



# The Indiana Prosecutor

1st Quarter, 2019

## Examining Our 2018 Filing Data

### Some Thoughts...

By  
**David N. Powell**  
IPAC Executive Director



In this column I want to share some big picture data that explains, in part, issues driving local jail crowding and costs. In 2010, prosecutors filed 254,363 criminal cases. In 2015, those filings dropped almost 50,000 to 204,778. This past year, prosecutors filed 224,041 cases, an increase of 20,000 filings from the low point in 2015. What has happened since 2015 to increase filings? Can we determine what types of criminal behavior drove the increase? The answer is yes.

The steady increase in filing since 2015 involves almost exclusively Level 6 felony offenses. Misdemeanor filings and Murder through Level 5 felony filings have been essentially a flat line. The increase has come from Level 6 felonies which account for 14,000 out of the 20,000 new filings since 2015. The next largest increase was in Level 5 felonies which only increased by about 1,500 filings from 2015 to 2018. Level 6 felonies are driving the train on the sizable increase we're seeing.

The top 10 felonies prosecutors filed last year were all Level 6 felonies. The top 10 Level 6 felonies have remained constant since 2015. The top 10 filings totaled 30,881 in 2015 and those same top ten felony filings increased to 50,015 in 2018 – an increase of 20,000, or 177%, in four years. In 2018, Possession of Methamphetamine was the number one felony filed. If Possession of Methamphetamine continues to increase at the same pace the next four years, it will become our top filing offense overall exceeding the perennial number one offense in Indiana, Misdemeanor – Driving While Suspended.

Syringe possession was the number two felony filed in 2018. On Page 6 of this newsletter you will find two charts showing the top 10 felonies and top 10 misdemeanors for your review. These 20 crimes represent more than 50% of your workload statewide. The largest, single year jump we've seen since 2015 occurred between 2015 and 2016 when syringe possession jumped 214%. 2015 was also the year the Governor and the General Assembly authorized needle exchange. Filings for this offense have been flat since 2016.

Four of our top 10 felonies and six of our top 10 misdemeanors are substance abuse crimes. Substance abuse is likely a contributor in the remaining offenses. Clearly, we have a substance abuse crisis in Indiana. Additionally, none of the top 20 offenses filed can be sentenced to the Department of Corrections, except under limited circumstances. This has led to a strain on local jails and many of them are not able to be the treatment facilities people with substance abuse and mental health issues need.

Five counties have built new jails in the last four years (5,426 new beds and \$785 million dollars), four counties are in the process of building new jails and 33 counties are contemplating new jails. One could easily assume that if all of the counties thinking about new jails, build new jails, the local property tax cost could easily exceed \$1.5 billion dollars and that is without factoring in the \$500 Million Marion County is spending on its jail. How will local communities find the money? I have spent a lot of time speaking at conferences for local Commissioners and county officials and the issue of jail overcrowding and the resulting funding issue is a problem that comes up over and over.

There are a few bills moving this session that may help a little, but they are narrow in scope and do not address the larger problem of reducing substance abuse. My concern is that the competition for local tax dollars, which is extremely high already, will get worse. The same dollars needed to build new jails are also needed for local schools, infrastructure and day to day operations of county government.

Prosecutors as problem solvers and innovators, play an important role in this dialogue.

# Legislative Update

By **Lacey Berkshire**  
IPAC Legislative Counsel

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The end of the 2019 Legislative Session is in sight. We reached the halfway point at the end of February, when many of our legislative priorities passed handily out of their house of origin. During the second half of session, which runs until the end of April, the bills that passed the Senate will go to the House and vice versa, where they must once again go through the process of passing through a committee before a full chamber vote. Below is an update on several IPAC priority bills:

