

IPAC
2013 Legislative Update
HEA 1108 - July 1, 2013
Dual Sentencing for Juveniles

HEA 1482 - July 1, 2013
Expungement

HEA 1006 - July 1, 2014
Criminal Code Revision

1

House Enrolled Act 1108

- I.C. 31-30-4 (New Chapter created) -- New Sentencing Procedures for juveniles, Impacts:
 - Direct file (31-30-1-4) Juveniles and;
 - Waivers (31-30-3 sections 2-6)(shall/may)

2

Background—HEA 1008

- Similar bill failed in 2012 session
- DOC policy is to house direct file/waived juvenile offenders with adults
- Approximately 40 youthful offenders currently in DOC—majority burglary offenses
- Judges & Public Defenders supported the bill

3

Key Points—HEA 1108

- Waiver/direct file rules do not change
- Once in adult court, the sentencing judge MAY impose a juvenile disposition & adult sentence in the same case—upon motion of court, prosecutor or offender's legal representative

4

Indiana Code 31-30-4-2(b)

- Court may impose an adult sentence
- Suspend the sentence
- Order placement into a juvenile facility
- Require successful completion of the juvenile detention

5

Indiana Code 31-30-4-2(c)

- Before court may impose dual sentence:
 - Prosecutor must notify victim, if any
 - Probation must complete pre-sentence
 - DOC must conduct diagnostic evaluation

6

Indiana Code 31-30-4-3

- If probable cause exists to believe a violation of the sentence:
 - Sentencing Court shall hold a review hearing
 - Placement may continue
 - Adult sentence may be executed
 - Any other modification the Court deems appropriate

7

Indiana Code 31-30-4-4

- Allows DOC to move an offender from juvenile facility to adult facility
 - DOC must notify the court of the transfer (no time frame required)
 - Review hearing is required by the court to evaluate the move and court may modify sentence

8

Indiana Code 31-30-4-5

- DOC will notify Court when offender turns 18
- Court will hold a review hearing prior to 19th birthday
- Court may:
 - Continue placement to complete programming
 - Discharge & vacate the adult sentence
 - Modify the adult sentence

9

Indiana Code 31-30-4-5(c)

- Prosecutor may veto sentence modification in certain instances:
 - Direct file cases under IC 31-30-1-4 for murder, attempted murder, kidnapping, rape, robbery (A felonies)
- Court may not vacate or modify the adult sentence in these cases if the prosecutor objects in writing. Must list reasons for objection.

10

DOC may transfer -before age 21

•IC 31-30-4-6 allows DOC to automatically transfer offender who turns 21 to adult facility. Notice to court is only requirement.

•IC 31-30-4-7 provides that offender receives credit time for juvenile sentence against adult sentence when juvenile sentence is revoked

11

Additional Provisions

- I.C. 35-50-2-17 (New Section of Indiana Code)
- If less than 18; waived to adult court and convicted or pleads to a felony or juvenile court lacks jurisdiction; court may impose sentencing alternatives
- Impact?

12

**Expungement—House
Enrolled Act 1482**
Effective July 1, 2013

13

House Enrolled Act 1482

- Expungement (Effective July 1, 2013)
 - Repeals IC 35-38-5-5.5 which allowed petitions to restrict disclosure of arrest and criminal records not resulting from conviction
 - Repeals IC 35-38-8 which permitted petitions to restrict access under certain circumstances to misdemeanor and D Felony convictions after 8 years

14

~~Expungement: 35-38-9-1 replaces 35-38-5-5.5 – Arrest with no conviction, vacated/set-aside convictions, or reversals (Section 1)~~

- Shall expunge—Burden of Proof to Court—Clear and Convincing
- Not earlier than 1 year after arrest, petition or request to seal must be filed in court where person was charged or if not charged, in any court with criminal jurisdiction
- All BMV, Corrections, Court ordered treatments, ISP information sealed from all except criminal justice agencies. **Police & prosecutors still have access to records.**

