

***AMENDED* CORRECTIONS IMPACT STATEMENT**

SESSION: 18RS

BILL #: HB 396 Introduced

BR #: 434

DOC ID#: XXXX

BILL SPONSOR(S): Rep. K. Moser, J. Nemes, M. Dossett

AMENDMENT SPONSOR(S):

SUBJECT: AN ACT relating to crimes and punishments and making an appropriation therefor.

SUMMARY OF LEGISLATION: Amend KRS 186.990 to reclassify select non-DUI traffic and licensure offenses from misdemeanors to violations; increase the felony threshold for registering a vehicle out of state to avoid taxation from \$500 to \$2,000 and create a Class B misdemeanor level for offenses of less than \$100; amend KRS 186.991 to reclassify offenses related to truck or tractor dealer-demonstrator tags from Class B misdemeanors to violations; amend KRS 186A.990 to reclassify offenses related to temporary motor vehicle tags from Class B misdemeanors to violations, and offenses without prescribed penalties from Class A misdemeanors to violations; amend KRS 189.990 to reclassify a second offense of disregarding a traffic regulation from a Class B misdemeanor to a violation, and misuse of an off-road vehicle from a Class A misdemeanor to a violation; amend KRS 304.99-060 to reclassify the first and second offenses of driving without and failing to maintain proper security from Class B and A misdemeanors to violations; amend KRS 138.465 to conform; amend KRS 194A.990, 205.8461, 205.8463, 217.181, 238.995, 304.47-020, 341.990, 365.241, 434.650, 434.655, 434.660, 434.670, 434.690, 434.850, 434.851, 434.853, 514.030, 514.040, 514.050, 514.060, 514.070, 514.080, 514.090, 514.110, 514.120, 516.120, and 517.060 to increase the felony threshold for offenses from \$500 to \$2,000 and create a Class B misdemeanor level for offenses of \$100 or less; amend KRS 218A.1415 to reclassify first degree possession of a controlled substance from a Class D felony to a Class A misdemeanor for first and second offenses, require probation to be imposed for the offense unless the defendant has been convicted of certain violent or sexual offenses within the last five years, and allow the court to order a substance abuse assessment and treatment referral based on the recommendation of the treatment or service provider; amend KRS 218A.1416 to reclassify the penalty for second degree possession of a controlled substance from a Class A misdemeanor to a Class B misdemeanor; amend KRS 218A.14151 to revise findings to be made by the prosecutor if entry into a deferred prosecution program is denied and to require the prosecutor to state reasons for the requirement of a criminal conviction; amend KRS 511.040 to exclude motor vehicles, with the exception of recreational vehicles, from the definition of "building" for the purposes of third degree burglary; amend KRS 439.250 to revise definition of parole compliance credits and establish definitions for probation compliance credits, technical violations, and absconding; amend KRS 446.010 to revise definitions for pretrial risk assessment, supervised individual, and treatment; create a new section of KRS 439.250 to 439.560 to establish an administrative parole process that allows inmates serving a sentence for a Class C or D felony offense that is not a violent or sexual offense to be released at the parole eligibility date without a hearing if the inmate does not commit a serious disciplinary violation, unless the victim or Commonwealth's attorney requests a hearing; amend KRS 439.340 and 439.3406 to conform; amend KRS 439.553 to require graduated sanctions to be used in response to technical violations and absconding violations; amend KRS 532.260 to allow inmates with 12 months or less to serve on their sentence to be eligible for home incarceration, require a risk and needs assessment to be conducted for offenders placed on home incarceration, and allow graduated sanctions to be used in response to technical violations committed while on home incarceration; amend KRS 439.3107 to require the Department of Corrections to adopt a system of graduated sanctions for absconding violations; amend KRS 439.3108 to require graduated sanctions to be used for the first absconding violation unless the parole officer determines the individual has committed new criminal activity during the absconding period or the individual is on supervision for a sexual or violent offense; allow the Department of Corrections to use graduated sanctions for the second and subsequent absconding violation; amend KRS 439.341 to require preliminary hearings for supervised individuals who have been detained for a technical violation to be conducted within 15 days of detainment; require a show cause hearing to be held to extend the period of detainment beyond the 15 days, otherwise the supervised individual will be released and continued on supervision; prohibit the period of detainment pending final revocation hearing to exceed the length of the revocation limitations established in KRS 439.430 or 533.050; amend KRS 439.315 to require fees to be waived for individuals placed on administrative supervision; require fees to be suspended for the first six months of a person's term of community supervision following release from custody, unless the releasing authority determines the individual has an ability to pay; clarify that nonpayment of fines, fees, and court costs must be willful in order to be considered a technical violation and grounds for revocation; amend KRS 439.430 to allow a summons to be issued in lieu of a warrant for a technical violation; require a preliminary hearing and revocation hearing to be conducted before a parole can be revoked; require the final revocation hearing to be conducted within 30 business days of the date of the preliminary hearing; limit the term of imprisonment that can be imposed for a technical violation to up to 30 days for the first revocation, up to 90 days for the second revocation, up to 180 days for the third revocation, and up to two years for the fourth and subsequent revocation; repeal KRS 439.440; amend KRS 533.020 to reduce the maximum probation period that can be ordered from five years to four years and make conforming amendments; amend KRS 533.050 to require a final revocation hearing to be held within 30 business days of the preliminary hearing; prohibit individuals detained pending a final revocation hearing from being held beyond the maximum time that can be revoked for a technical violation; limit the term of imprisonment that can be imposed for a technical violation to up to 30 days for the first revocation, up to 90 days for the second revocation, up to 180 days for the third revocation, and up to two years for the fourth and subsequent revocation; create a new section of KRS 439.250 to 439.560 to establish probation credits; amend KRS 439.345 to remove the requirement that a parolee serve one or two years on supervision before being eligible for certain credits and incentives and add a conforming amendment; amend KRS 441.127 to expand credits available to misdemeanors; amend KRS 439.3105 to expand eligibility for administrative supervision to allow individuals with remaining financial obligations to be placed on administrative supervision, and require individuals who are low-risk and served six months on active supervision without a violation of the terms and conditions of supervision to be placed on administrative supervision; create a new section of KRS 439.250 to 439.560 to establish a geriatric parole review process that allows inmates convicted of a nonviolent and nonsex offense who have reached the age of 65 years and served at least fifteen percent of their sentence to be considered for parole release by the board; amend KRS 439.3405 to expand eligibility for medical parole to inmates who have a physical or mental disability that renders them incapable of being a danger to society and requires the Parole Board to notify inmates in writing when a medical parole consideration has been denied; amend KRS 534.020 to require an installment plan set up for repayment of court costs and fees to be determined based on defendant's discretionary income; allow installment plans to be extended to the defendant's term of

