
HOUSE BILL No. 1304

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-2-6-24; IC 11-12-3.7; IC 12-13-5-11; IC 12-23; IC 12-24-12-10; IC 31-30-3; IC 31-30.5; IC 31-32-4-1; IC 31-37-7; IC 33-37-8; IC 33-39-1-8; IC 33-40; IC 34-30-2-148.6; IC 35-31.5-2-68.5; IC 35-36-12; IC 35-43-10-3; IC 35-48-4-8.3; IC 35-50-2-8.

Synopsis: Various criminal law issues. Requires the criminal justice institute to track the number of direct file charges of juveniles in adult court. Requires custodial interrogations of juveniles to be recorded. Provides an exception if the interrogation occurs at the juvenile's school. Provides a process for funding appointed counsel for juveniles. Raises the ages for waiver of jurisdiction of juveniles to adult court. Defines "intellectual disability" and permits a person with an intellectual disability to participate in a forensic diversion program. Authorizes a prosecuting attorney to require a person participating in a prosecutorial diversion program to receive mental health treatment to reduce recidivism, and permits diversion and deferral fees to be used to fund mental health treatment programs to reduce recidivism. Permits a criminal court to appoint a court appointed special advocate to assist a person with an intellectual disability who is charged with a criminal offense. Changes the penalty of legend drug deception to a Class A misdemeanor. Removes the penalty for a subsequent conviction for possessing paraphernalia. Provides that a child who commits the delinquent act of running away may not be held in a juvenile detention facility. Provides that a juvenile shall not be shackled in court unless
(Continued next page)

Effective: July 1, 2015.

McMillin

January 13, 2015, read first time and referred to Committee on Courts and Criminal Code.



Digest Continued

the court determines the juvenile is dangerous or potentially dangerous. Provides that the habitual offender enhancement may be suspended if the habitual offender is in a court approved substance abuse treatment program. Allows drug abusers or alcoholics charged with or convicted of certain felonies to request treatment for addictions. Provides that a convicted individual may be placed on probation if the individual requests to undergo substance abuse treatment. Provides for voluntary and involuntary treatment for drug addictions.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1304

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-2-6-24, AS ADDED BY P.L.168-2014,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 24. (a) As used in this section, "criminal code
4 reform" refers to statutory provisions relating to criminal law enacted
5 by P.L.158-2013 and HEA 1006-2014.
6 (b) The institute shall monitor and evaluate criminal code reform as
7 described in this section.
8 (c) The institute shall annually gather data and analyze the impact
9 of criminal code reform on:
10 (1) local units of government;
11 (2) the department of correction; and
12 (3) the judicial center.
13 (d) The institute shall prepare an annual report containing the results
14 of its analysis before July 1 of each year. The report shall be provided



1 to the governor and the legislative council. The report provided to the
2 legislative council must be in an electronic format under IC 5-14-6.

3 (e) The report required under this section must:

4 (1) include an analysis of:

5 (A) the effect of criminal code reform on:

6 (i) county jails;

7 (ii) community corrections programs;

8 (iii) probation departments; and

9 (iv) courts;

10 (B) recidivism rates;

11 (C) reentry court programs; and

12 (D) data relevant to the availability and effectiveness of mental
13 health and addiction programs for persons who are at risk of
14 entering the criminal justice system, who are in the criminal
15 justice system, and who have left the criminal justice system;

16 **and**

17 (2) track the number of requests for sentence modification that are
18 set for hearing by the court, including the relief granted by the
19 court, if any. The report must include whether the grant or denial
20 of a request for sentence modification was discretionary or
21 mandatory, and whether the prosecuting attorney opposed the
22 request for sentence modification, agreed to the request for
23 sentence modification, or took no position on the request for
24 sentence modification; **and**

25 **(3) track the number of direct file charges of juveniles in adult
26 courts.**

27 (f) All local units of government and local elected officials,
28 including sheriffs, prosecuting attorneys, judges, and county fiscal
29 bodies, shall cooperate with the institute by providing data as requested
30 by the institute.

31 (g) State agencies, including the department of correction, the
32 Indiana prosecuting attorneys council, the Indiana public defender
33 council, and the judicial center, shall assist the institute by providing
34 requested data in a timely manner.

35 (h) Based on its analysis, the institute shall include
36 recommendations to improve the criminal justice system in Indiana,
37 with particular emphasis being placed on recommendations that relate
38 to sentencing policies and reform.

39 (i) The institute shall include research data relevant to its analysis
40 and recommendations in the report.

41 SECTION 2. IC 11-12-3.7-4, AS AMENDED BY P.L.192-2007,
42 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2015]: Sec. 4. As used in this chapter, "forensic diversion
2 program" means a program designed to provide an adult:

- 3 (1) who has **an intellectual disability**, a mental illness, a
4 addictive disorder, or ~~both a mental illness and an addictive~~
5 ~~disorder a combination of those conditions~~; and
6 (2) who has been charged with a crime that is not a violent
7 offense;

8 an opportunity to receive community treatment and other services
9 addressing mental health and addiction instead of or in addition to
10 incarceration.

11 SECTION 3. IC 11-12-3.7-4.5 IS ADDED TO THE INDIANA
12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2015]: **Sec. 4.5. As used in this chapter,**
14 **"intellectual disability" means a disability characterized by**
15 **significant limitations in:**

- 16 (1) **intellectual functioning; and**
17 (2) **adaptive behavior;**

18 **that originated before the person became eighteen (18) years of**
19 **age.**

20 SECTION 4. IC 11-12-3.7-7, AS AMENDED BY P.L.2-2014,
21 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2015]: Sec. 7. (a) An advisory board shall develop a forensic
23 diversion plan to provide an adult who:

- 24 (1) has **an intellectual disability**, a mental illness, an addictive
25 disorder, or ~~both a mental illness and an addictive disorder a~~
26 ~~combination of those conditions~~; and

- 27 (2) has been charged with a crime that is not a violent crime;

28 an opportunity, pre-conviction or post-conviction, to receive
29 community treatment and other services addressing **intellectual**
30 **disabilities**, mental health, and addictions instead of or in addition to
31 incarceration.

32 (b) The forensic diversion plan may include any combination of the
33 following program components:

- 34 (1) Pre-conviction diversion for adults with mental illness.

- 35 (2) Pre-conviction diversion for adults with addictive disorders.

- 36 (3) **Pre-conviction diversion for adults with intellectual**
37 **disabilities.**

- 38 (3) (4) Post-conviction diversion for adults with mental illness.

- 39 (4) (5) Post-conviction diversion for adults with addictive
40 disorders.

- 41 (6) **Post-conviction diversion for adults with intellectual**
42 **disabilities.**



1 (c) In developing a plan, the advisory board must consider the
 2 ability of existing programs and resources within the community,
 3 including:

- 4 (1) a problem solving court established under IC 33-23-16;
 5 (2) a court alcohol and drug program certified under
 6 IC 12-23-14-13;
 7 (3) treatment providers certified by the division of mental health
 8 and addiction under IC 12-23-1-6 or IC 12-21-2-3(5); and
 9 (4) other public and private agencies.

10 (d) Development of a forensic diversion program plan under this
 11 chapter or IC 11-12-2-3 does not require implementation of a forensic
 12 diversion program.

13 (e) The advisory board may:

- 14 (1) operate the program;
 15 (2) contract with existing public or private agencies to operate one
 16 (1) or more components of the program; or
 17 (3) take any combination of actions under subdivisions (1) or (2).

