

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

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FISCAL IMPACT STATEMENT

LS 7132

BILL NUMBER: SB 197

NOTE PREPARED: Apr 1, 2021

BILL AMENDED: Apr 1, 2021

SUBJECT: Criminal Law Issues.

FIRST AUTHOR: Sen. Young M

FIRST SPONSOR: Rep. Steuerwald

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) 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.

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.

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.

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

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

Delta-9 – It replaces references to delta-9 THC with THC.

Battery Enhancement – It amends the definition of "emergency medical services provider" for the offense of battery to include a staff member in the emergency department of a hospital.

Blood Sample Draw – It provides a procedure for a law enforcement officer to request a blood sample if the law enforcement officer has probable cause to believe that a person has committed the offense of operating a vehicle or motorboat while intoxicated causing: (1) serious bodily injury; or (2) death or catastrophic injury.

Law Enforcement Training Board – It provides that the Law Enforcement Training Board may establish certain standards for training programs.

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.

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.

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.

(Revised) *Delta-9* – Renaming delta-9-tetrahydrocannabinol as tetrahydrocannabinol (THC) would make possession and dealing of marijuana with other types of THC able to be prosecuted as felonies for dealing if the weight exceeds 30 grams. The additional number of cases cannot be determined. About 28% of all persons convicted and sentenced for dealing in marijuana as Level 5 and about 6% of all persons convicted and sentenced for dealing in marijuana as a Level 6 felony have been committed to DOC.

(Revised) *Battery Enhancement* – 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 person assaulted a staff member in the emergency department of a hospital.

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.

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.

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.

(Revised) *Delta-9* – More persons may be convicted and sentenced for Class A misdemeanors for dealing and Class A or B misdemeanors for possession of marijuana.

(Revised) *Battery Enhancement* – 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.

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.

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; Law Enforcement Training Board.

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			●