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FISCAL IMPACT STATEMENT

LS 7132
BILL NUMBER: SB 197

NOTE PREPARED: Feb 16, 2021
BILL AMENDED: Feb 15, 2021

SUBJECT: Criminal Law Issues.

FIRST AUTHOR: Sen. Young M
FIRST SPONSOR: Rep. Steuerwald

BILL STATUS: As Passed Senate

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

Revocation of a Teaching License – It specifies that a conviction for certain sex offenses requires mandatory revocation of a teaching license.

Juvenile Offenses – It provides that a child who: (1) commits indecent display by a youth; or (2) commits dangerous possession of a firearm or provides a firearm to another child in certain circumstances; has committed a delinquent act subject to the jurisdiction of a juvenile court.

Bail Provisions – It provides that bail provisions that apply to persons on probation and parole also apply to persons on community supervision.

"Official Investigations", "Official Proceedings" – It removes and replaces certain references to "official investigations", "official proceedings", and methods of reporting.

Resisting Law Enforcement – It adds to the crime of forcibly resisting law enforcement the act of resisting, refusing, obstructing, or interfering with a law enforcement officer's lawful: (1) entry into a structure; or (2) order to exit a structure.

Level 1 and Level 2 Felonies – It provides that all Level 1 and Level 2 felonies may be prosecuted at any time.

Crimes of Violence – It provides that all felony battery and domestic battery crimes are crimes of violence,

and adds arson and criminal confinement to the list of crimes of violence.

Firearm Sentence Enhancement – It makes attempted murder a predicate offense for the use of a firearm sentence enhancement.

Controlled Substance Analog – It makes certain changes to the definition of "substantially similar" for purposes of the controlled substance law. It adds controlled substance analogs to certain statutes prohibiting controlled substances in penal facilities.

Fraud and Deception Offenses – It repeals and consolidates various fraud and deception offenses. It defines "financial institution" for purposes of crimes involving financial institutions. It repeals synthetic identity deception and consolidates it with identity deception. It defines "pecuniary loss" for purposes of fraud in connection with insurance.

Infrequently Charged Misdemeanors – It repeals or decriminalizes certain infrequently charged misdemeanors.

Attempted Murder added to Sex or Violent Offender Registry – It defines attempted murder as a "serious violent felony". It specifies that a person convicted of attempted murder is a sex or violent offender.

"*Violent Criminal*" – It adds to the definition of "violent criminal" a person convicted of certain battery and domestic battery offenses.

Adult Protective Services Investigators – It adds adult protective services investigators to the definition of "public safety official" for purposes of the battery statute.

Trespass – It specifies that locking the door to a building or structure denies entry to another person for purposes of the trespass statute.

Fraud as Level 4 Felony – It makes fraud a Level 4 felony if the amount involved is at least \$100,000.

It makes conforming amendments.

Effective Date: July 1, 2021.

Explanation of State Expenditures: *Level 1 and Level 2 Felonies* – Under current law, prosecution of Level 1 and 2 felonies involving child molesting or sexual misconduct with a minor must be commenced before the date that the alleged victim reaches 31 years of age. This provision permits prosecution of these crimes to occur at any time like all other Level 1 and Level 2 felonies. The sentencing ranges for a Level 1 felony is 20 to 40 years while the sentencing ranges for a Level 2 felony is between 10 and 30 years. [See *Explanation of Local Expenditures.*]

Firearm Sentence Enhancement – This provision should cause a minor increase in DOC's felony population because this enhancement appears to be infrequently included in a sentence. A predicate offense is a crime that is part of a larger crime. If a person is convicted of attempting to murder another person with a firearm, a court could sentence the convicted person to an additional prison sentence of between 5 to 20 years under certain circumstances. An average 20 persons are convicted and sentenced for attempted murder each year. OFMA found 45 cases of firearm enhancement for persons who were committed to DOC between CY 2013

and CY 2019 for eligible offenses under current law.

Crimes of Violence – This provision would add the following felonies to the list of “crimes of violence”:

- Level 6 battery and domestic battery,
- arson
- criminal confinement.

The number of persons who might be added to the crime of violence category in a single year is shown in the following table.

