

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

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FISCAL IMPACT STATEMENT

LS 6396

BILL NUMBER: HB 1202

NOTE PREPARED: Feb 17, 2021

BILL AMENDED: Feb 4, 2021

SUBJECT: Sentencing.

FIRST AUTHOR: Rep. McNamara

BILL STATUS: As Passed House

FIRST SPONSOR: Sen. Bohacek

FUNDS AFFECTED: **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. Offenses Eligible for Relief – It lists certain offenses committed before July 1, 2014, that provides an inmate relief from the inmate's sentence.
- B. Rehabilitation Based Discharge for Certain Long Term Inmates – It reduces the number of consecutive years that an inmate must be confined to the custody of the department, for an offense committed before July 1, 2014, before the department identifies the inmate to the parole board and provides the parole board with the inmate's offender progress report.
- C. Discharge of Inmates Serving 75% of the Advisory Sentence – It provides that upon recommendation by the warden, the parole board may consider certain factors and discharge an inmate and require that the inmate receive post-incarceration reentry services if the sentence an inmate has served, including credit time earned or accrued, for an offense committed before July 1, 2014, is at least 75% of the current advisory sentence for the offense on the date the inmate files for a petition for discharge.
- D. Discharge for Inmates Serving 75% of the Maximum Sentence – It provides that if an inmate has served a sentence for an offense committed before July 1, 2014, that meets or exceeds 75% of the maximum sentence for the same offense that the inmate is currently seeking relief for, the parole board may discharge and release the inmate from the inmate's entire sentence.

Effective Date: July 1, 2021.

Explanation of State Expenditures: Any decrease in DOC's offender population will depend on the decisions made by the Parole Board when reviewing the records of each eligible inmate. OFMA cannot estimate the number of inmates who might qualify for early release under this bill because there is limited information about the prior offenses for which an inmate was convicted and because it cannot determine what the relevant felony level would be under current sentencing law.

Population Affected – Inmates could be eligible if they were convicted and sentenced before July 1, 2014, for the following offenses as the most serious crime with no prior felony conviction for certain violent crimes (see *Additional Information*):

- Theft
- Dealing in cocaine, narcotic drugs, methamphetamines, Schedule I through V controlled substances, marijuana, hash oil, hashish, or salvia
- Possession of cocaine, narcotic drugs, methamphetamines, Schedule I through V controlled substances marijuana, hash oil, hashish, or salvia

On December 1, 2020, there were 857 inmates who were convicted and sentenced for one of these offenses prior to July 1, 2014, of these, 318 inmates had no prior commitment to DOC. Inmates with a prior unrelated conviction for a violent offense, battery, domestic battery, or strangulation would *not* be eligible for an early discharge under this bill. The number of inmates who have a prior felony conviction for one of these disqualifying offenses cannot be determined. Inmates may also have a prior felony conviction that was suspended and for which the inmate would have been supervised by either probation departments or community correction agencies.

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. Staff would need to research the specific weight of the drug and the extenuating circumstances such as distance from schools and public parks to determine what felony level would apply for the inmate.
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.

Proposed Methods of Discharge – The following table describes the three methods that the Parole Board may use to discharge eligible inmates earlier than their current possible release dates. Since a specific felony level cannot be determined that would apply to each inmate (see above), OFMA compared the length of stay of each of these 857 inmates with 75% of both the advisory and maximum sentences for felony levels 2 through 5. Levels 2 through 5 is the likely range of felony levels for drug dealing and possession that would apply to these inmates. (See *Additional Information* on these felony level sentences)

In the “Estimated Population” column OFMA shows the percentage of the eligible inmates who have lengths of stay that exceed 75% of the advisory and maximum sentence for each of these felony levels.

