

New era in criminal justice begins today

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At midnight, everything changed for criminal justice officials in Indiana.

Today, the state’s first overhaul of the criminal code in nearly three decades goes into effect, with state officials hoping it both eases the strain on the Department of Correction’s resources and helps reduce recidivism.

But will the state’s hopes become reality? That’s the big question local criminal justice systems are asking.

No one knows what will happen now that sentencing goes from an A through D classification system for felons to a 1 through 6 level system. And no one’s quite sure what giving tougher sentences will do to the state’s prison and jail system.

One thing they do know is that whatever happens, there’s going to be no guaranteed additional funding from the state — for now at least.

“All other states that have done justice reinvestment have set aside money — Indiana has done nothing yet,” said Linda Brady, chief probation officer for Monroe County. “I keep saying ‘yet,’ because I’m hopeful.”

The code updates provide for two possible funding mechanisms. Sheriffs can receive a per diem and medical expense reimbursement for Level 6 felony offenders — the least serious level of felony crimes — with a release date of less than 90 days. Starting June 30, 2015, the reimbursements include Level 6 felony offenders with a release date of less than 366 days. Both are subject to approval by the state budget agency.

The most funding could come from savings realized by the Indiana Department of Correction. The law allows for \$11 million in grants to community corrections and probation departments if the Department of Correction realizes cost savings from felony diversion. If there are no savings, there will be no grants.

“The way the law is written, there has to be saved costs,” Brady said. “Even if there is \$11 million in savings, there’s 92 counties that have extra work. We know that the burden will be on counties.”

Most of the burden will come because the number of low-level felony offenders sent to the state

Felony classifications and sentencing ranges

Example of offense	Former sentence ranges			Ranges effective today		
	Felony	Sentencing range	Advisory sentence	Felony	Sentencing range	Advisory sentence
Auto theft	Class D	6 mo.–3 yrs.	1.5 yrs.	Level 6	6 mo.–2.5 yrs.	1 yr.
Burglary	Class C	2–8 yrs.	4 yrs.	Level 5	1–6 yrs.	3 yrs.
Arson	Class B	6–20 yrs.	10 yrs.	Level 4	2–12 yrs.	6 yrs.
Aggravated battery	Class B	6–20 yrs.	10 yrs.	Level 3	3–16 yrs.	9 yrs.
Voluntary manslaughter	Class A	20–50 yrs.	30 yrs.	Level 2	10–30 yrs.	17.5 yrs.
Aggravated rape	Class A	20–50 yrs.	30 yrs.	Level 1	20–40 yrs.	30 yrs.
Murder	Murder	45–65 yrs.	55 yrs.	Murder	45–65 yrs.	55 yrs.

Felony sentences

department of correction will be limited. Those felons will remain at the county level, possibly making already crowded jails and community corrections programs even more so.

And while Monroe County is preparing for the worst, the truth is no one is quite sure what will happen once the code changes take effect.

“There’s not really much planning you can do,” said Monroe County Commissioner Iris Kiesling. “We’ve got the best community corrections in the state, even though they don’t get any extra money. The pressure will be more on them than on anyone else.”

What the law says

The biggest change to the code is the felony classification system. Though there are similarities between the new system and the old system, the new system gives judges a little more discretion.

For example, in a sexual battery case, a person could be charged up to a Class C felony, which would carry a sentence of between two and eight years, with a recommended sentence of four years. Now, a sexual battery charge could be up to a Level 4 felony, with a sentence range of two to 12 years and a recommended sentence of six years.

While that may not seem like a huge change, persons convicted of Level 1-5 felonies now will serve a minimum of 75 percent of their sentence, up from 50 percent under the previous law. So now, a person with a six-year sentence will serve 4.5 years of his or her sentence, instead of three.

Monroe County Prosecutor Chris Gaal said the change to sentencing might be both the most significant difference and the most difficult for those doing the charging and the sentencing to process.

“We’re so used to thinking of things as A, B, C, D,” Gaal said, noting that at first people will want to find the equivalent sentence between the old and the new system. “You can’t really do that.”

