

CORRECTIONS IMPACT STATEMENT

SESSION: 18RS BILL #: SB 133 GA , & BR #: 958 DOC ID#: SB013340.100 - 958 - XXXX

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

SUBJECT: AN ACT relating to crimes and punishments.

SUMMARY OF LEGISLATION: Amend KRS 441.055 to require the Department of Corrections to promulgate administrative regulations for the jails that require adequate nutrition for pregnant inmates, adequate feminine hygiene products, and an appropriate number of undergarments for female inmates; create a new section of KRS Chapter 196 to require that pregnant inmates be restrained solely with handcuffs in front of the body unless further restraint is required to protect herself or others; ban the shackling of female inmates; amend KRS 197.020 to require the Department of Corrections to create a classification process for jails that may house female state inmates; amend KRS 532.100 to require a jail be certified before housing any female state inmates and provide a delayed effective date of January 1, 2019; amend KRS 403.725 to allow orders of protection to be filed at a domestic violence shelter or a rape crisis shelter; amend KRS 456.030 to allow interpersonal protective orders to be filed at a domestic violence shelter or a rape crisis shelter; create a new section of KRS Chapter 15 to require the reporting of allegations of sexual assaults by a jailer or any employee, contractor, vendor, or volunteer of a supervising entity to the Attorney General's Office for investigation; create a new section of KRS Chapter 439 to allow an eligible pregnant woman to be released from custody; amend KRS 431.517 to prohibit an offender charged with an offense under KRS Chapter 507 from pretrial home incarceration unless the judge makes a finding that the offender does not pose a threat to society; amend KRS 434.650, 434.655, 434.660, 434.670, 434.690, 514.030, 514.040, 514.050, 514.060, 514.070, 514.080, 514.090, 514.110, 514.120, and 517.060 to raise the threshold level for a Class D felony for various fraud and theft crimes from \$500 to \$1,000 if the person has not been convicted twice of the same offense in the last two years; amend KRS 439.3401 to make criminal attempt to commit murder of a peace officer or a firefighter an offense for which at least 85 percent of the sentence must be served before probation or parole; amend KRS 431.066 to eliminate monetary bond except for high-risk defendants who have not been charged with a violent or sexual offense; provide that when a court is making a bail determination for a defendant, it is based on whether a defendant poses a low, moderate, or high risk; create a new section of KRS Chapter 431 to provide that when a defendant poses a low or moderate risk and has been charged with a violent or sexual offense or poses a high risk, the court shall determine whether any nonfinancial conditions shall reasonably ensure the appearance of the defendant or the safety of the public; amend various statutes to conform; repeal KRS 431.021 and amend KRS 431.510 to conform; provide a delayed effective date of January 1, 2019 for the monetary bond provisions; provide short title.

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 checked="" type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input checked="" type="checkbox"/> Otherwise impacts incarceration (Explain) <u>Provides requirements for female inmates</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)

Female Inmates:

Section 1 of SB 133 requires the Department of Corrections to promulgate jail standards applying requirements for adequate nutrition for pregnant prisoners, as well as adequate hygiene products and undergarments for female inmates. Section 2 requires pregnant female inmates to be restrained solely by handcuffs in front of the body unless further restraint is required. Female inmates shall not be shackled or restrained while giving birth. Section 3 requires the Department of Corrections to promulgate administrative regulation to create a certification process for county jails that may house female state inmates. A physical barrier between male and female inmates is required. Section 4 requires that jails housing state female inmates be certified. Section 5 requires this to take affect January 1, 2019.

Emergency Protection Orders and Reporting Requirements:

Sections 6-7 refers to petitions for protection orders for victims of domestic and interpersonal violence. The legislation would allow domestic violence centers or rape crisis centers to file for emergency protection orders. Section 8 requires reporting of allegations (including PREA, sexual misconduct, etc.) against any incarcerated offender to be reported to the Attorney General for investigation.

