Report to the Criminal Law & Sentencing Policy Study Committee

Chaired by the Honorable R. Michael Young

Working Group on Recidivism

Chaired by the Honorable Greg Steuerwald

Members of the Working Group on Recidivism

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Overview

Charge to the Working Group: House Enrolled Act 1006 (HEA 1006-Criminal Code revisions passed in the 2013 legislative session) directed that the topic of recidivism be studied during the 2013 interim. (See attached language from HEA 1006). Senator Mike Young, Chairman of the bi- partisan Indiana Criminal Law & Sentencing Policy Study Committee, then assigned leadership on this issue to Rep. Greg Steuerwald, author of HEA 1006 and member of the study committee, to form a working group to study the issue and make recommendations to the committee.

The working group began as an ad hoc, informal team, with the addition of members as the study progressed. The genesis of the group began with the Indiana Prosecuting Attorneys Council, Public Defender Council, Indiana Criminal Justice Institute, the Indiana Judicial Center and Mental Health of America. As this group met to discuss and study the issue of recidivism, the vision of the team grew to include the groups and members listed on the cover sheet. This is critical to note because the core working group realized that the issue is not only complex, but spans a number of different disciplines, organizations, government units, and funding streams. The working group believes that this cooperative spirit and sharing of ideas across disciplines must continue as programming, funding and details of efforts to reduce recidivism move forward both at the state and local levels. The group believes that by breaking down existing silos, or at least ensuring that the silos are linked together sufficiently to produce positive results, is key to successful efforts to reduce recidivism.

The working group also strongly recommends and believes that coordination and cooperation between state and local units is essential. The group recognizes that local units have creative ideas, which if fostered by the state, can lead to solutions through collaboration.

<u>Cost Savings & Improved Communities:</u> **The working group gathered evidence, data and research showing that Indiana can reduce recidivism and save substantial money to state and local units of government, by funding cognitive-behavioral treatment to address addiction and/or mental health treatment, "wrap- around services" which consist of a multitude of re-entry services, such as assisting the individual to find a job, and cognitive behavior related training.**

In Marion County, a 1% reduction in recidivism (46 people per year) would save the county over $1 million per year. An example of a successful program identified by the working group showed a decrease of over 20% in recidivism at a cost of $1200 per offender (the cost of just several a few weeks at the DOC). The average daily cost to house a prisoner at a state facility (and DOC houses only 10% of the offender population with the remaining 90% remaining in local jails and in local programs) is $56.88 per day per offender (operating and capital costs combined). Thus a reduction in recidivism would be a tremendous savings to state and local governments.

Summary of Findings

Overarching Finding: The State of Indiana must focus resources in a strategic manner on addiction treatment, mental health, wrap around services and cognitive-behavioral treatment programs, if it is to be successful in lowering the rate of recidivism. Substance abuse, addiction and mental health issues are often key contributing factors to recidivism. The vast majority of recidivists cycling in and out of both the state prison system and local correction programs are low- level offenders (Class D felons— Level 6 felonies), and many have substance abuse or mental health issues.

By focusing resources on proactively especially at the local level when an individual first comes into contact with the criminal justice system, the working group finds through its research that state government and local units can actually **save money** if the programs are structured correctly, certified through the Department of Mental Health and are measured with metrics for success. The working group members strongly agree that any dollar spent must save state and local units more than a dollar. The working group believes that well- managed programs with measured outcomes and accountability could offer significant cost savings.

Lack of Addiction Treatment & Mental Health Services/Cognitive Behavior Training: The working group finds that a dearth of services across the State of Indiana exists both for indigent persons and sometimes even for those who can afford to pay. For those who are indigent, an almost complete lack of services exists.

Screening & Diagnostic Tools: Additionally, more consistent use of screening and diagnostic tools for identifying substance use and mental health needs would assist the criminal justice field to refer offenders to appropriate services and treatment programs. Research shows that addressing these need areas with the appropriate services and treatment will help lower recidivism rates. Sending all individuals to drug or alcohol treatment if they do not need treatment is a waste of resources.

