

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 47 GA BR # 143 DOC ID #: HB004710.100 - 143 - XXXX

BILL SPONSOR(S): Rep. L. Bechler, J. Miller AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to child abuse and declaring an emergency.

SUMMARY OF LEGISLATION: Amend KRS 500.050 to remove the five-year statute of limitations for misdemeanor sex offenses against minors and allow prosecution to be commenced at any time; amend KRS 413.249 to remove the ten-year statute of limitations for civil actions arising from childhood sexual assault or abuse and allow a suit to be commenced at any time; amend KRS 620.030, relating to the requirement to report child abuse, to limit the clergy-penitent exemption and make any person who intentionally fails to report guilty of a Class D felony; amend KRS 620.050, relating to the reporting of child abuse, to limit the clergy-penitent exemption; provide for severability; EMERGENCY.

AMENDMENT: Delete original provisions; amend KRS 500.050 to extend the criminal statute of limitations for misdemeanor sex offenses against minors from 5 to 10 years; amend KRS 413.249, relating to civil actions arising from childhood sexual assault or abuse, to apply to direct perpetrators as well as third-party individuals or corporate entities who may be criminally liable for the criminal act of those perpetrators; specify that the amendments enacted in 2017 Ky. Acts ch. 114, sec. 2 shall be applied retroactively to actions accruing before that Act's effective date of June 29, 2017; provide for severability; EMERGENCY.

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 checked="" type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input checked="" type="checkbox"/> Otherwise impacts incarceration (Explain) <i>Expands/Removes the statute of limitations.</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 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 legislation removes the statute of limitations for misdemeanor sex offenses under KRS 500.050. Current statute has a five (5) year statute of limitations after the victim reaches the age of eighteen (18).

Current statute is limited to offenses listed under KRS 510. The proposed legislation expands misdemeanor sex offense to include those in KRS 510, KRS 531 (*involving or depicting a minor*), as well as Criminal Attempt or Criminal Solicitation to offenses under KRS 510, KRS 531 (*involving or depicting a minor*), and the following: KRS 529.040 Promoting Prostitution (*when advances or profits from a minor*), KRS 529.100 Human Trafficking (*involving commercial sexual activity*), KRS 529.110 Promoting Human Trafficking (*involving commercial sexual activity*), and KRS 530.064 Unlawful Transaction with a Minor 1st Degree (*for illegal sexual activity*).

The statute of limitations for civil actions for childhood sexual assault or abuse is removed under KRS 413.249. Current statute has a ten (10) year statute of limitations (either from the act, last act, date the victim knew/should have known, the victim reaches age eighteen (18), or criminal conviction). Instructions on sealing the record if a complaint is filed outside of the statute of limitations are removed from the statute.

The definitions for childhood sexual abuse and childhood sexual assault are combined in KRS 413.249. The definition expands offenses which would meet the criteria for childhood sexual abuse or assault: KRS 510, KRS 529.040 Promoting Prostitution (*when advances or profits from a minor*), KRS 529.100 Human Trafficking (*involving commercial sexual*

activity), KRS 529.110 Promoting Human Trafficking (involving commercial sexual activity), KRS 530.020 Incest, KRS 530.064 Unlawful Transaction with a Minor 1st Degree (for illegal sexual activity), KRS 531 (involving or depicting a minor), and Criminal Attempt or Criminal Solicitation of any of these offenses.

This legislation also amends KRS 620.030 by removing the misdemeanor penalty for failing to report child abuse. Current statute is a Class B misdemeanor for the 1st Offense, Class A misdemeanor for the 2nd Offense, and a Class D felony for each Subsequent Offense.

The clergy privilege is limited in KRS 620.030 and KRS 620.050 to information received through confidential communications when in the course of professional duty, the clergy member has a duty to keep those communications confidential. Under this legislation, KRS 620.050 Knowingly Report Child Abuse Falsely is a Class D felony.

Restrictions under KRS 6.945(1) are not applied to the legislation. Provisions are made for severability and emergency enactment.

AOC records for FY2019 report fourteen (14) convictions for KRS 620.030 Failure to Report Child Neglect/Abuse 1ST Offense, plus twelve (12) convictions for Knowingly Report Child Abuse Falsely stemming from one defendant. Department of Corrections currently has one (1) offender on supervision for Failure to Report Child Neglect/Abuse 1ST Offense.

For the offenses cited in the legislation's definition of a misdemeanor sex offense and where the victim is identified as a minor, the Department of Corrections currently has seventy-eight (78) offenders incarcerated and eighty-four (84) offenders on supervision. (note: offenders may be incarcerated on other charges).

AOC records for FY2019 reflect sixty-eighty (68) convictions for the misdemeanor sex offenses comprised in the definition included in the legislation where a minor victim could be identified. Note: not all of the specified misdemeanor offenses identify the age of the victim. Included here are only the offenses for which a minor victim can be identified. Note: offenders may have multiple offenses.

Under the proposed legislation, due to the removal of the statute of limitations, additional offenders may be convicted of a misdemeanor sex offense. It is not possible to predict how many offenders would be prosecuted under the changes provided by this legislation that previously would not have been eligible for prosecution due to the statute of limitations.

With the removal of the misdemeanor level offenses under KRS 620.030 Knowingly Report Child Abuse Falsely, there could be an increase in felony convictions for this offense. However, the number of convictions stemming from this offense are not expected to be significant.

Incarceration of the Class D felons under the legislation would be a cost to the state of \$36.70 per day. Offenders convicted of a misdemeanor sex offense may be subject to supervision by the Department of Corrections' Division of Probation & Parole at a cost to supervise of \$3.88 per day.

Overall, this legislation would be expected to have a minimal to moderate impact.

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)

Class D felons under this legislation would be housed in a county jail as a state inmate, for which the jails would receive \$31.34 daily reimbursement. This provides additional revenue for jails. Based on the number of offenders convicted under KRS 620.030, the number of felony offenders generated by this legislation is not expected to be significant.

Misdemeanor offenses falling under this legislation would be subject to county jurisdiction. Misdemeanor offenders would serve a sentence of incarceration at a local detention center at a cost to the county.

It is not known how many additional offenders would be convicted of a misdemeanor sex offense due to the removal of the statute of limitations. Overall, however, the impact to local incarceration under this legislation is not expected to be significant.

It should be noted, however, that due to limited jail capacity at this time, any additional incarceration has an impact on the occupancy of jail beds.

Projected Corrections Impact from Amendments:

House Committee Substitute:

Under the House Committee Substitute, the statute of limitations for a misdemeanor sex offense is modified from current statute wording of five (5) years to ten (10) years. The legislation as introduced had removed the statute of limitation for the misdemeanor sex offense. Language previously marked for deletion related to civil actions for childhood sexual assault is reinstated, however, language is added for direct perpetrators of childhood sexual assault and third party individuals and corporate entities who may be criminally liable providing retroactivity to actions occurring before 2017. KRS 620.030 & KRS 620.050 holding the clergy privilege are removed from the legislation.

Under the House Committee Substitute, there would be opportunities for new convictions due to the change in the statute of limitations, however the numbers are not likely to be significant.

HB 47 passed the House with the Committee Substitute.

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:  **3/23/2020**
Commissioner, Kentucky Department of Corrections Date