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FISCAL IMPACT STATEMENT

LS 6305 | **NOTE PREPARED:** Apr 9, 2013
BILL NUMBER: HB 1006 | **BILL AMENDED:** Apr 9, 2013

SUBJECT: Various Changes to the Criminal Code.

FIRST AUTHOR: Rep. Steuerwald | **BILL STATUS:** 2nd Reading - 2nd House
FIRST SPONSOR: Sen. Steele

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State & Local
X **DEDICATED**
FEDERAL

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

A. It makes various changes to the criminal code, including changes to the law concerning community corrections, probation, sentencing, probation funding, drug and alcohol program funding, involuntary manslaughter, communicable disease crimes, battery, hazing, obstruction of traffic crimes, interference with medical services crimes, kidnapping, confinement, criminal mischief, railroad mischief, computer crimes, theft, deception and fraud crimes, timber spiking, offenses against general public administration, criminal gang activity crimes, stalking, offenses against public health, child care provider crimes, weapon crimes, drug crimes, protection zones, and rape.
B. It repeals the law concerning criminal deviate conduct, and consolidates the crime of criminal deviate conduct into the crime of rape. It changes the phrase "deviate sexual conduct" to "other sexual conduct".
C. It repeals laws concerning carjacking, and failure of a student athlete to disclose recruitment.
D. It removes the current four-level felony penalty classification and replaces that classification with a six-level felony penalty classification. It assigns new felony penalties to each crime and removes advisory sentences.
E. It permits certain persons to contact the Department of Child Services to report suspected cases of child abuse or neglect, and provides that a child who lives in the same household as a person charged with and awaiting trial for certain sex offenses is a child in need of services.
F. It removes the misdemeanor penalty for the entry or attempted entry by a person under the age of 21 into certain facilities that permit gambling and makes the violation an infraction.
G. It urges the Legislative Council to require an existing study committee to evaluate the criminal law

statutes in IC 7.1 and IC 9 and to make recommendations to the General Assembly for the modification of the criminal law statutes in those titles.

H. It makes technical corrections and conforming amendments.

(The introduced version of this bill was prepared by the Criminal Code Evaluation Commission.)

Effective Date: (Amended) Upon Passage; July 1, 2013; July 1, 2014.

Explanation of State Expenditures: *Summary* – The sentencing changes in this bill are estimated to reduce the prison population in the next biennium and through 2020. The following table summarizes the provisions in the bill. (The following table has been revised to reflect the reclassification of marijuana offenses.)

Summary of Fiscal Effects of HB 1006										
		2015	2016	2017	2018	2019	2020	***2025***	***2030***	***2035***
Offenders Affected	Reclassification, Recalculating Release Date Based on Earned Credit Time	112	(680)	(1,317)	(1,536)	(1,673)	(1,119)	989	970	1,146
	Earned Credit Time Cap 4 Years to 2 Years		58	58	58	58	58	*58*	*58*	*58*
Total Effect on DOC Facilities		112	(622)	(1,259)	(1,478)	(1,615)	(1,061)	*1,047*	*1,028*	*1,204*
Estimated Marginal Costs ($8.86/day)		$0.36	($2.01)	($4.07)	($4.78)	($5.22)	($3.43)	*$3.39*	*$3.32*	*$3.89*
Cost in County Jails ($35/day)		$1.4	($8.0)	($16.1)	($18.9)	($20.6)	($13.6)	*$13.4*	*$13.1*	*$15.4*

Additional Information-

(Revised) *Reclassifying Four Felony Classes to Six Felony Levels and Recalculating Release Date*– The following table shows the proposed changes in sentencing. Class A felonies would become either Levels 1 or 2, and Class B felonies would become either Levels 3 or 4. As amended, advisory sentences would be removed from sentencing statutes.

Felony Class				Felony Level			
	Minimum	Advisory[1]	Maximum		Minimum		Maximum
A	20 years	30 years	50 years	1	20 years		50 years
				2	10 years		30 years
B	6 years	10 years	20 years	3	3 years		20 years
				4	2 years		12 years
C	2 years	4 years	8 years	5	1 years		6 years
D	6 months	1.5 years	3 years	6	6 mos.		30 months

[1]An advisory sentence is a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence (IC 35-50-2-1.3).

Based on the changes proposed in the previous table, LSA assigned felony classes to felony levels as shown in the table below as an illustration of how these offenders might be distributed. The number of offenders are based on the annual average of full-time equivalent offenders who were committed to the DOC between CY 2008 and CY 2012. This is the same data base that DOC uses in making predictions in its model.

