

CORRECTIONS IMPACT STATEMENT

SESSION: 18RS BILL #: HB 71 SCS 1 BR #: 333 DOC ID#: HB007140.100 - 333 - XXXX

BILL SPONSOR(S): Rep. D. St. Onge, J. Blanton, M. Cantrell, J. Fischer, J. Jenkins, C. Morgan, S. Santoro, J. Sims Jr

AMENDMENT SPONSOR(S):

SUBJECT: AN ACT relating to distribution of sexually explicit images without the consent of the person depicted.

SUMMARY OF LEGISLATION: Amend KRS 531.010 to define "private erotic matter"; create a new section of KRS Chapter 531 to prohibit the distribution of sexually explicit images without consent; make such distribution a Class A misdemeanor for the first offense and a Class D felony for the second or subsequent offense, unless it is done for profit, in which case it is a Class D felony for the first offense and a Class C felony for the second or subsequent offense.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|--|--|
| <input checked="" 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 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)

HB 71 creates a new crime prohibiting the distribution of sexually explicit images without consent. The offense would be a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense, unless it is for profit, which would raise the penalty to a Class D felony for the first offense and a Class C felony for each subsequent offense.

It is not possible to estimate the number of additional offenders the new crime would create. Though not a direct comparison, the Department of Corrections currently has 67 inmates and 81 community supervision offenders for the offense of Distribution of Matter Portraying Sexual Performance by Minor (note that the current bill is not restricted to sexually explicit material involving a minor).

Though the bill would create additional misdemeanor and felony offenses, the number would not be expected to have a significant impact on the Department.

House Committee Substitute:

The House Committee Substitute removes the requirement of intention from the crime of distribution of sexually explicit images. It also adds a section for civil action for failing to remove a sexually explicit image upon request.

There is no impact to the Department of Corrections from the House Committee Substitute.

Senate Committee Substitute:

The Senate Committee Substitute adds as an element to the crime of distribution of sexually explicit images without consent, the intentional distribution of materials with the intent to profit, or to harm, harass, intimidate, threaten, or coerce the individual depicted.

The addition of this wording requires that intent would have to be shown as an element of the offense, removing the potential for individuals who distributed matter without intent to be charged with this crime. As a result, there may fewer individuals convicted of distribution of sexually explicit images without consent. The number of individuals who may be convicted of this crime is not known.

Overall, there is not a significant impact to the Department of Corrections under the Senate Committee Substitute.

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|---|--|
| 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)

SB 71 creates a new misdemeanor which will impact the county jails through creating additional county prisoners, which utilizes a county jail bed for a non-revenue generating county offender. While the Class D offenses generated under this bill would not be expected to be significant, the legislation will impact county jails by increasing the state inmate population, which is a source of revenue, but will also increase inmates in county facilities that are currently at capacity.

Based on the probable number of offenders sentenced for this offense, however, the overall impact to the local jails is expected to be minimal.

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:



Commissioner, Kentucky Department of Corrections

3/19/2018

Date