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FISCAL IMPACT STATEMENT

LS 7063

BILL NUMBER: HB 1296

NOTE PREPARED: Jan 11, 2010

BILL AMENDED:

SUBJECT: Habitual Offender Statutes.

FIRST AUTHOR: Rep. Culver

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State

Summary of Legislation: This bill modifies the habitual offender statutes for certain drug possession offenses so that a prosecuting attorney may not request that a person with more than two unrelated convictions for possession of cocaine, methamphetamine, a controlled substance, paraphernalia, marijuana, hash oil, or hashish be sentenced as a habitual offender.

Effective Date: July 1, 2010.

Explanation of State Expenditures: This bill potentially reduces the length of prison time of some offenders.

Background Information- Definition of Habitual Offenders– IC 35-50-2-8 defines habitual offenders as having two prior unrelated felony convictions. These offenders must be sentenced for an added length of stay. The added length of stay is at the sentencing court’s discretion. The added length of stay will depend on the “instant offense”, or the most recent felony for which the offender was convicted. The length of the enhancement is an additional fixed term that is not less than the advisory sentence for the underlying offense nor more than three times the advisory sentence for the underlying offense.

Analysis – LSA identified the offenders in the table below who were committed to the Department of Correction (DOC) where the instant offense was illegal drug possession. This table probably represents only a portion of the habitual offenders who have two or less illegal drug possession as prior felonies. During CY 2009, DOC reported that 219 offenders were given a habitual offender enhancement by a court. Since LSA only has commitment data for offenders with only the most recent felony, LSA was not able to find the prior

felonies of offenders who were committed to DOC as habitual offenders but who had some other offense besides illegal drug possession.

While the number of offenders who are committed as habitual offenders where the instant offense is a possession of an illegal drug is relatively small, the number of offenders has more than doubled between 2004 and 2008. The following table shows the number of offenders who were sentenced as habitual offenders where the “instant offense” is possession of cocaine, methamphetamine, a controlled substance, paraphenelia, marijuana, hash oil, or hashhish.

Habitual Offenders Committed to DOC with Possession as the Instant Offense										
	2004		2005		2006		2007		2008	
Felony Class	Number of Offenders	Avg. Sentence								
FB			3	13.00						
FC	4	16.25	4	9.25	7	5.79				
FD	6	7.72	9	5.28	12	3.67	13	4.69	26	4.25
Total	10	11.13	16	7.72	19	4.45	13	4.69	26	4.25

LSA examined the prior convictions of 84 offenders who were in DOC facilities on December 31, 2009, who were sentenced as habitual offenders and whose instant offense was a drug possession felony. Based on reported records, LSA estimates that 58 (or almost 70%) of these offenders would not be eligible for the habitual offender sentencing because they have less than three convictions for felony drug possession.

The added sentence for habitual offenders can be three times the advisory sentence. The following table shows the range in advisory sentences for each class of felony.

Minimum and Maximum Enhancements for Habitual Offenders		
Felony	Not less than Advisory Sentence	Nor More than
Class B	10	30
Class C	4	12
Class D	1.5	4.5
Habitual Substance Offender	3	8

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: DOC.

Local Agencies Affected:

Information Sources: DOC Offender Information System.

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