### Senate Bill 551: Victim’s Rights (Senator Mark Messmer, Representative Wendy McNamara)

One of our highest priority bills this session, Senate Bill 551, sailed through the Senate unanimously after some moderate changes and was recently approved in the House by a 92-4 margin. SB 551 provides a number of fixes that prosecutors have been advocating for over the years. A few of the highlights include: allowing parents to file protective orders against an adult they believe is grooming their child for sexual activity, creating strangulation enhancements, tightening penalties for violators of the sex offender registry, barring the release of confidential DCS files pertaining to child abuse cases until a verdict is reached, changing how sex crime victims are identified in court documents, and closing several loopholes in the child seduction and sexual misconduct with a minor statutes. The provision prohibiting

depositions of child sex crime victims was amended out of the bill and designated as a possible topic for a summer study committee. Since the bill has now passed both the Senate and the House, it heads to Governor Holcomb’s desk for signature.

### House Bill 1186: Synthetic Drugs (Representative Sharon Negele, Senator Mark Messmer)

Prosecutors are well aware of the serious issues synthetic drugs case in many communities throughout the state. House Bill 1186 was IPAC’s synthetic drug reform bill, which would, among other things, allow for synthetic drugs to be charged at the same level as the drug they are designed to mimic. HB 1186 passed the House 82-14 and the Senate unanimously without amendment and is awaiting the governor’s signature.

### Senate Bill 240: Intimidation (Senator Aaron Freeman, Representative Wendy McNamara)

Senate Bill 240 addresses the spike in school shooting threats and other violent threats Indiana has seen over the past few years. It does so by amending the intimidation statute, making it easier for prosecutors to charge someone who makes a threat to a school either directly via a phone call or a written message, or indirectly such as a public post made on social media. The bill states that a person commits intimidation if the threat places a person in fear that the threat will be carried out. SB 240 passed the House and Senate unanimously.

### Senate Bill 186: Traffic Crimes (Senator Eric Koch, Representative Wendy McNamara)

Senate Bill 186 is a measure IPAC and prosecutors have been working towards for a long time. The bill makes several improvements to OWI and other Title 9 crimes, including a newly created catastrophic injury enhancement. It also enhances the penalty for OWI causing death to a Level 4 felony in certain instances. It passed the Senate by a vote of 48-1 and the House 77-16. Because it was amended in the House Committee, it is now pending again in the Senate for approval.

### Senate Bill 279: Waiver to Adult Court (Senator Erin Houchin, Representative Wendy McNamara)

Senate Bill 279 was the response to the Noblesville school shooting that occurred on May 25, 2018. The case exposed a loophole in juvenile law, as the shooter was unable to be tried in adult court due to his age and the fact that the charge was attempted murder. The current statute only allows for juveniles under 14-years-old to be waived for murder. SB 279 would add attempted murder to the statute. The bill passed the Senate 45-3, but was not given a hearing in the House. The language was instead amended into House Bill 1114, which is currently waiting for a vote by the full Senate.

Thank you to the Legislative Committee for their work and to the many prosecutors who testified before the legislature this session on these and other important bills!

## Indiana Prosecuting Attorneys Council

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# News & Notes

## 30 Attend IPAC's Evidence Boot Camp

A group of 30 new prosecutors descended on Indianapolis earlier this month for Evidence Boot Camp, a one-day crash course on the Indiana Rules of Evidence designed to help prosecutors who are still new to jury trials. The course walks through a real-life case scenario with several potential pitfalls and legal challenges that students must work through in groups under the watchful eye of IPAC staff and seasoned prosecutors from around the state.

Throughout the day, students also heard lectures from Jim Oliver, IPAC's Criminal Law Chief and Chris Daniels, IPAC's Traffic Safety Resource Prosecutor. The lectures covered topics prosecutors have to deal with on a daily basis such as applicability and relevance, examining witnesses, hearsay and exhibits. The students were then encouraged to immediately apply what they learned in breakout groups.



