

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington St., Suite 301
Indianapolis, IN 46204
(317) 233-0696
iga.in.gov

FISCAL IMPACT STATEMENT

LS 6586
BILL NUMBER: SB 133

NOTE PREPARED: Feb 1, 2021
BILL AMENDED:

SUBJECT: Sentencing.

FIRST AUTHOR: Sen. Freeman
FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. It provides that a court may suspend only that part of a sentence that is in excess of the minimum sentence for a person convicted of a Level 2 or Level 3 felony who has a prior unrelated felony conviction, other than a conviction for a felony involving marijuana, hashish, hash oil, or salvia divinorum. (Current law provides that a court may suspend any part of a sentence for certain Level 2 and Level 3 felony convictions, including drug related convictions.)
- B. It enhances the penalty for child exploitation and child pornography if the person has a previous conviction. It provides that a court may suspend only that part of a sentence that is in excess of the minimum sentence for a person convicted of a felony for child exploitation or child pornography who has a prior conviction for child exploitation or child pornography.

Effective Date: July 1, 2021.

Explanation of State Expenditures: *Suspending Sentences of Level 2 or 3 Felonies* – OFMA cannot determine a specific effect because any decisions would be at the discretion of the sentencing court, and because information on prior convictions of these convicted offenders is limited.

This bill would affect sentencing options for four different groups of Level 2 and 3 felonies.

Mandatory Minimum with No Exceptions – Under current law, courts must sentence persons who committed these crimes to a minimum 10 years for Level 2 felonies and 3 years for Level 3 felonies

if these persons have any prior felony conviction. These crimes include:

1. Level 2 or Level 3 felonies that *do not involve* drug dealing, manufacturing or possession under IC 35-48-4 (these non-drug felonies are described in *Additional Information*); and
2. Dealing in heroin as either a Level 2 or Level 3 felony under IC 35-48-4-1 or IC 35-48-4-2.

As proposed, courts may suspend their sentence if their prior felony conviction involved marijuana, hashish, hash oil, or salvia divinorum. It is possible that some of those convicted and sentenced for these felonies could receive a suspended sentence.

Suspended sentence for persons convicted of a controlled substance felony under IC 35-48-4 – This group includes persons convicted and sentenced for:

- possessing methamphetamine, narcotics, cocaine and schedule drugs;
- dealing in methamphetamine as a Level 3 felony; and
- dealing narcotics or schedule drugs that are *neither* methamphetamine nor heroin as Level 2 and 3 felonies.

The prior felony can be any felony. As proposed, fewer persons may have a suspended sentence if the prior felony conviction is limited to felonies involving marijuana, hashish, hash oil, or salvia divinorum.

Suspended sentence for persons who are convicted of dealing or manufacturing methamphetamine as a Level 2 felony – Under current law, if the prior unrelated felony conviction is for dealing in a controlled substance that is not marijuana, hashish, hash oil, or salvia divinorum then the court is required to sentence the person to the mandatory minimum of either 10 years for Level 2 felony or 3 years for a Level 3 felony. Since this bill would impose the same sentencing condition for all other Level 2 and 3 felonies, the sentencing requirements would not be affected for persons who are sentenced for this felony.

Child Exploitation – The enhancement from a Level 5 felony to a Level 4 felony for a prior conviction will have a minor increase on DOC's offender population. Each year, an average of 20 persons are convicted and sentenced for child exploitation as a Level 5 felony. Of these, 13 persons are committed to DOC facilities for 3.2 years. If these persons have a prior conviction, they would be sentenced for a Level 4 felony with a mandatory minimum sentence of 2 years.

Child Pornography – The enhancement from a Level 6 felony to a Level 5 felony for a prior conviction will have a minor increase on DOC's offender population. Each year, an average of 17 persons are convicted and sentenced for child pornography as a Level 6 felony. Of these, 4 persons are committed to DOC facilities for 1.6 years. If these persons have a prior conviction, they would be sentenced for a Level 5 felony with a mandatory minimum sentence of one year.

Additional Information – Level 2 felonies include: arson, attempted murder, battery, burglary, contributing to delinquency of a minor, dealing or manufacturing methamphetamine, heroin, or narcotic or schedule drugs at certain weights or under enhancing circumstances, kidnapping and criminal confinement, manslaughter, resisting law enforcement, robbery, sex crimes, and weapons.

Level 3 felonies include: arson, battery, burglary, contributing to delinquency of a minor, dealing in methamphetamine, heroin, or narcotic or schedule drugs, kidnapping and criminal confinement, leaving the scene of an accident, manslaughter, neglect, resisting law enforcement in certain cases, robbery, sex crimes, manufacturing methamphetamine, possession of methamphetamine, narcotics, cocaine and schedule drugs at certain quantities.

Dealing in marijuana, hash oil, hashish, or salvia can be either a Level 5 or 6 felony, depending on the weight of the drug and the age of the purchaser (IC 35-48-4-10).

Between January 1, 2014, and December 31, 2019, 15% of persons with a non-drug Level 2 or Level 3 felony had a suspended sentence (no executed time) while 26% of persons who were convicted of either drug possession or dealing as Level 2 or 3 felonies had suspended sentences. Those with suspended sentences were generally ordered to supervision by community corrections agencies, probation departments, or both.

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:

Explanation of Local Expenditures: This bill could affect the workload of community corrections agencies and probation departments in Indiana.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts with criminal jurisdiction, prosecuting attorneys, county sheriffs, community corrections agencies, probation departments.

Information Sources: Indiana Supreme Court, Abstracts of Judgment.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.