

# CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 424 SCS 1 BR # 451 DOC ID #: HB042440.100 - 451 - 80036 - 7578

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

TITLE: AN ACT relating to crimes and punishments.

**SUMMARY OF LEGISLATION:** Amend KRS 194A.990, 205.8463, 238.995, 341.990, 434.650, 434.655, 434.690, 514.030, 514.040, 514.050, 514.060, 514.070, 514.080, 514.090, and 514.110 to increase the felony threshold for theft and fraud offenses to \$1,000, create a Class B misdemeanor level for theft and fraud offenses of \$1,000 or less, and allow for aggregation of offenses that occur within 180 days to determine the appropriate charge.

**AMENDMENT:** Amend KRS 194A.990, 205.8463, 238.995, 341.990, 434.650, 434.655, 434.690, 514.030, 514.040, 514.050, 514.060, 514.070, 514.080, 514.090, and 514.110 to increase the felony threshold for theft and fraud offenses to \$1,000, create a Class B misdemeanor level for theft and fraud offenses of less than \$500, amend the Class A misdemeanor level to be \$500 or more but less than \$1,000, and enhance the penalty for three convictions of a Class A misdemeanor to a Class D felony if the convictions occur within a five year period.

**AMENDMENT:** Amend KRS 194A.990, 205.8463, 238.995, 341.990, 434.650, 434.655, 434.690, 514.030, 514.040, 514.050, 514.060, 514.070, 514.080, 514.090, and 514.110 to increase the felony threshold for theft and fraud offenses to \$1,000, create a Class B misdemeanor level for theft and fraud offenses, amend the Class A misdemeanor level to be \$500 or more but less than \$1,000, enhance the penalty for three convictions of a Class A misdemeanor to a Class D felony if the convictions occur within a five year period, allow offenses that occur within 90 days to be aggregated into one offense, and make technical corrections.

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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 checked="" 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 checked="" 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 proposed legislation raises the felony threshold level for fraud and theft offenses. The legislation establishes a Class B misdemeanor if the fraud or theft offense amount is below \$1,000 and is a 1<sup>st</sup> Offense. The offense would be a Class A misdemeanor for a 2<sup>nd</sup> Offense under \$1,000 within five (5) years, and a Class D felony for a 3<sup>rd</sup> Offense within five (5) years. It would also be a Class D felony for amounts between \$1,000 and \$10,000.

In addition, if two or more separate offenses occur within 180 days, the offenses may be aggregated. This shall not apply if the criminal behavior is determined by the Court to be substance abuse related. In making the determination, the Court may consider a clinical assessment or convictions within the last two years.

The misdemeanor and felony threshold amounts are moved for the following statutes:

- KRS 194A.990 (which changes the provisions of KRS 194A.505 False Statement to Receive Benefits);
- KRS 205.8463 Fraudulent Claims to Defraud Kentucky Medical Assistance Program;
- KRS 238.995 Charitable Gaming;

KRS 341.990 False Statements to Increase or Reduce Benefits;  
 KRS 434.650 Fraudulent Use of a Credit Card;  
 KRS 434.655 Fraudulent Use of a Credit Card After Reported Stolen;  
 KRS 434.690 Receiving Goods by Fraud;  
 KRS 514.030 Theft by Unlawful Taking (*excluding firearm, anhydrous ammonia, and controlled substances*);  
 KRS 514.040 Theft by Deception;  
 KRS 514.050 Theft of Property;  
 KRS 514.060 Theft of Services;  
 KRS 514.070 Theft by Failure to Make Required Disposition of Property;  
 KRS 514.080 Theft by Extortion;  
 KRS 514.090 Theft of Labor; and  
 KRS 514.110 Receiving Stolen Property (*excludes firearm and anhydrous ammonia*).

The Class C theft amounts remain the same for these offenses.

There are specific exclusions for firearms, anhydrous ammonia, or controlled substances for KRS 514.030 Theft by Unlawful Taking and KRS 516.120 Receiving Stolen Property.