Pregnant Inmates:

Section 9 creates pregnancy release conditions and requires pregnant offenders charged or convicted under KRS 218A (drug offenses) to be released to custody on her own recognizance. Conditions of release shall include inpatient or intensive outpatient substance abuse treatment, no new criminal charges, court appearances, and no contact with victims or witnesses. If the pregnancy release conditions are violated, the offender shall be returned to custody.

The Department of Corrections currently has four (4) pregnant females housed at the Kentucky Correctional Institution for Women. Department policy currently states that restraints used on pregnant offenders shall not put the offender or the fetus at risk and that restraints shall only be used during active labor and the delivery of a child in extreme instances necessary to protect the mother or child from harm.

Pre-Trial Home Incarceration:

Section 10 prohibits offenders charged with Murder, Manslaughter, or Reckless Homicide to be released on pre-trial home incarceration under KRS 431.517 unless the Court finds the defendant does not pose a threat to society.

Fraud and Theft:

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.

Section 11 moves the Misdemeanor threshold level of Fraudulent Use of a Credit Card from \$500 to \$1,000, unless the offender has been convicted two (2) or more times in the previous (2) years, in which case the value remains less than \$500. For the Class D felony, the amount moves from \$500 to \$10,000 to more than \$1,000 and less than \$10,000, unless the offender has been convicted two (2) or more times in the previous (2) years, in which case the value remains at \$500 or more. The Class C felony remains at \$10,000 or more. Sections 12-15 outline the same for Fraudulent Use of Credit Card after the Card has been Reported Lost or Stolen; Fraudulent Reporting by Authorized Person, Business, or Financial Institution; Fraudulent use by Authorized Person, Business, or Financial Institution; Failure to Furnish Goods; and Receiving Goods by Fraud.

Section 16 does the same to Class D Theft by Unlawful Taking (excluding Theft of Firearm, Theft of Anhydrous Ammonia, and Theft of Controlled Substance), moving the theft threshold between misdemeanor to felony from \$500 to \$1,000. Class C & Class B felony levels do not change. Sections 17-22 provide the same for Theft by Deception; Theft of Property; Theft of Services; Theft by Failure to Make Required Disposition of Property; Theft by Extortion; and Theft of Labor. Section 23 moves the theft threshold for Receiving Stolen Property (excluding Receiving Stolen Property Firearm and Receiving Stolen Property Anhydrous Ammonia). Higher felony levels do not change. Sections 24-25 do the same for Obscuring the Identify of a Machine and Defrauding a Secured Creditor.

AOC data reflects 3,448 convictions for Class D felony offenses included in this legislation in FY2017 (including inchoate offenses).

For Class D KRSs included in this legislation, the Department currently has 4,790 Class D offenders incarcerated with 12,984 Class D felony offenders under community supervision. Note: offenders may be convicted of multiple offenses and may be incarcerated or on supervision for crimes not included in this legislation.

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 \$1,000 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 SB 133 had been law at the time of their convictions, of the 4,790 offenders incarcerated for Class D felony offenses included in this legislation, if it is assumed that 10% are incarcerated for an amount that would be affected by the threshold change, based on the annual jail incarceration cost of \$11,480.80, the savings for the Department could be \$5,499,303.20 for each year of incarceration. The below calculations represent estimated savings if additional offenders have offense amounts that would be affected by the threshold change:

Estimated Number of Offenders Impacted		Annual Cost to Incarcerate	TOTAL
10%	479	\$ 11,480.80	\$ 5,499,303.20
25%	1198	\$ 11,480.80	\$ 13,748,258.00

50%	2395	\$	11,480.80	\$	27,496,516.00
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Attempted Murder:

Section 26 of the proposed legislation would elevate Criminal Attempt to Commit Murder of a Peace Officer or Firefighter under KRS 506.010 to the violent offender statute, regardless of whether an injury occurs. This would require a minimum service requirement of 85% of the sentence imposed.

In CY2017 there were twelve (12) convictions for attempted murder of a police officer, according to AOC data. The Department has no data to calculate the number of offenders who may be convicted of criminal attempt to commit murder of a firefighter.

