

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 44 GA BR # 204 DOC ID #: HB004410.100 - 204 - XXXX

BILL SPONSOR(S): Rep. J. Gooch Jr., A. Bowling, R. Bridges, C. Massey

AMENDMENT SPONSOR(S): Rep. J. Gooch Jr.

TITLE: AN ACT relating to key infrastructure assets.

SUMMARY OF LEGISLATION: Amend KRS 511.100 to change the definition of "key infrastructure assets" to specify that natural gas or petroleum pipelines are the type of pipelines covered in the definition and include other types of infrastructure assets; amend KRS 512.020 to include tampering with, impeding, or inhibiting operations of a key infrastructure asset in the offense of criminal mischief in the first degree; create a new section of KRS 411 that a civil action may be maintained against a person that compensates or remunerates a person to violate KRS 512.020 and the compensated person is convicted of criminal mischief in the first degree.

AMENDMENT: Amend Section 1 to delete steelmaking facilities using an electric arc furnace and facilities regulated by the United States Department of Homeland Security Chemical Facility Anti-Terrorism Standards program from the definition of "key infrastructure assets"; amend Section 2 to clarify that the offense of criminal mischief in the first degree shall include tampering with a key infrastructure asset in a manner that renders the operations harmful or dangerous; amend Section 3 to clarify that a civil action may be maintained against any person that knowingly directs or causes a person to violate subsection (1)(b) of Section 2 and that liability may include punitive damages and court costs.

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 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 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)

The legislation modifies key infrastructure assets under KRS 511.100. Natural gas or petroleum pipelines, steelmaking facilities utilizing electric arc furnaces, cable television headend, and facilities regulated by Department of Homeland Security for chemical and anti-terrorism standards are added to the list of key infrastructure assets.

Trespass of Key Infrastructure Assets is a Class B misdemeanor for the first offense, and a Class A misdemeanor for a second or subsequent offense.

Tampering with, impeding, or inhibiting operations of a key infrastructure asset is added to the definition of Criminal Mischief 1st Degree under KRS 512.020. Criminal Mischief 1st Degree is a Class D felony.

It is not possible to estimate how many additional convictions for Criminal Mischief 1st Degree would be generated under the legislation, though application under KRS 511.100 would be expected to be limited.

The legislation also establishes civil liability for persons that knowingly compensates or remunerates a person to tamper with, impede, or inhibit operations of a key infrastructure asset and the person is subsequently convicted of criminal mischief in the 1st Degree.

Included in the list of key infrastructure assets under KRS 511.100 are correctional facilities within Kentucky.

The legislation would widen the behavior that could qualify for trespass of key infrastructure assets or criminal mischief. The application of the offense to Criminal Mischief provides for a felony penalty not currently provided for under KRS 511.100. These Class D offenders would be housed, by statute, in a local detention center.

Currently, the Kentucky Department of Corrections has 1,065 inmates and 1,645 offenders on community supervision for Criminal Mischief 1st Degree.

It is not expected that a significant number of additional convictions for Criminal Mischief would be incurred under this legislation.

There could also be some impact to the Department of Corrections under the new provision for civil actions. If a correctional facility suffers from tampering or inhibited operations through criminal mischief from an individual paid to commit the act, the Department could be due damages. It is not possible to predict, but it would be assumed that the occurrence and corresponding impact would be low.

The impact to the Department of Corrections stemming from this legislation would be expected to be minimal.

A Class D Felony sentence is 1 to 5 years.

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

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

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)

For the Class D offense specified by the legislation, offenders would serve their sentence in a county detention center at a cost to the state of \$36.70 per day, with \$31.34 daily reimbursement to the local detention center.

Class A and B misdemeanors are subject to the jurisdiction and cost of the county.

Due to limited capacity, any number of additional offenders impacts local jail populations. However, it is anticipated that a limited number of convictions would be generated by the additional facilities identified as key infrastructure assets and the expanded definition of Criminal Mischief as applied to key infrastructure assets.

As such, the impact on local corrections is expected to be very minimal.

A Class A misdemeanor is 90 days to 1 year in jail.

1 Class A misdemeanor: \$2,820.60 to \$11,439.10

10 Class A misdemeanants: \$28,206.00 to \$114,391.00

100 Class A misdemeanants: \$282,060.00 to \$1,143,910.00

A Class B misdemeanor is up to 90 days in jail.

1 Class B misdemeanor: up to \$2,820.60

10 Class B misdemeanants: up to \$28,206.00

100 Class B misdemeanants: up to \$282,060.00

Projected Corrections Impact from Amendments:

The House Committee Amendment amended the title of the legislation.

The House Floor Amendment introduces a few wording changes to HB 44. Steelmaking facilities and Department of Homeland Security facilities are removed from the legislation. Language is modified specifying tampering with a key

infrastructure asset that renders operations harmful or dangerous. Information for civil actions is modified to state a person who knowingly directs or causes a person to violate subsection (1)(b) of KRS 512.020, which is Criminal Mischief 1st Degree by tampering with a key infrastructure asset. Attorney fees are removed.

There is no change to the level of corrections impact from the House Floor Amendment.

HB 44 passed the House floor with House Committee Amendment and Floor Amendment.

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 **2/14/2020**
Commissioner, Kentucky Department of Corrections Date