

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 361 GA BR # 449 DOC ID #: HB036130.100 - 449 - XXXX

BILL SPONSOR(S): Rep. D. Frazier, J. Petrie, M. Meredith, P. Pratt

AMENDMENT SPONSOR(S): Rep. K. Moser, D. Osborne

TITLE: AN ACT relating to prisoners and declaring an emergency.

SUMMARY OF LEGISLATION: Amend KRS 441.520, relating to the transfer of prisoners, to require an agreement between an originating and receiving jail before ordering the transfer of a prisoner; specify that if a transfer is ordered before receiving an agreement, the receiving jail shall not be required to house the prisoner nor shall the receiving jail's jailer be subject to contempt; outline what a receiving jail may charge for housing a transferred prisoner; require a sheriff to transport the transferred prisoner; require a Circuit Judge to review his or her transfer order every 60 days; amend KRS 441.530 to conform; amend KRS 532.100, relating to the placement of state prisoners, to provide for the transfer of state prisoners from jails at or over 150% capacity; allow a jail to place county prisoners in an area usually reserved for state prisoners if that area has vacant beds; amend KRS 197.020, 439.3407, 441.005, 441.045, 441.146, and 533.025 to conform: EMERGENCY.

AMENDMENT: Clarify that the originating jail's sheriff shall be responsible for the transportation of any prisoner transferred pursuant to Section 1.

AMENDMENT: Specify that the receiving jail cannot charge a per diem that exceeds the combined cost of the prisoner's room and board, administrative processing or booking, and any evidence-based programming the prisoner receives.

AMENDMENT: Create the Jail and Corrections Reform Task Force; outline task force membership; require the task force to meet monthly during the 2020 interim; require the task force to submit findings and recommendations to the Legislative Research Commission by December 1, 2020.

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 type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input checked="" type="checkbox"/> Otherwise impacts incarceration (Explain) <i>Jail policy and procedures.</i> | |

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)

This legislation discusses the transfer of inmates between jails.

KRS 441.520 & KRS 441.530 speak to court orders for inmates to be transferred to a different jail for housing, often due to safety concerns. Instructions for housing, transportation, medical care, and associated costs are specified.

KRS 532.100 discusses placement of state inmates in jails. There is additional wording stating that the Department of Corrections shall approve programming offered by jails to state inmates for sentencing credits in accordance with KRS 197.045.

New procedures are established providing the Department of Corrections with the authority to direct jails at 150% overcapacity to transfer state inmates to vacant beds at other correctional facilities. Currently there are twenty (20) jails over 150% capacity. Transfers would be directed based on classification and the security level of vacant beds. Certain offenders would not be eligible for transfer, to include those needing necessary medical treatment and care under KRS 441.560, inmates currently enrolled in programming, and individuals awaiting trial in that county. A penalty for non-compliance with the directive is imposed through the withholding of per diem payment for that inmate. There is a provision for jails over 150% capacity to request the transfer of state inmates, as well, if other vacant beds are available. The legislation also authorizes placement of county prisoners in the area of the facility reserved for state prisoners if there are vacant beds.

KRS 197.020, KRS 439.3407, KRS 441.045, KRS 441.146, and KRS 533.025 conform. Under KRS 441.005 a correction is made to the definition of a regional jail.

In reference to the additional wording in KRS 532.100(5)(d), it is not possible to estimate how many offenders are currently in programming provided by the jail which is not an approved program. However, there is no additional fiscal impact as the offenders in non-approved programming are not able to receive program credit.

It is believed there would be a limited number of offenders ineligible for transfer. Of the 10,779 state inmates currently serving in a county jail, 1,093 state inmates are currently enrolled in approved programming. Additionally, there are fifty-nine (59) inmates currently on a waiting list to be brought into Department of Corrections custody due to medical issues.

The Department is not able to estimate the number of occurrences where per diem would be withheld from jails. However, the Department feels the proposed statutory language would compel compliance and that through the working relationship the Department has with the county jails, it is hoped that the penalty would not need to be imposed.

The legislation targets jails which are the most overcrowded. The legislation does assist Department of Corrections in managing the state inmate population by authorizing the movement of state inmates between county jails, utilizing beds that may be vacant. Effective use of vacant beds is vital given the critical capacity issue jails and prisons are facing.

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)

This legislation focuses specifically on jails currently at a high level of overcrowding. It provides a penalty for jails who fail to transfer state inmates upon receiving a directive to do so, as well as for jails who may refuse to accept these transfers. There is a monetary penalty for non-compliance included in the legislation. It is not possible to estimate the impact this may have.

Any efforts to target the reduction of overcrowding for jails provides a significant impact for local incarceration at this time.

Projected Corrections Impact from Amendments:

House Committee Substitute:

Under the House Committee Substitute, language relating to the transport of county prisoners by the sheriff of the originating county is modified to reflect transfers pursuant to that section of the legislation.

There is no additional corrections impact under the House Committee Substitute.

House Floor Amendment:

The House Floor Amendment ensure that jails receiving a transferred prisoner cannot charge a higher per diem than the prisoner's cost of room and board, administrative processing or booking fees, or any programming cost incurred. Current bill wording ensures this amount is no more than three (3) times the per diem amount.

Additionally, the House Floor Amendment establishes a Jail and Corrections Reform Task Force to study the management of Kentucky's incarcerated population. The Amendment specifies topics for the Task Force to study with recommendations due to the Legislative Research Commission by December 2020. Membership for the nine (9) member Task Force is outlined.

HB 361 passed the House with Committee Substitute 1 and Floor Amendments 3 & 4.

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:  **3/10/2020**
Commissioner, Kentucky Department of Corrections Date