

THE EFFECTS OF THE 2014 CRIMINAL CODE REFORM ON DRUG CONVICTIONS IN INDIANA

Created by the Indiana Criminal Justice Institute, this report compares drug conviction data from nine Indiana counties before and after the implementation of the criminal code reform law, House Enrolled Act 1006.

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Guided by a Board of Trustees representing all components of Indiana's criminal and juvenile justice systems, the Indiana Criminal Justice Institute (ICJI) serves as the state's planning agency for criminal justice, juvenile justice, traffic safety, and victim services. The ICJI develops long-range strategies for the effective administration of Indiana's criminal and juvenile justice systems and administers federal and state funds to carry out these strategies.

The Indiana Criminal Justice Institute serves as Indiana's Statistical Analysis Center (SAC). The SAC's primary mission is compiling, analyzing, and disseminating data on a variety of criminal justice and public safety-related topics. The information produced by the SAC serves a vital role in effectively managing, planning, and creating policy for Indiana's many public service endeavors. The Effects of the Criminal Code Reform on Drug Convictions in Indiana report was funded by Grant Award Number 2018-86-CK-K023 awarded to the Indiana Criminal Justice Institute by the State Justice Statistics Program for Statistical Analysis Centers, Bureau of Justice Statistics, U.S. Department of Justice. The findings, points of view, or opinions contained within this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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EXECUTIVE SUMMARY

On July 1, 2014, changes proposed to Indiana’s Criminal Code were officially implemented, affecting the criminal justice system. The Indiana Criminal Justice Institute (ICJI) is statutorily obligated to monitor and evaluate the impact of the criminal code reform, reporting results to state legislators on an annual basis. Findings from the Evaluation of Indiana’s Criminal Code Reform reports¹ suggest that local criminal justice professionals are concerned with the lessened severity of sentences associated with drug crimes. They suggest that this reduction in severity may have increased recidivism, perpetuating the revolving door of the justice system, and is negatively impacting an offender’s ability to recover from substance use disorder—a commonly identified association with a drug offense. In an effort to operationalize changes in severity of sentencing, this report compares drug conviction data from nine Indiana counties from a period in time before the reform to a like period after the changes set in. Results indicate that dealing and possession convictions increased, where dealing of marijuana and possession of methamphetamine had the starkest increases. Findings also displayed that felons and misdemeanants alike are being convicted differently than offenders under the legacy code. There was a 50% decrease in both dealing and possession offenses’ advisory sentence. In addition, while jail is the most common sentence placement across both time periods, alternative sentencing is utilized far more often than pre-reform, indicating that penalties for drug crimes have generally decreased. This work adds to literature concerning the effects of the criminal code reform in Indiana, and may lay the groundwork for further analysis, such as the reform’s impacts on recidivism and offender rehabilitation.

BACKGROUND

HOUSE ENROLLED ACT 1006 (PUBLIC LAW 168)

A criminal code is a state’s compilation of laws, or statutes, that define what acts are crimes, the classification of those crimes (e.g., felony, misdemeanor, infraction), and what the associated sentences for those crimes are. Indiana’s Criminal Code, last reworked by the Indiana Criminal Law Study Commission almost 40 years prior to 2014, was due for a comprehensive review. In 2010, the Criminal Code Evaluation Commission was formed to rework the code. They hoped changes would bring clarity, coordinating new criminal statutes with existing statutes; rectify the growing concern that many sentences were disproportionate to the crimes to which they were attached; and, generally, reevaluate how Indiana’s prisons were utilized, ensuring that dangerous offenders rather than nonviolent offenders are those represented in prison. Additionally, the proposed changes would give judges maximum

¹ Access reports beginning in 2015 on the Indiana Criminal Justice Institute’s [website](#) under Reports, Forms & Resources.

discretion to impose sentences and reduce crime by promoting the use of community-based rehabilitation of offenders. From 2010 to 2012, the commission met to determine the changes to the criminal code, and discussed the possible implications of all proposed changes. In 2013 and the first half of 2014, a number of fiscal impact² studies were presented to the commission, outlining the projected effects on the Department of Correction and other aspects of the criminal justice system as well as the state. After all information was considered, changes to the criminal code, enacted through House Enrolled Act (HEA) 1006, were officially implemented on July 1, 2014.³ Throughout this report, HEA 1006 may also be referred to as “the reform.”

Included in the house bill was a mandate for the ICJI to monitor and evaluate the impact of the reform on local units of government, the Department of Correction, and the judicial center. This requirement results in an annual report delivered to the Indiana State Legislature, including an analysis of the effect of the reform on county jails, community corrections programs, probation departments, courts (and reentry court programs), and mental health and addiction programs. Data collected for the report are both quantitative and qualitative in nature, assessing the breadth of the changes in the system. As part of this research, years of data point to concerns that the reform lessens the severity of sentences for drug-related crimes. This is perceived to be problematic, as locals describe an increase in recidivism amongst drug offenders and a decrease in community safety as a whole. To make matters worse, locals know that offenders are not receiving rehabilitative services when they need them due to this decrease in criminal classification and associated sentence time.

As part of the ICJI and the Justice Reinvestment Advisory Council’s most recent report, the [2019 Evaluation of Indiana’s Criminal Code Reform](#), three years of anecdotal data were analyzed from criminal justice stakeholder focus groups. Overall, criminal justice professionals concurred that drug offenses have seen decreased criminal classifications and associated sentences since the reform. In theory, the reduction in penalty for low-level, nonviolent offenders is a positive change, as the sentence is seemingly more equitable to the crime. Additionally, research suggests that nonviolent offenders with low-level felony charges who are sent to prison assimilate to prison culture, often resulting in that offender’s risk level increasing. Therefore, keeping these offenders out of prison is better for both the offender and their community. Finally, allowing this offender to be served in the community, where emphasis is focused on rehabilitation and restoration as opposed to punitive sanctions, has demonstrated decreases on recidivism. However, despite the aforementioned benefits, Indiana’s criminal justice professionals consistently report that this reduction in penalty for low-level, nonviolent offenders with drug-related offenses has negatively impacted their communities.

² Fiscal analyses: [Legislative Services Agency](#), [Applied Research Services, Inc.](#), and [American Institutes for Research](#)

³ See the full list of provisions [here](#) on pages 1 through 3.

First, they claim that a shorter sentence, coupled with good time credit⁴ and earned credit time⁵ resulting in *even less* time served, juxtaposes a strategic goal of the reform—the promotion of local rehabilitation for drug offenders. For example, criminal justice professionals explain that offenders found guilty of an F6—the lowest level felony in Indiana—drug crime typically receive an advisory sentence of 12 months, and with good time credit, the offender could serve as little as 6 months. Local professionals report that drug treatment programs typically last 18 to 24 months. Therefore, the offender will likely serve a jail sentence instead of a going into a treatment program. Even if they are able to get into treatment, they will not receive all intended exposure, and therefore not reap all the benefits because their sentence time has been reached prior to the time required to complete the program. Mental health professionals who offer forensic services, or services designed specifically for use in court or otherwise in connection with a legal matter, often report that substance use disorder, or some other mental health concern, is identified as a result of an offender’s assessment. Professionals fear that if offenders are not being exposed to treatment, underlying mental health concerns and criminogenic thinking will not be addressed. Therefore, untreated offenders will simply serve their time and return to their communities set up for failure—*recidivating*. Additionally, because drug offenses are now receiving lessened penalties, often misdemeanor criminal classifications as opposed to felony criminal classifications, misdemeanants often aren’t eligible for some treatment programs.

Secondly, the criminal code reform redistributed offenders from the prison system to local criminal justice systems by nature of moving low-level felons to the community. Local criminal justice staff are seeing increased caseloads across the board because of the change. Professionals describe their experiences in having to choose which client needs their immediate attention, and which do not. Often, low-level, nonviolent drug offenders fall in the latter category, further exacerbating professionals’ concerns about offenders serving shorter sentences, with minimal oversight and no treatment, later recidivating and risking community safety.

