

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

LS 7261

BILL NUMBER: SB 324

NOTE PREPARED: Jan 28, 2025

BILL AMENDED: Jan 28, 2025

SUBJECT: Criminal Penalties.

FIRST AUTHOR: Sen. Freeman

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

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

The bill increases the penalty levels of crimes related to the following:

- fentanyl and
- methamphetamine.

The bill increases the penalty levels of the following:

- battery against a public safety official,
- battery resulting in moderate bodily injury,
- battery resulting in serious bodily injury,
- battery against a public safety official that results in bodily injury,
- battery against an endangered adult resulting in serious bodily injury,
- battery against a child that results in serious bodily injury,
- battery that results in death, and
- aggravated battery.

The bill also requires that a bail hearing for a violent arrestee be held in open court, within 48 hours, and sets minimum bail requirements for the release of a repeat violent arrestee. It makes conforming changes.

Effective Date: July 1, 2025.

Explanation of State Expenditures: *Department of Correction (DOC):* The bill would increase annual costs to the state from additional commitments and longer executed prison terms at DOC. The additional expenditures will begin in FY 2026, increasing each year until leveling off in FY 2045.

Additional Expected Expenditures from DOC Commitments								
FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	FY 2031	FY 2032	FY 2033	FY 2034
\$2.5 M	\$5.3 M	\$8.1 M	\$10.2 M	\$12.2 M	\$14.0 M	\$15.5 M	\$17.0 M	\$18.5 M

The following table shows the average number of annual convictions from FY 2020 to FY 2024 for the pertinent charges increased in the bill, the number and percentage of those convictions that were committed to the DOC, and the average executed sentence. The table also shows the additional number of expected DOC commitments (and additional length of sentence) from those convictions if they are committed at the same rate and sentenced for the same lengths as the next highest felony level. All felonies included in the bill are raised one felony level.

FY 2020 to FY 2024 Pertinent Convictions Listed as the Maximum Conviction						
Current Annual Averages					Additional Expected	
Penalty	Convictions	DOC		Sentences*	DOC Commitments	Sentences*
Level 6	872	10%	89	1.4 years	343	1.4 years
Level 5	477	49%	236	2.8 years	73	2.7 years
Level 4	294	65%	190	5.6 years	26	2 years
Level 3	305	74%	225	7.6 years	19	5 years
Level 2	383	80%	305	12.7 years	77	7.4 years

*The difference between sentences by level (additional expected sentences), may be off due to rounding.

The increases in penalty from a Level 6 to a Level 5 felony would reduce good time credit and educational time credit that can be applied. Level 6 felonies can receive credit time of 50%, but Level 5 or higher felonies can receive credit time of 25%. There may also be longer sentences for some of these battery offenses as the increase in felony level from Level 6 to Level 5 will include these additional convictions in the “crime of violence” category which preclude them from statutory caps on the length of consecutive sentence terms. [See *Additional Information.*]

An entire sentence may be suspended for Level 6, Level 5, and Level 4 convictions and the person placed on either probation or community corrections. A person with a prior felony conviction who is sentenced for Level 3 or Level 2 felonies, that are neither drug dealing nor drug possession offenses under IC 35-48-4; or a person sentenced for a Level 1 felony, must be sentenced to the minimum sentence before any portion of the sentence may be suspended (minimum for a Level 3 is 3 years, for a Level 2 is 10 years, and for a Level 1 is 20 years). The average expenditure to house an adult offender is \$29,432 annually. If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,719 annually.

Additional Information:

Increases in Penalties for Fentanyl and Methamphetamine: The bill increases penalties for offenses relating to dealing fentanyl containing substances (if at least 1 gram) and all offenses of dealing or manufacturing methamphetamine. The level of these offenses are based on the weight of the drug and/or enhancing circumstances (the highest offense for manufacturing methamphetamine also involves the drug resulting in serious bodily injury or death of a person). The bill increases these offenses from Level 5 (dealing methamphetamine only), Level 4, Level 3, and Level 2 felonies to Level 4, Level 3, Level 2, and Level 1

felonies, respectively.

