

# CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # SB 235 Introduced BR # 1322 DOC ID #: xxxx

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

TITLE: AN ACT relating to sentencing by juries.

**SUMMARY OF LEGISLATION:** Amend KRS 532.055 to allow a jury to recommend that a Class D felony be designated and sentenced as a Class A misdemeanor if the jury finds that a felony conviction would be unduly harsh; amend KRS 532.080 to allow a jury to decide whether a person found to be a persistent felony offender should be sentenced to an increased term of imprisonment, rather than imposing automatic increases in sentencing.

**AMENDMENT:** .

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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 type="checkbox"/> Changes elements of offense for existing crime(s) |   |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) .       |   |
- 

**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)

Under the amendment to KRS 532.055 in SB 235, juries who return a guilty verdict for a Class D offense may consider setting the offense as a Class A misdemeanor. The jury shall consider if a felony conviction would be too harsh, after consideration for the nature and circumstance of the crime and the history and character of the defendant.

Amendment to KRS 532.080 changes wording from juries shall impose a Persistent Felony Offender (PFO) enhancement, to juries may impose the enhanced sentence.

There is wording confirming that PFO 2<sup>nd</sup> Degree offenders not subject to enhanced sentencing under PFO laws will be sentenced as authorized for the offense they presently stand convicted of.

Persistent Felony Offender 2<sup>nd</sup> Degree enhancement is an increase to the next highest degree above the offense for which the offender stands convicted. For example, a Class D one to five (1-5) year sentence may be enhanced to a Class C five to ten (5-10) year sentence.

PFO 1<sup>st</sup> Degree offenders not subject to enhanced sentencing under PFO laws may be sentenced as a PFO 2<sup>nd</sup> Degree or for the offense they presently stand convicted of.

Persistent Felony Offender 1<sup>st</sup> Degree for underlying Class C or D felony convictions is a term of imprisonment of ten to twenty (10-20) years. If the underlying conviction is for a Class A or B felony, the term of imprisonment is twenty to fifty (20-50) years, life, or life without parole for twenty-five (25) years for a sex crime committed against a minor.

It is not possible to predict the number of cases in which juries may consider imposing a Class A misdemeanor rather than the Class D felony. Imposition of the misdemeanor rather than the felony would be a cost savings to the state.

The Department of Corrections reports 3,765 Persistent Felony Offenders currently incarcerated: 1,138 are PFO 1<sup>st</sup> Degree; 2,314 are PFO 2<sup>nd</sup> Degree; and 313 have both PFO 1<sup>st</sup> and 2<sup>nd</sup> Degree sentences. Of the total number, 555 are Persistent Felony Offenders on a violent sentence.

For PFO 1<sup>st</sup> Degree, the average sentence length is twenty-four (24) years. For PFO 2<sup>nd</sup> Degree, the average length is twenty (20) years. If the number of Persistent Felony Offenders were reduced by 1%, (using the prison cost to incarcerate of \$75.91/day and estimating a reduction in sentence length of approximately 10 years) the cost savings could be \$6,681,579.22.

The language in this legislation changing from a “shall” to a “may” impose a PFO could have a significant impact on the number of PFO sentences imposed. It should be noted that only a portion of all convictions stem from jury trials.

While it is not possible to predict if, under the legislation, juries would elect to impose the enhanced sentence, the legislation may result in fewer Persistent Felony Offenders. Additionally, if a PFO is not imposed, offenders which may not have been eligible for probation under the PFO enhancement may receive probation under the legislation, also reducing incarceration costs.

A reduction in the number of Persistent Felony Offenders would significantly reduce sentence lengths and possibly the number of offenders incarcerated as a Persistent Felony Offender, resulting in significant incarceration cost savings. Significant cost savings could also be realized if a number of felony convictions were instead imposed as misdemeanor offenses.

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 imposition of a misdemeanor rather than a felony would be a cost savings to the state. This would be loss of revenue for the jail, with the county picking up the jurisdiction and cost for the misdemeanor offense.

It is not possible to predict how often the lower penalty would be imposed by a jury. Only a portion of Class D convictions are determined by jury cases.

For those current Class D offenders in the Department’s custody as inmates, the average sentence length is six (6) years (due to consecutive sentences).

If subject to a twelve (12) month misdemeanor sentence rather than a one (1) to five (5) year Class D felony sentence, the savings for each year beyond year one (1) would be \$13,396.97 annually.

Overall most Persistent Felony Offenders are not eligible to be housed in a county detention center. Fewer individuals receiving PFOs under the legislation may result in additional offenders who may be eligible, based on the underlying felony and classification level, to serve their sentence in the county detention center. This provides additional revenue opportunity for jails.

The impact of this legislation is indeterminable as it is not possible to estimate frequency of occurrence. However, the legislation could, in fact, have a significant impact to the state and the counties.

A Class A misdemeanor is 90 days to 1 year in jail.  
1 Class A misdemeanant: \$2,820.60 to \$11,439.10

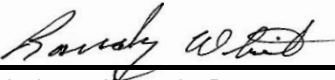
10 Class A misdemeanants: \$28,206.00 to \$114,391.00  
100 Class A misdemeanants: \$282,060.00 to \$1,143,910.00

**Projected Corrections Impact from Amendments:**

**The 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:  3/10/2020  
Commissioner, Kentucky Department of Corrections Date