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FISCAL IMPACT STATEMENT

LS 6778

BILL NUMBER: HB 1228

NOTE PREPARED: Dec 22, 2004

BILL AMENDED:

SUBJECT: Conditional Release.

FIRST AUTHOR: Rep. Kuzman

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: This bill has the following provisions:

- A. It allows a court to place a person on conditional release for a misdemeanor charge under certain conditions.
- B. It requires a court to dismiss a charge against a person if the person fulfills the conditions of a conditional release.
- C. It requires a court to enter a judgment of conviction if the court determines a person violated a condition of a conditional release.
- D. It repeals a statute concerning conditional release for a person charged with possession of marijuana or hashish.

Effective Date: July 1, 2005.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures: There will be an indeterminable number of defendants likely affected by bill resulting in minimal costs to court programs, depending on local action.

Background Information: IC 35-48-4-12 allows a court to place defendants on conditional release when they are charged with marijuana possession and have no prior conviction of an offense. The defendant would consent

and be placed under the custody of the court. If the person fulfills the conditions of the custody, the court is required by law to dismiss the charges against the defendant.

As proposed, all defendants being prosecuted for a misdemeanor may be placed in a conditional release program at the discretion of the court and if the defendant pleads guilty. This proposal is similar to the Pretrial Diversion Program option that prosecuting attorneys may offer to defendants under IC 33-39-1-8. The following compares the current statutes for conditional release and pretrial diversion with the proposed bill.

| Comparing Programs Involving Misdemeanor Defendants | | | |
|--|---|--|--|
| | IC 35-48-4-12 Conditional Discharge (Would be repealed and replaced by proposal) | IC 33-39-1-8 Pretrial Diversion Program | Proposed |
| Prior Conviction | No prior conviction allowed | Silent | Silent |
| Restrictions | Class A Misdemeanor Charged with Possession of Marijuana | Any Misdemeanant | Any Misdemeanant |
| Requirements | Conditions the Court Determines | Terms of Diversion Program Offered by Prosecuting Attorney | Defendant Pleads Guilty Court Issues Written Copy of Conditions |
| Court Fees | Probation Fees | Pretrial Diversion Fees | Probation Fees |
| Outcome of Successful Completion | Charges Dismissed | Court Withholds Prosecution but Arrest Record Remains | Charges Dismissed |
| Length of Time in Program | Silent but Likely Corresponds with Period of Incarceration | | |

Misdemeanants – The number of misdemeanor cases disposed are shown in the following table along with the number defendants either pleading guilty or being diverted.

| <u>Type of Court</u> | <u>Misdemeanor Cases Disposed</u> | <u>2002</u> | | <u>2003</u> | |
|----------------------|-----------------------------------|-------------|-----|-------------|-----|
| Courts of Record | Total Disposed | 159,128 | | 166,575 | |
| | Disposed by Guilty Plea | 79,942 | 50% | 81,249 | 49% |
| | Diverted | 11,538 | 7% | 14,240 | 9% |
| City and Town Courts | Misdemeanors Disposed | 47,767 | | 44,023 | |
| | Disposed by Guilty Plea | 22,065 | 46% | 20,853 | 47% |
| | Diverted | 2,916 | 6% | 3,665 | 8% |

Potential Effects on Courts Likely to be Limited – It appears that the type of misdemeanor defendants who would qualify for this proposed conditional release program will be similar to the individuals who agree to

participate in a prosecuting attorney diversion program. Since these populations would likely be similar in criminal history, it appears that most of these defendants would be in the pretrial diversion programs already since they will be offered an agreement by the prosecuting attorney prior to the prosecuting attorney filing charges in court against the defendant.

[Note: Marion County currently uses this section of the statute for drug offenders. Generally, offenders must attend drug education classes and consent to random drug screens. The length of stay in the program is usually four to six months, although offenders can remain on the program for up to one year.]

Explanation of Local Revenues: Defendants who would participate in a conditional release program would likely be under some minimum supervision of the court's probation program and pay a probation user fee.

State Agencies Affected:

Local Agencies Affected: Trial Courts.

Information Sources: *Indiana Judicial Reports, 2002 and 2003*; Susan Reese, Probation Officer, Marion County Courts.

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