Finally, communities feel as though they are not well equipped to treat offenders. Professionals feel that the housing of felons in the local community was an “unfunded mandate,” often expressed as a lack of investment in local treatment systems. They identify jail treatment as lacking; Community Mental Health Centers (CMHCs) as overburdened and understaffed; detox facilities and long-term residential care as virtually non-existent; and recovery communities as still needing to be accepted by those in the community in order to thrive.

⁴ Good time credit, or good conduct time, means a reduction in a person’s term of imprisonment or confinement awarded for the person’s good behavior while imprisoned or confined.

⁵ Earned credit time is any credit time that an offender receives for completing certain education and substance abuse programs, and is subtracted from the offender’s overall sentence time.

Understanding the history of Indiana’s criminal code and what the most recent reform intended, contrasted against locals’ perceptions of how the reform is affecting the local criminal justice systems, is important context for this project, as it defines the issues and our current gaps in understanding. The next two sections will comprehensively review the changes to the criminal code and drug statute, both of which illustrate the conviction landscape pre- and post-reform and lay a foundation for understanding the results of this project.

CRIMINAL CODE REFORM: CHANGES IN SENTENCING

Previously, the Indiana criminal code, otherwise referred to as the “legacy code,” had four felony classifications outlined from greatest severity to least severity: Class A Felony, Class B Felony, Class C Felony, and Class D Felony. The criminal code reform expanded the number of felony classifications to six (greatest to least severity): Felony Level 1 (F1), Felony Level 2 (F2), Felony Level 3 (F3), Felony Level 4 (F4), Felony Level 5 (F5), and Felony Level 6 (F6). Previously held felony classes are generally comparable to the newfound levels, where Class A felonies are now F1 and F2; Class B felonies are now F3 and F4; Class C felonies are now F5, and Class D felonies are now F6. The sentence ranges and advisory sentences for murder stayed the same.

It is also evident that the advisory sentences for felonies decreased: 30 years to 23.75 years (F1 and F2); 10 years to 7.5 years (F3 and F4); 4 years to 3 years (F5); and 1.5 years to 1 year (F6). Most notably, the reform required F6 felons, commonly equated to low-level, non-violent offenders, to be treated in the community instead of being sentenced to prison unless there are enhancing circumstances. For example, under the legacy code, a conviction for a Class D Felony could carry a sentence between 6 months to 3 years, with an advisory sentence of 1.5 years in prison. Now, a conviction for an F6 felony can carry a sentence of 6 months to 2.5 years, with an advisory sentence of 1 year, and the defendant can be sentenced to prison only under enhancing circumstances. Compare Table 1 and Table 2 below.

Table 1. Pre-Reform Sentencing

Felony Class	Sentence Range	Advisory Sentence
Murder	45-65 years	55 years
A	20-50 years	30 years
B	6-20 years	10 years
C	2-8 years	4 years
D	6 months-3 years	1.5 years
Misdemeanor	60 days-1 year	Depends on offense

Table 2. Post-Reform Sentencing

Felony Level	Sentence Range	Advisory Sentence
Murder	45-65 years (if capital death penalty)	55 years
1	20-40 years	30 years
2	10-30 years	17.5 years
3	3-16 years	9 years
4	2-12 years	6 years
5	1-6 years	3 years
6	6 months-2.5 years	1 year
Misdemeanor	60 days-1 year	Depends on offense

DRUG STATUTE CHANGES

Drug-related criminal offenses are largely categorized into dealing and possession offenses, where dealing offenses are often seen as more serious crimes than possession offenses. Offenses are distinguished using the weight of the drug(s) at the time of arrest, as well as identifying whether an offender was manufacturing, delivering, or financing the manufacturing and/or delivering of the drug, or possessed the drug with intention to do one of the aforementioned.

Along with the reform came a new way of classifying dealing and possession offenses. For dealing offenses, the statute saw a refined, and less severe in most cases, criminal classification. For example, before the enactment of HEA 1006, the lowest criminal classification for dealing cocaine was a Class B Felony (10 year advisory sentence), or what equates to an F3 or F4 in the new code (6 to 9 year advisory sentence).

Now, the lowest criminal classification is an F5 (3 year advisory sentence), or what would equate to a Class C Felony (4 year advisory sentence). Additionally, the weight of the drug became more nuanced, and in some cases was newly defined. For example, the legacy statute indicated that one may be charged with the highest penalty, a Class A Felony, for being arrested with more than 3 grams of cocaine. Now, they must be apprehended with more than 28 grams—*more than 9 times the original baseline*—to receive an equal penalty. See Table 3 below for more information.



Table 3. Dealing Statute Pre- and Post-Reform⁶

Dealing				
Drug	Pre-1006		Post-1006	
	Weight	Class	Weight	Level
Cocaine, Narcotic, Methamphetamine			<3 grams	5
	<3 grams	B	3 to <10 grams	4
			10 to <28 grams	3
	3 grams or more	A	28 grams or more	2
Schedule I, II, III Controlled Substance ⁷			<3 grams	5
	(intent to) deliver, manufacture, or finance	B	3 to <10 grams	4
			10 to <28 grams	3
	(intent to) deliver, manufacture, or finance	A	28 grams or more	2
Schedule IV Controlled Substance			<3 grams	6
	(intent to) deliver, manufacture, or finance	C	3 to <10 grams	5
			10 to <28 grams	4
	(intent to) deliver, manufacture, or finance	B	28 grams or more	3
Schedule V Controlled Substance				
	(intent to) deliver, manufacture, or finance	D	3 to <10 grams	6
	(intent to) deliver, manufacture, or finance	B	28 grams or more	4
Marijuana			30 grams or less	A misdemeanor
	>30 grams to <10lbs.	D	prior and <30 grams or 30 grams to <10 lbs.	6
	10 lbs. or more	C	prior and 30 grams to <10 lbs. or 10 lbs. or sale to minor	5

⁶ Most all offenses that fall in a preceding criminal classification could be due to an enhancing circumstance attached with the previous criminal classification.

⁷ Schedule I, II, and III Controlled Substances exclude marijuana, hash oil, hashish, salvia, or a synthetic cannabinoid.

Possession offenses saw more distinct and less severe criminal classifications as well. For example, before the reform, the highest criminal classification for possessing cocaine was a Class A Felony (30 year advisory sentence). Now, the highest criminal classification is an F3 (9 year advisory sentence), or what would equate to a Class B Felony (10 year advisory sentence). Additionally, the weight of the drug became more detailed for the cocaine, narcotic, drug or methamphetamine section. However, controlled substance and marijuana drug weights stayed relatively consistent. See Table 4 below for more information.

Table 4. Possession Statute Pre- and Post-Reform⁸

Possession				
Drug	Pre-1006		Post-1006	
	Weight	Class	Weight	Level
Cocaine, Narcotic, Methamphetamine	<3 grams	D	<3 grams	6
	3 grams or more	C	3 to <10 grams	5
	<3 grams, enhancing circumstance	B	10 to <28 grams	4
			28 grams or more	3
3 grams or more, enhancing circumstance	A			
Schedule I, II, III, IV Controlled Substance			possession	A misdemeanor
	possession	D	possession, enhancing circumstance	6
	possession, enhancing circumstance	C		
Schedule V Controlled Substance			>4 ounces of substances containing codeine, possession	A misdemeanor
	>4 ounces of substances containing codeine, possession	D		
Marijuana			<30 grams	B misdemeanor
	30 grams or less	A misdemeanor	<30 grams and prior	A misdemeanor
	>30 grams, or 30 grams or less and prior	D	30 grams or more and prior	6

⁸ Information in tables 3 and 4 were derived from 2013 and 2017 versions of Indiana Code.

Overall, the implementation of House Enrolled Act 1006 has changed sentencing and the drug statutes. Criminal classifications are more nuanced, therefore sentencing for drug offenses is different. This results in less severe penalties for crimes when compared to the legacy statute.

