

## CORRECTIONS IMPACT STATEMENT

**SESSION: 19RS BILL # HB 298 Introduced BR # 1153 DOC ID #: xxxx**

**BILL SPONSOR(S): Rep. Sponsors J. Petrie, K. King AMENDMENT SPONSOR(S): . .**

**SUBJECT:** AN ACT relating to the sexual exploitation of minors.

**SUMMARY OF LEGISLATION:** Amend KRS 531.335 to raise the penalty for possession or viewing of matter portraying a sexual performance by a minor under the age of 12 years to a Class C felony; amend KRS 531.340 to raise the penalty for the distribution of matter portraying a sexual performance of a minor under the age of 12 years to a Class C felony for the first offense and a Class B for each subsequent offense.

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This  bill  amendment  committee substitute is expected to:

Have the following Corrections impact  Have no Corrections impact

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|---|--|
| <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 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 298 amends KRS 531.335 providing for an increased penalty for possession or viewing matter portraying a sexual performance by a minor, depending on the age of the minor portrayed. Current penalty by statute for this offense is a Class D felony.

Under the proposed legislation, if the minor portrayed is less than eighteen (18) years of age, the penalty would be a Class D felony. If the minor portrayed is less than twelve (12) years of age, the penalty would be a Class C felony.

Possession or Viewing Matter Portraying a Sexual Performance by a Minor is a sex crime as defined in KRS 17.500(8).

Under KRS 531.340, Distribution of matter portraying a sexual performance by a minor is also revised. Under current statute, it is a Class D felony for a 1<sup>st</sup> Offense and a Class C felony for each Subsequent Offense.

Under the proposed legislation, the penalty would be applied based on the age of the minor. If the minor portrayed is less than eighteen (18) years of age, the penalty would be a Class D felony for a 1<sup>st</sup> Offense and a Class C felony for each Subsequent Offense. If the minor portrayed is less than twelve (12) years of age, the penalty would be a Class C felony for a 1<sup>st</sup> Offense and a Class B felony for each Subsequent Offense.

Distribution of Matter Portraying a Sexual Performance by a Minor is not a sex crime as defined in KRS 17.500(8).

Classification as a sex offense under KRS 17.500 impacts housing and classification. Under KRS 532.100, convictions for a sex crime under KRS 17.500 with a sentence of two (2) years or more are not eligible for placement at the local detention center.

Under the legislation, some offenders would be housed at a local detention center while others would require housing at a state correctional facility at a cost of \$71.10 per day.

Currently, the Department of Corrections has 403 offenders incarcerated or on supervision for KRS 531.335. Currently there are 160 offenders incarcerated or on supervision for KRS 531.340, two (2) of which are Class C convictions.

AOC records indicate 1,188 convictions in FY2018 for Possession or Distribution of Matter Portraying Sexual Performance by Minor (includes inchoate offenses).

It is not possible to predict how many offenses would fall in the higher penalty range under HB 298. While most offenders would likely remain in the Class D range, there would be increased incarcerated costs for the higher class levels.

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
A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1.3M to \$2.6M
1 Class C Felon costs KY \$129,753 to \$259,506	100 Class C Felons cost KY \$13M to \$26M
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 or community custody Class C offenders eligible for service of their sentence at a county jail would be housed at a cost to the state of \$31.34 per day to the local jail.

The changes under the current legislation are not expected to significantly alter the number of offenders housed in a county jail facility for these offenses. The impact to local incarceration would likely be minimal.

**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:** *Randy White* 2/19/2019  
Deputy Commissioner, Kentucky Department of Corrections Date