15

Expungement-Misdemeanors

(Section 2) (replaces 35-38-8)

- Misdemeanor Convictions (includes D Felonies reduced to Class A misdemeanors)
 - May petition 5 years after the date of conviction; prosecutor may agree in writing to a lesser waiting period
 - Civil filing fee, verified petition, clear & convincing standard,
 - Court **shall** expunge/seal
 - Records impacted: Court, DOC, BMV & Court ordered treatment providers

16

Restrictions to Misdemeanor, Section 2, Expungements

- No pending charges
- No existing or pending license suspensions
- Successful probation, not convicted of a crime within last 5 years
- Expunged & sealed as described in Section 6

17

Expungement of D Felonies- (Section 3) (replaces 35-38-8)

- Does not apply to the following:
 - Human trafficking
 - Sex Crimes (IC 35-42-4)
 - Perjury
 - Official Misconduct
 - Felony resulting in bodily injury
 - D felonies by elected officials or candidates
 - Sex or violent offenders (IC 11-8-8-5)

18

Expungement of D Felonies- Section 3 con't:

- Clear and Convincing Evidence Standard
- Applies to BMV/Court Records/DOC and Court ordered treatment records
- May apply for expungement after 8 years have passed, no pending charges, no pending license suspensions, successful sentence completion, and not convicted of another crime within 8 year waiting period, **shall** expunge/seal per section 6

19

Procedure-Section 6 (applies only to Section 2 & 3 expunge/seal orders)

- Prohibits DOC, BMV, law enforcement, and treatment providers from releasing record without a court order to all except law enforcement.
- Prohibits ISP Central Repository from releasing expunged conviction record to all except prosecutor, FBI or Homeland Security. Prosecutor must provide a court order to ISP to obtain an expunged misdemeanor or D felony record.
- All court records sealed (trial, appellate, Supreme Court)
- Published opinions must be redacted

20

Other Felonies-Section 4

- Does not apply to: elected officials or candidates convicted of an offense, sex offenders (11-8-8-5), a felony that results in **serious** bodily injury, perjury, official misconduct or felonies under 35-42-1 (against a person), 35-42-3.5 (human trafficking) or IC 35-42-4 (sex crimes).

21

Other Felonies–Section 4

- Offender must wait 8 years to apply unless you agree to a lessor period in writing
- Verified petition, clear & convincing, **May** Expunge
- Record is not sealed but marked “Expunged”

22

Other Felonies–Section 5

- Includes felonies resulting in serious bodily injury or committed by elected officials
- Otherwise same as section 4
- Offender must wait 10 years to apply unless you agree to a lessor period
- Prosecutor must consent to Section 5 petition
- Same procedure as section 4 - **May** expunge

23

Section 7 –Applies to Expungements under Section 4 & 5 (Felonies)

- Court and other records remain as “public records” but must be marked clearly and visibly as “expunged”.
- Law enforcement, ISP, BMV and others must add entry showing expungement
- Records not hidden from anyone

24

Verified Petition (IC 35-38-9-8) Section 8 requirements

- Applies Sections 2-5
- Lists verified petition requirements for petitioner in filing such as listing all convictions in the petition, describing any other petitions filed, evidence of completion of sentence, etc.
- Prosecuting attorney shall reply to petition within 30 days of receipt

25

Requirements of Petition (continued)

- If prosecutor objects, court shall set matter for hearing within 60 days
- Victim may provide oral or written statement against
- Clear and convincing evidence standard by petitioner
- Denial is appealable as final order
- Court may summarily deny petition

26

Petition Process (IC 35-38-9-9) Section 9

- Section 1 (arrests) multiple petitions allowed
- Sections 2-5 petitions
 - 1 per lifetime; however,
 - More than one conviction can be expunged
 - Multiple jurisdiction filings are considered 1 petition as long as all petitions are filed within a 365 day period
 - If a petition is denied on the merits a 3 year waiting period (subsequent petition limited to matters in the first petition)

