

# CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # SB 128 Introduced BR # 96 DOC ID #: xxxx

BILL SPONSOR(S): Sen. J. Higdon AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to performance-based incentives for jails and making an appropriation therefor.

**SUMMARY OF LEGISLATION:** Amend KRS 197.045 on felony sentence credits to award funds to local jails which offer programming that results in credit for state inmates; create a new section of KRS Chapter 441 to allow local jails to classify state inmates who have not been classified by the Department of Corrections within 30 days of the date of conviction; amend KRS 532.100 to increase the state inmate per diem paid to local jails offering approved evidence-based programming; create a new section of KRS Chapter 441 to create a negotiated contract option for jails meeting certain standards; amend KRS 441.055 to authorize administration regulations regarding contracts; APPROPRIATION.

**AMENDMENT:** .

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This  bill  amendment  committee substitute is expected to:

Have the following Corrections impact  Have no Corrections impact

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|---|--|
| <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 checked="" type="checkbox"/> Increases inmate/offender services |
| <input checked="" 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>Provides programming payments for jails.</i> |  |
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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 amends KRS 197.045 by adding a section for payment to the jail for state inmates housed in a county detention center who complete programming. If a state inmate housed in a jail receives sentence credits for completion of an education, drug treatment, evidenced based, promising practice, or life skills program as authorized by statute and approved by the Department of Corrections, additional compensation will be provided to the jail. At the end of the inmate's confinement in a jail facility the Department shall pay for each program completion according to the sentence credits awarded: \$1,000 for each program completed resulting in a ninety (90) day sentence credit; \$600 for each sixty (60) day credit program completed; and \$300 for each thirty (30) day credit program completed.

The legislation would allow qualified jail staff (defined as having a minimum of four (4) years' correctional experience) to classify a Class D state inmate if the inmate has not received an initial custody classification within thirty (30) days of the entry of conviction. The Department shall review the classification and may reclassify if needed.

Amendment to KRS 532.100 provides an increase in the per diem by two dollars (\$2) per day for state inmates enrolled in evidence based programs approved by the Department that do not require a postsecondary education qualification for instructors. For programs requiring specific postsecondary education qualifications for instructors, the per diem would be increased to ten dollars (\$10) per day.

The legislation also outlines the establishment of a performance-based contract agreement between a local jail and the Department. This contract would negotiate a per diem payment for state inmates housed in the jail based on programming, standards, and conditions within the jail. The jail would submit a request including a staffing plan, documentation of current programming offered, and proposed programming. The programming shall be evidence based cognitive behavioral programming comparable to programs offered in Kentucky prisons. The requirements of a

performance-based contract include accreditation under the American Correction Association (ACA) Performance-Based Core Jail Standards and Prison Rape Elimination Act (PREA) compliance. The jailer shall have a minimum of five (5) years' experience in corrections or law enforcement and five (5) years' experience in administration. The contract would require staffing plans and programming changes to be approved by the Department. Canteen prices would be set in accordance with the Department's Kentucky Centralized Inmate Commissary (KCIC). Recreational standards would require inmate access at least once daily to exercise out of the living area. Chaplain qualifications would mirror those for Kentucky prisons with religious programming held in accordance with the Department's Religious Reference Manual. Contract compliance is outlined through reports and inspections.

KRS 441.055 requires the promulgation of regulations specific to performance based standards.

For the programming completion payment under Section 1, based on issuance of 12,600 certificates awarding sentence credit for jail inmates in 2019, the estimated cost would be \$10,971,100.00. *(Rates calculated according to the days of credit awarded.)*

Under Section 2, Department of Corrections' records indicate the average wait time for Class D inmates to be classified is between twenty-four (24) and thirty (30) days. Classification may be awaiting receipt of the order from the Court, information on pending charges, etc. Jail staff would be required to attend the Department's classification training. The Department would develop a review system as provided by the legislation.

Section 3 provides an increase in the daily payment for evidence based programs based on enrollment. *(Life skills and promising practice program programs would not be eligible.)* Depending on the program, offenders may not be in programming every day. For example, Moral Reconciliation Therapy (MRT) may take six (6) months to complete the program, with the offender attending a one and half (1.5) hour session one (1) to two (2) days a week. Payments based on the period of time the offender is enrolled in the program (ex: six (6) months) rather than the number of days an offender attends programming would be a higher cost.

With the program completion credit of \$1,000 under Section 1 for a ninety (90) day credit program and the per diem increase for enrollment under Section 3, the additional cost would be \$1,360 for each program.

