

155828

**FINAL REPORT
OF THE
INTERIM STUDY COMMITTEE⁷
ON
CORRECTION ISSUES**

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U.S. Department of Justice
National Institute of Justice

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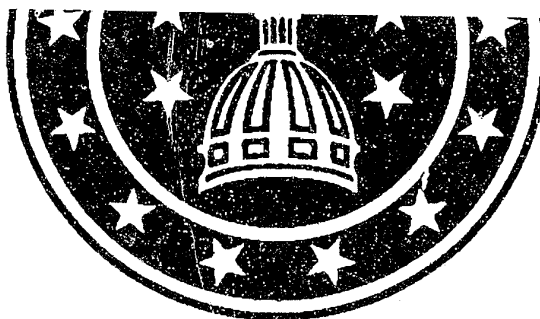
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November, 1994

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FINAL REPORT

I. LEGISLATIVE COUNCIL DIRECTIVE

The Legislative Council directed the Committee to study the efficacy of the state's correctional programs

II. INTRODUCTION AND REASONS FOR STUDY

Funding for Indiana's prisons is a significant portion of the state budget. The growing number of offenders incarcerated in the Department of Correction facilities has increased pressures on the state to provide meaningful work and learning experiences for offenders. In addition, a significant number of these offenders have served time in prisons either in Indiana or in other states for prior criminal convictions. Consequently, the legislative council asked this Committee to examine in more detail the types of programs that the Department of Correction provides for its offenders and how well that these programs are working.

III. SUMMARY OF WORK PROGRAM

The Committee met five times during the course of the interim.¹

June 30, 1994: The Committee met at the Wabash Valley Correctional Institution where the Committee received an overview of the condition of Indiana's correctional programs from the Commissioner of the Department of Correction, Christian Debruyne. The Committee also toured the facility.

August 1, 1994: The Committee met in the Statehouse to review in greater detail the educational, substance abuse, and transitional programs that were provided by DOC staff. The Committee members also requested additional information concerning aspects of the prison population. In the second half of the meeting, representatives from several community correction programs described their current programs and statutory issues that they would like the Committee to examine in further detail.

August 31, 1994: The Committee met at the Indiana Girls' School to hear testimony from the Department of Correction about the juvenile programs that DOC is currently developing. The director of the Indiana Juvenile Justice Task Force also testified about the problems with developing local programs for juvenile offenders. The Committee also examined some statutes that permit offenders to be released at an earlier date from incarceration if they complete certain educational programs or substance abuse programs. The Committee also toured the facility.

October 13, 1994: The Committee met in the Statehouse to hear testimony concerning probation officers workload standards, national trends concerning corrections and juvenile crime issues, and the potential application of transcendental meditation for offenders incarcerated in Indiana's prisons.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the Statehouse, Indianapolis, IN. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies.

November 21, 1994: During the fifth and final meeting, the Committee reviewed preliminary drafts and decided on those that would be recommended to be introduced during the 1995 General Assembly.

IV. SUMMARY OF TESTIMONY

At the Committee's first meeting, Chris DeBruyn made a presentation to the Committee concerning the state of Indiana's correction system. In his presentation, he addressed the following topics: juvenile programs; overcrowding problems with the Indiana Boys' School; waiving juveniles to adult court; elderly offenders; education programs; recidivism rates; offender population forecast; problems with early release statutes; work release; and other transition programs.

At the Committee's second meeting, the Committee heard from the following persons:

Christi Megna, Staff Attorney to the Committee, and Mark Goodpaster, Fiscal Analyst to the Committee, presented staff reports to the Committee

The following staff directors described aspects of programs that the Department of Correction offers to its offenders concerning state mandated transitions programs; DOC's efforts to comply with the state's sex offender registry law; and DOC's educational programs and drug rehabilitation programs:

- Ed Cohn, Deputy Commission for Social Services
- Tom Richards, Director of Social Services
- Stuart Sharpe, Director of Education Programs
- Jerry Vance, Substance Abuse Director

These individuals described aspects of the community correction programs that are operated at the local level.

