

CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # SB 190 Introduced . BR # 1065 DOC ID #: xxxx

BILL SPONSOR(S): Sen. G. Neal, M. McGarvey AMENDMENT SPONSOR(S): . .

SUBJECT: AN ACT relating to hate crimes.

SUMMARY OF LEGISLATION: Create a new section of KRS Chapter 525 to create the offense of a hate crime.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

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| <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 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)

SB 190 restructures the existing hate crime statute by instituting a hate crime as a criminal offense. A person is guilty of a hate crime if convicted of a specified offense intentionally because of race, color, religion, national origin, gender, sexual orientation, gender identity, or disability.

Offenses currently reflected in KRS 532.031 that may be designated as a hate crime: Assault 1st, 2nd, 3rd, & 4th Degree; Menacing; Wanton Endangerment 1st Degree; Criminal Abuse 1st & 2nd Degree; Unlawful Imprisonment 1st Degree; Rape 1st, 2nd, & 3rd Degree; Sodomy 1st, 2nd, 3rd, & 4th Degree; Sexual Abuse 1st Degree; Criminal Mischief 1st Degree; Criminal Use & Criminal Possession of Noxious Substance; Arson 1st, 2nd, & 3rd Degree; Riot 1st Degree; Unlawful Assembly; Disorderly Conduct; Harassment; and Harassing Communications.

The proposed legislation also adds offenses KRS 507.020 Murder, KRS 507.030 Manslaughter 1st Degree, KRS 507.040 Manslaughter 2nd Degree, and KRS 507.050 Reckless Homicide to the list of offenses identified as a hate crime.

A hate crime shall be punished at the same level of offense which is the criminal act that comprises the hate crime. A hate crime is specified as a separate offense, to be charged in addition to violation(s) of law occurring during the same course of conduct.

A hate crime would require at least 85% service of the imposed sentence prior to parole eligibility.

Designation of a hate crime may be utilized by the Parole Board in the releasing decision.

AOC does not track information on convictions that are designated as hate crimes.

For the KRS 507 offenses added in this legislation, in FY 2018, there were 511 convictions in Circuit Court and 332 convictions in District Court (including inchoate offenses). Currently the Department has 464 offenders incarcerated and 100 offenders on supervision for Murder, Manslaughter, or Reckless Homicide (including inchoate offenses). 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.

Offenses listed in this legislation may currently have 20% or 85% parole eligibility.

Excluding offenders who are already required to serve 85% of their sentence prior to parole eligibility, the average sentence length for the offenses included in this legislation is nine (9) years. Offenders serve an average of 657 days until parole eligibility. If convicted as a hate crime under the proposed legislation and subject to 85% of their sentence prior to parole eligibility, they would serve, on average, 2,794 days, a difference of 2,137 additional days in custody.

It should be noted that the hate crime conviction may be ordered concurrent or consecutive to the underlying conviction for the criminal act that comprises the hate crime.

Using the above calculations for comparison and looking at the current specified offenses only, if 1% of these offenders were designated as hate crimes under this legislation, using the cost to incarcerate of \$71.10 per day, the additional cost would be \$11,070,400. (Note: Offenders may be serving on other charges. These calculations assume that offenders are released on parole at the first parole opportunity.)

It is not possible to determine how many offenses would be designated as a hate crime. However, given that the offense would be in addition to the underlying offense comprising the criminal action, and that the hate crime would have an 85% parole eligibility requirement, the overall impact to incarceration under this legislation would be significant.

A Class A Felony sentence is 20 years or more.	10 Class A Felons cost KY a minimum of \$5.2M
1 Class A Felon costs KY a minimum of \$519,012	100 Class A Felons cost KY a minimum of \$52M
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)

Several of the offenses designated in this legislation are currently Class D felonies or Class C felonies (which may be eligible for community custody). These offenders would currently serve their sentence at the county jail at a cost to the Commonwealth of \$31.34 per day. Under the requirement to serve 85% of the sentence prior to release, the offenders would remain in custody longer, providing an additional revenue opportunity for jails, however, in times of current overcrowding any additional incarceration has an impact on the occupancy of jail beds.

The current hate crime statute includes misdemeanor offenses that under this legislation would garner designation as a felony hate crime: Assault 4th Degree, Menacing, Sodomy 4th Degree, Criminal Use of Noxious Substance, Criminal Possession of Noxious Substance, Unlawful Assembly, Disorderly Conduct, Harassment, and Harassing Communications.

These misdemeanor offenses are under county jurisdiction and, if designated by a hate crime under the current legislation, would not be eligible for probation, shock probation, or other form of early release by the court until 85% of service of the sentence.

Additional offenders receiving a sentence of incarceration and longer sentence lengths would increase incarceration costs.

Overall, the number of offenses committed as a hate crime would not be expected to be significant.

A Class A misdemeanor is 90 days to 1 year in jail.	10 Class A misdemeanants: \$28,206 to \$114,391
1 Class A misdemeanor: \$2,821 to \$11,439	100 Class A misdemeanants: \$282,060 to \$1,143,910

A Class B misdemeanor is up to 90 days in jail.
1 Class B misdemeanor: up to \$2,821

10 Class B misdemeanants: up to \$28,206
100 Class B misdemeanants: up to \$282,060

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