Successful Programs: Do successful, proven programs exist to reduce recidivism which also actually saves money? Yes; examples of successful programs using evidence based practice exist, both here in Indiana and in other states. Examples are outlined below.

Key Facts & Statistics—Framework of Recidivism

The lens through which the recidivism discussion must be based is framed by the following foundations:

- 52% of DOC Admissions are for new crimes—of those 70% are drug and theft related.
- 48% of DOC Admissions are for probation violations which are not for new crimes but technical violations such as missing multiple appoints, absconding from supervision, positive drug screen results and other similar issues
- Marion County has an even higher recidivism rate—51.6%

Addiction & Mental Health in the Criminal Justice System

It is helpful to have a basis of understanding about both addiction and mental health and why these issues are closely tied to a majority of individuals in the criminal justice system.

- **Mental Health Conditions:** Individuals with mental health issues (bi-polar disorder, schizophrenia, etc,) often "self-medicate" by taking unauthorized and illegal drugs or by abusing alcohol to help "control" their mania, depression, or other condition. Thus individuals with mental health conditions frequently become addicted to drugs/alcohol. Research by Dr. Chambers and others shows that individuals with mental health conditions are pre-disposed to addiction. Similar to having HIV, where the immune system is compromised and the individual is more prone to illness of many kinds, those with mental health conditions are at greater risk of addiction due to brain chemistry.

- **11% of the general population in the United States** has some form of a serious mental illness (Matt Brooks, Community Mental Health Centers). Compared to the general population, 50% of all offenders in the criminal justice system have a diagnosable mental disorder, with 25% of those having what is considered a serious mental health issue.

- **Addictions:** While the individual initially makes a choice to abuse drugs or alcohol, once addicted, the individual no longer has physical control over the drugs or alcohol. The drugs or alcohol are in control because a part of the brain is turned on like a light switch. (See attached presentation by Dr. Chambers on Addictions & Mental Health).

- **Interaction with Criminal Justice System:** By taking 1 or both of the conditions above, where the person is either illegally buying drugs to feed an addiction, stealing to obtain the money needed to feed the habit, driving while drunk, or any number of other illegal activities, the person is a prime candidate for entry into the criminal justice system and eventual recidivism over time

Using Science to Impact the Criminal Justice System

What does science have to do with the criminal justice system? At first glance, science and the criminal justice system would seem not to interrelate. Upon further examination, however, it is clear that science in the areas of addiction and impairment can help to determine treatment options for offenders who are addicted. Because addiction and mental health is often related to recidivism, research into how a person becomes addicted, and effective treatment options, is important. Two sources of such current research are the Lab for Translational Neuroscience

of Dual Diagnosis and Development through Indiana University at Purdue University in Indianapolis and the Indiana Alcohol Research Center through the IU School of Medicines. Others may also exist in the State. This report notes just two sources of important research in this report.

Screening & Diagnostic Tools to Categorize Offenders Treatment & Programming to Reduce Recidivism

Screening of Juvenile Cases— Juvenile Detention Alternatives Initiative

An example of excellent use of screening tools to categorize and deal with potential offenders is the Juvenile Court in Marion County. Judge Marilyn Moores and her staff have successfully reduced recidivism among juveniles by effectively screening the cases that came to her through the use of principles adopted from the Juvenile Detention Alternatives Initiative ("JDAI"). This effort is part of a nationwide program focused upon reallocation of government resources away from large scale secure detention of juveniles toward community-based alternatives that provide more long- term successful outcomes to enhance public safety, reduce recidivism and reduce costs. As the first site in Indiana for adoption of JDAI, detention of juveniles had been reduced 65.5%, by utilizing other programming to deal with juvenile issues, thereby saving money. After Marion County, additional counties have adopted JDAI concepts with a net result of 15.8% fewer felony petitions against juveniles in Indiana.

