

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6120

BILL NUMBER: SB 37

NOTE PREPARED: Jan 22, 2015

BILL AMENDED: Jan 14, 2015

SUBJECT: Possession of Paraphernalia.

FIRST AUTHOR: Sen. Bray

FIRST SPONSOR: Rep. McNamara

BILL STATUS: As Passed Senate

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

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

- A. *Possession of Rolling Papers and Raw Materials* – The bill excludes possession of rolling papers and raw materials from the crime of possession of paraphernalia, and removes possession of paraphernalia as an infraction.
- B. *Knowing or Intentional Possession of Paraphernalia* – It makes the knowing or intentional possession of paraphernalia a Class C misdemeanor, and increases the penalty to a Class A misdemeanor if the person has a prior unrelated judgment or conviction.
- C. *Possessing a Hypodermic Needle* – It makes it a Level 6 felony to possess a hypodermic needle with intent to commit a controlled substance offense. (Under current law, the offense only applies if committed with intent to violate the legend drug act). It specifies that the sentencing enhancement that applies to the legend drug act also applies to the new offense.

Effective Date: July 1, 2015.

Explanation of State Expenditures: (Revised) *Knowing or Intentional Possession of Paraphernalia* – This provision reduces knowing and intentional possession of paraphernalia for a second conviction or judgment from a Level 6 felony to a Class A misdemeanor. Based on the data set that LSA reviewed, reducing knowing and intentional possession of paraphernalia with a prior judgment or conviction is not expected to significantly affect future Department of Correction (DOC) populations.

Under IC 35-38-3-3 a person may not be committed to DOC facilities if the period between a person's date of sentencing and the earliest possible date is less than 366 days.

LSA examined the records of 277 offenders who were committed to DOC for the period between CY 2009 and 2013 for the sole charge of knowingly or intentionally possessing paraphernalia. For these offenders, the average anticipated length of stay (the period between the date of sentence and their earliest possible release date) was 85 days. Three offenders had anticipated lengths of stay that exceeded 366 days.

Possessing a Hypodermic Needle – The bill adds a new felony offense. Under current law, possessing a hypodermic needle to inject a controlled substance is not illegal. An initial violation would be a Level 6 felony, and violating this section with a prior conviction would be a Level 5 felony.

Additional Information –

Sentences by Felony Level				
	Level 5		Level 6	
	Sentences	Expected Length of Stay	Sentences	Expected Length of Stay
Minimum	1 years	9 months	6 months	3 months
Advisory	3 years	2.3 years	1 year	6 months
Maximum	6 years	4.5 years	30 months	15 months
Expected length of stay does not take into account jail credit and educational credit time. Level 5 felons receive 25% good time credit and Level 6 felons receive 50% good time credit.				

The number of offenders who are committed to DOC annually between 2009 and 2013 for knowing or intentional possession of paraphernalia with a prior offense are shown in the following table.

Commitments to DOC for Possessing Paraphernalia by Calendar Year						
	2009	2010	2011	2012	2013	Annual Average
Offenders Committed to DOC	82	78	55	33	29	55
Average Number of Days Between Sentence Date and Earliest Possible Release Date	85	87	109	78	68	85

Explanation of State Revenues: (Revised) *Possession of Rolling Papers and Raw Materials* – Under current law, possessing raw material, instruments or devices to use for introducing a controlled substance into the person's body, testing the drug or enhancing its effect is a Class A infraction. As proposed, rolling papers and raw materials are exempt from this violation. This exemption could reduce state revenue, but any revenue loss from infraction judgments is indeterminable and likely to be minimal from this violation.

Knowing or Intentional Possession of Paraphernalia with a Prior Offense – The bill reduces the penalty for knowing or intentional possession of paraphernalia with a prior offense from a Level 6 felony to a Class A misdemeanor. This could reduce the fine revenue to the Common School Fund. The maximum fine for any felony is \$10,000, while the maximum fine for a Class A misdemeanor is \$5,000. Any loss to the Common School Fund is not determinable. Court fees are the same for both misdemeanors and felonies.

Explanation of Local Expenditures:

Explanation of Local Revenues: (Revised) *Revenue Loss Due to Fewer Infractions* – Removing the possession of a rolling papers and raw material from the infraction for possessing paraphernalia would reduce revenue from infraction judgements. The number of infractions that would result is not determinable.

State Agencies Affected: Department of Correction.

Local Agencies Affected: County probation offices, trial courts, local law enforcement agencies.

Information Sources: DOC offender information system.

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