Boot Camp students talk things over with Lawrence County Chief Deputy Bob Cline

## Calendar of Events

- **Trial Advocacy II - DV, Sexual Assault**  
April 16-18  
Bloomington
- **Voir Dire Training**  
May 3  
Indianapolis
- **Spring Seminar**  
May 17  
Indianapolis
- **Trial Advocacy II - Drug Prosecution**  
May 22-24  
Indianapolis
- **Child Support Conference**  
June 4-7  
Indianapolis
- **IPAC Summer Conference**  
June 19-21  
Michigan City
- **Trial Advocacy I - Drunk Driving**  
August 20-22  
Indianapolis

## Jarrold Holtsclaw 2019 Association President

The start of 2019 also saw the beginning of Jarrod Holtsclaw's tenure as President of the Association of Indiana Prosecuting Attorneys, Inc. Holtsclaw, who served as President-Elect in 2018, was officially chosen during IPAC's Winter Conference. Holtsclaw has been the elected in Greene County since 2007 and was recently elected to his 4th term. He takes over for Ric Hertel, who served as President in 2018. Joining him as Association officers are President-Elect Pat Harrington, Tippecanoe County, Vice President Amy Richison, Huntington County and Secretary/Treasurer Lee Buckingham, Hamilton County.



Newly elected Association President Jarrod Holtsclaw presents 2018 President Ric Hertel with a plaque at the 2018 Winter Conference



Plenty of legislators attended IPAC's Legislative luncheon in January to talk with their local prosecutors. Pictured (top) Marion County Prosecutor Terry Curry and Sen. Aaron Freeman and (bottom) Madison County Prosecutor Rodney Cummings and Sen. Mike Gaskill.

# Advocating for Change

One of the keys to getting important legislation through the General Assembly is the conversations local prosecutors have with their legislators. Prosecutors coming to the Statehouse and testifying on behalf of bills is also an important factor in the legislative process. Below are just some of the prosecutors who testified, either on their own behalf or for IPAC this session. (Clockwise from top, Pat Harrington, Tippecanoe County, Lee Buckingham, Hamilton County, Loren Delp, Hendricks County, Jeremy Mull, Clark County and Terry Modesitt, Vigo County)



# IV-D Crash Course for New Prosecutors

By Amy Burgher  
IPAC Child Support Analyst

IPAC recently completed a day and a half of specialized training for new prosecutors regarding the nuances and requirements of the Title IV-D child support program. The training, held February 21 and 22, at the Sheraton at Keystone Crossing, served 56 students with a faculty of about 20 experienced attorneys and administrative staff from nine counties, the Child Support Bureau (CSB), and IPAC. Tallyed up, there was almost 500 years of child support experience in the room.

After a warm welcome from Chris Naylor, the IPAC Assistant Executive Director, the training kicked off with an overview of the Title IV-D program, led by Cynthia Longest, Director of the Child Support Bureau, and Karla Mantia, IPAC's Title IV-D Policy Liaison. This session provided the foundation and history of the program and highlighted the many partners and resources that are available to prosecutors to ensure successful program performance.

Financial quality assurance was another very important subject for the students, especially those directly involved in the preparation of budgets and submission of monthly and quarterly financial reports to the CSB. John Mallers, Assistant Deputy Director, Financial Quality Assurance, reviewed the various sources of funding for local offices, including incentive funds and federal financial participation for reimbursement of expenses. John also provided a number of guidance documents to the students, including very important requirements related to payment of county supplements to elected prosecutors and state-paid deputies. Deb Faut, a consultant from Sequoia Consulting Group, also presented a brief overview of the process for elected prosecutors and state-paid deputies to report their direct time spent on Title IV-D activities, which allows the Supreme Court to draw down additional federal funds that are then shared with IPAC and the Supreme Court. IPAC uses these funds to provide support to prosecutors,

including, but not limited to training, technology, and support of the Title IV-D program.

The students also received a vast amount of knowledge from a panel of seven seasoned deputy prosecutors and caseworkers. That discussion included suggestions for distribution of establishment and enforcement responsibilities among specialized units, which requires caseworkers to be knowledgeable in all aspects of the program. Special thanks to Michael



IPAC Assistant Executive Director Chris Naylor welcomes attendees to the conference

McGuire II, Marion County; Rochelle Moody, Lake County; Tammie Johnson, Allen County; Ethan McKinney, St. Joseph County; Robert Bishop, Kosciusko County; April Graper, Gibson County; and Wendy Whitehead, Decatur County for being on this panel.

