

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # SB 2 HCS 1 BR # 1168 DOC ID #: SB000230.100 - 1168 - XXXX
BILL SPONSOR(S): Sen. R. Mills, D. Thayer, R. Alvarado, D. Carroll, M. Castlen, C. Embry Jr., R. Girdler, S. Meredith, S. West, P. Wheeler, M. Wilson, M. Wise **AMENDMENT SPONSOR(S): Sen. R. Mills**

TITLE: AN ACT relating to voter identification and making an appropriation therefor.

SUMMARY OF LEGISLATION: Create new sections of KRS Chapter 117 to allow a voter to cast a provisional ballot if the voter is unable to produce proof of identification, by executing a provisional voter's affidavit furnished by the State Board of Elections; describe the voting procedure for casting a provisional ballot; describe how to validate a provisional ballot or provisional absentee ballot by requiring the provisional voter to appear before the county clerk or county board of elections to provide an affidavit stating that the voter is the same individual who cast the provisional ballot or provisional absentee ballot, and to either show proof of identification or give a sworn statement as to the reasonable impediment that precluded the voter from obtaining proof of identification with an accompanying Social Security card, an identification card that has been approved by the State Board of Elections, any identification card with picture and signature, or a credit card; amend KRS 116.065 to include provisional ballots and provisional absentee ballots in the requirements for verification and the penalties of perjury; amend KRS 117.066 to clarify that there are two ballot boxes that are transferred to the county board of elections and to conform; amend KRS 117.077 to require proof of identification to be sent with the absentee ballot request; provide for the voter to cast a provisional absentee ballot if the voter did not submit proof of identification; amend KRS 117.085 to set out the requirements for provisional absentee voting when voting by mail and for canceling the absentee ballots when the voter is able to vote in person on election day; amend KRS 117.0851 to include provisional absentee ballots with absentee ballots in the tabulation procedures; amend KRS 117.086 to provide instructions to the absentee voter on how to vote a provisional absentee ballot; include provisional absentee ballots in absentee voting procedures; provide for provisional absentee ballots for persons who appear in person to vote an absentee ballot but who are unable to provide proof of identification; require separate ballot boxes and lists for absentee ballots and provisional absentee ballots; amend KRS 117.0863 to include provisional absentee ballots in the requirements for absentee ballots; amend KRS 117.0865 to include provisional absentee ballots in the prohibition against aiding another in completing an absentee ballot or encouraging the voter to vote in a particular way; amend KRS 117.087 to exclude all provisional absentee ballots from the requirements in the section; amend KRS 117.145 to require the county clerk to print a sufficient number of provisional absentee ballots, provisional voter affidavits, and provisional ballots; specify the form of the provisional absentee ballot, and provisional ballots; amend KRS 117.175 to include instructions for filling out provisional ballots, and provisional voter affidavits in the instruction cards provided by the county clerk; amend KRS 117.187 to include instruction on proof of identification in the training provided by the county board of elections; amend KRS 117.195 to include provisional ballots, provisional voter affidavits, and a locked ballot box for provisional ballots in the items furnished to each precinct by the county clerk; amend KRS 117.225 to require that a voter provide proof of identification in order to cast a vote in a precinct polling place; provide an exception to requiring proof of identification if the voter resides in a state licensed care facility where the voting is taking place; amend KRS 117.227 to delete the requirement that a person's identify may be confirmed by personal acquaintance or by specific documents other than those documents designated as providing proof of identification in this Act; amend KRS 117.245 to specify that the challenge procedures do not apply to failure to provide proof of identification; amend KRS 117.255 to include provisional voters and provisional ballots in the instructions for marking a spoiled ballot; amend KRS 117.265 to include provisional voters and provisional ballots in the instructions for write-in candidates; amend KRS 117.275 to provide for tabulation of provisional ballots by the county board of elections; amend KRS 117.305 to include provisional ballots and provisional absentee ballots in the recanvassing procedures; amend KRS 117.365 to include provisional voter affidavits in the documents to be presented to the grand jury; amend KRS 117.375 to include provisional ballot and provisional absentee ballot in the definition of "ballot" or "official ballot" and to define "proof of identification," "provisional voter," and "provisional ballot" or "provisional absentee ballot"; amend KRS 117.383 to include provisional ballot cards in the State Board of Elections requirement to design ballot cards; amend KRS 117.385 to include instructions on how a voter is to place a provisional ballot with the accompanying affidavit in the appropriate envelope and box in the presence of a precinct election officer; amend KRS 117.995 to include provisional voting in the penalty provisions relating to voting; amend KRS 118.015 to define "ballot" or "official ballot" to include provisional ballots and provisional absentee ballots; amend KRS 118.305 to require the county clerk to print provisional ballots and provisional absentee ballots for the voting machines, and to ensure that provisional absentee ballots are not tabulated or recorded for any candidate who was replaced; provide that candidates for members of boards of education shall have their names printed on the provisional ballots; ensure that only duly nominated candidates shall have their names printed on provisional absentee ballots and provisional ballots; amend KRS 118.405 to prohibit more than one appearance of a candidate's name on any provisional ballot or provisional absentee ballot; amend KRS 118A.010 to define "ballot" or "official ballot" to include provisional ballots and provisional absentee ballots; amend KRS 118A.100 to require county clerks to print on provisional ballots and provisional absentee ballots the candidates for offices of the Court of Justice; amend KRS 118A.130 to prohibit a judicial candidates name from appearing more than once on a provisional ballot or a provisional absentee ballot; amend KRS 118A.150 to allow only duly nominated candidates to the Court of Justice to have their names printed on provisional absentee ballots and provisional ballots; amend KRS 119.005 to redefine "ballot" or "official ballot" to include provisional ballots and provisional absentee ballots; amend KRS 120.005 to redefine "ballot" or "official ballot" to include provisional ballots and provisional absentee ballots; amend KRS 186.531 to allow a free standard personal identification card to an individual who does not then currently have a valid operator's license or commercial driver's license, is at least 18 years of age, and is otherwise eligible to vote in the regular election.

