

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6396
BILL NUMBER: HB 1202

NOTE PREPARED: Dec 29, 2020
BILL AMENDED:

SUBJECT: Sentencing.

FIRST AUTHOR: Rep. McNamara
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

Rehabilitation Based Discharge for Long Term Inmates – It provides that the Department of Correction shall identify an inmate to the Parole Board and provide the Parole Board with the inmate's offender progress report as soon as practicable after the inmate has been confined to the custody of the Department of Correction for: (1) 15 consecutive years; (2) 14 consecutive years if the inmate has received one year of educational credit; (3) 13 consecutive years if the inmate has received two years of educational credit; (4) 12 consecutive years if the inmate has received three years of educational credit; or (5) 11 consecutive years if the inmate has received four years of educational credit.

Rehabilitation Based Discharge for Long Term Inmates Sentenced to Prison Before July 1 2014 – It provides that, after considering certain factors in determining whether to discharge an inmate who is not a violent criminal to parole or release an inmate who is not a violent criminal to the committing court for probation, the Parole Board shall discharge the inmate to parole or release the inmate to the committing court for probation if the sentence the inmate has served, including any credit time earned or accrued, for an offense committed before July 1, 2014, is greater than the current maximum sentence for the offense on the date the inmate files for a petition for discharge.

Sentence Modification – It provides that an inmate who is not a “violent offender” whose petition for discharge was denied by the parole board for an offense that was committed before July 1, 2014, may seek further relief by petitioning the court for a sentence modification. It provides that if a person who is not a “violent offender” petitions for a sentence modification for an offense that was committed before July 1, 2014, the court shall do the following: (1) Consider the current maximum sentence for the offense on the date

the person files a petition for sentence modification, including the minimum sentence, maximum sentence, and advisory sentence. (2) Grant the person's petition for sentence modification and modify the person's sentence if the sentence the person has served or will serve, including any credit time earned or accrued, for an offense committed before July 1, 2014, is greater than the current maximum sentence for the offense on the date the person files for a petition for sentence modification. (3) Discharge the person to parole or release the person to the committing court for probation if the sentence the person has served, including any credit time earned or accrued, for an offense committed before July 1, 2014, is greater than the current maximum sentence for the offense on the date the person files for a petition for sentence modification.

Effective Date: July 1, 2021.

Explanation of State Expenditures: *Potential Decrease in DOC Population:* This bill applies to long term inmates who have been confined in DOC under the sentencing laws that existed prior to July 1, 2014.

As shown in the following table, there would be three opportunities for certain non-violent inmates to apply to either the Parole Board or a sentencing court to be discharged from DOC at an earlier date than they are currently expected to be released from prison. The estimated population are the number of inmates who would be eligible for a hearing *but not necessarily whether the Parole Board or a sentencing court would discharge these inmates earlier than their current earliest possible release date.*

Section	Population Affected	Estimated Population	Conditions for Discharge
Rehabilitation Based Discharge for Long Term Inmates	Inmates confined between 11 and 25 years. Current law requires inmates to be confined for at least 21 years to petition for discharge	748 inmates	The board looks at inmate's conduct history, whether inmate has suitable living quarters, an employment offer, and a high school diploma or GED. It then determines if the inmate has been properly rehabilitated and has suitable plans to carry out if discharged.
Rehabilitation Based Discharge for Long Term Inmates	Inmates Sentenced prior to July 1, 2014, and whose current length of stay exceeds the maximum sentence for the same crime under current law	A minimum 76 inmates could qualify for review and hearing because their current time served exceeds their maximum sentence under current law	The board looks at conduct history, if inmate has suitable living quarters, an employment offer, and a high school diploma or GED and then determines if the inmate has been properly rehabilitated and has suitable plans to carry out if discharged and whether the inmate's time in prison is more than the current maximum sentence.
Sentence Modification	Inmates sentenced prior to July 1, 2014, and who were denied discharge for long term inmates (see above)	Portion of inmates denied discharge	If the court finds that the inmate's length of stay exceeds the maximum sentence for the offense under current law and establishes that the person has been properly rehabilitated and does not pose a significant threat to public safety.

Increase in Administrative Workload – There would be at least three different sections of DOC who would have an additional workload if inmates apply for early discharge through this bill.

1. DOC staff would presumably provide education and conduct records of these inmates to the Parole Board. For inmates who were sentenced for a drug felony prior to July 1 2014, staff would need to research the specific weight of the drug to determine what felony level would apply for the inmate (see *Additional Information*).
2. Parole officers would be required to write community investigation reports for each of the inmates who are petitioning for long term discharge. These reports substantially reflect the attitudes and opinions of: (1) the community in which the crime committed by the offender occurred; (2) law enforcement officers who have jurisdiction in the community in which the crime occurred; (3) the victim of the crime committed by the offender, or if the victim is deceased or incompetent for any reason, the victim's relatives or friends; and (4) friends or relatives of the offender (IC 11-13-3-3).
3. The Parole Board would need to hold additional hearings in which the Parole Board would review these requests for early release.

Additional Information – There were 805 inmates who were sentenced for drug dealing. An indeterminable number could apply for early release. The drug dealing offenses would likely require additional research by DOC to identify the weight of the drugs and other circumstances that determined whether the inmate was sentenced for either a Class A or B felony. This is because prior to July 1, 2014, a person could be sentenced for dealing in either cocaine, narcotics, methamphetamine or certain schedule drugs as either a Class A or B felony depending on whether the amount of the drug was more than three grams and whether other circumstances occurred that might have enhanced the penalty from a Class B to a Class A felony. Under current law, the weight of the drug that determines the level of the felony now begins at less than one gram and increases to more than 28 grams and whether any other “enhancing circumstances” were involved. Consequently, persons who were convicted of illegally dealing or possessing drugs with a weight exceeding three grams could well be sentenced to a felony level with a shorter length of stay under current law.

The average expenditure to house an adult inmate in a DOC facility was \$21,551 annually, or \$59 daily, during FY 2020. (This does not include the cost of new construction.) If inmates 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:

Explanation of Local Expenditures: *Sentence Modifications* – The new petitions for sentence modifications would likely increase the workload of individual courts. Inmates who are released from prison due to these sentence modifications may be assigned to probation departments, increasing their workload.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction; Parole Board.

Local Agencies Affected: Courts with criminal jurisdiction, probation departments.

Information Sources: Department of Correction.

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