- Robert Ohlemiller Deputy Commissioner of Community Service Division
- Ralph Watson, Director of the Hamilton County Community Corrections Program
- Julie Van Arx, Marion County Community Corrections Program:
- Diane MacMurray, Johnson County Community Corrections Program:
- Greg George, Chief Probation Officer, Monroe County

At the Committee's third meeting, the Committee heard testimony from the following individuals concerning juvenile issues in Indiana:

- Evelyn Ridley-Turner, Deputy Commissioner for Juvenile Programs Department of Correction:
- Ron Dougherty, Juvenile Classification Analyst, Department of Correction:
- Ron Lefler, Juvenile Parole, Department of Correction:
- Dave Uberto, Superintendent of the Indiana Girls' School
- Kevin Moore, Superintendent of the Indiana Boys' School:
- Jim Miller, Executive Director, Indiana Juvenile Task Force,

The following individuals testified to the Committee concerning the issues of early release of offenders:

- Rich Waples, the Legal Director for the Indiana Civil Liberties Union (ICLU), and
- Larry Landis, Executive Director, Indiana Public Defenders Council

At the fourth meeting, the Committee heard from the following individuals concerning selected issues:

- Jeff Bercovitz, Director of Probation and Juvenile Services at the Indiana Judicial Center, testified to the Committee about probation issues.
- James Austin, National Council on Crime and Delinquency, described the trends that are occurring in the criminal justice system and his perceptions concerning corrections issues in Indiana.
- Dr. Mike Tomkins, Associate Director of the Institute for Science, Technology and Public Policy, Maharishi International University, Fairfield, Iowa described the potential use of transcendental meditation in DOC programs across the state.

V. Issues

A. Credit for Early Release

Three sections of the Indiana Code permit the prison length of offenders to be reduced for good behavior, for completing certain educational programs and if the sentencing court determines that certain conditions have been met and that the offender has attained a certain amount of rehabilitation.

Good Behavior: Credit time is subtracted for an offender's sentence based upon the offender's good behavior during incarceration. Under IC. Code 35-50-6-3, there are the following three categories of credit time:

- (1) A person assigned to Class I earns one (1) day of credit time for every two (2) days he is imprisoned for a crime or confined awaiting trial or sentencing.
- (2) A person assigned to Class II earns one (1) day of credit time for every two (2) days he is imprisoned for a crime or confined awaiting trial or sentencing.
- (3) A person assigned to Class III earns no credit time.

Earned Credit Time for Successful Completion of Educational Degree: IC 35-50-6-3.3, enacted in 1993, allows a person who is in credit Class I to earn credit time for successfully completing any of the following:

- (1) A General Equivalency Degree/six (6) months credit time.
- (2) A High School Diploma/one (1) year credit time.
- (3) An Associate's Degree/one (1) year credit time.
- (4) A Bachelor's Degree/two (2) years credit time.

The maximum amount of credit time a person may earn under this statute is the lesser of four (4) years or one-third (1/3) of the person's total applicable credit time.

Petition for Modification of Sentences: IC 35-38-1-23, enacted in 1991, permits a person to petition the sentencing court for a reduction of sentence if the person has successfully completed any of the following:

- (1) An Educational Program.
- (2) A Vocational Program.
- (3) A Substance Abuse Program.

Under IC 35-38-1-23, a person may petition the court for a reduction in sentence if the person has successfully completed an educational program, a vocational program, or a substance abuse program. The court may reduce the person's sentence if the court finds that the reduction is in the best interests of justice and the following conditions exist: (1) the person has been sentenced to more than four (4) years imprisonment; (2) the person is in credit Class I; (3) there are less than two years remaining until the person's earliest possible release date computed by including Class I credit time; and (4) the person has demonstrated a pattern of behavior consistent with evidence of rehabilitation. The court may grant or deny the petition without a hearing.

Issues:

1. Problems with the Computation of Earned Credit Time and Good Behavior Time:

The Department of Correction interprets IC 35-50-6-3.3 by adding any credit time that an offender earns by completing a degree or a certificated program to the credit time that the offender earns for good behavior. As an example, if an offender having an eight year sentence that begins January 1, 1995 completes a series of programs that would give these offenders two additional years of earned credit time, the earliest release date as determined by DOC would be December 31, 1997. The Indiana Civil Liberties Union, which is representing offenders in a class action suit against DOC in this matter, has advocated that DOC should apply this additional credit time to the earliest possible release date that an offender would have. Under this interpretation, offenders earning two years of credit time would be released on December 31, 1996 instead.

