>OR</b> possess >3 but <10 grams <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]	<u>Possession</u> > 3 grams of Sched IV or V <b>OR</b> possess < 3 grams <b>AND</b> manufacturing, within 1,000 ft of protected zone, with a gun, or prior conviction of dealing in any controlled substance [excluding marijuana]
35-48-4-8.1					Manufacture of paraphenalia (prior)
35-48-4-8.3					
35-48-4-8.5					<u>Dealing</u> in paraphenalia (prior)
35-48-4-10				<u>Dealing</u> >50 lbs of marijuana	<u>Dealing</u> any amount of marijuana if intended recipient is less than 18 <b>OR</b> >10 lbs but <50 lbs <b>OR</b> >30 grams but <50 grams (prior)
35-48-4-11					
35-48-4-13					Maintaining a common nuisance
35-48-4-13.3					Taking a child or endangered adult to a drug sale location (prior)
35-48-4-14					
35-48-4-14.5					
35-49-3-1					Importing/distributing obscene material (<16 depicted)
35-49-3-2					Participating in obscene performance (<16 depicted)
35-49-3-3					Dissemination of obscene material to minor