FRIDAY UPDATE—JANUARY 28, 2005

The weekly update of the activities of the Indiana General Assembly
A publication of the Indiana Judicial Center

Another week at the General Assembly has ended. Below are reports on bills discussed this week.

If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at http://www.in.gov/serv/lsa_billinfo.

CIVIL LAW:

The Senate unanimously passed SB 77, mechanic's liens on towed vehicles, and SB 102, foreign judgments, discussed in detail in last week's Friday update.

The House Public Health Committee heard HB 1028 concerning attorney's fees in Medicaid lien collection cases, which increases the statutory award of attorney fees from seven and five-tenths to twenty-five percent, if the claim is collected without initiating legal proceedings, and from ten to thirty-three and one-third percent, if the claim is collected with legal proceedings. Rep. Ulmer sponsored the bill to return the statutory fee rates to what they were prior to a reduction amendment passed in 2003. The committee voted do pass 10-0.

CRIMINAL LAW:

The Senate Health and Provider Services Committee heard SB 444 concerning the sale of methamphetamine precursor, which restricts the over-the-counter sale of drugs containing pseudoephedrine and ephedrine.

The bill provides that no more than two forty-eight tablet blister packages of the drug can be purchased in one transaction, and requires retailers to restrict access of the drug by implementing secure storage policies.

Testimony from representatives of the Consumer Healthcare Products Association, Indiana State Police Department, and American Council on Regulatory Compliance all supported measures to restrict access to the drug, provided that legitimate consumers could receive the drug without excessive burden. Sen. Young proposed amending the bill to include a state pre-emption clause; however, Sens. Skinner, Simpson, and Dillon voiced concerns whether such a clause would limit more stringent locally enacted ordinances and voluntary measures undertaken to restrict the sale of the drug. There was also discussion on whether the sale restrictions should apply to purchases of the drug in other forms, such as liquid. Sen. Miller held off voting on the bill until next week so that a more accurately amended version could be considered.

The House Ways and Means Committee passed HB 1112 concerning direct placement in community corrections, presented by Rep. Richardson, 19-0. This bill was previously reported in the First Installment of the Friday Update.

The House Family, Children and Human Affairs Committee revisited HB 1125, which provides that persons convicted of substance abuse felonies may receive assistance under the federal Temporary Assistance for Needy Families (TANF) program, if they have completed or are participating in a substance abuse treatment program. The Judicial Center collaborated with Larry Landis, and Steve Johnson to recommend an amendment expressly mentioning that courts may order the substance abuse treatment discussed in HB 1125, and requiring that all substance abuse treatment (whether court-ordered or not) discussed in HB 1125 satisfy the Division of Mental Health and Addiction regulations. The committee recommended that the bill pass as amended 8-4.

The House Ways and Means Committee also heard HB 1241 concerning DNA samples from felons, which was presented by Rep. Harris. An amendment to this bill was offered to establish a DNA sample processing fund and collect a $1 DNA sample processing fee in actions where a person is convicted of an offense, required to pay pretrial diversion fee, or found to have committed an infraction or ordinance violation. This bill is still under consideration by the committee. This bill was also previously reported in the First Installment of the Friday Update.

The Senate Judiciary Committee heard a bill for a technical correction to the Interstate Compact on Probation, SB 115. Sen. Zakas introduced the legislation to permit Indiana to hear violations of probation by probationers supervised in Indiana under the new Compact.

Jane Seigel, Executive Director, Indiana Judicial Center spoke about the need for the amendment. In addition, she answered various questions about the workings of the compact and the active role Indiana takes under the compact to make sure the concerns of probation officers and courts are addressed favorably on a national basis. The legislation passed 9-0.

ELECTIONS AND VOTING:

The Senate Committee on Elections and Civil Affairs voted 9-0 to recommend the passage of amended SB 14, which establishes a ballot form that lists candidates by office (rather than by party) for optical scan and electronic voting systems, and removes references in the existing laws to outmoded forms of voting. Sen. Lawson sponsored the bill, stating that it updates the Indiana Code to the technology we use today, and reasoning that modern technology routinely lists candidates by office, making it less expensive for counties to use the "by office" ballot.

The committee also heard SB 15, relating to absentee ballots. Among other things, the bill establishes new criminal offenses relating to fraud and misrepresentation in elections. The committee recommended that the bill pass as amended, 6-2.