supervision; allow community service to be used in lieu of revocation for nonpayment of financial obligations; amend KRS 431.066 to limit the use of monetary bail to certain high-risk defendants and create a preventative detention process for defendants of select risk levels and charge types; create a new section of KRS Chapter 431 to establish a preventative detention hearing process and define the limited circumstances in which monetary bail can be imposed; amend various statutes to conform; repeal KRS 431.021; amend KRS 15.718 to require training for prosecutors related to victims' statutory rights, including but not limited to the use of victim impact statements at sentencing; amend KRS 21A.170 to require training for judges related to victims' statutory rights, including but not limited to the use of victim impact statements at sentencing; amend KRS 421.570 to require training for victim advocates related to victims' statutory rights, including but not limited to the use of victim impact statements and the submission of claims through the Kentucky Claims Commission; amend KRS 15A.075 to expand duties and responsibilities of the Criminal Justice Council to include tracking the implementation of this Act; amend KRS 196.031 to expand duties and responsibilities of the Justice and Public Safety Cabinet to collect and maintain data related to the implementation of this Act; create new sections of KRS Chapter 196 to create a fiscal incentive grant fund and a fiscal incentive grant program; provide a sunset provision for the fund and program; APPROPRIATION; EFFECTIVE in part January 1, 2019.

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 checked="" 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 \$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)

Non-DUI Traffic Offenses:

Sections 1-6 of the legislation focus on traffic offenses, reclassifying penalties for select non-DUI traffic and licensure offenses from misdemeanors to violations.

Under KRS 186.990, the felony threshold for registering a vehicle out of state to avoid taxation is raised from \$500 to \$2000 and a Class B misdemeanor level is established for offenses less than \$100. In FY2017 AOC records reflect four (4) misdemeanor convictions for this offense and zero (0) convictions for the Class D felony level.

Fraud and Theft:

Sections 7-33 of the bill raise the felony threshold level for fraud and theft offenses. This section establishes a Class B misdemeanor if the offense amount is below \$100 and redefines the Class A misdemeanor to amounts between \$100 and \$2000. The Class D felony threshold amount is moved to \$2000.