During the August 31 meeting of the Committee, Rich Waples of the Indiana Civil Liberties Union told the Committee that almost 900 offenders are currently affected by how this statute is interpreted. Under the current practice, DOC deducts the earned credit time from the fixed term of imprisonment and then applies the "good time" credit (in which one day is deducted from an offender's sentence for each day served where good behavior is displayed). Mr. Waples told the Committee that the ICLU recommends deducting the earned credit time from the earliest possible release date after the offender receives credit for good behavior. He suggested that the General Assembly could eliminate this ambiguity during the next legislative session.

Recommendations:

The Committee recommended PD 3673, which specifies a procedure for the Department of Correction to use in determining the earliest release date by first computing the amount of credit time for good behavior and then adjusting for the amount of earned credit time.

PD 3673 also provides for the following:

- It provides that an imprisoned offender may receive a sentence reduction of two months for the completion of a substance abuse program or other behavior modification program and a one year reduction for the completion of a vocational program. (Current law also allows a sentence reduction of six months for completion of a general equivalency degree, one year for graduation from high school, one year for completion of an associate's degree, and two years for completion of a bachelor's degree.)
- It creates a formula for calculating sentence reductions and requires credit time to be subtracted from the offender's fixed term of imprisonment before the reduction of the sentence allowed for completion of educational, vocational, or rehabilitational programs is calculated.
- It repeals the provision that allows a person to petition a court for a sentence reduction based on the successful completion of certain rehabilitative programs.

2. Petition for Modification of Sentences:

During the August 31 meeting, and in response to questions raised by the Committee, the staff counsel to the Committee explained that the Indiana Supreme Court ruled in a recent case that as a matter of statutory construction, IC 35-35-3-3(e) prohibits the reduction of any sentence imposed pursuant to a plea agreement. If the sentencing court is to reduce a sentence imposed pursuant to a plea agreement on the basis of the educational attainment provisions of IC 35-38-1-23, the legislature will have to provide an exception to IC 35-35-3-3(e). IC 35-35-3-3(e) provides that whenever a court sentences an offender under a plea agreement, the court is bound by the terms of the plea agreement. During the 1994 General Assembly, SB 6 was introduced to address this problem by allowing offenders who have sentences based on plea agreements to be eligible for sentence modification. However, the General Assembly did not enact the bill into law.

Larry Landis, Executive Director, Indiana Public Defenders Council, told the Committee that at the time that IC 35-38-1-23 was enacted into law, the intent was to make this statute applicable to all offenders. This would then give the judge the discretion to determine whether or not offenders should have their sentence modified. Mr. Landis asked the Committee whether the sentencing judge should also be given the authority to modify the sentence if circumstances change. Consequently, he told the Committee that he supports the contents of SB 6 1994 if it were to be introduced during the 1995 General Assembly.

Recommendations:

The Committee voted to recommend two different drafts relating to petition for modification of sentences:

PD 3673 -- while specifying how earned credit time is to be computed for offenders -- repeals the provision that allows a person to petition a court for a sentence reduction based on the successful completion of

certain rehabilitative programs.

PD 3390 allows a court to reduce the sentence of a defendant who has executed a plea agreement if after considering the defendant's petitions for the sentence reduction, the court finds that: (1) the defendant has completed certain rehabilitative programs; and (2) the sentence reduction is in the best interests of justice.

B. Transfer of Offenders to Sheriff's Department Prior to Release:

Some county sheriff departments might be interested in transferring the offenders from DOC to the county if the sheriff has a program developed to provide transitional services to the offender in the last year of the offender's sentence. Such a program would assist offenders in becoming reintegrated into the community.

Recommendations:

The Committee withdrew PD 3356 from consideration after some Committee members raised questions about how offenders would be selected for transfer to the local program and whether the community corrections board could be used in selecting the offenders to be selected from the prison. Rep. Young told the Committee members that he would address the questions raised by the Committee members and introduce a bill concerning this topic during the session.