Under Section 3, programs like Moral Reconciliation Therapy (MRT) would be reimbursed at the two dollar (\$2) additional per diem amount where the substance abuse program (SAP) would be elevated to the ten dollars (\$10) additional per diem amount. Jails currently receive an additional nine dollars (\$9) above the standard per diem amount for the substance abuse program. An increase from nine dollars (\$9) to ten dollars (\$10) a day for the substance abuse program (based on 2019 program achievement numbers) would be an additional \$299,880.00 in jail per diem. Based on 2019 numbers, twenty-two percent (22%) of the jail program completions were for the substance abuse program and seventy-eight percent (78%) were other evidence-based programs.

Utilizing an average time to complete a program of 180 days, and the 7,502 certificates awarded to jail state inmates for evidence based programs in 2019, the per diem cost under Section 3 of the legislation would be \$5,099,760.00 annually. Since the Department already pays nine dollars (\$9) per diem for SAP, subtracting that amount out reflects the additional cost to the state for per diem amount paid under this portion of the legislation as \$2,400,840.00 annually. *(Note: Calculated at rate listed above. GED and NCRC completions are removed. Calculations are based on program completions; there may be some offenders who enroll, but do not complete the program.)*

Some programs (such as GED and the National Career Readiness Certification (NCRC)) are not able to be estimated because they are test based according to the individual's preparedness and do not require a set curriculum. (For example, an individual may take the GED test within days of starting a GED prep course, while others may work for months in preparation of the test.) Jails are not currently required to submit attendance for these two programs. In 2019, 607 GED certificates and 2,013 National Career Readiness Certificates were awarded to jail state inmates. Qualifications for GED & NCRC instructors would place this program in the ten dollars (\$10) per diem category.

Estimates for increased per diem and program completion payments, based on 2019 program numbers, could be \$13,371,940.00 annually in additional to current per diem reimbursements. *(Amount takes the current SAP per diem payments into consideration.)*

It is not known how many jails would provide additional programming under the incentives provided by the legislation. If programming completions increased by ten percent (10%) the programming payment and per diem costs could be estimated at an additional \$1,603,935.36. *(Calculates increased volume with 22% at a \$10 per diem rate and 78% at a \$2 per diem rate. Assumes all SAP program growth is new cost.)*

Through cost avoidance for days less incarcerated (based on sentence credits earned by the inmate population), the state does realize savings in the provision of programming. For example, if there was a 10% increase in programming, there could be an estimated reduction of 99,414 days of incarceration which would equate to \$3.1 million less in per diem payments.

For the impact under Section 4, the Department currently completes inspections for local detention centers. There may be additional time required to monitor compliance with the items required under a performance-based contract.

The Department would need to implement an additional payment structure to issue the correlating per diem and program completion payments. This would require additional functionality within the current system and will have an associated software development cost.

To comply with the additional per diem payments, program tracking, and contractual requirements, the Department would need two (2) additional Purchasing Agents, two (2) additional Administrative Specialists II, and one (1) additional Administrative Specialist III. A Purchasing Agent I has an annual cost of \$83,492.13. An Administrative Specialist II has an annual cost of \$59,576.67 and an Administrative Specialist III has an annual cost of \$70,399.31. Additionally, there is an estimated \$6,000 operating costs associated with each of these new positions.

The Department supports program provision for offenders. State inmates housed in jail are at high risk for recidivism as the population is largely comprised of drug and property offenders (who often have substance abuse issues). These offenders are at high risk for continued drug use, often resulting in their re-incarceration.

**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)

Under the legislation, jails would receive additional funding for offenders' enrollment and completion of programming. This would be additional funds for jails, but may also require staffing and resources to provide the programming.

Jails seeking a performance-based contract under Section 4 may incur costs in readiness for compliance with ACA and PREA guidelines. These costs could be offset to some extent by the negotiated per diem payment under a performance-based contract.

The availability of programming in jails has expanded significantly in the past few years, but given the increasing population numbers there is a recognized need for expanded programming.

The provision of additional programming to the jail population reduces incarceration costs for the Commonwealth through fewer days of incarceration by issuance of sentence credits pursuant to KRS 197.045 as well as an associated reduction in recidivism as fewer offenders are returned to custody due to violations of supervision or new criminal behavior.

**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: Karen M. Keagy 2/25/2020  
Commissioner, Kentucky Department of Corrections Date