18 (f) Any treatment services provided under the forensic diversion
 19 program:

- 20 (1) for addictions must be provided by an entity that is certified by
 21 the division of mental health and addiction under IC 12-23-1-6;
 22 or
 23 (2) for mental health must be provided by an entity that is:
 24 (A) certified by the division of mental health and addiction
 25 under IC 12-21-2-3(5);
 26 (B) accredited by an accrediting body approved by the division
 27 of mental health and addiction; or
 28 (C) licensed to provide mental health services under IC 25.

29 SECTION 5. IC 11-12-3.7-11, AS AMENDED BY P.L.168-2014,
 30 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2015]: Sec. 11. (a) A person is eligible to participate in a
 32 pre-conviction forensic diversion program only if the person meets the
 33 following criteria:

- 34 (1) The person has **an intellectual disability**, a mental illness, an
 35 addictive disorder, or ~~both a mental illness and an addictive~~
 36 ~~disorder.~~ **a combination of those conditions.**
 37 (2) The person has been charged with an offense that is:
 38 (A) not a violent offense; and
 39 (B) a Class A, B, or C misdemeanor, or a Level 6 felony that
 40 may be reduced to a Class A misdemeanor in accordance with
 41 IC 35-50-2-7.
 42 (3) The person does not have a conviction for a violent offense in



- 1 the previous ten (10) years.
- 2 (4) The court has determined that the person is an appropriate
3 candidate to participate in a pre-conviction forensic diversion
4 program.
- 5 (5) The person has been accepted into a pre-conviction forensic
6 diversion program.
- 7 (b) Before an eligible person is permitted to participate in a
8 pre-conviction forensic diversion program, the court shall advise the
9 person of the following:
- 10 (1) Before the individual is permitted to participate in the
11 program, the individual will be required to enter a guilty plea to
12 the offense with which the individual has been charged.
- 13 (2) The court will stay entry of the judgment of conviction during
14 the time in which the individual is successfully participating in
15 the program. If the individual stops successfully participating in
16 the program, or does not successfully complete the program, the
17 court will lift its stay, enter a judgment of conviction, and
18 sentence the individual accordingly.
- 19 (3) If the individual participates in the program, the individual
20 may be required to remain in the program for a period not to
21 exceed three (3) years.
- 22 (4) During treatment the individual may be confined in an
23 institution, be released for treatment in the community, receive
24 supervised aftercare in the community, or may be required to
25 receive a combination of these alternatives.
- 26 (5) If the individual successfully completes the forensic diversion
27 program, the court will waive entry of the judgment of conviction
28 and dismiss the charges.
- 29 (6) The court shall determine, after considering a report from the
30 forensic diversion program, whether the individual is successfully
31 participating in or has successfully completed the program.
- 32 (c) Before an eligible person may participate in a pre-conviction
33 forensic diversion program, the person must plead guilty to the offense
34 with which the person is charged.
- 35 (d) Before an eligible person may be admitted to a facility under the
36 control of the division of mental health and addiction, the individual
37 must be committed to the facility under IC 12-26.
- 38 (e) After the person has pleaded guilty, the court shall stay entry of
39 judgment of conviction and place the person in the pre-conviction
40 forensic diversion program for not more than:
- 41 (1) two (2) years, if the person has been charged with a
42 misdemeanor; or



- 1 (2) three (3) years, if the person has been charged with a felony.
 2 (f) If, after considering the report of the forensic diversion program,
 3 the court determines that the person has:
 4 (1) failed to successfully participate in the forensic diversion
 5 program, or failed to successfully complete the program, the court
 6 shall lift its stay, enter judgment of conviction, and sentence the
 7 person accordingly; or
 8 (2) successfully completed the forensic diversion program, the
 9 court shall waive entry of the judgment of conviction and dismiss
 10 the charges.
- 11 SECTION 6. IC 11-12-3.7-12, AS AMENDED BY P.L.192-2007,
 12 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2015]: Sec. 12. (a) A person is eligible to participate in a
 14 post-conviction forensic diversion program only if the person meets the
 15 following criteria:
 16 (1) The person has **an intellectual disability**, a mental illness, an
 17 addictive disorder, or ~~both a mental illness and an addictive~~
 18 ~~disorder.~~ **a combination of those conditions.**
 19 (2) The person has been convicted of an offense that is:
 20 (A) not a violent offense; and
 21 (B) not a drug dealing offense.
 22 (3) The person does not have a conviction for a violent offense in
 23 the previous ten (10) years.
 24 (4) The court has determined that the person is an appropriate
 25 candidate to participate in a post-conviction forensic diversion
 26 program.
 27 (5) The person has been accepted into a post-conviction forensic
 28 diversion program.
- 29 (b) If the person meets the eligibility criteria described in subsection
 30 (a) and has been convicted of an offense that may be suspended, the
 31 court may:
 32 (1) suspend all or a portion of the person's sentence;
 33 (2) place the person on probation for the suspended portion of the
 34 person's sentence; and
 35 (3) require as a condition of probation that the person successfully
 36 participate in and successfully complete the post-conviction
 37 forensic diversion program.
- 38 (c) If the person meets the eligibility criteria described in subsection
 39 (a) and has been convicted of an offense that is nonsuspendible, the
 40 court may:
 41 (1) order the execution of the nonsuspendible sentence; and
 42 (2) stay execution of all or part of the nonsuspendible portion of



- 1 the sentence pending the person's successful participation in and
2 successful completion of the post-conviction forensic diversion
3 program.
- 4 The court shall treat the suspendible portion of a nonsuspendible
5 sentence in accordance with subsection (b).
- 6 (d) The person may be required to participate in the post-conviction
7 forensic diversion program for no more than:
- 8 (1) two (2) years, if the person has been charged with a
9 misdemeanor; or
10 (2) three (3) years, if the person has been charged with a felony.
- 11 The time periods described in this section only limit the amount of time
12 a person may spend in the forensic diversion program and do not limit
13 the amount of time a person may be placed on probation.
- 14 (e) If, after considering the report of the forensic diversion program,
15 the court determines that a person convicted of an offense that may be
16 suspended has failed to successfully participate in the forensic
17 diversion program, or has failed to successfully complete the program,
18 the court may do any of the following:
- 19 (1) Revoke the person's probation.
20 (2) Order all or a portion of the person's suspended sentence to be
21 executed.
22 (3) Modify the person's sentence.
23 (4) Order the person to serve all or a portion of the person's
24 suspended sentence in:
- 25 (A) a work release program established by the department
26 under IC 11-10-8 or IC 11-10-10; or
27 (B) a county work release program under IC 11-12-5.
- 28 (f) If, after considering the report of the forensic diversion program,
29 the court determines that a person convicted of a nonsuspendible
30 offense failed to successfully participate in the forensic diversion, or
31 failed to successfully complete the program, the court may do any of
32 the following:
- 33 (1) Lift its stay of execution of the nonsuspendible portion of the
34 sentence and remand the person to the department.
35 (2) Order the person to serve all or a portion of the
36 nonsuspendible portion of the sentence that is stayed in:
- 37 (A) a work release program established by the department
38 under IC 11-10-8 or IC 11-10-10; or
39 (B) a county work release program under IC 11-12-5.
40 (3) Modify the person's sentence.
- 41 However, if the person failed to successfully participate in the forensic
42 diversion program, or failed to successfully complete the program



1 while serving the suspendible portion of a nonsuspendible sentence, the
 2 court may treat the suspendible portion of the sentence in accordance
 3 with subsection (e).

4 (g) If, after considering the report of the forensic diversion program,
 5 the court determines that a person convicted of a nonsuspendible
 6 offense has successfully completed the program, the court shall waive
 7 execution of the nonsuspendible portion of the person's sentence.

