

## CORRECTIONS IMPACT STATEMENT

**SESSION: 19RS BILL # HB 109 Introduced . BR # 63 DOC ID #: xxxx**

**BILL SPONSOR(S): Rep. J. Fischer AMENDMENT SPONSOR(S): . .**

**SUBJECT:** AN ACT relating to violent offenders.

**SUMMARY OF LEGISLATION:** Amend KRS 439.3401, relating to parole eligibility for violent offenders, to classify any person convicted of the following offenses as a "violent offender": criminal attempt to commit murder, criminal attempt to commit fetal homicide, criminal attempt to commit arson, burglary in the first degree, kidnapping, and arson in the second degree.

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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 checked="" type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input checked="" 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 type="checkbox"/> Otherwise impacts incarceration (Explain) .        |  |
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**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)

HB 109 expands offenses classified as violent offenders under KRS 439.3401.

Additional Class B felony offenses include criminal attempt to murder, criminal attempt to fetal homicide, and criminal attempt to arson. Currently the statute is specific to attempted murder only if the victim of the offense is a peace officer or firefighter acting in the line of duty.

Burglary 1<sup>st</sup> Degree is modified, removing the requirement that it be accompanied by the commission of or attempted Assault 1<sup>st</sup> Degree, 2<sup>nd</sup> Degree, enhanced assault under KRS 508.032, or Wanton Endangerment 1<sup>st</sup> Degree.

Also removed is the combination of Burglary and Kidnapping, leaving Kidnapping as violent offense under KRS 509.040. Arson 2<sup>nd</sup> Degree under KRS 513.030 is added.

The statute reference for the violent offense of Robbery 1<sup>st</sup> Degree (KRS 515.020) is added.

Additional offenses classified as violent offenses requires these offenders to serve 85% of their sentence prior to parole eligibility.

Offenders classified as violent offenders impacts classification and where the offender is eligible to serve a sentence of incarceration. Designation as a violent offender adds to the length of time an offender is in secure custody due to the required sentence length. Overall, additional days in custody prior to parole eligibility translates to increased incarceration costs.

Of the Class B felonies included in this legislation, some of the offenders currently incarcerated for these offenses may be eligible for reduced custody. These offenders may currently be housed at a minimum security facility or halfway house at a lower cost to incarcerate. Under the legislation, as a violent offender, offenders with these Class

B offenses may serve longer before they would be eligible for reduced custody. The average cost to incarcerate at a state prison facility is \$71.10 per day.

Some of the offenders serving on these offenses may already be classified as violent, depending on the nature of the offense. (Note: The following calculations remove offenders already required to serve to 85% parole eligibility. While offenders may be serving on other charges, life and death sentences are removed. These calculations make the assumption that offenders would be paroled at the first opportunity for parole. This calculation is based on the average prison cost and does not attempt to reflect how many offenders may be eligible for reduced custody at some point during service of the sentence.)

AOC records reflect the following convictions in FY2018: zero (0) convictions of Criminal Attempt to Fetal Homicide, one (1) conviction for Criminal Attempt to Arson 1<sup>st</sup> Degree, thirty-one (31) convictions for Arson 2<sup>nd</sup> Degree, 100 convictions for Burglary 1<sup>st</sup> Degree, and twenty (20) for Kidnapping.

Currently the Department does not have anyone incarcerated for criminal attempt to Fetal Homicide. The Department currently has three (3) non-violent inmates for Criminal Attempt to Arson 1<sup>st</sup> Degree and 184 non-violent inmates on Attempted Murder. The average sentence length for these convictions is 11.7 years and 16.7 years, respectively. Using the current average sentence length, an offender sentenced under the proposed changes in this legislation would serve an additional 2,768 or 3,956 days, respectively, to 85% parole eligibility. For Criminal Attempt to Arson 1<sup>st</sup> Degree, this would be an additional cost of \$196,805 per person, and for Attempted Murder, this would be an additional cost of \$281,272 per offender.

The Department has 1,035 non-violent inmates in custody for Burglary 1<sup>st</sup> Degree. The average sentence length for Burglary 1<sup>st</sup> Degree is 15.3 years. Using the current average sentence length, an offender sentenced under the proposed changes in this legislation would serve an additional 3,628 days to 85% parole eligibility, for an additional cost of \$257,951 per offender.

The Department has 241 non-violent inmates in custody for Kidnapping. The average sentence length for Kidnapping is 18.1 years. Using the current average sentence length, an offender sentenced under the proposed changes in this legislation would serve an additional 4,290 days to 85% parole eligibility, for an additional cost of \$305,019 per offender.

The Department has 142 non-violent inmates in custody for Arson 2<sup>nd</sup> Degree. The average sentence length for Arson 2<sup>nd</sup> Degree is 13.7 years. Using the current average sentence length, an offender sentenced under the proposed changes in this legislation would serve an additional 3,243 days to 85% parole eligibility, for an additional cost of \$230,577 per offender.

Overall, the impact to incarceration under this bill would be significant. Given the large number of offenders with Burglary 1<sup>st</sup> Degree convictions, the additional days incarcerated until release eligibility and the associated increased cost to incarceration would be substantial.

A Class B Felony sentence is 10 to 20 years.	10 Class B Felons cost KY \$2.6M to \$5.2M
1 Class B Felon costs KY \$259,506 to \$519,012	100 Class B Felons cost KY \$26M to \$52M


**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)

**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:**  **2/4/2019**  
Commissioner, Kentucky Department of Corrections Date