

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Judiciary, to which was referred House Bill No. 1437, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, delete lines 1 through 4.
- 2 Page 2, delete lines 35 through 42.
- 3 Page 3, delete lines 1 though 15, begin a new paragraph and insert:
- 4 "SECTION 4. IC 11-12-2-3, AS AMENDED BY P.L.224-2003,
- 5 SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 6 JULY 1, 2004]: Sec. 3. (a) A community corrections advisory board
- 7 shall:
- 8 (1) formulate:
- 9 (A) the community corrections plan and the application for
- 10 financial aid required by section 4 of this chapter; and
- 11 (B) the forensic diversion program plan under ~~IC 11-12-3.5-2~~
- 12 **IC 11-12-3.7;**
- 13 (2) observe and coordinate community corrections programs in
- 14 the county;
- 15 (3) make an annual report to the county fiscal body, county
- 16 executive, or, in a county having a consolidated city, the
- 17 city-county council, containing an evaluation of the effectiveness
- 18 of programs receiving financial aid under this chapter and
- 19 recommendations for improvement, modification, or
- 20 discontinuance of these programs;

- 1 (4) ensure that programs receiving financial aid under this chapter
 2 comply with the standards adopted by the department under
 3 section 5 of this chapter; and
 4 (5) recommend to the county executive or, in a county having a
 5 consolidated city, to the city-county council, the approval or
 6 disapproval of contracts with units of local government or
 7 nongovernmental agencies that desire to participate in the
 8 community corrections plan.

9 Before recommending approval of a contract, the advisory board must
 10 determine that a program is capable of meeting the standards adopted
 11 by the department under section 5 of this chapter.

12 (b) A community corrections advisory board shall do the following:

- 13 (1) Adopt bylaws for the conduct of its own business.
 14 (2) Hold a regular meeting at least one (1) time every three (3)
 15 months and at other times as needed to conduct all necessary
 16 business. Dates of regular meetings shall be established at the first
 17 meeting of each year.
 18 (3) Comply with the public meeting and notice requirements under
 19 IC 5-14-1.5.

20 (c) A community corrections advisory board may contain an office
 21 as designated by the county executive or, in a county having a
 22 consolidated city, by the city-county council."

23 Page 4, delete lines 9 through 42, begin a new paragraph and insert:

24 **"Chapter 3.7. Forensic Diversion Program**

25 **Sec. 1. As used in this chapter, "addictive disorder" means a**
 26 **diagnosable chronic substance use disorder of sufficient duration**
 27 **to meet diagnostic criteria within the most recent edition of the**
 28 **Diagnostic and Statistical Manual of Mental Disorders published**
 29 **by the American Psychiatric Association.**

30 **Sec. 2. As used in this chapter, "advisory board" means a:**

- 31 **(1) community corrections advisory board, if there is one in**
 32 **the county; or**
 33 **(2) forensic diversion program advisory board, if there is not**
 34 **a community corrections advisory board in the county.**

35 **Sec. 3. As used in this chapter, "drug dealing offense" means**
 36 **one (1) or more of the following offenses:**

- 37 **(1) Dealing in cocaine, a narcotic drug, or methamphetamine**
 38 **(IC 35-48-4-1), unless the person received only minimal**
 39 **consideration as a result of the drug transaction.**
 40 **(2) Dealing in a schedule I, II, III, IV, or V controlled**

1 substance (IC 35-48-4-2 through IC 25-48-4-4), unless the
2 person received only minimal consideration as a result of the
3 drug transaction.

4 (3) Dealing in marijuana, hash oil, or hashish (IC
5 35-48-4-10), unless the person received only minimal
6 consideration as a result of the drug transaction.

7 Sec. 4. As used in this chapter, "forensic diversion program"
8 means a program designed to provide an adult;

9 (1) who has a mental illness or addictive disorder; and

10 (2) who has been charged with a crime that is not a violent
11 offense;

12 an opportunity to receive community treatment and other services
13 addressing mental health and addiction.

14 Sec. 5. As used in this chapter, "mental illness" means a
15 psychiatric disorder that is of sufficient duration to meet
16 diagnostic criteria within the most recent edition of the Diagnostic
17 and Statistical Manual of Mental Disorders published by the
18 American Psychiatric Association.

19 Sec. 6. As used in this chapter, "violent offense" means one (1)
20 or more of the following offenses:

21 (1) Murder (IC 35-42-1-1).

22 (2) Attempted murder (IC 35-41-5-1).

