

# CORRECTIONS IMPACT STATEMENT

SESSION: 18RS

BILL #: HB 193 SCS 1

BR #: 329

DOC ID#: HB019340.100 - 329 - XXXX

BILL SPONSOR(S): Rep. S. Lee

AMENDMENT SPONSOR(S): Rep. S. Lee & J. Nemes

SUBJECT: AN ACT relating to assault in the third degree.

**SUMMARY OF LEGISLATION:** Amend KRS 508.025, relating to the Class D felony of assault in the third degree, to add intentionally causing a peace officer to come in contact with bodily fluids or bodily waste to the elements of the crime; increase the criminal penalty to a Class C felony for contact with fluids which could transmit a communicable disease; and clarify that the existing provisions regarding detention facilities apply to adult and juvenile facilities.

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 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)

Amends KRS 508.025 Assault 3<sup>rd</sup> Degree by clarifying juveniles in a state residential treatment facility. Additionally, the legislation also adds intentionally causing a peace officer to come into contact with body fluids: saliva, vomit, mucus, blood, seminal fluid, urine, or feces. The legislation qualifies that the offender should reasonably know the individual to be a peace officer and that the contact is without the consent of the peace officer.

Assault 3<sup>rd</sup> Degree involving body fluids from an adult known to have a communicable disease transmitted through body fluid would become a Class C felony under this legislation.

Currently the Department has 336 offenders in custody on Assault 3<sup>rd</sup> Degree involving a Police/Probation Officer and 591 offenders on community supervision for the offense of Assault 3<sup>rd</sup> Degree Police/Probation Officer. AOC data reflects 298 convictions for Assault 3<sup>rd</sup> Degree on Police/Probation Officer in FY2017, with an additional 39 convictions of Attempted Assault 3<sup>rd</sup> Degree Police/Probation Officer.

It is not known how many additional Assault 3<sup>rd</sup> Degree felony convictions would be incurred as a result of this legislation. As a Class D felony, offenders with this offense would be housed at the local detention center as a state inmate at a cost of \$31.34 per day.

The number of Class C Assault 3<sup>rd</sup> Degree offenses would not be as significant of a number, but would carry increased incarceration costs. Offenders convicted of a Class C Assault 3<sup>rd</sup> Degree will likely not be eligible to be housed in jail under community custody and therefore would be housed at the institutional incarceration cost of \$70.12 per day.

House Committee Substitute:

The House Committee Substitute modifies language within the bill from someone known to have a communicable disease to someone who knows or reasonably should know that he or she has a communicable disease, which could be transmitted to another person through body fluid. The House Committee Substitute would reduce the number of offenders eligible to receive the Class C felony charge under this legislation. As an example, it would eliminate the elevated charge for an offender who assaults a police officer but at the time did not know he or she was HIV positive.

House Floor Amendment:

The House Floor Amendments would impact the levels of offenses incurred for Assault 3<sup>rd</sup> Degree involving body fluids.

The House Floor Amendment 2 redefines the penalties associated with the legislation, making the intentional contact of body fluids upon a peace officer a Class B misdemeanor, unless the assault by body fluid occurs from a person who knows or reasonably should know that he or she has hepatitis B or C, tuberculosis, or HIV, in which case the offense shall be a Class D felony.

The House Floor Amendment 3 redefines the penalties associated with the legislation, making the intentional contact of body fluids upon a peace officer a Class B misdemeanor, unless the assault by body fluid occurs from a person who knows that he or she has a serious communicable disease for which medical evidence demonstrates this type of contact is likely to cause transmission of the disease or condition, in which the offense shall be a Class A misdemeanor. A serious communicable disease is defined.

Senate Committee Substitute:

Under the Senate Committee Substitute, Assault 3<sup>rd</sup> Degree on peace officer through body fluids is a Class B misdemeanor. However, if the assault occurs from someone who knows or should reasonably know that he or she has a serious communicable disease, for which body fluid is demonstrated by medical professionals to be a method of transmission, the penalty shall be a Class D felony. A serious communicable disease is defined.

Though it is not known how many offenders would be convicted of Assault 3<sup>rd</sup> involving body fluids, the penalties contained in the Senate Committee Substitute reduce possible incarceration costs from the bill as introduced.

A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1.3M to \$2.6M
1 Class C Felon costs KY \$127,972 to \$255,944	100 Class C Felons cost KY \$12.8M to \$25.6M
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)

While the addition of peace officers to Assault 3<sup>rd</sup> Degree would potentially increase the inmate population, jails would receive the state inmate per diem for housing the Class D felons. The additional convictions incurred under this bill are not likely to increase the jail population significantly.

**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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Deputy Commissioner, Kentucky Department of Corrections

**3/26/2018**

Date