From FY 2020 to FY 2024, based on the charge listed as the maximum convicted offense, there were 3 people convicted for dealing a fentanyl containing substance; 5,215 people convicted for dealing methamphetamine; and 69 people convicted for manufacturing methamphetamine.

Increases in Penalties for Battery and Aggravated Battery: The bill increases some Level 6 and Level 5 battery offenses to Level 5 and Level 4, respectively. It increases all Level 4, Level 3, and Level 2 battery or aggravated battery offenses to Level 3, Level 2, and Level 1, respectively.

From FY 2020 to FY 2024, based on the charge listed as the maximum convicted offense was battery (pertinent charges in the bill), there were 4,374 people with a Level 6 battery conviction; 1,717 people with a Level 5 battery conviction; no Level 4 battery convictions; and 306 people with either a Level 3 or Level 2 battery or aggravated battery conviction.

Statutory Implications for Defined Categories of Crime: There are some categories of crime that have statutory implications. By increasing criminal penalties for some offenses, defined categories that include convictions based on *both* the type of crime and the level of felony would include additional individuals. A “crime of violence,” a “violent offense,” and convictions of a “serious violent felon” include all convictions of battery that are Level 5 felonies or higher. Therefore, the increase of certain Level 6 battery offenses to Level 5 would add almost 900 individuals each year to these categories. [Each of these defined categories include all felony levels of aggravated battery, so that penalty increase would not include additional individuals.]

The implications of these categories are discussed below:

- (Revised) “*Crime of Violence*”: Current law caps the consecutive terms of sentences a person may serve when more than one offense was committed in a single episode, but it does not apply if one of the convicted charges is a “crime of violence.” This could result in longer prison terms. Additionally, parole agents employed by DOC may need to prepare additional community investigation reports, which are required for a person convicted of a “crime of violence,” who is committed to the DOC, and is to be supervised on parole.

Both the Professional Licensing Agency and the Department of Homeland Security will be required to screen applicants to determine whether they have committed any of these felonies before being granted certain occupational licenses. The bill also establishes that an individual charged with a crime of violence (as a Level 1-5 felony) may not be released pursuant to a bail schedule and requires a court to conduct a public bail hearing with 48 hours of arrest.

- “*Violent Offense*”: A person who does not have a conviction for a “violent offense” in the previous 10 years, who also has an intellectual disability, an autism spectrum disorder, a mental illness, an addictive disorder, or a combination of those conditions may be eligible for pre- or post-conviction diversion programs, receiving various community-based treatments instead of or in addition to incarceration. Therefore, additional individuals may be incarcerated or remain incarcerated.

For cases that include a “violent offense,” law enforcement agencies are required to preserve evidence that could be subjected to DNA testing and analysis for a minimum of 20 years or, if the case did not result in a conviction, until the statute of limitations expires.

[“Violent offense” does not include current Level 4 battery (against an endangered adult resulting in serious bodily injury). The bill adds this level to the category. However, the most recent case in which this offense was listed as the maximum convicted charge was in FY 2019.]

- *Serious Violent Felon*: A “serious violent felon” who knowingly or intentionally possesses a firearm commits a Level 4 felony. Additional individuals would be capable of committing this offense. A juvenile court is required to transmit information to the Office of Judicial Administration (OJA) for transmission to National Instant Criminal Background Check System (NICS) regarding a juvenile who is convicted of a crime that would be a “serious violent felony” if committed by an adult.

Costs of Incarceration: The average expenditure to house an adult offender was \$29,432 annually, or \$80.58 daily, in FY 2024. (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 approximately \$4,719 annually, or \$12.93 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 \$113,108, or \$309.67 daily, in FY 2024. The marginal cost for juvenile facilities was \$8,778 annually or \$24.05 daily.