The purpose of this study is to analyze the changes in conviction practices of drug offenses pre- and post- reform, providing the never-before-seen effects of the reform in terms of changes in penalties, operationalized by criminal classification and placement. Demonstrating that current conviction practices align with the intentions of the criminal code reform may lay the groundwork for decision makers to analyze such changes and make inferences about its effects on recidivism and public safety.

DATA & METHODS

This study utilized drug conviction data obtained from the Indiana Prosecuting Attorneys Council (IPAC); variables used from this data set included offense name, conviction received (guilty), offense class (felony, misdemeanor), offense level (A, B, C, D, 1, 2, 3, 4, 5 and 6), and sentence placement information (prison, jail, alternative sentencing time). Offense names included in the final dataset consisted of dealing and possession of the following substances/substance categories: schedule I, II, III, IV, and V controlled substances;⁹ narcotic drugs;¹⁰ synthetic drugs;¹¹ legend drugs;¹² cocaine;¹³ marijuana;¹⁴ and methamphetamine.¹⁵ Offense names including the above characteristics were chosen because they have defined criminal classifications, sentences, and associated drug weights. All 568 other offenses were excluded due to their low degree of comparability to said information. While many of the aforementioned substances/substance categories overlap (e.g., cocaine is a schedule II drug), this categorization method is in alignment with the current offense naming system outlined in statute, and therefore the defined weights and penalties. Data includes drug convictions from nine Indiana counties¹⁶ for years 2013 and 2017, where data from 2013 represent the drug conviction atmosphere pre-reform, and data from 2017 represent the drug conviction atmosphere post-reform. As part of the data cleansing process, data were cross-checked using Indiana Court Information Technology Extranet (INcite), which is the Indiana Supreme Court's secured website housing offender and court case data. INcite was utilized to ensure the accuracy of the "conviction received" variable, determining if a case was dismissed, pending, or

⁹ "Controlled substance" means a drug, substance, or immediate precursor in schedule I, II, III, IV, or V under [IC 35-48-2-4](#), [IC 35-48-2-6](#), [IC 35-48-2-8](#), [IC 35-48-2-10](#), or [IC 35-48-2-12](#) if [IC 35-48-2-14](#) does not apply.

¹⁰ Narcotic drug is defined in [IC 35-48-1-20](#)

¹¹ Synthetic drug is defined in [IC 35-31.5-2-321](#)

¹² Legend drugs are drugs that are approved by the U.S. Food and Drug Administration (FDA) and that are required by federal or state law to be dispensed to the public only on prescription of a licensed physician or other licensed provider.

¹³ Cocaine is defined in [IC 35-48-1-7](#)

¹⁴ Marijuana is defined in [IC 35-48-1-19](#)

¹⁵ Methamphetamine is a stimulant that affects the central nervous system.

¹⁶ Indiana counties selected were Brown, Clark, Grant, Greene, Hendricks, Lawrence, Marion, Porter, and St. Joseph, where 6 of 9 counties are urban and the remaining are rural.

guilty. Only guilty convictions were analyzed for purposes of this project. If individuals were represented in the dataset more than once on the same disposition date, only their most serious offense level was included. The final dataset was analyzed producing the findings below.

Data pre- and post-reform were analyzed by severity of the penalty associated with the drug crime, operationalized by criminal classification (felony, misdemeanor) and placement (prison, jail, alternative sentencing). Criminal classifications were categorized by severity, where F1, F2, and Class A Felonies are considered highly severe; F3, F4, and Class B Felonies are considered of medium-high severity; F5 and Class C Felonies are considered of medium-low severity; F6 and Class D Felonies are considered of low severity; and misdemeanors are considered of very low severity. The sentence time (e.g., sentence range, advisory sentence) associated with the criminal classification will supplement the severity measure, where more time sentenced is more severe than less time sentenced. The third measure of severity in this study is the sentence placement information associated with the offense, provided in the form of time in days for prison, jail, or alternative sentencing (e.g., probation or community corrections time combined). Due to the inability to reliably represent the number of days an offender was sentenced, attributable to time suspended, an offense was instead associated with whether or not time was entered in a particular placement. Then, if any offense had time in more than one sentencing category (e.g., 375 days in prison, 65 days in jail), a hierarchy was applied equating that offense to the sentencing placement of highest severity (prison, most severe followed by jail, alternative sentencing, and no placement). In the given example, that offense would be associated with prison as opposed to jail.

RESULTS

The dataset consists of 8,018 guilty drug offenses, including felonies, Class A misdemeanors, and Class B misdemeanors. Of these, 1,115 (14%) were dealing offenses and 6,903 (86%) were possession offenses. About 33% of the data represents drug offenses from 2013 and about 67% represents drug offenses from 2017, indicating a 103% increase in guilty drug convictions from 2013 to 2017. When analyzing the total number of guilty cases by drug type, almost 30% of the offenses were marijuana-related, about 25% were narcotic-related, and about 20% were methamphetamine-related. When comparing 2013 to 2017, offenses relating to cocaine, marijuana, and methamphetamine make up a higher percentage of total offenses in 2017 than 2013 (12% compared to 4%; 32% compared to 22%; and 24% compared to 10%, respectively). Finally, when looking to sentence placement, about 61% of offenses have jail time as the most severe placement, followed by 21% for prison and 16% for alternative sentencing. The majority of offenses in both 2013 and 2017 are associated with jail time as the most severe placement, however this placement made up less of the total number of offenses in 2017 than 2013, 57%

compared to 68%. In 2017, offenses shifted, representing a higher percentage of the total for alternative sentencing than in 2013, 20% compared to 6%. Dealing and possession offenses in their respective substance categories will be analyzed pre- and post-reform, with particular emphasis on the change in associated severity.

DEALING

After filtering the data to represent the 1,115 dealing offenses, about 468 (42%) of the offenses are from 2013 and the remaining 647 (58%) are from 2017. This means that there was a 38% increase in guilty dealing convictions when comparing 2013 to 2017. When analyzing dealing convictions by drug type, dealing in narcotics makes up about 35% of the data, followed by dealing in marijuana and dealing in methamphetamine at about 19% each. Class B felony offenses make up about a quarter of the data, followed by F2 at 14% and F6 at 12%. These numbers show that dealing offenses were largely given advisory sentences of 10 years in 2013, whereas in 2017, it was split between 17.5 years and 1 year. Dealing offenses for narcotics, cocaine, and methamphetamine are associated with higher level criminal classifications (F2, Class B), where an F6 classification is associated with mainly marijuana and some controlled substances cases. About 44% of guilty dealing offenses include prison time as their most serious sentence placement, followed by jail at 33% and alternative sentencing at about 22%. When comparing pre- and post-reform, jail placement made up 50% of all dealing offenses in 2013, whereas in 2017, it only made up 21%. Prison and alternative placement increased post-reform, 47% compared to 40% and 31% compared to 10%, respectively.

When looking at the number of offenses in their respective drug category by year, each drug offense category saw an increase in the volume of offenses, with the exception of the controlled substances and narcotic drugs categories, which saw decreases of about 51% and 42%, respectively. Dealing in marijuana saw the largest increase (outside of the combination category) from 2013 to 2017 by 493%. See the table below for more information.

Table 5. Dealing Offenses Pre- and Post-Reform

Drug Offense Category	Frequency and Column Percentage		Percent Change
	Pre-1006 (2013)	Post-1006 (2017)	
Cocaine	26	125	+381%
Controlled Substances	76	37	-51%
Combination¹⁷	3	23	+667%
Marijuana	30	178	+493%
Methamphetamine	67	142	+112%
Narcotic Drug	250	144	-42%
Legend Drugs	0	0	
Synthetic	14	0	

¹⁷ Drug offenses in the combination category are duplicated from other categories.

