

CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # HB 71 Prefiled BR # 335 DOC ID #: BR033500.100 - 335 - XXXX

BILL SPONSOR(S): Rep. BR 335 - J. Nemes, J. Miller AMENDMENT SPONSOR(S): . .

SUBJECT: AN ACT relating to hate crimes.

SUMMARY OF LEGISLATION: Amend KRS 532.031, relating to an offense committed as a result of a hate crime, to include criminal homicide and fetal homicide as well as the attempt to commit or solicitation of those crimes.

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 type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input checked="" type="checkbox"/> Otherwise impacts incarceration (Explain) <u>May affect probation, shock probation, conditional discharge or parole</u> | |

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)

The proposed legislation amends KRS 532.031 by adding offenses listed under KRS 507 and 507A, as well as the attempt to commit or the solicitation of a crime under these offenses, to the list of offenses the sentencing judge may determine the offender to have committed as a result of a hate crime.

Added as a possible hate crime is KRS 507.020 Murder, KRS 507.030 Manslaughter 1st Degree, KRS 507.040 Manslaughter 2nd Degree, KRS 507.050 Reckless Homicide, KRS 507A.020 Fetal Homicide 1st Degree, KRS 507A.030 Fetal Homicide 2nd Degree, KRS 507A.040 Fetal Homicide 3rd Degree, and KRS 507A.050 Fetal Homicide 4th Degree.

The designation of a hate crime may affect sentencing decisions by the Court or release decisions by the Parole Board. The finding that a hate crime was a factor in the commission of the offense may result in denial of community supervision by the sentencing judge and impact length of incarceration sentences.

AOC does not track information on convictions that are designated as hate crimes. For the offenses included in this legislation, there were 447 convictions in FY 2018 in Circuit Court (including criminal attempt and solicitation). Currently the Department has 245 offenders incarcerated and 56 offenders on supervision for these offenses (including criminal attempt and solicitation). Not all of these would meet the parameters to be designated as a hate crime and it is not possible to estimate how many of these offenses would have been committed as a hate crime.

It is also not possible to predict how the designation of a hate crime may increase the probability the judge or parole board would rule in favor of incarceration. Given the serious nature of the offenses, the offender may have been sentenced to incarceration or denied parole without the additional consideration as outlined by this legislation.

Class C offenders and above would serve the sentence of incarceration at a state facility at a cost to the Commonwealth of \$71.10 per day.

It is not possible to determine how many offenses this legislation could possibly affect in the future. However, as the number of offenses designated as a hate crime would be expected to be a portion of the overall convictions for these offenses, it is not believed that the overall corresponding impact to incarceration would be significant.

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 impact to the local jails from this legislation would be minimal. Included in the legislation are the Class D offenses of Reckless Homicide and Fetal Homicide 4th Degree, which would serve any sentence of incarceration at the local detention facility at a cost to the state of \$31.34 per day to the local jail.

Also included are the Class C offenses of Manslaughter 2nd Degree and Fetal Homicide 3rd Degree. These offenders may be eligible to serve their sentences at the county jail if qualifying for community custody, based on length of sentence remaining and custody classification. However, based on the nature of the offense, these offenders may not be eligible for community custody and thus would be housed at a state prison facility.

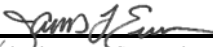
The designation of a hate crime may affect decisions by the releasing authority, resulting in sentences of incarceration or denial of parole opportunities. Both of which impact housing of state inmates in the local jails, increasing incarceration costs for the state and occupying jail beds.

Although it is not possible to estimate how many offenders this legislation would affect, the overall impact would be expected to 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:  **12/11/2018**
Commissioner, Kentucky Department of Corrections Date