

**2014 Legislative Update - Felony
Diversion, Sentence
Modification, Credit time &
Recidivism**

David N. Powell, Executive Director
Indiana Prosecuting Attorneys Council

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AGENDA

1. Felony Diversion
2. Modification of Sentence
3. Credit Time
4. Recidivism

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1. Felony Diversion

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1. HEA 1006 –Felony Diversion

- Council/Association did not ask for felony diversion – added by the House in HEA 1006
- I.C. 33-39-1-8(d) amended to add after the word misdemeanor, "**a Level 6 felony, or a Level 5 felony**".
- 2012 Judiciary Data (Dispositions)
 - 51,664 D Felons (Level 5)
 - 9,239 C Felons (Level 6)
 - 167,126 misdemeanors
 - Represents 96% of all dispositions (237,951)

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1. HEA 1006 – Diversion

- I.C. 33-39-8-5(6) (Function and Duties of IPAC)
The council shall adopt guidelines for the expenditure of funds derived from a deferral program or a **pretrial diversion** program.
- Other than adding Level 6/5 felonies to misdemeanors, no other changes to I.C. 33-39-1-8.
- I.C. 33-37-5-17 provides for a fee of \$120 for court costs. Applies to 33-39-1-8 prosecutor deferrals.

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1. HEA 1006 – Diversion Fees

- I.C. 33-37-4-1 governs court costs for actions involving felony/misdemeanor convictions and diversion.
 - (a) criminal costs is a fee of \$120
 - (b) in addition to criminal costs, the clerk shall collect the following fees – 19 fees described
 - Number (10) is deferred prosecution fee (IC 33-37-5-17).
 - **BUT** subsection (c) provides: "Instead of the criminal cost fees prescribed by the section,the clerk shall collect a pretrial diversion fee if an agreement between the PA and the D entered into under IC 33-38-1-8 requires payment of those fees.
 - A pretrial diversion program fee as follows: Initial user's fee of \$50 & a monthly user's fee of \$10

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1. HEA 1006 - Diversion

- I.C. 33-39-1-8
 - Same restrictions apply (no diversion for driving offense involving a CDL, OVWI, Title 7 and operation of a motor vehicle, etc.)
 - Written agreement that includes all terms signed by PA & D and filed in court where charge filed.
 - PA transmits info to IPAC

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1. HEA 1006 – Diversion Conditions

- I.C. 33-39-1-8 Conditions:
 - Pay fees specified in IC 33-37-4-1
 - Work, go to school, or pursue the same
 - Medical treatment/counseling (certified?)
 - Make restitution
 - Support dependents
 - Report to PA as reasonably required
 - Notify PA of change of address/employment

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1. HEA 1006 – Diversion Conditions

- I.C. 33-39-1-8 Conditions:
 - Refrain from contact with victim/witness
 - Participate in dispute resolution or programs established by the PA
 - Any other provision reasonably related to rehab
 - PA will notify victim if diversion offered
 - All user fees collected shall be deposited in the appropriate fund under I.C. 33-37-8

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**1. HEA 1006 –
Diversion Appropriations**

- I.C. 33-37-8-6 Appropriations - county fund
 - Funds from Deferral/Diversion may be disbursed only by adoption of an appropriating ordinance for the following purposes:
 - Any normal personnel/supply/operating expense
 - Activity/Program by PA to reduce/prevent crime: substance & child abuse, DV, OVWI and delinquency
 - Any other purpose agreed upon by the PA and council
 - Funds only used per IPAC guidelines I.C. 33-39-8-5

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HEA 1006 – Diversion & Court Services – Another Option?

- IC 12-23-14-5 allows a court to provide services under the certified alcohol & drug program for people referred by Prosecutor
- IC 33-23-15-23 as a condition of pretrial diversion a person is authorized to participate in a problem solving court program
- Additional program fees may be charged by these entities as well as community corrections

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1. HEA 1006 - Diversion Practice Tips

- So what does all of this mean?
 - No statutory restriction to diversion > 12 months
 - IPAC guidelines should permit additional activity/program treatment/rehab fees to reduce/prevent crimes
 - Prosecutors should be permitted to use the fees to fund treatment/rehab (Grants/vouchers?)
 - Some statutory cleanup needed to avoid SBA issues
 - Review your local ordinances for amendments

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1. HEA 1006 – Diversion Practice Tips

