

CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # HB 402 SCS 1 BR # 1414 DOC ID #: HB040240.100 - 1414 - 87280 - 6511v

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

TITLE: AN ACT relating to flagrant nonsupport.

SUMMARY OF LEGISLATION: Amend KRS 530.050 to increase the amount qualifying for flagrant nonsupport from \$1,000 to \$5,000.

AMENDMENT: Retain original provisions; change amount of arrearage that qualifies as flagrant nonsupport from \$5,000 to \$2,500.

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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 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 offense of flagrant non-support under KRS 530.050, moving the arrearage amount from \$1,000 to \$5,000.

Flagrant nonsupport is a Class D felony.
Nonsupport is a Class A misdemeanor.

Currently the Department supervises 3,661 offenders for failure to pay child support. All are felony Flagrant Non-Support cases except for forty-two (42) misdemeanor Non-Support cases. There are 520 current inmates with convictions for Flagrant Non-Support. (Note: offenders may be serving on other charges.)

AOC records for FY2020 indicate 678 Flagrant Non-Support and 446 Non-Support convictions.

While incarcerated, child support offenders are not paying toward child support obligations. While under community supervision, there is little recourse if the offender is non-compliant with child support payments.

Under an appellate court decision, child support arrearage is considered as restitution. As such, under KRS 439.563, Flagrant Non-Support offenders are subject to continued supervision past expiration of sentence and cannot be discharged from parole with child support arrearage.

Movement of the arrearage amount would significantly reduce the number of convictions for Flagrant Non-Support. A higher threshold amount would indicate a larger arrearage amount for offenders working to pay off the balance. The Department does not track the monetary amount of child support owed and thus cannot estimate how many offenders would be affected by such an amount change.

This legislation would have a particular impact on the Department of Corrections Division of Probation & Parole by increasing the threshold amount and thus removing felony level convictions for a number of failure to pay child support cases. The removal of a felony conviction removes challenges related to obtaining employment and other reentry barriers. Additionally, removal of community supervision for these non-violent offenders would allow more resources to be applied in the supervision of high-risk non-compliant individuals.

Cost to Incarcerate

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)

As a Class D offender, offenders subject to incarceration for Class D Flagrant Non-Support would serve their sentence in a county jail at a cost to the state of \$37.35 per day, with \$31.34 daily reimbursement to the local detention center.

Non-Support is a misdemeanor subject to the jurisdiction and cost of the county.

Under the legislation there would be significantly fewer felony offenders for failure to pay child support, which may elevate the number of misdemeanor offenses. However, use of incarceration for child support cases is often limited.

The impact on local incarceration from the changes to the offense of Flagrant Non-Support under this legislation would not be expected to be significant.

Cost to Incarcerate

A Class A misdemeanor is 90 days to 1 year in jail.

10 Class A misdemeanants: \$33,619.42 to \$136,345.44

1 Class A misdemeanant: \$3,361.94 to \$13,634.54

100 Class A misdemeanants: \$336,194.25 to \$1,363,454.45

PROJECTED CORRECTIONS IMPACT FROM AMENDMENTS:

House Committee Substitute: The Committee Substitute reduces the proposed flagrant non-support from \$5,000 to \$2,500. While the impact may be more moderate, the proposed increase in the threshold amount from the current statutory amount of \$1,000 to \$2,500 will realize an impact with fewer offenders being charged with Flagrant Non-Support. The House Committee Substitute was defeated on the House Floor.

Senate Committee Substitute: The Senate Committee Substitute returned the proposed flagrant non-support threshold amount to \$2,500.

**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

3/15/2021

Date