Section	Population Affected	Estimated Population	Conditions for Discharge
Rehabilitation Based Discharge for Certain Long Term Inmates	Inmates confined between 11 and 15 years for Drug Dealing, Possession and Theft	353 inmates in this group have been confined for 11 or more consecutive years. The number of inmates who might qualify for this discharge is likely to be minimal since 47% earn no time cut from earning education credits.	The board looks at the 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.
Discharge of Certain Offenders at 75% of Advisory Sentence	Inmates sentenced prior to July 1, 2014, and whose current length of stay exceeds the 75% of the <i>advisory sentence</i> for the same crime under current law	857 inmates may qualify depending on their prior criminal history. The time served by <i>all 857 inmates</i> exceeds 75% of the advisory sentence for Level 3, 4, or 5 felonies. 17% have lengths of stay that exceed the advisory sentence for a Level 2 felony.	The board looks at conduct history, if the 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.
Discharge of Certain Offenders at 75% of Maximum Sentence	Inmates Sentenced prior to July 1, 2014, and whose current length of stay exceeds the 75% of the <i>maximum sentence</i> for the same crime under current law	857 inmates may qualify depending on their prior criminal history. The time served by <i>all 857 inmates</i> exceeds the 75% of the maximum sentence for Level 5 felonies, 60% exceed the maximum sentence of Level 4 felonies, 26% are greater than Level 3 and 2% are greater than Level 2	If the court finds that the inmate’s length of stay exceeds 75% of the maximum sentence for the offense under current law, the parole board may discharge and release the inmate from the inmate’s entire sentence.

Additional Information – The sentence ranges for felony Levels 2 through 5 are shown in the following table.

Sentence Ranges in Years for Felony Level 2 through 5				
	Level 2	Level 3	Level 4	Level 5
75% of Advisory Sentence	13.125	6.75	4.5	2.25
75% of Maximum Sentence	22.5	12	9	4.5

Definition of Violent Offense:

1. Murder (IC 35-42-1-1).
2. Attempted murder (IC 35-41-5-1).

3. Voluntary manslaughter (IC 35-42-1-3).
4. Involuntary manslaughter (IC 35-42-1-4).
5. Reckless homicide (IC 35-42-1-5).
6. Aggravated battery (IC 35-42-2-1.5).
7. Battery (IC 35-42-2-1) as a Class A, B or C felony or Level 2, 3 or 5 felony
8. Kidnapping (IC 35-42-3-2).
9. A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8 that is a Class A, B, or C felony or Level 1, 2, 3, 4, or 5 felony
10. Sexual misconduct with minor (IC 35-42-4-9) as Class A or B felony or Level 1, 2, or 4 felony
11. Incest (IC 35-46-1-3).
12. Robbery (IC 35-42-5-1) as a Class A or B felony or Level 2 or 3 felony
13. Burglary (IC 35-43-2-1) as a Class A or B felony or Level 1, 2, 3 or 4 felony
14. Carjacking (IC 35-42-5-2) (repealed).
15. Assisting a criminal (IC 35-44.1-2-5) as a Class C felony or Level 5 felony
16. Escape (IC 35-44.1-3-4) as a Class B or Class C felony or Level 4 or 5 felony
17. Trafficking with an inmate (IC 35-44.1-3-5) as a Class C felony or Level 5 felony
18. Causing death when operating a vehicle (IC 9-30-5-5).
19. Criminal confinement (IC 35-42-3-3) as a Class B felony or Level 3 felony
20. Arson (IC 35-43-1-1) as a Class A or Class B felony or Level 2, 3, or 4 felony
21. Possession, use, or manufacture of a weapon of mass destruction (IC 35-47-12-1).
22. Terroristic mischief (IC 35-47-12-3) as a Class B felony or Level 4 felony
23. Hijacking or disrupting an aircraft (IC 35-47-6-1.6).
24. A violation of IC 35-47.5 (controlled explosives) as a Class A or B felony or Level 2 or 4 felony
25. Domestic battery (IC 35-42-2-1.3) as a Level 2 felony, Level 3 felony, or Level 5 felony.

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:

Explanation of Local Revenues:

State Agencies Affected: Department of Correction; Parole Board.

Local Agencies Affected:

Information Sources: Department of Correction.

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