

CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # HB 101 Prefiled BR # 184 DOC ID #: XXXX

BILL SPONSOR(S): Rep. L. Bechler AMENDMENT SPONSOR(S): . .

SUBJECT: AN ACT relating to child abuse and declaring an emergency.

SUMMARY OF LEGISLATION: Amend KRS 500.050 to remove the five-year statute of limitations for misdemeanor sex offenses against minors and allow prosecution to be commenced at any time; amend KRS 413.249 to remove the ten-year statute of limitations for civil actions arising from childhood sexual assault or abuse and allow a suit to be commenced at any time; amend KRS 620.030, relating to the requirement to report child abuse, to delete the clergy-penitent exemption and make any person who intentionally fails to report guilty of a Class D felony; amend KRS 620.050, relating to the reporting of child abuse, to delete the clergy-penitent exemption; create a new section of KRS Chapter 510 to make the sexual endangerment of a child a Class D felony; create a new section of KRS Chapter 15 to allow the Attorney General to petition the Supreme Court to convene a special grand jury to investigate childhood sexual assault or abuse that crosses multiple judicial circuits; amend KRS 15.205 to allow the Attorney General to direct a Commonwealth's or county attorney to act as a special prosecutor when the Supreme Court approves the Attorney General's petition for a special grand jury; amend KRS 29A.220 to outline the process and duties of a special grand jury; provide for severability; EMERGENCY.

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 checked="" type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input checked="" type="checkbox"/> Otherwise impacts incarceration (Explain) Expands/Removes the statute of limitations. | |

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$71.10. 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 \$32.78 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 MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

Section 1 of the legislation removes the statute of limitations for misdemeanor sex offenses under KRS 500.050. Current statute has a five (5) year statute of limitations after the victim reaches the age of eighteen (18).

Current statute is limited to offenses listed under KRS 510. The proposed legislation expands misdemeanor sex offense to include those in KRS 510, KRS 531 (*involving or depicting a minor*), as well as Criminal Attempt or Criminal Solicitation to offenses under KRS 510, KRS 531 (*involving or depicting a minor*), and the following: KRS 529.040 Promoting Prostitution (*when advances or profits from a minor*), KRS 529.100 Human Trafficking (*involving commercial sexual activity*), KRS 529.110 Promoting Human Trafficking (*involving commercial sexual activity*), and KRS 530.064 Unlawful Transaction with a Minor 1st Degree (*for illegal sexual activity*).

Section 2 removes the statute of limitations for civil actions for childhood sexual assault or abuse under KRS 413.249. Current statute has a ten (10) year statute of limitations (either from the act, last act, date the victim

knew/should have known, the victim reaches age eighteen (18), or civil conviction). Instructions on sealing the record if a complaint is filed outside of the statute of limitations are removed from the statute.

In KRS 413.249, the definitions for childhood sexual abuse and childhood sexual assault are combined and expanded, matching the definition for misdemeanor sex offense with the addition of KRS 530.020 Incest.

For the offenses cited in the legislation's definition of a misdemeanor sex offense and where the victim is identified as a misdemeanor, the Department of Corrections currently has seventy-four (74) offenders on supervision. AOC records for FY2018 reflect eighty-three (83) convictions for the misdemeanor sex offenses comprised in the definition included in the legislation where a minor victim could be identified. (Note: not all of the specified misdemeanor offenses identify the age of the victim. Included here are only the offenses for which a minor victim can be identified. Note: offenders may have multiple offenses.)

Due to the removal of the statute of limitations, additional offenders may be convicted of a misdemeanor sex offense. It is not possible to predict how many offenders would be prosecuted under the changes provided by this legislation that previously would not have been eligible for prosecution due to the statute of limitations.

Section 3 amends KRS 620.030 by removing the misdemeanor penalty for failing to report child abuse. Current statute is a Class B misdemeanor for the 1st Offense, Class A misdemeanor for the 2nd Offense, and a Class D felony for each Subsequent Offense. The clergy privilege is removed.

Section 4 removes the clergy privilege from KRS 620.050 Knowingly Report Child Abuse Falsely.

