

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

301 State House
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FISCAL IMPACT STATEMENT

LS 6505
BILL NUMBER: SB 165

DATE PREPARED: Apr 9, 1999
BILL AMENDED: Apr 8, 1999

SUBJECT: Serious violent felons and firearms.

FISCAL ANALYST: Mark Bucherl
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FUNDS AFFECTED: **GENERAL**
 DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) (A) This bill makes possession of a firearm by a person who has been convicted of a felony a Class D felony. It provides that a serious violent felon who knowingly or intentionally possesses a firearm commits a Class C felony unless 10 years have elapsed from the date the serious violent felon was discharged from probation, imprisonment, or parole, whichever occurs later. The bill excludes muzzleloading firearms that use blackpowder from the types of firearms applicable to the above-mentioned offenses.

(B) This bill provides for the commitment of a person found to be a sexually violent predator to a mental health institution for an indefinite period following the person's release from a correctional institution upon completion of a sentence imposed for conviction of a sexual offense and civil commitment upon release of a person charged with a sexual offense upon a finding of not guilty by reason of insanity. It provides for an annual review and hearing on the person's condition and for release of the person upon a finding that the person's mental abnormality has so changed that the person is not likely to commit predatory acts of sexual violence if released. It requires the commissioner of the Department of Correction to establish a multidisciplinary review team that includes individuals from other state agencies to assess initially whether a person meets the definition of a sexually violent predator and to notify the Attorney General of the multidisciplinary review team's findings.

This bill requires the Attorney General to establish a Prosecuting Attorney Review Committee to review the records of each person referred to them. It allows the Attorney General to file a petition for civil commitment of a person that the Attorney General and the prosecuting attorney review committee believe to be a sexually violent predator. It requires a court hearing to determine if there is probable cause to believe that the person is a sexually violent predator and requires a trial to be held not later than 60 days after the probable cause hearing. It also provides for the psychological examination of the person by qualified experts and requires the court to appoint experts to examine the person if the person is indigent.

Effective Date: July 1, 1999.

Explanation of State Expenditures: (Revised) (A) This bill creates a new Class C felony offense of possession of a firearm by a serious violent felon. It also expands the Class D felony of possession of a firearm by a person convicted of any felony. (Department of Corrections information indicates no persons have been sentenced for this crime, as a primary offense, in the last five years.) A Class C felony is punishable by a prison term ranging from 2 to 8 years. A Class D felony is punishable by a term of 6 months to 3 years. Terms depend upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,500 in FY 97. Individual facility expenditures range from \$11,000 to \$27,000. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually or \$5 daily per prisoner. The average length of stay in DOC facilities for all Class C felony offenders is approximately one year, seven months. The average length of stay for all Class D felony offenders is about seven months.

(B) Passage of this bill may effect the administrative expenditures of the following agencies: (1) Division of Mental Health (DMH) expenditures for overseeing a program for those determined to be a sexually violent predator; (2) Department of Correction (DOC) which may enter into an interagency confinement agreement with DMH and shall form a multidisciplinary review team to assess persons as to whether they are sexually violent predators; and (3) the Attorney General's Office for representing the State in civil commitment proceedings.

In the first year, the duties outlined in this bill for the Attorney General include review of cases involving sexual offenses by a prosecuting attorney review committee which could be handled with existing staff. Future activities may require additional funds and resources (see below under **Additional Agency Funds and Resources**).