The Senate unanimously passed SB 179, vacancies caused by death, discussed in detail in last week's Friday Update.

The House Elections and Apportionment Committee heard HB 1407 concerning voting systems, which proposes deleting the word "voting machine" from the statutes pertaining to voting systems because the machines are obsolete. The Committee also heard HB 1226 concerning various election law matters, which updates deadlines, deletes obsolete dates, specifies the first date a write-in candidate can file for the primaries, updates the election and redistricting schedules, clarifies that a ballot must permit the voter to cast a vote for a write-in Presidential or Vice-Presidential candidate, and prohibits filings by fax or electronic mail transmission unless expressly authorized. Brad King, co-director of the Indiana Election Division, testified in support of both bills. Rep. Thomas agreed to postpone voting on both bills until updated amended versions could be reviewed next week.

FAMILY & JUVENILE LAW:

The House Family, Children and Human Affairs Committee also voted on HB 1038 concerning child abuse or neglect, which provides that a child who is a passenger in a vehicle operated by an intoxicated parent, guardian, or custodian is a victim of child abuse or neglect, and is consequently a child in need of services. The bill is patterned verbatim after an Ohio statute passed last year, but various committee members and a representative of the Children's Coalition voiced concern about the procedure for protecting the child - they wanted the child to be placed with a relative, rather than with a governmental agency, if at all possible. Others expressed concern about an automatic CHINS determination, due to the impact on the child and the state budget. A subcommittee was formed to research the procedure and to draft an amendment.

The House Judiciary Committee heard HB 1263, concerning the Domestic Relations ADR fund. Rep. Pond explained the ADR Fund concept began as a pilot program in her community and was expanded statewide last year. She stated adjustments were needed - to permit St. Joseph Probate Court to participate in the program if they choose to do so, and to permit counties to place funds raised by the $20.00 fee on court costs in dissolution and paternity costs to use the same, rather than separate funds. Judge Thomas Felts, Allen Circuit Court added that smaller counties would benefit by being permitted to participate in the same alternate dispute resolution fund. In addition, he indicated the legislation would permit co-payments collected under this program to be placed in the ADR fund. Rep. Pond noted the mediation permitted under the law cuts down acrimony in dissolution cases. The bill passed the committee 10-0.

The Senate Judiciary Committee heard SB 422, concerning various Indiana Adoption laws, which contains procedural amendments, substantive legal amendments and responses to some recent appellate decisions and engendered lengthy discussion by committee members. Sen. Murray Clark, author, noted Indiana law would be clarified to permit prebirth consent to adoption by fathers, not mothers. In addition, the bill provided

a mechanism to require the state to keep records of adoption from adoption agencies and attorneys for 40 years if the agency or attorney goes out of business. The legislation would also require "adoption facilitators" to be licensed or face a D felony for adoption advertising. The proposed law would also deny any contest or challenge to a child's adoption if a child's biological father denies paternity of his child before or after birth if the denial is in writing and signed in the presence of a notary. In addition, the bill clarifies the burden of proof is clear and convincing evidence in an adoption contest. Other changes are also contemplated by the legislation. Indiana Adoption Agencies United spoke in favor of this bill. The committee's discussion focused on a variety of different areas including the length of time to keep these records and license requirements for an adoption facilitator. Two amendments passed committee, one to remove a recordkeeping fee and the other clean up language in the proposal about stepparent adoptions. Sen. Bray held the bill for further discussion at next Wednesday's meeting of the committee.

The Senate Judiciary Committee also heard SB 340, concerning adoption, CASAs, and dismissal of CHINS cases, authored by Sen. C. Lawson. This legislation requires a court to determine whether the OFC or an adoption agency provided background information about a child to prospective adoptive parents before granting an adoption. Discussion focused on the appropriate time for the information sharing to occur - during an initial placement, when the adoption petition is filed, after a termination proceeding, or some other point in time. The second portion of the bill provides when a motion to dismiss a CHINS petition is filed by OFC, a statement must be given including the reasons for the dismissal. In addition, the court may set a date for a hearing on the motion and if so, appoint a CASA or GAL. The third portion of the bill was added by an amendment proposed by Sen. Broden that would add a CASA to portions of the law, which indicate now only GALs are part of various court proceedings. CASAs were added to the list of entities permitted to move for counseling for a child in a custody proceeding, who may be appointed when a child alleged to be a CHINS is taken into custody, who shall receive a summons for the initial hearing on the CHINS petition, who shall receive a report prepared by the state for a CHINS review, who may move for modification of a CHINS dispositional decree, and to the list entities, which, if a modification is requested, a modification report does not have to be prepared. This amendment was adopted by consent of the committee. The bill passed as amended 9-0.

