

**ANNUAL REPORT
OF THE
PROBATION SERVICES
STUDY COMMITTEE**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

October, 1999

PROBATION SERVICES STUDY COMMITTEE
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Mark Bucherl
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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

INDIANA LEGISLATIVE COUNCIL
1999

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Philip J. Sachtleben
Executive Director
Legislative Services Agency

I. STATUTORY DIRECTIVE

The Indiana General Assembly enacted legislation in 1998 directing the Committee to study, review, and make recommendations regarding the following: (1) The mission of probation services. (2) Duties, roles, and responsibilities of probation officers. (3) Any necessary organizational changes. (4) Improvements to salary schedules and benefits. (5) Training standards. (6) Caseload classification standards. (7) Methods and levels of funding. (8) Other topics assigned by the Indiana Legislative Council or the Committee Chairman.

II. INTRODUCTION AND REASONS FOR STUDY

The Committee was directed to study probation services because of the integral role probation plays in law enforcement and correctional processes and its essential role in ensuring safety in Indiana communities. The Committee has three years in which to complete its work and to issue annual reports stating findings, conclusions, and recommendations. The Committee's work must be completed by November 1, 2000.

The Committee is served by 20 members with diverse perspectives on probation issues. The Committee is comprised of: (1) legislative members, including two senators and two representatives; (2) two judges, one who exercises criminal jurisdiction and one who exercises juvenile jurisdiction; (3) three individuals who hold a public office as a county clerk, auditor, commissioner, or councillor; (4) a representative of the Judicial Conference of Indiana; (5) a representative of the Department of Correction (DOC); (6) a representative of the Indiana Prosecuting Attorney's Council; (7) a county sheriff; (8) a county prosecutor; (9) four probation officers; (10) a municipal police chief; and (11) a community corrections program director.

III. SUMMARY OF WORK PROGRAM

The Committee, which is in the second year of its three year study process, met three times.

August 25, 1999 The Committee discussed a plan of action for its course of study. The Committee also heard testimony on the following topics: (1) The history and development of the Probation Services Study Committee. (2) Suggestions for revisions of the recently enacted Community Transition Program (CTP). (3) An Allen County perspective on the CTP and the administration of community corrections. (4) DOC's perspective of CTP and the viewpoints of diverse constituencies that met with the DOC to discuss CTP implementation issues.

September 22, 1999 The Committee heard testimony on and discussed the following: (1) Probation officers' salaries, case classification, and certification. (2) Positive and negative aspects of conferring law enforcement powers upon probation officers.

October 20, 1999 The Committee considered and voted on various probation and corrections oriented legislation. The Committee also approved the draft version of this report.

IV. SUMMARY OF TESTIMONY

During the Committee's course of study, numerous issues were considered, categorized as follows:

A. The Community Transition Program

During the 1999 legislative session, the Indiana General Assembly enacted legislation that established a Community Transition Program. The CTP allows state prisoners who are within four months of completing their sentences to make the transition back to society by receiving an early release from the Department of Correction and then being placed into a community corrections program. The appropriate sentencing court and prosecutor must be notified beforehand and the court must approve the early release. The purpose of the CTP was to help prisoners readjust to society and to alleviate some incarceration costs.

The following suggestions for change were made regarding the CTP:

- The minimum \$7 per diem for each offender who is sent back to a community and placed into a CTP is not enough money to adequately operate the program.
- Concern was expressed about costs to the county for offenders assigned to the CTP who end up being detained in the county jail either while awaiting placement into a community corrections program or as a result of being terminated from the CTP because of a violation of one of the program's conditions.
- The CTP law requires that the offender must be sent back to the community where the offender was sentenced. However, the offender may not have any family or a support system in that area.
- The due process rights of an offender who violates the conditions of the CTP were not addressed.
- The responsibility for notifying victims of offenders who are released from the CTP program is not addressed in the law.
- The CTP law presumes that an offender is given one sentence from one judge. It does not address situations in which the offender is given concurrent and consecutive sentences from two different courts.
- The CTP law is silent on the manner in which habitual offenders should be handled.
- The CTP law raises concerns about whether a plea agreement would be binding. Indiana case law has previously provided that a sentence modification was not permitted where the sentence was part of a plea agreement.
- Under IC 35-38-2.6-1, a person may not be assigned to a community corrections program if the defendant is convicted of a sex offense, Class A or Class B felony drug offense or non-suspendible felony. Questions were raised about whether these offenders would now be eligible for community corrections placement in a transitioning program.

□ The CTP law is a shift in responsibility for supervising felons from the DOC to the local communities which raises concerns about whether all community corrections programs and probation programs are adequately equipped to handle this additional responsibility.

□ Additional issues about the CTP law are raised in an August 24, 1999 memorandum issued by Steve Johnson, Indiana Prosecuting Attorneys Council, and a memorandum by Christi Megna, Legislative Services Agency, dated September 21, 1999.

B. Probation Officer Salary Issues

Probation officers often leave their positions after four years for higher salaried positions. Judges are reluctant to urge higher salaries for probation officers because of criticism from the Indiana Association of Counties. In 1997, \$8 million was raised in probation user fees, but the fees partially cover salaries and also fund rehabilitative programs. It was estimated that it would cost approximately \$14.9 million to fund one-half of probation officer salaries in Indiana. It was suggested that state funding assistance for probation officer salaries should be directed at reducing probation officer workloads.

