

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

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6247**

**BILL NUMBER:** HB 1155

**NOTE PREPARED:** Feb 28, 2006

**BILL AMENDED:** Feb 28, 2006

**SUBJECT:** Child Molesting.

**FIRST AUTHOR:** Rep. Budak

**FIRST SPONSOR:** Sen. Long

**BILL STATUS:** 2<sup>nd</sup> Reading - 2<sup>nd</sup> House

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill has the following provisions.

- A. *State Agency Responsibilities – Oversight of the Sex Offender Registry* -- It transfers oversight of the Sex Offender Registry from the Criminal Justice Institute to the Department of Correction (DOC). It eliminates the Sex and Violent Offender Directory and transfers its functions to the Sex Offender Registry, and requires the Criminal Justice Institute to seek grants to support the Sex Offender Registry. It removes a provision requiring a sex offender to register using a "registration form", and requires the DOC to establish a format for registration. It requires the DOC to transmit information concerning sex offenders to a neighborhood association, or to provide instructional material in the use of the Sex Offender Registry. It requires the DOC to inform and train judges, prosecuting attorneys, law enforcement officials, and others in the sex offender registration procedure. It requires that the Sex Offender Registry be updated daily and be available on the Internet, requires incarcerated sex offenders to register before being released, and shortens certain registration periods. *Credit Time for Sex Offenders* – It permits the DOC to reduce good time credit for a sex offender who does not participate in a sex offender treatment program or who does not register before being released from incarceration. *Sentencing Policy Study Committee* -- It requires the Sentencing Policy Study Committee to study issues related to sex offenders, including: (1) lifetime parole; (2) GPS monitoring; (3) a classification system for sex offenders; (4) recidivism; and (5) treatment. It adds a board-certified psychologist or psychiatrist appointed by the Governor to the Sentencing Policy Study Committee to act as a nonvoting advisor to the Committee. *Department of Correction* – It requires the Department of Correction to report annually to the Legislative Council concerning the Department's implementation of lifetime parole and GPS monitoring of sex offenders, including information concerning costs, recidivism, and

proposals to reduce cost or increase efficiency. It requires the Department of Correction to report to the Budget Committee before August 1, 2006, concerning the feasibility of recovering the expense of GPS monitoring from an offender.

- B. *Local Agency Responsibilities* – It requires the local law enforcement authority with whom a sex offender registers under this section shall make and publish a photograph of the sex offender on the Indiana Sex Offender Registry web site established under IC 36-2-13-5.5. The local law enforcement authority shall make a photograph of a sex offender that complies with the requirements of IC 36-2-13-5.5 at least once per year. The sheriff of a county containing a consolidated city shall provide the police chief of a consolidated city with all photographic and computer equipment necessary to enable the police chief of the consolidated city to transmit sex offender photographs to the Indiana Sex Offender Registry web site. In addition, the sheriff of a county containing a consolidated city shall provide all funding for the county's financial obligation for the establishment and maintenance of the Indiana Sex Offender Registry web site. It requires the local law enforcement authority to mail a reply form to each sex offender in the county at the sex offender's listed address at least one time per year, beginning 7 days after the local law enforcement authority receives a notice about the date the sex offender is released from a penal facility, a secure private facility, or a juvenile detention facility and is placed in a community transition program, a community corrections program, on parole; or placed on probation. It requires the local law enforcement authority to mail a reply form to each sex offender who is designated a sexually violent predator at least once every 90 days, beginning 7 days after the local law enforcement authority receives a notice about when the sex offender is released from a penal facility, a secure private facility, or a juvenile detention facility and is placed in a community transition program, a community corrections program, on parole; or placed on probation. It requires that the local law enforcement authority personally visit each sex offender in the county at the sex offender's listed address at least one time per year, and each sexually violent predator at least once every 90 days. It requires the local law enforcement authority to immediately notify DOC and the prosecuting attorney not later than 14 days after mailing if a sex offender fails to return a signed reply form either by mail or in person, or if the offender does not to reside at the listed address.
- C. *Sex Offenders -- Sex offenders from Other States* – It establishes a procedure for determining which out-of-state sex offenders residing in Indiana are required to register and how long they are required to register. It adds crimes committed in other states that are substantially similar to certain Indiana sex crimes to the list of underlying offenses that permit a person to be charged as a repeat sexual offender. It specifies that a sex offender's principal residence is the residence where the offender spends the most time. It imposes additional registration and notification requirements on sex offenders, including a requirement that a sexually violent predator notify law enforcement officials if the predator will be absent from the predator's principal residence for more than 72 hours. It requires a sex offender to possess a valid driver's license or state identification card. It requires a sex offender who temporarily resides in transitional housing to register once every seven days, and requires a local law enforcement authority to personally visit the listed address of a sex offender. It provides various penalties for violations of these provisions.
- D. *Sexually Violent Predators* – It expands the definition of a "sexually violent predator" to include persons who commit certain offenses, persons who commit an offense for which they must register as a sex offender who have a prior conviction for an offense for which they would be required to register as a sex offender. It requires a sexually violent predator to initially register not more than 72 hours after release from incarceration or supervision, and requires all sex offenders to register in person at least once per year. Sexually violent predators would be prohibited from working or volunteering on school property or at a public park or youth program center or at an amusement attractive to children. It provides that a sexually violent predator who commits an offense after June 30, 2006, must be

