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**FISCAL IMPACT STATEMENT**

**LS 6492**

**BILL NUMBER: HB 1399**

**NOTE PREPARED: Jan 16, 2004**

**BILL AMENDED:**

**SUBJECT:** Elimination of Nonsuspendible Sentences.

**FIRST AUTHOR:** Rep. Smith V

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED: X GENERAL  
DEDICATED  
FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. It eliminates nonsuspendible sentences.
- B. It makes conforming amendments.
- C. It repeals provisions mandating life imprisonment without parole for certain recidivist offenders and making certain offenses nonsuspendible for a person with a juvenile record.
- D. It makes habitual offender sentences discretionary rather than mandatory.

**Effective Date:** July 1, 2004.

**Explanation of State Expenditures:** Current law establishes the minimum, presumptive, and maximum sentence for each felony class and for murder. These sentences are shown in the following table.

<b>Felony Class</b>	<b>Minimum</b>	<b>Presumptive</b>	<b>Maximum</b>
Murder	45 years	55 years	65 years
A	20 years	30 years	50 years
B	6 years	10 years	20 years
C	2 years	4 years	8 years
D	6 months	1.5 years	3 years

Sentencing courts also, with some exceptions, may suspend any portion of the sentence for a crime and place

the offender on probation for up to the maximum sentence that may be imposed under law. The exceptions to this list are specified as crimes for which the persons sentenced are required to serve a mandatory minimum.

The following table presents the offenses that currently are not suspendible and for which the offender is required to serve the minimum sentence shown in the previous table. As an example, an offender with a prior felony conviction and who is currently being sentenced for a Class B felony would be sentenced for a minimum of six years. This table also shows the number of offenders who are currently serving a sentence for these crimes and the average number of offenders who are committed to Department of Correction (DOC) facilities annually based on a five-year average.

<b>Offense</b>	<b>DOC Population*</b>	<b>Average New Commitments per Year**</b>
Any felony with a juvenile record that would have been some combination of felonies if committed by an adult	Currently not known	Currently not known
A or B Felony with Prior Conviction	729	86
Murder	1,755	99
Battery	137	11
Sexual Battery	Not listed	Not listed
Kidnaping	111	6
Confinement with Deadly Weapon	187	35
Rape	306	14
Criminal Deviate Conduct	132	5
Child Molesting	1,152	59
Robbery	1,583	14
Arson	163	2
Burglary	1,764	396
Resisting Law Enforcement with Deadly Weapon	7	8
Escape with Deadly Weapon	10	1
Dealing in Cocaine	2,672	86
Dealing in Schedule Controlled Substances	<u>605</u>	Included in "Dealing in Cocaine"
Total Offenders	<u>11,313</u>	<u>822</u>
*Current population on December 13, 2003.      ** Based on FY 1999 - FY 2003 average.		

This bill would repeal this mandatory minimum sentence for this list of crimes and allow offenders who are already serving the mandatory minimum sentence to petition the sentencing court for a suspension of their

sentence.

*Impact on Offenders in DOC Facilities* – This bill does not entitle the offenders to a sentence modification, but would allow the offenders to petition the sentencing court for a suspension of their commitment length to DOC and to be reassigned to the local probation programs. Under IC 35-38-1-17, if an offender has served more than 365 days of the sentence, the sentence cannot be modified without approval of the prosecuting attorney. *Consequently, any reduction in the current prison population will depend on the actions of the sentencing courts and the approval of the prosecuting attorney.*

The average expenditure to house an adult offender was \$26,825 in FY 2002. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

*Three Strikes Provision* – Under current law, the state may seek to have a person sentenced as a habitual offender for any felony by alleging that the person has accumulated two prior unrelated felony convictions. This bill would eliminate this provision and limit the potential sentence to an underlying charge and a habitual enhancement. This provision could potentially save future prison beds if the sentences of offenders are limited to a term of years. [Note: The number of offenders who are currently in prison for life without parole will be included in this fiscal note when this information becomes available.]

Offenders already committed for committing three felonies would have their sentences commuted to 30-year sentences with eligibility to earn credit time. Depending on their current length of stay and credit class, more offenders from DOC facilities could be released in the next five years.

*Habitual Offender* – Currently, offenders with two prior unrelated felony convictions are required to serve an additional sentence if they are convicted of a third prior unrelated felony. This third felony is called the underlying offense. The minimum sentence is not less than the presumptive sentence for the underlying offense. The maximum sentence is the lesser of either three times the presumptive sentence or 30 years. (IC 30-50-2-8(e)). This bill would allow courts to have the discretion to sentence a person as a habitual offender.

The following table shows the minimum and maximum enhanced sentences under current law.

