

**PROBATION OFFICERS PROFESSIONAL ASSOCIATION OF INDIANA
(POPAI)**

Position Statement with regard to SB 561 and HB 1530

February 7, 2011

With regard to the above bills, both entitled **Corrections and Sentencing**, POPAI supports the underlying concepts of these bills. Senate Bill 561 in essence aims to reduce the prison population trend that predicts Indiana's prison population will continue to rise through 2017 approximately 21% from its 2011 population of 29,204 to approximately 34,794 absent of any change in current sentencing practices.

The Council of State Governments (CSG) has considered three (3) issues with regard to Indiana which include: Sentencing; Community Supervision; and Public Safety. With regard to Community Supervision, the CSG strategy would be to "strengthen community supervision by focusing resources on high risk offenders" and "create incentives for coordination among supervision agencies." As for Public Safety, the suggested CSG strategy includes "increased availability of substance use treatment available in the community and availability of cognitive behavioral therapy in prison; encourage local governments to reduce the number of Class D offenders sentenced to prison; enable probation officers to use swift and certain sanctions for people who violate conditions of supervision."

Senate Bill 561 is commendable in its intent to achieve reduction in Indiana's prison population while also implementing programming to effectively supervise offenders in the community. However, SB 561 presently contains provisions which will have the unintended result of imposing negative consequences on Indiana's probation departments and community corrections programs.

POPAI respectfully urges your consideration of the following before taking action on the bill as drafted.

POPAI has five (5) primary concerns regarding SB 561 as written.

POPAI Concern #1: Probation departments that utilize evidence-based correctional practices and programs may, or may not, be awarded probation improvement fund grants.

Section 21 of SB 561 introduces a "Probation Improvement Fund" with grant awards to be made within the discretion of the Indiana Department of Correction (IDOC). The "Probation Improvement Fund" is to include savings that the IDOC realizes as a result of fewer placements to the department.

POPAI is concerned with the manner in which this fund will be distributed. According to the proposed bill, **"After the judicial conference of Indiana makes a recommendation to the department, the department may award a grant from the fund to a county probation department".....**

As you know, probation departments in Indiana are under the supervision of the judicial branch of government. The Indiana legislature has given the Judicial Conference of Indiana, and its administrative staff at the Indiana Judicial Center, responsibilities for certifying and training probation officers, setting probation supervision standards, certifying problem solving courts, and certifying court alcohol and drug programs. The Indiana Judicial Center already has in place the necessary infrastructure to set standards for probation departments and to hold departments accountable for adhering to these standards. Obviously the Judicial Center would need more staff to take this a step further to establish criteria for awarding Improvement Fund grants. But the Judicial Center has a long track record of establishing relationships with probation departments in the state. The Judicial Center is ideally positioned to take on the task of administering the “Probation Improvement Fund” grants.

As SB 561 is currently written, the “Probation Improvement Fund” grants would be administered at the discretion of an agency of the executive branch of government that has had little direct experience working with probation officers and within probation departments. That seems to provide the foreseeable potential of tensions and issues in the future, particularly in light of the lack of any provision in the bill that requires any awards at all to be made by the IDOC. The IDOC “may” award grant funding and “shall” determine the amount of the grant.

For all practical purposes, this is no different from the current Community Corrections grants which are based on a formula derived by the IDOC. Despite the language offered in the bill that suggests funding will be awarded to counties that focus on evidence based practices and cooperate with community supervision agencies, the language which states the department “may” fund, and allows the department to determine the amount, allows the IDOC to determine which counties they will be awarding funding.

As the bill in no way guarantees the availability of grant funding from the IDOC, it is reminiscent of the “State Aid for Probation Services” law that is currently on the books in Indiana (IC 11-13-2). According to a local attorney who researched this law, it was originally enacted in the late 1950’s (recodified in 1979, amended in 1980) and was funded for only a couple of years in the early 1960’s. Since that time, this law has remained on the books but has never been funded. The language of SB 561 opens the door to the very real possibility that SB 561 could become the next IC 11-13-2 (State Aid for Probation Services)...a law that remains on the books, but has no funding appropriated. It is critical that an appropriation be attached to this law. The word “may” provide grants leaves too much to chance.

POPAI Concern #2: Probation departments may not receive Substance Abuse Treatment Funds intended to provide increased access to substance abuse treatment as intended by SB 561.

Section 22 of SB 561 intends to provide funding to make substance abuse treatment more accessible to offenders with substance abuse issues who cannot afford such services. POPAI believes that this is a very worthy provision. The vast majority of offenders who are under probation supervision have serious substance abuse problems and few have the insurance or income to pay for treatment.

