**Legislative Summary 2014**

**Written for Probation Officers Professional Association of Indiana (POPAI) Membership**

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***Link to Indiana Judicial Center 2014*** [***Legislative Update – Final Update***](http://indianacourts.us/blogs/legislative/?m=2014&w=16)

[***Link to more Family & Juvenile Law updates***](http://indianacourts.us/blogs/legislative/?p=2433)

***Link to*** [***See all Criminal Law updates***](http://indianacourts.us/blogs/legislative/?p=2437)

**Criminal Law**

1. [**S.E.A. 3, P.L. 147-2014**](http://iga.in.gov/legislative/2014/bills/senate/3/) **Judicial Officers.** Makes battery a Level 6 felony if the offense is committed against judicial officers while the officers are engaged in the judicial officers’ official duties; and a Level 5 felony if the offense results in bodily injury to certain judicial officers. Permits judicial officers to possess and use a firearm in the same locations as law enforcement officers.
2. [**S.E.A. 235, P.L. 158-2014**](http://iga.in.gov/legislative/2014/bills/senate/235/) **Mental Health Pilot Project.** Requires community corrections programs to use evidence based services, programs, and practices (known as EBP) that reduce the risk for recidivism. [Mirrors HEA 1268]
3. [**H.E.A. 1268, P.L. 184-2014**](http://iga.in.gov/legislative/2014/bills/house/1268/) **Probation and community corrections treatment.**

* Creates mental health and addiction forensic treatment services account to provide grants or vouchers for mental health and addiction services. [NO $$$ appropriated for this account yet.]
* **AMENDS IC 11-13-2-1 State Aid for Probation Services.** Puts in place the mechanism to award grants for EBP. [There is NO money appropriated for this yet.] [Mirrors SEA 235]

1. [**H.E.A. 1155, P.L. 181-2014**](http://iga.in.gov/legislative/2014/bills/house/1155/)**. Expungement. Effective *March 26, 2014.***

* Reduces requirements to qualify for expungement. Person only required to prove payment of costs, fees, fines, and victim restitution. Provides that a court must find by a preponderance of the evidence instead of by clear and convincing evidence that all the requirements of expungement have been met to order a person's conviction records marked as expunged.
* If petition is granted, no information concerning the arrest may be placed or retained in any state central repository for criminal history information or in any other alphabetically arranged criminal history information system maintained by a local, regional, or statewide law enforcement agency. This does not require any change or alteration in:

(1) any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public;

(2) the record of any court in which the criminal charges were filed; or

(3) records that relate to a diversion or deferral program.

* Grants defense attorney and a probation department access to expunged records if authorized by court order. Specifies procedure to regain right to possess a firearm by a person convicted of a misdemeanor crime of domestic violence.

1. [**H.E.A. 1279, P.L. 217-2014**](http://iga.in.gov/legislative/2014/bills/house/1279/) **Various motor vehicle issues.**

* Minors: For the following class C misdemeanor offenses, removes authority to suspend driving privileges: Illegal Consumption/Possession/Transportation; Use of False or Altered Driver’s license; and to recklessly **knowingly or intentionally** be in a tavern, bar, or other public place where alcoholic beverages are sold, etc.
* Creates specialized driving privileges.
* Creates the habitual vehicular substance offender designation and sentencing.
* Requires the state department of toxicology to develop standards and testing for ignition interlock devices.

1. [**H.E.A. 1005, P.L. 113-2014**](http://iga.in.gov/legislative/2014/bills/house/1005/) **Government Reduction**.

* IC 9-30-5-16 Operating a vehicle while intoxicated. Effective JANUARY 1, 2015. The court may, in granting specialized driving privileges, also order that the specialized driving privileges include the requirement that a person may not operate a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.
* Makes it a Class C infraction (not misdemeanor) for a minor to knowingly or intentionally make a false statement of the minor's age or to present or offer false ID.

