

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

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FISCAL IMPACT STATEMENT

LS 6396
BILL NUMBER: HB 1202

NOTE PREPARED: Apr 12, 2021
BILL AMENDED: Apr 12, 2021

SUBJECT: Sentencing.

FIRST AUTHOR: Rep. McNamara
FIRST SPONSOR: Sen. Bohacek

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill allows certain inmates committed to the Department of Correction to seek a sentence modification.

Effective Date: July 1, 2021.

Explanation of State Expenditures: This bill's requirements represent an additional workload that would be outside of DOC's routine administrative functions. DOC's staff would need to examine over 800 inmate records to determine if these inmates are eligible for a sentenced modification hearing. [A sentence modification is a legal proceeding that can reduce the sentence of someone who has been convicted of committing a crime.]

If existing staffing and resource levels are being used to capacity, DOC may not be able to fully implement this bill's requirement. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

In addition, OFMA cannot estimate any population reduction because of limited information about these inmates and the decisions that the sentencing courts and prosecuting attorneys might make in the vast majority of these cases.

The following describes the procedure that would be used, the added staff workload, and the possible number of inmates who might be affected.

Procedure – The DOC would be required to review the inmate population sentenced before July 1, 2014, and determine whether those who were convicted and sentenced for the following offenses would be eligible for a sentence modification:

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

These inmates would not qualify for a sentence modification if they have either a prior conviction for a violent offense defined in IC 11-12-3.7-6 (see *Additional Information*), battery, domestic battery or strangulation or if they were charged with any of these offenses which were dismissed as part of a plea bargain.

DOC staff would then evaluate the records of each inmate and recommend either no change in an inmate's sentence or a modification in the inmate's sentence. The factors DOC would consider include:

1. A good conduct history during confinement.
2. Proof that the inmate will have suitable living quarters in a community if the inmate is discharged.
3. Proof that one or more employers in the area in which the inmate would reside if discharged have offered to employ the inmate for at least 30 hours a week on the same terms as the employer employs other employees.
4. Proof that the inmate is at least a high school graduate; or has obtained a general equivalency degree or a state of Indiana general educational development (GED) diploma.

An inmate who receives a recommendation by DOC may petition for a sentence modification under this new section.

When the inmate petitions for a sentence modification, and the sentence was part of plea agreement, the prosecuting attorney of the county in which the criminal procedure occurred must consent to the sentence modification. Between 93% and 97% of all Class A felonies were resolved using a plea agreement based on Abstracts of Judgment records and reports published by the Indiana Supreme Court.

Since any decrease in DOC's offender population will depend on the determination by the prosecuting attorney and sentencing court that were involved in the case, OFMA cannot estimate the number of inmates who might qualify for early release under this bill.

Increase in Staff Workload – DOC staff would be required to identify these inmates and determine whether they would qualify based upon their prior convictions or sentencing. DOC staff would likely have to manually examine the sentencing records of each of these inmates. After determining whether an inmate might qualify, the staff would be required to determine whether it would recommend a sentence modification based on the inmate's conduct, educational attainment, and whether the inmate has a prospective job and a place to live. Information about an inmate's prospects for housing and possible jobs is generally not known until an inmate is being scheduled to be released and DOC staff contacts any local agencies or family members who might assist with housing and employment possibilities.

Population Affected – On December 1, 2020, there were 857 inmates who were convicted and sentenced prior

to July 1, 2014 for one of these eligible offenses. The vast majority of these inmates were sentenced for a Class A felony. Of these, 318 inmates had *no prior commitment* to DOC.

Additional Information – Definition of Violent Offense (IC 11-12-3.7-6):

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: The courts and the prosecuting attorney's offices should be able to be accommodate these new requirements with existing resources. The courts may deny a request to suspend or reduce a sentence without conducting a hearing or making written findings. The prosecuting attorney would be required to give notice to the victims of the crime for which the inmate is serving the sentence.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction.

Local Agencies Affected: Courts with criminal jurisdiction and prosecuting attorneys.

Information Sources: Department of Correction Offender Information System; Indiana Supreme Court.

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