

CORRECTIONS IMPACT STATEMENT

AMENDED 1-10-2020

SESSION: 20RS BILL # HB 161 Prefiled BR # 997 DOC ID #: xxxx

BILL SPONSOR(S): Rep. C. Massey AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to theft.

SUMMARY OF LEGISLATION: Amend KRS 514.030 to raise the threshold level of property value for a Class D felony for theft by unlawful taking or disposition from \$500 to \$1,500.

AMENDMENT: .

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 checked="" 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 \$75.91. Community Custody Class C and most Class D felons are housed in one of 76 full service jails for up to 5 years. Department of Corrections' cost to incarcerate a felony inmate in a jail is \$36.70 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs (substance abuse treatment not included). *Projections are based on the daily rate x 365 days x number of years. Offenders may have multiple offenses or incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

Projected Impact: ☐ NONE ☐ MINIMAL to MODERATE (< \$1 million) ☒ SIGNIFICANT (> \$1 million)

The legislation changes the offense threshold amounts for Theft by Unlawful Taking under KRS 514.030, raising the amount from \$500 to \$1,500 for a Class D felony.

Theft under KRS 514.030(2)(a)-(c) (theft of a firearm, anhydrous ammonia, or controlled substances) would not be impacted under the legislation.

Changing the threshold for Theft by Unlawful Taking would reduce the number of felony theft convictions. And in turn, reduce the number of felony offenders incarcerated.

AOC data reflects 2,285 convictions for Class D felony KRS 514.030 Theft by Unlawful Taking offenses (*specific to KRS 514.030(2)(d)*) in FY2019.

For Class D theft under KRS 514.030(2)(d), Department of Corrections records reflect 3,496 Theft by Unlawful Taking convictions for those inmates currently serving an incarcerated sentence. (*Offenders may be serving on multiple offenses*). For those inmates serving *only* on theft charges, there are 354 convictions specific to KRS 514.030(2)(d).

Additionally, for offenders under community supervision, there are 8,044 Theft by Unlawful Taking convictions. (*Offenders may be on supervision for multiple offenses*.) For offenders *only* on supervision for theft convictions, 2,202 hold convictions specific to KRS 514.030(2)(d).

It is not possible for the Department to estimate how many future offenders convicted of Theft by Unlawful Taking would fall in the felony versus the misdemeanor theft threshold range. Some cases will have theft amounts above the \$1,500 threshold, which would not change the offense class from current felony level. Others would have an amount that under current statute would be charged as a Class D felony, but under the legislation would be reduced to a Class A misdemeanor. The fiscal amount of the crime is not tracked by the Department.

For estimation purposes, if this legislation had been law at the time of their convictions, and if it is assumed that half of the inmates who are serving on Theft by Unlawful Taking are incarcerated for an amount that would be affected by the threshold change, the savings for the Department could be \$2.4M for one year of incarceration.

The below calculations represent estimated savings depending on how many offenders could be impacted by the proposed threshold change for Theft by Unlawful Taking:

| Estimated Number of Offenders Impacted | | Annual Cost to Incarcerate | TOTAL |
|--|-----|----------------------------|-----------------|
| 10% | 35 | \$ 13,396.97 | \$ 468,893.95 |
| 25% | 89 | \$ 13,396.97 | \$ 1,192,330.33 |
| 50% | 177 | \$ 13,396.97 | \$ 2,371,263.69 |
| 75% | 266 | \$ 13,396.97 | \$ 3,563,594.02 |
| 100% | 354 | \$ 13,396.97 | \$ 4,742,527.38 |

The savings would be significantly increased if the sentence is greater than one (1) year in length.

A Class D Felony sentence is 1 to 5 years.

1 Class D Felon costs KY \$13,396.97 to \$66,984.87

10 Class D Felons cost KY \$133,969.74 to \$669,848.70

100 Class D Felons cost KY \$1,339,697.40 to \$6,698,487.00

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. Since the per diem is an estimated average cost of housing an inmate, the per diem may not be the actual housing cost for the jail. *Projections are based on the daily rate x 365 days x number of years. Offenders may have multiple offenses or incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

Projected Impact: ☐ NONE ☐ MINIMAL to MODERATE (< \$1 million) ☒ SIGNIFICANT (> \$1 million)

Under the proposed legislation, there would be an increase in misdemeanor level theft charges subject to county jurisdiction which previously would have qualified as a state felony conviction (*if the offense falls between the \$500 and \$1,500 value threshold*).

The legislation would reduce the number of Class D state inmates housed in county detention centers, which reflects a cost savings for the Department of \$36.70 per day per offender.

Jails would lose the \$31.34 revenue from the state per diem for offenders that previously would have been a Class D felony, but under the legislation would reflect a misdemeanor theft offense. Counties hold the incarceration costs related to misdemeanor offenders.

AOC data reports 15,631 misdemeanor convictions in FY2019 for Theft by Unlawful Taking specific to KRS 514.030(2)(d).

There is no way to predict judicial sentencing if Theft by Unlawful Taking under \$1,500 would become a misdemeanor offense rather than a felony. However, it could be assumed that as a misdemeanor offense, judges may be more inclined to probate than incarcerate misdemeanor theft cases, therefore decreasing the impact to counties.

Overall, a shift from felony to misdemeanor level offenses has the potential for a significant fiscal impact for counties.

Projected 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:

Kathleen M. Kenney

Commissioner, Kentucky Department of Corrections

1/9/2020

Date