Probation officers have a great deal of difficulty finding substance treatment that their clients can afford as so many are “the working poor” who earn too much to qualify for state-funded treatment but whose wages are too low to afford treatment and food, rent and the basic necessities.

While POPAI supports the intent of the legislation, the comments in **POPAI Concern #1** above are applicable to this provision.

As with the “Probation Improvement Fund” grants, POPAI believes that the Indiana Judicial Center is ideally positioned to administer the “Substance Abuse Treatment Funds.” The Judicial Center already has many years of experience certifying Court Alcohol and Drug Programs, Drug Courts and Problem Solving Courts. Additionally, as with the “Probation Improvement Fund” grants, POPAI believes that it is critical to have an appropriation be attached to this law. The word “may” sounds like “may or may not.” If the legislature intends that such Substance Abuse Treatment grants be made available, then more strong language is recommended to ensure that occurs.

In reviewing Sections 17 through 20 and then 21 through 22 of the proposed bill, POPAI proposes that a delayed funding mechanism for the Probation Improvement Fund and Substance Abuse Treatment Fund could be beneficial and aid the implementation of these grant processes. Additionally, combining these two funds into one “pot” could further improve efficiencies. If the Fiscal Impact Statement is correct, the IDOC would save \$5.8 million in 2012. There has been discussion that the full effects of this legislation will not be seen by probation immediately, which can offer some time to get our local needs assessed. The IDOC could then transfer this savings to the Judicial Branch (Judicial Conference of Indiana, Indiana Judicial Center) in March of 2013 to be available for grants to probation departments and community corrections programs in 2014. This pattern would follow for successive years.

From POPAI’s perspective, the Indiana Judicial Center is best suited for administering the Probation Improvement Fund grants and the Substance Abuse Treatment Fund grants. We urge the committee to consider the Indiana Judicial Center’s history and experience certifying probation officers, Court Alcohol and Drug Programs and Drug Courts in the state.

POPAI Concern #3: Probation departments, community corrections programs and problem solving courts will be required to add the responsibility of supervising all B, C, and D felons exiting the IDOC but no specific provision for added probation officer staffing is made.

At the present time, all B, C, and D felons exiting the department are under the supervision of Parole. SB 561 increases responsibility of probation departments, community corrections programs and problem solving courts to include the supervision of B, C, and D felons exiting the IDOC. The bill as written removes this responsibility from Parole and shifts it to probation, community corrections, and problem solving courts but does not shift any Parole funding to subsidize this additional responsibility.

Speaking just for POPAI, Probation departments are anticipating increased caseloads as a result of the diversion of “D” felons in addition to the release of B, C, and D felons to probation (as opposed to Parole as indicated in Section 23 of the proposed bill), and the reduction in certain felonies that change the mandatory minimum sentences to the IDOC. Probation in the State of Indiana needs resources to further the strategies outlined by the CSG. Without the appropriate resources and the ability to adequately supervise those offenders who need the services the most (high risk), the system of community supervision will inevitably fail and public safety will be compromised. According to the CSG, felony probations have increased nearly 36% from 1999 to 2008. This increase has been met with minimal increases in probation officers. The CSG has found an average caseload of one hundred eighty-one (181) clients per adult probation officer in Indiana. This creates a significant issue with regard to public safety.

At present, the Indiana Judicial Center in partnership with the IDOC has implemented a risk and needs measurement instrument that is utilized by the department, probation, community corrections and parole. While indications exist that this instrument will affect community supervision, the underlying philosophical change that is being encountered is similar to this proposed bill....that is, monumental.

POPAI Concern #4: The restriction of utilizing community corrections grant funding and user fee funds for the exclusive supervision of “persons who have been convicted of a felony” could have the unintended effect of substantially reducing and possibly eliminating community corrections programs in some counties.

In reading these proposed statutes, the indication is that monies received from the State of Indiana (IDOC) shall only be used to offer services to persons who have been convicted of a felony.

In addition, user fee funds obtained from the services to persons who have been convicted of a felony can only be used to offer services to felons. While Sections 6, 7, 8 and 12 would allow for a community corrections agency to serve misdemeanor and juvenile clients, according to the proposed bill, two sets of accounting processes would need to be maintained; one for felony clients and one for the misdemeanants and juveniles. In addition, if a community corrections program serves misdemeanants, juveniles and felons, a community corrections program must divide staff in some manner to ensure compliance with the statute.

As a practical matter, many if not most community corrections programs do not have designated field home detention officers who only supervise felons. It is very common for community corrections field home detention officers to supervise a mixed caseload consisting of felons and misdemeanants. In smaller communities, these community corrections field home detention officers may also supervise juvenile offenders.

