

# CORRECTIONS IMPACT STATEMENT

**SESSION: 18RS**      **BILL #:** HB 126 Introduced      **BR #:** 413      **DOC ID#:** XXXX  
**BILL SPONSOR(S):** Rep. A. Scott, R. Meeks, G. Brown Jr      **AMENDMENT SPONSOR(S):**  
**SUBJECT:** AN ACT relating to crimes and punishments.

**SUMMARY OF LEGISLATION:** Amend KRS 186.990, 194A.990, 341.990, and 516.120 to raise the threshold level for a Class D felony for unlawful registration of a car to evade taxes, misrepresentation to receive public assistance or unemployment benefits, and unlawful use of slugs from \$100 to \$1,500; amend KRS 205.8461, 205.8463, 209.990, 238.995, and 434.850 to raise the threshold level for a Class D felony for unlawful referral practices of a Medicaid provider, fraudulent Medicaid claims, wantonly or recklessly exploiting a vulnerable adult, charitable gaming fraud, unlawful diversion of charitable gaming funds, and unlawful access to computers in the second degree from \$300 to \$1,500; amend KRS 209.990 to raise the threshold level for a Class C felony for knowingly exploiting a vulnerable adult from \$300 to \$1500; amend KRS 217.181 to raise the threshold levels for a Class C and D felony for theft of a legend drug; amend KRS 304.47-020, 434.650, 434.655, 434.660, 434.670, 434.690, 514.030, 514.040, 514.050, 514.060, 514.070, 514.080, 514.090, 514.110, 514.120, and 517.060 to raise the threshold level for a Class D felony for various fraud and theft crimes from \$500 to \$1500; and amend KRS 365.241 to raise the threshold level for a Class D felony for counterfeit intellectual property from \$1,000 to \$1,500.

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 checked="" type="checkbox"/> Decreases penalty for existing crime(s) |
| <input type="checkbox"/> Increases incarceration                                      | <input checked="" 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 checked="" 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 \$70.12. 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 \$31.45 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       MODERATE (< \$1 million)       SIGNIFICANT (> \$1 million)

This legislation changes the offense threshold amounts for several offenses. Felony threshold amounts are raised from \$100 to \$1500 for the following statutes: KRS 186.990, which deals with vehicle registration; KRS 194A.990, which changes the provision of KRS 194A.505 False Statement to Receive Benefits; KRS 341.990 False Statements to Increase or Reduce Benefits; and KRS 516.120 Unlawful Use of Slugs.

Felony threshold amounts are raised from \$300 to \$1500 for the following statutes: KRS 205.8461 Provider Knowingly Solicit Remuneration for Medical Assistance Benefits; KRS 205.8463 Fraudulent Claims to Defraud Kentucky Medical Assistance Program; KRS 238.995 Charitable Gaming; and KRS 434.850 & KRS 434.851 Unlawful Access to a Computer. Additionally, the threshold between a Class C Felony, Class D Felony, and Class A misdemeanor under KRS 209.990 Exploitation of an Adult is modified from \$300 to \$1500. KRS 217.181 Theft of a Legend Drug moves the threshold between a Class C and a Class D Felony from \$300 to \$1500.

Felony threshold amounts are increased from \$500 to \$1500 for the following statutes: KRS 304.47-020 Fraudulent Insurance Acts; KRS 434.650 & 434.655 Fraudulent Use of a Credit Card; KRS 434.670 Failure to Furnish Goods; KRS 434.690 Receiving Goods by Fraud; KRS 514.030 Theft by Unlawful Taking; KRS 514.040 Theft by Deception; KRS 514.050 Theft of Property; KRS 514.060 Theft of Services; KRS 514.070 Theft by Failure to Make Required Disposition of Property; KRS 514.090 Theft of Labor; KRS 514.110 Receiving Stolen Property; KR 514.120 Obscuring the Identity of a Machine; and KRS 517.060 Defrauding Secured Creditor. Additionally, the amount between a Class D and Class C felony under KRS 434.660 Fraud by Authorized Person/Business/Financial Institution is increased from \$500 to \$1500. And KRS 365.241 Prohibit Commerce Counterfeit Goods & Services' felony threshold is increased from \$1000 to \$1500.

The proposed legislation changes the threshold for several fraud and theft offenses, which would significantly reduce the population of felony offenders incarcerated in state prison facilities.

AOC data reflects 3,662 convictions for Class D felony offenses included in this legislation in FY2017.

