

Hide photos

Journal Gazette

Published: February 20, 2011 3:00 a.m.

Scaled-down justice

Want to fight crime? Save money? Study suggests using prisons less

TRACY WARNER | Editorial Page Editor

Some cocaine dealers are serving way too much time in Hoosier prisons.

This is one of the arguments in support of a legislative proposal aimed at reining in prison sentences for non-violent crimes. The controversial measure has support from Gov. Mitch Daniels and other key players but strikes fear into the hearts of lawmakers who don't want to appear soft on crime.

While some of the debate revolves around rehabilitation versus punishment, the bigger issue is money. The proposal would shift hundreds of criminals each year from the state Department of Correction – the prison system – to county-level courts, probation and Community Corrections programs. The state would send more money to the counties – starting at a total of \$5 million annually – but county officials worry the amounts will be insufficient, perhaps woefully so.

The idea that fewer criminals should go to prison comes not from a progressive advocacy group but from an independent, data-driven study of Indiana sentencing practices. Those who support the study's findings include Daniels, Indiana Chief Justice Randall Shepard and Attorney General Greg Zoeller, not exactly wild-eyed liberals.

Released just two months ago, the study is the chief piece of evidence supporting the legislative proposal.

Advocates say the plan will save the state hundreds of millions of dollars while improving public safety with a better emphasis on rehabilitation that is less costly and more likely to turn lower-level, non-violent offenders away from crime. In turn, the state prison system would focus its resources on the more violent offenders who *should* be locked up.

Opponents argue that some measures are too soft on certain crimes and would merely transfer a financial burden from state government to cash-strapped counties. They worry about many of the details and question the rush to put controversial, little-debated policies into law.

In a legislative session seemingly overflowing with important and emotional issues – education, redistricting, guns, gay marriage and more – the sentencing proposal is emerging as one of the most contentious and significant.

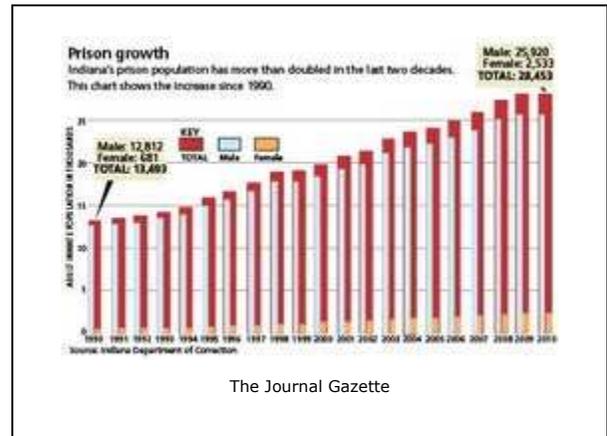
Here's a look at what's happening and why Hoosiers should care.

The problem

Prisons: Key Indiana prisons are aging and bursting at the seams. "If there was a closet, we put two bunk beds in," said Ed Buss, who until recently was commissioner of the Indiana Department of Correction.

As lawmakers over the years added more crimes and longer sentences, the state simply added prison space. Without changes, Indiana will spend *an additional* \$1.2 billion in the next seven years to build and operate prisons, the study by the Pew Center on the States and the Council of State Governments Justice Center concluded.

Fast growth: Some Hoosier officials were stunned when Indiana's prison population grew at a higher rate than that of any other state in 2009, a year in which prison populations fell nationwide. From 2000 to 2008, the number of criminals in Indiana prisons jumped 41 percent – compared with 13 percent in Ohio and Wisconsin, 2 percent in Michigan and zero percent in Illinois.



Small crimes, big burden: During the last decade, violent crime in Indiana dropped and the arrest rate for violent crimes dropped 27 percent. But more Hoosiers were imprisoned.

In 2009, half of the new inmates going into state prisons were convicted of Class D felonies, the least severe of felony crimes. More than half of prison admissions were for drug offenses or non-violent property crimes such as theft and fraud.

Sentencing in perspective: According to the study of Indiana sentencing practices, the average sentence for a drug deal was eight years, while the average sentence for sexual assault was five years, five months.

In Indiana, the sentence for selling 3 grams of cocaine – roughly the amount of three individual packets of sugar – is 20 to 50 years. In Texas, the sentence is 2 to 20 years. In neighboring Ohio, the maximum is one year in prison.

Sentences of more than five years for low-level dealers are senseless, argues Larry Landis, executive director of the Indiana Public Defenders Council.

"After five years, you don't have any more deterrence," he said. With longer sentences, "you're not getting anything for public safety. You're wasting your resources."

The process

Proposals to address the issues are in Senate Bill 561. Before discussing them, it's important to note that the bill is a work in progress. It faced significant amendments in committees last week and will likely face more on the Senate floor.

The most significant change would require violent criminals convicted of the most severe felonies to serve at least 85 percent of their sentences. Under current laws, many of them can be released after serving half, or sometimes even less, of the years a judge hands down. Such a provision could reduce the cost-savings in the original bill by keeping more people in prison. Whether the proposal is a serious move toward truth in sentencing or an attempt to kill the entire proposal is subject of debate.

The bill has a long path to go toward passage and could be dropped or dramatically changed along the way.

(See more on this in Niki Kelly's story Tuesday.)

The proposal

Theft: In Indiana, all thefts are felonies. (Theft crimes involve taking property without use of force or breaking into a home or building.) Indiana is believed to be the only state in the nation that treats petty theft as a felony. The proposal would make the first offense of stealing an item worth less than \$750 as a misdemeanor and taking something worth between \$750 and \$50,000 a Class D felony.