The proposed legislation changes the threshold for several fraud and theft offenses, which would significantly reduce the number of felony theft convictions. In turn, the legislation would reduce the number of felony offenders incarcerated.

AOC data for FY2019 reflects 4,356 convictions for Class D felony offenses included in this legislation.

For Class D KRSs included in this legislation, the Department currently has inmates serving on 4,414 Class D fraud or theft convictions (some offenders will have multiple offenses). Felony community supervision offenders show a total of 12,759 Class D felony fraud or theft convictions.

Of the inmates currently serving on fraud or theft convictions only, 724 offenders are serving on offenses identified in this bill. (*Note: these numbers may include certain offenses which would be excluded under the legislation, like theft involving a firearm.*)

It is not possible to know how many of the offenders currently incarcerated for Class D offenses listed in this legislation would be affected by the threshold change proposed in the legislation. Some cases will have theft amounts above the proposed threshold, which would not change the offense class under the proposed legislation. Others would have an amount that currently classifies the offense as a felony, but under the new statutory proposal, would reduce the offense from a Class D felony to a Class A misdemeanor. The fiscal amount of the crime is not tracked by the Department.

If this legislation had been law at the time of their convictions, and if it is assumed that they are incarcerated for an amount that would be affected by the threshold change, for the 724 offenders incarcerated for Class D felony offenses included in this legislation, the savings for the Department could be \$9,698,342.00 for one year of incarceration.

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)

This legislation would reduce the number of Class D felons housed in county jails, which would result in cost savings for the Department.

Jails would acquire more misdemeanor offenders under this legislation. There would be a significant increase in the number of individuals under county jurisdiction for misdemeanor fraud and theft charges which previously would have qualified as a state felony conviction. Jails would lose the revenue from the state per diem for these misdemeanor offenders that previously would have been a Class D felony state inmate. The counties would incur the cost of incarcerating the Class A misdemeanor offenders.

AOC data for FY 2019 reports 2,144 Circuit Court and 22,113 District Court misdemeanor convictions for offenses specified in this legislation. In addition, under the proposed legislation, a portion of the current Class D felony offenses would become misdemeanor level offenses under county jurisdiction.

For example, there were 1,296 convictions for Class D Receiving Stolen Property in FY2019. If ten percent (10%) of that total were convicted upon passage of this legislation and involved theft of an amount under the proposed felony threshold, and assuming they are incarcerated for a twelve-month sentence, the cost to the county could be \$1.74 million for 130 offenders.

There is no way to predict judicial sentencing if fraud and theft charges would become misdemeanor offenses rather than a felony. However, a shift from felony to misdemeanor level offenses has potential for a significant fiscal impact on the counties.

**Projected Corrections Impact from Amendments:**

House Floor Amendment:

The House Floor Amendment increases the felony threshold for theft and fraud offenses to \$1,000, creates a Class B misdemeanor for \$500 or less, and moves the Class A misdemeanor to amounts between \$1,000 and \$500. Included is an enhanced penalty to a Class D felony for three (3) Class A misdemeanor convictions occurring within five (5) years. The period of time is calculated from the offense dates.

The list of applicable offenses under the House Floor Amendment remains the same. Fraudulent Use of a Credit Card and Receiving Goods by Fraud have an added element for the amounts to occur within six (6) months. Removed from the legislation is the substance abuse exception.

The House Floor Amendment will increase the number of offenders qualifying at the misdemeanor conviction level rather than the felony level. It is not possible to predict how many offenders would be impacted by the change in the theft threshold, however, the impact would be expected to be significant.

HB 424 passed with House with HFA4.

Senate Committee Substitute:

The Senate Committee Substitute allows offenses that occur within 90 days to be aggregated for the purpose of identifying value. Wording specifically stating that the Class B misdemeanor is for amounts less than \$500 are removed.

Overall, the aggregated amounts in the Senate Committee Substitute may increase the number of convictions rising to the felony theft or fraud level.

**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:  3/20/2020  
Commissioner, Kentucky Department of Corrections Date