

CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # SB 207 Introduced . BR # 338 DOC ID #: xxxx

BILL SPONSOR(S): Sen. M. McGarvey, W. Westerfield AMENDMENT SPONSOR(S): . .

SUBJECT: AN ACT relating to hate crimes.

SUMMARY OF LEGISLATION: Create a new section of KRS Chapter 532 to provide an enhanced term of imprisonment for any defendant convicted of certain crimes when he or she intentionally selected the person because of that person's actual or perceived race, color, ethnicity, national origin, religion, mental or physical disability, gender identity or expression, or sexual orientation; amend KRS 15.334 and 17.1523 to conform; repeal KRS 49.320 and 532.031.

AMENDMENT: .

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 207 provides enhanced sentencing for a hate crime. An offender shall be subject to an enhanced term of imprisonment if he or she is convicted of a specified crime (or criminal attempt to commit) and it is proven that the action was due to a person's race, color, ethnicity, national origin, religion, mental or physical disability, gender identity or expression, or sexual orientation.

The following statutes are identified:

- ◆ KRS Chapter 507 (*Murder, Manslaughter, Reckless Homicide*);
- ◆ KRS Chapter 507A (*Fetal Homicide*);
- ◆ KRS Chapter 508 (*Assault, Assault Under Extreme Emotional Disturbance, Menacing, Wanton Endangerment, Terroristic Threatening, Criminal Abuse, Stalking, Violation of Stalking Restraining Order, Disarming a Police Officer*);
- ◆ KRS Chapter 509 (*Unlawful Imprisonment, Kidnapping, Custodial Interference, Criminal Coercion*);
- ◆ KRS Chapter 510 (*Rape, Sodomy, Sexual Abuse, Sexual Misconduct, Indecent Exposure, Use of Electronic Communication to Procure Minor*); or
- ◆ KRS Chapter 525 (*Riot, Inciting to Riot, Terrorism, Unlawful Assembly, Disorderly Conduct, Harassment, Harassing Communications, Loitering, Public Intoxication, Desecration of Venerated Objects, Institutional Vandalism, Violating Graves, Abuse of a Corpse, Cruelty to Animals, Torture of a Cat or Dog, Obstructing a Highway, Disrupting Meetings and Processions, Interference with a Funeral, Failure to Disperse, Assault on a Service Animal*).

Or, if an offender is convicted of Criminal Mischief (*KRS 512.020, KRS 512.030, KRS 512.040*) or Arson (*KRS 513.020, KRS 513.030, KRS 513.040*) and it is proven that the defendant intentionally defaced, damaged, or started a fire on property associated with a person due to the bias-related factors identified above.

The court shall hold a hearing, separate from a hearing resulting in the defendant's conviction for the underlying offense, to determine if the act constituted a hate crime. A jury shall discern if the act was a hate crime and the enhanced term of imprisonment to be imposed.

Upon a finding to have committed a hate crime, the sentence for the underlying offense shall be enhanced:

- ◆ If the underlying offense is a misdemeanor, the term shall be increased by at least half of the maximum imprisonment (and the fine shall be at least half the maximum amount).
- ◆ If the underlying offense is a Class D felony, the term of imprisonment shall be increased by one (1) to five (5) years.
- ◆ If the underlying offense is a Class C felony, the term of imprisonment shall be increased by five (5) to ten (10) years.
- ◆ If the underlying offense is a Class A or B felony, the term of imprisonment shall be increased by ten (10) to twenty (20) years.

Any offender receiving an enhancement for a hate crime shall not be eligible for probation, shock probation, parole, or any other form of early release.

KRS 15.334 adds to the list of bias-related crimes for the purpose of law enforcement training courses approved by the Kentucky Law Enforcement Council. The list of bias-related crimes is also updated in KRS 17.1523, which requires law enforcement officers to note if the offense appears to be bias-related. KRS 49.320 (*Victim of Hate Crime Deemed Victim of Criminally Injurious Conduct*) and KRS 532.031 (*Hate Crime*) are repealed. KRS 6.945(1) restrictions shall not apply to this legislation.

SB 207 would significantly increase the sentence length for those offenses identified as a hate crime. In addition to the sentencing enhancement, due to the prohibition for community supervision, offenders designated under this legislation would be subject to a term of imprisonment with no possibility of parole or other form of early release.

It is not possible to predict how many offenses would be designated as a hate crime. While the number may not be significant, there would be a significant increase in the number of days incarcerated and the associated incarceration costs.

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)

This legislation would have an impact for both the misdemeanor incarcerated population as well as state inmates housed in a county jail.

Due to the prohibition for community supervision, offenders would be subject to a term of imprisonment, which would include the applied enhancement.

It is not known how many offenses would be designated as hate crimes.


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

Corrections Impact from Amendments:

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:  2/23/2019
Deputy Commissioner, Kentucky Department of Corrections Date