

**FINAL REPORT
OF THE
PROBATION SERVICES
STUDY COMMITTEE**



**Indiana Legislative Services Agency
200 W. Washington St., Suite 301
Indianapolis, Indiana 46204-2789**

November, 1998

Probation Services Study Committee

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Christi Megna, Attorney for the Committee

I. STATUTORY DIRECTIVE

The Probation Services Study Committee was created and provided its study assignments by Public Law 131-1998, as follows:

The Committee shall study, review and make recommendations concerning: (1) The mission of probation services. (2) Duties, roles and responsibilities of probation officers. (3) Organizational changes considered necessary. (4) Improvements to salary schedules and benefits available. (5) Training standards. (6) Caseload and case classification standards. (7) Methods and levels of funding (8) Other topics assigned by the Indiana Legislative Council or the Committee Chairman.

II. INTRODUCTION AND REASONS FOR STUDY

The Committee was directed to study probation services across the state due to the integral role probation plays in law enforcement and correctional processes and its essential role in ensuring safety in Indiana communities. The Committee has three years in which to complete its work and is to issue annual reports stating findings, conclusions and recommendations. The work of the Committee and its final report are to be completed by a statutory expiration date of November 1, 2000.

Membership on the Committee includes a variety of probation interests among its 20 members: (1) legislative members, including two senators and two representatives; (2) two judges, one who exercises criminal jurisdiction and one who exercises juvenile jurisdiction; (3) three individuals who hold a public office as a county clerk, auditor, commissioner or councillor; (4) a representative of the Indiana Judicial Conference; (5) a representative of the Department of Correction; (6) a representative of the Indiana Prosecuting Attorney's Council; (7) a county sheriff; (8) a county prosecutor; (9) four probation officers; (10) a municipal police chief; and (11) a community corrections program director.

III. SUMMARY OF WORK PROGRAM

In this first year of its three-year study process, the Committee met five times.

July 16, 1998 The Committee discussed basic information needs regarding probation in Indiana and nationally.

August 27, 1998 The Indiana Judicial Conference provided information on probation officer standards and minimum salary schedule. Also presented were summaries of probation statistics annually published in the *Indiana Probation Report*. Department of Correction (DOC) staff gave a description of parole services. The president of the Probation Officers Advisory Board described concerns and recommendations regarding probation.

September 9, 1998 A perspective on federal probation services was provided by a representative of the federal southern Indiana district office of probation. National research findings on state probation issues were presented by a spokesman from the National Institute of Corrections, U.S. Department of Justice.

September 23, 1998 Numerous professional organizations testified regarding probation officers, services and funding, including the following: the Indiana Association of Counties, the Indiana Judges Association, the Indiana Public Defender Council, the Probation Officers Professional Association of Indiana, the Indiana Prosecuting Attorney's Council, and the DOC Community Correction Division.

October 15, 1998 Descriptions of juvenile probation services were given by two chief probation officers of county juvenile probation programs. An overview of county expenditures on probation was also provided by the Indiana Association of Counties.

IV. SUMMARY OF TESTIMONY

Following are summaries of probation issues discussed and testimony taken at each of the Committee's five meetings. Detailed meeting minutes and materials presented are available upon request to the Indiana Legislative Services Agency.

July 16 Meeting

Committee members discussed the charges assigned to the Committee by the Indiana Legislative Council. Several basic research issues were raised, categorized as follows.

General Probation Questions

What are the goals of probation services, what are the funding sources and what tasks are probation officers called upon to perform—which functions are viewed as appropriate and inappropriate?

Identify all Indiana statutes and administrative rules relevant to probation services.

Study probation effectiveness using measures such as revocation for technical or substantive reasons.

Define the probation officer role for post-commitments when a sentence is suspended.

County-Specific Probation Information

Collect all available data from counties that maintain heavy probation caseloads, including (1) specific types of cases reviewed; (2) salary schedules; (3) revocation hearing processes; (4) levels of training; and (5) educational background.

Collect mission statements from each county; detail similarities and differences in the duties and responsibilities of probation officers.

Determine demographics for counties, including total population, probation population, filing rates, case dispositions, county jail space, etc.

Probation and the Department of Correction

Define the DOC parole mission and its services.

How is probation utilized in DOC-funded county community corrections programs?