AMENDMENT: Retain the provisions of the bill with the following changes: replace the entirety of Sections 1 and 2 of the bill and re-create with two new sections of KRS Chapter 117 with the following changes: allow a voter to cast a ballot on the day of a primary or an election, who is unable to produce a photo proof of identification, if the voter executes a voter's affirmation furnished by the State Board of Elections affirming the reasonable impediment that precluded the voter from obtaining photo proof of identification; in addition to the affirmation, the voter must also provide an alternative ID such as an accompanying Social Security card, an identification card that has been approved by the State Board of Elections, any identification card with picture and signature, or debit or a credit card, in order for the voter to cast a ballot on the day of a primary or an election; allow voters who, on the day of a primary or an election, are unable to provide photo proof of identification, and are also unable to provide an alternative form of proof of identification, to cast a provisional ballot; the provisional voter will then have to personally appear before the county clerk not later than the close of business, the Friday immediately following a primary or an election, and provide either photo proof of identification, or provide an alternative identification with an affirmation affirming the reasonable impediment that precluded the voter from obtaining photo proof of identification; describe process to ensure a provisional voter's ballot is valid and counted; amend KRS 117.077 to remove provisional mail-in absentee voting and revert back to regular mail-in absentee voting with photo ID and affirmation requirements; amend KRS 117.085 to allow for in-person provisional absentee voting to conform to the same ID and affirmation requirements to those voters who vote on a primary or an election; amend KRS 117.086 to revert to regular mail-in absentee voting with photo ID and not provisional mail-in voting; amend KRS 117.087 to state that provisional in-person absentee voting shall be processed in accordance with those provisional votes cast on the day of a primary or an election; require affirmations that are returned with mail-in ballots to be verified for regularity; amend KRS 117.145 to remove requirements concerning provisional voting for mail-in absentee ballots; amend KRS 117.187 to require the county board of elections to include training on provisional absentee voting; amend KRS 117.275 to include retention of ballot affirmations; include ballot affirmations to be included as part of the public review when ballots are counted; amend KRS 117.305 to move the date for certification of votes for a special election from the day following a special election to the Tuesday following; amend KRS 117.383 to ensure provisional voting is conducted in accordance with HAVA; amend KRS 118.425 to move the date for certification of votes for any primary or an election from the Friday following an election to the Monday following an election; amend KRS 186.531 to remove the requirement of eligibility to vote in order to receive a free standard personal identification card; amend various sections of to conform; technical corrections.