The Department currently has six (6) offenders serving a sentence for criminal attempt to murder a police officer who are eligible for a parole hearing after serving 20% of their sentence.

If this legislation had been the law at the time of conviction, these offenders would be required to serve 85% of their sentence. While not every offender would be paroled by the Parole Board at 20% of their sentence, there is no way to predict when the Parole Board would parole each offender. The cost difference for the six (6) offenders currently serving on Criminal Attempt to Murder - Police Officer between serving 20% of their sentence as opposed to 85% of their sentence is calculated as follows: 3,559 days x 6 offenders x \$70.12/day = \$1,497,342.48.

Monetary Bond:

Sections 27-38 of the bill are concerned with monetary bond and pretrial services, eliminating monetary bond except for high risk offenders.

Senate Committee Substitute:

The Committee Substitute expands prohibitions on restraints beyond giving birth to language specifying a prohibition on restraints during labor, transport to a medical facility or birthing center for delivery, or during postpartum recovery. There is an exception for extraordinary circumstances that is defined as 1) a serious threat of harm to self or others or 2) a risk of escape.

Section 8 that contained PREA (Prison Rape Elimination Act) and sexual misconduct reporting requirements is removed from the legislation.

Under Pregnancy Release Conditions, the option for outpatient substance abuse treatment is removed.

Sections 26-30 of the Committee Substitute modify the legislation relating to pretrial release. The no monetary bond concept is removed with additional provisions for administrative release outlined.

Section 31 adds sentence credits for misdemeanor offenders housed in county jails. Offenders obtaining a GED or high school diploma would receive ninety (90) days rather than thirty (30) days sentence credit. For each day an inmate participates in a drug treatment program or evidence based program approved by the Department, the offender shall earn one (1) day off their sentence. The jailer may award up to seven (7) days exceptional meritorious service good time each month and good behavior credit is increased from five (5) to ten (10) days each month.

Senate Floor Amendments:

Senate Floor Amendment #2 deletes the pretrial release preventative detention model previously contained in the legislation.

Senate Floor Amendment #3 deletes several sections of the bill specific to fraud and theft offenses, thereby removing the proposal to modify the theft threshold for these offenses.

Senate Floor Amendment #4 requires an offender released under pregnancy release to maintain a current address with the court. Additionally, the amendment removes pregnancy release for pregnant females who are housed in a jail that provides treatment for substance use disorders or in a jail that transports prisoners for treatment.

With these changes, the overall impact of this bill to the Department is reduced. However, the bill remains a significant impact for Corrections in the areas of regulations for female inmates, restraints for inmates in labor, pregnancy release, and Criminal Attempt to Murder - Police or Firefighter.

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)

Female Inmates:

The provisions of this bill for housing female inmates will impact local jails. Depending on amounts set by regulation, there may be an initial supply cost for feminine hygiene products for jails, though the amount is likely to be negligible. Required provisions under Section 1 and Section 3 are currently included in the Kentucky Jail Standards.

Regulations currently require and audit for nutritionally adequate diets of at least 2,400 calories per day with additional medical diets as needed. Jail standards currently require that offenders be issued or permitted to obtain hygienic items, to include female sanitary supplies. Indigent prisoners shall be furnished with these items. While each jail is different, the general practice is that offenders may request additional supplies through medical staff or may purchase additional items through a commissary. While there is a cost to commissary items, there are efforts to maintain costs within a reasonable range. Jail standards also require that if a prisoner does not have undergarments upon admission, the jail shall issue undergarments. General practice provides for provision of at least two sets of uniform/undergarments, to allow for availability while being laundered. Jails are currently required to provide separation of male and female prisoners, with an exception in diversion holding areas. However, regulations require that area to be constructed in such a way as to provide an unobstructed view into the area and to provide constant in-person surveillance. Not all jails have diversion holding, and those who do may not currently utilize them for cross-gender holding. Additionally, current regulations require that if a female offender is booked, detained, or otherwise lodged, the jail shall provide a female deputy to perform twenty-four (24) hour awake supervision for those females.