National Information

Sample probation services among states.

Define the state-level entities with authority over probation officers, e.g., for standard setting and salary levels and how funding is determined.

Explore the Missouri law allowing local governments to pass local option income taxes to fund court activities such as probation.

Examine North Carolina's probation services, including its community control concept, and its statewide information system.

Sentencing Policy Relating to Probation

How should the length of probation be determined: A fixed amount of time (five or six years); by the judge's discretion; by the General Assembly?

Determine bed space in county jails and DOC, and examine how bed availability relates to probation sentencing.

Examine the relative benefits of placing a person on probation or parole.

August 27 Meeting

General Probation Statistics Jeff Bercovitz, Indiana Judicial Center (IJC), presented general probation information, including probation-related definitions, judicial responsibilities, and monitoring and treatment programs. The following insights were also provided.

- ▶ For ten years ending in FY 97, the statewide probation population rose from 70,000 to 118,000 (68%) while the number of field probation officers has increased from 518 to 841 (62%).
- ▶ Most probation officers have less than six years experience, reflecting the five-year cap in the salary schedule.
- ▶ About two-thirds of probation officers are paid at or below the IJC minimum salary schedule, which ranges from \$21,138 in year one to \$29,210 for five or more years experience.
- ▶ No information is available on whether probation departments are following IJC recommended probation caseload levels based on supervision risk levels.
- ▶ No state data exist on the effectiveness of varying levels of supervision though national data suggest increased supervision is more effective.
- ▶ A statute allowing for state funding of probation (under IC 11-13-2-1) was repealed in 1995.
- ▶ The number of probation revocations due to criminal and technical violations are tracked, though post-probation convictions are not. *(Though criminal and technical violations are not separately tracked by IJC, technical violations tracked in Monroe and Marion counties made up 66% and 55% of all violations, respectively.)*
- ▶ Repeat offenders are untraceable in Indiana because no common identification system exists across criminal justice agencies. State-to-state offender movement exacerbates this problem.

Indiana Parole Services David Ferguson, DOC Parole Services Supervisor, described the similarities and differences between probation and parole services. The DOC Board of Correction establishes policies for the 63 parole officers across the state, who supervise between 4,500 to 5,000 parolees. These additional points were made:

- ▶ Parole officers do not require a bachelor degree, though one is preferred.
- ▶ Parole officers recently received a salary reclassification, and, currently field officers' salaries range from \$23,600 to \$33,000.
- ▶ Parole caseloads are growing due to the increased presumptive parole period (changed from one to two years in 1991), changes in the sex offender sentencing, and increasing numbers of parolees from other states.

Mr. Ferguson stated that, of the 4,500 parole cases handled in FY 97, 258 (6%) were returned to DOC due to new convictions, and 641 (14%) were returned due to technical violations. (Also, it was noted that about 60% of DOC inmate population has been incarcerated previously.)

Probation Officer Issues in Indiana Todd McCormack, Probation Officers Advisory Board Chair, stated that all probation offices are different, though certain commonalities in day-to-day reporting and monitoring activities exist. Commonalities included the following traits.

- ▶ Field contacts in homes are increasingly replacing office visits, and safety is an increasing risk for probation officers, especially due to split sentences.
- ▶ Officers spend much time preparing documents and testimony for court.
- ▶ Probation officers perform numerous duties, including: collecting user fees; acting as banker for offenders; gathering urine samples; providing counseling/counseling referrals; alcohol and drug programming; community service monitoring; informal legal consulting; court administrative tasks; and public relations.
- ▶ The mentally ill are becoming a larger proportion of probation cases.
- ▶ Increased probation caseloads are due partially to jail and prison overcrowding, as well as to minor misdemeanors (which may make up about 65% of adult cases across the state).

Mr. McCormack made the following observations regarding possible improvement of probation services.

- ▶ Increase the probation officer salary cap, and extend the schedule to ten years instead of five.
- ▶ Rather than hire more probation officers, place fewer people on probation. Perhaps 20 percent of persons placed on probation are either likely probation violators or have committed trivial crimes.
- ▶ Examine time and resources possibly misspent on presentence reports that rarely affect sentencing.
- ▶ Examine political contribution practices and patronage systems practiced in some courts which causes needless probation officer turnover when judges leave office.
- ▶ County residency requirements for probation officers should not be required.
- ▶ Duplication of effort and inconsistent delivery of probation services among some courts indicates a need to consider unification of probation services.