- So what does all of this mean?
 - Make sure you have in place written policies as to who can approve felony diversion
 - In large offices you may not want entry level DPAs signing off on felony diversion
 - You may want to establish a list of felonies that you will not permit a diversion (incest, etc.)
 - Be careful

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2. Modification of Sentence

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2. HEA 1006 Sentence Modification

- Sentence Modification (I.C. 35-38-1-17)
 - Does not apply to credit restricted felons
 - Within first 365 days of sentence (current law)
 - After 365 days, as to open/discretionary portions of sentence in plea, or imposed after a trial
 - 2 petitions allowed
 - Cannot waive this right in a plea agreement
 - Victim notification only if petition set for hearing
 - Court is not required to set a hearing

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2. HEA 1006 Practice Tips

- Sentence Modification (I.C. 35-38-1-17)
 - Make sure waiver provisions are removed from your plea agreements – could result in a disciplinary complaint
 - Be alert to plea offers that agree to range, minimum and cap, defendant's will later seek to modify to minimum under this statute
 - Look for more open pleas

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3. Credit Time

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3. Current Credit time

- Credit time changes (Offenses before July 1, 2014)
 - 4 class system (35-50-6-3)
 - Class 1 - 1 day for 1 day (good time)
 - Class 2 - 1 day for 2 days
 - Class 3 - no credit
 - Class 4 - 1 day for 6 days (credit restricted felon)

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3. HEA 1006 Credit Time Changes

- Credit time changes (Offenses after July 1, 2014)
 - New 4 class system (35-50-6-3.1)
 - Class A - 1 day for 1 day (Level 6 felons & Misdemeanors)
No change from current law.
 - Class B - 1 day for 3 days (Murder – Level 5 felons)
 - Class C – 1 day for 6 days (Credit restricted felon)
 - Class D - no credit

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Current v. New Range of Penalties - Comparison

I.C.35-50-2	Class	Current	50% credit	Level	New	25% credit
35-50-2-3	Murder	45-65 years	22.5 -32.5 years	Murder	45-65 years	33.75 – 48.75 years
35-50-2-4	A	20-50 years	10 – 25 years	1	20-40 years	15 - 30 years
35-50-2-4.5				2	10-30 years	07.5 – 22.5 years
35-50-2-5	B	06-20 years	03 – 10 years	3	03-16 years	02.25 – 12 years
35-50-2-5.5				4	02-12 years	01.5 – 09 years
35-50-2-6	C	02-08 years	01 – 04 years	5	01-06 years	0.75 – 04.5 years
35-50-2-7	D	0.5-03 years	0.25 – 01.5 years	6 (50% credit)	0.5-2.5 years (50% credit time)	0.25 – 01.25 years (50% credit time)

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Comparison – Current v. New Range of Advisory Penalties

I.C.35-50-2	Class	Current Advisory	50% credit	Level	New Advisory	25% credit
35-50-2-3	Murder	55 years	27.5 years	Murder	55 years	41.25 years (+13.75)
35-50-2-4	A	30 years	15 years	1	30 years	22.5 years (+7.5)
35-50-2-4.5				2	17.5 years	13.125 years (+4.375)
35-50-2-5	B	10 years	5 years	3	9 years	6.75 years (+2.25)
45-50-2-5.5				4	6years	4.5 years (-1.5)
35-50-2-6	C	4 years	2 years	5	3 years	2.25 years (-1.75)
35-50-2-7	D	1.5 years	0.75 year	6 (50% credit time)	1 year (50% credit time)	0.50 year (-1.0)(50% credit time)

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3. HEA 1006 Education Credit

- Additional credit time changes
 - Earned/Education credit changes (35-50-6-3.3)
 - Associates/Bachelors degrees **must be earned** (vs. received) **during period of incarceration**
 - Not more than 1 year for Associates
 - Not more than 2 years for Bachelors
 - Vocational increased from ½ year to 1 year
 - Credit time earned must be proportional to time served & earned while incarcerated

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3. HEA 1006 Education Credit

- Credit time changes
 - Earned/Education credit changes (35-50-6-3.3)
 - Maximum E. credit time one can earn is the lessor of:
 - 2 years or
 - 1/3 of executed sentence
 - Current law allows 4 years for educational credit
 - Educational credit deducted from the release date after subtracting all other credit time (net v. gross sentence)

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3. HEA 1006 Pretrial credit

- Credit time changes – I.C. 35-50-6-4
 - A person awaiting trial is assigned to a credit class on the most serious offense charged. However, credit time is adjusted to the lower offense if the person is convicted of an offense that permits increased credit time.
 - Example, Charged with a level 5 and convicted of a Level 6. Given credit at 50% vs. 25% for pretrial detention despite charged with level 5.

