

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

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FISCAL IMPACT STATEMENT

LS 6548

BILL NUMBER: HB 1364

NOTE PREPARED: Dec 14, 2022

BILL AMENDED:

SUBJECT: Elements of Rape.

FIRST AUTHOR: Rep. Negele

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill provides that a person commits rape, a Level 3 felony, if the other person submits to the sexual intercourse or other sexual conduct under the belief that the person committing the act is someone the victim knows, other than the person committing the act, and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the person.

Effective Date: July 1, 2023.

Explanation of State Expenditures: Any increase in DOC's population due to this bill should be minor. Between FY 2016 and FY 2022, DOC received commitments of between 35 and 67 persons each year for rape that would be either a Class B (under prior law) or a Level 3 felony (under current law). Of the 303 persons who were convicted and sentenced for rape as a Level 3 felony between FY 2015 and FY 2021, 90% were confined in a DOC facility with an average executed sentence of 8.3 years.

A Level 3 felony is punishable by a prison term ranging from 3 to 16 years, with an advisory sentence of 9 years. The sentence depends on mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$27,185 annually, or \$74.43 daily, in FY 2022. (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 \$4,456 annually, or \$12.21 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 \$130,547, or \$357.42 daily, in FY 2022. The marginal cost for juvenile facilities was \$5,125 annually or \$14.04 daily

Persons with prior felony convictions who are sentenced for Level 3 felonies that are neither drug dealing nor drug possession offenses under IC 35-48-4 must be sentenced to a minimum 3-year sentence before any portion of the sentence may be suspended. The person may then be placed on either probation or community corrections for the remainder of the suspended time. If no time is suspended, offenders can receive good time credit of 25% and educational credit time. Upon release, offenders can be placed on parole.

Explanation of State Revenues: 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 Level 3 felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit or superior court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. In addition, some or all of the following revenue is deposited into the state General Fund: automated record keeping fee (\$20), 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).

Explanation of Local Expenditures: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. 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.

In addition, all persons convicted and sentenced for rape as a Level 3 felony are monitored by county sheriffs as registered sex offenders and 65% of these 303 Level 3 felons were supervised by either community corrections agencies or probation departments.

Explanation of Local Revenues: 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 criminal 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 the criminal costs fee. 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: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Department of Correction; U.S. Department of Justice Marshals Service; Abstracts of Judgment, Indiana Supreme Court.

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