Meeting Materials Distributed: (1) Indiana Probation Standards and Guidelines (Indiana Judicial Center); (2) Probation Trends and Analysis: August 1998, (3) Records Creation, Maintenance and Disposal of Probation Officers Records (Indiana State Court Administration); (4), General information on parole services and statewide statistics (Indiana Department of Correction); (5) Indiana probation departmental directory; (6) Indiana probation office staffing by county and estimated turnover statistics; (7) Indiana community corrections grant act fact sheet; (8) community corrections expenditures, fourth quarter case data, and program staffing.

September 9 Meeting

National Probation Issues George Keiser, Community Corrections Director, National Institute of Corrections, testified that the single biggest problem for probation is a lack of expectations and a clearly articulated mission regarding probation authority, financing and direction. Mr. Keiser reported that probation is viewed among states primarily as either a sanction device or as a social welfare program. Any attempts to measure probation effectiveness are impossible without defined purposes.

Mr. Keiser made several general observations, including the following.

- ▶ Probation, as a part of community corrections systems, is often treated as a financial shell game in transferring costs among jurisdictions.

- ▶ Probation funding sources in most states are based more on history circumstances than on deliberate decisions.
- ▶ Probation services are difficult to compare among states due to few common definitions and widely varying systems among jurisdictions.
- ▶ There is little sense of caseload capacity in probation programs. Probation workloads should be periodically reviewed as expectations for offenders become more focussed.
- ▶ Probation services should be structured to fit probation's relationship to other agencies with which it must effectively deal.
- ▶ Several state jurisdictions have measured success based on stakeholder-established policies regarding defined sanctions for certain types of offenders, e.g., fines based on earning capacity; or behavioral change management, working at times with mental health services.
- ▶ Probation performance measures require specific definitions, e.g., a probation revocation due to a technical violation could be a "bad" outcome when a probationer is jailed at high cost for being behind on fine payments or deemed a "good" outcome when it prevents a costly prosecution.

Mr. Keiser presented data from a recent national probation census. He mentioned that Indiana has a high number of probation cases when compared to other Midwestern states. Also, he said that the census itself suggests that Indiana probation information is either not collected or is unavailable in the form requested and provided by other states.

Federal Probation Services Doug Davis, Supervising U.S. Probation Officer, Southern District of Indiana, stated that federal probation is directed by national policy and workload measurement formulas and local judges have control over hiring and practices. The Indianapolis office has 17 field officers providing intensive supervision for about 600 probationers. A federal sentencing matrix specifies probation terms, usually from three to five years. Federal probation officers require at least a bachelor's degree (a master's degree is required for the Indiana southern district). The officer salary range is merit based, ranging from \$37,000 to \$60,000. Federal officers often specialize in certain areas, such as sentencing guidelines, mental health, and drug and alcohol treatment.

Meeting Materials Distributed: (1) Draft statistics from the 1996 national probation census, Bureau of Justice Statistics (expected publication date, November 30, 1998); (2) Organization of Community-Based Corrections, (National Institute of Corrections); (3) U.S. Probation Office, Southern Indiana: organization chart, workload staffing ratios, probation officer salaries and position descriptions; (4) Probation Trends and Analysis: Disposition Supplement (Indiana State Court Administration).

September 23 Meeting

Indiana Association of Counties (IAC) Matt Brooks testified that Indiana counties heavily fund probation services (stated as \$31 million annually for all counties), but lack control over how these funds are spent. Steve Wills testified on IAC's behalf concerning probation and parole services in other states. He described Arizona and Illinois probation services as comparable to probation in Indiana and provided details of the state/local probation funding arrangements in these states.

Indiana Judges Association Judge Bruce Embrey, Miami County Circuit Court, testified that his probation department's five officers supervise 900 probationers. He acknowledged county councils' criticisms of probation officer salaries, and expressed hope that funding and standards issues could be addressed without altering: (1) the quality of probation services, (2) probation's close relationship to the court, and (3) each jurisdiction's unique needs. He also advised discretion in changing the distribution of probation user fees. Fees pay about a one-third of his probation officer salaries and also reimburse county general fund expenditures. He said that raising probation user fees might help funding problems, though greater fee burdens could increase the number of nonpayments and probationers jailed for that technical violation. He added that Miami County's jail is constantly over capacity, and an alternative correctional

system is urgently needed to avoid the necessity of building a new jail.