Having established some basic foundational information about the Title IV-D program, students were then submersed in the nitty gritty details of establishing paternity and obtaining child support orders, and under what conditions those orders should be modified, including periods of extended incarceration. This session was led by deputy prosecuting

attorneys, Laura Bernacki Stafford, Porter County; Kristina Armstrong, La Porte County; and Robert Bishop, Kosciusko County. David Morris, Senior Deputy Prosecuting Attorney from Marion County, followed up with an extensive review of the administrative enforcement remedies that are in the prosecutor's IV-D tool box.

Security and confidentiality is another very important matter where prosecutors need to be fully informed, and Paul Kreitl, CSB Security Manager, explained the requirements to protect the confidential and personal information that is stored within the ISETS computer system and local case files.

The second day of the training kicked off with IPAC's staff attorney, Bill Welch, providing a very interesting, and entertaining, ethics presentation. Never one to let down the audience, Bill pulled out all the stops in finding "real life" actors from the IPAC staff to create short video clips to demonstrate the pitfalls a deputy prosecutor needs to be on the lookout for. Bill covered the importance of clearly defining the relationship between the IV-D applicant and the office staff, particularly the child support deputy prosecutor, from the outset of the case.

Moving deeper into the enforcement responsibilities of the IV-D office, Ethan McKinney and Sarah Troyer, from St. Joseph County, reviewed the process of filing civil contempt actions and the review hearings or proceeding supplemental actions that typically follow. They also reviewed negotiating agreements, sanction hearings, and the statute of limitations, as well as what judicial actions are appropriate when a case is only open for the collection of support arrearages and not current support. Deputy prosecutors Matthew Raper, St. Joseph County, and Robert Bishop, Kosciusko County, followed with a session on criminal nonsupport.

From Page 1: A list of the Top 10 Misdemeanor and Felony filings from the past four years.

# Top Ten Misdemeanor Filings, 2015-2018

	2015	2016	2017	2018
1	Driving While Suspended, AM 19,196	Driving While Suspended, AM 20,637	Driving While Suspended, AM 22,822	Driving While Suspended, AM 22,758
2	OWI-Endangerment, AM 13,948	Possession of Marijuana, BM 14,944	Possession of Marijuana, BM 18,675	Possession of Marijuana, BM 20,695
3	Theft, AM 13,438	OWI-Endangerment, AM 14,402	Paraphernalia Possession, CM 16,557	Paraphernalia Possession, CM 17,758
4	Possession of Marijuana, BM 11,142	Paraphernalia Possession, CM 13,296	OWI-Endangerment, CM 15,369	OWI-Endangerment, AM 15,231
5	Operating Never Licensed, CM 7,209	Theft, AM 12,798	Operating Never Licensed, CM 11,837	Theft, AM 11,843
6	Battery, Bodily Injury, AM 8,473	Operating Never Licensed, CM 10,841	Theft, AM 11,735	Operating Never Licensed, CM 11,814
7	OWI .15 or More, AM 7,209	OWI .15 or More, AM 7,393	OWI .15 or More, AM 7,630	Domestic Battery, AM 7,987
8	OWI .08 or More, CM 5,784	OWI, CM 5,976	OWI, CM 7,197	OWI, CM 7,825
9	Domestic Battery, AM 5,782	OWI .08 or More, CM 5,743	Domestic Battery, AM 6,824	OWI .15 or More, AM 7,481
10	OWI, CM 5,701	Resisting LE, AM 4,917	Battery, Bodily Injury, AM 6,435	Battery, Bodily Injury, AM 6,066