Meanwhile, another adoption bill was heard at the same time in the House Committee on Family, Children, and Human Affairs committee. HB 1217 would require the release of social, medical psychological and educational records and reports about the adoptee's birth parents to the adoptee that is at least eighteen (18) years of age. It only applies to adoptions granted before July 1, 1993. The bill does not allow identifying information about birth parents to be released.

The House Education Committee heard HB 1530 concerning mandatory school attendance age, which requires school principals to discuss consequences to dropping out of school to juveniles 16 to 18 years old. The bill passed 11-1.

JUDICIAL ADMINISTRATION:

The House Courts and Criminal Code Committee heard HB 1046, Vigo superior court, HB 1053, DeKalb superior court, HB 1061 Perry superior court, HB 1108, Dearborn superior court, HB 1110 Hamilton superior court and HB 1121, Howard superior court. These bills would add an additional court in each of these counties. Many judges came to testify, and all of these bills passed. The Committee also heard HB 1141, Courts in Montgomery County, which would change the county court in Montgomery County to a superior court. That bill also passed.

The Senate Governmental Affairs and Interstate Cooperation Committee heard SB 298 concerning administrative rules requiring fiscal review. Sen. Young, author of the bill, testified that the bill clarifies the procedure for determining the total estimated economic impact of a proposed rule by specifically allowing an agency to account for things such as inflation/deflation and anticipated actual/future costs on the regulated persons. Sen. Young also introduced an amendment to change the bill's language from regulated "entities" to "persons." A representative from the Attorney General's office supported the amendment, and the Committee adopted the amendment by consent and voted do pass 9-0.

PROBATE LAW:

The House Ways and Means Committee passed HB 1129 concerning inheritance tax and will depository, presented by Rep. Foley, 24-0. This bill was previously reported in the First Installment of the Friday Update.

SALARIES & BENEFITS:

The Senate Judiciary Committee heard SB 363, on judicial salaries. This bill, authored by Sen. Broden, and co-authored by Sen. Clark would provide all full-time judges and justices with the same salary increase that state executive branch employees receive in each year that the judges and justices do not receive a salary increase from the general assembly.

Sen. Broden related to the committee that judges make important decisions that affect our daily lives, and we want to insure that we continue to attract the best. Sen. Long declared that this approach makes sense-that it should keep the salary base from at least eroding. He stated that judges' pay should be "caught up" and then apply this policy. Sen. Lanane asked how this bill would be funded, and Sen. Bray reported that these increases would be a general revenue item. Judge Paul Mathias then testified and informed the committee about the loss in earnings judges had experienced over the last 8 years, which is very discouraging for judges who have made judging their careers. Representatives from ITLA, Prosecutors Association and ISBA also testified in support of the bill.

Sen. Steele's only concern was that he wanted to make sure that judges pay was "caught up" before this went into effect, and didn't want this bill as a substitute for the catch up. Sen. Drozda received a commitment from both Sens. Broden and Clark that this bill would "stay clean"-i.e. other public officers would not be added to this bill. The bill passed 10-0 and was recommitted to Senate Appropriations.

The House Judiciary Committee will hear HB 1777 concerning judicial compensation on Monday, January 31 at 10:30 a.m. in Room 319.

TRAFFIC:

The House Roads and Transportation Committee heard HB 1057 concerning open alcoholic beverage containers , which places responsibility for possession of an open container with the passenger instead of the driver; the passenger who is issued an open container citation must pay a $25 fine.

The Committee had previously received testimony regarding the bill, but received further support for the bill from the Mother's Against Drunk Driving (MADD) organization. Rep. Duncan pointed out that passage of the bill would meet federal congressional requirements that the state have an effective open container law, freeing up $20 million dollars for building and improving roads. Although Rep. May and others voiced concerns, such as whether the bill infringed on individual rights, the Committee voted do pass 11-0 agreeing that the bill was as fair as possible and needed for the benefits it would provide Indiana.