23 (3) Voluntary manslaughter (IC 35-42-1-3).

24 (4) Involuntary manslaughter (IC 35-42-1-4).

25 (5) Reckless homicide (IC 35-42-1-5).

26 (6) Aggravated battery (IC 35-42-2-1.5).

27 (7) Battery (IC 35-42-2-1) as a Class A felony, Class B
28 felony, or Class C felony.

29 (8) Kidnapping (IC 35-42-3-2).

30 (9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8
31 that is a Class A felony, Class B felony, or Class C felony.

32 (10) Sexual misconduct with a minor (IC 35-42-4-9) as a
33 Class A felony or Class B felony.

34 (11) Incest (IC 35-46-1-3).

35 (12) Robbery as a Class A felony or a Class B felony
36 (IC 35-42-5-1).

37 (13) Burglary as a Class A felony or a Class B felony
38 (IC 35-43-2-1).

39 (14) Carjacking (IC 35-42-5-2).

- 1 **(15) Assisting a criminal as a Class C felony (IC 35-44-3-2).**
 2 **(16) Escape (IC 35-44-3-5) as a Class B felony or Class C**
 3 **felony.**
 4 **(17) Trafficking with an inmate as a Class C felony**
 5 **(IC 35-44-3-9).**
 6 **(18) Causing death when operating a motor vehicle**
 7 **(IC 9-30-5-5).**
 8 **(19) Criminal confinement (IC 35-42-3-3) as a Class B**
 9 **felony.**
 10 **(20) A crime under the laws of another jurisdiction, including**
 11 **a military court, that is substantially similar to any of the**
 12 **offenses listed in this subdivision.**
 13 **(21) Any other crime evidencing a propensity or history of**
 14 **violence.**

15 **Sec. 7. (a) An advisory board shall develop a forensic diversion**
 16 **plan to provide an adult who:**

- 17 **(1) has a mental illness or addictive disorder; and**
 18 **(2) has been charged with a crime that is not a violent crime;**
 19 **an opportunity, pre-conviction or post-conviction, to receive**
 20 **community treatment and other services addressing mental**
 21 **health and addictions.**

22 **(b) The forensic diversion plan may include any combination of**
 23 **the following program components:**

- 24 **(1) Pre-conviction diversion for adults with mental illness.**
 25 **(2) Pre-conviction diversion for adults with addictive**
 26 **disorders.**
 27 **(3) Post-conviction diversion for adults with mental illness.**
 28 **(4) Post-conviction diversion for adults with addictive**
 29 **disorders.**

30 **(c) In developing a plan, the advisory board must consider the**
 31 **ability of existing programs and resources within the community,**
 32 **including:**

- 33 **(1) a drug court established under IC 12-23-14.5;**
 34 **(2) a court alcohol and drug program certified under**
 35 **IC 12-23-14-13; and**
 36 **(3) other public and private agencies.**

37 **(d) Development of a forensic diversion program plan under**
 38 **this chapter or IC 11-12-2-3 does not require implementation of**
 39 **a forensic diversion program.**

- 1 **(e) The advisory board may:**
2 **(1) operate the program;**
3 **(2) contract with existing public or private agencies to**
4 **operate one (1) or more components of the program; or**
5 **(3) take any combination of actions under subdivisions (1) or**
6 **(2).**

7 **(f) Any treatment services provided under the forensic**
8 **diversion program must be provided by an entity certified by the**
9 **division of mental health and addiction.**

10 **Sec. 8. (a) An individual may request treatment under this**
11 **chapter or the court may order an evaluation of the individual to**
12 **determine if the individual is an appropriate candidate for forensic**
13 **diversion.**

14 **(b) A request for treatment under this chapter tolls the**
15 **running of the speedy trial time period until the court has made**
16 **a determination of eligibility for the program under this section.**

17 **Sec. 9. (a) A court shall be provided with periodic progress**
18 **reports on an individual who is ordered by the court to undergo**
19 **treatment in a forensic diversion program.**

20 **(b) A participant may not be released from a forensic diversion**
21 **program without a court order. The court must consider the**
22 **recommendation of the forensic diversion program before**
23 **ordering a participant's release.**

24 **Sec. 10. (a) A county that does not have a community**
25 **corrections advisory board may form a forensic diversion advisory**
26 **board.**

27 **(b) A forensic diversion advisory board formed under**
28 **subsection (a) shall consist of the following:**