placed on lifetime parole when the person's term of imprisonment is completed. It provides that a person who violates a condition of lifetime parole after the person's lifetime parole has been revoked two or more times or after completing the person's sentence (including any credit time) commits a Class D felony if the violation involves contact with a child or a victim of the child molesting offense of which the person was convicted, and a Class C felony if the person has a prior unrelated lifetime parole violation conviction. Juvenile courts would also be prohibited from appointing a person who is determined to be a sexually violent predator from serving as a guardian or custodian of a child.

- E. *Restrictions* -- It prohibits certain sex offenders from residing within: (1) 1000 feet of a school, public park, or youth program center; or (2) one mile of the victim's residence. It requires a sexually violent predator placed on lifetime parole to wear a GPS monitoring device. It specifies that a sexually violent predator in another state whose parole is transferred to Indiana may also be required to be placed on lifetime parole. It provides that, if a person being supervised on lifetime parole is also required to be supervised by a probation department or similar agency, the probation department or similar agency may have sole supervision of the person if the parole board finds that supervision by the probation department or other agency will be at least as stringent and effective as supervision by the parole board. It prohibits a sex offender from obtaining a waiver for certain residency restrictions imposed as part of probation or parole. It specifies that a sex offender's principal residence is the residence where the offender spends the most time.
- F. *DNA Exceptions* -- It provides that the DNA exception to the statute of limitations for Class B, C, and D felonies applies when DNA analysis provides evidence sufficient to charge a person with an offense. (Currently the DNA exception applies when DNA analysis permits the discovery of the offender's identity.) It requires certain persons not committed to the Department of Correction to submit a DNA sample.
- G. *Stalkers* -- It permits a court or the parole board to prohibit a probationer or parolee who has been convicted of stalking from residing within 1000 feet of the home of the victim. It provides various penalties for violations of these provisions.
- H. It also makes conforming amendments and repeals certain provisions concerning the Criminal Justice Institute's duties with respect to sex offenders.

**Effective Date:** Upon Passage; July 1, 2006.

**Explanation of State Expenditures:** The most fiscally significant provision of this bill is expanding the definition of a sexually violent predator. Under current law, a court is required to consult with two board-certified psychologists or psychiatrists and then determine whether the defendant in a sex crime is a sexually violent predator. As proposed, a person would automatically be a sexually violent predator because they committed certain sex crimes as a first-time offense or, in some cases, if one or more prior unrelated offenses were committed. Defendants in sex crimes who are not automatically determined to be a sexually violent predator will still be required to be examined by two board-certified psychologists or psychiatrists to determine whether they are sexually violent predators.

The added costs for monitoring these offenders with GPS equipment will begin in FY 2008 and continue increasing over the next 20 to 30 years. The specific costs will depend on the organizational and technological advances that can be made as more offenders are released and need to be monitored. Assuming that the costs of monitoring and supervising sexually violent predators remains in constant 2006 dollars, the costs for GPS monitoring could be \$8.6 M within ten years.

The following table illustrates which sex crimes would be grounds for determining whether a defendant would

be a sexually violent offender.

