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FISCAL IMPACT STATEMENT

LS 6811

BILL NUMBER: HB 1004

NOTE PREPARED: Feb 22, 2022

BILL AMENDED: Feb 10, 2022

SUBJECT: Department of Correction.

FIRST AUTHOR: Rep. Frye R

FIRST SPONSOR: Sen. Koch

BILL STATUS: As Passed Senate

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Updates of Certain Terms* – It amends and updates certain terms involving direct placement in a community corrections program. It updates the definition of "community corrections program".
- B. *Direct Placement Supervision for Executed Time* – It specifies that a court may suspend any portion of a sentence and order a person to be placed in a community corrections program for the part of the sentence which must be executed.
- C. *Credit Time* – It provides that a person placed on a level of supervision as part of a community corrections program: (1) is entitled to earned good time credit; (2) may not earn educational credit; and (3) may be deprived of earned good time credit.
- D. *Placement on Probation* – It provides that when a person completes a placement program, the court may place the person on probation.
- E. *Placement of Level 6 Felons in DOC* – It provides that a court may commit a person convicted of a Level 6 felony for an offense committed after June 30, 2022, to the Department of Correction (DOC), and that, consistent with current law, a court may commit a person convicted of a Level 6 felony for an offense committed before July 1, 2022, to DOC only if certain circumstances exist.
- F. *Lifetime Parole* – It establishes certain conditions of parole for a person on lifetime parole and makes the violation of parole conditions and commission of specified other acts by a person on lifetime parole a Level 6 felony, with an enhancement to a Level 5 felony for a second or subsequent offense.
- G. *Partial Calendar Day* – It provides that, for purposes of calculating accrued time and good time credit, a calendar day includes a partial calendar day.
- H. It makes conforming changes.

Effective Date: July 1, 2022.

Explanation of State Expenditures: *Placement of Level 6 Felons in DOC* – This provision would likely increase DOC’s population by an indeterminable amount. The number of persons who might be committed to DOC instead of being placed in either a county jail or community correction program is not known and would be at the discretion of the sentencing court. Sentencing courts would likely consider the capacity of the county’s jail and whether substance abuse and mental health treatment are available in the county when determining whether to commit the person to DOC.

Any net change in state expenditures will depend on the number of Level 6 felons who might be committed to DOC instead of being housed in a county jail. For each day that a person is housed in an existing DOC facility with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,333 annually, or \$11.67 daily, per prisoner. When Level 6 felons are housed in county jails instead, sheriffs receive a per diem reimbursement based on a formula developed by DOC from a \$25.3 M appropriation for FY 2022 and FY 2023 in the state budget.

Increasing the number of persons who would be committed to DOC could also increase the number of felons who could await transportation to DOC facilities. When persons are committed to DOC they first are assigned to the Reception Diagnostic Center (RDC) for medical, psychological and security assessments. RDC can evaluate between 800 and 1,000 persons per month. If more Level 6 offenders are committed to DOC beyond RDC’s capacity, committed persons who are waiting in county jails to be transported to RDC would be required to be housed in county jails for longer periods of time. Sheriffs can be reimbursed up to \$40 per day for each day beyond five days that any committed felon is held while awaiting transportation to RDC.

To illustrate the possible number of new commitments to DOC, LSA compared the total commitments over time between CY 2012 and 2020. The restriction on commitments of Level 6 felons to DOC became effective July 1, 2015. In the following table, the number of persons who were committed to DOC between CY 2012 and CY 2014 were compared with the number of persons committed to DOC between CY 2016 and CY 2019. (CY 2015 was excluded because the effective date was in the middle of 2015. CY 2020 was excluded because of the effect of COVID.) The table shows that the average annual number of persons committed to DOC is less than 40% for the 3 years between CY 2012 and CY 2014 as compared with the average number committed between CY 2016 and CY 2019. The extent of this difference in total commitments to DOC is due to the restriction of Level 6 felons is likely significant.

Number of Persons Committed or Recommitted to DOC by Calendar Year								
2012	2013	2014	2015	2016	2017	2018	2019	2020
14,054	15,548	14,678	12,084	8,822	9,020	8,904	8,612	5,447
14,760 (3 year average)			effective July 1, 2015	8,840 (4 year average)				Excluded due to COVID

In FY 2021, 28,589 persons were convicted and sentenced for a Level 6 felony. Of these, 15,936 were placed in a county jail for one or more days, 10,929 were in community supervision and 223 had sentences that were either suspended or appeared to serve their full time pretrial. While their length of stay in DOC upon commitment cannot be determined, the maximum sentence for a Level 6 felony is 30 months (2.5 years).

Persons who are committed to DOC for a Level 6 felony receive good time credit of one day for each day served.

Direct Placement Supervision for Executed Time – This provision could reduce the population in DOC facilities, depending on the discretion of the sentencing court.

The following table shows the number of persons who were convicted and sentenced for either Level 2 or Level 3 felonies and committed to DOC as part of an executed sentence. Because these persons were sentenced for either dealing or possession of controlled substances under IC 35-48 they could be eligible for direct commitment to a community corrections agency under IC 35-38-2.6-1.

Persons Committed to DOC by Felony Level							
	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Level 2	44	119	242	358	342	371	362
Level 3	25	126	198	292	359	388	269

Lifetime Parole – Any added population to DOC should be minor. Between FY 2018 and 2021, 14 persons have been convicted and sentenced for violating these parole conditions when they were on lifetime parole. This is an average of 3.5 person per year. DOC reports that over 700 persons have been placed on lifetime parole on November 2, 2021. The Parole Board would also be permitted to adopt rules to impose additional conditions of lifetime parole.

Partial Calendar Day – Depending on how frequently courts currently use a partial calendar day as a full day for determining pretrial credit, this provision could slightly reduce confinement of persons who are committed to DOC facilities for a part of their executed sentence.

Additional Information – A Level 6 felony is punishable by a prison term ranging from 6 to 30 months, with an advisory sentence of 1 year, and a Level 5 felony is punishable by a prison term ranging between one and five years with an advisory sentence of three years. The sentence depends on mitigating and aggravating circumstances.

Explanation of State Revenues: *Lifetime Parole* – 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 any 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: *Placement on Probation* – This provision should have little to no effect on the supervised population on probation. Currently, when a person placed on community corrections programs completes the program, the court is required to place the person on probation. An estimated 2% of persons who were placed on probation after being in community corrections. This is based on the Abstracts of Judgment of persons who were placed on community correction in lieu of DOC or county jail.

Level 6 Felons – Counties committing more Level 6 felons to DOC would receive less in reimbursements from this funding source, but they would save an indeterminable amount if the Level 6 felons are committed to DOC. The average cost per day 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.

Partial Calendar Day – Depending on how frequently courts currently use a partial calendar day as a full day for determining pretrial credit, this provision could slightly reduce confinement of persons who are committed to county jails as part of their executed sentence.

Lifetime Parole – When defendants are detained in county jails prior to their court hearings, local expenditures for jail operations can increase. The average cost per day 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: *Lifetime Parole* – 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: Courts with criminal jurisdiction; prosecuting attorneys; community corrections agencies; probation departments.

Information Sources: Department of Correction; Abstracts of Judgment, Indiana Supreme Court; U.S. Department of Justice Marshals Service; Adams v. State 18A-CR-1544

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