27

**Impact on Employment: IC 35-38-9-10
Section 10 Remedies:**

- Unlawful to discriminate against any person with an expunged or sealed record by:
 - Suspending, expelling, refusing to employ, refusing to admit, grant or renew a license or otherwise discriminate
 - Civil rights are restored for voting, holding public office, serving as juror and owning or possessing firearm

28

**Impact on Employment Procedures -
Section 10 remedies**

- Employers may only ask questions such as "Have you been arrested for or convicted of a crime that has not been expunged by a court?"
- Person shall be treated as if never convicted of offense
- Violators commit a Class C infraction and may be held in contempt of court

29

Impact on Subsequent Crimes:

- If prior expunged conviction and person commits unrelated offense (arrest or conviction), prior expunged/sealed conviction may be considered by the court in determining the new sentence for purposes of enhancement of sentence or to determine habitual offender status
- A prosecutor may use an expunged or sealed record in the same manner as a criminal record or conviction that is not sealed or expunged.

30

**Criminal Code Revision—
House Enrolled Act 1006**
Effective July 1, 2014

31

Key Points—HEA 1006

- Delayed until July 1, 2014
- Good Chance will be delayed until July 1, 2015

32

Key Points—HEA 1006

- Converts Class A - D Felonies to Levels 1 - 6
- Murder unchanged
- Current Code HEA 1006
 - Murder Murder
 - Class A Levels 1 & 2
 - Class B Levels 3 & 4
 - Class C Level 5
 - Class D Level 6

33

Key Points—HEA 1006

Sentencing Range Comparison

I.C.35-50-2	Class	Current	Level	New
-3	Murder	45-65 years	Murder	45-65 years
-4	A	20-50 years	1	20-50 years
-4.5			2	10-30 years
-5	B	06-20 years	3	03-20 years
-5.5			4	02-12 years
-6	C	02-08 years	5	01-06 years
-7	D	0.5-03 years	6	0.5-2.5 years

34

Key Points—HEA 1006

Advisory Sentence Range Comparison

I.C.35-50-2	Class	Current	Level	New
-3	Murder	55 years	Murder	55 years
-4	A	30 years	1	30 years
-4.5			2	17.5 years
-5	B	10 years	3	06 years
-5.5			4	04 years
-6	C	04 years	5	02 years
-7	D	01.5 years	6	01 years

35

Key Points—HEA 1006

- Credit time changes
 - Current 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)

36

Key Points—HEA 1006

- Credit time changes
 - New 3 class system (35–50–6–3.1)
 - Class A – 1 day for 3 days (good time)
 - Class B – 1 day for 6 days (credit restricted felon)
 - Class C – no credit

37

Current v. New Range of Penalty Comparison

I.C. 35-50-2	Class	Current	50% credit	Level	New	25% credit
-3	Murder	45-65 years	22.5 - 32.5 years	Murder	45-65 years	33.75 - 48.75 years
-4	A	20-50 years	10 - 25 years	1	20-50 years	15 - 37.5 years
-4.5				2	10-30 years	07.5 - 22.5 years
-5	B	06-20 years	03 - 10 years	3	03-20 years	02.25 - 15 years
-5.5				4	02-12 years	01.5 - 09 years
-6	C	02-08 years	01 - 04 years	5	01-06 years	0.75 - 04.5 years
-7	D	0.5-03 years	0.25 - 01.5 years	6	0.5-2.5 years	0.375 - 01.875 years

38

Comparison - Current v. New Range of Advisory Penalty

I.C. 35-50-2	Class	Current Advisory	50% credit	Level	New Advisory	25% credit
-3	Murder	55 years	27.5 years	Murder	55 years	41.25 years (+13.75)
-4	A	30 years	15 years	1	30 years	22.5 years (+07.5)
-4.5				2	17.5 years	13.125 years (-1.875)
-5	B	10 years	05 years	3	06 years	04.5 years (-0.5)
-5.5				4	05 years	03 years (-02)
-6	C	04 years	02 years	5	02 years	01.5 years (-0.5)
-7	D	01.5 years	0.75 year	6	01 years	0.75 year

39

Key Points—HEA 1006

- 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

40

Key Points—HEA 1006

- 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

41

Key Points—HEA 1006

- What about the Offenses?
- Premises for Revision - There was general agreement:
 1. Some crimes were disproportional;
 2. Need to hit the worst offenders harder;
 3. Need to hit recidivists harder; and,
 4. Give some 1st offenders a break to reform (i.e. low level drug dealers and property crimes).