DOC Felons Potentially Effected: The fiscal impact of this proposal is based on the number of prisoners currently in DOC facilities that fall under the provisions of this bill as well as prisoners with impending release dates. It is estimated that at least 1,700 offenders currently incarcerated would be eligible for screening as sexually violent predators. Based on the experiences from other states, between 2% and 3% of these could be civilly committed under this system. The following number of Class A and B felony sexually violent predators will be eligible for release from the DOC in the next four years and could be referred to the Review Committee for screening and possible commitment (*Class C & D felony offense figures will be added to those below when they are received*).

| <u>Year of Release</u> | <u>Scheduled for Release</u> | <u>Predicted 2% Commitments</u> |
|------------------------|------------------------------|---------------------------------|
| FY 2000 | 190 | 4 |
| FY 2001 | 149 | 3 |
| FY 2002 | 128 | 2 |
| FY 2003 | 117 | 2 |

It should be noted that admissions for sexually violent crimes, specified in this bill, have increased substantially in recent years (FY 1997: 574 felons—*updated figures will be provided when they are received*) and future review and commitment rates would be expected to rise as well. Incarceration terms vary for these crimes from 1.9 years for C felony child molesting to 12.8 years for A felony rape.

Future Potential Civil Commitments: This bill provides that persons convicted of criminal offenses (misdemeanors or felonies) other than sexual offenses (under IC 35-42-4) may be reviewed for civil commitment if it is proven by a special prosecution allegation that the defendant was sexually motivated to commit the crime. A plausible effect of this provision is unattainable at this time.

Facility Cost: Based on the figures above, it is estimated that a 100-bed facility would be needed. Currently neither the DOC nor DMH reports an appropriate available facility. The facility would require strict confinement and be able to segregate these individuals from other persons being treated in the facility. It is estimated that the cost to retrofit an existing non-DOC facility, including perimeter security, would be \$7,000,000. To retrofit an existing DOC facility, the estimated cost is \$5,000,000. The estimated cost for a new 100-bed facility is \$10,000,000.

Treatment Cost: The cost of treatment of individuals housed at the Isaac Ray Treatment Center (DMH's forensic unit) is approximately \$110,000. It is estimated that the treatment cost for the individuals in this proposal would likely be higher because of the need for security and the type of treatment expertise required. The estimated cost of treatment per person is \$150,000 per year. If four individuals are committed in the first year, the cost of treatment would be \$600,000.

DMH Administrative Cost: In addition to the staff needed to operate the facility, additional staff will be necessary for the Division of Mental Health. The State of Washington has experienced more legal processing due to the litigious nature of its sexual predator commitments, who sue over treatment and care conditions. An attorney and a support staff person could be necessary to handle any such claims and to advise the facility as legal issues arise. Support staff will also be required to provide the necessary notices to committed persons as to their right to petition the court for their release. The estimated cost for the two positions is \$80,457 in FY 2000 and \$80,132 in FY 2001 (see under **Additional Agency Funds and Resources**).

Additional Agency Funds and Resources: The funds and resources potentially required by the Attorney General's office and DMH could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified (According to the March 31, 1999 manning table the Family and Social Services Administration had 278 vacancies. Of 269 authorized full-time positions in the Attorney General's office, 22 positions were vacant.); (4) Funds that, otherwise, would be reverted; or (5) New appropriations.

Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Explanation of State Revenues: (Revised) (A) If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund could increase. The maximum fine for a Class B felony is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, county or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: (Revised) (A) If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

(B) Courts may experience additional hearing expenses for the civil commitment procedures (e.g. provision of counsel for indigent offenders) as well as for professional evaluations of persons held in county jails to determine whether they are sexually violent predators, as defined in this bill.

Also, prosecuting attorneys may incur additional procedural expenses in filing special allegations for sexually motivated defendants for both misdemeanor and felony offenses.

Explanation of Local Revenues: (Revised) (A) If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court 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. (2) A \$3 fee would be assessed, and if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Department of Correction; Division of Mental Health; Attorney General; State Parole Board.

Local Agencies Affected: Courts; law enforcement agencies.

Information Sources: Planning Division, Department of Correction, 233-4756; Janet Corson, Division of Mental Health, 232-7839; J. D. Lux, Office of Attorney General, 233-6312; Robert Harrison, Kansas Department of Corrections, (913) 296-3317; Indiana Sheriffs Association.