8 SECTION 7. IC 12-13-5-11 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 11. ~~Except as provided~~
 10 ~~in IC 31-37-7-3~~; IC 12-13 through IC 12-19 does not authorize a state
 11 or county official, agent, or representative, in carrying out IC 12-13
 12 through IC 12-19, to take charge of a child over the objection of either
 13 parent of the child or of the person standing in loco parentis to the
 14 child, except under a court order.

15 SECTION 8. IC 12-23-1-11, AS AMENDED BY P.L.113-2014,
 16 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2015]: Sec. 11. (a) This article does not repeal or modify
 18 Indiana law relating to the operation of a vehicle under the influence of
 19 liquor or drugs.

20 (b) IC 12-23-5, **IC 12-23-6.1, IC 12-23-7.1, IC 12-23-8.1**, and any
 21 other related provisions of this article shall be considered to be
 22 alternative methods or procedures for the prosecution of alcoholics or
 23 drug abusers as criminals.

24 SECTION 9. IC 12-23-6.1 IS ADDED TO THE INDIANA CODE
 25 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2015]:

27 **Chapter 6.1. Addiction Services**

28 **Sec. 1. A drug abuser or an alcoholic charged with or convicted**
 29 **of a felony may request treatment under the supervision of the**
 30 **division and upon the consent of the authorities concerned as set**
 31 **forth in IC 12-23-7.1 instead of prosecution or imprisonment.**

32 SECTION 10. IC 12-23-7.1 IS ADDED TO THE INDIANA CODE
 33 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2015]:

35 **Chapter 7.1. Continuance of Prosecution After Felony Charge**

36 **Sec. 1. If:**

37 **(1) a court has reason to believe that an individual charged**
 38 **with a felony is a drug abuser or an alcoholic or the individual**
 39 **states that the individual is a drug abuser or an alcoholic; and**
 40 **(2) the court finds that the individual is eligible to make the**
 41 **request for treatment provided for in IC 12-23-6.1;**
 42 **the court may advise the individual that the prosecution of the**



1 charge may be continued if the individual requests to undergo
2 treatment and is accepted for treatment by the division.

3 **Sec. 2. In offering an individual an opportunity to request**
4 **treatment, the court shall advise the individual of the following:**

5 (1) **If the individual requests to undergo treatment and is**
6 **accepted, the individual may be placed under the supervision**
7 **of the division for a period not to exceed three (3) years.**

8 (2) **During treatment the individual may be confined in an**
9 **institution or, at the discretion of the division, the individual**
10 **may be released for treatment or supervised aftercare in the**
11 **community.**

12 (3) **If the individual completes treatment, the charge will be**
13 **dismissed, but if the individual does not complete treatment,**
14 **prosecution on the charge may be resumed.**

15 (4) **A request constitutes a formal waiver of the right to a**
16 **speedy trial.**

17 (5) **To make a request the individual must waive a jury trial**
18 **and consent to a trial by the court or must enter a guilty plea,**
19 **with the general finding to be entered by the court to be**
20 **deferred until the time that prosecution may be resumed.**

21 **Sec. 3. If an eligible individual requests to undergo treatment,**
22 **the court may order the division to conduct an examination of the**
23 **individual to determine whether the individual is a drug abuser or**
24 **an alcoholic and is likely to be rehabilitated through treatment.**

25 **Sec. 4. The court may deny a request if after conducting a**
26 **pretrial or preplea investigation the court finds the individual**
27 **would not qualify under the criteria of the court to be released on**
28 **probation if convicted.**

29 **Sec. 5. If a request is granted, the court shall do the following:**

30 (1) **Certify to the division that the individual may request**
31 **treatment.**

32 (2) **Transmit to the division the following:**

33 (A) **A summary of the criminal history of the individual.**

34 (B) **A copy of the report of all background investigations**
35 **conducted by or for the court.**

36 **Sec. 6. Within a reasonable time after receiving an order to**
37 **conduct an examination, together with the court's certification of**
38 **eligibility and required supporting documents, the division shall**
39 **report to the court the results of the examination and recommend**
40 **if an individual should be placed under supervision for treatment.**

41 **Sec. 7. If the court, acting on the report and other information**
42 **coming to the court's attention, determines that:**



- 1 (1) an individual is not a drug abuser or an alcoholic; or
 2 (2) the individual is not likely to be rehabilitated through
 3 treatment;

4 the individual may be held to answer the charge.

5 **Sec. 8.** If the court determines that an individual is a drug
 6 abuser or an alcoholic and is likely to be rehabilitated through
 7 treatment, the court may, with the consent of the prosecuting
 8 attorney:

- 9 (1) defer the trial; or
 10 (2) without a jury, conduct the trial of the individual but may,
 11 with the consent of the prosecuting attorney, do the following:
 12 (A) Defer entering general findings with respect to the
 13 individual until the time that prosecution may be resumed.
 14 (B) Place the individual under the supervision of the
 15 division for treatment for a maximum of three (3) years.

16 **Sec. 9.** The court may require progress reports on an individual
 17 that the court finds necessary.

18 **Sec. 10.** An individual may not be placed under the supervision
 19 of the division for treatment under this chapter unless the division
 20 accepts the individual for treatment.

21 **Sec. 11.** If an individual is placed under the supervision of the
 22 division for treatment under this chapter, the criminal charge
 23 against the individual shall be:

- 24 (1) continued without final disposition; and
 25 (2) dismissed if the division certifies to the court that the
 26 individual has successfully completed the treatment program.

27 **Sec. 12.** (a) Subject to subsection (b), if by the expiration of the
 28 supervisory period the division has not been able to certify that an
 29 individual has completed the treatment program, the pending
 30 proceeding may be resumed.

31 (b) If the court believes that the individual will complete the
 32 treatment on a voluntary basis, the court may dismiss the criminal
 33 charge.

34 (c) If, before the supervisory period expires, the division
 35 determines that further treatment of the individual is not likely to
 36 be successful, the division shall so advise the court. The court shall
 37 terminate the supervision, and the pending criminal proceeding
 38 may be resumed.

39 **Sec. 13.** If a criminal proceeding is resumed, time spent in
 40 institutional care shall be deducted from a fixed term of
 41 imprisonment imposed.

42 **Sec. 14.** The division may not release an offender under section



1 **2(2) of this chapter to an alcohol and drug services treatment**
 2 **program that is not a program administered by a court under**
 3 **IC 12-23-14 or that has not complied with the certification**
 4 **requirements of the division of mental health and addiction.**

5 SECTION 11. IC 12-23-8.1 IS ADDED TO THE INDIANA CODE
 6 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2015]:

8 **Chapter 8.1. Treatment and Probation Following Felony**
 9 **Conviction**

10 **Sec. 1. If:**

11 (1) a court has reason to believe that an individual convicted
 12 of an offense is a drug abuser or an alcoholic or the individual
 13 states that the individual is a drug abuser or an alcoholic; and

14 (2) the court finds that the individual is eligible to make the
 15 request for treatment provided for under IC 12-23-6.1;

16 the court may advise the individual that the individual may be
 17 placed on probation if the individual requests to undergo treatment
 18 and is accepted for treatment by the division.

19 **Sec. 2. (a) In offering an individual an opportunity to request**
 20 **treatment, the court shall advise the individual of what may be**
 21 **required of the individual under IC 35-38-2-2.3 as conditions of**
 22 **probation.**

23 (b) The court may certify an individual for treatment while on
 24 probation regardless of the failure of the individual to request
 25 treatment.