For dealing offenses overall, there has been an increase in the volume of offenses in all categories besides the medium-high severity category (F3, F4, Class B Felony). When analyzing the shift in frequency across categories and years, it is evident that the categories representing a lower severity (medium-low, low, very low) have a higher percentage of the total; in 2017, about 50% of all dealing offenses represent lower severity, whereas in 2013, it was 15%. Therefore, dealing offenses are generally receiving less severe sentences in 2017 compared to 2013. See the table below for more information.

Table 6. Severity of Dealing Offense Criminal Classifications Pre- and Post-HEA 1006

Criminal Classification Severity	Frequency and Column Percentage		Total
	Pre-1006 (2013)	Post-1006 (2017)	
High	121, 26%	157, 24%	278
Medium-high	274, 59%	173, 27%	447
Medium-low	28, 6%	125, 19%	153
Low	35, 7%	132, 20%	167
Very Low	8, 2%	62, 10%	70
Total	466, 100%	649, 100%	1,115

When looking to the “Cocaine, Narcotic, Methamphetamine, Schedule I, II, and III Controlled Substance” section of Table 7, low-level felonies increased by 2% and medium-low-level felonies increased by 22%. In other words, about a quarter of the time, those found guilty of a charge in this category received an F5 or an F6 in 2017, or a 1 to 3 year advisory sentence; in 2013 there was minimal representation for Class C and Class D felonies. After the new criminal code went into effect, those in the medium-high felony category (B, 3, 4) decreased by 30% and those in the high felony category (A, 1, 2) increased by about 7%.

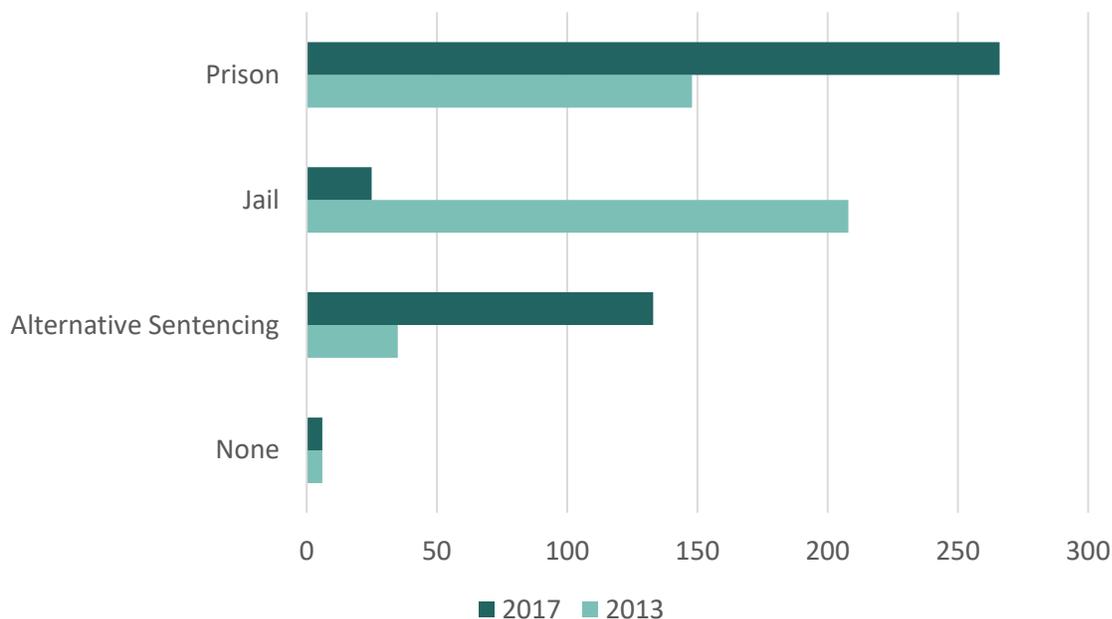
In the “Schedule IV Controlled Substance” section, it is evident that number of low-level offenses increased when comparing 2013 to 2017; misdemeanor offenses increased by 36% and low-level felony offenses increased by 21%. This means that almost three fifths of all offenses in 2017 resulted in an A misdemeanor or F6 charge, or a year or less advisory sentence. In 2013, 95% of all offenses resulted in a Class C felony (or an F5 in 2017), or about a 4 year advisory sentence. Additionally, offenses in the medium-high-level felony category (B, 3, 4) increased by 24%. However, medium-low-level felonies decreased by 81%. Similar to the prior section, it seems that dealing offenses for schedule IV controlled substances are being dispersed from medium severity categories to either lower or higher severity categories. There weren’t many offenses associated with the “Schedule V Controlled Substance” section (3), however, 100% of the time in both 2013 and 2017, offenses were associated with a low-level felony charge. Additionally, the “Marijuana” section reveals a slight decrease in severity of sentence associated with dealing in marijuana. However, similar to 2013, those with a

marijuana dealing offense are most often being charged with a low-level felony, followed by an A misdemeanor, then a medium-low-level felony (C, 5).

Table 7. Dealing Offenses by Drug, Weight, and Criminal Classification

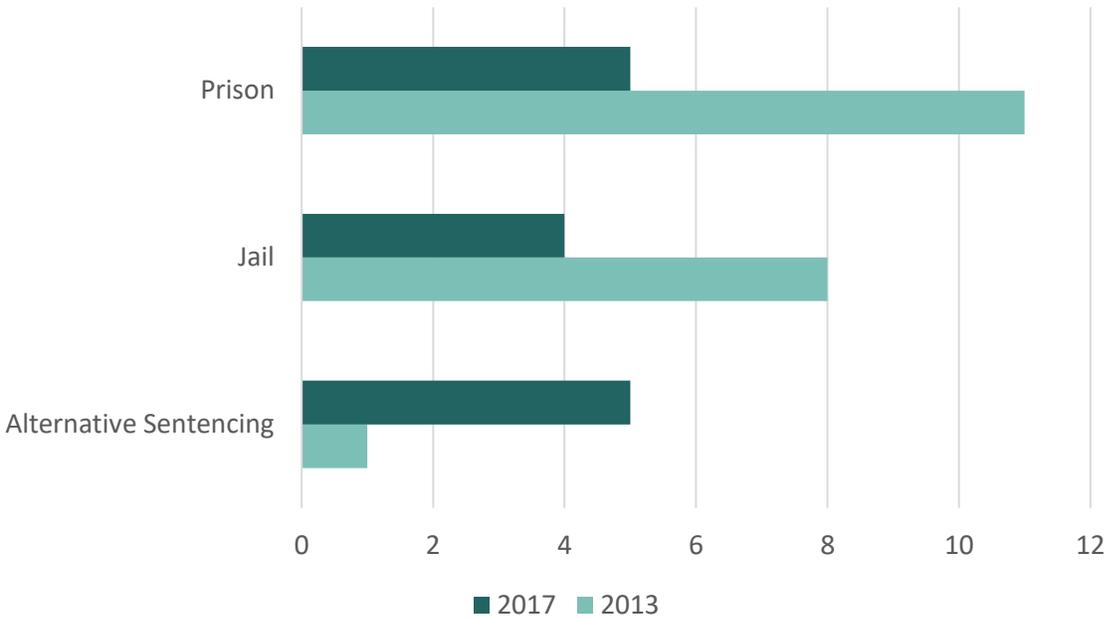
Dealing								
Drug	Pre-1006				Post-1006			
	Weight	Class	#	%	Weight	Level	#	%
Cocaine, Narcotic, Methamphetamine, Schedule I, II, III Controlled Substance		D	1	0%		6	7	2%
		C	2	0%	<3 grams	5	97	22%
	<3 grams	B	273	69%	3 to <10 grams	4	100	23%
					10 to <28 grams	3	69	16%
	3 grams or more	A	121	30%	28 grams or more	2	157	37%
Total			397	100%	Total		430	100%
Schedule IV Controlled Substance						A misd	5	36%
					<3 grams	6	3	21%
	(intent to) deliver, manufacture, or finance	C	19	95%	3 to <10 grams	5	2	14%
	(intent to) deliver, manufacture, or finance	B	1	5%	10 to <28 grams	4	0	0%
					28 grams or more	3	4	29%
Total			20	100%	Total		14	100%
Schedule V Controlled Substance					<3 grams	A misd	0	0%
	(intent to) deliver, manufacture, or finance	D	2	100%	3 to <10 grams	6	1	100%
					10 to <28 grams	5	0	0%
	(intent to) deliver, manufacture, or finance	B	0	0%	28 grams or more	4	0	0%
	Total			2	100%	Total		1
Marijuana	30 grams or less	A misd	7	23%	<30 grams	A misd	48	27%
	>30 grams to <10 lbs.	D	19	64%	30 grams-10 lbs.	6	104	58%
	10 lbs. or more	C	4	13%	30 grams-10 lbs. with prior	5	26	15%
Total			30	100%	Total		178	100%
Total			446		Total		623	

