

CORRECTIONS IMPACT STATEMENT

SESSION: 18RS

BILL #: HB 83 Prefiled

BR #: 411

DOC ID#: BR041100.100 - 411 - XXXX

BILL SPONSOR(S): Rep. Attica Scott **AMENDMENT SPONSOR(S):**

SUBJECT: AN ACT relating to crimes and punishments.

SUMMARY OF LEGISLATION: Amend KRS 532.090 to establish gross misdemeanors as a new category of misdemeanor offense and set penalty range; amend various sections of KRS Chapters 500, 530, 532, and 533 to conform; amend KRS 532.100 to ensure that custody of gross misdemeanants parallels that of Class D felons; repeal KRS 431.060; amend various sections to conform.

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 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 checked="" type="checkbox"/> Otherwise impacts incarceration (Explain) <u>Creates a new gross misdemeanor offense level</u> | |

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)

The proposed legislation establishes a gross misdemeanor offense category, amending the definition of misdemeanor offense from a maximum of a twelve (12) month sentence to allow up to a twenty-four (24) month sentence. Section 6 of the bill establishes that gross misdemeanors would be housed in county jails, but would be considered state prisoners and incarcerated at the state's cost rather than subject to county jurisdiction. Gross misdemeanors would be eligible for home incarceration.

Gross misdemeanants would vary from other misdemeanor cases in that under HB 83, the Parole Board may release gross misdemeanors to parole. Gross misdemeanants would be eligible for parole after serving 15% of their sentence. If the Parole Board does not parole these offenders, the maximum deferment shall be six (6) months.

Section 14 references changing KRS 218A.1415 Possession of a Controlled Substance 1st Degree to a gross misdemeanor and removes the three (3) year maximum term of incarceration. Also moved to gross misdemeanor status would be KRS 194A.505 False Statement or Misrepresentation to Receive Benefits Over \$100. Under this legislation several Fraud statutes (KRS 194A.505, 434.650, 434.655, 434.660, 434.670, 434.690, & 517.060) are amended to create a gross misdemeanor offense for amounts of \$500 < \$5,000, while \$5,000 < \$10,000 would remain a Class D felony. Several Theft statutes (KRS 514.030, 514.040, 514.050, 514.060, 514.070, 514.080, 514.090, 514.110, & 514.120) are also amended to a gross misdemeanor amount for \$500 < \$5,000, while \$5,000 < \$10,000 remains a Class D felony. KRS 516.030 & KRS 516.060 creates a gross misdemeanor for Forgery 2nd Degree and Criminal Possession of a Forged Instrument if the value is less than \$500, while \$500 or more remains a Class D Felony. KRS 520.050 Promoting Contraband and KRS 524.100 Tampering with Physical Evidence are moved from a Class D felony to a gross misdemeanor. KRS 530.050 modifies Flagrant Non-Support to a gross misdemeanor if the arrearage amount is under \$5,000. Over \$5,000 would remain a Class D felony.

This bill affects incarceration costs due to the requirement that the state pay for any offender serving as a gross misdemeanor. Accordingly, the reduction in the maximum sentence from 1-5 years as a Class D felony to 12-24 months as a gross misdemeanor would reduce costs associated with shorter incarceration periods. Without statutory authority otherwise, it is assumed that gross misdemeanors will receive sentence credits under KRS 441.127.

Data from AOC reports 16,743 offenders convicted in Circuit Court in FY17 for offenses included in this legislation, including Fraud, Theft, Possession of Controlled Substances, and Flagrant Non-Support.

It should be noted that the Department is not able to distinguish arrearage amounts for current Flagrant Non-Support offenders. It is not known how many Flagrant Non-Support offenders would have an arrearage under \$5,000, which would be required in order to meet the qualifications for a Gross Misdemeanor.

Currently, the Department has 11,561 offenders incarcerated on offenses that would be applicable as gross misdemeanors under this legislation. Note: offenders may also be serving on other felony offenses. It is to note that the average sentence length for Class D offenders is six (6) years (due to offenders having multiple convictions).

Of this population, 5,671 offenders have a Class D felony as the highest felony they are serving on. Note: offenders may be serving on other Class D felonies which are not identified as gross misdemeanors under this legislation. Additionally, 5,890 of the offenders are serving on offenses identified in this legislation as well as a Life, Class A, Class B, or Class C felony offense.

To estimate the fiscal impact of this bill, if HB 83 was in effect at the time of the conviction of the 11,561 offenders currently incarcerated on these charges, 5,890 offenders would remain in state custody even if they received a conviction for a gross misdemeanor because they would also be serving on higher level felony offenses. However, 5,671 offenders may be eligible for county custody as a gross misdemeanor if they are not also serving on another felony conviction not included in this legislation. It is to note that under this legislation, gross misdemeanants in county custody would receive the state inmate per diem.

Presumptive Probation: The Bill requires a gross misdemeanor be granted probation under KRS 532.040, unless statutorily ineligible, decreasing incarceration costs and increasing the supervised population. The FY2017 the daily cost to supervise an offender is \$3.62.

Kentucky Offender Management System Changes (KOMS) Enhancements: The creation of a new category of offenses, gross misdemeanors, which are designated as state inmates, assumes that the Department is responsible for sentence calculations, releases, billing, and all other management functions associated with state inmates. The KOMS system would require a significant number of enhancements in order to support the management of these offenders. The estimated cost of enhancements is \$250,000.

Offender Information Services: It is estimated that approximately eight (8) additional administrative staff would be needed to process presumptive parole cases and apply sentencing credits. The cost of one (1) offender information specialist is \$52,808 for salary and benefits.

Parole Board: The proposed legislation requires the Parole Board to review gross misdemeanants for parole. These gross misdemeanants are offenders the Board would have been reviewing for parole as Class D felons, however, under a new supervision type, new procedures would be required to maintain records.

Overall, this proposed legislation has the potential to reduce the state inmate population. However, as the state would continue to pay a daily per diem, the fiscal impact may not be as significant. There would be cost savings for shorter sentences, however.

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)

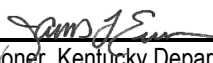
The proposal would shift beds from state class D beds to county misdemeanor beds, to be treated like state inmates receiving a per diem. The mandatory probation component may impact to some level the number of offenders incarcerated as gross misdemeanors, which may reduce revenue previously received as a Class D felony, but may also reduce jail overcrowding.

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

1/10/2018

Date