26 **Sec. 3. If an individual requests to undergo treatment or is**
 27 **certified for treatment, the court may order an examination by the**
 28 **division to determine whether the individual is a drug abuser or an**
 29 **alcoholic and is likely to be rehabilitated through treatment.**

30 **Sec. 4. The court may deny the request if after conducting a**
 31 **presentence investigation the court finds that the individual would**
 32 **not qualify under criteria of the court to be released on probation.**

33 **Sec. 5. If a request is granted, the court shall certify to the**
 34 **division that the individual may request treatment.**

35 **Sec. 6. The court shall do the following:**

36 (1) Transmit to the division a summary of an individual's
 37 criminal history.

38 (2) Transmit to the division a copy of the reports on all
 39 background and presentence investigations conducted by or
 40 for the court.

41 **Sec. 7. Within a reasonable time after receiving an order to**
 42 **conduct an examination and after the court submits the required**



1 supporting documents and certification of eligibility, the division
2 shall do the following:

3 (1) Report to the court the results of the examination.

4 (2) Recommend whether the individual should be placed on
5 probation and supervision for treatment.

6 Sec. 8. If the court, acting on a report and other information
7 coming to the court's attention, determines that:

8 (1) an individual is not a drug abuser or an alcoholic; or

9 (2) the individual is not likely to be rehabilitated through
10 treatment;

11 the court shall sentence the individual as in other cases.

12 Sec. 9. If the court determines that an individual is a drug
13 abuser or an alcoholic and is likely to be rehabilitated through
14 treatment, the court may do the following:

15 (1) Place the individual on probation under IC 35-38-2 and
16 under the supervision of the division for treatment.

17 (2) Require progress reports on the individual from the
18 probation officer and the division that the court finds
19 necessary.

20 Sec. 10. An individual may not be placed under supervision
21 unless the division accepts the individual for treatment.

22 Sec. 11. (a) Failure of an individual placed on probation and
23 under the treatment supervision of the division to observe the
24 requirements set down by the division constitutes a violation of a
25 condition of probation.

26 (b) A failure shall be reported by the division to the probation
27 officer in charge of the individual and treated in accordance with
28 IC 35-38-2-3.

29 SECTION 12. IC 12-23-9-4, AS AMENDED BY P.L.113-2014,
30 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2015]: Sec. 4. (a) An individual who by medical examination
32 is found to be incapacitated by alcohol at the time of admission or to
33 have become incapacitated by alcohol at any time after admission may
34 not be detained at a facility:

35 (1) after the individual is no longer incapacitated by alcohol; or

36 (2) if the individual remains incapacitated by alcohol for more
37 than forty-eight (48) hours after admission as a patient, **unless the**
38 **individual is committed under IC 12-23-7.1 through**
39 **IC 12-23-8.1.**

40 (b) An individual may consent to remain in a facility as long as the
41 physician in charge believes it is appropriate.

42 SECTION 13. IC 12-23-10.1 IS ADDED TO THE INDIANA



1 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2015]:

3 **Chapter 10.1. Voluntary Treatment by Division for Drug**
4 **Abusers**

5 **Sec. 1. An individual who believes the individual is a drug**
6 **abuser may request the division or a facility approved by the**
7 **division to provide the individual with treatment.**

8 **Sec. 2. Upon receipt of a request, the division or facility may**
9 **require an examination of the individual to determine if:**

10 (1) the individual is a drug abuser; and

11 (2) the individual should be admitted to an existing treatment
12 facility or program.

13 **Sec. 3. The examination shall be conducted within a reasonable**
14 **time of the receipt of a request.**

15 **Sec. 4. The decision of the facility whether to offer treatment to**
16 **an individual and whether to discontinue treatment to an**
17 **individual is final and not subject to appeal.**

18 SECTION 14. IC 12-23-11.1 IS ADDED TO THE INDIANA
19 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2015]:

21 **Chapter 11.1. Involuntary Treatment by Division for Alcoholics**
22 **and Drug Abusers**

23 **Sec. 1. (a) Except as provided in subsection (b), an individual**
24 **who is:**

25 (1) an alcoholic;

26 (2) incapacitated by alcohol; or

27 (3) a drug abuser;

28 **may be involuntarily committed to the care of the division under**
29 **IC 12-26.**

30 (b) A drug abuser who is charged with or convicted of an
31 offense that makes the individual ineligible to make an election for
32 treatment under IC 12-23-6.1 may not be involuntarily committed
33 under subsection (a).

34 **Sec. 2. (a) Acceptance of treatment for drug abuse under the**
35 **supervision of the division may be made a condition of parole**
36 **under IC 11-13-3-4. Failure to comply with treatment may be**
37 **treated as a violation of parole.**

38 (b) The division shall establish the conditions under which a
39 parolee is accepted for treatment.

40 (c) A parolee may not be placed under supervision of the
41 division for treatment unless the division accepts the individual for
42 treatment.



1 **(d) The division shall make periodic progress reports regarding**
 2 **each parolee to the appropriate parole authority and shall report**
 3 **failures to comply with the prescribed treatment program.**

4 SECTION 15. IC 12-24-12-10, AS AMENDED BY P.L.113-2014,
 5 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2015]: Sec. 10. (a) Upon admission to a state institution
 7 administered by the division of mental health and addiction, the
 8 gatekeeper is one (1) of the following:

9 (1) For an individual with a psychiatric disorder, the community
 10 mental health center that submitted the report to the committing
 11 court under IC 12-26.

12 (2) For an individual with a developmental disability, a division
 13 of disability and rehabilitative services service coordinator under
 14 IC 12-11-2.1.

15 (b) The division is the gatekeeper for the following:

16 (1) An individual who is found to have insufficient
 17 comprehension to stand trial under IC 35-36-3.

18 (2) An individual who is found to be not guilty by reason of
 19 insanity under IC 35-36-2-4 and is subject to a civil commitment
 20 under IC 12-26.

21 (3) An individual who is immediately subject to a civil
 22 commitment upon the individual's release from incarceration in
 23 a facility administered by the department of correction or the
 24 Federal Bureau of Prisons, or upon being charged with or
 25 convicted of a forcible felony (as defined by IC 35-31.5-2-138).

26 (4) An individual transferred from the department of correction
 27 under IC 11-10-4.

28 **(5) An individual placed under the supervision of the division**
 29 **for addictions treatment under IC 12-23-7.1 and IC 12-23-8.1.**

30 SECTION 16. IC 31-30-3-2, AS AMENDED BY P.L.67-2008,
 31 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2015]: Sec. 2. Upon motion of the prosecuting attorney and
 33 after full investigation and hearing, the juvenile court may waive
 34 jurisdiction if it finds that:

35 (1) the child is charged with an act that is a felony:

36 (A) that is heinous or aggravated, with greater weight given to
 37 acts against the person than to acts against property; or

38 (B) that is a part of a repetitive pattern of delinquent acts, even
 39 though less serious;

40 (2) the child was at least ~~fourteen (14)~~ **sixteen (16)** years of age
 41 when the act charged was allegedly committed;

42 (3) there is probable cause to believe that the child committed the



1 act;

2 (4) the child is beyond rehabilitation under the juvenile justice

3 system; and

4 (5) it is in the best interests of the safety and welfare of the

5 community that the child stand trial as an adult.

6 SECTION 17. IC 31-30-3-3 IS AMENDED TO READ AS

7 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. Upon motion of the

8 prosecuting attorney and after a full investigation and a hearing, the

9 court may waive jurisdiction if it finds that:

10 (1) the child is charged with an act that, if committed by an adult,

11 would be a felony under IC 35-48-4;

12 (2) there is probable cause to believe that the child has committed

13 the act;

14 (3) the child was at least ~~sixteen (16)~~ **seventeen (17)** years of age

15 when the act was allegedly committed; and

16 (4) it is in the best interests of the safety and the welfare of the

17 community for the child to stand trial as an adult.

