149th GENERAL ASSEMBLY
FISCAL NOTE

BILL:	**HOUSE SUBSTITUTE NO. 1 to HB 42**
SPONSOR:	**Representative Bolden**
DESCRIPTION:	**AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO TERMS OF IMPRISONMENT.**

Assumptions:

1. This Act would become effective upon enactment by the General Assembly.

2. This Act would allow offenders who were sentenced to two or more consecutive sentences prior to June 30, 2014 the ability to petition the court to have all or part of their sentences modified, reduced, or suspended if the defendant would have been eligible to be sentenced to serve concurrent sentences under Chapter 297, Volume 79 of the Laws of Delaware.

3. The Statistical Analysis Center (SAC) reviewed approximately 1,500 offenders sentenced prior to June 30, 2014 with release dates after June 30, 2017 and not sentenced to life or the death penalty. SAC identified approximately 600 offenders that would meet the criteria to have their sentences reviewed for modification. Based on ongoing experience with similar types of legislation, it would not be unreasonable to assume a significant number of offenders above and beyond the 600 identified would apply for this modification.
    a. Of these 600 offenders identified, approximately 150 to 175 meet the criteria of having at least one Title 16 conviction and per this Act would be reviewed first.
    b. Of the remaining 425 to 450 offenders identified, approximately 70 to 92 meet the criteria of having at least one property offense conviction and per this Act would be reviewed second.
    c. The remaining group of 333 to 360 offenders would be reviewed last.

4. This Act would require the following:
    a. The Department of Correction would be responsible to notify all applicable offenders and the attorney of record by no later than December 1, 2019.
    b. The Superior Court would need to establish rules and processes for the implementation of this Act. These rules would require the review of petitions filed by offenders with at least one conviction for a Title 16 offense first, offenders with a property conviction second, followed by all other offenders. In addition, the Courts would also be responsible for providing an initial review, including review of a formal response by the Department of Justice, the applicant's prior criminal history, the applicant's conduct while incarcerated, and a recent risk assessment of the applicant. Lastly, the Superior Court would be responsible for putting on record the results of its review and the reasoning for its decision.
    c. The Department of Justice would be responsible for preparing a formal response to the petition after consulting with any victim(s) involved in the original conviction(s)
    d. The Office of Defense Services (ODS) would be responsible for the review, preparation, filing and the litigation of a significant number of the 600 plus cases identified.

5. This Act would have an estimated fiscal impact of $1,606,898 in Fiscal Year 2019 and $1,581,898 for all remaining Fiscal Years. The estimated costs consist of the following:

    a. The Department of Correction estimates a one-time cost of $25,000 to review and notify all required parties.

    b. The Superior Court estimates up to a total of $150,370.

        i. For ongoing personnel cost for 1.0 FTE (Judicial Case Manager I) at an annual cost of $55,685; 1.0 FTE (Paralegal I) at an annual cost of $55,685 and either $26,000 or $39,000 annually for a contractual Retired Judge depending on whether it's 2 or 3 days per week.

        ii. The Superior Court projects that there would be a high volume of cases initially followed by a more steady and sustainable number of cases and filings. For this reason, the Superior Court recommends the number of filings and the volume of cases be reviewed 18 months after the effective date, and 3 years after to reexamine case file load.

    c. The Office of Defense Services estimates a total of $632,505.

        i. For ongoing personnel costs for 3.0 FTEs (Assistant Public Defender III) at an annual cost of $131,460 and 3.0 FTEs (Paralegal III) at an annual cost of $79,375.

        ii. Current average caseloads carried by Assistant Public Defenders are well above the American Bar Association's recommended levels. These large caseloads have required ODS to request additional staffing in recent Fiscal Years. Due to the current level of caseloads staff are enduring, ODS would need an additional Assistant Public Defender III and Paralegal III in each county to meet the requirements of this Act.

    d. The Department of Justice estimates a total of $799,023.

        i. For ongoing personnel costs for 3.0 FTEs (Deputy Attorney General V) at an annual cost of $186,966 and 3.0 FTE (Paralegal III) at an annual cost of $79,375.

6. These estimated costs do not account for any savings associated with the reduction in sentences for the 600 plus offenders. When these offenders were originally sentenced, the judicial officer took into account the defendant's entire criminal history, the victim's position, the likelihood of the defendant reoffending and the safety of the community. These are the same elements that this Act proposes the Court utilize when determining if the petition is granted or denied. In addition, each of these offenders had the ability to file for a sentence modification pursuant to Superior Court Rule 35.

Cost:

Fiscal Year 2019	$ 1,606,898
Fiscal Year 2020	$ 1,581,898
Fiscal Year 2021	$ 1,581,898

Prepared by
Office of the Controller General