Offense	Convicted and Sentenced Per Year	Committed to DOC Each Year
Arson	65	33
Battery (Level 6)	829	128
Criminal Confinement	284	101
Domestic Battery (Level 6)	<u>1,873</u>	<u>236</u>
Total	3,051	498

Including these four offenses as crimes of violence could have a minor affect on the workload of the Professional Licensing Agency, the Department of Homeland Security, and the Department of Correction.

Both the Professional Licensing Agency and the Department of Homeland Security will be required to screen applicants to determine whether they have committed any of these felonies before being granted certain occupational licenses. The Professional Licensing Agency should be able to implement this requirement with existing resources.

If these four offenses are not crimes of violence, then current law would cap the consecutive terms of sentences which these persons may need to serve when more than one offense was committed in a single episode. Consequently, persons who are convicted of more than one crime that includes any of these four offenses in a single episode could be given longer prison terms if their consecutive terms are not capped by current statute. Having more offenders not qualifying for this statutory cap would increase DOC’s future population. OFMA cannot determine how this might affect future prison population levels. [Almost 500 offenders are committed on average to DOC for these offenses each year.]

Parole agents employed by DOC are required to prepare a community investigation report about a person if the person is 1) sentenced for a crime of violence, 2) committed to DOC, and 3) is to be supervised on parole (IC 11-13-3-3(n)(1)). Not all offenders are released on parole, but adding 499 new offenders who are sentenced for these offenses will increase the number of community investigation reports that need to be prepared before being released on parole.

A “community investigation” reports on the attitudes and opinions of: (1) the community in which the crime occurred; (2) law enforcement officers who have jurisdiction in the community in which the crime occurred; (3) the victim of the crime or the victims’s relatives or friends; (4) friends of the offender (IC 11-13-3-3 (m)).

According to the staffing report obtained from the State Personnel Department, DOC employed 145 parole officers on December 1, 2020.

Controlled Substance Analog – Expanding the definition of “substantially similar” for a controlled substance analog could increase the number of Schedule I through V drugs that might be considered illegal. Consequently this could increase the number of arrests and prosecutions for dealing and possessing these types of drugs. The number of possible new arrests and convictions is indeterminable.

Average Number of Persons Convicted and Sentenced for Dealing and Possessing Schedule Drugs Between FY 2016 and 2020						
	Dealing					Possessing
Felony Level	Level 2	Level 3	Level 4	Level 5	Level 6	Level 6
Average Number	9	12	21	37	59	59
Percent with Prison Sentences	55%	60%	49%	34%	10%	7%
Average Sentence (in years)	9.4	6.9	4.6	2.6	1.3	1.2

Fraud and Deception Offenses – OFMA estimates that this bill could result in a minimal increase in DOC’s offender population. This bill would repeal 28 offenses that can be currently punished as infractions, misdemeanors, and felonies and consolidates them under fraud (IC 35-43-5-4) statutes. The sentencing range would be between a Class A misdemeanor and a Level 5 felony. [A summary is included in a series of tables at the end of this fiscal note.]

There is one Class B infraction and one Class B misdemeanor that would both be enhanced to a minimum Class A misdemeanor. Enhancing both of these offenses to a minimum Class A misdemeanor should have a minor effect on state and local government.

A customer of a cable TV service currently commits a Class B infraction when utilizing any device or scheme to avoid being assessed for the full amount of services. This would be a Class A misdemeanor. OFMA found two instances of this offense between CY 2013 and CY 2020.

A person could be charged with home improvement fraud as a Class B misdemeanor under certain circumstances. OFMA found five cases of home improvement fraud as a Class B misdemeanor in 2016.

[OFMA found no cases of conviction and sentencing for worker’s compensation fraud, stolen valor, or possessing a fraudulent sales document manufacturing device.]

Fraud as Level 4 Felony – If the pecuniary loss from fraud would be more than \$100,000, the person would commit a Level 4 felony. In general, 66% of Level 4 felons will be sentenced to DOC for an average 7.2 years. OFMA expects that few persons will be convicted of this crime since no persons were sentenced for a Level 5 felony for fraud under current law as reported in the abstracts of judgment maintained by the Indiana Supreme Court.