1. [**H.E.A. 1008, P.L. 169-2014**](http://iga.in.gov/legislative/2014/bills/house/1008/) **Publication of list of criminal offenses.** Reorganizes the criminal law statutes into individual sections. Does not make any substantive change in the law.
2. [**H.E.A. 1269, P.L. 185-2014**](http://iga.in.gov/legislative/2014/bills/house/1269/) **Criminal Matters.** Crimes committed before July 1, 2014 to be sentenced in accordance with the law in effect at the time the crime was committed.
3. [**H.E.A. 1006, P.L. 168-2014**](http://iga.in.gov/legislative/2014/bills/house/1006/) **Reconciles technical and substantive conflicts between HEA 1006-2013 (the criminal code revision bill) and other bills concerning criminal law**
4. **HEA 1006 of 2014** combined with HEA1006 of 2013 created a new six (6) felony level system. Changes the nomenclature for felonies from “Class” to “Level.”
5. Lowest felony, Level 6, and misdemeanants to serve at a minimum of 50% while all other felony levels (1-5) are to be served at a minimum of 75% of their sentence. Credit restricted felons earn one (1) day of credit time for every six (6) days the person is imprisoned.
6. Some offenses are reduced in level, others are increased. The total overall effect does result in tougher sentencing when compared to current Indiana criminal code.
7. Authorizes pretrial diversion for persons charged with a Level 5 or Level 6 felony.
8. Amends credit time provisions by creating a new Class A that provides that a person: (1) who is not a credit restricted felon; and (2) who is imprisoned for a Level 6 felony or a misdemeanor or imprisoned awaiting trial or sentencing for a Level 6 felony or misdemeanor; earns one day of credit time for every day the person is imprisoned or confined awaiting sentencing.
9. Increases the advisory sentence: (1) from six years to nine years for a Level 3 felony; (2) from four years to six years for a Level 4 felony; and (3) from two years to three years for a Level 5 felony. Reduces the maximum penalties for Level 1 felonies from 50 to 40 years; and Level 3 felonies from 20 to 16 years.
10. Provides that Class I through Class IV credit class system applies to a person who commits an offense before July 1, 2014; and Class A through Class D credit class system applies to a person who commits an offense after June 30, 2014.
11. Allows a court to suspend any part of a sentence for a Level 2 felony or a Level 3 felony concerning a controlled substance. Enhances the penalties for certain controlled substance offenses if a person commits an offense: (1) within 500 feet of school property or a public park when a child is likely to be present; or (2) in the physical presence of a child less than 18 years of age, knowing that the child was present and might be able to see or hear the offense.
12. Requires a court to sentence a person found to be a habitual offender to an additional fixed term of imprisonment between: (1) six years and 20 years, for a person convicted of murder or a Level 1 through Level 4 felony; and (2) two years and six years, for a person convicted of a Level 5 or Level 6 felony.
13. Removes criminal gang activity, criminal gang intimidation, and certain drug offenses from the list of crimes over which a juvenile court does not have jurisdiction.
14. Increases the number of crimes that are nonsuspendible.
15. Makes changes to the penalties for the crimes of dealing in cocaine or a narcotic drug and dealing in methamphetamine.
16. Creates a lower offense category for persons who sell less than one gram of a controlled substance.
17. Increases minimum enhancement amount for certain controlled substances from 3 grams to 5 grams.
18. Provides that a person may only be convicted of possession with intent to deliver if there is evidence in addition to the amount of the drug possessed that the person intended to manufacture or deliver the drug.
19. Reduces the sentence for: (1) arson with intent to defraud; (2) an offense against intellectual property; and (3) auto theft; from a Level 5 felony to a Level 6 felony.
20. IF DOC realizes marginal cost savings from felony diversion, MAY provide grant $$$ to community corrections and probation departments that demonstrate use of EBP. Grants derived from savings or $11 million cap. However, if no savings, no grants. This potential grant funding is the only new funding possible for probation and community corrections programs despite the expectation that more felons will be sentenced to these local programs for community supervision. **This lack of funding is of serious concern to probation departments and community corrections programs across the state.**
21. Requires more local supervision of Level 6 (formerly class D) felons. Effective July 1, 2014, Level 6 felons with less than 90 days left to serve on their sentences cannot be sent to the DOC. Beginning July 1, 2015, Level 6 felons with less than one year left to serve of their sentences cannot be sent to the DOC to serve the remainder of their sentences. **EXCEPTION: unless the commitment is due to the person violating a condition of probation, parole, or community corrections by committing a new criminal offense.**
22. After June 30, 2014, a sheriff is entitled to a per diem and medical expense reimbursement for the cost of incarcerating a person convicted of a Level 6 felony whose earliest possible release date is less than 91 days. After June 30, 2015, a sheriff is entitled to a per diem and medical expense reimbursement for the cost of incarcerating a person convicted of a Level 6 felony whose earliest possible release date is less than 366 days. [Subject to the approval of the state budget agency.]
23. **Credit Time:** four (1) credit time classes as follows (IC 35-50-6-3.1):

* **Class A** earns one (1) day of credit time for each day the person is imprisoned**. (Serves 50%)**
* **Class B** earns one (1) day of credit time for every three (3) days the person is imprisoned. **(Serves 75%)**
* **Class C (credit restricted felon)** earns one (1) day of credit time for every six (6) days the person is imprisoned. [IC 35-31.5-2-72 Credit restricted felon; applies to certain child molesting and murder convictions.]
* **Class D** earns no credit time. Persons sentenced to life imprisonment without parole.

1. **Pretrial Credit**: With these various credit time classes, HEA 1006-14creates a pretrial credit law foreseeing that defendants may not be convicted of the same level of crime(s) for which they are charged. The person is initially assigned to a credit class based on the most serious offense with which the person is charged. If all the offenses of which a person is convicted have a higher credit time class than the most serious offense with which the person is charged, the person earns credit time for the time imprisoned awaiting trial at the credit time class of the most serious offense of which the person was convicted.
2. **Sentencing Ranges and Advisory Sentences.**

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|  | **Current**  **Range / Advisory** | **HEA 1006 (2014)**  **Range / Advisory** | **HEA 1006 (14) Credit Class** |
| **Level 6**  Current D | D: 6 months – 3 years  (1.5) | 6 months - 2.5 years  (1) | Class A\* |
| **Level 5**  Current C | C: 2-8  (4) | 1 – 6  (3) | Class B\* |
| **Level 4**  Low B | B: 6-20  (10) | 2 – 12  (6) | Class B\* |
| **Level 3**  High B | B: 6-20  (30) | 3 – 16  (9) | Class B\* |
| **Level 2**  Low A | A: 20-50  (30) | 10 – 30  (17.5) | Class B\* |
| **Level 1**  High A | A: 20-50  (30) | 20 – 40  (30) | Class B\* |
| **Murder\*\*** | 45-65  (55) | 45-65  (55) | Class B\* |

NOTE: All fines are $10,000.

\*Credit restricted felons shall be assigned to Credit Class C.

\*\*Murder: The jury may recommend the death penalty or life imprisonment without parole. Persons sentenced to life imprisonment without parole shall be assigned to Credit Class D.

**\*\*\*Home Detention Credit:** The new language is confusing. Awaiting interpretation by Indiana Judicial Center and DOC.