Case Example of Use of JDAI Screening Program

From the very first point of contact with the court, Judge Moores' team analyzes the case through the use of an evaluation sheet with scoring factors that rate the danger the juvenile poses to himself/herself or others, and whether the juvenile needs to be detained by the court. Certain violent offenses automatically result in a child being detained while many other offenses require community-based programming which provides for much better longer- term results. The juvenile facility has seen a decrease from an overcapacity situation to approximately 90 detainments under Judge Moores' implementation of JDAI principles and screening tools. (See Risk Assessment & Other Juvenile Court information from Marion County—attached.)

The screening mechanism was developed in coordination with the Judicial Center, local input, and the Annie E. Casey Foundation, and results in fewer juveniles being detained. The juvenile offenders are instead sent to an appropriate community-based corrective program or they may not need to be detained at all upon review of their individual case.

The juvenile court looks more deeply at the case as illustrated in the following example. A child 7 years of age was brought to the court on the charge of bringing a gun to school. What appeared to be a shocking case of potential violence upon initial review by the court was a very different matter upon further examination. The child's mother was suicidal and the child feared for her safety, and chose to bring the gun to school to keep it from her. The child and the family needed help in this instance instead of the child receiving punishment from the juvenile court. Juvenile detention can and often does result in worse outcomes if the detention was not warranted. In addition, nationally, JDAI sites show that 43% fewer felony petitions were filed in 2012 than those jurisdictions without JDAI, thus a significant reduction in recidivism was achieved.

Local Development of Screening Mechanisms

While eight Indiana counties have adopted the JDAI approach, Judge Moores emphasizes that it is critical for stakeholders at the local level to contribute to and agree upon risk factors that are often specific to the local community. For example, the same risk analysis factors for Indianapolis will likely not be the same as for a small town in Indiana. Some factors may be the same, while others may not be, depending upon the community and its needs.

Problem Solving Courts

In 2002, the Indiana General Assembly enacted legislation which created drug and other problem solving courts, including mental health courts. Now in Indiana, there are 28 drug courts alone (25 for adults and 3 for juveniles). An evaluation of the effectiveness of 5 of these drugs courts was conducted over a period of several years. The recidivism rates of graduates of drug court programs showed a range of a low 7% as compared to 39% of all drug offenders in that jurisdiction up to an 18% recidivism rate in another drug court as compared to 43% for those who do not complete the drug court programs. The savings represented in the study of 5 drug courts over a 2 year period showed a cost reduction of $7 million to the State of Indiana. While the results of problem solving courts can vary, successful drug courts

such as these studied, can represent significant savings through a reduction in recidivism. (See Summary of Findings Report— Indiana Drug Courts—provided by Indiana Judicial Center). A combination of treatment and accountability is essential in problem solving courts.

The State Prison Population—Who makes up the Prison Population?

In understanding the issues above, it is also helpful to have a basic understanding of what categories of crimes individuals are in prisons and local jails, keeping in mind that only **10% of those incarcerated are actually in the state prison system—the remainder is in local jails and community corrections. 90% of felons remain in local jails.**

These are the individuals received in 2012 at the DOC Reception Center:

- **Murder: 82**
- **Class A Felonies (very serious violent crimes) 514**
- **Class B Felonies 3772**
- **Class C Felonies 3571**
- **Class D Felonies 6296** (The majority of the crimes committed by this group are drug and theft related—these issues are often tied together). The question is—how can policy makers impact this group in order to provide treatment which would save the state and local government money in the long run and to help create a better society?)

Probation

The working group determined that too many offenders are placed on probation as illustrated by the numbers of probations in 2012. In 2012, the total number of supervisions pending in probation departments around the state was 128,189. (See attached Adult Probation Supervisions Report 2003-2012). For example, a first time DUI offender with no criminal history and no substance use issues typically does not need probation. Research has shown that probation when ordered in some instances where it is not needed actually **increases** recidivism. (See attached University of Cincinnati Research Report).

