

INDIANA'S JUSTICE REINVESTMENT JOURNEY: A REVAMPED CRIMINAL CODE

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Indiana's criminal code was last overhauled in the 1970s. In 2009, the Indiana General Assembly created a bipartisan commission for the broad purpose of evaluating the criminal code. The commission included representatives from all three branches of state government as well as prosecuting attorneys, public defenders, and other state-level correctional leaders.

The commission, known as the "Criminal Code Evaluation Commission" (CCEC), examined Indiana's criminal laws to evaluate the basic principles of:

- 1) Consistency;
- 2) Proportionality of penalties;
- 3) Like sentences for like crimes;
- 4) Elimination of duplication;
- 5) Increased certainty regarding the length of sentence to be served; and
- 6) Sentencing scheme designed to keep dangerous offenders in prison but avoid using scarce state prison space for nonviolent offenders. The CCEC met during the summers of 2010, 2011, and 2012.

During the same time period the CCEC was meeting, a state-level ad hoc task force was created, known as the "Justice Reinvestment Project." This task force included representation from all three branches of government, and aided by the Council of State Governments and the Pew Foundation, a project partially sponsored by the U.S. Department of Justice. Indiana's Justice Reinvestment Project proposed to make certain targeted changes to Indiana law with the purpose of enhancing public safety by managing lower-level offenders in the community, freeing up prison space for more dangerous offenders, and re-investing the savings from the project in the communities to fund improved probation practices for lower-level offenders. The recommendations stemming from this task force were presented to the CCEC.

In December of 2010, the CCEC adopted the recommendations of the Indiana Justice Reinvestment Project, however, no legislation was passed in 2011 establishing the recommended changes. There was opposition to proposed legislation in the 2011 session of the Indiana General Assembly, in part based on the fact that the comprehensive review of Indiana's Criminal Code by the CCEC had not yet been completed. To move this project forward, the CCEC formed a "work group" with additional outside support from attorneys, state judicial and executive branch agencies, and the Office of the Indiana Attorney General. Some limited legislation was passed in 2012 that reflected certain recommendations of the Justice Reinvestment Project and by July of 2012, the CCEC filed its final report, (*CRIMINAL CODE EVALUATION COMMISSION: REVIEW OF CRIMINAL CODE*).

Based on the recommendations of the CCEC, which included recommendations of the Justice Reinvestment Project, the Indiana General Assembly adopted legislation in 2013, 2014, and 2015 that updated Indiana's criminal code pursuant to the six principles established by the CCEC.

House Enrolled Act (HEA) 1006 of 2013 was the broad wholesale overhaul of the Indiana criminal code. The new criminal code moved four felony classes (A,B,C,D) to six felony levels (Level 1, signifying the most serious crimes, through Level 6, the least serious). The new code was designed to give judges more discretion in sentencing, to both make penalties more proportional and to strengthen penalties for the most serious crimes.

The new code was to go into effect on July 1, 2014 to give the criminal justice system entities time to prepare for the changes. However, although this was a budget year, there were no specific budget appropriations to move Indiana forward with “justice reinvestment.”

The criminal code was further modified in 2014 when the General Assembly changed the laws to require felony levels 1-5 to serve a minimum of 75% of the sentence, and Level 6 felons and misdemeanants to serve a minimum of 50% of the sentence. Some labeled this change “truth in sentencing,” however, the credit time and good time credit calculations caused confusion.

The year 2015 marked a significant change. The General Assembly again modified the criminal code with substantive changes and concurrent budgetary appropriations. Credit time and good time credit levels were changed and clarified, with the most serious offenses such as sex offenses against children receiving the least amount of good time credit (serve six days to earn one day good time credit). One of the most significant changes made was to remove the lowest felony level from eligibility to serve sentences in prison. Effective January 1, 2016, Level 6 felons are no longer eligible to be committed to the Department of Correction with a few exceptions [Note: a Level 6 felony is the lowest level of felony in Indiana, carrying a penalty upon conviction of a fixed term between six (6) months and two and one half (2 1/2) years in prison and a fine of up to \$10,000]. This portion of the statute revision was designed to keep low-level offenders in local communities where they will have better access to mental health and substance abuse treatment as well as rehabilitative programming.