When analyzing differences in sentencing of dealing offenses pre- and post-reform using the above drug categories, similar patterns emerge. Dealing offenses in the “Cocaine, Narcotic, Methamphetamine, Schedule I, II, and III Controlled Substance” category saw an 80% increase in prison sentences as the most severe placement, an 88% decrease in jail sentences, and a 280% increase in alternative sentencing.¹⁸ After the criminal code reform, offenses with a prison sentence make up the majority of the total, whereas before the criminal code reform, offenses with a jail sentence made up the majority. The penalty for dealing has varied since the criminal code reform. See the chart below for more details.

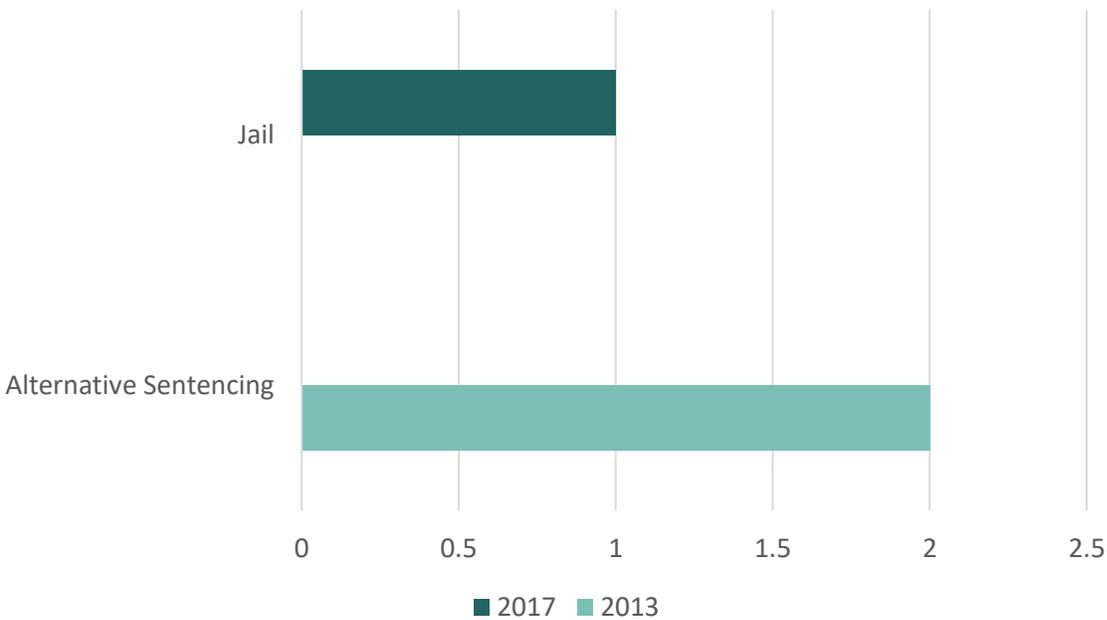


Dealing offenses in the “Schedule IV Controlled Substance” category saw a 55% decrease in prison sentences, a 50% decrease in jail sentences, and a 400% increase in alternative sentencing. Before the criminal code reform, a majority of these dealing offenses had a prison placement. Now, offenses are more evenly dispersed across placement types, where 36% of offenses have a prison or alternative sentencing placement and 28% have a jail placement. The criminal code reform allowed for less severe penalties for dealing of schedule IV drug offenses. See the chart below for more details.

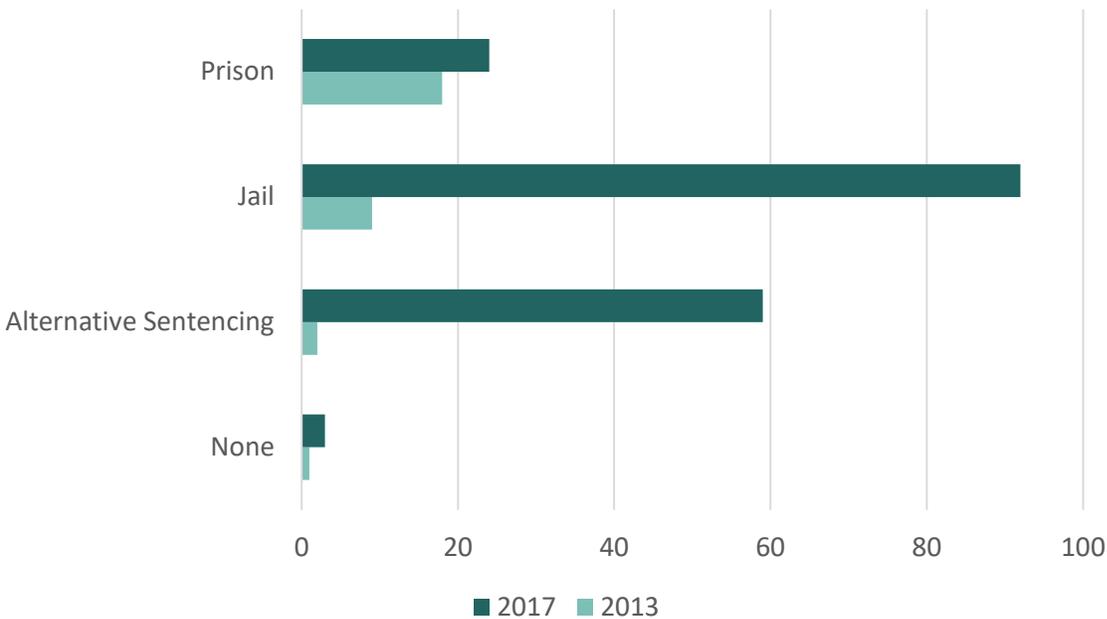
¹⁸ When broken out by drug, dealing in cocaine offenses saw a 39% decrease in prison sentences, a 3% increase in jail sentences, and a 34% increase in alternative sentences; dealing in narcotic offenses saw a 41% increase, 61% decrease, and 19% increase; dealing in methamphetamine offenses saw a 13% increase, 27% decrease, and 19% increase; dealing in schedule I controlled substances offenses saw a 39% increase, 29% decrease, and 10% decrease; dealing in schedule II controlled substances offenses saw a 49% decrease, 52% increase, and 12% increase; and dealing in schedule III controlled substances offenses saw a 67% decrease, 33% increase, and 33% increase.



Dealing offenses in the “Schedule V Controlled Substance” category saw a shift from alternative sentencing to jail. Therefore, the criminal code reform allowed for an increase in severity of placement for schedule V controlled substances. However, this trend is not definitive seeing as the sample size in this category is so small (3).



Finally, dealing offenses in the “Marijuana” category saw a 33% increase in prison sentences, a 922% increase in jail sentences, and a 2,850% increase in alternative sentencing. Before the criminal code reform, the majority of dealing in marijuana offenses were associated with a prison sentence. Post-reform, the majority are associated with a jail sentence, indicating that the change has allowed for less severe penalties for dealing in marijuana offenses.



