

# CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # HB 472 SCS BR # 1476 DOC ID #: HB047240.100 - 1476 - 88060 - 7285v

BILL SPONSOR(S): Rep. L. Bechler, M. Hart, C. Massey, R. Palumbo

AMENDMENT SPONSOR(S): Rep. L. Bechler

TITLE: AN ACT relating to child abuse and declaring an emergency.

**SUMMARY OF LEGISLATION:** Amend KRS 500.050 to extend the criminal statute of limitations for misdemeanor sex offenses against minors from 5 to 10 years; amend KRS 413.249, relating to civil actions arising from childhood sexual assault or abuse, to apply to direct perpetrators as well as third-party individuals or corporate entities who may be criminally liable for the criminal act of those perpetrators; specify that the amendments enacted in 2017 Ky. Acts ch. 114, sec. 2 shall be applied retroactively to actions accruing before that Act's effective date of June 29, 2017; create a new section of KRS Chapter 413 to state legislative findings and declarations; provide for severability; EMERGENCY.

**AMENDMENT:** Delete provisions of Section 2 and replace with language making it unlawful for an individual or entity to knowingly or negligently allow another individual to commit childhood sexual assault or abuse; amend Section 2 to clarify that a privilege shall be a ground for excluding evidence when an exception to the Kentucky Rules of Evidence is met; delete Section 3 and replace with language allowing insurance carriers to include an exemption in coverage for intentional conduct of a perpetrator of childhood sexual assault or abuse.

**AMENDMENT:** Amend KRS 500.050 to extend the criminal statute of limitations for misdemeanor sex offenses against minors from five to 10 years; amend KRS 413.249, relating to civil actions arising from childhood sexual assault or abuse, to apply to direct perpetrators as well as entities who may be criminally liable for the criminal act of those perpetrators; specify the use of evidentiary privileges; limit the use of the clergy-penitent privilege; specify that the amendments enacted in 2017 Ky. Acts ch. 114, sec. 2 shall be applied retroactively to actions accruing before that Act's effective date of June 29, 2017; and provide for severability; EMERGENCY.

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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 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 checked="" type="checkbox"/> Otherwise impacts incarceration (Explain) <i>Expands/Removes the statute of limitations.</i> |  |

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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 moves the statute of limitations for misdemeanor sex offenses under KRS 500.050 from five (5) years to ten (10) years after the victim reaches the age of eighteen (18).

Current statute is limited to offenses listed under KRS 510. The proposed legislation expands misdemeanor sex offense to include those in KRS 510, KRS 531 (*involving or depicting a minor*), as well as Criminal Attempt or Criminal Solicitation to offenses under KRS 510, KRS 531 (*involving or depicting a minor*), and the following: KRS 529.040 Promoting Prostitution (*when advances or profits from a minor*), KRS 529.100 Human Trafficking (*involving commercial sexual activity*), KRS 529.110 Promoting Human Trafficking (*involving commercial sexual activity*), and KRS 530.064 Unlawful Transaction with a Minor 1<sup>st</sup> Degree (*for illegal sexual activity*).

The definitions for childhood sexual abuse and childhood sexual assault are combined in KRS 413.249. The definition expands offenses which would meet the criteria for childhood sexual abuse or assault: KRS 510, KRS 529.040 Promoting Prostitution (*when advances or profits from a minor*), KRS 529.100 Human Trafficking (*involving commercial sexual*

activity), KRS 529.110 Promoting Human Trafficking (*involving commercial sexual activity*), KRS 530.020 Incest, KRS 530.064 Unlawful Transaction with a Minor 1<sup>st</sup> Degree (*for illegal sexual activity*), KRS 531 (*involving or depicting a minor*), and Criminal Attempt or Criminal Solicitation of any of these offenses.

Language added to the legislation also discusses criminal liability; confidentiality privileges, such as clergy-penitent communications; retroactivity of 2017 Ky. Acts ch. 114, sec. 2.; and liability for insurance carriers and employers.

Restrictions under KRS 6.945(1) are not applied to the legislation. Provisions are made for severability and emergency enactment.

- ◆ For the offenses cited in the legislation's definition of a misdemeanor sex offense and where the victim is identified as a minor, the Department of Corrections currently has three (3) offenders incarcerated and thirty-two (32) offenders on supervision.
- ◆ AOC records for FY2020 reflect 376 convictions for the misdemeanor sex offenses comprised in the definition included in the legislation. Only nineteen (19) specify a minor victim.

Under the proposed legislation, with change to the statute of limitations, additional offenders may be convicted of a misdemeanor sex offense. It is not possible to predict how many offenders would be prosecuted under the changes provided by this legislation that previously would not have been eligible for prosecution due to the statute of limitations.

Offenders convicted of a misdemeanor sex offense may be subject to supervision by the Department of Corrections' Division of Probation & Parole at a cost to supervise of \$3.84 per day.

Overall, this legislation would be expected to have a minimal impact.

**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)

Misdemeanor offenses falling under this legislation would be subject to county jurisdiction. Misdemeanor offenders would serve a sentence of incarceration at a local detention center at a cost to the county.

It is not known how many additional offenders would be convicted of a misdemeanor sex offense due to the change in the statute of limitations. Overall, however, the impact to local incarceration under this legislation is not expected to be significant.

#### 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:**

House Floor Amendment: Under Section 2, wording is modified surrounding criminal liability for knowingly or negligently allowing an individual to commit childhood sexual assault, along with clarification for privilege exemptions under the rules of evidence. Section 3 of the legislation speaking to coverage by insurance carriers is modified.

There is no significant change to the impact on corrections under the House Floor Amendment.

Senate Committee Substitute: The Committee Substitute specifies application of timeframes for civil actions. Wording for a cause of action against a third party is revised. Language specific to insurance carriers is deleted.

There is no significant change to the impact on corrections under the Senate Committee Substitute.

*\*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:**  \_\_\_\_\_ **3/16/2021**  
Chief of Staff, Kentucky Department of Corrections Date