

CORRECTIONS IMPACT STATEMENT

SESSION: 15RS BILL #: SB 190 Introduced

BR #: 171 DOC ID#: BR017100.100 - 171 - 2086

BILL SPONSOR(S): Sen. R. Webb, D. Harper Angel

AMENDMENT SPONSOR(S):

SUBJECT: AN ACT relating to crimes and punishments.

SUMMARY OF LEGISLATION: Amend KRS 12.020 to move the state crime laboratory to an independent office in the Justice and Public Safety Cabinet; create a new section of KRS Chapter 15 to require the Prosecutors Advisory Council to establish a capital offense database, guidelines for the exercise of prosecutorial discretion in capital cases, and training programs for lineups, interrogations, and mental health issues; amend KRS 15.334 to require the Kentucky Law Enforcement Council to develop law enforcement training relating to biological evidence, lineups, interviews, and mental health issues; amend KRS 15.440 to require law enforcement agencies to have written policies on biological evidence; amend KRS 15A.020 to establish requirements for the state crime laboratory; amend KRS 21A.170 to require judges and justices to have training in recognizing cognitive disabilities and mental health issues; create a new section of KRS Chapter 31 to establish minimum standards for representation of persons charged with capital offenses; amend KRS 31.185 to allow attorneys privately representing capital offenders access to state criminal forensic facilities; amend KRS 61.878 to allow capital offenders greater access to public records; amend KRS 72.225 and 72.240 to provide additional standards for medical examiners; **create a new section of KRS Chapter 196 to prohibit the Department of Corrections from denying capital offenders access to prison officials when preparing clemency petitions; amend KRS 196.171 to require the Department of Corrections to develop staff training on mental health issues;** create new sections of KRS Chapter 421 to establish standards for law enforcement lineups; amend KRS 422.285 to establish revised criteria for post-conviction DNA testing; **amend KRS 431.240 to allow death row inmates up to three years to file post-conviction motions; amend KRS 439.450 allow death row inmates to make a personal appeal to the Parole Board;** create new sections of KRS Chapter 455 to establish new standards for law enforcement interviews; require open file discovery in capital cases; amend KRS 524.140 to require the retention of biological evidence in capital cases; create a new section of KRS Chapter 532 to prohibit executions when certain mental health or competency conditions are present; amend KRS 532.025 to revise the point in a case when the jury receives its instructions; amend KRS 532.075 to increase the factors considered by the Supreme Court in death penalty appeals; amend KRS 532.130, 532.135, and 532.140 to prohibit executions of persons who are severally mentally ill; amend KRS 532.300 and 532.305 to broaden the applicability of the Kentucky Racial Justice Act; amend and repeal various sections of the Kentucky Revised Statutes to conform; create noncodified sections to create a commission to study judicial selection in Kentucky; require a study of the effect of the Kentucky Racial Justice Act; provide that a person having at least five years of experience managing a Kentucky State Police forensic laboratory immediately preceding the Act's effective date is deemed qualified for appointment as executive director of the newly created Office of Kentucky State Criminal Forensic Laboratories.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|---|--|
| <input type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input type="checkbox"/> Increases incarceration | <input type="checkbox"/> Decreases incarceration |
| <input type="checkbox"/> Reduces inmate/offender services | <input type="checkbox"/> Increases inmate/offender services |
| <input type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions |
| <input type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input checked="" type="checkbox"/> Otherwise impacts incarceration (Explain) <u>Requires DOC to provide inmate access to officers and staff for purposes that are not appropriate.</u> | |

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$60.38. Most Class D felons are housed in one of 78 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$32.92 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

Projected Impact: NONE MINIMAL MODERATE SIGNIFICANT

Potential Impact: Section 12 Creates a new section of KRS Chapter 196 to prohibit the Department of Corrections from denying an inmate in its custody who has been sentenced to death, or who is charged with an offense for which he or she could be sentenced to death, access to department officers or employees if the access is for the purpose of preparing a petition for clemency under Section 77 of the Kentucky Constitution or for the purpose of assisting an inmate in the investigation or litigation of a post-conviction action.

Section 13 requires the Department of Corrections to develop an educational course on recognizing intellectual disabilities and mental illness in capital defendants and death row inmates for the instruction of corrections personnel who have day-to-day

contact with incarcerated capital defendants or inmates. The training may be part of any continuing education program.

Department officers or employees are not appropriate resources for the purpose of preparing a petition for clemency or for the purpose of assisting an inmate in the investigation or litigation of a post-conviction action. Capital offenders already have access to the courts through individual counsel, mail, the legal library and aids within the institution. This issue was recently litigated in state and federal courts and rejected by the U.S. Supreme Court both times. See *Baze v. Thompson*, Ky., 302 S.W.3d 57 (Ky.2010), cert. denied, 131 S.Ct. 111 (2010) and *Baze v. Parker*, 371 F.3d 310 (2004), cert. denied, 544 U.S. 931 (2005).

DOC currently meets the American Correctional Association mandatory standard 4-439, which states that staff must be trained in mental health issues. In addition, 501 KAR 16:290 and 501 KAR 16:310 provide specific protections for the insane and those suffering from a serious intellectual disability relative to execution of the death penalty. State law already prohibits the execution of capital offenders determined to have a serious intellectual disability. See KRS 532.140(1). Likewise, KRS 431.240(2) mandates an execution to be suspended if the capital offender is determined to be insane.

LOCAL IMPACT: Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$32.25 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

Creates no new misdemeanor offenses.

The following offices contributed to this Corrections Impact Statement:

Dept. of Corrections Dept. of Kentucky State Police Administrative Office of the Courts Parole Board Other

NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments.

APPROVED BY:

 Commissioner, Kentucky Department of Corrections

 Date