POSSESSION

After filtering the data to represent the 6,903 possession offenses only, about 31% of the offenses are from 2013 and the remaining 69% are from 2017. There was a 120% increase in guilty possession convictions when comparing 2013 to 2017. When analyzing guilty possession cases by drug type, possession of marijuana makes up about 30% of the data, followed by possession of narcotic drugs (22%) and possession of methamphetamine (20%). F6 offenses make up about 34% of the data, followed by FD and MA at 20% each. These numbers show that possession offenses were largely given advisory sentences of 1.5 years in 2013, whereas in 2017 offenses saw an advisory sentence of about a year or less. Possession of narcotics, cocaine, and methamphetamine offenses are associated with higher level criminal classifications, where possession of marijuana offenses are largely the recipients of very low criminal classifications (misdemeanor A and misdemeanor B). About 65% of guilty possession offenses include jail time as their most serious sentence placement, followed by prison at 17% and alternative sentencing at about 15%. When comparing 2017 to 2013, jail placement still makes up the majority of the total number of possession offenses, however it decreased and was redistributed to alternative sentencing.

When looking at the number of offenses in their respective drug category by year, each drug offense category saw an increase in the volume of offenses, with the exception of the controlled substances which saw a decrease of about 38%. Possession of methamphetamine saw the largest increase (outside of the combination category) from 2013 to 2017 by 502%. See the table below for more information.

Table 8. Possession Offenses by Drug Category and Pre- and Post-HEA 1006

Name	Frequency		Percent Change
	Pre-1006 (2013)	Post-1006 (2017)	
Cocaine	92	503	+447%
Controlled Substances	634	390	-38%
Combination¹⁹	20	272	+1,260%
Marijuana	553	1,532	+177%
Methamphetamine	194	1,167	+502%
Narcotic Drug	649	855	+32%
Legend Drugs	0	24	

For possession offenses overall, there has been an increase in the volume of offenses in all categories besides the high severity category (F2, Class A Felony). When analyzing each category’s frequency as a percentage of the total number of possession offenses for that year, the “very low” category holds 43% of 2017 possession offenses. In 2013, this percentage was 23%. Additionally, the medium-low and low severity categories saw a decrease in total percentage, with very little change for the high severity categories. In other words, more possession offenses are receiving less severe sentences in 2017 compared to 2013. See the table below for more information.

Table 9. Severity of Possession Offense Criminal Classifications Pre- and Post-HEA 1006

Category	Frequency and Column Percentage		Total
	Pre-1006 (2013)	Post-1006 (2017)	
High	28, 1%	0, 0%	28
Medium-high	19, 1%	87, 2%	106
Medium-low	176, 8%	241, 5%	417
Low	1,431, 66%	2,364, 50%	3,795
Very Low	506, 23%	2,051, 43%	2,557
Total	2,160, 100%	4,743, 100%	6,903

When looking to the “Cocaine, Narcotic, and Methamphetamine” section, it is evident that more low-level felony charges are given post-reform than pre-reform, 87% of the total drug offenses in this section compared to 75%. When looking to the “Controlled Substance I, II, III, or IV” section, the percentage of the total low-level felony charges decreased by 73% in 2017, largely becoming misdemeanor A charges. Marijuana-related charges sees the same trend, however the misdemeanor A charges largely become misdemeanor B charges.

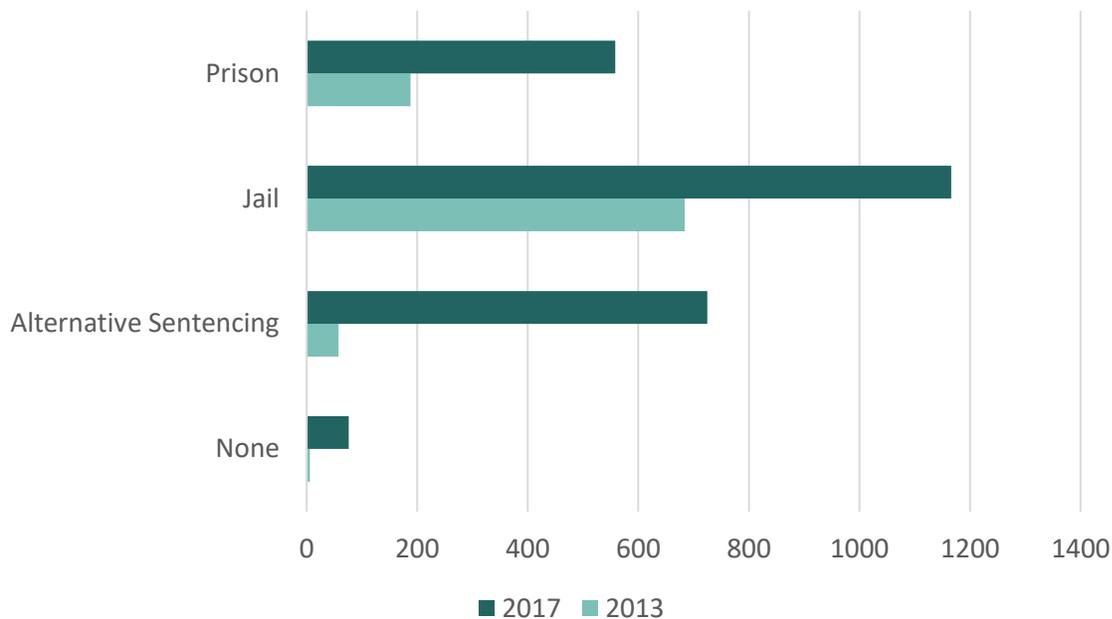
¹⁹ Drug offenses in the combination category are duplicated from other categories.

Table 10. Possession Offenses by Drug, Weight, and Criminal Classification

Possession								
Drug	Pre-1006 (2013)				Post-1006 (2017)			
	Weight	Class	#	%	Weight	Level	#	%
Cocaine, Narcotic, Meth		MA	31	3%		MA	1	0%
	<3 grams	D	698	75%	<3 grams	F6	2197	87%
	3 grams or more	C	160	17%	3 to <10 grams	F5	240	10%
	<3 grams, enhancing circumstance	B	19	2%	10 to <28 grams	F4	57	2%
					28 grams or more	F3	30	1%
	>3 grams, enhancing circumstance	A	28	3%				
Total			936	100%	Total		2525	100%
Schedule I, II, III, IV Controlled Substance ²⁰		MA	22	3%	possession	MA	307	79%
	possession	D	596	94%	possession, enhancing circumstance	F6	82	21%
	possession, enhancing circumstance	C	17	3%		F5	1	0%
Total			635	100%	Total		390	100%
Marijuana					<30 grams	MB	1147	75%
	30 grams or less	MA	432	78%	<30 grams and prior	MA	347	23%
	>30 grams, or 30 grams or less and prior	D	121	22%	30 grams or more and prior	F6	38	2%
Total			553	100%	Total		1532	100%
Total			2124		Total		4447	