The language in this part of the bill references “persons who have been convicted of a felony.” Was it the intent of this bill to exclude pretrial defendants who have been charged with felony offense, but who have not yet been convicted? Many community corrections programs and probation departments in this state supervise pretrial defendants. Judges often order pretrial supervision of defendants as a matter of public safety. By limiting the services to “persons who have been convicted of a felony,” the bill could unintentionally be limiting or omitting services to persons charged with committing felony offenses who could benefit from community supervision while awaiting trial.

Additionally, restricting the use of IDOC grant funds and user fees to only “persons who have been convicted of a felony” fails to recognize the reality of funding issues at the local level. Some community corrections programs in the state are incorporated and integrated into the local probation department. Thus, correctional programming and supervision functions are integrated.....there is no “felony” programming or “misdemeanant” programming, there is only programming that responds to the individual offender’s risk and needs. By utilizing the Indiana Risk Assessment System (known as IRAS), probation officers are able to intervene at an earlier stage of the criminal developmental process than would otherwise be possible. Referring offenders to the appropriate level of community supervision and correctional programming disrupts the development of “career criminal,” ultimately decreasing the number of future felony commitments to IDOC. It is of great importance that local correctional options be expanded, not reduced.

SB 561 as written could actually reduce the availability of correctional programs at the local level. With the only true disincentive being loss of misdemeanor funds, some counties may conduct a cost-benefit analysis and find that it is cheaper to lose misdemeanor funding than to absorb the responsibility of funding misdemeanor community corrections programming and juvenile programming without the state grants and/or user fees.

Section 11 summarizes the purpose of the community corrections grant fund at the local level, particularly the home detention fund, may only be used or reported for those participants who have been convicted of a felony. If SB 561 is adopted as written, a new law would need to be created to establish a community corrections user fee fund for misdemeanants and/or juveniles who may be served by a community corrections program.

POPAI urges that the total prohibition of utilization of state (IDOC) grant funding and user fees for juvenile, misdemeanor and pretrial supervision be eliminated from this bill.

POPAI Concern #5: The proposed legislation does not fully take into account the recently implemented Indiana Risk Assessment System (IRAS) and its potential impact on community supervision.

As previously mentioned, the Indiana Judicial Center in partnership with the IDOC has implemented a risk and needs measurement instrument that is utilized by the department, probation, community corrections and parole. The implementation of this risk assessment system will lead to new community supervision requirements from the Indiana Judicial Center in the near future.

SB 561 proposes in Section 17, 18, 19, and 20 there is an established a program of state financial aid to be used for the support of court probation services **to felons and high risk offenders** (Section 17). The financial aid program shall be administered by the Judicial Conference of Indiana. This financial aid shall be used for the following purposes:

- (1) Salaries for existing or new probation officer positions.
- (2) Maintenance or establishment of administrative support services to probation officers.
- (3) Development and use of a progressive sanctions policy for violations of probation conditions.**
- (4) Development and use of evidence based supervision practices and programs to reduce the risk of further offense.**
- (5) Establishment of a system to improve the efficiency and coordination of offender services provided by supervision agencies within a county to ensure that an offender is supervised by only one (1) offender supervision agency.** (Section 18)

Section 19 further indicates the State financial aid for support of probation services **to felons and high risk offenders** may be made only to courts meeting the minimum standards adopted by the Judicial Conference of Indiana. Section 20 completes the “aid” or grant by requiring an accounting of funds expended be reported quarterly to the Indiana Judicial Center.

POPAI supports the notion of funding allowed in Section 17 through 20. However, these sections combined with the prior sections, 6 through 12, may limit the services available to misdemeanants particularly those “high risk” misdemeanants.

SB 561 places much emphasis on “persons who have been convicted of a felony.” However, there are offenders who plead guilty to misdemeanor offenses but who may be just as high risk if not more of a risk to the community than a “person who has been convicted of a felony.” Negotiated plea agreements and/or reduction in charging are common. An offender that started out with an arrest for a class B felony Burglary may end up with a plea to Conversion, class A misdemeanor (just one example). Then there are repeat drunk driving offenders, some who have pleaded to reduced charges of Reckless Driving, Public Intoxication, etc.; it is not uncommon to see a repeat drunk driver placed on probation after a misdemeanor conviction.

With the arrival of the long awaited Indiana Risk Assessment System, it is likely that more “high risk misdemeanants” will be identified and found to be in need to community corrections programming. Artificially limiting community corrections programs at any level to “persons who have been convicted of a felony” fails to take into account that community corrections programs were created by the Indiana legislature to promote community safety through rehabilitation of offenders.

Community corrections programs need to be provided to the offenders who are in need of these types of services, regardless of what the name of the offense, or offense classification, may be.

Respectfully Submitted by Don Travis, POPAI President and Linda Brady, POPAI Vice-President