AOC records for FY2018 report nine (9) convictions for KRS 620.030 Failure to Report Child Neglect/Abuse 1ST Offense. Department of Corrections has zero (0) offenders incarcerated and one (1) offender on probation for the misdemeanor offense of Failure to Report Child Neglect/Abuse 1ST Offense.

With the removal of the misdemeanor level offenses under KRS 620.030, there would be an increase in felony convictions under this legislation. However, the number of convictions stemming from this offense are not expected to be significant.

Section 5 creates a new Class D felony of Sexual Endangerment of a Child. This offense is conduct that creates a substantial risk of childhood sexual assault or abuse, or failure to take reasonable steps to alleviate the substantial risk of childhood sexual assault or abuse where there is a duty to act.

Under this section, childhood sexual assault or abuse is an act(s) against a minor which meets the criteria of a felony or misdemeanor offense in the following statutes: KRS 529.040 Promoting Prostitution (*when advances or profits from a minor*), KRS 529.100 Human Trafficking (*involving commercial sexual activity*), KRS 529.110 Promoting Human Trafficking (*involving commercial sexual activity*), KRS 530.020 Incest, KRS 530.064 Unlawful Transaction with a Minor 1st Degree (*for illegal sexual activity*), KRS 531 (*involving or depicting a minor*), and Criminal Attempt or Criminal Solicitation of any of these offenses.

It is not known how many additional Class D offenders would be convicted under this new offense.

Note: Neither AOC nor the Department of Corrections tracks the age of the victim. Unless the offense itself specifies the age of the victim, it is not possible to determine if the offense involved a minor. Some offenses only specify victims under the age of twelve (12), leaving minors between the ages of twelve (12) and seventeen (17) that are not identified by the offense.

For the offenses included in this legislation where a minor victim could be identified, Department of Corrections reports 1,540 convictions for offenses against a minor within the incarcerated population, with an additional 700 offenses against a minor by offenders on supervision. (Note: Offenders may have multiple offenses. This does not represent all offenses included in the legislation where a minor may be a victim, only those in which a minor victim is known.)

AOC records for FY2018 indicate 1,783 convictions for offenses specified in this legislation where the charges specify a minor as a victim (including inchoate offenses of criminal attempt and criminal solicitation). (Note: This does not represent all offenses cited in the legislation where a minor may be a victim.)

Not all sexual offenses against a minor possess circumstances applicable to Sexual Endangerment of a Child. It is unknown how many additional convictions the proposed legislation would generate.

Convictions for Sexual Endangerment of a Child would be a Class D felony subject to incarceration at the local detention center as a state inmate.

Section 6 establishes a process for the Attorney General to petition the Supreme Court to convene a special grand jury to investigate childhood sexual assault or abuse across multiple judicial circuits.

Section 7 amends KRS 15.205 allowing a Commonwealth's or county attorney to act as a special prosecutor for the grand jury.

Section 8 amends KRS 29A.220 outlining the process and procedures for the special grand jury.

Restrictions under KRS 6.945(1) shall not apply to this legislation. Provisions are made for severability and emergency enactment.

Overall, the impact from this legislation is expected to be minimal to moderate.

A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$119,649 to \$598,244
1 Class D Felon costs KY \$11,965 to \$59,824	100 Class D Felons cost KY \$1.2M to \$6M

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 MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

Class D offenders incarcerated under this legislation would serve their sentence in a county jail at a cost to the state of \$31.34 per day to the local jail. This provides additional revenue for jails.

Misdemeanor offenses are subject to county jurisdiction. Misdemeanor offenders convicted under this legislation would serve a sentence of incarceration at a local detention center at the cost to the county.

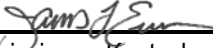
It should be noted, however, that due to limited capacity, any additional incarceration has an impact on local jail populations.

Overall, the number of additional convictions generated by the legislation and the corresponding impact on incarceration at the local level would be expected to be minimal to moderate.

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:  1/7/2019
Commissioner, Kentucky Department of Corrections Date