42

Key Points—HEA 1006 –Offenses

- A lot remained the same—251 felonies are essentially unchanged by 1006.
- 65 felonies are decreased
- 28 felonies are increased
- The full list and the number of commitments in 2012 to DOC for those offenses is included in your material as IPAC memo dated 4.3.13

43

Key Points—HEA 1006 –Offenses

- Some examples that increased include:
 - Murder (including attempt and conspiracy)
 - Manslaughter
 - Rape & other sex offenses
 - Child molesting & other sex offenses involving children

44

Key Points—HEA 1006

- Some examples that decreased include:
 - Arson
 - Residential Burglary (B felony to a Level 4)
 - Theft less than \$750 (1st offense now a Class A misdemeanor)
 - Forgery & Fraud offenses (Class C to Level 6)
 - First time Drug and Narcotic offenses involving less than 3 grams – area of biggest reduction.

45

Key Points—HEA 1006 — Offenses

- Drug offenses are enhanced 2 ways in:
- First, Enhancing Circumstances (EC) (35-48-1-16.5)
 1. Prior dealing conviction
 2. Committed with a firearm
 3. Committed the offense:
 1. On a school bus or w/in 500 ft of school or public park
 4. Delivered or financed delivery to person under 18 & 3 years junior
 5. Manufactured or financed the manufacture

46

Key Points—HEA 1006 — Offenses

- Second, by weight
 1. One level if the amount is > 3grams & <10 grams or < 3 grams & a EC applies
 2. Two levels if the amount is > 10 grams & < 28 grams or < 28 grams & a EC applies.
 3. Three levels if the amount is > 28 grams & a EC applies.

47

Key Points—HEA 1006 —Offenses

- Possession of Meth, Cocaine, Sched. I, II, & III offenses <3 grams start as a level 6 felony.
- Possession with enhancements cap at level 3.
- Dealing <3 grams starts as a level 5 felony.
- Dealing with enhancements cap at level 2.
- Note: current EC of 1000 ft reduced to 500 ft & public housing complex and youth program center removed in HB 1006.

48

Key Points—HEA 1006

- Sentencing:
 - Suspendibility - 35-50-2-2 containing the long list of offenses is removed
 - New 35-50-2-2.2 provides:
 - All sentences are suspendible except:
 - Minimum for Levels 1 & 2 with a prior unrelated felony
 - Minimum for Murder

49

Key Points—HEA 1006

- Sentencing: Habitual Offender
 - Now one Habitual 35-50-2-8 (HSO repealed)
 - All felonies qualify, even drug offenses, Title 9 and offenses, including misdemeanors, that are enhanced to a felony.
 - No right to Voir Dire
 - Attaches to the highest felony charged
 - If set aside applies to next highest felony

50

Key Points—HEA 1006

- Sentencing: Habitual Offender
 - 3 sections:
 - Murder through Level 4 felonies
 - 2 prior unrelated felonies
 - Limited to 1 level 6 felony
 - Level 5 felonies
 - Same as above
 - Not more than 10 years have elapsed between the completion of any sentence on a Level 5 or 6 felony and the current offense.

51

Key Points—HEA 1006

- Sentencing: Habitual Offender
 - 3 sections:
 - Level 6 felonies
 - 3 prior unrelated felony offenses
 - Not more than 10 years have elapsed between the completion of any sentence on a Level 5 or 6 felony and the current offense.

