

To: Members of the Environmental Crimes Task Force
From: Andy Hedges, LSA
Re: Introduction to Indiana criminal law
Date: November 28, 2005

--Memorandum--

This memo provides background information on certain aspects of criminal law and criminal procedure that may be helpful in defining environmental crimes. I have also attached a separate sheet specifically listing criminal sentences.

I. Criminal procedure

A. Jurisdiction and venue

Indiana has jurisdiction over all crimes that are committed in Indiana. Indiana has the authority to convict a person of a crime under Indiana law if the result of the crime occurs in Indiana, even if all or part of the conduct defining the crime is committed in another state. Indiana may also convict a person of conspiracy or of an attempt to commit a crime that occurs in another state if the overt act (in the case of a conspiracy), or the substantial step (in the case of an attempt) occurs in Indiana. A crime that involves the Internet may be punished in Indiana if the victim (or the criminal) accesses the Internet in Indiana. IC 35-41-1-1.

Under Art. 1, Sec. 13, of the Indiana constitution, a person charged with a crime has the right to be tried in the county in which the crime was committed.

B. Prosecutors and charging

The decision to bring criminal charges against a person is made by the county prosecuting attorney. If the county prosecutor has a conflict of interest, a court may appoint a special prosecutor to investigate the case and determine whether charges should be filed. Until 2005, a special prosecutor was required to be a prosecuting attorney or deputy prosecuting attorney from another county; under the inspector general bill passed in 2005, the inspector general may also be appointed as a special prosecuting attorney in certain situations involving malfeasance in state government.

In Indiana, a prosecutor usually brings criminal charges by filing an "information" with the court. An "information" is a document in which the prosecutor describes the crime he or she believes has been committed, and also sets forth the material facts underlying the crime. A prosecutor may also bring a criminal charges by seeking an indictment from a grand jury, but seeking an indictment is not required. See IC 35-34-1-1. Under the federal system, by contrast, criminal charges may only be brought by indictment.

C. Warrants

A law enforcement officer may obtain a warrant to enter onto a person's property to search for evidence concerning a crime if the officer goes before a judge and: (1) explains, under

oath, why the officer believes that the evidence will be found in a specific location; and (2) the judge finds probable cause to believe that the officer is correct. A search warrant must be fairly specific, and the officer's explanation must be credible and supported. See generally IC 35-33-5-1. An improperly issued warrant or a search without a warrant usually causes any evidence found to be inadmissible at trial.

D. Trial procedure and the right to jury trial

Every person charged with a crime has the right to a jury trial. In addition, the prosecutor has the right to try a case to a jury. A case may be tried to the court only if the prosecutor and the defendant both agree that the case should be tried to the court. IC 35-37-1-2.

A jury trial in a criminal case in which the most serious crime is a misdemeanor or Class D felony will have a six person jury. A jury in a more serious case will have 12 jurors. IC 35-37-1-1. Evidence rules and other technical rules of trial procedure are not statutory, but are established by rules adopted by the Indiana Supreme Court.

II. What is a crime?

A. Voluntariness

A person can commit a crime only if the person voluntarily engages in conduct that violates a statute defining a crime. If a person engages in conduct prohibited by a criminal statute, but the conduct is not the result of voluntary action - it was an accident, the person was sleepwalking, etc. - the person has not committed a crime. Similarly, if the criminal conduct involves the possession of a certain property, and the person was not aware that he or she possessed the property long enough to terminate possession of the property, there is no crime. IC 35-41-2-1.

B. Mens rea

In addition to the voluntariness requirement described above, a person can commit a crime only if the person performs the voluntary act while having a certain mental state (or "mens rea"). This means that every crime has two parts: (1) some conduct that is prohibited by statute; and (2) a certain mental state that the person must have while engaging the prohibited conduct.

Indiana recognizes three levels of mens rea: (1) "intentionally"; (2) "knowingly"; and (3) "recklessly." IC 35-41-2-2 defines these mental states as follows:

(a) A person engages in conduct "intentionally" if, when he engages in the conduct, it is his conscious objective to do so.

(b) A person engages in conduct "knowingly" if, when he engages in the conduct, he is aware of a high probability that he is doing so.

(c) A person engages in conduct "recklessly" if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.

Indiana law does not require that the mens rea apply to every element of a crime.

