

children," requires offenders against children to register for life, prohibits an offender against children from working in certain locations, and provides a means for individuals designated as offenders against children to have this designation removed.

Conformance: It makes certain other changes.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Summary:* The bill will add more costs for the supervision of sex offenders and sexually violent predators. These costs include supervision, GPS monitoring, notifications, and potential incarcerations. The bill also eliminates certain offenders from registering as a sex offender and reduces the penalty for a crime under certain circumstances. However, these reductions in registration or incarceration are not expected to override the increases in other costs. The exact costs for these additions and eliminations cannot be estimated because data on the groups is unavailable.

Offenders Added to Sex Offender Registry: The following offenders would be required to register as a sex offender under the bill:

- Offenders who commit promoting prostitution of a minor; promotion of human trafficking if the victim is less than 18 years old, sexual trafficking of a minor, and human trafficking if the victim is less than 18 years old.
- Offenders who commit vicarious sexual gratification are already included, but the bill clarifies that performing sexual conduct in the presence of a minor is also included.
- Children who commit certain delinquent acts are already included, but the bill clarifies that this includes acts committed in Indiana or another jurisdiction.

The number of offenders who may be added to the register as a result of these changes is indeterminate. Legislation defining crimes involving human sexual trafficking was enacted in 2006, and, as a result, there are no data available to estimate how many more offenders may be added to the Sex Offender Registry. For promoting prostitution as a Class B felony, there were two offenders committed to a state correctional facility in 2006.

Offenders Excluded from the Sex Offender Registry:

- Offenders convicted of sexual misconduct with a minor as a Class C felony if the offender is not more than four years older than the victim and the sentencing court finds the offender should not have to register.
- Kidnapping of a victim less than 18 years old if the offender is the victim's parent or guardian.
- Criminal confinement if the victim is less than 18 years old and the person who confined or removed the victim is not the victim's parent or guardian.

There are no data to indicate how many offenders may be excluded from the Sex Offender Registry as a result of these changes. Between 2001 and 2005 on average, there were seven offenders a year committed to a state correctional facility for criminal confinement. However, there are no data available to indicate the circumstances of the crime and whether these offenders would be eliminated from the requirement to register.

_____ *Background on Sex Offender Registry:* There were 8,052 active registrants on the Sex Offender Registry as of November 3, 2006. In total, the registry contains information on 16,533 individuals with 6,535 no longer required to register; 1,511 offenders in custody who will have to register upon release from custody; and 435 offenders who reside out of state.

Changes to Sexually Violent Predator Status: The bill adds the following qualifications for classification as a sexually violent predator:

- The offender committed a crime substantially equivalent to a qualifying offense in Indiana.
- The offender commits a qualifying offense while having a previous unrelated adjudication as a delinquent child for an offense that would have been qualifying if committed by an adult.
- The offender attempts or conspires to commit a qualifying offense.

To the extent that more offenders would have to register as sexually violent predators, costs for supervision could increase. These costs are primarily undertaken by local law enforcement agencies (See *Explanation of Local Expenditures* below).

- The crime committed or the determination of a board of experts classifies an offender as a sexually violent predator, and the court does not have discretion to determine on the record that an offender is a sexually violent predator.

To the extent that courts currently believe that they have the discretion to determine sex offenders to be sexually violent predators beyond the operation of the law, this clarification could reduce the number of offenders labeled as sexually violent predators. There is no information available to know if courts have made such determinations or how many offenders may be involved.

- A court may decide that an offender is no longer a sexually violent predator after consulting with two licensed psychiatrists or psychologists. However, the offender will have to continue to register as a sex offender for life.

Costs for supervision would decrease somewhat if an offender who is no longer a sexually violent predator continues to register as a sex offender. Added supervision costs for sexually violent predators include GPS monitoring, and under the bill, increased frequency of registration.

_____ *Background on Sexually Violent Predator Status:* There are 1,621 offenders listed in the Sex Offender Registry as sexually violent predators under IC 35-38-1-7.5. In the past, the Department of Correction (DOC) estimated that fewer than 50 were either in DOC facilities or had been released and that two offenders a year are determined to be sexually violent predators, on average. The large increase in the number of sexually violent predators is the result of revisions of IC 35-38-1-7.5 that became effective on July 1, 2006.

Offenders Against Children: The bill adds to the category of offenders who must register for life offenders who commit offenses against children. It also applies unlawful employment near children by a sexual predator, a Class D felony to offenders against children. Under the bill, a court may find that an offender is no longer an offender against children after consulting with two psychiatrists or psychologists. If an offender is found to no longer be an offender against children, the offender will continue to register as a sex offender.

Changes to Registration Requirements: The bill makes the following changes to registration requirements:

- All sex offenders will have to register in person.
- Sexually violent predators will have to register in person with local law enforcement and be photographed every 90 days. In addition, an offender who claims to be working or in school must present documentation providing evidence of the claim.
- A sex offender who commits a crime against children is required to register for life.
- An offender who committed the crime in another jurisdiction must register for the length of time required by the other jurisdiction.
- Offenders who carry on vocations or intent to carry on a vocation in Indiana will have to register. (Under current law, the offender has to register if the period exceeds 14 days or 30 days total.)
- The offender must provide a vehicle VIN and the address where the offender stays for more than 3 nights in a 30-day period.

Knowing or intentional violation of the registration requirements for sex offenders is a Class D felony or a Class C felony in certain circumstance. A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in DOC facilities for all Class C felony offenders is approximately 2 years and for all Class D felony offenders is approximately 10 months.

Sexual Conduct with a Minor: Sexual conduct with a minor as a Class D felony is established under the bill if the offense is committed by an offender who is not more than four years older than the victim. Since victims can be within days of their 16th birthday, this addition could possibly affect any offender younger than 20. Of the 96 persons committed to DOC for Class C sexual misconduct with a minor in CY 2006, seven were under the age of 20 at the time of sentencing. The penalty for the underlying offense is a Class C felony. State expenditures could decrease if offenders are incarcerated for less time in a state prison.

Explanation of State Revenues: *Federal Funds:* A federal law enacted in 2006, known as the Adam Walsh Sex Offender Act, places requirements on jurisdictions concerning sex offender registries. Failure to reach compliance with the requirements within three years may result in the loss of as much as 10% of the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant Program funds from the U.S. Department of Justice, which currently would be estimated to be a loss of approximately \$350,000. Federal administrative regulations are being drafted at this time.

Explanation of Local Expenditures: *Local Law Enforcement Agencies (LLEA):* Many of the changes in the bill 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 sex offenders and sexually violent predators and the terms of registration will 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 were not able to be estimated.

Sexual Conduct with a Minor: Since a Class D felony may be reduced to a Class A misdemeanor depending on the aggravating and mitigating circumstances, offenders could be sentenced to a local jail rather than a state facility. The average cost of incarceration in a county jail is \$44 per day.

Explanation of Local Revenues:

State Agencies Affected: State Police, Department of Correction.

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

Information Sources: Steve Johnson, testimony to the Sentencing Policy Study Committee on September 18, 2006; Indiana Sheriffs' Association; Department of Correction.

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