

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6280
BILL NUMBER: SB 34

NOTE PREPARED: Nov 11, 2020
BILL AMENDED:

SUBJECT: Unlawful Assembly.

FIRST AUTHOR: Sen. Tomes
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Ineligibility for Governmental Employment* – It provides that a person convicted of rioting is not eligible: (1) for employment by the state or a local unit of government; and (2) to receive certain state and local benefits.
- B. *Removal of Certain Tort Claims Immunity* – It removes immunity under the Indiana tort claims act for the failure to enforce a law if the failure to enforce the law: (1) occurs in connection with an unlawful assembly; and (2) constitutes gross negligence.
- C. *Civil Forfeiture of Property* – It allows for the civil forfeiture of property that is used by a person to finance a crime committed by a person who is a member of an unlawful assembly.
- D. *Eligibility of Release on Bail*– It prohibits a person from being released on bail without a hearing in open court, establishes a rebuttable presumption that money bail shall be required, and requires a court to consider whether bail conditions more stringent than the local guidelines should be imposed.
- E. *Enhanced Penalties* – It adds enhanced penalties to the crimes of: (1) rioting; (2) obstruction of traffic; (3) criminal mischief; and (4) disorderly conduct. It adds a sentence enhancement to battery committed by a member of an unlawful assembly.
- F. *Defunding Law Enforcement* – It defines "defunding law enforcement" and allows a person to bring an action to enjoin a local unit from defunding law enforcement.

Effective Date: July 1, 2021.

Explanation of State Expenditures: *Ineligibility for Governmental Employment and Certain Benefits* – State and local governmental employees who are convicted and sentenced for rioting after July 1, 2021, would be

terminated from their jobs. They could also lose their pension and deferred compensation benefits depending on the number of years that they have been employed by either the state or local unit and other considerations. Any forfeited benefits are deposited into the state General Fund or the general funds of local governments, as applicable.

Removal of Certain Tort Claims Immunity – State and local governments would not be immune from lawsuits if they negligently fail to enforce a law concerning an unlawful assembly. "Unlawful assembly" means a gathering of five or more persons whose common object is to commit an unlawful act, or a lawful act by unlawful means (IC 35-45-1-2). Any new payments from the state General Fund that could be ordered by a court would depend on losses suffered by the plaintiff. Loss can mean injury to or death of a person, or damage to property. Liability is capped at \$700,000 for injury or death caused in a single instance, and \$5 M for injury to or death of all persons in that occurrence.

Criminal Enhancements for Rioting, Obstruction of Traffic and Criminal Mischief – The proposed criminal enhancements would affect acts of rioting, unlawful assembly and disorderly conduct. These enhancements, particularly to a Level 3 felony, could increase the likelihood that a person could be confined in a DOC facility.

Rioting – Persons commit rioting when they are a member of an unlawful assembly, and recklessly, knowingly, or intentionally engage in tumultuous conduct. Rioting is a Class A misdemeanor that can be enhanced to a Level 6 felony if rioting is committed while armed with a deadly weapon.

This bill would enhance rioting to a Level 5 felony if 7 or more people are involved in a riot, and either bodily injury to another person or property damage of at least \$750 occurred.

Persons who are convicted and sentenced for a Level 5 felony are more likely to be confined for a period of time in a DOC facility than persons sentenced for a Level 6 felony. According to the Abstracts of Judgment for FY 2014 through FY 2020, about 7% of Level 6 felons were committed to DOC for an average of 1.4 years as compared to 42% of Level 5 felons who were committed to DOC for an average 2.6 years.

Obstruction of Traffic – Currently this offense can be charged as either a Class B misdemeanor and could be enhanced to a Class A misdemeanor if a person uses a motor vehicle to obstruct traffic, and a Level 6 felony if the offense results in serious bodily injury. As proposed, a person who participates in a protest or demonstration without a permit and obstructs vehicular traffic commits a Level 5 felony.

Criminal Mischief is charged when a person recklessly, knowingly, or intentionally damages or defaces property of another person without the other person's consent. It can already be prosecuted as either Class A or B misdemeanors, or a Level 6 felony. This bill adds circumstances to enhance the penalty to a Level 6 felony if a person damages public property while a member of an unlawful assembly, and a Level 3 felony if the damage to the public property is more than \$50,000. Of the records of 5,500 Level 3 felons that OFMA examined, 79% were confined in a DOC facility for with an average sentence of 7.2 years.