C. Law Enforcement Powers for Probation Officers

Whether probation officers should have law enforcement powers was debated.

Positive Aspects of Law Enforcement Powers for Probation Officers

Probation officers have concerns about protecting themselves from their probationers. The National Institute of Corrections suggests providing the option for probation officers to carry weapons. Testimony was provided suggesting that legislation should be proposed allowing probation officers to carry weapons and to also provide the probation officers with training. However, it was further suggested that if probation officers are required to provide law enforcement duties, they should be paid more and receive retirement benefits similar to those provided for law enforcement officers.

Three-fourths of Indiana judges thought probation officers should be able to carry guns while on duty, if properly trained.

Negative Aspects of Law Enforcement Powers for Probation Officers

The roles of probation officers and police officers should not be confused. Concern was expressed that law enforcement activities might be forced onto probation officers, especially in the area of juvenile probation.

Probation officer training may be needed, but testimony was heard that the Indiana Law Enforcement Academy did not have enough capacity to conduct the training.

Liability issues were discussed with respect to a probation officer's exercise of law enforcement powers. There was discussion about whether legislation should be fashioned to confer immunity on probation officers for possible negligent acts. There is already a growing body of federal case

law that confers immunity upon judicial officers along with that already given to judges. Judicial immunity flows to probation officers except in circumstances where probation officers exceed their authority.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee made the following findings of fact:

The Committee reviewed three preliminary drafts in order improve upon Indiana's current community transition program laws: (1) Option #1, PD 3455, transfers the administration of the CTP to the Department of Correction. (2) Option #2, PD 3522, places control over the CTP with the courts by expanding the sentencing modification statutes. (3) Option #3, PD 3523, makes numerous modifications to the current CTP laws while retaining its current structure. However, the Committee was unable to reach a consensus on these PDs.

Finding #1. Offenders who have been incarcerated should receive services that assist them in being transitioned back into the community. There is also a need to alleviate some of the prison overcrowding.

Finding #2. The CTP can work with proper communication between the Department of Correction and judges, prosecutors, probation officers, and persons who work with community corrections programs. Numerous aspects of the CTP law need to be refined to facilitate proper implementation of the CTP.

The Committee made the following recommendations:

Recommendation #1: *Probation officer salaries (PD 3517)*

PD 3517. Allows a court having probation jurisdiction to apply to the Judicial Conference of Indiana for state financial assistance to be used for probation officer salaries. Applies only to courts administering probation that meet or exceed all of the minimum standards adopted by the Judicial Conference of Indiana. Requires that the financial assistance must be limited to an amount that is 50% of the minimum cost of salaries for not more than the number of probation officers required by the minimum standards adopted by the conference. Eliminates the requirement that the Budget Committee approve the salaries. Allows counties to appropriate funds for probation positions and services. Expands the information required on an application requesting financial aid to include any information required by the conference. Makes stylistic changes.

The Committee approved the following three amendments to PD 3517: (1) Delay the effective date until January 1, 2001. (2) Allow counties to borrow money to pay probation officers' salaries in a manner that is equivalent to a tax anticipation warrant. (3) Apply the state financial assistance not only to probation officer salaries but also to probation officer benefits.

Vote on PD 3517: Adopted as Amended by Consent.

Recommendation #2: *Death benefit for probation officers (PD 3469)*

PD 3469. Expands the law to provide that survivors of a probation officer who dies in the line of duty are entitled to receive certain death benefits.

Vote on PD 3469: Adopted by Consent.

Recommendation #3: *Probation officer safety (PD 3515)*

PD 3515. Requires a probation officer to meet the following conditions before the probation officer is allowed to carry a handgun while on duty: (1) The court with jurisdiction over the probation officer must enter an order authorizing the probation officer to carry the handgun. (2) The probation officer must obtain a license to carry the handgun. (3) The probation officer must complete a certified handgun safety course. Requires the Law Enforcement Training Board to adopt rules for certifying handgun safety courses that meet certain standards for training probation officers in handgun safety. Specifies that the certified handgun safety courses for probation officers may include courses offered in the private sector. Specifies that the tort claims act applies to a civil action arising out of an act within a probation officer's employment or duties. Makes certain stylistic changes.

Vote on PD 3515: Adopted by Consent

WITNESS LIST

The Honorable Tom Milligan, Montgomery Circuit Court,
Vice President, Indiana Judges' Association

Sheriff Dave Murtaugh, Tippecanoe County Sheriff
President of the Indiana Sheriff's Association

Ms. Shelia Hudson, Executive Director, Allen County Community Corrections

Mr. Eric Zimmerman, Chief Adult Probation Officer, Allen County

Mr. Randy Koester, General Counsel & Legislative Liaison, Department of Correction

Mr. Todd McCormack, Chief Probation Officer, Hendricks County
Chair of the Probation Officers Advisory Committee

The Honorable David Matsey, Starke Circuit Court

Ms. Linda Brady, Chief Probation Officer, Monroe County Probation Office

Ms. Carolyn Foley, Chief Probation Officer, Allen County Juvenile Probation Office