The threshold amounts are moved for the following statutes: KRS 194A.990, which changes the provisions of KRS 194A.505 False Statement to Receive Benefits; 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; KRS 304.47-020 Fraudulent Insurance Acts; KRS 341.990 False Statements to Increase or Reduce Benefits; KRS 365.241 Prohibit Commerce Counterfeit Goods & Services; KRS 434.650 Fraudulent Use of a Credit Card; and KRS 516.120 Unlawful Use of Slugs.

The following offenses also realign the Class D felony level to between \$2000 and \$10,000, with the amount over \$10,000 remaining at the Class C level: KRS 217.181 Theft of a Legend Drug; KRS 434.655 Fraudulent Use of a Credit Card After Reported Stolen; KRS 434.660 Fraud by Authorized Person/Business/Financial Institution; KRS 434.670 Failure to Furnish Goods; KRS 434.690 Receiving Goods by Fraud; 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 514.080 Theft by Extortion; KRS 514.090 Theft of Labor; KRS 514.110 Receiving Stolen Property (excludes firearm and anhydrous ammonia); KR 514.120 Obscuring the Identity of a Machine; and KRS 517.060 Defrauding Secured Creditor.

Fraud levels are adjusted for KRS 434.850, KRS 434.851, & KRS 434.853 Unlawful Access to a Computer. Thresholds are moved for KRS 514.030 Theft by Unlawful Taking (excluding firearm, anhydrous ammonia, and controlled substances). In addition, if two

or more separate offenses occur within 180 days, the offenses may be aggregated. This shall not apply if the criminal behavior is determined by the Court to be substance abuse related. In making the determination, the Court may consider a clinical assessment or convictions within the last two years.

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 3,707 convictions for Class D felony offenses included in this legislation in FY2017.

For Class D KRSs included in this legislation, the Department currently has 4,883 Class D offenders incarcerated on 6,243 fraud or theft offenses (some offenders will have multiple offenses). Additionally, 11,389 Class D felony offenders are under community supervision for 13,290 separate felony fraud or theft offenses. Of the inmates currently serving on fraud or theft convictions as identified in this bill, 772 offenders are serving on these offenses only.

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 \$2,000 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 this legislation had been law at the time of their convictions, and if it is assumed that they are incarcerated for an amount that would be affected by the threshold change, for the 772 offenders incarcerated for Class D felony offenses included in this legislation, the savings for the Department could be \$8,863,177.60 for one year of incarceration.

The Crime & Justice Institute indicates their research reveals that 52% of Kentucky Class D theft offenders would fall below a \$1,000 threshold and an estimated 73% involve amounts below a \$2,000 threshold.

Drug Possession:

Under Section 34, Possession of Controlled Substance 1st Degree 1st offense would be a Class A misdemeanor. This offense shall be probated if not placed on deferred prosecution. An exception shall be for convictions within the last five (5) years for a violent offense, sexual offense, or interpersonal/domestic violence, in which case the maximum term of imprisonment shall be one (1) year. For a 2nd offense, the Class A misdemeanor shall be subject to deferred prosecution and presumptive probation (unless not eligible, in which the maximum term of imprisonment shall be one (1) year). For a 3rd or subsequent offense, it shall be a Class D felony, with presumptive probation (unless not eligible) and a maximum term of imprisonment of three (3) years.

The Court may order a substance abuse assessment to be conducted by a community mental health center or other provider approved by the Office of Drug Control Policy, with a subsequent condition of probation to complete the recommended treatment.

AOC data reports 6,176 Circuit Court convictions in FY2017 for Possession Controlled Substance 1st Degree. There were 110 offenders specifically convicted of Possession of Controlled Substance 3rd or Greater Offense. The Crime & Justice Institute indicates from a review of Kentucky Class D felony drug possession cases that an estimated 76% had one or no prior possession convictions.

Currently, the Department has 4,662 inmates and 14,766 offenders on supervision who have received convictions for Possession of Controlled Substance 1st Degree. Of the 4,662 inmates currently serving on a Class D felony Possession of Controlled Substance conviction, 912 offenders are serving on Possession of Controlled Substance 1st Degree only.