Drugs: The original proposal would lower the felony category for dealing smaller amounts of drugs. Possessing up to 10 grams of cocaine or methamphetamine would be a Class D felony.

Class D felonies: Perhaps the most controversial element would give financial incentives for county judges to avoid sending Class D felony offenders – most involving non-violent theft, fraud or drug violations – to state prison. The proposal emphasizes alternative sentencing and "problem-solving courts," such as drug courts and re-entry courts. Counties would be financially penalized for failing to use such alternatives.

In 2009, Allen County sent 637 Class D offenders to state prisons – at an estimated cost to state taxpayers of more than \$10 million.

With many serving only a few months, prison officials say that leaves virtually no time for the inmates to go through training and other programs in the prison system. Inmates arrive, they are evaluated – and then, sometimes within a matter of weeks, they are released. "We get 'em ... and we're just basically warehousing them," Buss said. "They never have time to get into even the most basic program."

Probation, etc.: The proposal places more emphasis on supervising offenders outside of locked cells, through programs such as probation and Community Corrections, which oversees numerous offenders in urban counties, including those whose whereabouts are monitored using ankle bracelets. The state would establish uniform guidelines for probation departments to conduct risk assessments of offenders.

Counties would be required to run programs – or contract services – for drug treatment, alcohol counseling, mental health services, housing and more to help rehabilitate criminals.

The counties

Glossary

Class D felony: The least severe of four felony classes of crime in Indiana. The current penalty is a minimum of 6 months and a maximum of 3 years in prison.

Community Corrections: County-level programs that offer an alternative to jail or prison. Programs include electronic monitoring with ankle bracelets, community-service work crews, and rehabilitation programs such as substance-abuse counseling and job training.

Department of Correction: The state agency that oversees the prison system as well as programs dealing with convicted criminals.

Parole officers: State employees who monitor offenders after release from state prison.

Probation: The county-level program that monitors offenders out of jail but still under the court's control. Probation officers are employees of the local courts.

Truth in sentencing: Most Indiana inmates can reduce their sentence by at least 50 percent by not causing trouble. They receive an additional day's credit for each "good" day served. Other incentives, such as getting a college degree, can further reduce sentences. Under truth in sentencing, reductions are limited; one proposal would require some criminals to serve 85 percent of a sentence.

Correcting Corrections

- First in a five-day series on the state of the Indiana prison system

Coming up

Monday: A snapshot of Indiana's prison population

Tuesday: The politics behind sentencing reform

Wednesday: Money the key issue

Thursday: Melissa Long describes wearing an ankle bracelet

On TV

- Indiana's NewsCenter also examines sentencing reform this week on newscasts at 5 and 11 p.m. Monday through Thursday. Look for writers from The Journal Gazette to appear on some of those newscasts.

Allen County is in an ideal situation to flourish under the proposal.

Its Community Corrections program is considered one of the best in the state. Alternative sentencing and problem-solving courts are firmly established. The probation department already conducts risk assessment.

On the other hand, "We do not have an active Community Corrections program in Huntington County," Prosecutor Amy Richison said, not unusual for the state's smaller counties.

"Funding is supposed to be available under the proposal," she said, but many county-level officials across the state believe it would be inadequate.

"We're really concerned about the funding coming back to the counties," said David Bottorff, executive director of the Indiana Association of Counties. The proposal creates funds for counties, but "some of our people are concerned it's going to be much, much more."

The state would send money to counties based on complex formulas. How much is being debated and changes as the bill winds through the General Assembly, but \$10 million annually has been suggested – an average of about \$109,000 for each county, providing little more than the salaries of two probation officers.

(More explanation on the finances is in Jeff Wiehe's Wednesday story.)

More concerns

In addition to money, insiders in the correction system have some other concerns and observations:

- The theft crime argument, they argue, is overblown. Prosecutors often plead felony theft cases down to criminal conversion, a misdemeanor defined as "exert(ing) unauthorized control over property of another person."
- Many criminals convicted of Class D felonies were first charged with a more-severe crime that was reduced in a plea bargain. So many of those affected by the proposal may be deeper into crime than the charge reflects.
- One goal of the proposal is to clarify the relationship and reduce overlap between county probation departments, county Community Corrections departments and state parole officers. But some county officials question whether that goal is accomplished in the bill. While they generally believe offenders are more closely monitored by county-paid probation officers, they are particularly concerned about the costs of assuming more duties now performed by the state-paid parole officers.
- Some prosecutors question the lessening of sentencing for cocaine. "Cocaine is a huge problem in urban areas like ours," Allen County Prosecutor Karen Richards said. While 3 grams may not seem like much, "dealers are dealing 3 grams or a little more again and again and again."

More advantages

In addition to relieving the state's burgeoning prison costs, advocates of the proposal believe:

- Employed offenders may well be able to keep their jobs if they go into county-level programs. That doesn't happen in prison.
- Because participants in alternative sentencing programs pay a fee, it helps relieve the overall tax burden of criminal justice and can instill a greater sense of responsibility.
- Putting lower-level offenders into programs that emphasize rehabilitation will reduce recidivism. In addition to getting help, the offenders avoid prison, where minor criminals can learn to become major criminals.

"We think about justice," Buss said. " 'Somebody needs to be locked up.' That's our definition of justice."

But for the lower-level offenders affected by the proposal, "we are no more safe by locking these people up."

twarner@jg.net

[© Copyright 2011 The Journal Gazette. All rights reserved. This material may not be published, broadcast, rewritten or redistributed.](#)