18 SECTION 18. IC 31-30-3-4 IS AMENDED TO READ AS

19 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. Upon motion of the

20 prosecuting attorney and after full investigation and hearing, the

21 juvenile court shall waive jurisdiction if it finds that:

22 (1) the child is charged with an act that would be murder if

23 committed by an adult;

24 (2) there is probable cause to believe that the child has committed

25 the act; and

26 (3) the child was at least ~~ten (10)~~ **twelve (12)** years of age when

27 the act charged was allegedly committed;

28 unless it would be in the best interests of the child and of the safety and

29 welfare of the community for the child to remain within the juvenile

30 justice system.

31 SECTION 19. IC 31-30-3-5, AS AMENDED BY P.L.158-2013,

32 SECTION 316, IS AMENDED TO READ AS FOLLOWS

33 [EFFECTIVE JULY 1, 2015]: Sec. 5. Except for those cases in which

34 the juvenile court has no jurisdiction in accordance with IC 31-30-1-4,

35 the court shall, upon motion of the prosecuting attorney and after full

36 investigation and hearing, waive jurisdiction if it finds that:

37 (1) the child is charged with an act that, if committed by an adult,

38 would be:

39 (A) a Level 1 felony, Level 2 felony, Level 3 felony, or Level

40 4 felony, except a felony defined by IC 35-48-4;

41 (B) involuntary manslaughter as a Level 5 felony under

42 IC 35-42-1-4; or



1 (C) reckless homicide as a Level 5 felony under IC 35-42-1-5;
 2 (2) there is probable cause to believe that the child has committed
 3 the act; and
 4 (3) the child was at least ~~sixteen (16)~~ **seventeen (17)** years of age
 5 when the act charged was allegedly committed;
 6 unless it would be in the best interests of the child and of the safety and
 7 welfare of the community for the child to remain within the juvenile
 8 justice system.
 9 SECTION 20. IC 31-30.5 IS ADDED TO THE INDIANA CODE
 10 AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2015]:
 12 **ARTICLE 30.5. JUVENILE LAW: PRELIMINARY**
 13 **PROCEEDINGS**
 14 **Chapter 1. Custodial Interrogations**
 15 **Sec. 1. As used in this chapter, "custodial interrogation" means**
 16 **an interrogation conducted by a law enforcement agency during**
 17 **which:**
 18 (1) a reasonable person being interrogated would consider the
 19 person to be in custody; and
 20 (2) a question is asked that is reasonably likely to elicit an
 21 incriminating response from the person.
 22 **Sec. 2. As used in this chapter, "law enforcement agency" means**
 23 **an agency or department of any level of state or local government**
 24 **whose principal function is the apprehension of criminal offenders.**
 25 **Sec. 3. As used in this chapter, "record electronically" means to**
 26 **make a record of:**
 27 (1) sounds by using audio electronic equipment; or
 28 (2) visual images and sounds by using video and audio
 29 electronic equipment.
 30 **Sec. 4. (a) After June 30, 2015, except as provided in subsection**
 31 **(b), a law enforcement agency shall record electronically all**
 32 **custodial interrogations:**
 33 (1) of juvenile suspects involved in investigations of acts that
 34 would be crimes if committed by an adult; and
 35 (2) that occur:
 36 (A) at:
 37 (i) a law enforcement agency station house; or
 38 (ii) any other building owned or operated by the law
 39 enforcement agency;
 40 at which persons are detained in connection with criminal
 41 investigations; or
 42 (B) at any other place where the suspect is detained in



1 connection with the investigation.

2 (b) A custodial interrogation of a juvenile that occurs at the
3 school the juvenile attends is not required to be electronically
4 recorded if recording the interrogation would impair the
5 administration of school functions.

6 Sec. 5. A law enforcement agency shall retain a copy of a
7 custodial interrogation of a juvenile electronically recorded under
8 this chapter:

9 (1) if the juvenile is adjudicated a delinquent child for
10 committing an act that would be crime if committed by an
11 adult, until the juvenile has exhausted all appeals related to
12 the adjudication;

13 (2) if the juvenile is convicted of a felony as an adult, until:

14 (A) the felony conviction is final; and

15 (B) the juvenile has exhausted all direct and habeas corpus
16 appeals related to the conviction; or

17 (3) until a prosecution of the juvenile for a felony is barred by
18 law.

19 Sec. 6. A custodial interrogation recorded electronically under
20 this chapter is:

21 (1) confidential; and

22 (2) exempt from disclosure under IC 5-14-3.

23 Sec. 7. (a) Except as provided in subsection (b), if a court finds
24 by a preponderance of the evidence that a juvenile suspect was
25 subjected to a custodial interrogation:

26 (1) after June 30, 2015; and

27 (2) that violated this chapter;

28 any statements made by the suspect during or following the
29 interrogation are inadmissible in the felony prosecution against the
30 suspect or in a juvenile adjudication.

31 (b) The state has the burden of proving by a preponderance of
32 the evidence that a statement is admissible under this subsection.

33 Chapter 2. Shackling of Juveniles in Court

34 Sec. 1. A juvenile shall not be shackled in court unless the court
35 has determined the juvenile is dangerous or potentially dangerous.

36 SECTION 21. IC 31-32-4-1 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) The following
38 persons are entitled to be represented by counsel:

39 (1) A child charged with a delinquent act, as provided by
40 IC 31-32-2-2.

41 (2) A parent, in a proceeding to terminate the parent-child
42 relationship, as provided by IC 31-32-2-5.



- 1 (3) Any other person designated by law.
- 2 **(b) A county auditor may seek reimbursement for the expenses**
- 3 **of counsel described in this section as described in IC 33-40-6-4.**
- 4 SECTION 22. IC 31-37-7-1, AS AMENDED BY P.L.146-2008,
- 5 SECTION 625, IS AMENDED TO READ AS FOLLOWS
- 6 [EFFECTIVE JULY 1, 2015]: Sec. 1. A child alleged to be a
- 7 delinquent child under IC 31-37-2, ~~except as provided in section 3 of~~
- 8 ~~this chapter~~, may not be held in:
- 9 (1) a secure facility; or
- 10 (2) a shelter care facility, a forestry camp, or a training school that
- 11 houses persons charged with, imprisoned for, or incarcerated for
- 12 crimes.
- 13 SECTION 23. IC 31-37-7-3 IS REPEALED [EFFECTIVE JULY 1,
- 14 2015]. ~~Sec. 3: A child alleged to be a delinquent child because of an act~~
- 15 ~~under IC 31-37-2-2 may be held in a juvenile detention facility for:~~
- 16 ~~(1) not more than twenty-four (24) hours before; and~~
- 17 ~~(2) not more than twenty-four (24) hours immediately after;~~
- 18 ~~the initial court appearance; not including Saturdays, Sundays, and~~
- 19 ~~nonjudicial days.~~
- 20 SECTION 24. IC 33-37-8-4, AS AMENDED BY P.L.229-2011,
- 21 SECTION 263, IS AMENDED TO READ AS FOLLOWS
- 22 [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) Except as provided in
- 23 subsection (b), upon receipt of monthly claims submitted on oath to the
- 24 fiscal body by a program listed in section 3(b) of this chapter, the fiscal
- 25 body of the city or town shall appropriate from the city or town fund to
- 26 the program the amount collected for the program fee under
- 27 IC 33-37-5.
- 28 (b) Funds derived from a deferral program or a pretrial diversion
- 29 program may be disbursed only by the adoption of an ordinance
- 30 appropriating the funds for one (1) or more of the following purposes:
- 31 (1) Personnel expenses related to the operation of the program.
- 32 (2) Special training for:
- 33 (A) a prosecuting attorney;
- 34 (B) a deputy prosecuting attorney;
- 35 (C) support staff for a prosecuting attorney or deputy
- 36 prosecuting attorney; or
- 37 (D) a law enforcement officer.
- 38 (3) Employment of a deputy prosecutor or prosecutorial support
- 39 staff.
- 40 (4) Victim assistance.
- 41 (5) Electronic legal research.
- 42 (6) Office equipment, including computers, computer software,