The group suggests narrowing the field of probationers to not only lighten case loads for officers so that they can focus upon the offenders who truly need supervision, but to lessen the burden on courts and programming. In some instances, offenders are unnecessarily ordered by courts to attend treatment programs when the individuals do not actually require treatment, thus taking up scarce resources. Probation as a system needs additional review to better focus scarce resources. (See attached "Adult Probation Supervisions 2003-2013") for more information. Probation officers work to detect issues with the offender through indicators such as failed drug screens, to utilize available resources to attempt to address problems.

Parole

According to information provided by Douglas Huyvaert, Director of the Parole Division with the Department of Correction, a significant number of parolees are on medication for mental health conditions such as bi-polar disorder and schizophrenia. A significant number are addicts. Of 1,051 recent drug tests, 320 tested positive. 535 of the 10,500 parolees across the state are currently in substance abuse programs. The need for substance abuse treatment is much greater than current funding levels or available programming in Indiana. In January of 2014, an additional $750,000 has been allocated to parole for additional addiction and mental health treatment programming from DOC.

When parolees are released from prison, they receive a 30 day supply of medication with a prescription for another order to be filled, for a total of 60 days. Part of the role of the parole officer is to try to get the offender to fill the medication prescription. Staying on medication is a key to controlling some mental illnesses. A bi-polar offender without medication is a likely recipe, for example, for the commitment of another crime. Keeping offenders (or any person with a bi-polar condition) on their medication can be a challenge.

Intermediate sanctions (such as drug treatment or temporary jail time) are often used.. When a drug screen comes back unclean, the parole officer works to address it because he or she knows that a subsequent criminal act is likely not far behind the unclean drug screen.

Parole has a completion rate of 74.7%, meaning that the offenders on parole complete their sentences as parolees. There are 135 parole officers throughout the State of Indiana with an average case load of 80 to 90 cases. There are 10 districts across the state and parole hearings are held via distance with the Parole Board. Parole supervision lasts from a minimum of 6 months life-time depending as in the case of specially designated sexually violent predators.

Recommendations & Ideas

Probation: The working group determined that far too many offenders are placed on probation and these offenders are clogging up the system unnecessarily. The workgroup discussed the dilemma of probation user fees funding a significant portion of the probation system and the fact that the people who can afford to pay fees are the ones who benefit least from probation services. Current law requires that suspended time for felony sentences must be served on probation, even if the offender is low risk for re-offending and will not benefit from probation services, and most plea agreements also require probation for low-risk offenders. The workgroup also recognizes that additional funding streams will be necessary to offset the fluctuation in probation caseloads.

Additionally, 48% of offenders on probation have their status revoked and are sent back to DOC for technical violations. The possibility for an incredible cost savings exists if this problem is addressed. The Judicial Center is currently developing a probation incentives and sanctions system so that probation officers can use an administrative process to reward positive offender behaviors and immediately punish certain offender violation behaviors.

Credit Time & Home Detention/Work Release: Credit time should be consistent between home detention as a direct commitment and as a condition of probation. Clean-up of language in HEA 1006 needs to be done to ensure that credit for home detention is day for day. Statutory language or policy on deprivation of credit time for home detention as a condition of probation is needed. It could give the judge authority to conduct a hearing or delegate to a conduct adjustment board these decisions. Work release should reflect change in credit time and should also be consistent between DOC commitment and DOC work release.

Indiana Sheriffs & Community Mental Health in County Jails: An idea proposed by the Community Mental Health Association is to embed a staff member or two in each county jail for diagnostic and transition planning. The sheriff is often the first point of contact for offenders with the criminal justice system and the county jail is frequently the earliest place to intervene in criminal behavior to try to ameliorate the situation before the individual commits more serious crimes and moves on to the Department of Correction.

By embedding a staff member and/or providing Indiana sheriffs with some funding to use in DMHA certified programming, local units of government will be able to intercede with the offender, and therefore likely keep costs lower by attempting to address addiction and mental health issues or the need for cognitive behavioral training when possible.

