

# CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # HB 126 GA BR # 9 DOC ID #: XXXX

BILL SPONSOR(S): Rep. Massey AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to crimes and punishments.

**SUMMARY OF LEGISLATION:** Amend KRS 194A.990, 205.8463, 238.995, 341.990, 434.650, 434.655, 434.690, 514.030, 514.040, 514.050, 514.060, 514.070, 514.080, 514.090, and 514.110 to increase the felony threshold for theft and fraud offenses to \$1,000; create a Class B misdemeanor level for theft and fraud offenses; amend the Class A misdemeanor level to be \$500 or more but less than \$1,000; enhance the penalty for three convictions of a Class A misdemeanor to a Class D felony if the convictions occur within a five year period; allow offenses that occur within 90 days to be aggregated into one offense.

**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 checked="" 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 \$80.24. 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 \$37.35 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs (substance abuse treatment not included).\*

**Projected Impact:**  NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

The proposed legislation changes the threshold for several fraud and theft offenses, which would significantly reduce the number of felony theft convictions and the number of felony offenders incarcerated. The following numbers indicate a potential significant cost savings of up to \$4 million per year under the proposed threshold amount.

The legislation establishes a Class B misdemeanor for fraud or theft offense amounts below \$500. The offense would be a Class A misdemeanor for amounts between \$500 and \$1,000; and a Class D felony for amounts between \$1,000 and \$10,000.

Three (3) specified misdemeanor offenses occurring within five (5) years is established as a Class D felony. Class C felony amounts remain the same. Offenses within ninety (90) days may be treated as one (1) offense and the values aggregated.

The misdemeanor and felony threshold amounts are moved for the following statutes:

- KRS 194A.990 (*which changes the provisions of KRS 194A.505 False Statement to Receive Benefits*);
- KRS 205.8463 Fraudulent Claims to Defraud Kentucky Medical Assistance Program;
- KRS 238.995 Charitable Gaming;
- KRS 341.990 False Statements to Increase or Reduce Benefits;
- KRS 434.650 Fraudulent Use of a Credit Card;
- KRS 434.655 Fraudulent Use of a Credit Card After Reported Stolen;
- KRS 434.690 Receiving Goods by Fraud;
- KRS 514.030 Theft by Unlawful Taking (*excluding firearm, anhydrous ammonia, and controlled substances*);
- KRS 514.040 Theft by Deception;
- KRS 514.050 Theft of Property;
- KRS 514.060 Theft of Services;
- KRS 514.070 Theft by Failure to Make Required Disposition of Property;
- KRS 514.080 Theft by Extortion;

KRS 514.090 Theft of Labor; and  
KRS 514.110 Receiving Stolen Property (*excludes firearm and anhydrous ammonia*).

There are specific exclusions for firearms, anhydrous ammonia, or controlled substances for KRS 514.030 Theft by Unlawful Taking and KRS 516.120 Receiving Stolen Property.

The proposed legislation changes the threshold for several fraud and theft offenses, which would significantly reduce the number of felony theft convictions and the number of felony offenders incarcerated. The following numbers indicate a significant cost savings under the proposed threshold amount.

Of the offenses identified in this bill, 320 inmates are currently serving on fraud or theft convictions only. (*Note: these numbers may include certain offenses which would be excluded under the legislation, like theft involving a firearm.*)

If this legislation had been law at the time of their convictions, and if it is assumed that they are incarcerated for an amount that would be affected by the threshold change, for the 320 offenders incarcerated only for Class D felony offenses included in this legislation, the savings for the Department could be \$4,362,480.00 for one year of incarceration based on the average cost to incarcerate.

Overall, for Class D KRSs included in this legislation, the Department currently has 3,565 inmates serving on over 4,700 Class D fraud or theft convictions (some offenders have multiple offenses). Felony community supervision offenders show a total of 12,616 Class D felony fraud or theft convictions.

AOC data for FY2020 reflects 3,973 convictions for Class D felony offenses included in this legislation (*reflects inchoate offenses at underlying offense level*).

It is not possible to know how many of the offenders currently incarcerated for Class D offenses listed in this legislation would be affected by the threshold change proposed in the legislation. Some cases will have theft amounts above the proposed threshold, which would not change the offense class under the proposed legislation. Others would have an amount that currently classifies the offense as a felony, but under the new statutory proposal, would reduce the offense from a Class D felony to a Class A misdemeanor. The fiscal amount of the crime is not tracked by the Department.

#### Cost to Incarcerate

A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1,464,387.29 to \$2,928,774.58
1 Class C Felon costs KY \$146,438.73 to \$292,877.46	100 Class C Felons cost KY \$14,643,872.89 to \$29,287,745.77
A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$136,345.44 to \$681,727.22
1 Class D Felon costs KY \$13,634.54 to \$68,172.72	100 Class D Felons cost KY \$1,363,454.45 to \$6,817,272.25

**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. The estimated impact will be based on the \$37.35 cost to incarcerate while \$31.34 is the per diem and medical that DOC pays jails to house felony offenders. Since the cost to incarcerate is an estimated average cost of housing an inmate, this may not be the actual housing cost for the jail.\*

**Projected Impact:**  NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

There would be more misdemeanor offenders under this legislation. There would be an increase in the number of individuals under county jurisdiction for misdemeanor fraud and theft charges which previously would have qualified for a felony conviction. The counties would incur the cost of incarcerating the Class A misdemeanor offenders and jails would lose the revenue from the state per diem for these misdemeanor offenders that previously would have been a Class D felony state inmate. However, it is possible that fewer individuals may be incarcerated due to the lower offense level.

AOC data for FY 2020 reports 16,111 misdemeanor convictions for offenses specified in this legislation (*reflects inchoate offenses at underlying offense level*). In addition, under the proposed legislation, a portion of the current Class D felony offenses would become misdemeanor level offenses under county jurisdiction.

For example, there were 1,262 convictions for Class D Receiving Stolen Property in FY2020. If ten percent (10%) of that total were convicted upon passage of this legislation and involved theft of an amount under the proposed felony threshold, and assuming they are incarcerated for a twelve-month sentence, using the average cost to incarcerate, the cost to the county could be \$1,717,726.50 million for 126 offenders.

There is no way to predict judicial sentencing if fraud and theft charges would become misdemeanor offenses rather than a felony. Overall, a shift from felony to misdemeanor level offenses has the potential for a significant fiscal impact on the counties.

**Cost to Incarcerate**

A Class A misdemeanor is 90 days to 1 year in jail.  
1 Class A misdemeanor: \$3,361.94 to \$13,634.54

10 Class A misdemeanants: \$33,619.42 to \$136,345.44  
100 Class A misdemeanants: \$336,194.25 to \$1,363,454.45

A Class B misdemeanor is up to 90 days in jail.  
1 Class B misdemeanor: up to \$3,361.94

10 Class B misdemeanants: up to \$33,619.42  
100 Class B misdemeanants: up to \$336,194.25

**Projected Corrections Impact from Amendments:**

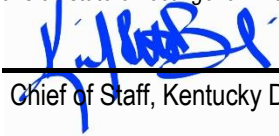
*\*All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

**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, lengthens the term or incarceration, or impose new obligations on state or local governments.

**APPROVED BY:**



Chief of Staff, Kentucky Department of Corrections

**1/19/2021**

Date