

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6407
BILL NUMBER: SB 321

NOTE PREPARED: Dec 29, 2010
BILL AMENDED:

SUBJECT: Criminal Recklessness.

FIRST AUTHOR: Sen. Banks
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: This bill adds criminal recklessness as a felony as a crime of violence for sentencing purposes.

Effective Date: July 1, 2011.

Explanation of State Expenditures: New offenders convicted of criminal recklessness as a felony and which would be treated as a crime of violence could serve longer sentences. Based on a historic number of offenders serving comparable sentences, the following table estimates the increased cost for potentially new offenders each year between 2013 and 2020. The estimated number of offenders increase until 2018, leveling out in years thereafter.

New Offenders in DOC Custody Due to Longer Sentences for Offenders Convicted of Criminal Recklessness and Treated as a Crime of Violence by FY								
Fiscal Year	2013	2014	2015	2016	2017	2018	2019	2020
New Offenders	24	24	35	46	57	66	66	66
Cost per Diem	\$12,775	\$12,775	\$12,775	\$12,775	\$12,775	\$12,775	\$12,775	\$12,775
Added Costs	\$306,600	\$306,600	\$447,125	\$587,650	\$728,175	\$843,150	\$843,150	\$843,150

Background Information- Criminal recklessness can be either a Class C or D felony and generally involves reckless behavior with a firearm or a vehicle or certain forms of hazing.

The following table shows the acts that are considered criminal recklessness in Indiana law.

	Condition for Felony
Class C felony	Shooting a firearm into an inhabited dwelling or building or place where people are likely to gather; aggressive driving that results in another person's death; hazing* with a deadly weapon.
Class D felony	Recklessness while armed with a deadly weapon; aggressive driving that results in another person's serious bodily injury; hazing* resulting in serious bodily injury.
* "Hazing" means forcing or requiring another person to perform an act that creates a substantial risk of bodily injury with or without the consent of the other person and as a condition of association with a group or organization;	

“Crimes of Violence” are mentioned in four different sections of statute that would affect the term of incarceration for these offenders if criminal recklessness is a crime of violence.

IC 35-38-1-7.1 permits the sentencing court to consider that the crime was a crime of violence and therefore an aggravating circumstance that was knowingly committed within the presence or within hearing of an individual who is younger than 18 and who is not a victim.

IC 35-50-1-2 permits the sentencing court to “stack” a person’s sentence if more than one crime occurred in the same episode and the most serious crime was a crime of violence. If the offense is not a crime of violence, then the total sentence cannot exceed the advisory sentence for the next felony level. (Example: A person sentenced for more than one Class D felony cannot be sentenced for more than four years if the offense is not a crime of violence.)

IC 11-13-3-3 requires the parole board to conduct a community investigation before an offender can be released on parole if the offender was committed to DOC for a crime of violence.

IC 35-50-6-1 requires offenders who are being placed on parole to remain on parole for two years if they are convicted for a crime of violence. Under current law, persons sentenced to DOC for criminal recklessness spend one year on parole after being released from prison.

Under IC 16-31-3-14.5, the Department of Homeland Security may issue an order under IC 4-21.5-3-6 to deny an applicant's request for certification or permanently revoke a certificate if the individual who holds the certificate issued under this title is convicted of any crime of violence.

How Sentences Could Be Enhanced – Of the sections of the code described above, IC 35-50-1-2 would likely have the most significant effect on DOC’s population. Using CY 2009 commitments, LSA found that 51 offenders had more than one felony offense for which they were committed. In the table below, the “Average Offenses” is the number of crimes that were committed in the arresting episode that resulted in the offender being sentenced. The “Average Current Sentence” is the actual term of years of incarceration that they received. The “New Sentence” is the length of time that these offenders could potentially receive if the court were permitted to “stack” the sentence. As an example, if a Class C felon was convicted of three Class C felonies in the same criminal episode, the added sentence would be three felonies multiplied by four years (the advisory sentence for Class C felonies). Under current law, the term of incarceration could not be more than 10 years, the advisory sentence for a Class B felony.

Offenders Sentenced to DOC for More than One Felony With Criminal Recklessness As Most Serious Offense							
Class C Felonies				Class D Felonies			
Offenders	Avg. Offenses	Avg. Current Sentence	New Sentence	Offenders	Avg. Offenses	Avg. Current Sentence	New Sentence
11	3.8	6.3	13.9	40	2.0	1.9	3.0

Effect on DOC Offender Population – As proposed, the term of years and resulting length of stay that these offenders could receive could be increased beyond the advisory sentence. The 40 offenders sentenced for Class D felonies received an average sentence of 1.9 years. Given good time credit, the offenders would likely be released in 10.8 months. As proposed, these offenders would remain in prison for roughly six additional months (3.0 years - 1.9 years = 1.1 year x 50% good time credit = 6 months). The 11 Class C felons would spend another 3.8 years in prison (13.9 years - 6.3 years = 7.6 years x 50% good time credit = 3.8 years).

Because DOC facilities are at capacity, LSA assumes that most of these offenders would be in county jails and therefore uses the per diem paid to county sheriffs to calculate the average cost to DOC (\$35 per day x 365 = \$12,775 annually).

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Community Investigations – The Parole Board would be required to conduct a community investigation on offenders who were sentenced for committing a crime of violence. According to the Parole Board, these community investigation reports generally take between 6 and 12 months to complete.

A community investigation is a report that substantially reflects the attitudes and opinions of:

- (1) the community in which the crime committed by the offender occurred;
- (2) law enforcement officers who have jurisdiction in the community in which the crime occurred;
- (3) the victim of the crime committed by the offender, or if the victim is deceased or incompetent for any reason, the victim's relatives or friends; and
- (4) friends or relatives of the offender.

Besides the 51 offenders with more than one offense, 141 offenders were sentenced to DOC in CY 2009 for a single offense of criminal recklessness. Altogether, the parole board would be required to conduct 192 additional community investigations in a year.

Length of Parole Supervision – Under current law, persons sentenced for criminal recklessness would spend a year on parole after being released from prison. As proposed, these offenders would spend two years on parole since criminal recklessness would be considered a crime of violence. This would result in 192 offenders being released for each cohort of offenders sentenced to DOC in a given 12-month period.

Explanation of State Revenues:

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts; prosecuting attorneys.

Information Sources: DOC Offender Information Systems

Fiscal Analyst: Mark Goodpaster, 317-232-9852.