Full-Time Equivalent Offenders Affected Based on Average Annual Commitments Between CY 2008 and 2012							
		Current Felony Class					
	Class or Level	Class A	Class B	Class C	Class D	Murder	Grand Total
Proposed Felony Level	1	134					134
	2	134	227				361
	3	74	581				655
	4	59	399	138			596
	5	2	1,062	2,009	342		3,415
	6		1	89	2,613		2,703
	Misdemeanor				603		603
	Murder					75	75
	Grand Total	403	2,270	2,236	3,558	75	8,542

Estimating the Changes in Offender Population – To estimate how this bill might affect DOC's offender population, LSA used commitment data between CY 2008 and CY 2012 as the basis of this analysis. LSA categorized offenders by felony class and offense (example – Class A Robbery) and assigned these categories as felony levels based on the levels specified in the bill (as in this example – Level 2 Robbery). In some cases, the bill adds new felony levels for drug offenses and theft. In these cases, LSA assumed that there was an even distribution between the various levels. [Examples of how these assignments were made for various drug offenses and theft crimes are shown in a later section of this fiscal note.]

Under current law and as proposed by this bill, offenders would receive time off of their incarceration for complying with facility rules and regulations (good time credit). LSA factored into the release date the amount of added time that offenders would spend in DOC facilities based on the changes in good time credit according to the following table.

Good Time Credit By Credit Class			
Convictions Before June 30, 2014		Convictions After June 30, 2014	
Class I	One day for each day served	Class A	One day for every three days served
Class II	One day for every two days served	Class B	One day for every six days served
Class III	No credit time	Class C	No credit time
Class IV	One day for every six days served	Class B	One day for every six days served

While exact sentencing patterns cannot be predicted, LSA multiplied the ratio of the current sentence to the current maximum sentence by the new maximum sentence to estimate what the new sentence would be. The number of offenders is increased by 2% in each ensuing year.

Projected Offender Population Changes Based on All Sentences Being Proportionate To Maximum Sentences by Fiscal Year									
	2015	2016	2017	2018	2019	2020	2025	2030	2035
Change in Population	112	(680)	(1,317)	(1,536)	(1,673)	(1,119)	989	970	1,146

Note on Avoided Costs – On February 20, 2013, DOC's facilities had 29,012 beds and an offender population of 27,647. If the DOC population approaches 29,000 offenders, DOC will likely request money to build a new prison. DOC projects that if no change occurs to current sentencing laws, the DOC population will reach 29,000 by 2020.

LSA uses the Miami Correctional Facility, which has a current bed capacity of 3,188, as an example of the operating costs that the state could avoid. Miami's population on February 20, 2013, was 3,127 offenders and had an operating budget of $32 M in FY 2013.

LSA estimates that the changes proposed under this bill would permit the offender population to remain under the 29,000 offender level until 2022.

Judicial Center Drug and Alcohol Programs Fund (IC 12-23-14-17) – Under current law, the Judicial Center Drug and Alcohol Programs Fund is used to administer, certify, and support alcohol and drug service programs. As proposed, the Indiana Judicial Center could award a grant from the fund to a probation department or a community corrections program to increase substance abuse treatment access for individuals on probation or individuals placed in a community corrections program who are under court supervision and who have been diagnosed with a substance abuse disorder or co-occurring disorder. The Judicial Center would consult with the Division of Mental Health and Addiction and local probation departments or community

corrections programs in determining the amounts of the grants. Any mental health and substance abuse counseling services provided by the grants would be provided by certified mental health or addiction providers as determined by the Division of Mental Health and Addiction.

Neglect Causing Death or Serious Bodily Injury (IC 35-50-2-2) – Any added prison population due to the increased stays in prison will depend on the number of offenders who are assigned to Level 1 or Level 2 felonies and the new minimum sentences that they would receive. This provision would likely increase the number of offenders who have extended stays because the offenders would have to be incarcerated for a mandatory minimum time.

To estimate the added number of offenders who might be affected, LSA assumed that in future years a portion of offenders who might otherwise receive a sentence that was less than the mandatory minimum sentence would now serve the mandatory minimum sentence.

Between 2007 and 2012, about 20% of Class A felony offenders received a prison sentence that was less than the mandatory minimum of 20 years (7 out of 36 offenders), while 31% of Class B felons (38 out of 123) received a prison sentence that was less than 6 years. Any added offenders will depend on the sentencing lengths associated with the felony levels.

Earned Credit Time (IC 35-50-6-3.3) – This provision will make five significant changes to how release dates will be affected, likely lengthening the stay of offenders who have accumulated earned credit time.

