

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 275 Introduced BR # 58 DOC ID #: xxx

BILL SPONSOR(S): Rep. D. Lewis AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to the sexual exploitation of minors.

SUMMARY OF LEGISLATION: Amend KRS 531.335 to raise the penalty for possession or viewing of matter portraying a sexual performance by a minor under the age of 12 years to a Class C felony; amend KRS 531.340 to raise the penalty for the distribution of matter portraying a sexual performance of a minor under the age of 12 years to a Class C felony for the first offense and a Class B felony for each subsequent offense.

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 checked="" 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 seventy-seven (77) full service or regional jails for up to five (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)

HB 275 modifies the criminal penalty for two (2) offenses under KRS Chapter 531.

The criminal penalty is modified for KRS 531.335 Possession or Viewing of Matter Portraying a Sexual Performance by a Minor. Under current statute, Possession/Viewing is a Class D felony. Language added under the legislation would retain the Class D felony if the minor portrayed is less than eighteen (18) years old, but adds a Class C felony if the minor portrayed is less than twelve (12) years old.

Also modified is KRS 531.340 Distribution of Matter Portraying a Sexual Performance by a Minor. Under current statute this offense carries a Class D felony for the first offense and a Class C felony for subsequent offenses. The legislation applies the Class D felony if the minor portrayed is less than eighteen (18) years old. If the minor is less than twelve (12) years old, the penalty is elevated to a Class C for a first offense and a Class B felony for subsequent offenses.

The Kentucky State Police indicates these offenses are two (2) of the most frequent crimes charged by their Electronic Crime Branch and KY ICAC Task Force. Kentucky State Police relay that the majority of arrests for these types of offenses are for pre-pubescent images (ages 0-12).

Only KRS 531.335 Possession or Viewing of Matter Portraying a Sexual Performance by a Minor is identified by statute as a sex crime under KRS 17.500. As a sex offense, KRS 531.335 is subject to sex offender treatment and the sex offender registry. However, under KRS 532.043 and KRS 532.060, Possession or Viewing of Matter Portraying a Sexual Performance by a Minor is the only sex offense not subject to five (5) years sex offender postincarceration supervision.

As a sex offense, under KRS 532.100 Class D KRS 531.335 offenders would serve their offense in a state prison facility if the sentence is two (2) years or more at a daily cost of \$75.91. If the sentence is under two (2) years, placement would be at a county detention facility at a cost to the state of \$36.70 per day.

As a Class D felony for a 1st Offense (and as it is not a sex offense), KRS 531.340 offenders would serve their sentence in a county detention center.

For KRS 531.335 Possession or Viewing of Matter Portraying a Sexual Performance by a Minor, AOC records indicate 926 convictions in FY 2019. (Note: these convictions stemmed from eighty-eight (88) cases.) The Department currently has 221 inmates and 193 community supervision offenders for this offense.

AOC records indicate 142 convictions for KRS 531.340 Distribution of Matter Portraying a Sexual Performance by a Minor in FY 2019. (Note: these convictions stemmed from thirty-five (35) cases.) For this offense, the Department has eighty (80) inmates currently incarcerated and seventy-nine (79) offenders currently on supervision.

The Department is not able to track the age of the minor victims, so it is unknown how many of these current offenses are for victims under the age of twelve (12). Based on information from Kentucky State Police related to victim age, a substantial number of convictions incurred under the legislation may carry the higher level of conviction.

For KRS 531.335 Possession or Viewing of Matter Portraying a Sexual Performance by a Minor, the average sentence length for this sentence is four (4) years. (Note: does not reflect other charges the inmate may also be serving on.) These offenders would be serving their incarceration sentence at the prison cost. It is not possible to estimate, with elevation from a Class D to a Class C felony, if the incarceration length imposed would be at the five (5) year or the ten (10) year end of the sentencing range. There could be increased sentence lengths given the higher criminal penalty.

For KRS 531.340 Distribution of Matter Portraying a Sexual Performance by a Minor, records do not indicate any current convictions for a subsequent offense. It may be estimated, however, that a number of future convictions under the proposed legislation may incur elevated penalties. If half of those individuals currently incarcerated for this offense (40) were to receive future convictions under the proposed legislation (receiving a Class C or Class B felony rather than a Class D felony), the additional cost to incarceration could be estimated at \$500,000 annually (Note: it is assumed Class C offenders would not be eligible for community custody).

While the number of elevated sentences under the legislation may be limited, the higher penalty does carry increased incarceration costs. Overall, the impact of this legislation could be in the moderate range.

A Class B Felony sentence is 10 to 20 years.	10 Class B Felons cost KY \$2,770,827.17 to \$5,541,654.34
1 Class B Felon costs KY \$277,082.72 to \$554,165.43	100 Class B Felons cost KY \$27,708,271.72 to \$55,416,543.43
A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1,385,413.59 to \$2,770,827.17
1 Class C Felon costs KY \$138,541.366 to \$277,082.72	100 Class C Felons cost KY \$13,854,135.86 to \$27,708,271.72
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)

The impact to local corrections under this legislation would be minimal. Under current statute, KRS 531.340 offenders and certain KRS 531.335 offenders are currently are eligible to serve state sentences at a county detention center.

The increased penalties under the legislation would leave fewer inmates under these two (2) offenses eligible for state service in a county detention center, which would be a loss in revenue for county jails.

However, the number of eligible convictions under the offenses are such that the impact would not be expected to be significant. Reductions, even if slight, may assist with population overcapacity.

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 **1/30/2020**
Commissioner, Kentucky Department of Corrections Date