

# CORRECTIONS IMPACT STATEMENT

SESSION: 18RS

BILL #: SB 19 SCS 1

BR #: 105

DOC ID#: BR010500.100 - 105 - XXXX

**BILL SPONSOR(S):** Sen. D. Carroll      **AMENDMENT SPONSOR(S):**

**SUBJECT:** AN ACT relating to sex offenses.

**SUMMARY OF LEGISLATION:** Amend KRS 510.050, 510.060, 510.080, 510.090, 510.110, and 510.120 to increase penalties for sex crimes against a victim who is a person with an intellectual disability.

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)

The proposed legislation shifts engaging in sexual intercourse and deviate sexual intercourse with a person who is incapable of consent because of intellectual disability from Rape 3<sup>rd</sup> Degree to Rape 2<sup>nd</sup> Degree and Sodomy 3<sup>rd</sup> Degree to Sodomy 2<sup>nd</sup> Degree. The proposed legislation also moves sexual contact with a person who is incapable of consent due to intellectual disability from Sexual Abuse 2<sup>nd</sup> Degree to Sexual Abuse 1<sup>st</sup> Degree.

The legislation also adds a female designation for the criminal act of Rape 2<sup>nd</sup> Degree and Sodomy 2<sup>nd</sup> Degree.

The Department currently has 557 offenders incarcerated for Rape 3<sup>rd</sup> Degree, Sodomy 3<sup>rd</sup> Degree, and Sexual Abuse 2<sup>nd</sup> Degree. However, it is not possible to determine how many of these offenses involve sexual interaction with a person who is not able to provide consent due to intellectual disability. Overall, it can be assumed that this number would be a much smaller subset of offenders convicted of Rape, Sodomy, and Sexual Abuse.

A search of AOC records for similar sex offenses specifying that the victim was incapable of providing consent by physical helplessness or mental incapacitation by intoxicating substances reveals 28 felony convictions in FY2017.

Inmates serving on Rape or Sodomy 3<sup>rd</sup> Degree serve the Class D sentence at either a jail or prison facility, depending on the length of their sentence, as outlined in KRS 521.100. A rape or sodomy offense involving a person incapable of consent due to intellectual disability would become a Class C offense under the proposed legislation. All inmates serving on Sodomy or Rape 2<sup>nd</sup> Degree are incarcerated in a state prison facility at a cost of \$70.12 per day, \$38.67 a day higher than the cost to incarcerate at a jail facility. The move from Sexual Abuse 2<sup>nd</sup> Degree to Sexual Abuse 1<sup>st</sup> Degree would shift future convictions from a Class A misdemeanor subject to service at a county jail to a Class D state prison sentence. An offender serving on Class D Sexual Abuse 1<sup>st</sup> Degree will be housed at a jail or prison depending on the length of their sentence.

It is anticipated that changes under the proposed legislation would have a minimal effect on incarceration costs for the Department of Corrections as the number of offenses involving the specific circumstances of this legislation would not be sizeable.

Senate Committee Substitute:

The Senate Committee Substitute amends KRS 510.020, which defines for every offense established in KRS 510, lack of consent and when a person is deemed incapable to consent. The legislation adds language clarifying an individual with an intellectual disability or a mental illness is deemed incapable of consent when he or she is unable to communicate consent or lack of consent, or unable to understand the nature of the act or its consequences.

There is no additional impact to the Department of Corrections under the Senate Committee Substitute.

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)

The only impact to local jails under this legislation is a proposed shift from a Class A misdemeanor to a Class D felony for Sexual Abuse 1<sup>st</sup> Degree involving sexual contact with an individual incapable of providing consent due to an intellectual disability. This impact would be expected to be minimal to no significance due to the specific circumstances of this offense and the limited number of offenders it would involve.

Under the proposed legislation, these Sexual Abuse 1<sup>st</sup> Degree offenders may remain housed in a county jail as a state inmate, depending on the length of their sentence as outlined in KRS 532.100. Additionally, Rape or Sodomy offenders with victims as specified by this legislation who under current law would qualify for a Class D offense which may be housed at a county jail as a state inmate, would be subject under the proposed legislation to conviction as a Class C offender with incarceration at a state prison facility.

However, due to lower numbers specific to the circumstances of this offense, there would not be a significant impact on jail beds or local revenue.

A Class A misdemeanor is 90 days to 1 year in jail  
1 Class A misdemeanor: \$2,821 to \$11,439

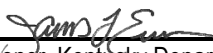
10 Class A misdemeanants: \$28,206 to \$114,391  
100 Class A misdemeanants: \$282,060 to \$1,143,910

**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

3/2/2018  
Date