Under current law, offenders in DOC facilities can receive two types of credit time (called "time cuts") that can reduce their length of stay in DOC facilities. First, under IC 35-50-6-3, offenders in the Class I credit classification can receive up to one day off for each day they are compliant with facility rules ("good time" credit). Second, if they are in the Class I credit classification, they can also receive earned credit time by successfully completing educational programs, vocational and technical programs, substance abuse programs, basic life skills programs, and reformative programs.

The amount of earned credit time that an offender can receive is the lesser of four years or one-third of the person's total applicable credit time. Offenders successfully completing bachelor's degrees can earn two years credit time, and offenders completing associate's degrees can earn one year of credit time.

DOC currently calculates the release date for an offender by first applying the "good time" credit (generally 50%) and then subtracting the earned credit time.

This bill will make five significant changes to how release dates will be affected.

(1) The bill limits the amount of earned credit time that offenders can receive for successfully completing associate's and bachelor's degrees to one and two years, respectively. Consequently, offenders who have completed more than one associate's or bachelor's degree would be limited to receiving either one year of credit, even if the offender completed more than one associate's degree, or two years, even if the offender completed more than one bachelor's degree.

(2) The bill increases from six months to one year the amount of earned credit time that offenders can receive for completing one or more career and technical or vocational education programs. This could reduce the length of stay for offenders who enroll in these types of programs.

(3) The bill specifies that earned credit time is to be directly proportional to time served. Depending on how DOC formulates the rules to implement this section, the length of stay for some offenders may increase.

(4) The bill changes how earned credit time is to be applied to determine the release date. Currently, any good time credit is subtracted from the length of stay, and then any earned credit time is applied. As proposed, earned credit time would be applied first, and then the good time credit is to be applied. Offenders with no earned credit time will not be affected by this provision. The length of stay of any offenders with earned credit time will be extended, depending on the amount of earned credit that they have available.

[Note: This change in how the earned credit time is applied is reflected in the summary table (*Reclassification, Recalculating Release Date Based on Earned Credit Time*).]

(5) The bill limits the maximum amount of earned credit time to the lesser of two years or one-third of the person's total applicable credit time. The current limit on earned credit time is the lesser of four years, or 1,460 days, or 1/3 of the person's applicable credit time. [Note: This change in how the earned credit time is applied is reflected in the summary table (*Reclassification, Recalculating Release Date Based on Earned Credit Time*).]

Applicable credit time is considered the total amount of earned credit time. Consequently, this provision would increase the length of stay of offenders who currently have more than two years of credit time.

DOC reported that between the 2010 and 2012 fiscal years, 171 of the offenders who were released accumulated more than two years of earned credit time. Consequently, roughly 57 offenders each year would be released at a later date. In the following table, a summary of the amount of earned credit time compiled illustrates the average amount of credit time earned by offenders between FY 2010 and 2012.

Time Cuts Earned by Offenders Released from DOC Facilities Between CY 2010 and 2012									
Offenders NOT Affected by Reducing the Maximum from 4 years to 2 years						***Offenders Affected by Reducing the Maximum from 4 years to 2 years***			
30 Or Fewer	Between 30 and 60	Between 61 and 90	Between 91 and 183	Between 184 and 365	Between 366 and 730	***Between 731 and 1,095***	***Between 1,096 and 1,460***	***1,461 Or More***	Total Number of Offenders
23,746	375	2,083	5,863	2,480	1,761	***124***	***44***	***3***	36,479
36,308						***171***			
65%	1%	6%	16%	7%	5%	***0%***	***0%***	***0%***	100%

Examples of How Offenses Could be Reclassified – Since this bill significantly changes both drug and theft penalties, this portion of the fiscal note describes in more specific terms the assumptions that LSA made when determining how these offenses would be changed.

Drug Thresholds (IC 35-48) – This provision changes the enhancing circumstances and the weights of drugs to determine the felony level. Overall, the enhancing circumstances in this bill make the following changes:

(1) The enhancement could be applied when persons under 18 years of age can be reasonably expected to be

present in either the park or the school property.

(2) The distance in the protective zones for schools and public parks would be reduced from 1,000 feet to 500 feet.

(3) Family housing complexes and youth program centers would not be included in the protective zone.

The following table compares and contrasts the current enhancements with the enhancing circumstances in the proposed bill.

Enhancing Circumstances as Factor in Determining Enhancement for a Drug Offense (IC 35-48-1-16.5)		
Circumstance	In Existing Law?	In Proposed Bill?
Prior conviction for dealing in a controlled substance that is not marijuana, hashish, hash oil, salvia divinorum, or a synthetic drug	Limited to marijuana	Yes
On a School bus	Yes	Yes
Dealing to a Person under 18 or at least 3 years junior	Yes	Yes
Manufacturing or financing the manufacture of drug	Yes	Yes
Distance from school property or public park	1,000 feet	500 feet
Time Element	No	Offense occurred while person under 18 reasonably expected to be present
Distance from family housing project or youth program center	1,000 feet	No
"Drug offense" means a felony or misdemeanor involving the production, delivery, sale, or possession of a controlled substance.		