If HB 396 had been law at the time of convictions, these offenders would now be county misdemeanor convictions subject to county costs. The cost savings to the state would be the removal of the state inmate per diem of \$11,480.80 annually per inmate. These savings could be estimated at a minimum of \$10,470,489.60 for each year of incarceration.

Section 35 moves Possession of Controlled Substance 2nd Degree from a Class A misdemeanor to a Class B misdemeanor. Section 36 outlines deferred prosecution and requires the prosecutor, if denying deferred prosecution, to state why a criminal conviction is necessary.

Burglary:

Section 37 modifies Burglary 3rd Degree by excluding all vehicles other than a recreational vehicle from the definition of a building. Burglary 3rd Degree is a Class D felony. Currently the Department of Corrections has twenty-eight (28) offenders incarcerated or on supervision for Burglary 3rd Degree.

Community Supervision:

Section 38 adds definitions for probation compliance credit and modifies parole compliance credit from a paroled individual to a supervised individual. Definitions for technical violation and absconding are added. Absconding is defined as the willful avoidance of supervision for a period of at least thirty (30) days and requiring the Probation & Parole Officer to make at least four (4) documented attempts to locate the offender. Under Section 39 definitions for pretrial risk assessment, supervised individual, and treatment (medication assisted treatment added) are modified.

Administrative Parole: Under Sections 40-42 administrative parole is established. Class C and D non-violent, non-sex offenders are eligible and shall be administratively released on the offender's parole eligibility date without a parole hearing, unless a victim requests a hearing or the offender has had a serious category III or IV disciplinary violation within a year of the parole eligibility date.

The proposed legislation for certain non-violent, non-sexual offenders to be released on parole automatically has the potential to reduce the state inmate population and reduce administrative staff functions. Based on a two year average, 9,319 inmates who met the criteria for administrative parole were considered for parole by the Parole Board. Of those, an average of 4,002 were not granted parole. These offenders served an average of 297 additional days. At \$31.34 per day, administrative release would save \$37,250,535.96 in incarceration costs.

Administrative parole would impact the Parole Board by reducing the large volume of parole file reviews conducted by the Parole Board each month. Offender Information Services will need four (4) additional staff to cover not only the increased volume but to ensure inmates are released to supervision on the accurate date. The cost of one (1) offender information specialist is \$52,479.

Graduated Sanctions: Section 43-44 provides instructions to the Court on responding to violations. Graduated sanctions may be imposed for new misdemeanor or felony convictions, but shall be imposed for technical violations and absconding. This section shall take effect January 1, 2019.

Section 45-46 extends home incarceration from nine (9) to twelve (12) months and requires a risk and needs assessment and case plan. Graduated sanctions may be imposed for technical violations and shall take effect January 1, 2019. Section 47 requires the Department to adopt a system of graduated sanctions for both technical violations and absconding by January 1, 2019. Section 48 imposes graduated sanctions for a first absconding violation, unless there is an arrest for new criminal activity or the offender is a violent or sex offender. For second or subsequent absconsions, graduated sanctions may be used. To be implemented by January 1, 2019.

Home Incarceration Program: The Department released an average of 1,278 offenders to home incarceration over the past three (3) years. Home incarceration costs \$26.77 less than incarceration, taking into consideration the daily program cost of \$4.57 for each offender. For the three additional months on home incarceration, the state will save an average of \$3,079,085.40 in incarceration costs.

Revocations: Section 50 requires a preliminary revocation hearing for technical violations to occur with fifteen (15) days of detainment. The period of detainment shall not exceed the period of incarceration for the technical violation. A show cause hearing is required if beyond the timeframe or the offender shall be released.

Section 51 waives the supervision fee for offenders on administrative supervision. Fees shall be suspended for the first six (6) months of community supervision. Willful non-payment is clarified as a technical violation.

The Department of Corrections currently has 2,250 offenders on administrative supervision who under the bill would not be subject to fees. Most of these offenders are subject to restitution as a priority, so as a current practice, supervision fees are often not collected from administrative offenders. However, if applied, fees for administrative offenders could total \$52,827 per month which would not be collected under this legislation.

On average, approximately 1,019 offenders are released each month to some sort of post incarceration supervision. On average, the suspended fees outlined in the legislation would total \$213,990 for these offenders. For a fiscal year, this would be an average reduction of \$2,567,880 in fees. Additionally, 5-10% of offenders are released directly to treatment or halfway house programs, totaling an average of \$128,394-\$256,788 in fees for new offenders that are exempted due to program participation.