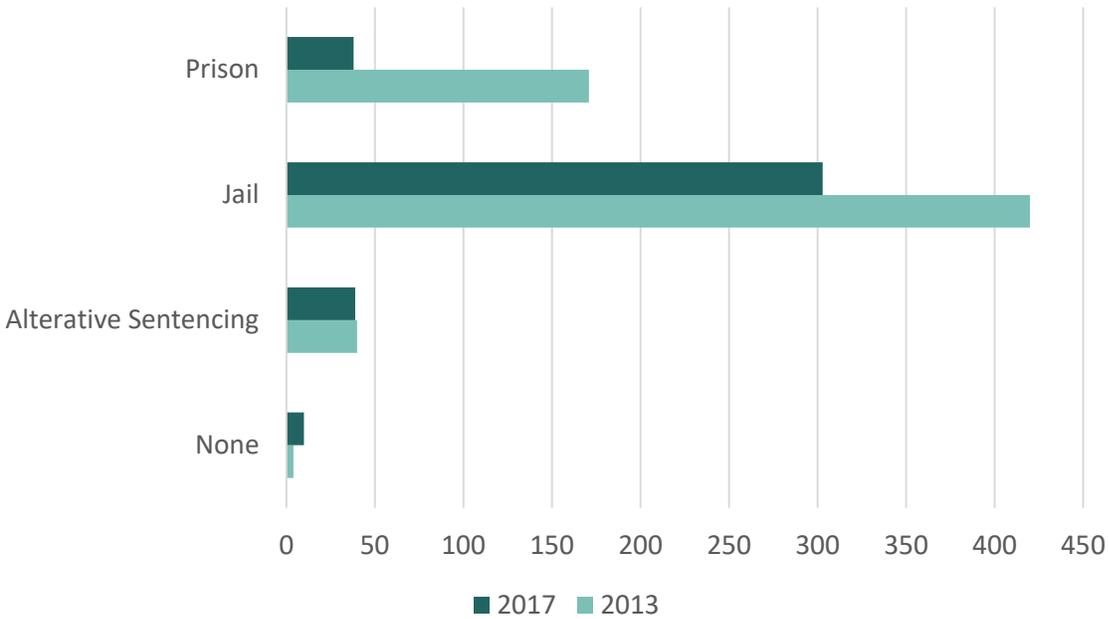
²⁰ Indiana Prosecuting Attorney Council data concerning possession of a controlled substance offenses did not include schedule number. Therefore, even though statute differentiates between possession of a schedule I, II, III, and IV controlled substances and a schedule V controlled substance, they are combined in this analysis.

Possession offenses in the “Cocaine, Narcotic, Methamphetamine” category saw a 197% increase in prison sentences as the most severe placement, a 70% increase in jail sentences, and a 1,150% increase in alternative sentencing.²¹ Before the criminal code reform, offenses with a jail sentence made up the majority of the total. Now, offenses with a jail sentence still make up the highest percentage of the total, but the percentage of offenses with an alternative sentencing placement increased by 23%. In other words, possessing cocaine, narcotic drugs, and/or methamphetamine often results in a jail sentence, but results in an alternative sentence more often than in 2013, which may suggest that the penalty has decreased.

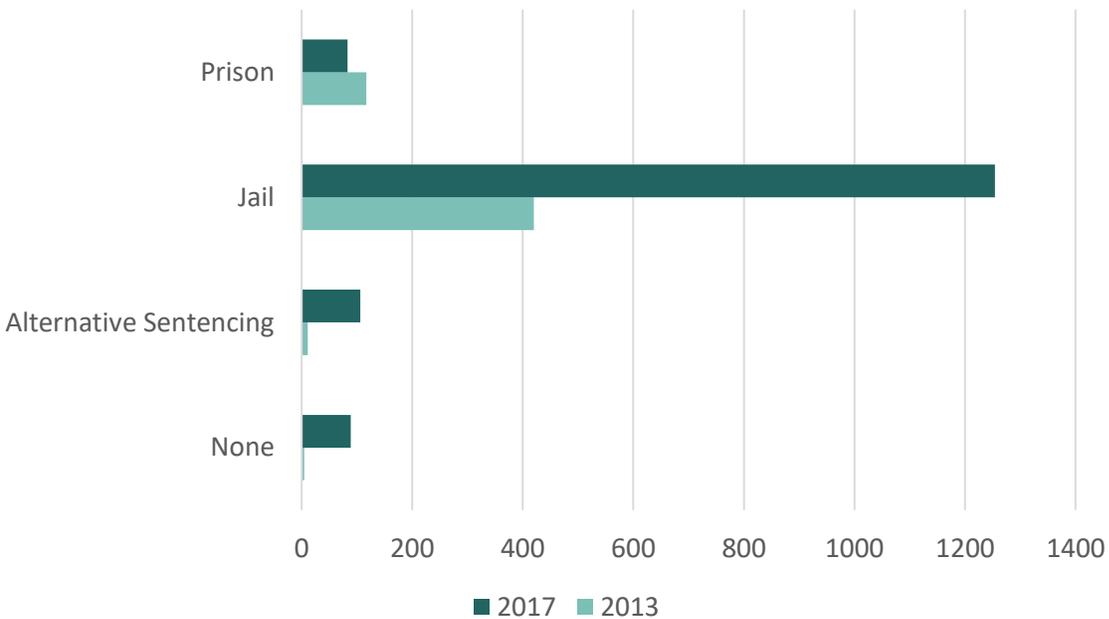


Possession offenses in the “Controlled Substance I, II, III, or IV” category saw a 77% decrease in prison sentences, a 28% decrease in jail sentences, and a 3% decrease in alternative sentencing. Before the criminal code reform, offenses with a jail sentence made up the majority of the total. Now, offenses with a jail sentence still make up the highest percentage of the total, but the percentage of offenses with an alternative sentencing placement increased by 4% and the percentage of offenses with a prison placement decreased by 17%. Possessing a controlled substance often results in a jail sentence, but results in a prison sentence less often than in 2013 and an alternative sentence more often than in 2013, suggesting the penalty has decreased.

²¹ When broken out by drug, possession of cocaine offenses saw a 55% decrease in prison sentences, a 27% increase in jail sentences, and a 26% increase in alternative sentencing; possession of a narcotic offenses saw a 8% increase, a 35% decrease, and a 25% increase; and possession of methamphetamine offenses saw a 2% increase, a 22% decrease, and an 18% increase.



Finally, possession offenses in the “Marijuana” category saw a 29% decrease in prison sentences, a 199% increase in jail sentences, and an 864% increase in alternative sentencing. Similar to the above trends, possession of marijuana offenses most often result in a jail sentence in both 2013 and 2017. However, the proportion of offenses resulting in a jail placement is higher in 2017 (82% compared to 76%), lower for prison placement (5% compared to 21%), and higher for alternative sentencing (7% compared to 2%). These trends suggest that the penalty for possession of marijuana has decreased post-reform.



LIMITATIONS

This report utilizes drug conviction data, meaning only data that resulted in a guilty conviction was analyzed. Therefore, this dataset only represents the court's recommendation of penalty for any one drug offense, not the final result of the case. This report acts an overview of court sentencing practices, which may or may not be representative of what actually occurs. Additionally, any pending cases were removed from analysis, and, as a result, we do not have a comprehensive view of drug offenses that resulted in a guilty convictions in select Indiana counties for 2017. The original intent of this report was to analyze criminal classification and sentence placement against a drug's weight, outlined in tables 3 and 4 above. However, due to the nature of how offense names were collected in the IPAC data, weights of drugs were not standardly present, therefore this portion of the study could not be conducted.

Drug offenses that met pre-existing structures, outlined in the tables above, were used for this analysis when a multitude of other drug offenses existed in the data. Therefore, this study should not be viewed as an all-encompassing review of drug convictions for this sample. For similar reasons, findings cannot be generalized to the whole state, considering only a selection of counties' data were analyzed.

Finally, the project was not able to adequately assess whether or not the decreases in penalties associated with drug offenses lead to an increase in recidivism in the counties in the study. Obtaining annual drug conviction data over a longer period of time would allow a recidivism study to be made possible. Following a recidivism study, local criminal justice professionals' claims may be fully analyzed to prove or disprove the claim that the criminal code may have negatively impacted an offender's ability to recover from substance use disorder due to the reduction in time they are required to serve for the crime that is more often than not associated with that disorder.