# Top Ten Felony Filings, 2015-2018

	2015	2016	2017	2018
1	Theft with Prior, F6 5,010	Syringe Possession, F6 7,079	Possession of Meth, F6 9,510	Possession of Meth, F6 11,606
2	Possession of Meth, F6 4,194	Possession of Meth, F6 6,304	Syringe Possession, F6 8,791	Syringe Possession, F6 8,763
3	Theft, \$750-\$50k, F6 3,933	Theft with Prior, F6 5,292	Theft with Prior, F6 5,247	Theft with Prior, F6 5,211
4	Domestic Battery, F6 3,394	Narcotics Possession, F6 4,518	Common Nuisance, F6 5,184	Narcotics Possession, F6 4,641
5	Narcotics Possession, F6 3,374	Theft, \$750-\$50k, F6 3,802	Narcotics Possession, F6 4,817	Domestic Battery, F6 4,435
6	Strangulation, F6 2,488	Auto Theft, F6 2,572	Dom. Battery, Child Present, F6 3,847	Common Nuisance, F6 4,174
7	Common Nuisance, F6 2,275	Strangulation, F6 2,454	Theft, \$750-\$50k, F6 3,719	Theft, \$750-\$50k, F6 3,787
8	Syringe Possession, F6 2,250	Residential Entry, F6 2,081	Auto Theft, F6 2,743	Strangulation, F6 2,842
9	Auto Theft, F6 1,985	Common Nuisance, F6 2,015	Resisting LE with Vehicle, F6 2,117	Resisting LE with Vehicle, F6 2,437
10	Residential Entry, F6 1,978	Resisting LE with Vehicle, F6 1,924	Residential Entry, F6 2,095	Residential Entry, F6 2,119

# Media Quotes of Note

## Senate set to consider juvenile waiver bill

"He made those shots at people multiple times with the intent to kill them. It was only because the doctors kept them alive that he was not sent to the adult system."

**Lee Buckingham**  
Hamilton County  
Indiana Lawyer  
January 21, 2019

## Answers still elusive in Delphi murders

"This is not a cold case, this case is not closed. We are not done with this investigation. There are countless people working on this every day."

**Nick McClelland**  
Carroll County  
CBS 4  
February 13, 2019

## Road rage can't be charged as hate crime

"We've said on many occasions, too many occasions in fact, that hate and crimes motivated by hate are real. Those of us who listen to our neighbors understand that this is an unfortunate reality in our state"

**Terry Curry**  
Marion County  
NUVO  
February 27, 2019

## Indiana Legislature passes bill aimed at protecting crime victims

"For too long, the system has been tilted toward affording criminals more and more rights at the expense of victims. Any time that victim rights are addressed by the legislature and enacted into law, I think that's a good thing."

**Jeremy Mull**  
Clark County  
WDRB  
March 20, 2019

## Howard County to get magistrate

"We do have a situation where we need to get individuals into treatment facilities, not incarcerated, unless they need to be incarcerated and get them services versus them sitting there for what we call minor offenses or revocation of probation. They could be being treated and back into society and addressing the problems that got them there in the first place."

**Mark McCann**  
Howard County  
Tribune Star  
April 3, 2019

## Modesitt testifies for tougher homicide penalties

"We're out on the front lines every day. When a crime occurs, we are meeting with the families and we have to explain to them that you're looking at a range of penalty on reckless homicide of one to six years. I say that's an injustice."

**Terry Modesitt**  
Vigo County  
Tribune Star  
January 29, 2019

## Animal abusers get their pet back? Bill to stop that advances

"This is an area where we can convict someone of killing an animal and then they can go out and get another animal. We need to fix that."

**Pat Harrington**  
Tippecanoe County  
Journal & Courier  
January 31, 2019

## Hancock County hires new deputy prosecutor

"We are swamped, we are swimming upstream. When you are doing too many things, you cannot devote time and attention to one thing."

**Brent Eaton**  
Hancock County  
CBS 4  
February 27, 2019

## School superintendent resigns after using her health insurance for student she claimed was her son

"I understand it was her desire to help a young man that was in bad shape but probably not the best example to set for young people to assume other identities and make false statements."

**Rodney Cummings**  
Madison County  
NBC News  
February 22, 2019



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