Indiana's battery statute (IC 35-42-2-1) prohibits knowingly or intentionally shoving another person as a relatively minor misdemeanor. However, if the shove results in serious bodily injury to victim, the crime becomes a more serious felony, even if the person who did the shoving had no idea that serious bodily injury might result from the shoving. A person who knowingly or intentionally shoves another person has committed battery, and may be held strictly liable for the results of having committed the battery, even if the person did not intend the result.

C. Corporate criminal liability

A corporation, LLC, partnership, or other organization can commit a crime and may be prosecuted for committing the crime. (The *Healthscript* case discussed at the last meeting was a case involving a corporate defendant). An organization may be convicted of an offense only if it is proved that the offense was committed by the organization's agent acting within the scope of the agent's authority. A business organization cannot be imprisoned, of course, and any fine assessed as the result of a criminal conviction is limited to the property of the organization. IC 35-41-2-3.

D. Accomplice liability

Under Indiana law, a person who assists another person in committing a crime is guilty of the same level of offense. This is true even if the original person who committed the offense has not been prosecuted for the offense, has not been convicted of the offense, or has been acquitted of the offense. (Note that this statute only applies to a person who helps the principal commit the offense; it does not apply to a person who helps the principal after the crime has already been committed). IC 35-41-2-4

E. Attempt and conspiracy

Indiana treats attempt crimes and conspiracy crimes in the same manner as it treats accomplice liability - an attempt to commit a crime or a conspiracy to commit a crime is treated as being the same level of offense as the underlying crime. (With the sole exception of attempted murder or conspiracy to commit murder.)

Under IC 35-41-5-1, a person attempts to commit a crime when, having the same mens rea required for commission of the crime, the person engages in conduct that constitutes a "substantial step" toward commission of the crime. It is not a defense to an attempt crime that due to a misunderstanding on the person's part, it would have been impossible to commit the crime.

IC 35-41-5-2 provides that a person commits conspiracy to commit a crime when, with intent to commit the crime, the person: (1) agrees with others to commit the crime; and (2) the person or the person with whom the person conspired performed an overt act in furtherance of the conspiracy.

E. Defenses: abandonment and mistake of fact

A defense is basically an admission by a defendant that the defendant committed the elements of the crime, with the appropriate mental state, but that some other reason exists why the defendant should not be convicted. The defense of self-defense is probably the most familiar defense, where a person who admits to deliberately shooting another person will not be held criminally liable if the person establishes that the shooting was done in self-defense.

It is a defense to a prosecution under a theory of accomplice liability, attempt, or conspiracy that the person who engaged in the prohibited conduct voluntarily abandoned the effort to commit the underlying crime and voluntarily prevented its commission. IC 35-41-3-10. However, Indiana case law holds that it is not a defense that the person voluntarily abandoned a crime because the person would have been caught had the person continued.

The defense of mistake of fact provides a defense against a criminal prosecution if the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact, if the mistake negates the culpability required for commission of the offense. IC 35-41-3-7

F. Statutes of limitation

Statutes of limitation generally bar a prosecution if charges are not filed within a certain time period. There is no statute of limitation for murder or Class A felonies. The statute of limitation for Class B, C, or D felonies is five years. The statute of limitations for misdemeanors is two years. (This is a general guide to statutes of limitations: there are special rules for specific crimes, special rules for specific victims, and certain conditions under which a statute of limitations will be suspended). See IC 35-41-4-2.

G. Sentences

Indiana punishes crimes as follows (see also the criminal penalties chart attached separately):

- (1) A Class C misdemeanor: up to 60 days imprisonment and a fine of up to \$500.
- (2) A Class B misdemeanor: up to 180 days imprisonment and a fine of up to \$1,000.
- (3) A Class A misdemeanor: up to one year imprisonment and a fine of up to \$5,000.
- (4) A Class D felony: six months to three years imprisonment and a fine of up to \$10,000. Under certain situations, a Class D felony may be reduced to a Class A misdemeanor.
- (5) A Class C felony: two to eight years imprisonment and a fine of up to \$10,000.
- (6) A Class B felony: six to 20 years imprisonment and a fine of up to \$10,000.
- (7) A Class A felony: 20 to 50 years imprisonment and a fine of up to \$10,000.
- (8) Murder: 45 to 65 years imprisonment and a fine of up to \$10,000. Under certain conditions, a death sentence or a sentence of life imprisonment without

parole may be imposed.

IC 35-50-2; IC 35-50-3.

In addition to these penalties, Indiana law also provides additional criminal penalties for (typically recidivist) offenders who meet certain criteria.