Judge Marc Kellams, Monroe County Circuit Court, described his 52-employee probation department as part of the only truly unified court and probation system in the state. In Monroe County, combining probation departments and community corrections has proven very effective. He suggested that the Committee rely on the experience of other states for recommendations on probation funding, organization, training, etc. He promoted his department's emphasis on probation officer training in alcohol and drug treatment, since the majority of probationers' drug or alcohol problems are highly related to their offenses.

Judge Kellams remarked that increased user fees could assist probation departments, though any fee diversion could be harmful. Monroe County's \$2 million probation budget relies on user fees and is only 32% funded by general funds. He suggested that probation systems might be unified among the many individual court probation departments without necessarily unifying the courts themselves.

Indiana Public Defenders Council Larry Landis, Council Executive Director, noted three important probation issues: quality, cost, and control. He suggested that better salaries and training in mental health and substance abuse for probation officers are crucial quality factors. Also, since state funding is already provided for judges, prosecutors and public defenders, state funding of probation seems reasonable. He warned that the probation not become dependent on user fees, especially when treatment is sometimes available only to those who can afford the fees.

Mr. Landis made the following recommendations.

- ▶ The Committee should explore merging probation, community corrections and parole.
- ▶ Probation officers should not have arrest powers or carry guns.
- ▶ Graduated sanctions should be encouraged rather than the use of technical violations that cause probation revocation.
- ▶ Deferred prosecution is perceived as dependent on an offender's ability to pay the deferral fee, which is deposited into prosecution funds. Courts should decide deferrals.

Probation Officers Professional Association of Indiana (POPAI) Ted Ward, POPAI President suggested that probation services struggle to be recognized as a profession due in part to low salaries and high turnover. He classified probation services as consisting of three types of service: (1) court responsibilities (pre-sentencing reports, victim notification, fee collection, etc.); (2) responsibility to the public (probation officers are "on duty" at all times); and (3) responsibility to offenders to treat them with dignity and respect. Mr. Ward suggested that probation effectiveness measurement should be judged on positive changes in probationer circumstances, as well as probation outcome successes.

Indiana Prosecuting Attorney's Council Becky McClure, Council Assistant Executive Director, stated that the increase in the number of probation officers has increased the number of petitions to revoke probations sent to prosecutors. The Prosecuting Attorney's Council supports a general increase of state funding for criminal justice services. However, greater funding for probation might impel the need for additional funding for prosecutors' services.

Judge Ryan commented that the revocation of probation has been delegated to prosecutors, but that it seemed inconsistent that the judiciary should control the implementation but not technical revocations of probation. Numerous revocations due simply to user fee nonpayment suggests a need to prioritize which fees should be aggressively collected.

Indiana Department of Correction, Community Corrections Robert Ohlemiller, DOC Deputy Director, stated that the DOC is in the process of reviewing community corrections in other states regarding the possibility that parole, probation, and community corrections could be merged. He stated that funding of community corrections is premised on its uniqueness as an alternative sanction between imprisonment and probation. Legislative changes in this voluntary program would be required to increase the number of probationers who participate in community corrections and especially for direct commitments of certain

offenders such as sex offenders into programs where treatment exists.

Meeting Materials Distributed: (1) 1997 Corrections Yearbook (selected probation and parole statistics); (2) brief descriptions of Illinois and Arizona's probation systems; (3) Indiana Sentencing Outcomes: a flow chart describing probation-related placements.

October 15 Meeting

Juvenile Probation Services Julia Brita, Allen County Chief Juvenile Probation Officer, testified regarding juvenile probation, Allen County's caseload breakdown, and juvenile probation programs and outcomes. Especially stressed were the unique elements of juvenile probation compared to adult probation, such as status offenses, education requirements, and the close and long-term nature of probation officers working with juveniles and parents throughout their involvement in the justice system. Also, the inherent conflict for service funding between child welfare and justice organizations was touched upon. Ms. Brita conveyed program successes such as a long-term, intensive education program for repeat juveniles offenders, and a probation/YMCA partnership program for status offenders.

