

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

200 W. Washington St., Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
iga.in.gov

**FISCAL IMPACT STATEMENT**

**LS 7100**  
**BILL NUMBER: SB 198**

**NOTE PREPARED:** Feb 15, 2021  
**BILL AMENDED:** Feb 15, 2021

**SUBJECT:** Rioting.

**FIRST AUTHOR:** Sen. Young M  
**FIRST SPONSOR:**

**BILL STATUS:** 2<sup>nd</sup> Reading - 1<sup>st</sup> House

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

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

- A. *Attorney General* – It grants, until January 1, 2025, the Attorney General (AG) concurrent jurisdiction with the prosecuting attorney to prosecute an action in which a person is accused of committing a criminal offense while a member of an unlawful assembly.
- B. *Curfew and Criminal Penalty* – It permits the chief executive officer of a political subdivision to establish a curfew under certain circumstances. It makes refusing to leave a location in violation of a curfew, after having been informed of the curfew and ordered to leave by a law enforcement officer, a Class B misdemeanor.
- C. *Civil Forfeiture* – It allows for the civil forfeiture of property that is used by a person to finance a crime committed by a person who is a member of an unlawful assembly.
- D. *Eligibility of Release on Bail* – It prohibits a person from being released on bail without a hearing in open court, establishes a rebuttable presumption that money bail shall be required, and requires a court to consider whether bail conditions more stringent than the local guidelines should be imposed.
- E. *Enhanced Penalties* – It adds enhanced penalties to the crimes of: (1) rioting; and (2) obstruction of traffic.
- F. *Conspiracy Charge* – It allows a conspiracy charge for a misdemeanor committed while a member

of an unlawful assembly.

- G. *Property Loss* – It provides that a person may recover actual damages in a civil action against a county, city, or town (unit) for loss of property proximately caused by an unlawful assembly, if the unit recklessly fails to exercise reasonable diligence to prevent or suppress the unlawful assembly.

**Effective Date:** July 1, 2021.

**Explanation of State Expenditures:** *(Revised) Attorney General* – Any actions that the Attorney General decides to take should be within the Office’s existing resources. The concurrent jurisdiction that this bill grants expires January 1, 2025. The Office of the Attorney General employs 430 persons according to the December 1, 2020, staffing table.

*Enhanced Penalties* – The proposed criminal enhancements would affect acts of rioting and obstruction of traffic.

*Obstruction of Traffic* – Currently this offense can be charged as either a Class B misdemeanor and can be enhanced to a Class A misdemeanor if a person uses a motor vehicle to obstruct traffic, and a Level 6 felony if the offense results in either catastrophic bodily injury or death. As proposed, a person who obstructs vehicular traffic commits a Level 5 felony if obstruction of traffic results in catastrophic injury or death.

*Rioting* – Persons commit rioting when they are a member of an unlawful assembly, and recklessly, knowingly, or intentionally engage in tumultuous conduct. Rioting is a Class A misdemeanor that can be enhanced to a Level 6 felony if rioting is committed while armed with a deadly weapon. This bill would add causing either serious bodily injury or property damage of between \$750 and \$50,000 as a new condition to enhance the crime of rioting to a Level 6 felony. It would also enhance the crime of rioting to a Level 5 felony if either catastrophic bodily injury or death occurs to another person, or if at least \$50,000 of property damage occurred.

According to the Abstracts of Judgment between FY 2014 and FY 2020, about 7% of all Level 6 felons were committed to DOC for an average of 1.4 years while 46% of all Level 5 felons who were committed to DOC for an average 2.7 years.

The average expenditure to house an adult offender in a DOC facility was \$21,551 annually, or \$59 daily, during FY 2020. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is estimated at \$3,524 annually, or \$9.66 daily, per prisoner. These marginal cost estimates are based on contractual agreements with food and medical vendors and projections based on prior years for clothing and hygiene.

The estimated average cost of housing a juvenile in a state juvenile facility was \$89,998 annually, or \$246.40 per day, in FY 2020. The marginal cost for juvenile facilities was \$3,969 annually or \$10.87 daily.

**Explanation of State Revenues:** *Property Loss* – If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana, and proceeds from the automated record keeping fee (\$20) are deposited into the State User Fee Fund.

Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

*Criminal Penalties* – If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B misdemeanor is \$1,000, \$5,000 for a Class A misdemeanor, and \$10,000 for any felony. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit or superior court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, the automated record keeping fee (\$20) is deposited into the state user fee fund, and the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$3) are deposited into the state General Fund.

**Explanation of Local Expenditures:** This bill creates two new crimes associated with violating a curfew and conspiracy involving an unlawful assembly.

*Curfew and Criminal Penalty* – A person who refuses to leave a location in violation of a curfew would commit a Class B misdemeanor.

*Conspiracy Charge* – A person who has been found to have conspired in an unlawful assembly to commit rioting would commit a Class A misdemeanor.

A Class B misdemeanor is punishable by up to 180 days in jail. A Class A misdemeanor is punishable by up to one year in jail.

*Eligibility of Release on Bail* – This bill adds a presumption that money bail be required (rather than just bail conditions), and that the court consider whether a higher than usual bail should be required if a person was a member of an unlawful assembly. Any restrictions on the discretion of the criminal court to determine the conditions of bail could increase the pretrial population of county jails. The court would be required to consider the distance that the person traveled and the damage or harm caused by the offense.

The average cost per day to incarcerate a prisoner is approximately \$54 based on the per diem payments reported by U.S. Marshals to house federal prisoners in 16 county jails across Indiana during federal FY 2017.

**Explanation of Local Revenues:** *Civil Forfeiture* – Law enforcement agencies would be permitted to seize real or personal property that is used by a person to finance or facilitate the financing of a crime committed by a person while the person is part of an unlawful assembly. Any added revenue or assets from these actions depends on the value of the assets seized.

*Property Loss* – If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$5) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per page) are charged for preparing transcripts or copies of record or certificate under seal.
- A civil garnishee defendant service fee (\$10) is collected from the filing party for each defendant beyond the first three garnishee defendants cited in the lawsuit.

*New and Enhanced Criminal Penalties* – If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Persons found guilty of a felony or misdemeanor are also required to pay the document storage fee (\$5), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and the law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

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

**Local Agencies Affected:** Trial courts, city and town courts. Trial courts, local law enforcement agencies.

**Information Sources:** Abstracts of Judgment, Indiana Supreme Court; Department of Correction; State Staffing Table,

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