
INTERIM STUDY COMMITTEE ON CORRECTIONS AND CRIMINAL CODE



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
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INTERIM STUDY COMMITTEE ON CORRECTIONS AND CRIMINAL CODE

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FINAL REPORT

Interim Study Committee on Corrections and Criminal Code

I. STATUTORY DIRECTIVE

The Interim Study Committee on Corrections and Criminal Code is authorized under IC 2-5-1.3-4. The Committee is required to study and make findings and recommendations concerning the topics assigned and submit a Final Report to the Legislative Council in an electronic format under IC 5-14-6 before November 1, 2017.

II. INTRODUCTION AND REASONS FOR STUDY

For the 2017 Interim, this committee was charged with studying the following topics:

- (A) Implementation of HEA 1006-2014, including the following:
 - (i) Savings accrued by the Department of Correction due to implementation of HEA 1006-2014.
 - (ii) Jail overcrowding.
 - (iii) Establishment of regional jails.
 - (iv) Availability and certification of treatment providers and treatment facilities. (Source: HEA 1349-2017, SECTION 2.)

- (B) Requiring bills creating crimes or increasing penalties to be reviewed by an interim study committee. (Source: SR 58 (2017).)

- (C) Extending support services provided under IC 12-23-19 (mental health and addiction forensic treatment services) to individuals in the criminal justice system:
 - (i) who: (a) are charged with a misdemeanor offense; or (b) have a prior misdemeanor conviction; and
 - (ii) who have been placed in or are eligible for placement in a pre-trial services program, a community corrections program, a prosecuting attorney's diversion program, or jail. (Source: HEA 1006-2017, SECTION 11.)

- (D) Serious mental illness and the death penalty. (Source: SR 64 (2017).)

III. SUMMARY OF WORK PROGRAM

At the first meeting, the Committee heard testimony from stakeholders representing (1) the Department of Correction, (2) the Prosecuting Attorneys Council, (3) the staff from the Indiana Supreme Court's Office of Judicial Administration, (4) the Division of Mental Health and Addiction, and (5) the Indiana Sheriffs' Association.

The minutes of this meeting may be found at: <https://iga.in.gov/documents/4e62c63b>

At the second meeting, the Committee heard testimony about: (1) the financial effects of criminal sentencing reforms; (2) testimony from persons representing community corrections agencies, probation departments and the Office of the Attorney General about the effects of criminal sentencing reform on their operations. The committee also heard testimony from sheriffs of two counties, the Indiana Sheriffs' Association, and the

president of the Indiana Judges Association about the effect of criminal sentencing reform on local jails and of the advantages and disadvantages of regional jails. Finally, the committee members heard testimony about additional monies that the General Assembly appropriated for treating and supervising felons in their communities.

The minutes of this meeting may be found at: <https://iga.in.gov/documents/1e14ca01>

At the third meeting, the Committee heard further testimony on the following topics: (1) financial effects of criminal sentencing reform, (2) the availability and certification of treatment providers and treatment facilities for persons with mental illnesses and alcohol and drug addictions, (3) the possibility of offering mental health and alcohol and drug treatment programs to persons who have been charged or convicted of a misdemeanor, (3) whether persons with serious mental illnesses should be exempt from the death penalty if they have been convicted and sentenced for murder, and (4) whether any proposed changes to establish a new criminal penalty or enhance an existing one should be reviewed by an interim study committee.

The minutes of this meeting may be found at: <https://iga.in.gov/documents/a8cc7c07>

At the fourth meeting, the Committee heard testimony about an evaluation of the Recovery Works Program that is being conducted and approved the final report by a vote of 13 to 3.

The minutes of this meeting may be found at: <https://iga.in.gov/documents/fccfb0f9>

IV. COMMITTEE FINDINGS AND RECOMMENDATIONS

A) Savings accrued by the Department of Correction due to implementation of HEA 1006-2014

The Committee found evidence that savings occurred due to implementation of the criminal sentencing reform legislation between 2013 and 2015.

The Committee found that both the average annual populations of all facilities operated by DOC declined by 1,292 offenders between FY 2015 and FY 2017.