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3. HEA 1006 Home Detention Credit

- Credit Time for Home Detention (Probation v. Community Corrections Commitment)
- I.C. 35-38-2.5-5 provides that credit time is day for day (no good time allowed)
- Some courts were allowing good time and treating credit time differently for Home Detention as a condition of probation vs. Home Detention community corrections placement .

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3. HEA 1006 Level 6 Doc Restriction

- I.C. 35-38-3-3 (Level 6 DOC restriction)
 - After 6.30.14 and before 7.1.15 court may not commit a Level 6 felon to DOC if earliest release date is less than 91 days from date of sentencing, unless commitment is due to violation of probation, parole or community corrections.
 - 366 days after 6.30.15
 - Sheriff gets per diem & medical expenses

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4. Recidivism

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4. Recidivism

- First some numbers
 - DOC
 - PROBATION
 - JAIL
- HEA 1268 – Community Corrections funding
- SEA 235 – Marion County pilot
- SEA 171 – Collaborative plan by 2017
- HEA 1006 (2014) – seed money

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4. DOC Admission/Releases 2013

- 2013 DOC Offender Population Report:
 - Table 4 – Yearly Admissions & Release of Adult Offenders
 - 18,533 admissions, 18,921 releases
 - 51% of the males had a prior commitment to DOC
 - 38% of the females had a prior commitment to DOC

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4. Drug Offense Numbers

- 2013 DOC Offender Population Report:
 - Table 11 – Admissions by Most Serious Offense:
 - **Drug Offenses:**
 - 1. A Felonies 266 (Level 2 cap) 5.9%
 - 2. B Felonies 1,782 (Level 3 & 4) 39.7%
 - 3. C Felonies 420 (Level 5) 9.3%
 - 4. D Felonies 2,013 (Level 6) 47.5%

Total: 4,481 or 24% of admissions (18,533)

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4. DOC Recidivism

- DOC data shows that 39% of the males sent to them recidivate
- This number has been constant for years
- 84% of the recidivists are offenders serving less than 2 years – the C and D felons
- Under new code how many will go to DOC?

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4. Probationers – 2012 Data

- 61% - no H.S. diploma
- 57% - no job & possess a criminal attitude
- 73% - poor – indigent
- 88% - use drugs
- 42% - regular use of alcohol since 17
- 63% - report friends with criminal records
- 67% - have unstructured time

▪ Data provided by Don Travis, President, Indiana Probation Officers in his 2011 report to the Criminal Code Evaluation Commission

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4. Drug Offenses - Probation

- 2012 Indiana Probation Report p. 16:
 - 128,189 people on probation
 - 61,494 felons/66,695 misdemeanants
 - 42% of felons on probation for a **substance abuse** offense (25,828)
 - 39% of misdemeanants on probation for a **substance abuse** offense (26,011)

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4. Risk Assessments - Probation

- 2012 Indiana Probation Report p. 15
 - Felony Probation Supervision (74,442)
 - High risk 14,594 or 20%
 - Medium risk 18,982 or 26%
 - Low risk 27,025 or 36%
 - No assessment 13,821 or 18%
 - Misdemeanor Probation Supervision (44,010)
 - High risk 5,305 or 12%
 - Medium risk 7,390 or 18%
 - Low risk 19,856 or 45%
 - No assessment 11,459 or 26 %
 - Should the folks in Red be on probation at all?

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4. Probation

- CONCLUSIONS 2012 PROBATION REPORT:
 - LOCAL PROBATION UNABLE TO FUND OR CONTINUE EVIDENCE BASED PROGRAMS
 - TOO FEW PROBLEM SOLVING COURTS
 - ¾ OF OFFENDERS UNABLE TO PARTICIPATE WITHOUT WAIVER OF FEES – REAL COST?
 - 1,362 PROBATION OFFICERS
 - NO FORMULA FOR STAFFING OR WORKLOADS

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4. Jail Numbers

- 2012 JAIL SURVEY (85 of 92 counties reporting)
 - Average year of construction 1987 (25YRS)
 - 17,581 capacity
 - \$195,119,052 budgeted
 - medical appropriated \$27,843,347.00 (14%)
 - 40% NA or AA
 - 28% "thinking for a change" & religion
 - 17% substance abuse assistance