<b><u>Felony</u></b>	<b>Added Sentence for Third Felony Under Habitual Offender Statute</b>	
	<b><u>Minimum Sentence</u></b>	<b><u>Maximum Enhanced Sentence</u></b>
Class D	1.5 years	4.5 years
Class C	4 years	12 years
Class B	10 years	30 years
Class A	30 years	30 years

Making this sentence discretionary potentially reduces the number of offenders who serve longer sentences. Of the offender population in DOC facilities as of January 10, 2003, 1,397 offenders received an habitual offender enhancement.

For FY 2001 and FY 2002, the number of offenders committed to DOC as habitual offenders and the number of offenders who are exclusively violent are shown below.

<b>Offenders Committed As:</b>	<b>FY 2001</b>	<b>FY 2002</b>
Habitual Offender	263	265

*Habitual Substance Offender* – Under current law, a person who has two prior unrelated substance abuse convictions can be sentenced as a habitual substance offender if the person is convicted of a third offense. The additional term of imprisonment for habitual substance offenders is between three and eight years. This bill would make this discretionary rather than mandatory.

Allowing this sentence to be discretionary rather than mandatory potentially reduces the amount of time that certain offenders would remain in DOC facilities if the habitual substance offender sentencing statute is repealed.

DOC reports the number of offenders who received habitual substance offender enhancements in the following table.

<b>Offenders Receiving Habitual Substance Offender Enhancements</b>	
FY 2001	64
FY 2002	97

*Impact on DOC Administrative Functions* – Depending on how many offenders petition for a sentence modification and how the hearings are conducted, DOC could incur significant transportation costs to transport the offender to the court from which the offender was sentenced.

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** *Provisions A and B -- Impact on Sentencing Courts* -- Offenders who are currently serving a nonsuspendible sentence may petition to have their sentence modified under this bill. To the extent that many of the 11,000 offenders petition for their sentences to be modified, the courts will experience significant increases in workload. Petitions for sentence modification are filed in the court from which the offender was sentenced. Consequently, these petitions would likely be distributed to courts throughout the state.

*Impact on Probation Programs* – Under current law, a court may suspend the person’s sentence and send the person to probation. The person on probation is then required to serve the maximum sentence for this crime as specified in the table (See table in *Explanation of State Expenditures*). As a rough estimate, there is one probation officer for every 112 felons, misdemeanants, and juvenile delinquents. If 11,000 offenders were to have their sentences suspended, then courts would need to add an estimated 98 probation officers.

*Impact on Prosecuting Attorneys Offices* -- Under IC 35-38-1-17, if the petition to modify the sentence is filed 365 days after the offender begins serving the sentence, then a hearing must be held and the prosecuting attorney must approve of the sentence modification. Consequently, depending on the number of offenders who petition for a sentence modification, this bill could significantly increase the costs to the prosecuting attorneys in counties from where these offenders were sentenced.

*Provision C: Jail Time for OWI* -- Under current law, the courts are required to sentence persons convicted of drunk driving offenses to minimum prison time if the person in question has been convicted of a previous

offense. This bill would eliminate the minimum jail time of five days on a first offense and ten days on a second offense and would only allow for community restitution, as shown in the following table.

<u>Offense</u>	<u>Minimum Days of Imprisonment and Other Conditions</u>	
	<u>Current Law</u>	<u>Proposed Minimum</u>
OWI with 1 previous conviction	5 days in jail or 30 days community restitution	30 days community restitution
OWI with at least 2 previous convictions	10 days in jail or 60 days community restitution	60 days community restitution

The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

The number of offenders who are committed to county jails for this offense is currently unknown. To illustrate how this provision might affect county operations, offenders whose licenses were suspended and had one or more prior OWI offenses was considered.

BMV reported that for the period between October 1, 2002, and September 30, 2003, 3,100 individuals received a suspended license for OWI with a prior conviction of an OWI offense. Based on a packet search of 130 offenders committed to DOC, DOC found that 80% had two or more prior unrelated offenses.

Assuming that 20% of the persons found guilty of OWI with a single prior OWI conviction, about 620 persons who could be assigned to five days of jail would now only be eligible for 30 days of community restitution (if they are already sentenced to 5 days of jail). For persons who have more than one prior OWI conviction, about 2,480 persons could avoid spending ten days in jail and only be permitted to be assigned to 60 days performing community restitution, as shown in the following table.

<b>Persons Found Guilty of Operating a Vehicle While Intoxicated With One Or More Prior OWI Convictions in CY 2002</b>	
Persons With One Prior Conviction	620
Persons With More Than One Prior Conviction	<u>2,480</u>
Total Number of Persons (based on license suspensions)	3,100
* Based on a packet search by DOC of 130 offenders, 20% had one prior conviction and the remaining 80% had more than one prior conviction.	

**Explanation of Local Revenues:** If sentences of more offenders are suspended and the offenders are sentenced to probation, then revenue from probation user fees may increase.

**State Agencies Affected:** Department of Correction, Office of the Attorney General.

**Local Agencies Affected:** Prosecuting attorneys, courts, probation departments, county sheriffs.

**Information Sources:** Department of Correction, *Indiana Judicial Report 2002*.

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