Revocation Caps: Section 52-53 speaks to parole revocation processes. The bill allows for a summons rather than a warrant to be issued by the Parole Board for technical violations of parole and requires a final revocation hearing to be held within 30 days. The period of detainment shall not exceed the period of incarceration for the technical violation. A show cause hearing is required if beyond the timeframe or the offender shall be released. For technical violations, the Parole Board may continue supervision or revoke and impose a term of imprisonment for thirty (30) days for a first revocation, a term of ninety (90) days for the second revocation, a hundred-eighty (180) days for a third revocation, and for a fourth or subsequent revocation, two (2) years.

For a selected year, an average of 961 parole, home incarceration, and mandatory reentry supervision offenders incarcerated on a revocation served, on average, 287 days prior to re-release back out to supervision. The cost difference between this time frame and the first revocation cap of thirty (30) days is \$7,730,219.93.

To look at all violators, for a selected year, 4,384 offenders were returned by way of parole violation (note: does not include offenders returned with new sentences). Included were offenders who were released to parole or shock probation (947), those who were discharged by expiration of sentence (801), and those who had not yet been released from custody (382). Not included were offenders released to or discharged from a new supervision type which would not be subject to revocation caps (2,213) or those who died or who escaped (41). Overall, these offenders served, on average, 290 days prior to release. If subject to a thirty (30) day revocation cap, these offenders would save approximately \$17,375,164.63 in incarceration costs.

If violators are released back to parole via a revocation cap prior to being released to another type of supervision, savings would be substantially higher. Note calculations above do not account for different revocation cap lengths which would be imposed based on the number of parole revocations previously incurred. Nor does it account for violations of absconding, which may not be subject to revocation caps.

Section 54 reduces the period of felony probation from five (5) to four (4) years. Currently the average length of supervision for probationers is 4.5 years. Section 55 establishes probation revocation procedures. It requires the Court to have a hearing to modify the conditions of probation. The final revocation hearing shall be held within thirty (30) days with the same stipulations as listed above. The same revocation caps are established. It should be noted there is no waiver for victim input, sex or violent offenders. Sections 50-55 take effect January 1, 2019.

Compliance Credits: Section 57 establishes probation sentence credits in the same fashion that parole offenders currently receive time removed from their sentence for completion education, drug treatment, or evidence based programming. Additionally, probationers shall receive compliance credit in the same fashion parolees currently do. After one (1) full calendar month on supervision, the offender shall receive thirty (30) days credit for each full calendar month he or she is compliant. Section 58 removes compliance credit timeframes currently in statute for parole offenders to match the same timeframe for probation offenders.

Calculations project that an average of 6,229 parole offenders would qualify for supervision compliance credits under the legislation. On average, earned compliance credit could reduce time on parole supervision by an additional 354 days. At a cost to supervise of \$3.62 per day, the cost avoidance to the state is estimated at \$7,982,338.92.

Calculations project that an average of 33,839 probation offenders would qualify for supervision compliance credits under the legislation. On average, earned compliance credit could reduce time on parole supervision by an additional 331 days. At a cost to supervise of \$3.62 per day, the cost avoidance to the state is estimated at \$40,546,566.58.

Offender Information Services will need one (1) additional staff member to process the administrative function of ensuring credits are awarded accurately as well as issuing final discharge certificates at sentence completion. The cost of one (1) offender information specialist is \$52,479.

Section 59 provides sentence credits for county jail misdemeanor inmates. Section 60 revises eligibility for presumptive administrative supervision from twelve (12) to six (6) months and requires no violations within the last six (6) months, rather than twelve (12).

Geriatric and Medical Parole: Section 61 establishes geriatric parole for offenders age sixty-five (65) and older, who have served at least 15% of the sentence, and is not a violent or sex offender. Twenty-seven (27) offenders currently meet the requirements. The average sentence length for these offenders is 14.5 years. Six (6) of these offenders are already subject to a 15% parole eligibility requirement. The remaining twenty-one (21) offenders currently have a 20% parole eligibility. The average difference 20% and 15% parole eligibility is 319 days. Assuming the Parole Board paroled these offenders at 15% parole eligibility under geriatric parole

(and would have paroled them at 20%), the cost savings would be between \$209,946.66 - \$469,733.88 (depending if the offenders were housed at a prison facility at a cost of \$70.12 per day or a jail at a cost of \$31.34).