- 1 communication devices, office machinery, furnishings, and office
 2 supplies.
- 3 (7) Expenses of a criminal investigation and prosecution.
- 4 (8) An activity or program operated by the prosecuting attorney
 5 that is intended to reduce or prevent criminal activity, including:
 6 (A) substance abuse;
 7 (B) child abuse;
 8 (C) domestic violence;
 9 (D) operating while intoxicated; and
 10 (E) juvenile delinquency.
- 11 **(9) The provision of evidence based mental health and
 12 addiction forensic treatment services to reduce the risk of
 13 recidivism in a program administered or coordinated by a
 14 provider certified by the division of mental health and
 15 addiction with expertise in providing evidence based forensic
 16 treatment services.**
- 17 ~~(9)~~ **(10)** Any other purpose that benefits the office of the
 18 prosecuting attorney or law enforcement and that is agreed upon
 19 by the county fiscal body and the prosecuting attorney.
- 20 (c) Funds described in subsection (b) may be used only in
 21 accordance with guidelines adopted by the prosecuting attorneys
 22 council under IC 33-39-8-5.
- 23 SECTION 25. IC 33-37-8-6, AS AMENDED BY P.L.229-2011,
 24 SECTION 264, IS AMENDED TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) Except as provided in
 26 subsection (b), upon receipt of monthly claims submitted on oath to the
 27 fiscal body by a program listed in section 5(b) of this chapter, the
 28 county fiscal body shall appropriate from the county fund to the
 29 program or fund the amount collected for the program under
 30 IC 33-37-5.
- 31 (b) Funds derived from a deferral program or a pretrial diversion
 32 program may be disbursed only by the adoption of an ordinance
 33 appropriating the funds for one (1) or more of the following purposes:
 34 (1) Personnel expenses related to the operation of the program.
 35 (2) Special training for:
 36 (A) a prosecuting attorney;
 37 (B) a deputy prosecuting attorney;
 38 (C) support staff for a prosecuting attorney or deputy
 39 prosecuting attorney; or
 40 (D) a law enforcement officer.
 41 (3) Employment of a deputy prosecutor or prosecutorial support
 42 staff.



- 1 (4) Victim assistance.
- 2 (5) Electronic legal research.
- 3 (6) Office equipment, including computers, computer software,
- 4 communication devices, office machinery, furnishings, and office
- 5 supplies.
- 6 (7) Expenses of a criminal investigation and prosecution.
- 7 (8) An activity or program operated by the prosecuting attorney
- 8 that is intended to reduce or prevent criminal activity, including:
- 9 (A) substance abuse;
- 10 (B) child abuse;
- 11 (C) domestic violence;
- 12 (D) operating while intoxicated; and
- 13 (E) juvenile delinquency.
- 14 **(9) The provision of evidence based mental health and**
- 15 **addiction forensic treatment services to reduce the risk of**
- 16 **recidivism in a program administered or coordinated by a**
- 17 **provider certified by the division of mental health and**
- 18 **addiction with expertise in providing evidence based forensic**
- 19 **treatment services.**
- 20 ~~(9)~~ (10) Any other purpose that benefits the office of the
- 21 prosecuting attorney or law enforcement and that is agreed upon
- 22 by the county fiscal body and the prosecuting attorney.
- 23 (c) Funds described in subsection (b) may be used only in
- 24 accordance with guidelines adopted by the prosecuting attorneys
- 25 council under IC 33-39-8-5.
- 26 SECTION 26. IC 33-39-1-8, AS AMENDED BY P.L.168-2014,
- 27 SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 28 JULY 1, 2015]: Sec. 8. (a) After June 30, 2005, this section does not
- 29 apply to a person who:
- 30 (1) holds a commercial driver's license; and
- 31 (2) has been charged with an offense involving the operation of
- 32 a motor vehicle in accordance with the federal Motor Carrier
- 33 Safety Improvement Act of 1999 (MCSIA) (Public Law
- 34 106-159.113 Stat. 1748).
- 35 (b) This section does not apply to a person arrested for or charged
- 36 with:
- 37 (1) an offense under IC 9-30-5-1 through IC 9-30-5-5; or
- 38 (2) if a person was arrested or charged with an offense under
- 39 IC 9-30-5-1 through IC 9-30-5-5, an offense involving:
- 40 (A) intoxication; or
- 41 (B) the operation of a vehicle;
- 42 if the offense involving intoxication or the operation of a vehicle was



1 part of the same episode of criminal conduct as the offense under
2 IC 9-30-5-1 through IC 9-30-5-5.

3 (c) This section does not apply to a person:

4 (1) who is arrested for or charged with an offense under:

5 (A) IC 7.1-5-7-7, if the alleged offense occurred while the
6 person was operating a motor vehicle;

7 (B) IC 9-30-4-8(a), if the alleged offense occurred while the
8 person was operating a motor vehicle;

9 (C) IC 35-44.1-2-13(b)(1); or

10 (D) IC 35-43-1-2(a), if the alleged offense occurred while the
11 person was operating a motor vehicle; and

12 (2) who held a probationary license (as defined in
13 IC 9-24-11-3.3(b)) and was less than eighteen (18) years of age at
14 the time of the alleged offense.

15 (d) A prosecuting attorney may withhold prosecution against an
16 accused person if:

17 (1) the person is charged with a misdemeanor, a Level 6 felony,
18 or a Level 5 felony;

19 (2) the person agrees to conditions of a pretrial diversion program
20 offered by the prosecuting attorney;

21 (3) the terms of the agreement are recorded in an instrument
22 signed by the person and the prosecuting attorney and filed in the
23 court in which the charge is pending; and

24 (4) the prosecuting attorney electronically transmits information
25 required by the prosecuting attorneys council concerning the
26 withheld prosecution to the prosecuting attorneys council, in a
27 manner and format designated by the prosecuting attorneys
28 council.

29 (e) An agreement under subsection (d) may include conditions that
30 the person:

31 (1) pay to the clerk of the court an initial user's fee and monthly
32 user's fees in the amounts specified in IC 33-37-4-1;

33 (2) work faithfully at a suitable employment or faithfully pursue
34 a course of study or career and technical education that will equip
35 the person for suitable employment;

36 (3) undergo available medical treatment or counseling and remain
37 in a specified facility required for that purpose;

38 **(4) receive evidence based mental health and addiction
39 forensic treatment services to reduce the risk of recidivism;**

40 ~~(5)~~ **(5)** support the person's dependents and meet other family
41 responsibilities;

42 ~~(5)~~ **(6)** make restitution or reparation to the victim of the crime for



1 the damage or injury that was sustained;
 2 ~~(6)~~ (7) refrain from harassing, intimidating, threatening, or having
 3 any direct or indirect contact with the victim or a witness;
 4 ~~(7)~~ (8) report to the prosecuting attorney at reasonable times;
 5 ~~(8)~~ (9) answer all reasonable inquiries by the prosecuting attorney
 6 and promptly notify the prosecuting attorney of any change in
 7 address or employment; and
 8 ~~(9)~~ (10) participate in dispute resolution either under IC 34-57-3
 9 or a program established by the prosecuting attorney.