The Committee also found that when including the costs of all facilities and food and medical care, the combined expenditures increased from \$538.2 million in FY 2015 to \$543.7 million in FY 2016, but then decreased to \$528.5 million in FY 2017.

The Committee found that the report prepared by consulting firm Katz, Sapper, and Miller was limited to the effect that requiring Level 6 felons be committed to county jails instead of DOC facilities would have on state expenditures. The report concluded that for FY 2017, DOC experienced additional spending of \$2.2 million.

Recommendation: IC 11-12-2-1(b) currently specifies that “Before March 1 of each year, the department shall estimate the amount of any operational cost savings that will be realized in the state fiscal year ending June 30 from a reduction in the number of individuals who are in the custody or made a ward of the department of correction (as described in IC 11-8-1-5) that is attributable to the sentencing changes made in HEA 1006-2014 as enacted in the 2014 session of the general assembly. The department shall make the estimate under this subsection based on the best available information.” The Committee recommends that the reference to HEA 1006-2014 be changed to HEA 1006-2015 as enacted in the 2015 session of the general assembly.

The DOC is urged to continue identifying savings and efficiencies in its system as criminal code reforms are implemented. Testimony and evidence presented during the multi-year process of rewriting Indiana's criminal code identified a more effective strategy for reducing crime – focusing limited tax dollars on locally-based mental health and substance use disorder treatment programs rather than incarceration. The intent of HEA 1006 – 2014 was to treat these root causes of crime using evidence-based best practices to reduce recidivism, making communities safer. It also ensures DOC will have sufficient capacity to house violent criminals who need to be isolated from society to protect Indiana's citizens.

B) Jail overcrowding

County sheriffs completed a one day count of their county jails between July 18 and September 14, 2017. The compiled results show that there were 21,478 beds and 21,360 persons in these beds for an occupancy rate of 99%.

The Committee found four concerns about the issue of overcrowding in Indiana jails:

First, the Committee finds little evidence that jail overcrowding has resulted from the passage of the criminal sentencing reform legislation between 2013 and 2015. Supreme Court staff examined the results and found that although 44% of all jail beds are filled by a Level 6 inmate, only 10% of all jail beds are filled due to sentenced Level 6 felons (those offenders may not be committed to DOC facilities). The staff found that while 44 jails were over capacity, even if every sentenced Level 6 felon were sent to DOC, there would still be 31 jails over capacity. The pre-trial population accounts for a significant percentage of current local jail populations.

Second, county sheriffs use 25 different jail management systems for keeping track of their prison population, spending \$1.6 million annually. Currently, no standards exist that govern how data should be formatted and what data should be collected. In addition, some of the jails had to count the persons in their jails manually to complete the requested survey. Consequently, the results of surveying all 91 jails are not necessarily valid or reliable.

Third, the Committee finds the fiscal effect that the length of time that in particular Level 6 felons spend in pre-trial detention creates a significant burden for county budgets. The Supreme Court staff noted that in 2016, 41% of Level 6 felons who received executed sentences had already served the entire sentence while in pre-trial detention. As a result, counties were not able to recoup any of their expenses when confining these offenders. Also in 2016, the Level 6 felons spent over 1.3 million days in pre-trial incarceration for Level 6 offenses. If these sentences had been served after trial, the counties would have been eligible for an estimated \$43.1 million in reimbursement from DOC at \$35 per day.

Fourth, the Committee also finds the original purposes of HEA 1006 sentencing reform included providing certainty in sentencing so victims could be properly advised of the actual time offenders were to serve and to provide proportionality between crimes against the person vs. crimes against property vs. drug related offenses. An analysis of 1,241 abstracts of judgment from 2/1/2017 to 8/22/2017, completed for Dealing in a Controlled Substance, found 373 dealing offenders received no post-conviction sentence of executed time in DOC or jail. Of the 373, 47 did not serve any time in jail pre-trial; **which means 4% did not spend any time in jail**. These offenders, taken as a group of 373, spent an average of 93 days in jail pre-trial. 251 of the 373 received an average of 800 days executed time on community corrections.