"Violent Criminal" – Adding these offenses as crimes of violence could cause a minor increase DOC's population. Persons who are “violent criminals” under this statute are limited to one petition for a sentence modification without the consent of the prosecuting attorney. Persons who receive a sentence modification may have their sentence either reduced or suspended. Other than “violent criminals”, a convicted person may request a sentence modification at any point while serving their sentence. (IC 35-38-1-17) The Criminal Justice Institute reports that during FY 2020, 4,452 sentence modification motions were filed. Of these, nearly 30% were denied and 23.5% were granted. The rest of the motions are pending.

Adult Protective Services Investigators – Under current law, persons who touch other persons in a rude, insolent, or angry manner or place any bodily fluid or waste on other persons commit a Class B misdemeanor. The crime is a Class A misdemeanor if these actions result in bodily injury.

As proposed, a person would commit either a Level 6 or Level 5 felony for these battery offenses if the victim was a adult protective services investigator. Of the persons who have been convicted and sentenced for battery as a Level 6 felony, 8% were committed to DOC with an average sentence of 1.4 years. Of the persons who have been convicted and sentenced for battery that caused bodily injury, 46% were committed to DOC facilities with an average 2.6 years.

Trespass – The felonies for criminal trespassing can range from Level 6 to a Level 4, depending on the type of facility that the intruder entered and whether the intruder damaged any property. According to the Abstracts of Judgment between FY 2014 and FY 2020, on average, 8% of Level 6 felons will be sentenced to a DOC facility for an average 1.4 years, 46% of Level 5 felons will be sentenced to DOC for an average 2.7 years and 66% of Level 4 felons will be sentenced to DOC for an average 7.2 years.

The average expenditure to house an adult offender in a DOC facility was \$21,551 annually and \$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 and \$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: Additional felony and misdemeanor cases could increase revenue from court fees for the state General Fund and proceeds for criminal fines would be deposited into the Common School Fund. Any added fee and fine revenue would likely be minor.

Explanation of Local Expenditures: *Revocation of a Teaching License* – Prosecuting attorneys would be required to notify both the state superintendent of public instruction and the school superintendent when a licensed employee of a public or nonpublic school has been convicted of either crime of child exploitation. The prosecuting attorney should be able to implement this requirement with existing resources.

Juvenile Offenses – Two offenses, if committed by a person under the age of 18, would be delinquent acts.

“Indecent Display by a Youth” occurs when a person produces, presents, exhibits, photographs, records, or creates a digitized image of a child between the ages of 12 and 16 years of age. OFMA found no information on convictions for this offense.

Possession and unlawful transfer of a firearm is a Class A misdemeanor and can be enhanced to a Level 5 felony for a prior conviction. Making this a delinquent act could keep some juveniles out of the adult system. OFMA found 15 persons between 16 and 17 years of age who were convicted and sentenced as adults for dangerous possession of a firearm by a juvenile as a Level 5 felony between 2014 and 2020. Of these 15 persons sentenced for a Level 5 felony, 9 were committed to a DOC adult facility with an average sentence of 1.85 years.

Persons who are sentenced as juveniles can be either confined in a juvenile detention facility at the state or county level or supervised in a county juvenile probation program.

Bail Provisions – “Other community supervision” includes community corrections. Under current law, there is no specified amount of time that persons in this situation would be confined in a county jail prior to bail determination. No information exists about the length of jail confinement for persons who are on community corrections and are arrested for an offense. Persons assigned to a community corrections program and are arrested and charged with any offense could be confined in a county jail for not more than 15 days prior to bail determination, the same as persons on probation or parole who are charged with a new offense.

Crime of Resisting Law Enforcement – A person who forcibly blocks a law enforcement officer from legally entering a building could be charged with resisting law enforcement as a Class A misdemeanor if the person did not draw or use a deadly weapon or inflict bodily injury. A Class A misdemeanor is punishable by up to one year in jail. A person who is convicted and sentenced for a Class A misdemeanor is likely to be fined or sentenced to supervision on either probation or community correction or both. Some persons convicted of a Class A misdemeanor could be sentenced to a county jail after a trial.

Level 1 and Level 2 Felonies – See *Explanation of State Expenditures*. Prosecuting attorneys should be able to prosecute these new offenses and courts with criminal jurisdiction should be able to dispose of these additional cases with existing resources.

Battery Against an Adult Protective Services Investigator – This could increase the pretrial population in county jails if the person is charged with an enhanced felony.