Number of Convictions Needed to Automatically Be a Sexually Violent Predator By Offense and Felony Level				
Offense	Class A	Class B	Class C	Class D
Rape or criminal deviate conduct	First Time		<del>Class C</del>	<del>Class D</del>
Child molesting	First Time		<del>Class C</del>	<del>Class D</del>
Child exploitation	<del>Class A</del>	<del>Class B</del>	Prior	
Vicarious sex gratification if victim less than 18, w/ force or drugs or causing victim serious bodily injury or involving animals	<del>Class A</del>	<del>Class B</del>	First Time	<del>Class D</del>
Vicarious sex gratification w/ children less than 16	Prior		<del>Class C</del>	<del>Class D</del>
Sexual conduct in the presence of a minor	<del>Class A</del>	<del>Class B</del>	<del>Class C</del>	Prior
Child solicitation	<del>Class A</del>	<del>Class B</del>	Prior	
Child seduction	<del>Class A</del>	<del>Class B</del>	<del>Class C</del>	Prior
Sexual misconduct with a minor	Prior		<del>Class C</del>	<del>Class D</del>
Incest	<del>Class A</del>	Prior		<del>Class D</del>
Sexual battery	<del>Class A</del>	<del>Class B</del>	Prior	
Kidnapping of person younger than 18	Prior	<del>Class B</del>	<del>Class C</del>	<del>Class D</del>
Criminal confinement of person less than 18	<del>Class A</del>	Prior		<del>Class D</del>
Possession of child pornography	<del>Class A</del>	<del>Class B</del>	<del>Class C</del>	2 Priors
Attempt, conspiracy, related offenses in other jurisdictions	Prior			
<p><b>First Time</b> – First Time Offense; <b>Prior</b> – When offender has been convicted of committing one prior unrelated sex offense; <b>2 Priors</b> When offender has been convicted of committing two prior unrelated sex offenses.</p>				

Based on release data between CY 2000 and 2004, the following represents the number of sex offenders who would be considered sexually violent offenders when they are released from DOC facilities.

<b>Annual Number of Sexually Violent Predators Released*</b>					
	Class A	Class B	Class C	Class D	Grand Total
Rape	27	69			96
Crim Deviate Conduct	7	25			32
Child Molesting	8	154	290		452
Child Exploitation			3	1	4
Vicarious Sex Gratif			0	0	0
Child Solicitation			1	2	3
Child Seduction				2	2
Sex Misconduct-Minor		5	1		6
Incest		1	1		2
Sexual Battery			0	5	5
Kidnapping	1				1
Criminal Confinement	-	<u>1</u>	-	<u>2</u>	<u>3</u>
Grand Total	43	255	296	12	606
*Based on Releases from DOC between 2000 and 2004.					

Offenders sentenced as sexually violent predators are placed on parole for the remainder of their lives. As a condition of parole, these offenders will be required to wear a monitoring device that can transmit information about the offender's precise location 24 hours per day. This bill also permits other sex offenders who are not sexually violent predators to wear monitoring devices upon the discretion of the parole board.

The offender sentenced as a sexually violent predator may be placed on probation if the parole board determines the other supervising authority will be at least as stringent and effective as supervision by the parole board. Since offenders on parole are required to have these monitoring devices, it is assumed offenders on probation will also need to be using global positioning systems as well. Consequently, this bill would mandate probation departments to use global position monitoring if the offender sentenced as a sexually violent predator is placed on probation.

The potential impact on sentencing patterns is currently indeterminable. On average between 2000 and 2004, 60% of all offenders who were sentenced for a sex crime were released on parole and discharged after serving a full sentence or released to a community transition program, while 40% were released on probation. Under the bill, offenders who are released on parole or discharged after serving their entire sentences will be on parole for the rest of their lives. It is not clear whether courts who give offenders split sentences for sex offenses where an offender is determined to be a sexually violent predator will continue to do so if they are required to use global position monitoring.

To make the following estimate, it is assumed that all offenders released from DOC will be placed on parole.

Future parole populations are affected by three variables: the number of offenders released each year, the average age at release, and the recidivism rate of the offenders. The following table presents these factors.

<b>Variables Affecting Costs of GPS Monitoring and Parole Supervision</b>				
	<u>Class D</u>	<u>Class C</u>	<u>Class B</u>	<u>Class A</u>
Sexually Violent Predators Released Each Year	12	296	255	43
Average Length of Stay (In Years) in DOC	1.0	2.5	4.6	12.6
Year Offender Will Begin GPS	2008	2009	2011	2019
Average Age at Release from DOC Facility	33	36.5	37.6	42.6
Average Age When Beginning Lifetime Parole	43	46.5	47.6	52.6
Number of Years Offenders Would Have to Be on Parole	34	30.5	29.4	24.4
Recidivism Rate Based on Offenders Released in 2001	40%			

The fiscal effects from this bill will begin occurring in FY 2008 when Class D felons who were committed in 2007 will be released. Little or no information is available at the state level about the number of offenders who have been determined by the courts to be sexually violent predators under IC 35-38-1-7.5. DOC estimates that fewer than 50 are currently either in DOC facilities or have been released and that roughly two offenders are determined to be sexually violent predators in any given year.

