

## CORRECTIONS IMPACT STATEMENT

**SESSION: 19RS BILL # SB 44 Prefiled BR # 357 DOC ID #: 746**

**BILL SPONSOR(S): Sen. G. Neal 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; amend KRS 439.3401 to include hate crimes; amend KRS 49.320 to conform; repeal KRS 532.031; exempt the provisions of the Act from KRS 6.945(1).

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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 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 44 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, sexual orientation, national origin, or because of a person's actual or perceived employment as a state, city, county, or federal peace officer, member of an organized fire department, or emergency medical services personnel.

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

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

Under the legislation, a hate crime is a Class B felony, unless death or serious physical injury results, in which it is a Class A felony.

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 is added to the violent offender statute, KRS 439.3401, requiring at least 85% service of the imposed sentence prior to parole eligibility.

KRS 532.031, the current hate crime statute is repealed and the statute reference for qualification for crime victim compensation is modified. Restrictions under KRS 6.945(1) shall not apply to the legislation.

Of the offenses listed in the legislation, the following are not currently classified as violent offenses under KRS 439.3401: Manslaughter 2<sup>nd</sup> Degree, Reckless Homicide, Assault 2<sup>nd</sup> & 3<sup>rd</sup> Degree, Wanton Endangerment 1<sup>st</sup> Degree, Criminal Abuse 2<sup>nd</sup> Degree, Unlawful Imprisonment 1<sup>st</sup> Degree, Criminal Mischief 1<sup>st</sup> Degree, Arson 3<sup>rd</sup> Degree, and Riot 1<sup>st</sup> Degree. (*Manslaughter and Reckless Homicide are violent if the offense involved the killing of a peace officer or firefighter in the line of duty.*)

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 have currently 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.

Using these 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.

This calculation does not take into consideration the felony level increase for the specified Class C or Class D offenses to a Class A or B felony level hate crime. The corresponding increased sentence length would further increase the incarceration cost significantly.

It is not possible to determine how many offenses would be designated as a hate crime. However, given that the Class B or Class A offense would be in addition to the underlying offense comprising the criminal action, and that the hate crime would be designated under the violent offender statute with 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 this legislation, a hate crime is a Class A or Class B felony, requiring service of the sentence at a state prison facility. Removal of offenses from qualification to serve the incarceration at a county jail would be a loss of revenue for the jails.

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

These misdemeanor offenses which are currently under county jurisdiction would, if designated by a hate crime under the current legislation, result in an additional felony conviction and subject to incarceration at a state prison.

It is not known how many offenders currently incarcerated for these offenses would be designated as a hate crime.

While the legislation increases incarceration costs at the felony level, fewer misdemeanor offenders would provide some measure of relief to county costs and jail overcrowding.

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.

1 Class A misdemeanor: \$2,821 to \$11,439

10 Class A misdemeanants: \$28,206 to \$114,391

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:**



Deputy Commissioner, Kentucky Department of Corrections

**1/11/2019**

Date