

CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # HB 254 GA BR # 1226 DOC ID #: xxxx

BILL SPONSOR(S): Rep. D. Lewis AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to the sexual exploitation of minors.

SUMMARY OF LEGISLATION: Amend KRS 531.335 to raise the penalty for possession or viewing of matter portraying a sexual performance by a minor under the age of 12 years to a Class C felony; amend KRS 531.340 to raise the penalty for the distribution of matter portraying a sexual performance of a minor under the age of 12 years to a Class C felony for the first offense and a Class B felony for each subsequent offense.

AMENDMENT: .

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 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 \$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 legislation modifies the criminal penalty for KRS 531.335 Possession or Viewing of Matter Portraying a Sexual Performance by a Minor.

- Under current statute, Possession/Viewing is a Class D felony. The legislation would retain the Class D felony if the minor portrayed is less than eighteen (18) years old, but adds a Class C felony if the minor portrayed is less than twelve (12) years old.

Also modified is KRS 531.340 Distribution of Matter Portraying a Sexual Performance by a Minor.

- Under current statute this offense carries a Class D felony for the 1st offense and a Class C felony for subsequent offenses. The legislation applies a range from a Class D, Class C, and Class B felony based on the age of the minor and the number of offenses.

The Kentucky State Police indicates these offenses are among those frequently charged by their Electronic Crime Branch and KY Internet Crimes Against Children (ICAC) Task Force and that a number of arrests for these types of offenses are for pre-pubescent images (ages 0-12).

KRS 531.335 Possession or Viewing of Matter Portraying a Sexual Performance by a Minor is identified as a sex crime under KRS 17.500.

- As a sex offense, KRS 531.335 is subject to sex offender treatment and the sex offender registry. However, under KRS 532.043 and KRS 532.060, this offense is the only sex offense not subject to five (5) years sex offender postincarceration supervision.
- As a sex offense, under KRS 532.100, Class D KRS 531.335 offenders would serve their offense in a state prison facility if the sentence is two (2) years or more at a daily cost of \$80.24. If the sentence is under two (2) years, placement would be at a county detention facility at a cost to the Commonwealth of \$37.35 per day.
- As it is not a sex offense, KRS 531.340 1st Offense Distribution offenders would serve their sentence in a county detention center, with the 2nd Offense offenders serving at a prison.

For KRS 531.335 Possession or Viewing of Matter Portraying a Sexual Performance by a Minor:

- AOC records indicate 467 convictions in FY 2020. (*Note: these convictions stemmed from sixty-eight (68) cases.*)
- The Department currently has 235 inmates and 193 community supervision offenders for this offense.

For KRS 531.340 Distribution of Matter Portraying a Sexual Performance by a Minor:

- AOC records indicate eighty-two (82) convictions for KRS 531.340 Distribution of Matter Portraying a Sexual Performance by a Minor in FY 2020. (*Note: these convictions stemmed from twenty-two (22) cases.*)
- For this offense, the Department has eighty-six (86) inmates currently incarcerated and eighty-two (82) offenders currently on supervision.
- For KRS 531.340, records indicate zero (0) inmates and one (1) community supervision offender for a second or subsequent offense, which under the legislation would be a Class B felony.

While the number of elevated sentences under the legislation is unknown, the legislation includes higher-level felonies, which does carry increased incarceration costs:

- The Department is not able to track the age of the minor victims, so it is unknown how many of the current offenses are for victims under the age of twelve (12). Based on information from Kentucky State Police related to victim age, a substantial number of convictions incurred under the legislation may carry the higher level of conviction.
- For KRS 531.335, the average sentence length is 4.3 years. (*Note: does not reflect other charges the inmate may also be serving on.*) There would be increased sentence lengths under the legislation, as a number of convictions may be at the Class C felony level based on the age distinction.
- It also may be estimated that, under the legislation, a number of future convictions for KRS 531.340 may incur elevated penalties. If half of those individuals currently incarcerated for this offense (43) were to receive future convictions under the proposed legislation (receiving a Class C or Class B felony rather than a Class D felony), the additional incarceration cost could be estimated at \$673,159 annually (*Note: it is assumed Class C offenders would not be eligible for community custody*).

While the fiscal impact of the legislation is unknown, the higher penalty does carry increased incarceration costs. Overall, the impact of this legislation could be in the high-moderate to significant range.

Cost to Incarcerate

A Class B Felony sentence is 10 to 20 years.

1 Class B Felon costs KY \$292,877.46 to \$585,754.92

10 Class B Felons cost KY \$2,928,774.58 to \$5,857,549.15

100 Class B Felons cost KY \$29,287,745.77 to \$58,575,491.55

A Class C Felony sentence is 5 to 10 years.

1 Class C Felon costs KY \$146,438.73 to \$292,877.46

10 Class C Felons cost KY \$1,464,387.29 to \$2,928,774.58

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.

1 Class D Felon costs KY \$13,634.54 to \$68,172.72

10 Class D Felons cost KY \$136,345.44 to \$681,727.22

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)

The impact to local corrections under this legislation would be minimal. Under current statute, KRS 531.340 offenders and certain KRS 531.335 offenders are currently eligible to serve state sentences at a county detention center.

- Class D offenders serve their sentence in a county jail at an average cost to incarcerate of \$37.35 per day, with \$31.34 received by the local detention center as daily reimbursement for housing of a state inmate.

The increased penalties under the legislation would leave fewer inmates under these two (2) offenses eligible for state service in a county detention center, which would be a loss in revenue for county jails.

However, the number of eligible convictions under the offenses are such that the impact would not be expected to be significant.

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:  _____ 2/4/2021
Chief of Staff, Kentucky Department of Corrections Date