To help Indiana counties prepare for the increase in Level 6 felony offenders that will remain in local communities, the General Assembly appropriated \$55 million in new monies to fund grant programs over the next two years. The grant funding is divided between the Department of Correction’s (DOC) community corrections grant program and the Family and Social Services Administration, Division of Mental Health and Addiction (DMHA). The DOC received \$5 million for State Fiscal Year (SFY) 2016 and \$20 million for SFY 2017, which is available for evidence-based and technology-based programs for moderate and high-risk felony offenders on community supervision with probation and/or community corrections [Note: In Indiana, probation is a judicial branch agency operated and funded by local courts at the county level, community corrections programs are operated at the county level by statutorily-defined advisory boards and parole is operated by the DOC]. The DMHA received \$10 million in SFY 2016 and \$20 million in SFY 2017, which is available for evidence-based mental health and addictions treatment as well as wrap-around services for persons currently charged with a felony offense or currently charged with a misdemeanor offense but with a previous felony conviction.

The General Assembly expected that the new criminal code would reduce DOC’s costs; therefore, the new law provides that up to \$11 million in DOC cost savings per year which may be reinvested in community corrections grants. Community corrections programs, probation departments, court recidivism reduction programs (such as problem solving courts), and prosecutor diversion programs, through a collaborative effort, are eligible to apply for the DOC community corrections grant funds.

The DMHA developed a voucher system, known as “Recovery Works,” to distribute its grant funding to designated forensic treatment providers. The vouchers will reimburse mental health and addictions treatment providers for services provided to qualified offenders.

Indiana’s new law also created a new statewide council, the Justice Reinvestment Advisory Council (JRAC). The council is charged with conducting state level reviews and evaluations of local corrections programs, advising the DOC and DMHA on grant awards, reviewing programming and interventions funded by grant awards, and suggesting areas/programs for future grants. The law specifies the membership of the nine-member council which consists of leadership from the executive and judicial branches of state and local government and includes as voting members the president of the Probation Officers Professional Association of Indiana (POPAI) and the president of the Indiana Association of Community Corrections Act Counties (IACCAC).

Inclusion of probation and community corrections leadership is significant as it allows actual community supervision practitioners to have a voice at the table. The goal of the JRAC is to develop incarceration alternatives and recidivism reduction programs at the county and community level. This council was designed to serve as the ongoing accountability piece for the justice reinvestment project. Agencies that receive DOC or DMHA funding will be required to report recidivism rates of participants and overall success rates of programs. In addition, DOC, DMHA and the Advisory Council will oversee funded programs to ensure adherence to evidence-based practices, collaboration with criminal justice partners and avoidance of service duplication.

The JRAC published its first annual report on October 1, 2015. A great deal of work lies ahead for the State of Indiana as we implement “justice reinvestment.” With the new Indiana code, the significant financial investment of the General Assembly, and the infrastructure of the JRAC to provide leadership and accountability, the pieces are in place to implement long-term change in the criminal justice system.

Additional information on the JRAC and the DOC and DMHA funding opportunities is available on the [Indiana Judicial Center website](#) at [Justice Reinvestment Advisory Council](#).

For additional information on this topic, you may also contact the author at (812) 349-2648 or at lbrady@co.monroe.in.us.

REFERENCES:

- 1) Indiana Criminal Code Evaluation Commission. *CRIMINAL CODE EVALUATION COMMISSION: REVIEW OF CRIMINAL CODE*. [CCEC Report 2012](#)
- 2) [Justice Reinvestment Advisory Council Annual Report October 1 2015](#)
- 3) [\\$55M Grant Program Working to Keep Low-level Criminals Out of Prison](#), *Indiana Court Times*, Nov/Dec 2015.