The following tables describe in further detail the drug weights that are proposed by this bill as compared to current law.

Proposed Changes in Drug Dealing and Manufacturing Offenses for Cocaine, Methamphetamine, and Schedule I, II, or III Controlled Substances (IC 35-48-4-1, 1.1, and 2)					
			Average Number of Offenders Affected [1]		
	Felony Class	Felony Level	Involving Meth	Involving Cocaine	Involving Schedule I, II, III
Less than 3 grams	Class B	Level 5	256	606	220
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class A	Level 4	10	53	7
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class A	Level 3	10	53	7
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class A	Level 2	10	53	7
Manufacturing meth and causing explosion that results in serious bodily injury	Class A or B	Level 2	unknown		

[1] Based on commitments between CY 2008 and 2012.

Proposed Changes in Drug Dealing and Manufacturing Offenses for Schedule IV Controlled Substances (IC 35-48-4-3)			
	Felony Class	Felony Level	Offenders Affected[1]
Less than 3 grams	Class C	Level 6	29
Less than 3 grams and enhancing circumstance	Class B	Level 5	unknown
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class B	Level 5	2
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class B	Level 4	2
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class B	Level 3	2

[1] Based on average number of commitments between CY 2008 and 2012

Proposed Changes in Drug Dealing and Manufacturing Offenses for Schedule V Controlled Substances (IC 35-48-4-4)			
	Current Law	Proposed	Offenders Affected[1]
Less than 3 grams	Class D Felony	Class A Misdemeanor	2
Between 3 and 10 grams or less than 3 grams and enhancing circumstance	Class B Felony	Level 6 Felony	1
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class B Felony	Level 5 Felony	1
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class B Felony	Level 4 Felony	1
[1] Based on average number of commitments between CY 2008 and 2012			

Proposed Changes in Possession Offenses for Cocaine or Methamphetamine (IC 35-48-4-6, 6.1)			
	Current Law	Proposed	Offenders Affected
Less than 3 grams	Class D	Level 6	minimal number
Less than 3 grams and enhancing circumstances	Class C or B	Level 4 or 5	
Between 10 and 28 grams or between 3 and 10 grams and enhancing circumstance	Class A	Level 4	
More than 28 grams or between 10 and 28 grams and enhancing circumstance	Class A	Level 3	

Proposed Changes in Possession Offenses for Schedule I, II, III, IV Controlled Substances (IC 35-48-4-7)			
	Current Law	Proposed	Offenders Affected[1]
Any amount	Class D Felony	Class A Misdemeanor	265
Any amount and enhancing circumstances	Class C	Level 6	46
[1] Based on average number of commitments between CY 2008 and 2012			

Theft Thresholds (IC 35-43-4-2) – Under current law, stealing any item can result in a Class D felony. As proposed, this bill would make stealing any item with a value of less than $750 a Class A misdemeanor. The following table describes in more detail how the new felony levels would be assigned by the value of the item that is stolen.

Value of Item Stolen	Current Law	Proposed	Offenders Affected[1]
Less than $750	Class D Felony	Class A Misdemeanor	549
Between $750 and $50,000 or less than $750 and prior conviction	Class D Felony	Level 6 Felony	549
Between $50,000 and $100,000	Class D Felony	Level 5 Felony	549
More than $100,000	Class C Felony	Level 5 Felony	5

[1] Based on average number of commitments between CY 2008 and 2012

Death Benefits for Community Corrections Officers (IC 5-10-10-4) – Under IC 5-10-10-6, $150,000 is to be paid in a lump sum from the Special Death Benefit Fund to the following relative of a public safety officer who dies in the line of duty: (1) the surviving spouse; (2) the surviving children (to be shared equally) if there is no surviving spouse, or (3) the parent or parents in equal shares if there is no surviving spouse and there are no surviving children.

Explanation of State Revenues:

Explanation of Local Expenditures: *Penalty Reductions for Marijuana Possession and Certain Crimes of Theft* – More individuals will likely be committed to either jails or assigned to probation or community corrections programs if these offenses are reclassified to be misdemeanors rather than felonies. The average number of offenders could be over 1,000, based on commitments to DOC between FY 2007 and 2012.

Explanation of Local Revenues:

State Agencies Affected: DOC; Indiana Judicial Center; Department of Mental Health and Addictions.

Local Agencies Affected: County sheriffs, trial courts, probation offices, community corrections programs.

Information Sources: Department of Correction Offender Information System.

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