C. Trafficking by Employees in DOC Facilities:

One concern mentioned during the course of the interim was that DOC employees were selling drugs to offenders and distributing drugs from offenders who are incarcerated in DOC. Consequently, there is no assurance that offenders in DOC will be able to abstain from drugs while in prison.

Recommendations:

PD 3035 makes it a Class B felony for a person who is an employee of a penal facility to commit trafficking with an inmate if the person knowingly or intentionally (1) delivers, or carries into the penal facility with the intent to deliver, a controlled substance or a firearm to an inmate of the facility; or (2) carries, or receives with intent to carry out of the penal facility, a controlled substance or a firearm from an inmate of the facility.

D. Probation Workload Measures:

The probation system in Indiana plays an important role in Indiana's correctional system. The number of persons who are reported to be on probation has increased from 69,746 to 100,056 between 1989 and 1993, a 43% increase in caseload. In particular, the number of offenders who are being released on split sentences to probation programs is also increasing. Between 1988 and 1993, the number of persons who have been released on a split sentence has increased from 8,573 to 11,352, a 32% increase.

As the number of offenders who are on probation increases, the local governments have

responded by increasing the number of probation officers, but also allowing for an increase in the workloads of the probation officers. Between 1988 and 1993, the number of probation officers that are listed in the Indiana Probation Report, prepared by the Office of State Court Administration, has increased from 648 to 798, a 23% increase. For the same period of time, the average caseload per probation officer, as measured by the ratio of persons reported to be on probation divided by the number of probation officers, has increased from 108 to 125, a 16% increase. As the number of offenders who are released to probation has increased, there has been some question about whether these individuals would be adequately supervised so that public safety would not be compromised.

Because of this increase in the role of the probation system, probation officers, with the assistance of the Indiana Judicial Center, held a series of workshops and developed a manual to guide probation programs in determining minimum contact time based on each offender's assessed degree of risk.² The necessary contact time for each probationer is based on the probationer's degree of risk. Based on these standards, the probation program administrators and decision makers in the local governments would be better able to estimate the number of probation officers that each jurisdiction needs to adequately supervise its probation population.

The Indiana Judicial Center has, as part of its staff, a probation case manager who is funded by a federal grant scheduled to expire in March, 1996. The judicial center would like to have this position and a clerical assistant position be funded from the state general fund.

During Committee discussions, some members were concerned that promulgated rules concerning caseload standards could be viewed as a mandate for additional staff. Therefore, the Committee instead wished to retain the current law in which the Judicial conference makes recommendations to the county probation departments.

Recommendations:

The Committee recommends that legislation be prepared that would do the following:

- It requires the judicial conference to provide probation departments with training and technical assistance for: (1) the implementation and management of probation case classification; and (2) the development and use of workload information.
- It appropriates annually to the judicial conference \$79,083.66 from the state general fund to carry out training and technical assistance.

²The manual is entitled Probation Case Classification and Workload Measures System for Indiana.

WITNESS LIST

June 30, 1994: Chris DeBruyn, Commissioner, Department of Correction

August 1, 1994:

Christi Megna, Staff Attorney to the Committee
Mark Goodpaster, Fiscal Analyst to the Committee
Ed Cohn, Deputy Commissioner for Social Services
Tom Richards, Director of Social Services
Stuart Sharpe, Director of Education Programs
Jerry Vance, Substance Abuse Director
Robert Ohlemiller Deputy Commissioner of Community Service Division
Ralph Watson, Director of the Hamilton County Community Corrections Program
Julie Van Arx, Marion County Community Corrections Program
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- Ron Lefler, Juvenile Parole, Department of Correction
- Dave Uberto, Superintendent of the Indiana Girls' School
- Kevin Moore, Superintendent of the Indiana Boys' School
- Jim Miller, Executive Director, Indiana Juvenile Task Force
- Rich Waples, the Legal Director for the Indiana Civil Liberties Union (ICLU)
- Larry Landis, Executive Director, Indiana Public Defenders' Council

October 13, 1994:

- Jeff Bercovitz, Director of Probation and Juvenile Services, Indiana Judicial Center
- James Austin, National Council on Crime and Delinquency, San Francisco, CA
- Dr. Mike Tomkins, Associate Director of the Institute for Science, Technology and Public Policy, Maharishi International University, Fairfield, Iowa