The cases were disposed as follows:

	Count of Disposition	Percent
Finding of Guilty	1	0.27%
Finding of Guilty by Lesser Included	4	1.07%
Plea by Agreement	281	75.34%
Plea Guilty	41	10.99%
Plea Guilty Lesser Included	46	12.33%
Grand total	373	100.00%

Recommendation: It was not the intent of the General Assembly to simply shift incarceration of offenders from the DOC system to local jails. The goal is to use other, more effective methods such as treatment programs and problem-solving courts at the local level to break the cycle of recidivism. The General Assembly must work in partnership with local sheriffs and county governments to make these programs available to counties throughout the state. Scaling up these programs will more effectively reduce crime and help reduce local jail populations.

C) Establishment of regional jails

Recommendation: The Committee recommends that secure regional treatment facilities in different regions of the state be established to address the problems with persons who are charged with a crime and are diagnosed with a mental illness or substance abuse disorder. Establishing regional treatment facilities would help to address the shortage of counselors and social workers who could work with these persons who await trial in a single facility. There might be closed DOC facilities that could be used for treatment of these persons.

D) Availability and certification of treatment providers and treatment facilities

The Committee found that, historically, substance abuse treatment providers received limited state funding support in Indiana. Most of the funding came from the Substance Abuse and Mental Health Services Administration (SAMHSA) through block grant funding through the Division of Mental Health and Addiction. Consequently, the reimbursement for supporting the costs of intensive case management, residential housing, detox services and crisis stabilization did not exist and treatment providers did not invest in addiction treatment.

The Committee also found that besides little investment in programs, the limited reimbursements available likely discouraged the development of college programs to train and develop addiction treatment professionals. Consequently, the number of treatment providers is inadequate.

The Committee found that based on a survey of the licenses of mental health professionals by the Bowen Center for Health Workforce, over half of Indiana counties lack access to psychiatry, psychology, addiction counseling, or marriage and family therapy.

The Committee found that Recovery Works, which was established in 2015, reimburses treatment providers who are licensed by the Professional Licensing Agency and certified by the Division of Mental Health and Addiction. There are some technical changes that are likely needed in IC 12-23-19-3 to address how services by certified for licensed providers are administered or coordinated.

Recommendation: The committee recommended adoption of PD 3318 after making two amendments:

The first amendment was to strike “or licensed” because DMHA does not license providers.

The second amendment was to add “to provide mental health and addiction treatment services” after “agency”,

to specify what type of license the provider must have.

The amendments were adopted by consent, as was the PD.

The Committee also recommends that any treatment provider reimbursed by Recovery Works should address the criminal thinking of these persons as well as their problems with mental illness and substance abuse disorders.

E) Requiring bills creating crimes or increasing penalties to be reviewed by an interim study committee

The committee recommends that when determining whether to hear a bill that creates a new crime or increases the penalty for an existing crime, the chairs of the:

- (1) House Courts and Criminal Code Committee;
- (2) Senate Corrections and Criminal Law Committee;
- (3) Senate Judiciary Committee; and
- (4) House Judiciary Committee;

give priority to a bill which addresses a particular need of the criminal justice system identified by the interim study committee on corrections and criminal code.

Recommendation: The committee adopted PD 3317 after amending the bill to specify that the committee “shall review current trends with respect to criminal behavior, sentencing, incarceration, and treatment”.

The original PD did not include a review of “sentencing”. The amendment and PD were approved by consent.

F) Extending support services provided under IC 12-23-19 (mental health and addiction forensic treatment services) to persons charged with a misdemeanor

The Committee finds that appropriations for Recovery Works are likely to be adequate to properly serve persons who are convicted and sentenced for a felony and who have either a substance abuse disorder, a mental illness disorder, or both. In addition, Recovery Works has not been in existence long enough for DMHA to determine what are the most effective treatment modalities to use for assisting persons with substance abuse disorders, mental illnesses or both.

Recommendation: The Committee recommends that when DMHA determines what are the most effective treatment modalities, the General Assembly should consider the costs and benefits of extending support services to persons charged with a misdemeanor.