In addition, some convictions that are Class C offenses under current statute would become Class D level felonies under this legislation. There were eighteen (18) Class C felony Knowingly Exploit Adult convictions (KRS 209.990) and zero (0) Class C convictions for Theft of a Legend Drug (KRS 217.181) in FY2017. These offenses would also be impacted by threshold changes as currently an amount over \$300 would be a Class C felony, while under the proposed legislation, the required amount would be greater than \$1500 to reach the Class C felony level.

For Class D KRSs included in this legislation, the Department currently has 5,353 Class D offenders incarcerated with 12,483 Class D felony offenders under community supervision. Note: the KRS may include specific offenses not impacted by this legislation. Additionally, offenders may be incarcerated or on supervision for crimes not included in this legislation.

Offenders may be convicted of multiple offenses. For the specific offenses included in this legislation, the Department reflects 6,256 Class D offenses in the current incarcerated population with 14,146 Class D felony offenses for community offenders.

There are 56 Class C felony convictions for incarcerated offenders and 142 Class C felony convictions for community offenders for the specific Class C felony offenses for which the threshold level would change under this legislation.

It is not possible to know how many of the offenders currently incarcerated for Class D offenses listed in this legislation would be affected by the threshold change proposed in the legislation. Some cases will have theft amounts above the \$1,500 threshold, which would not change the offense class under the proposed legislation. Others would have an amount that currently classifies the offense as a felony, but under the new statutory proposal, would reduce the offense from a Class D felony to a Class A misdemeanor. The fiscal amount of the crime is not tracked by the Department.

If HB 126 had been law at the time of their convictions, and of the 5,353 offenders incarcerated for Class D felony offenses included in this legislation, if it is assumed that 10% are incarcerated for an amount that would be affected by the threshold change, then the savings for the Department could be \$6,145,672.24 for a one year sentence. The below calculations represent estimated savings if additional offenders have offense amounts that would be affected by the threshold change:

| Estimated Number of Offenders Impacted |      | Annual Cost to Incarcerate | TOTAL            |
|--|------|----------------------------|------------------|
| 10%                                    | 535  | \$ 11,480.80               | \$ 6,145,672.24  |
| 25%                                    | 1338 | \$ 11,480.80               | \$ 15,364,180.60 |
| 50%                                    | 2677 | \$ 11,480.80               | \$ 30,728,361.20 |

The savings would be significantly increased if the sentence is greater than a year in length.

A Class D Felony sentence is 1 to 5 years.

10 Class D Felons cost KY \$114,808 to \$574,040

1 Class D Felon costs KY \$11,481 to \$57,404

100 Class D Felons cost KY \$1.1M to \$5.7M

**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  MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

This bill would reduce the number of Class D felons housed in county jails, which would result in cost savings for the Department, but would provide a decrease in revenue for county jails who house these inmates. There would be a significant increase in the number of individuals under county jurisdiction for misdemeanor fraud and theft charges which previously would have fallen into a felony category. Jails would not receive a per diem for these misdemeanor offenders as they would for a Class D felony state inmate.

Additionally, counties hold the incarceration cost of time Class A misdemeanor offenders would serve in the local jail.

The Department reports 1,726 community supervision offenders with misdemeanor convictions for offenses referenced by this legislation.

AOC data reports 1,808 convictions in FY2017 for Class A misdemeanor offenses through Circuit Court under statutes specified in this legislation. In addition, a portion of the offenders from the 3,662 Class D felony convictions from FY2017 would become misdemeanor offenders under county jurisdiction under the proposed legislation.

For example, there were 945 convictions for Class D Receiving Stolen Property under \$10,000 in FY2017. If 10% of these offenses involved theft of an amount under the proposed \$1,500 threshold, and assuming they are incarcerated for a twelve month sentence, the cost to the county could be \$1,090,676 for 95 offenders.

It is not possible to determine how many of the current felony offenders would be misdemeanants under the proposed thresholds; however, there is potential for the impact on the counties to be significant.

A Class A misdemeanor is 90 days to 1 year in jail

10 Class A misdemeanants: \$28,206 to \$114,391

1 Class A misdemeanant: \$2,821 to \$11,439

100 Class A misdemeanants: \$282,060 to \$1,143,910

**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. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.**

**APPROVED BY:**

  
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Commissioner, Kentucky Department of Corrections

**1-12-18**  
Date