

# CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 189 Introduced BR # 144 DOC ID #: xxxx

BILL SPONSOR(S): Rep. L. Bechler AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to the sexual endangerment of a child and declaring an emergency.

**SUMMARY OF LEGISLATION:** Create a new section of KRS Chapter 510 to make the sexual endangerment of a child a Class D felony; EMERGENCY.

**AMENDMENT:** .

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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 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 \$75.91. Community Custody Class C and most Class D felons are housed in one of 77 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 creates a new Class D felony of Sexual Endangerment of a Child. This offense is the wanton engagement in conduct that creates a substantial risk of childhood sexual assault or abuse or wanton failure to take reasonable steps to alleviate the substantial risk of childhood sexual assault or abuse where there is a duty to act.

Childhood sexual assault or abuse is an act(s) against a minor which meets the criteria of a felony or misdemeanor offense in KRS Chapter 510, KRS 529.040 Promoting Prostitution (*when advancing or profiting from a minor*), KRS 529.100 Human Trafficking (*involving commercial sexual activity*), KRS 529.110 Promoting Human Trafficking (*involving commercial sexual activity*), KRS 530.020 Incest, KRS 530.064 Unlawful Transaction with a Minor 1<sup>st</sup> Degree (*for illegal sexual activity*), KRS 531 (*involving or depicting a minor*), and Criminal Attempt or Criminal Solicitation of any of these offenses.

Restrictions under KRS 6.945 are not applied to the legislation. The legislation is identified as an emergency act.

It is not known how many additional Class D offenders would be convicted under this new offense.

Note: Neither AOC nor the Department of Corrections tracks the age of the victim. Unless the offense itself specifies the age of the victim, it is not possible to determine if the nature of the offense involved a minor. It must also be noted that some offenses specify victims under the age of twelve (12). There could be additional convictions for minor victims between the ages of twelve (12) and seventeen (17) that are not identified by the offense title (Example: Rape 1<sup>st</sup> Degree vs Rape 1<sup>st</sup> Degree – Victim under Twelve (12) Years of Age).

For the offenses included in this legislation where a minor victim could be identified, Department of Corrections incarceration records indicate 1,668 convictions for offenses against a minor, with an additional 797 offenses against a minor by offenders on supervision. Note: This may not represent all offenses cited by the legislation where a minor may be a victim.

AOC records for FY2019 indicate 1,844 convictions for offenses specified in this legislation where the charges specify a minor as a victim. Note: This may not represent all offenses cited in the legislation where a minor may be a victim.

Not all sexual offenses against a minor possess circumstances applicable to Sexual Endangerment of a Child. It is unknown how many additional convictions the proposed legislation would generate.

Under KRS 17.500 Sexual Endangerment of a Child would be classified as a sex offense subject to the sex offender registry and sex offender postincarceration supervision. Convictions for Sexual Endangerment of a Child would be a Class D felony subject to incarceration at the local detention center as a state inmate if the sentence is less than two (2) years in duration. Class D sex offenders with sentences longer than two (2) years, in accordance with KRS 532.100, shall be housed a state prison facility at a cost of \$75.91 per day.

The impact from this legislation is expected to be minimal to moderate, given that the number of convictions is not likely to be significant.

A Class D Felony sentence is 1 to 5 years.

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

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

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)

As a Class D offender, offenders incarcerated under this offense with a sentence under two (2) years would serve their sentence in a county jail at a cost to the state of \$36.70, with \$31.34 paid per day to the local jail.

This provides additional revenue for jails. However, in times of current overcrowding any additional incarceration has an impact on the occupancy of jail beds.

Overall, the number of offenders generated by this offense could have a minimal to moderate impact on incarceration in jails.

**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. Keavy

Commissioner, Kentucky Department of Corrections

1/23/2020

Date