CORRECTIONS IMPACT STATEMENT

SESSION: 16RS   **BILL #:** HB 412 HCS 1   **BR #:** 479   **DOC ID#:**

BILL SPONSOR(S): Rep. Yonts   **AMENDMENT SPONSOR(S):**

SUBJECT: AN ACT relating to crimes and punishments.

SUMMARY OF LEGISLATION: Amend KRS 532.090 to establish gross misdemeanors as a new category of misdemeanor offense and set penalty range; amend various sections of KRS Chapters 500, 530, 532, and 533 to conform; amend KRS 441.127 to require local jailers to grant limited service credits against an inmate's sentence for good behavior and educational achievement; amend KRS 532.110, relating to multiple sentences, to prohibit the aggregate of consecutive definite terms from exceeding the longest term authorized for the highest class of crime for which any of the sentences is imposed; amend KRS 439.340 to make parole mandatory for Class D offenders who are not violent offenders or sexual offenders and have not committed any violent acts while incarcerated; amend KRS 218A.135 to require that certain findings utilized in pretrial release decisions be made by clear and convincing evidence; amend KRS 532.080 to make persistent felony offender sentencing discretionary; amend KRS 534.070 to increase jail credit for fines; amend various KRS sections to conform.

HB412 - AMENDMENTS

   HCS1/LM - Create three-tiered offense of non-support; clarify changes to KRS 532.100 to ensure that custody of gross misdemeanants parallels that of Class D felons; remove clear and convincing evidence standard on decisions relating to bond and pretrial relase; amend KRS 24A.110 to ensure that jurisdiction over gross misdemeanor cases is in the Circuit Court; repeal KRS 431.060; amend various sections to conform.

This ☒ bill ☐ amendment   ☐ committee substitute is expected to:

☒ **Have the following Corrections impact**   ☐ **Have no Corrections impact**

☐ Creates new crime(s)   ☐ Repeals existing crime(s)
☐ Increases penalty for existing crime(s)   ☐ Decreases penalty for existing crime(s)
☐ Increases incarceration   ☒ Decreases incarceration
☐ Reduces inmate/offender services   ☐ Increases inmate/offender services
☐ Increases staff time or positions   ☐ Reduces staff time or positions
☒ Changes elements of offense for existing crime(s)
☐ Otherwise impacts incarceration (Explain) .

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of $61.09. 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 $32.51 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

                                          $0-$1,000,000 $1,000,000- $5,000,000 $5,000,000- Up

Potential Savings: The Bill reduces convictions for Flagrant Non-Support, Forgery II, and Criminal Possession of a Forged Instrument II to Gross Misdemeanors with a maximum sentence of 24 months. Cost savings were calculated by:

1 Evaluating average time served for persons convicted of these charges over the last 3 years. 2) Evaluating the average time served for persons serving a 24 month sentence. 3),Finding the difference between the average time served for these charges and a 24 month sentence. 4) Determining the cost avoidance by multiplying the difference in time served by the average number of admissions per year, and the by the cost of incarceration per day.

Assumptions: All inmates convicted of Criminal Possession of a Forged Instrument II, and Forgery II were less than $500, Inmates admitted for these charges who already had a sentence less than 24 months are not considered. All inmates sentenced as a gross misdemeanor would receive a sentence of 24 months. All gross misdemeanant inmates with a 24 months sentence serve the average time incarcerated for a two year state inmate sentence (436 days).

The average sentence for inmates previously convicted of these charges was 3.05 years. On average, these inmates served a total of 654 days. Over the last five years, there was an average of 202 inmates admitted for these charges.

The cost savings for 202 inmates who served 218 fewer days would be $1,431,610.36.

The section that concerns Presumptive Parole outlines that qualifying Class D and gross misdemeanors shall be paroled after

serving fifteen percent (15%) or two (2) months of the original sentence, whichever is longer.

There was an average of 5,313 inmates considered for parole each year who met the criteria for mandatory parole. Of those, an average of 1,751 were not granted parole. Those who were not granted parole served an average of 348 days longer than those granted parole.

1,751 inmates serving 348 fewer days (assuming they are serving their time in a county jail) saves the Department of Corrections $19,809,903.4

Presumptive Probation: As the Department has no data regarding how the court will assess the risks/needs of the defendant for the purposes of probation, we are able to provide only a partial calculation based on the number of these offenders currently incarcerated who were not on supervision prior to admission. Over the last 5 years, there have been an average of 202 inmates admitted each year that would be impacted. Of those, an average of 105 was probated and 96 were sentenced directly to imprisonment. Since we cannot predict the number of those 96 who would have been probated, we estimated the savings as follows if: a) 50% of those 96 inmates were probated b) 100% of those inmates were probated

Assumptions: All inmates convicted of Criminal Possession of a Forged Instrument II, and Forgery II were less than $500. All inmates sentenced as a gross misdemeanor would receive a sentence of 24 months. All gross misdemeanor inmates with a 24 months sentence serve the average time incarcerated for a two year state inmate sentence (436 days). All inmates probated would be placed on probation for a period of 5 years. All inmates granted probation will successfully complete probation.

If these offenders were probated, supervision costs would also increase. The estimated savings are a result of the difference between the cost to incarcerate and the cost to supervise these offenders. The cost for 48 inmates being supervised for 5 years is $303,096. If they were incarcerated for 436 days the cost would be $680,369.28, which is $377,273.28 more than the cost of supervision. For 96 inmates, the cost of supervision for 5 years is $606,192 and the cost to incarcerate for 436 days is $1,360,738.56 for a difference of $754,546.56.

There would be additional costs in order to meet the requirements of the proposed legislation. Kentucky Offender Management System Changes (KOMS) Enhancements: The creation of a new category of offenses, gross misdemeanors, which are designated as state inmates, assumes that the Department is responsible for sentence calculations, releases, billing, and all other management functions associated with state inmates. The KOMS system would require a significant number of enhancements in order to support the management of these offenders. The estimated cost of enhancements is $250,000.

Administrative Staff: It is estimated that approximately four (4) additional administrative staff would be needed to process presumptive parole cases. The cost of one (1) offender information specialist is $44,522.84.

Probation/Parole Officers: As numerous sections of the bill have the potential to increase the number of offenders on supervision it is likely additional probation/parole officers would be needed to supervise these offenders. Given that mandatory parole is projected to increase the number of parolees by 1,751 the number of additional officers for that function alone would be approximately 21 officers. The cost of each additional officer is $46,556.71

If sentencing credits for gross misdemeanors are awarded using the same process as other misdemeanors, decisions regarding these credits would be made by the jailers. Absent a uniform guidelines regarding application of these credits, it is anticipated that there would be a disparity regarding the number of credits applied by each jail for 82 jails across the state. If the Department is responsible for applying these credits, administrative costs would increase.

The HCS changes the language on Flagrant Nonsupport. Flagrant Nonsupport would be a Gross Misdemeanor unless the arrearage is $5,000 or more. In that case it would be a Class D Felony. This would affect the predicted number of persons incarcerated under the charge of Flagrant Nonsupport, however it is not possible to predict the amount of change. It is expected to be small.

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 $31.92 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

Projected Impact: ☐ NONE ☐ MINIMAL ☐ MODERATE ☒ SIGNIFICANT

Potential Impact: The proposed legislation would result in an increase in used bed space.

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