With 25 Community Mental Health Centers throughout the State of Indiana, this organization works in every county, thus the apparatus is already in place to deliver these services. Required by statute to take all individuals (including violent offenders) Community Mental Health Centers in Indiana have 8000 employees with $130 million dedicated to its current funding. $35 million is a Medicaid Match program. Community Mental Health Centers are also gatekeepers for admittance to the few state mental facilities in Indiana—Logansport, Richmond, Evansville, Madison & LaRue Carter.

Several Pronged Approach to Address Addiction/Mental Health, Cognitive Behavior Training & Wrap-Around Treatment Services:

The Working Group recommends adopting an approach with several prongs, each with oversight, accountability measures, and a reporting structure. It recognizes that "one size does not fit all" in that different communities have varying needs and that allowing for competition and creativity at the local level will create a well-spring of ideas and thought.

The working group recommends that grants, apportioned through the funding streams largely already in place below, would be a viable way in which funds could be tracked, measured and reviewed for success.

Certified programs through DMHA: The working group strongly recommends that funding only be granted to programs certified through an existing structure (Department of Mental Health). The group recommends that no funding be provided to programs without this certification, to ensure results.

Metrics: The group recommends that metrics be established to measure the success of each program funded through the state and that these metrics be standard and a report provided back to the Budget Committee on an annual basis. The report should include an analysis of each program and an analysis county by county.

Funding Streams:

Current structures exist to fund programs. These are as follows:

- **Indiana Sheriffs:** Sheriffs are ideally positioned to operate some programs at local jails. Currently monies which provide for housing of DOC inmates in local prisons are not directed to the sheriff but instead are allocated to the county, which often uses the monies for building projects and other similar non-correction program related tasks. Allocating these monies directly to the sheriffs to operate programming for mental health and addiction treatment would be beneficial because the sheriffs are situated to spot and be able to help solve problems early in an offender's first brush with the criminal justice system. Sheriffs should be given the ability to serve not just in a law enforcement role, but to become creative problem solvers at the local level.

  The sheriffs in Indiana have a long standing partnership with the DOC in housing state inmates. Intervention services at the earliest point in the criminal justice system as discussed in the report are essential. At the first opportunity when an offender enters the criminal justice system, screening and assessment can be most effective. This is usually done at the local jail. The Indiana Sheriff's Association as well as the working group support programming at the first opportunity when an offender is introduced into the system. The overall goal is to get the offender back into the community to be a productive member of society. Additionally, the sheriff is in a very good position to administer programming because the sheriff often knows the offenders/the local families and the actual problems/issues which in many instances is an advantage to help turn an offender's life around. The ISA and this working group recommends that 25% of the revenue paid directly to counties for housing DOC offenders be dedicated to the county sheriff for use in treating offenders in jail by implementing addiction and mental health programs.

- **Community Corrections:** Community Corrections is able currently to meet only approximately 30% of the need for addiction/mental health services. Additional funding to Community Corrections for addiction/mental health, wrap-around services and cognitive behavior training should be provided as determined through screening processes.

- **Judicial Center Grants:** The Judicial Center already receives some funding for programming. It is in a good position to provide oversight and review to ensure that grants are competitive and that programs provide successful, measurable results.

- **Direct Grants:** Center Stone programs which have been successful in Indiana received competitive, direct grant funding from SAMHSA at the federal level. Indiana should work toward obtaining additional SAMHSA grant funding for successful programming in the state.

Other Ideas Discussed:

- **Money Follows the Offender:** A problem that exists in the system is the disjointed oversight of an offender. An offender may have some addiction treatment during his or her incarceration at the DOC, but upon release, services may not be available. An offender may have some service through the court, but it is discontinued at the DOC. An idea discussed by the working group is to assign a specified amount of money to an offender's case for addiction treatment.