Battery While a Member of an Unlawful Assembly – The prosecuting attorney could seek an additional prison term for battery if the person was a member of an unlawful assembly. This would be a Level 5 felony. The added sentence could be between 6 months and 3 years if the act resulted

in bodily injury to a public safety official acting within the scope of the public safety official's duty, or it could be an additional fixed term of 2 years if the victim was not a law enforcement officer.

Additional Information – The Indiana Supreme Court reports the number of persons who were convicted of rioting between CY 2015 and 2020 (as of November 10, 2020).

	2015	2016	2017	2018	2019	2020*
Allen						16
Monroe	1					
Rush		5				
Vanderburgh		6				
Grand Total	1	11				16
*as of November 10, 2020						

The average expenditure to house an adult offender in a DOC facility was \$21,551 annually, or \$59 daily during FY 2020. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is estimated at \$3,524 annually, or \$9.66 daily, per prisoner. These marginal cost estimates are based on contractual agreements with food and medical vendors and projections based on prior years for clothing and hygiene. The estimated average cost of housing a juvenile in a state juvenile facility was \$89,998 annually, or \$246.40 per day in FY 2020. The marginal cost for juvenile facilities was \$3,969 annually or \$10.87 daily.

Explanation of State Revenues: *Court Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana, and proceeds from the automated record keeping fee (\$20) are deposited into the State User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Explanation of Local Expenditures: The following provisions could increase the pretrial population of county jails. The average cost per day to incarcerate a prisoner is approximately \$54 based on the per diem payments reported by U.S. Marshals to house federal prisoners in 16 county jails across Indiana during federal FY 2017.

Eligibility of Release on Bail for Offenses Committed as Member of Unlawful Assembly– This bill adds a presumption that money bail be required (rather than just bail conditions), and that the court consider whether a higher than usual bail should be required. Any restrictions on the discretion of the criminal court to determine the conditions of bail could increase the pretrial population of county jails.

Enhancements for Rioting, Criminal Mischief, and Obstruction of Traffic – Enhancing the criminal sentences of rioting, criminal mischief, and obstruction of traffic will likely increase the pretrial population of county jails. In each case, as felonies are enhanced, a greater proportion of these persons who are charged with these offenses will be confined in county jails prior to trial for a longer period of time. The supervisory burdens of community corrections agencies and probation departments would also be increase as these persons who are sentenced at higher levels are more likely to be on post conviction supervision for a longer period of time.

Battery While a Member of an Unlawful Assembly – If the jury was the fact finder in the case, the county would be required to pay for an additional day of per diem payments of \$480 to members of a jury who would determine whether a person who was convicted of battery while a member of an unlawful assembly should receive an enhanced sentence. Twelve jury members are required for a case involving a Level 5 felony (Trial Rule 16. Number of Jurors) and each jury member is entitled to \$40 per day (IC 33-37-10-1).

Defunding Law Enforcement – A person may file a lawsuit in circuit or superior court if the law enforcement agency in that unit has its budget defunded. Defunding occurs when a law enforcement agency’s budget is reduced by 5% or more from the amount budgeted in the most recent budget. Under this bill, defunding would be permitted if either tax revenue or the crime rate within the territory of the unit declined, or if another funding source for the law enforcement agency becomes available. OFMA did not find any law enforcement agencies that have had their funding reduced under any of these three conditions.

Explanation of Local Revenues: *Civil Seizure and Forfeiture* – Law enforcement agencies would be permitted to seize real or personal property that is used by a person to finance or facilitate the financing of a crime committed by a person while the person is part of an unlawful assembly. Any added revenue or assets from these actions depends on the value of the assets seized.

Court Fee Revenue: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$5) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per page) are charged for preparing transcripts or copies of record or certificate under seal.
- A civil garnishee defendant service fee (\$10) is collected from the filing party for each defendant beyond the first three garnishee defendants cited in the lawsuit.

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources: Indiana Code, Indiana Trial Rules, Abstracts of Judgment maintained by the Indiana Supreme Court.

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