Predicting the future costs of providing these offenders with GPS monitoring and lifetime parole supervision is difficult due to changes in technology and organizational arrangements. The cost of GPS monitoring has decreased rapidly within the past five years, and the costs of actual staff monitoring may depend on the arrangements that the Department of Correction makes with local probation and community correction programs.

*GPS Costs* -- The immediate effect of this bill will result in increased parole supervision costs as sexually violent predators are released from DOC and required to wear a monitoring device. Since this bill only applies to crimes committed after June 30, 2006, the earliest that this bill could affect the Department of Correction would be in FY 2008 because Class D felons have an average length of stay of one year. The following tables illustrate the potential costs associated with these requirements based on costs in 2006 for mandatory GPS monitoring.

<b>Potential Costs in \$Million for GPS Monitoring for Sexually Violent Predators in 2006 Dollars</b>													
<u>Felony Class</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Class A												43	86
Class B				255	357	500	643	786	929	1,072	1,215	1,358	1,501
Class C		296	414	532	650	768	886	1,004	1,122	1,240	1,358	1,476	1,594
Class D	12	24	29	34	39	44	49	54	59	64	69	74	79
Totals	12	320	443	566	1,046	1,312	1,578	1,844	2,110	2,376	2,642	2,951	3,260
Est. Costs <sup>1</sup>	\$0.04	\$1.2	\$1.6	\$2.0	\$3.8	\$4.7	\$5.7	\$6.6	\$7.6	\$8.6	\$9.5	\$10.6	\$11.7

<sup>1</sup>Costs of GPS estimated at \$3,600 per offender.

*Projected Costs for Lifetime Parole* -- Both the staff costs for supervising offenders on parole and offenders who return to DOC because of parole violations could increase costs to DOC. Supervisory costs can take one of two forms for DOC. DOC may increase the number of parole officers to supervise these offenders or contract with probation or community corrections agencies to provide the supervision. If parole staff is increased to supervise more offenders, more staff would likely be needed beginning in 2018 when offenders who

were released from DOC in 2008 finish their current 10-year maximum period on parole that they are required to serve under current law and begin the lifetime parole added by this bill. Currently, eight district offices have 91 parole officers and 36 other employees, including substance abuse counselors and support staff. The average annual parole population as of November 2005 was 8,144. Based on these statistics, the average number of offenders per parole officer is 90.

The following represents the added costs to the Department of Correction based on the average 2006 salary of \$50,100.

<b>Potential Costs in \$Millions of Additional Offenders on Parole in 2006 Dollars</b>						
	Year Felons Sentenced in 2007 Begin Lifetime Parole					
	2018	2019	2020	2021	2022	2029
Class A Felons*						26
Class B Felons*					153	1,071
Class C Felons*		178	356	534	712	4,984
Class D Felons*	7	14	21	28	35	245
Added Sexually Violent Predators on Parole	7	192	377	562	900	6,326
New Probation Officers Needed**		2	4	6	10	70
Added Costs of New Probation Officers		\$0.1	\$0.20	\$0.3	\$0.5	\$3.5
*Assumes that 40% of original releases in 2007 have returned to DOC.						
**Based on 90 Offenders per Parole Officer.						

*Minimum Time on Sex Offender Registry* -- Under current law, sex offenders must register for a minimum of ten years while sexually violent predators are required to register for life (IC 5-2-12-13). If more sex offenders are required to register for life instead of 10 years, there would be more offenders who could intentionally fail to register and commit a new crime for not conforming with registration requirements. Offenders who knowingly or intentionally fail to register or to complete and submit a new registration form commit a Class D felony on a first offense and a Class C felony as a second offense (IC 5-2-12-9).

In CY 2004, 23 persons in 13 counties were committed to DOC facilities as Class D felons for not registering as a sex offender as a first-time offense.

*Changes in Credit Time* -- This bill would allow DOC to deny credit time to sex offenders if they refuse to:

- register as a sex offender while in a DOC facility (used as a management tool); or
- participate in a sex offender treatment program specifically offered to the sex offender by DOC.

DOC indicated that loss of credit time would be used as a management tool to force offenders to comply. Offenders who may lose credit time for good behavior may regain the lost credit time. Consequently, these provisions would not likely increase future facility populations. DOC also offers sex offender treatment to the offenders that staff determine would benefit from the program. Consequently, the number of sex offenders participating in the program is limited. Sex offender treatment programs are located at the following male facilities: Miami, Correctional Industrial Complex, Putnamville, and Westville. Liberty Behavioral Health (LBH) is contracted to provide those services. By contract agreement LBH is to provide services for not fewer than 200 offenders at any given time. Currently, 220 sex offenders are enrolled in the treatment program.