Explanation of State Revenues: The bill should not increase the number of cases, only the felony levels, with the potential exception of a person who commits the specific Level 6 battery offenses, increased to Level 5, who would be prohibited from possessing a firearm and could commit unlawful possession of a firearm by a “serious violent felon,” a Level 4 felony. The maximum criminal fine is the same for all felony levels. The following linked document describes the fees and distribution of the revenue: [Court fees imposed in criminal, juvenile, and civil violation cases.](#)

Explanation of Local Expenditures: (Revised) *Workload and Expenditures*: The bill could reduce the number of individuals eligible for community corrections programs, probation, pre- and post- conviction diversion programs, or mental health referral programs by including more individuals in the “crime of violence” and/or “violent offense” categories. The bill could reduce administrative workload of the court if consent is not required from a parent who is incarcerated for a Level 4 battery conviction at the time of the filing of a petition for adoption (for the specific Level 5 offenses increased to Level 4 in the bill).

Conversely, courts would have additional workload as the bill provides that an individual charged with a crime of violence (as a Level 1-5 felony) may not be released pursuant to a bail schedule and requires a court to conduct a public bail hearing with 48 hours of arrest and to review the probable cause affidavit or arrest warrant before releasing a violent arrestee. This provision could increase pre-trial jail population for individuals awaiting a hearing and could have an indeterminate impact on pre-trial jail population to the extent that the determination of bail or release by a judicial officer is decided differently than bail determinations pursuant to a default bail schedule. Increasing felony levels could also increase jail populations for pre- and post-trial confinement. The average cost per day is approximately \$64.53 based on the per diem payments reported by U.S. Marshals to house federal prisoners in 11 county jails across Indiana during CY 2021.

Notifications regarding individuals on electronic monitoring who enter an exclusion zone, who interfere with the monitoring device, or whose device loses communication must be done within 15 minutes for a person convicted of a “crime of violence,” rather than within 12 hours (an employee or contract employee must notify a supervising agency (court, community corrections program, or parole board)).

For additional cases that would include a “violent offense,” law enforcement agencies would be required to preserve evidence that could be subjected to DNA testing and analysis for a minimum of 20 years, or, if the case did not result in a conviction, until the statute of limitations expires.

A juvenile court is required to transmit information to the OJA for transmission to NICS regarding a juvenile who is convicted of a crime that would be a “serious violent felony” if committed by an adult. There could also be an increase in cases of unlawful possession of a firearm by a “serious violent felon,” if additional individuals are added to that category (for the specific Level 6 offenses increased to Level 5 in the bill).

Local units that require certain occupational licenses to practice in the unit’s jurisdiction may have additional individuals that are disqualified based on criminal convictions that include a “crime of violence.”

Explanation of Local Revenues: (Revised) The bill could reduce user-fee revenues received for probation, diversion, and deferral programs if fewer individuals qualify due to convictions for a “crime of violence.” Conversely, the implementation of a minimum bail schedule for initial bail hearings for repeat violent arrestees could increase the bond administration fees retained by counties and local units. The following linked document describes the fees and distribution of the revenue: [Court fees imposed in criminal, juvenile, and civil violation cases.](#)

If a local unit charges licensing fees to practice certain occupations in the unit’s jurisdiction, these fees may be reduced if additional individuals are disqualified based on criminal convictions that include a “crime of violence.”

State Agencies Affected: Department of Correction; Department of Homeland Security; Professional Licensing Agency; Office of Judicial Administration.

Local Agencies Affected: Trial courts, local law enforcement agencies; community corrections programs, probation

Information Sources: Department of Correction; U.S. Department of Justice Marshals Service; Abstracts of Judgment; Odyssey Case Management System; <https://www.in.gov/courts/iocs/files/2023-indiana-judicial-service-report.pdf>.

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