If an offender is sentenced to state prison rather than to a county jail, the costs to the county for post trial confinement may be reduced. The maximum term of imprisonment for a Class B misdemeanor is up to 180 days and the maximum term of imprisonment for a Class A misdemeanor is one year.

The average cost per day to confine a person in a county jail is approximately \$54. This is 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.

Attempted Murder added to Sex or Violent Offender Registry – Persons who are convicted and sentenced for attempted murder would be required to register as a sex or violent offender and be monitored by the county sheriff. Persons who fail to periodically register with or report to the sheriff of the county in which the sex offender lives or works commit a Level 6 felony. An average 36 offenders are released from DOC facilities each year for attempted murder who would have to register.

Explanation of Local Revenues: Additional felony and misdemeanor cases could increase revenue from court fees. Any added revenue is likely to be minor.

State Agencies Affected: Department of Correction; Department of Homeland Security; Professional Licensing Agency.

Local Agencies Affected: Courts with criminal jurisdiction, county sheriffs.

Information Sources: Indiana Supreme Court Abstracts of Judgment; Department of Correction Offender Information System; Criminal Justice Institute, Evaluation of Indiana’s Criminal Code Reform 2020

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Repeal and Consolidation of Various Fraud and Deception Offenses

Code Cite	Description	Infraction		Misdemeanor		Felony		
		Class B	Class A	Class B	Class A	Level 6	Level 5	Level 4
These New Sections Would be Added								
35-43-5-4	Fraud				•	•	•	
35-43-5-4.7	Insurance Fraud (New Section)		•					

The Current Penalty Ranges Will Be the Same as the Proposed Penalty Ranges								
Code Cite	Description	Infraction		Misdemeanor		Felony		
		Class B	Class A	Class B	Class A	Level 6	Level 5	Level 4
35-43-5-4.5	Insurance Fraud / Insurance Application Fraud				•	•	•	
35-43-5-5	Check Deception				•	•	•	
35-43-5-7	Welfare Fraud				•	•	•	
35-43-5-7.1	Medicaid Fraud				•	•	•	
35-43-5-7.2	Insurance Fraud				•	•	•	
35-43-5-12	Check Fraud				•	•	•	
35-43-5-20	Inmate Fraud					•	•	
35-43-6.5-1	Altering ID of Vehicle, Vehicle Part or Watercraft				•	•	•	
35-43-6.5-1	False ID Number on Vehicle				•	•	•	
35-43-6.5-1	Counterfeit Vehicle Title				•	•	•	

The Current Penalty Ranges of these Offenses Are Not the Same as the Proposed Penalty Ranges; Which Will Be Either a Class A Misdemeanor, a Level 6 Felony or a Level 5 Felony								
Code Cite	Description	Infraction		Misdemeanor		Felony		
		Class B	Class A	Class B	Class A	Level 6	Level 5	Level 4
35-43-5-2(c)	Possession of a Fraudulent Sales Document				•	•		
35-43-5-3	Deception				•	•		
35-43-5-3.8	Synthetic Identifying Information					•	•	
35-43-5-4.3	Possession of a card skimming device					•	•	
35-43-5-6	Avoid being assessed for Cable TV service	•						
35-43-5-15	Possessing a Fraudulent Sales Document Manufacturing Device				•			
35-43-5-21	Worker's Compensation Fraud				•			
35-43-5-22	Stolen Valor				•			
35-43-6-12, 13	Home Improvement Fraud			•	•	•	•	
35-43-9-7	Title Insurance Agent					•	•	•

Infrequently Charged Misdemeanors

These offenses would be reduced to infractions				
Code Cite	Description	Misdemeanor		
		Class C	Class B	Class A
6-2.5-9-7	No Retail Transactions		●	
20-27-7-19	School Bus Inspection and Registration			
35-45-21-2	Home Diagnostic Equipment for HIV Detection			●
35-47-7-1	Report of Certain Injuries to Law Enforcement Agencies			●

These offenses would be removed from statute				
Code Cite	Description	Misdemeanor		
		Class C	Class B	Class A
16-20-1-25	False Information to a Health Officer	●		
24-5-14.5-11	Automatic Dialing Machines		●	●
24-5-14.5-11	False Information to a Health Officer	●		
35-45-14-2	Unlawful Solicitation			●