52

Key Points—HEA 1006

- Sentencing: Habitual Offender
 - Penalties:
 - Murder through Level 4 felony – 0 to 20 years
 - Level 5 & 6 felony – 0 to 06 years
 - At 25% credit 20 years is equivalent to 30 years at 50% or 15 years added to the sentence
 - IPAC has an issue with the zero minimum and the maximum for level 5 felonies.

53

Key Points—HEA 1006

- Sentencing: Other Enhancements
 - 35-50-2-11 firearm unchanged
 - 35-50-2-15 gang affiliation:
 - Several good changes to clean up the language
 - Should make proving gang affiliation easier
 - 35-50-2-9 Criminal confinement was added as an aggravator to the LWOP and death penalty.

54

What's ahead? —HEA 1006

- Study Committees for this summer to be appointed by the Legislative Council end of May 2013:
 - Title 7 & 9
 - Advisory Sentences
 - Suspendibility
 - Recidivism
 - Criminal Justice Funding
 - General Sentencing laws and issues.

55

Our Association Priorities —HEA 1006

- Highest
 - Raise minimums Level 3 from 3 to 6 Years, Level 4 from 2 to 4 years; and , Level 5 from 1 to 2 years.
 - Eliminate advisory sentences, or raise Level 3 from 6 to 10 years, Level 4 from 4 to 8 years; and, Level 5 from 2 to 4 years.

56

Association Priorities —HEA 1006

- Highest
 - Suspendibility (35-50-2-2)
 - Minimum for Level 1 non-suspendible
 - Minimum for Levels 2 & 3 non-suspendible with a prior
 - Minimum for Levels 4 & 5 non-suspendible if a prior w/in 10 years
 - Habitual (35-50-2-8)
 - Change the zero minimums to 6 years for Murder to Level 4 felonies, and 2 years for Level 6 felonies.

57

Association Priorities — HEA 1006

- Highest
 - Habitual (35-50-2-8)
 - Change the zero minimum to 6 years and the maximum to 10 years for Level 5 felonies.
 - Drugs
 - Increase dealing under 3 grams from Level 5 to Level 4.
 - Allow the 5 enhancing circumstances to compound, like weight enhancements, up to a Level 2 (35-48-1-16.5) (i.e. gun on a school bus)

58

Association Priorities — HEA 1006

- Highest
 - Drugs
 - Include attempt & conspiracy with the enhancing circumstances of a dealing conviction (35-48-1-16.5)
 - Fix the protected zones by returning to 1000 ft, family housing complex and youth program center.
 - Make manufacturing a separate offense beginning one class higher than dealing.

59

Association Priorities — HEA 1006

- High
 - Offenses
 - Raise residential burglary & possession of a firearm by a SVF from Level 4 to 3
 - Raise reckless homicide, child exploitation & identity deception from Level 5 to 4
 - Create a Level 1 robbery where a deadly weapon and SBI to a person other than the defendant are present.
 - Eliminate the \$750 theft and create a misdemeanor retail theft
 - Forgery w/ prior enhanced from Level 6 to 5.

60

Fiscal issues —HEA 1006

- DOC: “we will have to build a prison in 2 years.
- LSA: “build a prison in 2025”
- IPAC memo looking at 2012 DOC commitments demonstrates that potential reductions in Property and Drug offenses may affect about 40% of annual admissions in some way.
- LSA’s predicts that about 1000 fewer offenders will go to DOC each year, but know one is sure.

61

Fiscal issues —HEA 1006

- Local Government, Probation Officers and Sheriffs are concerned that their numbers will increase without funding from the State
- The ultimate success or failure of HEA 1006 will depend on an accurate fiscal & local funding
- No unified plan or agreement how to approach the local funding issue - to be studied this summer

62

IPAC Challenges —HEA 1006

- A committee of prosecutors have drafted a template for Titles 7 & 9. The legislative Committee has reviewed it and recommended it to the Association. Just a template, but we intend to take the lead here.
- We are developing a strategy and plan to implement our priorities and present a positive, collaborative influence on this process.
- Can we do all of this in summer 2013?

63
