

CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # SB 20 SCS 1 BR # 2 DOC ID #: SB002040.100 - 2 - XXXX

BILL SPONSOR(S): Sen. W. Westerfield AMENDMENT SPONSOR(S): . .

SUBJECT: AN ACT relating to juvenile justice.

SUMMARY OF LEGISLATION: Create new sections of KRS Chapters 15A, 27A, 158, and 194A to require reporting of statistics, including age, race, and gender, to determine whether there is disproportionate minority contact with the juvenile justice, social welfare, and educational discipline systems; create training requirements; require the development and reporting of plans to ameliorate disproportionate minority contact with juvenile justice and education systems; amend KRS 156.095 to require professional development for education professionals on juvenile justice topics; create a new section of KRS Chapter 31 to allow the Division of Protection and Advocacy to investigate the use of restraint and seclusion in schools and require confidentiality; amend KRS 15.334 to require training on juvenile justice topics; create new sections of KRS Chapter 610 to create a minimum age of criminal responsibility of 12 years of age; establish rules relating to the court's treatment of developmental immaturity, mental illness, and intellectual disability; amend KRS 503.010 to define "physical restraint"; create new sections of KRS Chapter 158 to regulate the use of physical restraint by teachers or school personnel; amend KRS 635.020 to limit the youthful offender process to cases involving offenses against persons and to require that a child be 16 years of age; amend KRS 158.135 to further define "state agency children"; amend KRS 15A.220 to require facilities under contract to the Department of Juvenile Justice to report data; amend KRS 635.060 to allow a child who has committed an offense that would be a Class D felony if committed by an adult to be retained on probation for 18 months if the court-ordered substance abuse or mental health program is longer than 12 months and to limit the exclusion of children from the time limits placed on certain dispositions; amend KRS 610.105 to expand a court's options for diversion of a child's adjudicated case; amend KRS 600.020 to define "restorative justice practices"; amend KRS 630.070 to limit detention for a child violating a court order to 30 days; amend various sections to conform; amend KRS 610.265 to require hearings every 10 days to continue holding a child in custody; amend KRS 15A.305, 610.030, 610.190, 610.200, 610.220, 635.010, and 630.030 to make technical corrections; repeal KRS 610.012, relating to court jurisdiction over detention of suspected runaways.

AMENDMENT: Remove provisions creating a juvenile age of criminal responsibility; remove sections establishing rules relating to the court's treatment of developmental immaturity, mental illness, and intellectual disability; remove sections relating to the use of restraint and seclusion in schools; remove section changing definition of "state agency children"; remove provisions raising minimum age for certain youthful offender cases; change language to clarify data being collected.

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

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)

Relative to the impact of felony offenses this legislation includes the following:

Section 20 of the bill, referring to juvenile public offenses (those actions which if committed by an adult, would be a crime), adds Class D felonies and prohibits against a public offense petition if the child is the subject of a diversion agreement with no prior adjudications and no prior diversions (statute wording currently is a “may”). Added is wording that a youth who is detained under Section 31 of the bill shall be offered a diversion agreement if the offense is a misdemeanor or a Class D felony and the child has no prior adjudications or diversions. If a child is eligible for mandatory diversion, the court shall dismiss the petition, expunge the record, and return the case to the court-designated worker for diversion. This language reduces the number of individuals who would come into contact with the court system.

Under Sections 17 & 21, in reference to probationary and commitment periods for juvenile misdemeanors or juvenile Class D felonies, the legislation modifies statute wording from offenses involving a deadly weapon to offenses involving the use of a firearm.

Under Section 29, to qualify as a youthful offender, the capital, Class A, or Class B offense must be an offense committed against a person. The same requirement of being charged with an offense against a person is added at the Class C or a Class D felony level as one of the requirements to qualify as a youthful offender. This change would reduce the number of individuals designated as a youthful offender.

For offenses where a firearm was used by a child (whether the firearm was functional or not), court procedures for youthful offenders under KRS 635.020 are modified, removing language describing the youthful offender process and referring instead to youthful offender procedures as outlined in KRS 640.010. The following language is removed (for felony offenses involving a firearm): *a youthful offender is subjected to the same penalties as an adult, with the exception of remaining in juvenile custody until the age of eighteen (18) at which time he or she is returned to the sentencing court for proceedings under KRS 640.030 (unless he or she is transferred to a Department of Corrections adult correctional facility under KRS 635.025 or is released by expiration of sentence or on parole).*

For a child previously convicted as a youthful offender charged with a new felony prior to age eighteen (18), wording is added that the new felony shall be an offense against a person in order to be treated as a youthful offender on the new offense. The same stipulation of an offense against a person is added to proceed as a youthful offender for an offender who is age eighteen (18) or older but before the court on a felony which occurred prior to his or her eighteenth birthday.

Section 30 adds use of a firearm in the commission of an offense as one of the criteria in KRS 640.010 to determine if a case shall be transferred to Circuit Court as a youthful offender.

Currently the Department of Corrections has nine (9) youthful offenders incarcerated and six (6) youthful offenders under supervision. During 2018, the Kentucky Parole Board had twenty (20) youthful offender hearings.

The restriction to an offense committed against a person will decrease the number of youthful offenders generated. The legislation will reduce the number of youthful offenders seen for decisions by the Kentucky Parole Board and the corresponding number of youthful offenders on parole supervised by the Division of Probation & Parole.

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)

Projected Corrections Impact from Amendments:

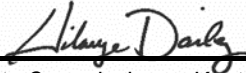
The Senate Committee Substitute makes several changes within the bill. Pertaining to the Corrections Impact, the original bill raised the age at which someone could be designated as a youthful offender. The Committee Substitute retains the age currently stated in statute. Retained is the fact that the offense must be committed against a person.

Under the Committee Substitute, though the age remains as it is currently in statute, the number of individuals designated as a youthful offender will be reduced through the requirement that it be an offense against a person.

The following offices contributed to this Corrections Impact Statement:

- Dept. of Corrections
- Dept. of Kentucky State Police
- Administrative Office of the Courts
- Parole Board
- Dept. of Juvenile Justice

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:  2/26/2019
Deputy Commissioner, Kentucky Department of Corrections Date