AMENDMENT: Retain the provisions of the bill with the following changes: amend Section 1 to permit those voters who are unable to provide a photographic proof of identification to present, with an affirmation, a secondary form of identification that may include an identification card that is issued in this state, any identification card with the voter's photograph and name stated, and any food stamp identification card, electronic benefit transfer card, or supplemental nutrition assistance card, with the name of the voter stated; add a provision to ensure that voter affirmations shall be processed in the same manner as an oath of voter affidavit; amend Section 2 to permit those voters who are unable to provide a photographic proof of identification to present, with an affirmation, a secondary form of identification that may include an identification card that is issued in this state, any identification card with the voter's photograph and name stated, and any food stamp identification card, electronic benefit transfer card, or supplemental nutrition assistance card, with the name of the voter stated; add a provision to ensure that voter affirmations shall be processed in the same manner as an oath of voter affidavit; delete KRS 117.077; amend KRS 117.085 to require a voter to submit with his or her mail-in absentee ballot application a photographic proof of identification or an affirmation; eliminate the requirement that a voter is required to submit, with his or her mail-in absentee ballot, an affirmation if the voter failed to submit his or her photographic proof of identification with the voter's mail-in absentee ballot application; amend KRS 117.375 to expand the definition of proof of identification to include: a document that was issued by any state of the United States, a document that was issued by any college, university, or postgraduate technical or professional school located within the United States, or a document that was issued by any local governmental authority in this state; amend various sections to conform and make technical corrections.

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 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 legislation requires a voter to produce proof of identification prior to voting. If a voter is unable to produce identification, the voter may cast a provisional ballot and then return at a specified later date to provide identification. Instructions are provided if a voter does not return with the proper identification. Proof of identification is defined.

Section 10 adds the provisional absentee ballot to the Class D offense of Influencing a Voter Completing an Absentee Ballot under KRS 117.0865.

Under Section 27, provisional ballots and provisional absentee ballots are added to criminal offenses surrounding willful violations of election law under KRS 117.995.

Offenses include the following Class D felony offenses: Violation of Election Law, Election Officer who Violates an Election Law 1st Offense, and Special Ballots – Person Who Signs Name Other Than Own.

The statute also includes the following Class A misdemeanor offenses: Failure of Election Officer to Allow Voter to Vote/ Machine, Failure of Election Officer to Prepare/Furnish Labels/Ballots to Voter, Election Officer who Violates an Election Law 2nd Offense, and Misuse of Voter Registration Roster by Election Official.

The Department of Corrections records reflect zero (0) offenders incarcerated or on supervision for voting violations under KRS 117. Additionally, AOC records indicate there have not been any convictions under this chapter since 1997.

It is not known how many additional misdemeanor or felony convictions would be generated under this criminal offense, however, given the historical number of criminal voting-related violations, the number is likely to be minimal.

Accordingly, the impact to incarceration or supervision of felony offenders under Department of Corrections would be very little to negligible.

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)

The legislation includes both Class D felonies and Class A misdemeanors.

Class D felonies are housed in a county detention center as a state inmate at a cost to the state of \$36.70 per day, with a daily rate of \$31.34 paid to the county jail as reimbursement.

This provides additional revenue for county jails, however, the number of offenders convicted under this legislation is expected to be minimal.

Class A misdemeanors included in the legislation would be subject to the jurisdiction and cost of the county.

Due to limited capacity, any number of additional offenders impacts local jail populations. However, offenders convicted of voting violations may receive community supervision as an alternative to incarceration. As such, there is minimal additional impact for local corrections based on this legislation.

A Class A misdemeanor is 90 days to 1 year in jail.
1 Class A misdemeanant: \$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

Projected Corrections Impact from Amendments:

The Senate Committee Substitute modifies instructions for voters without photo identification, allowing an alternative identification and a signed affirmation. Provisional ballots apply for voters without any form of identification, which must be validated within a specified timeframe. Provisional ballots are removed from absentee voting, with a copy of an identification card or an executed voter affirmation included with the absentee ballot.

There is no impact to incarceration under the Senate Committee Substitute.

The Senate Committee Substitute was adopted. SB 2 passed the Senate with the Committee Substitute.

The House Committee Substitute provides modification to allowable identification documents, including the addition of a food stamp card as a form of identification. KRS 117.077 is removed from the legislation with references to the statute inserted. Under KRS 117.085 changes are made to the mail-in absentee ballot instructions, with mail-in absentee ballot voters required to submit photographic proof of identification or an voter affirmation. KRS 117.375 adds to allowable identification documents, including a document issued by an educational institution or a local government authority.

There is no additional impact to incarceration under the House 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: *Ailany Daily* 2/24/2020
Deputy Commissioner, Kentucky Department of Corrections Date