Indiana law also permits all or part of a certain sentences to be suspended (i.e., they are not required to be served in a penal facility) and the person placed on probation. A person may be placed on probation in lieu of serving any prison time, or a person may be required to serve a certain period in prison followed by a period of probation. A person placed on probation who violates the conditions of the person's probation may be required to serve the suspended portion of the sentence in prison.

H. Statutory construction and the constitution

The due process clause of both the United States and the Indiana constitution requires that statutes be drafted as clearly as possible to give people fair notice of precisely what conduct is prohibited. Constitutional doctrines implicating statutory language include:

(1) The "void for vagueness" doctrine. This was the problem in the *Healthscript* case discussed at the last meeting, where the Indiana Supreme Court found a criminal statute that incorporated by reference a 50 page article of the Indiana Code (as well as regulations adopted pursuant to certain statutes in the 50 pages) void for vagueness because it was not clear precisely which conduct was prohibited.

(2) The "overbreadth" doctrine. A statute that is clear, but that is so broad that it could only be enforced arbitrarily will be found unconstitutional because it vests too much discretion in police to determine who should be arrested.

(3) The "principle of lenity". If a criminal statute is ambiguous, a court will strictly construe the statute in favor of the defendant. The principle does not mean that the entire statute is invalid, but in practice it tends to mean that the statute encompasses less conduct than was originally intended.

I. Infractions

An infraction is not a crime, but a person who violates a statute may be required to pay a fine. Infractions do not have a mens rea requirement, and many other limitations on criminal prosecutions do not apply to infractions. Probably the best known infraction is speeding. There are four levels of infraction:

- (1) Class D infraction: fine of up to \$25.
- (2) Class C infraction: fine of up to \$500.
- (3) Class B infraction: fine of up to \$1,000.
- (4) Class A infraction: fine of up to \$10,000.

A person may not be imprisoned for violating an infraction.

EXPLANATION OF PENALTY PROVISIONS AND PROCEDURES IN THE INDIANA CODE
 Prepared by the Legislative Services Agency (Last Revised: 07/2005)

CRIMINAL MATTERS				
CATEGORY	FIXED TERM OF IMPRISONMENT	MAXIMUM FINE	STATUTORY AUTHORITY****	
Murder	45 to 65 years (55 years)*, Death Penalty, or Life Imprisonment without Parole	\$10,000***	IC 35-50-2-3 IC 35-50-2-9	
Class A Felony	20 to 50 years (30 years)*	\$10,000***	IC 35-50-2-4	
Class B Felony	6 to 20 years (10 years)*	\$10,000***	IC 35-50-2-5	
Class C Felony	2 to 8 years (4 years)* or Reduction to Class D felony	\$10,000***	IC 35-50-2-6 IC 35-50-2-6(b)	
Class D Felony	6 months to 3 years (1.5 years)* or Reduction to Class A misdemeanor***	\$10,000***	IC 35-50-2-7	
Class A Misdemeanor	Up to 1 year	\$5,000***	IC 35-50-3-2	
Class B Misdemeanor	Up to 180 days	\$1,000***	IC 35-50-3-3	
Class C Misdemeanor	Up to 60 days	\$500***	IC 35-50-3-4	

CIVIL MATTERS

CATEGORY	FIXED TERM OF IMPRISONMENT	MAXIMUM CIVIL JUDGMENT	STATUTORY AUTHORITY
Class A Infraction	None	\$10,000	IC 34-28-5-4(a)
Class B Infraction	None	\$1,000	IC 34-28-5-4(b)
Class C Infraction	None	\$500	IC 34-28-5-4(c)
Class D Infraction	None	\$25	IC 34-28-5-4(d)
Ordinance Violation	None	\$2,500*****	IC 36-1-3-8(10)

* The numbers in parentheses are advisory sentences. IC 35-50-2-1.3 provides that an advisory sentence means a guideline sentence that the court may consider as the midpoint between the maximum and minimum sentence.

** Certain crimes are not eligible for reduction to Class A misdemeanor.

*** IC 35-50-5-2 provides for an alternative fine equal to twice the offender's pecuniary gain or twice the pecuniary loss of the victim.

**** Miscellaneous other statutes provide various sanctions in specific cases, including driver's license suspension (e.g., IC 9-30-5-10; IC 9-30-13), treble damages (IC 34-24-3), forfeiture (IC 34-24-1 and IC 34-24-2), disenfranchisement (IC 35-50-5-1.1), and restitution (IC 35-50-5-3).

*****The maximum civil judgment for violations of certain ordinances concerning air emissions is \$10,000.