Thomas Frederick, St. Joseph County Director of Court Services, described some of the history of the juvenile court, developed initially as an informal advisory system, and its evolution to a formal system concerned with proof and due process. He emphasized the continued need for juvenile courts and the pervasive responsibilities of juvenile probation officers in sanctioning and rehabilitating juvenile offenders. He remarked on parental involvement in juvenile justice proceedings, which is strictly enforced in St. Joseph County. He added that any state funding of probation should be weighed against loss of local autonomy. Among the suggestions discussed were the following issues.

- ▶ Optional arrest powers for probation officers.
- ▶ Examination of probation office workload standards established by the Indiana Judicial Conference.
- ▶ A review of the juvenile code regarding some disparate provisions, e.g. the misdemeanor penalty for firearm possession and penalties for drug offenses.

County Financing of Probation Services Nicholas Pasyanos, Indiana Association of Counties, outlined the increasing burden placed on county general funds by public safety expenditures (estimated at perhaps 65 to 80 percent of all county spending), and the salary growth rate for probation officers, which has outstripped the salary growth for circuit court clerks. He suggested a state subsidy or a court tax levy as possible options to alleviate this burden. Other suggested remedies included changes in court fee revenue distribution and eliminating the per diem charged to counties for juvenile offenders in DOC facilities.

Meeting Materials Distributed: (1) Allen County juvenile probation department: organization, caseloads and programming. (2) Indiana Association of Counties: salary comparisons of circuit court clerks and probation officers; gross county budgeted assessed values, levies and net expenditures for the child welfare and judicial system.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

Committee members proposed the following findings for future consideration and work by the Committee during next year's interim study period.

- ▶ Provide a better definition of probation mission and duties, especially regarding focus on law enforcement versus social work.

- ▶ Develop specific and consistent probation duties and responsibilities among counties.
- ▶ Find funding sources for probation programs, such as intensive supervision, possibly through use of community corrections grants.
- ▶ Determine specific probation sentences, linked to diversion, for funding by community corrections grants.
- ▶ Measure probation effectiveness, especially compared to other criminal and juvenile sanctions, through means such as tracking offenders released from probation.
- ▶ Determine the need for more extensive probation officer training, possibly similar to law enforcement training.
- ▶ Examine the issue of probation officer safety.
- ▶ Research means of state cost sharing with counties for probation services.
- ▶ Examine probation officer caseloads.
- ▶ Choose an entity (e.g., the Hudson Institute or National Institute of Corrections) to oversee a review and evaluation of probation services.
- ▶ Consider legislation to discontinue county charges for committing juvenile delinquents to the Department of Correction and require some percentage of this funding to be reinvested in county probation, e.g., early intervention programs, meaningful intermediate sanctions or salaries.
- ▶ Consider moving probation management authority from the judiciary to the executive branch, supervised by a county, criminal justice-related board. Remove the state established salary levels and allow counties to provide compensation relating to existing job compensation and classification levels.
- ▶ Provide clarity on the application of user fee funds and increased collection enforcement. This could include greater flexibility and aggressiveness for a juvenile court judge to charge parents.
- ▶ No specific recommendations were made for consideration by the General Assembly this year.

WITNESS LIST

Jeff Bercovitz, Indiana Judicial Center

Julia Brita, Allen County Chief Juvenile Probation Officer

Matt Brooks, Indiana Association of Counties

Doug Davis, Supervising U.S. Probation Officer, Southern District of Indiana

Bruce Embrey, Miami County Circuit Court Judge, Indiana Judges Association

David Ferguson, DOC Parole Services Supervisor

Thomas Frederick, St. Joseph County Director of Court Services

Lilia Judson, State Court Administration

George Keiser, Community Corrections Director, National Institute of Corrections

Marc Kellams, Monroe County Circuit Court Judge, Indiana Judges Association

Larry Landis, Indiana Public Defenders Council

Becky McClure, Indiana Prosecuting Attorney's Council

Todd McCormack, Chair, Probation Officers Advisory Board

Robert Ohlemiller, Indiana Department of Correction, Community Corrections

Nicholas Pasyanos, Indiana Association of Counties

Ted Ward, Probation Officers Professional Association of Indiana

Steve Wills, Indiana Association of Counties