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**4. HEA 1268
Community Corrections**

- I.C. 11-12-1-2.5 –Community Corrections
 - *"Shall use evidence based services, programs, and practices that reduce the risk for recidivism among persons who participate in the community corrections programs"*
 - May include: list of 11 programs stricken

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**4. HEA 1268 Mental Health and
Addiction Forensic Treatment**

- I.C. 11-12-3.8 (New chapter)
 - *Mental Health and Addiction Forensic Treatment Services*
 - (1) *Provide evidence based treatment/recovery wrap around services for treatment, vocations, housing, community support, care coordination and transportation*
 - (2) *Eligible if poor, a resident, 18, entering criminal justice system as a felon or with prior felony*

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**4. HEA 1268 Mental Health and
Addiction Forensic Treatment**

- I.C. 11-12-3.8 (New chapter)
 - (3) Provider must be certified by Division of Mental Health and Addiction
 - (4) Creates a forensic treatment account
 - Provides grants/vouchers
 - Appropriations from general assembly, grants, gifts & bequests – does not revert to state if not spent

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4. HEA 1268 Mental Health and Addiction Forensic Treatment

- I.C. 11-12-3.8 (New chapter)
 - (5) DOC commissioner may award financial assistance – but must coordinate with judicial center and division of mental health/addictions to avoid duplication of services
 - Division of mental health/addiction may provide grants

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4. HEA 1268 Judicial Center

- I.C. 11-13-2-1 – Judicial Center
- Allows local grants from Judicial Center
 - Permits judicial center to deduct a 3% admin. fee from appropriations and prohibits use for any purpose other than local grants.
- I.C. 11-13-2-2 Funds the development of local programs, evidence based practices to reduce recidivism. Must establish a coordinated system of community supervision.

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4. HEA 1268 Judicial Center

- I.C. 11-13-2-3 – Judicial Center
- Shall develop a grant process for local courts
 - Shall base awards upon local coordination & EBP
 - Shall consult with DOC and Division of Mental Health/Addiction to avoid duplication of services
 - Certified provider required in every case

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4. SEA 235 Augments HEA 1268

- Marion County Recidivism Reduction Pilot
 - I.C. 11-12-3.8-5(e) permits DOC to award money to Marion County for project – ends 6.30.2017
 - I.C. 11-12-3.8-6 (defines pilot)
 - Marion Superior Court may create 3 year pilot to provide mental health & addiction services as an alternative to DOC commitment
 - Authorized programs included: diversion, probation, community corrections, home detention, anything that works

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4. SEA 235 Augments HEA 1268

- Marion County Recidivism Reduction Pilot
 - I.C. 11-12-3.8-6 (defines pilot)
 - Sex and violent offenders not eligible
 - Certified provider (diversion program certification)
 - Report to legislature each year before Oct 1
 - Report shall provide recidivism rate, cost, savings, any other info requested by the legislative council

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4. SEA 171 Community Corrections

- I.C. 11-12-2-4 (Community Corrections)
 - New (8) requires a plan of collaboration between the probation department and community corrections filed with DOC and Judicial Center – deadline July 1, 2017
 - Plan must include: description of EBP, ways to reduce duplication, sanctions, eligibility criteria, fees/aid, evidence of compliance
 - DOC funding priority to those who comply

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4. Seed Money

- Dr. Roger Jarjoura, in his assessment of the local fiscal impact of HEA 1006 (2013), estimated that an additional 10.5 million dollars would be needed annually at the local level. (page 6/169 January 2014 report)
- HEA 1006 (2014) – I.C. 11-12-2-1
 - Before March 1, 2015 DOC shall estimate operation cost savings of HEA 1006-2014

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4. Seed Money

- HEA 1006 (2014) – I.C. 11-12-2-1
 - DOC shall certify savings to budget/auditor
 - Shall transfer/grant to judicial conference an amount that may not exceed the lessor of the operational savings certified or **11 million dollars**
 - Subsection expires on June 30, 2015
 - What then?

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QUESTIONS?

- David N. Powell, Executive Director
- Indiana Prosecuting Attorneys Council
 - 302 W. Washington Street
 - Indianapolis, Indiana 46204
 - dpowell@ipac.in.gov
 - 317-232-1836

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