

CORRECTIONS IMPACT STATEMENT

SESSION: 17RS

BILL #: HB 261 SCS

BR #: 952

DOC ID#: HB026140.100- 952- 6635V

BILL SPONSOR(S): Rep. DuPlessis

AMENDMENT SPONSOR(S): Rep. DuPlessis

SUBJECT: AN ACT relating to driving under the influence.

SUMMARY OF LEGISLATION:

Keep original provisions; amend KRS 189A.010 to provide that all first DUI offenses and all DUI offenses with aggravating circumstances remain on the record and constitute prior offenses regardless of when they were committed; amend KRS 189A.070 to conform; amend KRS 189A.090, 189A.340, 189A.410 on ignition interlock licenses after DUI convictions to conform.

HFA3 - Amend KRS 189A.010 to allow driving under the influence first offenses to be sealed ten years after the date of the offense upon motion of the defendant; forbid the appearance of the first offense in state background checks; permit use of the first offense to determine the charging level of a subsequent violation; prohibit retroactive application of the new first offense procedures.

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 checked="" type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input checked="" 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 type="checkbox"/> Otherwise impacts incarceration (Explain) _____ | |

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$66.82. Most Class D felons are housed in one of 76 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$31.41 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

Creates no new felonies. While this legislation relates to misdemeanor DUI offenses, with the proposed change to DUI 2nd Offense, it could be assumed that there may be more offenders receiving a DUI 2nd Offense and therefore to some extent, more offenders qualifying for a felony DUI 4th Offense in the future. It is not known what the impact would be, however, it is expected to have a minimal fiscal impact.

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 \$31.34 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 the number of persons incarcerated for a misdemeanor charge related to DUI after their first offense.

Under this legislation, the penalty for a DUI 2nd Offense would be extended to any repeat first offense in one's lifetime. The Class B misdemeanor penalty includes 7 days to 6 months jail and \$350-\$500 fine. The mandatory minimum term of imprisonment is increased if the offense involves any aggravating factors, which is not eligible to be suspended, probated, or conditionally discharged. The legislation extends the penalties to DUI Under the Age of 18, Driving on DUI Suspended License, and ignition interlock periods under KRS 189A.340.

According to AOC data, in CY2016 there were 2,123 DUI 2nd Offense convictions and 1,475 2nd Offense with Aggravators Class B misdemeanor convictions.

It is unknown how many additional 2nd Offense convictions this would bring, however the expected impact to the local jails would be minimal.

House Committee Substitute:

The House Committee Substitute modifies existing statute to state that after a first DUI conviction, any subsequent offense would be considered a repeat offense and subject to increased penalties.

Any offense but a first time DUI offense would have a prior offense. Prior offenses include all DUI first offenses regardless of when the offense was committed, all offenses with aggravating circumstances regardless of time, and all offenses committed within a ten year period.

An offender receiving a second DUI offense in his lifetime would be subject to the penalties of a DUI second, even if their prior DUI conviction occurred outside of the 10 year look-back period. The 10 year look-back period is in place for the subsequent DUI offenses. The ten year period shall be measured from the date of the offense.

The same definition of prior offense applies to penalties for violation of DUI suspended license and ignition interlock devices. The ten year look back period is removed from the penalty of driver's license suspension following a DUI conviction.

Counting the first DUI offense in one's lifetime regardless of when it occurred would allow subsequent DUI offenses to have increased penalties. As offenders qualify for subsequent DUI offenses, they incur increased days incarcerated for the subsequent DUI offenses.

Under the proposed Committee Substitute, it could be assumed that in the future there may be more offenders qualifying for a DUI 2nd Offense up through a felony DUI 4th Offense.

House Floor Amendment 3:

The House Floor Amendment would allow a DUI first offense to be sealed after 10 years. This sealed offense would not appear on official state performed background checks, but for the purposes of this legislation, would remain a first DUI offense and be subject to enhanced penalties for subsequent offenses. This would not apply retroactively.

There is no impact to the Department in regards to the number of anticipated offenders under this House Floor Amendment.

Senate Committee Substitute:

The Senate Committee Substitute contains expanded wording related to the sealing of the first DUI offense, maintenance of the person's driving history, state-performed background checks, and availability to the court, law enforcement, and prosecutors for charging of subsequent DUI offenses. The individual shall disclose the arrest if required by state or federal law. The Senate Committee Substitute instructs the Transportation Cabinet on maintaining driving records, to include the record of the first DUI offense as relevant to this legislation.

There is no additional impact to Corrections under the Senate Committee Substitute.

A Class B misdemeanor is up to 90 days in jail.

10 Class B misdemeanants: up to \$28,270

1 Class B misdemeanor: up to \$2,827

100 Class B misdemeanants: up to \$282,700

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