- 29 **(1) A judge exercising criminal jurisdiction in the county.**
30 **(2) The head of the county public defender office, if there is**
31 **one in the county, or a criminal defense attorney who**
32 **practices in the county if there is not a county public**
33 **defender office in the county.**
34 **(3) The chief probation officer.**
35 **(4) The prosecuting attorney.**
36 **(5) The drug court judge or the designee of the drug court**
37 **judge if there is a certified drug court in the county.**
38 **(6) The supervising judge of the court alcohol and drug**
39 **services program or the designee of the supervising judge, if**

1 **there is a certified court alcohol and drug services program**
 2 **in the county.**

3 **(7) An individual with expertise in substance abuse**
 4 **treatment.**

5 **(8) An individual with expertise in mental health treatment.**

6 **Sec. 11. (a) A person is eligible to participate in a pre-conviction**
 7 **forensic diversion program only if the person meets the following**
 8 **criteria:**

9 **(1) The person has a mental illness or an addictive disorder.**

10 **(2) The person has been charged with an offense that is:**

11 **(A) not a violent offense; and**

12 **(B) a Class A, B, or C misdemeanor, or a Class D felony**
 13 **that may be reduced to a Class A misdemeanor in**
 14 **accordance with IC 35-50-2-7.**

15 **(3) The person does not have a conviction for a violent**
 16 **offense in the previous ten (10) years.**

17 **(b) Before an eligible person is permitted to participate in a**
 18 **pre-conviction forensic diversion program, the court shall advise**
 19 **the person of the following:**

20 **(1) Before the individual is permitted to participate in the**
 21 **program, the individual will be required to enter a guilty plea**
 22 **to the offense with which the individual has been charged.**

23 **(2) The court will stay entry of the judgment of conviction**
 24 **during the time in which the individual is successfully**
 25 **participating in the program. If the individual stops**
 26 **successfully participating in the program, or does not**
 27 **successfully complete the program, the court will lift its stay,**
 28 **enter a judgment of conviction, and sentence the individual**
 29 **accordingly.**

30 **(3) If the individual participates in the program, the**
 31 **individual may be required to remain in the program for a**
 32 **period not to exceed three (3) years.**

33 **(4) During treatment the individual may be confined in an**
 34 **institution, be released for treatment in the community,**
 35 **receive supervised aftercare in the community, or may be**
 36 **required to receive a combination of these alternatives.**

37 **(5) If the individual successfully completes the forensic**
 38 **diversion program, the court will waive entry of the judgment**
 39 **of conviction.**

1 **(6) The court shall determine, based upon a report from the**
2 **forensic diversion program, whether the individual is**
3 **successfully participating in or has successfully completed the**
4 **program.**

5 **(c) Before an eligible person may participate in a pre-conviction**
6 **forensic diversion program, the person must plead guilty to the**
7 **offense with which the person is charged.**

8 **(d) After the person has pleaded guilty, the court shall stay**
9 **entry of judgment of conviction and place the person in the**
10 **pre-conviction forensic diversion program for not more than:**

11 **(1) two (2) years, if the person has been charged with a**
12 **misdemeanor; or**

13 **(2) three (3) years, if the person has been charged with a**
14 **felony.**

15 **(e) If, based on the report of the forensic diversion program,**
16 **the court determines that the person has:**

17 **(1) failed to successfully participate in the forensic diversion**
18 **program, or failed to successfully complete the program, the**
19 **court shall lift its stay, enter judgment of conviction, and**
20 **sentence the person accordingly; or**

21 **(2) successfully completed the forensic diversion program,**
22 **the court shall waive entry of the judgment of conviction.**

23 **Sec. 12. (a) A person is eligible to participate in a**
24 **post-conviction forensic diversion program only if the person**
25 **meets the following criteria:**

26 **(1) The person has a mental illness or an addictive disorder.**

27 **(2) The person has been convicted of an offense that is:**

28 **(A) not a violent offense; and**

29 **(B) not a drug dealing offense.**

30 **(3) The person does not have a conviction for a violent**
31 **offense in the previous ten (10) years.**

32 **(b) If the person has been convicted of an offense that may be**
33 **suspended, the court shall suspend all or a portion of the person's**
34 **sentence, place the person on probation for the suspended portion**
35 **of the person's sentence, and require as a condition of probation**
36 **that the person successfully participate in and successfully**
37 **complete the post-conviction forensic diversion program.**

38 **(c) If the person has been convicted of an offense that is**
39 **nonsuspendible, the court shall order the execution of all or part**

1 of the nonsuspendible sentence and stay execution of all or part
2 of the nonsuspendible portion of the sentence pending the
3 person's successful participation in and successful completion of
4 the post-conviction forensic diversion program. The court shall
5 treat the suspendible portion of a nonsuspendible sentence in
6 accordance with subsection (b).

