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FISCAL IMPACT STATEMENT

LS 6135

BILL NUMBER: SB 44

NOTE PREPARED: Apr 9, 2007

BILL AMENDED: Apr 5, 2007

SUBJECT: HIV Testing, Child Support Matters, Victims Rights.

FIRST AUTHOR: Sen. Bray

FIRST SPONSOR: Rep. L. Lawson

BILL STATUS: 2nd Reading - 2nd House

**FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL**

IMPACT: State & Local

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

- A. *Delinquent Child Support Payments* – It requires a state or local government officeholder who has been subject to a judgment: (1) of at least \$15,000 for delinquent child support payments; and (2) for more than 60 days; to be removed from office.
- B. *HIV Testing* – It corrects certain cross-references that relate to HIV testing after convictions for certain sex and substance abuse offenses. It makes other changes and conforming amendments.
- C. *Employee Who Is the Victim of a Crime* – It provides that an employee who is the victim of a crime may take unpaid leave from work to attend court proceedings and confer with the prosecuting attorney concerning the crime unless the employee's absence would cause significant difficulty or expense to an employer. It prohibits an employer from reducing employee benefits to an employee who is absent from employment in order to: (1) file a petition for an order for protection; (2) attend a hearing regarding an order for protection; and (3) exercise certain rights of the employee as a victim, in certain circumstances. It prohibits an employer from refusing to employ an individual who has exercised the individual's rights to attend court proceedings or to confer with a prosecuting attorney. It requires that employment records concerning an employee's absence to: (1) confer with a prosecuting attorney; (2) file a petition for an order for protection; (3) attend a hearing regarding an order for protection; or (4) exercise certain rights of the employee as a victim; be kept confidential. It requires a prosecuting attorney to advise a victim of the victim's rights as an employee. It makes other changes.

(The introduced version of this bill was prepared by the Sentencing Policy Study Committee.)

Effective Date: (Amended) Upon passage; July 1, 2007.

Explanation of State Expenditures: *HIV Testing* – This bill restores the list of crimes referenced by the statute regarding HIV testing of offenders after certain criminal convictions, thus enabling the courts to receive the results of HIV tests.

Background on HIV Testing – Under current law, courts having either criminal or juvenile jurisdiction are required to order an HIV screening test if the adult or juvenile has committed a sex crime or a crime related to using controlled substances in which a demonstrated risk of transmitting HIV would occur. The general arrangement is for a health worker with the local health department to draw the blood specimen and to send the specimen to the laboratory of the State Department of Health (SDH) for analysis. Staff in the SDH laboratory perform the tests and send the results to the Legal Section of the SDH. Attorneys in the Legal Section will then contact the courts with the information. The SDH is also required to notify victims of these crimes and to provide counseling to the persons notified.

The sex crimes are listed in IC 35-38-1-7.1-(c), while the crimes related to controlled substances are listed in IC 35-38-1-7.1(f). The sex crimes include: rape (IC 35-42-4-1), criminal deviate conduct (IC 35-42-4-2), child molesting (IC 35-42-4-3), child seduction (IC 35-42-4-7), prostitution (IC 35-45-4-2), patronizing a prostitute (IC 35-45-4-3), incest (IC 35-46-1-3), and sexual misconduct with a minor under IC 35-42-4-9(a).

The crimes related to controlled substances include: dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1), dealing in a Schedule I, II, or III controlled substance (IC 35-48-4-2), dealing in a Schedule IV controlled substance (IC 35-48-4-3), dealing in a Schedule V controlled substance (IC 35-48-4-4), possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6), possession of a controlled substance (IC 35-48-4-7), dealing in paraphernalia (IC 35-48-4-8.5), possession of paraphernalia (IC 35-48-4-8.3), and offenses relating to registration (IC 35-48-4-14).

Both sections were removed from the statute in 2005 by SEA 96 - 2005. Consequently there are no lists in current statute which refer to the crimes in question. Because these lists have been removed from statute, staff with the State Department of Health and several courts have indicated that no legal authority now exists to conduct these tests or notify victims about the results of these tests. Consequently, the number of tests ordered by the criminal and juvenile courts has declined. The specific number of tests ordered was not available.

This bill restores the list of crimes to which this section of the code references, enabling the courts to receive the results of the HIV tests.

Explanation of State Revenues: (Revised) *Delinquent Child Support Payments* – An information to remove a person from office must be filed with the circuit court by a prosecuting attorney or by any other person. A prosecuting attorney is not responsible for court costs, but a private person bringing the information is. The court may adjudge the costs against the defendant instead.

Revenue to the state General Fund may increase if court fees are collected. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues: (Revised) *Delinquent Child Support Payments* – Local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing 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. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: State Department of Health.

Local Agencies Affected: Courts, local health departments, prosecuting attorneys.

Information Sources: Jane Siegel, Indiana Judicial Center; Carmen Quintana, State Department of Health.

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