Section 62 expands medical parole. Currently the statute limits medical parole to terminal conditions. The legislation would expand this to include chronic medical conditions. Under KRS 439.3405, over the last year, eleven (11) offenders qualified for medical parole. Five (5) offenders were paroled, one (1) passed away prior to release, and six (6) offenders were unable to obtain placement in the community. Placement is a challenge for sex offenders as well as offenders requiring long term medical care.

Preventative Detention Model:

Section 63 establishes installment payment plans for defendants. Sections 64-74 of the bill are concerned with monetary bond and pretrial services, establishing a preventative detention model that provides limited circumstances where monetary bond may be imposed. Sections 64 to 73 of the act would take effect January 1, 2019.

Miscellaneous:

Sections 75-77 require training for prosecutors, judges, and victim advocates related to victims rights. Section 78 calls on the Criminal Justice Council to oversee implementation of the legislation, review performance measures and outcomes, and prepare an annual report. Section 79 adds statistical information required to be reported annually. Sections 80-82 create a cost sharing model with the counties and creates a fiscal incentive grant fund, which would be operational until July 1, 2022.

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)

Non-DUI Traffic Offenses:

Counties could see reduced incarcerations through the reduction from certain misdemeanor traffic offenses to violations. Overall, the number of offenders or days of incarceration under these offenses is not expected to be significant.

Fraud and Theft:

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 for the time Class A misdemeanor offenders would serve in the local jail.

AOC data reports 1,802 Circuit Court and 24,547 Class A misdemeanor convictions in FY2017 for offenses under statutes specified in this legislation. In addition, under the proposed legislation, a portion of the current Class D felony offenses would become misdemeanor level offenses under county jurisdiction.

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 \$2,000 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.

Drug Possession:

Under the proposed legislation a good portions of current Class D felony convictions would become misdemeanor offenders under county jurisdiction. This bill would reduce the number of Class D felons housed in county jails, which would result in a cost savings for the Department. However, the loss of per diem from state felony inmates would be a loss of revenue for the jails.

At the same time, moving Possession of Controlled Substance from a felony to a misdemeanor would significantly impact local corrections as the county would absorb costs that previously would have fallen under state jurisdiction.

AOC data reports 1,180 Circuit Court and 5,587 District Court convictions in FY2017 for misdemeanor Possession of Controlled Substance. In addition, under the proposed legislation, a portion of the current Class D felony Possession of Controlled Substance offenses would become misdemeanor level offenses under county jurisdiction.

Jail Sentence Credits:

Section 59 would amend KRS 441.127 to provide sentence credits for county misdemeanor inmates. It moves educational credit from thirty (30) to ninety (90) days, provides a service credit of one (1) day for each day in treatment, seven (7) days of meritorious service, and moves good behavior time from five (5) to ten (10) days a month.

Sentencing credits for misdemeanants would significantly decrease sentence lengths and lower costs associated with shorter periods of incarceration. However, each of the eighty (80) jails across the state will be required to establish a system to award and maintain sentencing credits, and create an adjustment process in the event credit is removed from an inmate due to a disciplinary action.

Preventative Detention Model:

With the reform of monetary bond for low and moderate risk pretrial offenders, there would be fewer pre-conviction detainees. This would provide some relief in overcrowding and the fiscal costs associated with these offenders. Fewer pre-conviction inmates held in custody on bond would open beds available to house state inmates, which could provide a revenue source for jails and help alleviate the need for additional bed space for state inmates.

Fiscal Incentive Grant Fund:

Sections 80-82 create a cost sharing model with the counties and establishes a fiscal incentive grant fund, which would be operational until July 1, 2022. The cost aversion from state beds will assist counties in absorbing the additional misdemeanor offenders established under this bill. Additionally the incentive grant fund may provide opportunities for counties to fund programing and treatment at the county level.

Summary:

Overall, there is no way to predict judicial sentencing if Possession of a Controlled Substance, Fraud, and Theft charges would become misdemeanor offenses rather than a felony. A shift from felony to misdemeanor level offenses would have a significant fiscal impact for county jails.

Jails would acquire more misdemeanor offenders under this legislation, losing the state per diem for those amounts that would have previously qualified as a state felony conviction. However, as the counties would incur the cost of incarcerating these offenders, there would be fewer pre-conviction offenders incarcerated under the reform of monetary bond which may provide some level of an offset.

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:



Commissioner, Kentucky Department of Corrections

3/19/2018

Date