7 (d) The person may be required to participate in the
8 post-conviction forensic diversion program for no more than:

9 (1) two (2) years, if the person has been charged with a
10 misdemeanor; or

11 (2) three (3) years, if the person has been charged with a
12 felony.

13 The time periods described in this section only limit the amount
14 of time a person may spend in the forensic diversion program and
15 do not limit the amount of time a person may be placed on
16 probation.

17 (e) If, based on the report of the forensic diversion program,
18 the court determines that a person convicted of an offense that
19 may be suspended has failed to successfully participate in the
20 forensic diversion program, or has failed to successfully complete
21 the program, the court shall revoke the person's probation and
22 reimpose all or a portion of the person's suspended sentence.

23 (f) If, based on the recommendation of the forensic diversion
24 program, the court determines that a person convicted of a
25 nonsuspendible offense failed to successfully participate in the
26 forensic diversion, or failed to successfully complete the program,
27 the court shall lift its stay of execution of the nonsuspendible
28 portion of the sentence and remand the person to the department
29 of correction. However, if the person failed to successfully
30 participate in the forensic diversion program, or failed to
31 successfully complete the program while serving the suspendible
32 portion of a nonsuspendible sentence, the court shall treat the
33 suspendible portion of the sentence in accordance with subsection
34 (e).

35 (g) If, based on the report of the forensic diversion program,
36 the court determines that a person convicted of a nonsuspendible
37 offense has successfully completed the program, the court shall
38 waive execution of the nonsuspendible portion of the person's
39 sentence.

1 **Sec. 13. (a) As used in this section, "account" means the**
 2 **forensic diversion program account established as an account**
 3 **within the state general fund by subsection (b).**

4 **(b) The forensic diversion program account is established within**
 5 **the state general fund to administer and carry out the purposes of**
 6 **this chapter. The department shall administer the account.**

7 **(c) The expenses of administering the account shall be paid**
 8 **from money in the account.**

9 **(d) The treasurer of state shall invest money in the account in**
 10 **the same manner as other public money may be invested.**

11 **(e) Money in the account at the end of the state fiscal year does**
 12 **not revert to the state general fund.**

13 **(f) The account consists of:**

14 **(1) amounts appropriated by the general assembly; and**

15 **(2) donations, grants, and money received from any other**
 16 **source.**

17 **(g) The department shall adopt guidelines governing the**
 18 **disbursement of funds to the advisory board to support the**
 19 **operation of the forensic diversion program.**

20 **(h) There is annually appropriated to the department from the**
 21 **account an amount sufficient to carry out the purposes of this**
 22 **chapter."**

23 Delete pages 5 and 6.

24 Page 7, line 3, strike "(a)".

25 Page 7, strike lines 13 through 21.

26 Page 7, delete lines 22 through 42.

27 Page 8, delete lines 1 through 32, begin a new paragraph and insert:

28 "SECTION 12. IC 12-23-14.5-14, AS ADDED BY P.L.168-2002,
 29 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2004]: Sec. 14. (a) A person is eligible to participate in a drug
 31 court only if:

32 (1) the person meets all criteria established by the drug court;

33 (2) the judge approves the admission of the person to the drug
 34 court; and

35 (3) the offense for which the person is referred to drug court is
 36 not any of the following:

37 (A) A forcible felony (as defined in IC 35-41-1-11).

38 ~~(B) A dealing offense under IC 35-48-4.~~

39 ~~(C)~~ (B) Any offense that a local drug court committee agrees
 40 to exclude from participation.

1 The local drug court committee referred to in subdivision (3)(C) must
2 include the drug court judge, the local prosecuting attorney, and a local
3 criminal defense attorney.

4 (b) If a person is eligible to participate in a drug court, a person may
5 be referred to the drug court as a result of any of the following:

6 (1) The procedure described in section 15 of this chapter.

7 (2) As a term of probation.

8 (3) In response to a violation of a condition of probation."

