

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

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6414
BILL NUMBER: SB 367

NOTE PREPARED: Dec 21, 2006
BILL AMENDED:

SUBJECT: Review of Sentences of Certain Habitual Offenders.

FIRST AUTHOR: Sen. Bowser
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: This bill has the following provisions:

- A. It allows a person: (1) convicted of certain felonies involving controlled substances; and (2) sentenced as a habitual offender; to petition the sentencing court to vacate any additional fixed term of imprisonment added to the person's sentence because the person was found to be a habitual offender.
- B. It requires the court to order the Department of Correction (DOC) to determine the person's new expected release date if the court vacates an additional fixed term of imprisonment added to the person's sentence.
- C. It requires the Department to release the person if DOC determines that the person's release date occurred before the date the court vacated the person's sentence.
- D. It prohibits a person from bringing an action against the state or an employee of the state if DOC determines that the person's release date occurred before the date the court vacated the person's sentence.

Effective Date: July 1, 2007.

Explanation of State Expenditures: Habitual offenders have been convicted of three unrelated felonies at different points in time. The third felony is called the underlying offense. The advisory sentence is the length of incarceration that can be either increased for aggravating circumstances and reduced for mitigating circumstances.

If a person is found by the court to be an habitual offender, the court is required to add a fixed term that is not less than the advisory sentence for the underlying offense nor more than three times the advisory sentence

for the underlying offense. This added sentence may not exceed 30 years.

The habitual offender enhancement has been in statute since at least 1976. In 2001, HEA 1001 amended the statute to exclude certain drug possession felonies and if the offender was convicted of only one dealing offense from being an applicable crime that would be eligible for the habitual offender enhancement. HEA 1001 – 2001 did not have a retroactive provision so that offenders given the habitual offender enhancement prior to 2001 were not given a sentence reduction. This bill would permit a person who was sentenced as an habitual offender before 2001 with a drug possession or dealing felony as a contributing felony to petition the sentencing court to have the offender's sentence reviewed. A court finding that the person who received an habitual offender enhancement would have that portion of the sentence vacated. Offenders with reduced sentences would have their release dates adjusted.

LSA identified 99 offenders in DOC facilities on December 14, 2006, who had an intake date prior to July 1, 2001, and who had an underlying offense for drug dealing and 10 offenders who had an underlying offense for drug possession. Of these, 44 offenders have early release dates between 2007 and 2012, and 13 offenders could potentially be eligible for a reduced sentence.

If these offenders are released earlier than scheduled, the Department of Correction could have reduced expenditures in housing offenders in DOC facilities. On average, the variable cost for housing an additional offender in a DOC facility is \$35 per day, based on the cost of placing an offender in a county jail. The average annual cost per offender in a DOC-operated facility is \$22,734.

Explanation of State Revenues:

Explanation of Local Expenditures: Courts that sentenced these offenders could experience some increase in caseload if offenders petition the courts to review their sentences to determine whether they are eligible for a sentence reduction.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts with criminal jurisdiction.

Information Sources: Department of Correction.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.