Possible Funding Sources for Addiction/Mental Health, Wrap Around Services & Cognitive Behavior Training Treatment

(1) Savings Realized by Making Changes within the Corrections System:

- **Probationers:** Since 48% of the DOC population which recidivates are individuals simply back at the DOC because of technical violations , a tremendous cost savings could be realized by changing the approach to these technical violations through policy or other changes. The probation incentives and sanctions system should have a positive impact on offender recidivism rates once implemented by county probation departments.

(2) Savings Realized Over Time by Successful Programs

- **By successfully treating drug addicts and mental health illnesses, savings will be realized thus providing further program funding**

Example: Centerstone programming cost an average of $1200 per offender for wrap-around, drug treatment and mental health assistance in total. Some offenders required more services (and thus are more expensive) while others required fewer services (and therefore were less expensive). Centerstone's rate of recidivism is 29.6 % as compared to the state average. By spending $1200 per offender upon release, the state avoids a much

higher cost should the person recidivate. **($1200 equals approximately 12 days at the DOC-- $100 per day per offender multiplied by 12 days) (See Centerstone presentation to study committee)**

Example: RecycleForce Program: Established private business in operation for a number of years--Recidivism rate is 17.67% (Provides jobs to offenders).

(3) Alcohol Tax

The working group believes that consideration to raising this tax should be discussed, despite potential challenges. Alcohol taxes have not been increased since 1981---over 30 years of no increase to alcohol taxes. On the other hand, almost all other taxes in Indiana have been raised since that time. Why is the alcohol tax exempt? It is helpful to consider the following:

- A one cent (1 penny) increase on the tax on beer would result in approximately $30 million in revenue to Indiana per year
- Indiana alcohol taxes are by far the lowest when compared to the national average:
  - Spirits (Indiana 3 cents compared to national average of 12 cents)
  - Wine (Indiana 2 cents compared to national average of 4 cents)
  - Beer (Indiana 1 cent compared to national average of 5 cents)
- 13% of the alcohol tax currently is dedicated to treatment of addiction

(See charts & graphs attached for reference)

References Utilized & Attached

(1) Marion County Study on Recidivism (2013)

(2) Stanford Study on Realignment of California's Prison System (2013)

(3) Centerstone: Presentation to Study Committee (September 26, 2013)

(4) University of Cincinnati Presentation by Dr. Paula Smith (2013)

(5) Indiana Prosecuting Attorneys Council Presentation on Recidivism to Study Committee (See also DOC and Probation Statistics) (September 26, 2013)

(6) Alcohol Tax Fiscal Numbers (Comparison to Other States, Break-Down of Revenue & Funding Sources, etc): Mental Health Association of America & Indiana Criminal Justice Institute

(7) Scope of Work—Applied Research Services of Georgia (Study of fiscal impact on the DOC of HEA 1006)

(8) Scope of Work—AIR (Dr. Jarjoura—study of local impact of HEA 1006)

(9) House Enrolled Act 1006—Language referencing subject of study for interim committee

(10) Per Diem Daily Cost of Housing Prisoners in State Facilities (DOC 2011-2012 Report)

(11) Presentation—Dr. R. Andrew Chambers (2012)

(12) Juvenile Detention Alternatives Initiative & Marion County Juvenile Court Screening Documents

(13) Indiana Drug Courts—Summary of Evaluation Findings by NPC Research

(14) Adult Probation Supervisions 2003-2012 Data

(15) Additional Resources upon which this report is based--Interviews or Discussions with:

- Judge Linda Chezem, former Indiana Court of Appeals Judge, current member of the National Advisory Council on Alcohol Abuse & Alcoholism; Professor, Indiana University Alcohol Research Institute through the IU School of Medicine

- **Dr. R. Andrew Chambers, Associate Professor of Psychiatry, Director of Addiction Psychiatric Training Program, Director of Lab for Translational Neuroscience of Dual Diagnosis & Development, Institute of Psychiatric Research---Indiana University at Purdue University in Indianapolis**

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(Final report reviewed by all members of the working group as listed on the first page of this report.)