9 Page 9, delete lines 6 through 42.

10 Delete page 10.

11 Page 11, delete lines 1 through 37.

12 Page 12, delete lines 2 through 26.

13 Page 12, line 35, strike "IC 11-12-3.5" and insert "**IC 11-12-3.7**".

14 Page 12, line 35, delete "or in a".

15 Page 12, delete line 36.

16 Page 15, delete lines 25 through 26, begin a new paragraph and
17 insert:

18 "SECTION 14. [EFFECTIVE JULY 1, 2004] **(a) As used in this**
19 **SECTION, "committee" refers to the forensic diversion study**
20 **committee established by subsection (c).**

21 **(b) As used in this SECTION, "forensic diversion program"**
22 **means the program established under IC 11-12-3.7, as added by**
23 **this act, and any similar program that treats persons charged with**
24 **or convicted of offenses eligible for forensic diversion who have a**
25 **mental illness or addictive disorder.**

26 **(c) There is established the forensic diversion study committee.**
27 **The committee shall:**

28 **(1) evaluate the effectiveness and appropriateness of forensic**
29 **diversion programs within Indiana and in other jurisdictions;**
30 **and**

31 **(2) review the adequacy of funding provided for forensic**
32 **diversion programs.**

33 **(d) The committee consists of fifteen (15) members appointed**
34 **as**

35 **follows:**

36 **(1) Two (2) members of the senate, who may not be affiliated**
37 **with the same political party, to be appointed by the president**
38 **pro tempore of the senate.**

39 **(2) Two (2) members of the house of representatives, who**
40 **may not be affiliated with the same political party, to be**

- 1 **appointed by the speaker of the house of representatives.**
- 2 **(3) The chief justice of the supreme court or the chief**
3 **justice's designee.**
- 4 **(4) The commissioner of the department of correction or the**
5 **commissioner's designee.**
- 6 **(5) The director of the Indiana criminal justice institute or**
7 **the director's designee.**
- 8 **(6) The executive director of the prosecuting attorneys**
9 **council of Indiana or the executive director's designee.**
- 10 **(7) The executive director of the public defender of Indiana**
11 **council or the executive director's designee.**
- 12 **(8) One (1) person with experience in administering**
13 **community corrections programs, appointed by the governor.**
- 14 **(9) One (1) person with experience in administering**
15 **probation programs, appointed by the governor.**
- 16 **(10) One (1) person with experience in treating mental**
17 **illness or addictive disorders, appointed by the governor.**
- 18 **(11) Two (2) judges who exercise criminal jurisdiction, who**
19 **may not be affiliated with the same political party, appointed**
20 **by the governor.**
- 21 **(12) The director of the division of mental health and**
22 **addiction or the director's designee.**
- 23 **(e) The chairman of the legislative council shall appoint a**
24 **legislative member of the committee to serve as chair of the**
25 **committee. Whenever there is a new chairman of the legislative**
26 **council, the new chairman of the legislative council may remove**
27 **the chair of the committee and appoint another chair.**
- 28 **(f) If a legislative member of the committee ceases to be a**
29 **member of the chamber from which the member was appointed,**
30 **the member also ceases to be a member of the committee.**
- 31 **(g) A legislative member of the committee may be removed at**
32 **any time by the authority who appointed the legislative member.**
- 33 **(h) If a vacancy exists on the committee, the authority who**
34 **appointed the former member whose position is vacant shall**
35 **appoint an individual to fill the vacancy.**
- 36 **(i) The committee shall submit a final report of its study to the**
37 **legislative council before November 1, 2007.**
- 38 **(j) The Indiana criminal justice institute shall provide staff**
39 **support to the committee.**

1 **(k) Each member of the committee is entitled to receive the**
 2 **same per diem, mileage, and travel allowances paid to individuals**
 3 **who serve as legislative and lay members, respectively, of interim**
 4 **study committees established by the legislative council.**

5 **(l) The affirmative votes of a majority of the members**
 6 **appointed to the committee are required for the committee to**
 7 **take action on any measure, including the final report.**

8 **(m) The committee:**

9 **(1) shall meet at the call of the chair; and**

10 **(2) may meet at any time before October 15, 2007.**

11 **(n) Except as otherwise specifically provided by this act, the**
 12 **committee shall operate under the rules of the legislative council.**
 13 **All funds necessary to carry out this SECTION shall be paid from**
 14 **appropriations to the legislative council and legislative services agency.**

15 **(o) This SECTION expires December 31, 2007.**

16 SECTION 15. IC 11-12-3.5 IS REPEALED [EFFECTIVE JULY 1,
 17 2004].".

18 Renumber all SECTIONS consecutively.

(Reference is to HB 1437 as reprinted February 5, 2004.)

and when so amended that said bill do pass .

Committee Vote: Yeas 9, Nays 0.

Senator Bray, Chairperson