*Background on Supervision of Sex Offenders* -- By law, sex offenders must serve a minimum sentence

in a DOC facility. IC 35-50-2-2(d) allows a court to sentence the offender for the minimum term and, upon release, place the offender on probation for not more than 10 years. If the offender is given a full sentence with no early release on probation, the offender may earn time cuts for good behavior and for earning educational degrees and vocational certificates. IC 35-50-6-1(d) requires an offender who is released early because of accrued credit time to be placed on parole for a maximum of 10 years upon release. Offenders can also be released into a community transition program operated by a probation department or community corrections program (CTP). Community transition assignments are of relatively short term compared to probation or parole assignments. Some offenders serve their entire sentences without early release because they earned no credit time.

Future parole populations are affected by three variables: the number being released by type of felony, the average age at release, and the recidivism rate of the offenders. The projections shown in prior tables took these factors into account.

*Background on GPS Monitoring* -- The impact of requiring GPS monitoring would begin in FY 2008 when Class D felony sexually violent predators would be released. There are a variety of monitoring systems that fit the requirements for monitoring in IC 35-38-2.5-3 and that would work in different geographic locations. The cost of monitoring will vary based on the type of device required. As an example of the difference in cost, the daily cost of a radio frequency device that monitors offenders in their homes is \$1.30 in Marion County, while the cost of a global positioning satellite system is \$5.00 per day for a passive system and \$10.00 for active, or 24-hour, surveillance. Continuous monitoring (not necessarily required) could increase costs for staff to allow for monitoring and response or to provide for more flexible working schedules

(Revised) *Sentencing Policy Study Committee* – The bill also adds a series of topics for the Sentencing Policy Study Committee to examine and requires that one board-certified psychologist or psychiatrist appointed by the Governor act as a nonvoting member of the Committee. The Sentencing Policy Study Committee currently consists of 19 members.

**Explanation of State Revenues:** *Violation of Lifetime Parole:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class C and Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 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:** *Restrictions on Stalkers* -- Stalking is defined in statute as a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term does not include statutorily or constitutionally protected activity (IC 35-45-10-1). Stalking is a Class D felony and can be enhanced to either a Class C or B felony under certain circumstances. As a felony, offenders sentenced for stalking can be committed to DOC. A court can suspend a person's sentence for stalking, so an offender can be sentenced to probation or community corrections.

The number of offenders statewide who have been sentenced to probation or community corrections for stalking is not known. As of November 21, 2005, 46 offenders were in DOC facilities for the offense of stalking.

<b>Offenders in DOC Facilities on November 21, 2005, for Stalking</b>	
<b>Felony Class</b>	<b>Offenders</b>
<b>Class B</b>	<b>6</b>
<b>Class C</b>	<b>32</b>
<b>Class D</b>	<b>8</b>
<b>Total Offenders</b>	<b>46</b>

*Extending the Minimum Period of Registering as a Sex Offender or Sexually Violent Predator* -- Currently, each local law enforcement agency (LLEA) has identified staff to monitor sex offender registration. Extending the amount of time that offenders must register as sex offenders will increase the responsibilities of the local law enforcement agencies. Their responsibilities include:

- forwarding a copy of a sex offender's registration form to the DOC and every local law enforcement agency having jurisdiction in the area where the offender is located;
- taking and publishing photographs of offenders on the Sheriffs' Sex Offender Registry web site;
- informing other local law enforcement agencies if an offender moves, starts employment, vocation, or enrollment within another LLEA's jurisdiction;
- notifying other states if an offender changes residence, place of employment, or enrollment to the other state;
- verifying offenders' addresses; and
- notifying the prosecuting attorney and DOC if an offender fails to return a signed registration form.

Increasing the number of offenders who will be monitored as sexually violent predators could increase costs to the local law enforcement authorities. These agencies will be required to send notifications in the mail to the sexually violent predators and make personal visits to their residences. The added costs for these types of responsibilities was not able to be estimated.

**Explanation of Local Revenues:** *Monitoring of Offenders* – A portion of the costs associated with these systems can be offset from user fees collected from offenders on parole.

*Violation of Lifetime Parole:* 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. (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.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** Indiana Sheriffs' Association, Department of Correction.

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