10 (f) An agreement under subsection (d)(2) may include other
 11 provisions reasonably related to the defendant's rehabilitation, if
 12 approved by the court.

13 (g) The prosecuting attorney shall notify the victim when
 14 prosecution is withheld under this section.

15 (h) All money collected by the clerk as user's fees under this section
 16 shall be deposited in the appropriate user fee fund under IC 33-37-8.

17 (i) If a court withholds prosecution under this section and the terms
 18 of the agreement contain conditions described in subsection ~~(e)~~(6):
 19 **(e)(7):**

- 20 (1) the clerk of the court shall comply with IC 5-2-9; and
 21 (2) the prosecuting attorney shall file a confidential form
 22 prescribed or approved by the division of state court
 23 administration with the clerk.

24 SECTION 27. IC 33-40-5-4 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. The commission
 26 shall do the following:

27 (1) Make recommendations to the supreme court concerning
 28 standards for indigent defense services provided for defendants
 29 against whom the state has sought the death sentence under
 30 IC 35-50-2-9, including the following:

- 31 (A) Determining indigency and eligibility for legal
 32 representation.
 33 (B) Selection and qualifications of attorneys to represent
 34 indigent defendants at public expense.
 35 (C) Determining conflicts of interest.
 36 (D) Investigative, clerical, and other support services
 37 necessary to provide adequate legal representation.

38 (2) Adopt guidelines and standards for indigent defense services
 39 under which the counties will be eligible for reimbursement under
 40 IC 33-40-6, including the following:

- 41 (A) Determining indigency and the eligibility for legal
 42 representation.



- 1 (B) The issuance and enforcement of orders requiring the
 2 defendant to pay for the costs of court appointed legal
 3 representation under IC 33-40-3.
 4 (C) The use and expenditure of funds in the county
 5 supplemental public defender services fund established under
 6 IC 33-40-3-1.
 7 (D) Qualifications of attorneys to represent indigent
 8 defendants at public expense.
 9 (E) Compensation rates for salaried, contractual, and assigned
 10 counsel.
 11 (F) Minimum and maximum caseloads of public defender
 12 offices and contract attorneys.

- 13 (3) Make recommendations concerning the delivery of indigent
 14 defense services in Indiana, **including the funding and delivery**
 15 **of indigent defense services for juveniles.**
 16 (4) Make an annual report to the governor, the general assembly,
 17 and the supreme court on the operation of the public defense fund.
 18 The report to the general assembly under subdivision (4) must be in an
 19 electronic format under IC 5-14-6.

20 SECTION 28. IC 33-40-6-4 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 4. (a) A county auditor
 22 may submit on a quarterly basis a certified request to the public
 23 defender commission for reimbursement from the public defense fund
 24 for an amount equal to fifty percent (50%) of the county's expenditures
 25 for indigent defense services provided to a defendant against whom the
 26 death sentence is sought under IC 35-50-2-9.

27 (b) **Except as provided in subsection (d),** a county auditor may
 28 submit on a quarterly basis a certified request to the public defender
 29 commission for reimbursement from the public defense fund for an
 30 amount equal to forty percent (40%) of the county's expenditures for
 31 indigent defense services provided in all noncapital cases except
 32 misdemeanors.

33 (c) A request under this section from a county described in
 34 IC 33-40-7-1(3) may be limited to expenditures for indigent defense
 35 services provided by a particular division of a court.

36 (d) **A county auditor may submit on a quarterly basis a certified**
 37 **request to the public defender commission for reimbursement from**
 38 **the public defense fund for an amount equal to one hundred**
 39 **percent (100%) of the county's expenditures for indigent defense**
 40 **services provided to a juvenile defendant described in IC 31-32-4-1.**

41 SECTION 29. IC 33-40-6-5 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Except as



1 provided under section 6 of this chapter, upon certification by a county
 2 auditor and a determination by the public defender commission that the
 3 request is in compliance with the guidelines and standards set by the
 4 commission, the commission shall quarterly authorize an amount of
 5 reimbursement due the county:

6 (1) that is equal to fifty percent (50%) of the county's certified
 7 expenditures for indigent defense services provided for a
 8 defendant against whom the death sentence is sought under
 9 IC 35-50-2-9; ~~and~~

10 (2) that is equal to forty percent (40%) of the county's certified
 11 expenditures for defense services provided in noncapital cases
 12 except misdemeanors; ~~and~~

13 **(3) that is equal to one hundred percent (100%) of the**
 14 **county's certified expenditures for defense services provided**
 15 **in juvenile cases.**

16 The division of state court administration shall then certify to the
 17 auditor of state the amount of reimbursement owed to a county under
 18 this chapter.

19 (b) Upon receiving certification from the division of state court
 20 administration, the auditor of state shall issue a warrant to the treasurer
 21 of state for disbursement to the county of the amount certified.

22 SECTION 30. IC 34-30-2-148.6 IS ADDED TO THE INDIANA
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2015]: **Sec. 148.6. IC 35-36-12-7 (Concerning**
 25 **a court appointed special advocate, an employee of a county court**
 26 **appointed special advocate program, or a volunteer for a court**
 27 **appointed special advocate program for good faith performance of**
 28 **duties relating to assistance of a person with an intellectual**
 29 **disability).**

30 SECTION 31. IC 35-31.5-2-68.5 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2015]: **Sec. 68.5. "Court appointed special**
 33 **advocate" means a community volunteer who:**

34 **(1) has completed a training program approved by the court**
 35 **that includes training in:**

36 **(A) the development of a person with an intellectual**
 37 **disability (as defined in IC 11-12-3.7-4.5); and**

38 **(B) evidence based treatment and counseling programs for**
 39 **a person with an intellectual disability;**

40 **(2) has been appointed by a court to assist a person with an**
 41 **intellectual disability who has been charged with a criminal**
 42 **offense; and**



1 **(3) may research, examine, advocate, facilitate, and monitor**
 2 **the situation of a person with an intellectual disability who**
 3 **has been charged with a criminal offense.**

4 SECTION 32. IC 35-36-12 IS ADDED TO THE INDIANA CODE
 5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2015]:

7 **Chapter 12. Court Appointed Special Advocate for Persons**
 8 **With Intellectual Disabilities**

9 **Sec. 1. A court may appoint a court appointed special advocate**
 10 **at any time to assist a person with an intellectual disability who has**
 11 **been charged with a criminal offense.**

12 **Sec. 2. A court appointed special advocate shall assist the person**
 13 **with an intellectual disability to whom the advocate has been**
 14 **appointed.**

15 **Sec. 3. A court appointed special advocate may recommend to**
 16 **the court treatment programs and other services that may reduce**
 17 **recidivism and are available to the person with an intellectual**
 18 **disability.**

19 **Sec. 4. A court appointed special advocate serves until the court**
 20 **enters an order for removal.**

21 **Sec. 5. The court appointed special advocate is considered an**
 22 **officer of the court for the purpose of assisting the person with an**
 23 **intellectual disability.**

24 **Sec. 6. A court appointed special advocate appointed by a court**
 25 **under this chapter may continue to assist the person with an**
 26 **intellectual disability while the person is undergoing treatment or**
 27 **-serving the person's sentence, if applicable.**

28 **Sec. 7. Except for gross misconduct:**

29 **(1) a court appointed special advocate;**

30 **(2) an employee of a county court appointed special advocate**
 31 **program; and**

32 **(3) a volunteer for a court appointed special advocate**
 33 **program;**

34 **who performs in good faith duties relating to assistance of a person**
 35 **with an intellectual disability is immune from any civil liability that**
 36 **may occur as a result of that person's performance.**