Gaal said the law was a “mixed bag,” full of lots of things, such as additional discretion for judges, that make justice officials happy and other things, like some of the home detention changes, that don’t. Those on home detention will only serve 50 percent of their sentence if they get “good time” credit, as opposed to the 75 percent those in jail will serve.

One thing that should start playing out immediately is the sentencing options.

The old code was rigid and didn’t necessarily allow judges to consider all factors presented to them in deciding a sentence, said Judge Kenneth Todd.

Judges now have the ability to suspend any part of a Level 2 or Level 3 felony dealing with a controlled substance. They also may sentence those with Level 5 or Level 6 felonies to pretrial diversion programs.

“Having the ability to tailor sentences will eliminate some results that were unduly harsh,” Todd said.

The flexibility should make sure that serious offenders are going to jail for longer periods of time, and minor offenders will get the chance for rehabilitation in alternative programs, according to local criminal justice officials.

Probation and community corrections

County probation has applied for a grant to start mental health and veterans’ courts, a pilot program for offenders with a high risk to reoffend or with high needs, freeing up staff to take up what is likely to be an influx offenders into the department, Brady said.

“We know we’re going to get more (offenders),” Brady said. “The numbers — that’s a mystery.”

The department is hoping that aggressively applying for grants will help get more services for those who need them. If grants aren’t available, the burden will fall to the judges to figure out what exactly to do with the offenders, Brady said.

“We’re dedicated to make the best of it, but we might need some help,” said Tom Rhodes, assistant chief probation officer and director of Monroe County community corrections.

Monroe County sends few offenders straight to the Department of Correction, and alternative jail programs are often the first choice for judges. From July 1, 2012, to June 30, 2013, the department sent 111 Class D felony offenders to the department of correction, most of whom violated their probation, out of 125 total sent to the state, according to numbers provided by Rhodes.

This means that 89 percent of Class D offenders, a classification which would now be Level 5 or 6, were given the chance to go through alternative programming first, and ultimately sent to the Department of Corrections.

“We try not to be punitive; we try to restore somebody,” Rhodes said.

But sending violators to the state will be a limited option now.

Beginning July 1, 2014, those with less than 90 days left to serve cannot be sent to a state facility unless they have violated a condition of probation, parole or community corrections by committing a new offense; beginning July 1, 2015, those with less than one year cannot be sent, unless they have committed a new offense.

“Where this all could burden us with felons is if they violate and don’t have enough time left, where are they going to go? Our jail,” Rhodes said.

The jail

In the past 20 years, the words “crowding” and “Monroe County Jail” have often been used regularly together.

Sheriff Jim Kennedy said a new jail is needed and could be needed sooner than some think if the changes to the criminal code force the jail over the federally mandated cap it is under.

In 2009, an agreement between the American Civil Liberties Union of Indiana and local officials — the result of a class action lawsuit against the county for crowding the jail with too many prisoners — set a population cap for the facility at 278. The cap is set to expire in October.

The county jail was built to hold just more than 130 inmates; based on the current population of Monroe County, the jail should be able to hold 350, Kennedy said.

“We’ve kept it below the cap all except for two days two years ago,” Kennedy said. “But there are people who are out that should be in.”

Todd agreed that because of the cap, people are being released who probably would not have been in the past, and that it is becoming a matter of increasing importance.

There’s an obvious solution, in Todd’s view: Build a 24/7 fully staffed community corrections center.

“Having sufficient tax revenue to support the ongoing staffing of a facility has always been the problem,” he said.

County Commissioner Julie Thomas said there are possibilities of what could happen, but they are not necessarily guaranteed to happen. The county has twice attempted to build a corrections or justice campus before plans petered out.

County council member Marty Hawk said that previous discussions were under the threat of a lawsuit, and noted that type of building will take money that the county simply doesn’t have.

“It’s easy enough to say, but this is not a checkers game or something of the sort where you just move things around,” Hawk said. “I hope that these changes at the state will not cause this (need for a new jail) to happen any quicker.”