G) Serious mental illness and the death penalty

The Committee recommends no action on the issue of mental illness and the death penalty. The General Assembly has set forth safeguards to prevent inappropriate imposition of the death penalty on mentally ill individuals. These safeguards include the requirement of mens rea, the codification of the defense of mental disease or defect, and the requirement that an aggravating circumstance exist and a specific enumeration of mitigating factors that must be considered in the decision.

In addition to the act of killing, mens rea is required to convict a person of murder. A person must knowingly or intentionally kill another person to be convicted under the murder statute. A mentally ill individual who cannot form the requisite intent cannot be convicted of murder or a required aggravating circumstance to constitute a

capital offense.

The defense of mental disease or defect can be raised to prevent a conviction and protects persons with serious mental illness from being sentenced to death.

In determining the appropriateness of the death penalty, a jury must consider a number of mitigating factors enumerated in statute. Several relate to the presence of mental illness, including:

- Whether the defendant was under the influence of extreme mental or emotional disturbance
- Whether the defendant acted under the substantial domination of another person
- Whether the defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease.

Furthermore, the jury is instructed to deliberate any circumstance that they consider mitigating. Beyond statutory safeguards, the federal and state constitutions provide procedural and substantive protections to ensure any mental illness is considered before a sentence of death is imposed. Specifically, the Eighth Amendment of the United States Constitution and Article I, § 16 of the Indiana Constitution prevent an insane inmate from being executed.

WITNESS LIST

Linda Brady, Probation Officers Professional Association of Indiana
Senator Rodric Bray
Matt Brooks, Indiana Council of Community Mental Health Centers
Brett Clark, Sheriff, Hendricks County
Bernice Corley, Indiana Public Defender Council
Alan Davis
Stan Dekemper, Executive Director, Indiana Counselors Association on Alcohol and Drug Abuse
Matt Ellis, Project Director, HASMIE (Hoosier Alliance for a Serious Mental Illness Exemption)
Jon Ferguson, Legislative Director, Department of Correction (DOC)
Hon. Robert Freese, Hendricks Superior Court #1 and President of the Indiana Judges Association
Mark Goodpaster, Senior Fiscal Analyst, Legislative Services Agency
Troy Hatfield, Deputy Chief Probation Officer, Monroe County Probation Department
Andrew Hedges, Senior Staff Attorney, Legislative Services Agency
Mary Kay Hudson, Indiana Deputy Director, Office of Judicial Administration, Indiana Supreme Court
Lisa Hutcheson, Vice President of Policy and Programs, Mental Health America of Indiana
Christopher Johnston, Katz Sapper and Miller Consulting
Christine Kerl, Chief Probation Officer, Marion County Probation Department
Amy Levander, Valle Vista Hospital
Sarah Lochner, Chief Probation Officer, Wabash County
Steve Luce, Executive Director, Indiana Sheriffs' Association
Todd Meyer, Indiana Prosecuting Attorneys Council
Kevin Moore, Director, Division of Mental Health and Addiction
Barbara Moser, Executive Director, Indiana Chapter of the National Alliance on Mental Illness (NAMI Indiana)
Aaron Negengard, Office of the Attorney General
Brad Ray, Ph.D.; Director, Center for Criminal Justice Research, Indiana University Public Policy Institute
Candace Rothenbuhler, President, Indiana Opiate Treatment Provider Association (INTOD)
Steve Schutte
Jane Siegel, Executive Director, Office of Court Services, Indiana Supreme Court
Representative Greg Steurwald
Jill Bolte Taylor, Ph.D.
Glenn Tebbe, Executive Director, Indiana Catholic Conference
Lisa Thompson, Project Manager for Trial Court Technology, Office of Judicial Administration, Indiana Supreme Court
Tim Troyer, Steuben County Sheriff
Greg Wathen, President and CEA, Economic Development Coalition of Southwest Indiana
Bill Watson, President, Indiana Association of Community Corrections Act Counties
Executive Director, Vigo County Community Corrections Agency
Dave Wedding, Sheriff, Vanderburgh County
Dave Williams, Project Manager for Court Technology, Office of Judicial Administration, Indiana Supreme Court