DISCUSSION

Indiana's criminal code and corresponding drug crime statute were revised throughout the early 2010s, with changes officially going into effect July 1, 2014. The ICJI, tasked to monitor and evaluate the criminal code reform, discovered that local criminal justice stakeholders believed the criminal code decreased the penalties associated with drug crimes, negatively affecting their communities. The results of this project confirm this claim in all respects. Penalties for dealing and possession drug offenses across all categories provided in this research generally decreased in severity in terms of criminal classification, associated time sentenced, and sentence placement. Additionally, felons and misdemeanants are being convicted differently than offenders under the legacy code, which is a direct effect of the

reform. As for the second aspect of the claim, data from this report suggest that dealing offenses pre-reform had an average advisory sentence of 14.3 years, while offenses post-reform had an average advisory sentence of 7.7 years. Possession offenses saw a similar decrease in average advised sentence time, down from 2.4 years pre-reform to 1.4 years post-reform. Thus, the average advisory sentences for both dealing and possession convictions decreased by about 50%, perhaps informing the increase in both dealing and possession offenses from 2013 to 2017. The increase not only affects public safety, but has financial and operational implications as well, outlined by local professionals in the qualitative components of the ICJI's research.

Overall, drug convictions increased when comparing 2013 to 2017, and are more often being handled in probation or community corrections. Dealing offenses in 2013 were typically given a Class B Felony criminal classification, or an advisory sentence of 10 years. Post-reform, dealing offenses are typically given an F2 (narcotics, cocaine and methamphetamine) or an F6 (marijuana and some controlled substances) criminal classification, or an advisory sentence of 17.5 years or 1 year. In terms of where offenders are sentenced, there was a marked change in number of offenders sentenced to jail, as they are more likely sentenced to probation and community corrections, and representation in prison increased slightly. As for possession offenses, criminal classifications were comparable pre- and post-reform, however, the advisory sentence changed from 1.5 years to 1 year for the felony classifications. Pre-reform prison and jail sentence were replaced by alternative sentencing post-reform.

In the past, Hoosiers obtained methamphetamine from make-shift labs within rural pockets of Indiana. Presently, the drug is being smuggled from other countries such as Mexico, and is sometimes mixed with fentanyl—a drug associated with many deaths in Indiana as well as the United States. Professionals consistently report that a rise in use of methamphetamine corresponds with the curbing of the opioid epidemic. Methamphetamine is now cheap and readily available, compared to opioids that are expensive and hard to access. This study demonstrates that possession of methamphetamine saw the largest increase in guilty convictions from 2013 to 2017. This finding aligns with the Indiana Prosecutor Case Management System's top 10 felony filings for 2017, where possession of methamphetamine ranked number 1. Possession of methamphetamine persisted as the number 1 felony filing in both 2018 and the first half of 2019 (January 1 to July 31) and had been the number 2 felony filing in 2015 and 2016. Additionally, results of this project indicate that one-fifth of all drug possession charges were possession of methamphetamine. Methamphetamine use is permeating Indiana's communities and has been for quite some time, reiterated by the findings of this report. In 2017, almost half of the methamphetamine-related offenses in the data set were associated with sentences to jail, and the remaining were split between prison and alternative sentencing. As a result, about three-fourths of these offenses are of local

responsibility, indicating that the burden on local communities is increasing. Furthermore, due to the reform, there will likely be little opportunity for counties to seek help from the Indiana Department of Correction, as 88% of all possession of methamphetamine offenses in the dataset are associated with an F6 criminal classification and the reform placed restrictions on sentencing low-level, nonviolent felons, or F6 offenders, to prison. Mental health and substance use providers working with criminogenic populations often reported in focus groups that not only are offenders screening positive for substance use disorder, but they are also coping with trauma,²² making their criminal case that much more complex. Local criminal justice professionals worry that increases in substance use resulting in justice involvement, coupled with a lack of (capacity within) mental health and substance use treatment services, perpetuates substance-related criminal activity.

As of October 2019, 33 states and the District of Columbia have legalized medical marijuana use, and 11 of those states, as well as D.C., have passed laws that allow adult recreational use.²³ Of those, two states in the Midwest (Michigan and Illinois) permit the sale of legalized recreational marijuana, inevitably affecting the increase of marijuana prevalence in the State of Indiana. The Treatment Episode Data Set (TEDS) collected from clients being admitted to substance abuse treatment indicates that from 2007 to 2017, Indiana exhibited a significantly higher percentage of treatment episodes reporting marijuana use and dependence compared to the rest of the United States. Roughly one-half of Indiana treatment admissions reported marijuana use and about one-fifth indicated marijuana dependence.²⁴ High supply, use, and dependence, intertwined with marijuana's illegality in Indiana, sets up the stage for increased convictions. Marijuana convictions increased substantially from 2013 to 2017, almost tripling in count. Dealing in marijuana saw the largest increase of all drug offenses in the sample coupled with an increase in prison, jail, and alternative sentencing. In 2013, the majority of dealing in marijuana charges were sentenced to prison, and in 2017, the majority are sentenced to jail. Additionally, possession of marijuana made up 30% of all drug possession charges, seeing a decrease in prison sentencing and an increase in jail and alternative sentencing. Like possession of methamphetamine, this decrease in penalty and shift in sentence placement means that local justice professionals are handling the majority of these cases, ill-equipped to support offenders' rehabilitation—the key to curbing the “revolving door” aspect of the system, especially in relation to drug offenses— due to the structural changes brought about by the criminal code reform as well as severe lack in local treatment systems. As identified by many groups studying Indiana's criminal justice system post-reform, these findings reiterate the fact that county jails are experiencing jail overcrowding issues, meaning that their facilities are at or above 80% capacity. However, professionals discussed that law makers' agreed upon decision

²² Trauma is defined by the [American Psychological Association](#) as an emotional response to a terrible event like an accident, rape, or natural disaster.

²³ [National Conference of State Legislatures](#), 2019

²⁴ [Substance Abuse Mental Health Data Archive](#), 2020

to alter the criminal code to make crimes have like punishments was a positive change. Therefore, this report reiterates professionals' plea for rehabilitation.

Drug offenses resulting in a misdemeanor criminal classification increased from 514 to 2113 from 2013 to 2017, where those in 2013 were solely A misdemeanors and those in 2017 were both A misdemeanors and B misdemeanors. All B misdemeanors present in the data are associated with marijuana offenses in 2017, a direct effect of the penalties for marijuana offenses decreasing as a result of the criminal code reform. According to the Indiana Prosecuting Attorney's Council, five of the top ten misdemeanor offenses are substance abuse related. It is emphasized that substance abuse is just as much of an issue for misdemeanants as it is for felons. However, there are minimal state resources available for misdemeanants, leaving their potential substance use disorder unaddressed and therefore increasing their likelihood of recidivating.

The criminal code reform established the Forensic Treatment Services Grants through the Family and Social Services Administration's (FSSA) Division of Mental Health and Addiction (DMHA). The grant program, known as Recovery Works, increases the availability of specialized mental health and addiction treatment and recovery services in the community for persons without insurance coverage who may otherwise face incarceration. DMHA officially launched the Recovery Works treatment program on November 1, 2015. Recovery Works is a voucher-based system that works with entities that are DMHA certified/licensed and demonstrate competency in the treatment of criminal justice populations. In fiscal year 2019, there were 13,492 unique participants enrolled in Recovery Works and \$19,777,789 expended for services to participants. While services are being provided to those who are incarcerated at a never-before-seen rate, there are specific stipulations for an individual to access this program. They must be a resident of Indiana who is at least 18 years of age who is a member of a household where the annual income does not exceed 200% of the federal income poverty line and entered the justice system as a felon or with a prior felony conviction.

In a presentation given in 2019, the Indiana Prosecuting Attorney's Council reported that adequately addressing substance use in Indiana called for two things—reducing demand and supply of drugs. In reducing demand, it was suggested that probation terms be expanded to “gently coerce users with diagnosed substance use disorder into treatment.” The JRAC and the ICJI also recommended in the most recent Evaluation of the Criminal Code Reform report that there should be a continued effort to enhance the accessibility of community-based mental health and substance use treatment programs that support the full range of needs for the criminal justice population, including recovery residences, medication assisted treatment, and behavioral health services. Findings from this report align with these recommendations.