37 **Sec. 8. The court may order the person assisted by the court**
 38 **appointed special advocate to pay a user fee to the:**

39 **(1) court appointed special advocate program; or**

40 **(2) individual who served as a court appointed special**
 41 **advocate;**

42 **for the services provided under this chapter.**



1 **Sec. 9. The court shall establish one (1) of the following**
 2 **procedures to be used to collect the user fee:**

3 **(1) The court may order the person with the intellectual**
 4 **disability to pay the user fee to the court appointed special**
 5 **advocate program that provided the services.**

6 **(2) The court may order the person with the intellectual**
 7 **disability to pay the user fee to the individual court appointed**
 8 **special advocate that provided the services.**

9 **Sec. 10. If the court orders the person with the intellectual**
 10 **disability to pay a user fee under this chapter, the program or the**
 11 **individual shall report to the court the receipt of payment not later**
 12 **than thirty (30) days after receiving the payment.**

13 SECTION 33. IC 35-43-10-3, AS AMENDED BY P.L.158-2013,
 14 SECTION 494, IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2015]: Sec. 3. A person who knowingly or
 16 intentionally:

17 (1) possesses a contraband legend drug;

18 (2) sells, delivers, or possesses with intent to sell or deliver a
 19 contraband legend drug;

20 (3) forges, counterfeits, or falsely creates a label for a legend drug
 21 or falsely represents a factual matter contained on a label of a
 22 legend drug; or

23 (4) manufactures, purchases, sells, delivers, brings into Indiana,
 24 or possesses a contraband legend drug;

25 commits legend drug deception, a ~~Level 6 felony~~: **Class A**
 26 **misdemeanor.**

27 SECTION 34. IC 35-48-4-8.3, AS AMENDED BY P.L.158-2013,
 28 SECTION 635, IS AMENDED TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2015]: Sec. 8.3. (a) A person who possesses a
 30 raw material, an instrument, a device, or other object that the person
 31 intends to use for:

32 (1) introducing into the person's body a controlled substance;

33 (2) testing the strength, effectiveness, or purity of a controlled
 34 substance; or

35 (3) enhancing the effect of a controlled substance;

36 in violation of this chapter commits a Class A infraction for possessing
 37 paraphernalia.

38 (b) A person who knowingly or intentionally violates subsection (a)
 39 commits a Class A misdemeanor. ~~However, the offense is a Level 6~~
 40 ~~felony if the person has a prior unrelated judgment or conviction under~~
 41 ~~this section.~~

42 SECTION 35. IC 35-50-2-8, AS AMENDED BY P.L.168-2014,



1 SECTION 118, IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2015]: Sec. 8. (a) The state may seek to have a
 3 person sentenced as a habitual offender for a felony by alleging, on one
 4 (1) or more pages separate from the rest of the charging instrument,
 5 that the person has accumulated the required number of prior unrelated
 6 felony convictions in accordance with this section.

7 (b) A person convicted of murder or of a Level 1 through Level 4
 8 felony is a habitual offender if the state proves beyond a reasonable
 9 doubt that:

- 10 (1) the person has been convicted of two (2) prior unrelated
 11 felonies; and
 12 (2) at least one (1) of the prior unrelated felonies is not a Level 6
 13 felony or a Class D felony.

14 (c) A person convicted of a Level 5 felony is a habitual offender if
 15 the state proves beyond a reasonable doubt that:

- 16 (1) the person has been convicted of two (2) prior unrelated
 17 felonies;
 18 (2) at least one (1) of the prior unrelated felonies is not a Level 6
 19 felony or a Class D felony; and
 20 (3) if the person is alleged to have committed a prior unrelated:
 21 (A) Level 5 felony;
 22 (B) Level 6 felony;
 23 (C) Class C felony; or
 24 (D) Class D felony;

25 not more than ten (10) years have elapsed between the time the
 26 person was released from imprisonment, probation, or parole
 27 (whichever is latest) and the time the person committed the
 28 current offense.

29 (d) A person convicted of a Level 6 felony is a habitual offender if
 30 the state proves beyond a reasonable doubt that:

- 31 (1) the person has been convicted of three (3) prior unrelated
 32 felonies; and
 33 (2) if the person is alleged to have committed a prior unrelated:
 34 (A) Level 5 felony;
 35 (B) Level 6 felony;
 36 (C) Class C felony; or
 37 (D) Class D felony;

38 not more than ten (10) years have elapsed between the time the
 39 person was released from imprisonment, probation, or parole
 40 (whichever is latest) and the time the person committed the
 41 current offense.

42 (e) The state may not seek to have a person sentenced as a habitual



1 offender for a felony offense under this section if the current offense is
 2 a misdemeanor that is enhanced to a felony in the same proceeding as
 3 the habitual offender proceeding solely because the person had a prior
 4 unrelated conviction. However, a prior unrelated felony conviction may
 5 be used to support a habitual offender determination even if the
 6 sentence for the prior unrelated offense was enhanced for any reason,
 7 including an enhancement because the person had been convicted of
 8 another offense.

9 (f) A person has accumulated two (2) or three (3) prior unrelated
 10 felony convictions for purposes of this section only if:

11 (1) the second prior unrelated felony conviction was committed
 12 after commission of and sentencing for the first prior unrelated
 13 felony conviction;

14 (2) the offense for which the state seeks to have the person
 15 sentenced as a habitual offender was committed after commission
 16 of and sentencing for the second prior unrelated felony
 17 conviction; and

18 (3) for a conviction requiring proof of three (3) prior unrelated
 19 felonies, the third prior unrelated felony conviction was
 20 committed after commission of and sentencing for the second
 21 prior unrelated felony conviction.

22 (g) A conviction does not count for purposes of this section as a
 23 prior unrelated felony conviction if:

24 (1) the conviction has been set aside; or

25 (2) the conviction is one for which the person has been pardoned.

26 (h) If the person was convicted of the felony in a jury trial, the jury
 27 shall reconvene for the sentencing hearing. If the trial was to the court
 28 or the judgment was entered on a guilty plea, the court alone shall
 29 conduct the sentencing hearing under IC 35-38-1-3. The role of the jury
 30 is to determine whether the defendant has been convicted of the
 31 unrelated felonies. The state or defendant may not conduct any
 32 additional interrogation or questioning of the jury during the habitual
 33 offender part of the trial.

34 (i) The court shall sentence a person found to be a habitual offender
 35 to an additional fixed term that is between:

36 (1) six (6) years and twenty (20) years, for a person convicted of
 37 murder or a Level 1 through Level 4 felony; or

38 (2) two (2) years and six (6) years, for a person convicted of a
 39 Level 5 or Level 6 felony.

40 An additional term imposed under this subsection is ~~nonsuspendible~~.
 41 **may be suspended if the habitual offender is in a court approved**
 42 **substance abuse treatment program.**



- 1 (j) Habitual offender is a status that results in an enhanced sentence.
2 It is not a separate crime and does not result in a consecutive sentence.
3 The court shall attach the habitual offender enhancement to the felony
4 conviction with the highest sentence imposed and specify which felony
5 count is being enhanced. If the felony enhanced by the habitual
6 offender determination is set aside or vacated, the court shall
7 resentence the person and apply the habitual offender enhancement to
8 the felony conviction with the next highest sentence in the underlying
9 cause, if any.
- 10 (k) A prior unrelated felony conviction may not be collaterally
11 attacked during a habitual offender proceeding unless the conviction
12 is constitutionally invalid.
- 13 (l) The procedural safeguards that apply to other criminal charges,
14 including:
15 (1) the requirement that the charge be filed by information or
16 indictment; and
17 (2) the right to an initial hearing;
18 also apply to a habitual offender allegation.

