

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 410 Introduced BR # 1193 DOC ID #: xxxx

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

TITLE: AN ACT relating to crimes and punishments.

SUMMARY OF LEGISLATION: Amend KRS 431.066, relating to pretrial release and bail options, to define "administratively released," "danger to others," and "financial condition of release"; require pretrial services to provide a defendant's juvenile court history when the defendant is 23 or under; require pretrial services, if requested by the court, to provide the defendant's juvenile court history when the defendant is over 23; specify that a court may impose a financial condition of release if the court finds by a preponderance of the evidence that the defendant constitutes a risk of failing to appear or danger to others; provide that a defendant is not eligible for bail credits if the court finds by clear and convincing evidence that the defendant constitutes a risk of failing to appear or danger to others; amend KRS 431.520, relating to conditions of release, to conform and to outline the hearing process for when a person continues to be detained as a result of his or her inability to meet a financial condition of release; amend KRS 218A.135, 222.204, 431.525, and 610.340 to conform; amend KRS 67.372 and 431.517 to require counties to pay global positioning monitoring system fees for those on pretrial release who are at or below 200% of the federal poverty guidelines; repeal KRS 431.540, relating to a schedule of bail amounts.

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 checked="" 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)

This legislation provides guidelines for financial conditions for pre-trial release. The legislation specifies that upon arraignment the court may impose a financial condition of release if there is a preponderance of evidence that the defendant is a failure to appear risk or is a danger to the public. If a clear and convincing risk is determined, the defendant is not eligible for bail credits. If not a risk, the offender shall be released on his own recognizance or on an unsecured bond. A hearing process is outlined if an individual is not able to meet the financial conditions of release. The uniform schedule of bail amounts for Class D felonies, misdemeanors, and violations is repealed. There are also instructions for the provision of juvenile criminal histories to the court for offenders under the age of twenty-three (23). Counties shall pay for indigent offenders on pretrial GPS monitoring.

While the Commonwealth's pretrial system does not directly impact post-adjudication incarceration, the proposed modifications have a significant impact to incarceration on the local level with a corresponding impact for the Department of Corrections. It is especially relevant due to the current bed shortage for state inmates in county jails and prisons.

Days in custody prior to conviction are awarded toward a defendant's sentence, though as a pre-adjudication offender, the cost is assumed by the county. Based on pre-sentence investigation reports completed by the Division of Probation &

Parole in 2019, the average number of days in custody prior to sentencing for a felony (excluding capital offenses) was 66 days.

Of the 22,555 pre-sentence investigation reports completed by the Division of Probation & Parole in 2019, 73% were probated and 20% received a sentence of incarceration. Of those admissions to prison, 70% were Class D offenders and 20% were Class C offenders.

For offenders ultimately sentenced to incarceration, fewer days of jail custody credit is a cost savings for the county but equates to a higher number of days left to serve on their sentence, which is a corresponding cost increase for the state.

Upon commitment, offenders will serve the remainder of their sentence as a state inmate, at a cost to the Commonwealth of either the county jail cost to incarcerate of \$36.70 or the prison daily cost to incarcerate of \$75.91, depending upon the offense level.

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 proposed legislation presents a significant impact on the volume and incarceration length for pre-adjudication offenders housed in county jails.

Under the proposed legislation there would be fewer pre-adjudication detainees. This would provide relief in jail overcrowding and the fiscal costs associated with these offenders. Fewer pre-adjudication inmates held in custody on bond would open beds available to house state inmates, which could provide a revenue source for jails and help alleviate the current bed shortage. Currently there are twenty (20) county jails over 150% capacity.

Of the 169,726 pre-trial interviews conducted by AOC in 2019, 23,847 (14%) were released on administrative release (*i.e. low or moderate risk offender released on their own recognizance without a bond hearing*), 61,769 (36%) were released on a non-financial bond, and 75,345 (44%) were released on a financial bond. (*Note: an additional 3% did not have a bond hearing (ex: quick disposition or bond conditions set on another case) and 2% had a bond hearing and was not offered pretrial release.*)

Fifty-one percent (51%) of the pre-trial interviews conducted were for misdemeanor offenses and forty-one (41%) were for felony offenses. Sixty-nine percent (69%) of felony offenders were released on pretrial release while thirty-one percent (31%) were detained until disposition of the case. Seventy-eight percent (78%) of misdemeanor offenders were released on pretrial release, with twenty-two percent (22%) detained until disposition of the case. (*Note: does not include offenders in custody on violations (3%) or other (5%).*)

Misdemeanor offenders served a median average of one (1) day in custody prior to release. Those detained under disposition of the case served a median average of five (5) days.

Felony offenders served a median average of thirteen (13) days in custody. (*note: includes offenders released under the 60-day rule.*) Those released on pre-trial release reflected a median average of seven (7) days before release. Those detained under disposition of the case served a median average of fifty-five (55) days.

If a portion of offenders who were not previously released on pretrial could be considered for release under the proposed legislation, the average days in custody could be reduced significantly, saving jail days correlating to a significant cost savings.

Overall, the legislation would have a significant impact at the local level in terms of cost savings for counties and relief for jail overcrowding.

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. Keamy 2/19/2020
Commissioner, Kentucky Department of Corrections Date