

CORRECTIONS IMPACT STATEMENT

SESSION: 18RS

BILL #: SB 109 GA

BR #: 985

DOC ID#: XXXX

BILL SPONSOR(S): Sen. J. Adams, D. Harper Angel, A. Kerr, W. Westerfield **AMENDMENT SPONSOR(S):**

SUBJECT: AN ACT relating to crimes and punishments.

SUMMARY OF LEGISLATION: Amend KRS 510.010 to include penetration by body parts in definitions of "sexual intercourse" and "deviate sexual intercourse" for purposes of describing the crimes of rape and sodomy.

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)

SB 109 amends definitions of "sexual intercourse" and "deviate sexual intercourse" established in KRS 510.010 to include penetration by any body part.

Currently, the definitions of "sexual intercourse" and "deviate sexual intercourse" in KRS 510.010, which apply to Rape, Sodomy and Sexual Misconduct offenses in KRS Chapter 510 only include penetration of the sex organs, mouth, or anus of a victim by the sex organs of an offender or by a foreign object manipulated by the offender. Penetration of the sex organs, mouth, or anus of a victim by "other body parts" of the offender are currently considered "sexual contact" as defined in KRS 510.010, which supports charges of Sexual Abuse, but not Rape or Sodomy. Under the proposed legislation, the definitions of "sexual intercourse" and "deviate sexual intercourse" would be amended to include penetration by "any body part", resulting in what would currently be various degrees of Sexual Abuse to be charged as Rape or Sodomy offenses.

Sexual Abuse 1st Degree is a Class D felony, unless the victim is under the age of twelve, in which case it is a Class C felony. Sexual Abuse 2nd Degree is a Class A misdemeanor.

AOC reports 552 convictions for Sexual Abuse in FY2017, with 428 at a Class D felony level and 124 at the misdemeanor level.

Under this legislation, acts which previously may have been prosecuted as a lower offense may be charged at a higher level. For example, Class D Sexual Assault 1st Degree may be prosecuted as Rape 1st Degree, a Class B felony.

Rape 1st & Sodomy 1st Degree are Class B felonies unless the victim is under the age of twelve or receives a serious physical injury, in which it is a Class A felony; Rape 2nd & Sodomy 2nd Degree are Class C felonies; Rape 3rd & Sodomy 3rd Degree are Class D felonies; and Sodomy 4th Degree is a Class A misdemeanor.

The impact of this legislation is not known. It is anticipated that several offenses which previously would have been Sexual Abuse convictions may well be prosecuted under this legislation as Rape or Sodomy offenses at a higher felony level.

The fiscal impact of a higher offense level would include increased sentence lengths and a higher cost to incarcerate. Class A to Class C sex offenses would be subject to housing at a prison facility at a cost of \$70.12 per day. Inmates serving on Rape or Sodomy 3rd Degree serve Class D sentences at either a jail or prison facility, depending on the length of their sentence, as outlined in KRS 532.100. The cost to incarcerate at a jail facility is \$31.45 per day. Additionally, as a more serious offense, the offender may be less likely to be granted paroled, resulting in longer incarceration periods.

It is not known how many of the 428 felony Sexual Abuse convictions from FY2017 would, if SB 109 were in effect at the time of conviction, possess elements that would elevate the offense from Class D Sexual Abuse to a higher felony Rape or Sodomy charge. If 10% were to qualify for a Rape 1st or Sodomy 1st offense and receive a sentence of incarceration, at an annual cost to incarcerate of \$25,594.44 (\$14,113.64 more expensive than a Class D felony), the increased incarceration cost would be \$604,063.79 per year.

Percentage	Increased Cost to Incarcerate per Year
10%	\$604,063.79
15%	\$906,095.69
20%	\$1,208,127.58

A Class A Felony sentence is 20 years or more. 1 Class A Felon costs KY a minimum of \$511,889	10 Class A Felons cost KY a minimum of \$5.1M 100 Class A Felons cost KY a minimum of \$51.2M
A Class B Felony sentence is 10 to 20 years. 1 Class B Felon costs KY \$255,944 to \$511,889	10 Class B Felons cost KY \$2.6M to \$5.1M 100 Class B Felons cost KY \$25.6M to \$51.2M
A Class C Felony sentence is 5 to 10 years. 1 Class C Felon costs KY \$127,972 to \$255,944	10 Class C Felons cost KY \$1.3M to \$2.6M 100 Class C Felons cost KY \$12.8M to \$25.6M
A Class D Felony sentence is 1 to 5 years. 1 Class D Felon costs KY \$11,481 to \$57,404	10 Class D Felons cost KY \$114,808 to \$574,040 100 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)

AOC records indicate 124 convictions for Sexual Abuse 2nd Degree in FY 2017.

Under this legislation, some offenses which would be currently prosecuted as Sexual Abuse 2nd Degree, a Class A misdemeanor, could be prosecuted under this legislation as felony Rape or Sodomy offense. It is not possible to estimate how many offenses that under current statute would classify as a misdemeanor offense that would, under this legislation, be charged as a felony offense.

There would be some savings to the county as a certain number of offenses which would be at a misdemeanor level under current statute would become felony convictions under this legislation and subject to incarceration at the cost of the state.

A limited number of Class D sex offenders are eligible for service of a state prison sentence at the local jail. Any increase to state offenders serving a sentence at a county jail provides jail revenue while also negatively impacting jail beds.

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:  **2/1/2018**
 Commissioner, Kentucky Department of Corrections Date