At this time it is not known how the certification process would impact local jails. Current wording suggests the certification would be required for jails who may house female state inmates. The language requiring the Department to promulgate regulations (to create a certification process for county jails that may house female state inmates) provides county jails an opportunity to elect not to house female state inmates. Given the current population, that the Department has a very limited number of beds for female state prisoners in our state institutions, and that Class D females prisoners are currently our fastest growing population, it causes great concern that this legislation, as written, could further reduce the availability of female bed space in county jails. If any number of full-service jails choose to forgo the certification process and cease housing female state inmates, there would be no option for the housing of those Class D felons that shall be held in a county jail pursuant to KRS 532.100.

There currently is no jail standard language specifically addressing restraint of pregnant females. The Department's current practice is to bring in female inmates to the prison facility for the delivery of their child and as such, Department policies and procedures are followed. Currently, there are nineteen (19) pregnant females who are awaiting transfer from a jail to Department custody.

For pregnant female county inmates released under pregnancy release conditions, there is a savings of incarceration costs of an estimated \$31.34 per day, as well as medical costs for counties. Currently the Department of Corrections reports nineteen (19) pregnant females in jail custody. It is not known how many of these would be convictions under KRS 218A for drug offenses.

Fraud and Theft:

This bill would reduce a number of Class D fraud and theft offenders 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 been in a felony conviction. Jails would not receive a per diem for these misdemeanor offenders as they would for a Class D felony state inmate.

Additionally, counties would incur incarceration costs for days Class A misdemeanor offenders would serve in jail custody.

AOC data reports 26,178 offenses in FY2017 for misdemeanor offenses through Circuit and District Court under statutes specified in this legislation (including inchoate offenses).

For example, there were 945 convictions out of Circuit Court for Class D Receiving Stolen Property under \$10,000 in FY2017. If 10% of these offenses involved theft of an amount under the proposed \$1,000 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.

Monetary Bond:

With the elimination 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.

Overall, jails would acquire more misdemeanor theft offenders, 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 elimination of monetary bond which may provide some level of an offset.

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.

Senate Committee Substitute:

The Senate Committee Substitute affects several areas for local corrections. Both local jails and the Department of Corrections will be required to comply with restraint policies for pregnant females and pregnancy release conditions.

The jails will see a significant reduction in pre-conviction detainees through modifications to the existing pretrial release and detention model.

Additionally, the local jail population will receive relief on days averted from sentence service through the expansion of sentence credits for the misdemeanor incarcerated population. Additionally, the provision of incentives will encourage jail inmates to participate in much needed education, evidence-based programs, and substance abuse treatment.

Senate Floor Amendments:

With the changes under the Floor Amendments, the overall impact of this legislation at the county level is reduced. However, the bill remains a significant impact for local corrections in the areas of regulations for female inmates, restraints for inmates in labor, pregnancy release, pretrial home incarceration, and the addition of sentence credits for misdemeanor inmates.

Under the Senate Floor Amendment, based on jail facilities which currently provide substance abuse treatment, fewer female jail prisoners will be eligible for pregnancy release. It is not known how many jails transport prisoners for treatment.

As included in the Floor Amendment, a jail would possibly be prohibited from releasing a qualifying pregnant female simply because they offer substance abuse programming for males. While several jails offer substance abuse programming for males, at this time there are only three (3) substance abuse programs for female state inmates. There may be other jails which offer substance abuse treatment for county female prisoners.

Current practice for the Department in assigning inmates to substance abuse beds is that eligible inmates go to the first available bed, regardless of location. If the female inmate must complete treatment at the facility where she is currently housed (for those jails which have a female substance abuse program), there may be a wait list for an available bed. An inability to transfer to another facility that may have an open bed could negatively impact the waiting time for an available bed.

The wording in the bill is specific to jails, but the Department also offers substance abuse treatment at the female prison. As written, the female prison inmates would not qualify for the pregnancy release.

A Class A misdemeanor is 90 days to 1 year in jail

10 Class A misdemeanants: \$28,206 to \$114,391

1 Class A misdemeanor: \$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

3/9/2018

Date