

CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # SB 211 GA BR # 291 DOC ID #: SB021110.100 - 291 - 87863 - 7089

BILL SPONSOR(S): Sen. D. Carroll, M. Nemes AMENDMENT SPONSOR(S): Sen. D. Carroll

TITLE: AN ACT relating to public safety.

SUMMARY OF LEGISLATION: Amend KRS 500.080 to define "public assistance benefits," "emergency services personnel," "firework," and "riot"; create a new section of KRS Chapter 508 to require restitution for a violation of assault in the first, second, third, and fourth degree; create a new section of KRS Chapter 511 to create the crime of unlawful camping on property owned by the Commonwealth; create a new section of KRS Chapter 512 to require restitution for a violation of criminal mischief in the first, second, and third degree; amend KRS 508.010, 508.020, 508.025, 508.030, 512.020, 512.030, 512.040, 520.090, 525.015, 525.060, 525.140, and 525.160 to provide enhanced penalties for violations of these offenses during the course of a riot; amend KRS 520.020, 525.030, and 525.040 to provide enhanced penalties; create a new section of KRS Chapter 431 to restrict when a person shall be released after an arrest for a violation of an offense of during the course of a riot; amend KRS 439.340 to add violations of KRS 508.020 and 508.025 committed during the course of a riot to the definition of violent offender; create a new section of KRS Chapter 15 to state legislative findings and declarations; amend KRS 411.100 to require gross negligence for a cause of action for property damaged by riotous or tumultuous assemblage of people that a local government could have prevented; amend KRS 61.912, 61.914, 61.168, 525.010, 532.100, and 525.200 to make conforming changes; provide that this Act may be cited as the Community and First Responder Protection Act.

AMENDMENT: Amend KRS 500.080 to define "emergency services personnel," "firework," and "riot"; amend KRS 503.055 to allow a person to use defensive force, create a new section of KRS Chapter 511 to create the crime of unlawful camping on property owned by the Commonwealth; amend KRS 508.010, 508.020, 508.025, 508.030, 512.020, 512.030, 512.040, 520.090, 525.015, 525.060, 525.140, and 525.160 to provide enhanced penalties for violations of these offenses during the course of a riot; amend KRS 520.020, 525.030, and 525.040 to provide enhanced penalties; create a new section of KRS Chapter 431 to restrict when a person shall be released after an arrest for a violation of an offense of during the course of a riot; amend KRS 439.340 to add violations of KRS 508.020 and 508.025 committed during the course of a riot to the definition of violent offender; create a new section of KRS Chapter 15 to .state legislative findings and declarations; amend KRS 411.100 to require gross negligence for a cause of action for property damaged by riotous or tumultuous assemblage of people that a local government could have prevented; amend KRS 61.912, 61.914, 61.168, 525.010, 532.100, and 525.200 to make conforming changes; provide that this Act may be cited as the "Community and First Responder Protection Act."

AMENDMENT: Retain original provisions; make technical corrections; amend Section 3 to provide that a person convicted of a Class A or B misdemeanor shall not be released on any form of early release prior to serving 20% of the imposed sentence.

AMENDMENT: Retain original provisions; amend Section KRS 411.100 to include references to KRS Chapter 65 regarding claims against local governments.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|---|--|
| <input checked="" 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 checked="" 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)

Several offenses are amended under the Community and First Responder Protection Act.

If committed during a riot, the following Class B felony would be subject to a minimum imprisonment term of fifteen (15) years and a \$10,000 fine.

- » KRS 508.010 Assault 1st Degree
 - ◇ The current average length of time served prior to release for Assault 1st Degree is a little under eleven (11) years (3,964 days).

If committed during a riot, the following Class C felonies would be subject to a minimum term of imprisonment of seven and one-half (7½) years and a \$7,500 fine.

- » KRS 508.020 Assault 2nd Degree
 - ◇ This offense would be added as a violent offense under KRS 439.3401 and subject to service of 85% of the sentence prior to parole eligibility.
 - ◇ The current average length of time served prior to release for Assault 2nd Degree offenders is five (5) years (1,834 days).

If committed during a riot, the following Class D felonies would be subject to a minimum imprisonment term of 4 years (with some offenses restricted from eligibility for community supervision or early release until parole eligibility), a \$5,000 fine, and a one (1) year prohibition from public assistance benefits.

- » KRS 508.025 Assault 3rd Degree
 - ◇ This offense would be added as a violent offense under KRS 439.3401 and subject to service of 85% of the sentence prior to parole eligibility.
 - ◇ The current average length of time served prior to release for Assault 3rd Degree is a little under three (3) years (1,044 days).
- » A new offense of unlawful camping on property owned by the Commonwealth, 2nd Offense
- » KRS 512.020 Criminal Mischief 1st Degree
 - ◇ The current average length of time served for Criminal Mischief 1st Degree prior to release is three (3) years (1,103 days).
- » KRS 525.020 Riot 1st Degree
 - ◇ The Department of Corrections has twelve (12) inmates incarcerated and eight (8) offenders on supervision for Riot 1st Degree. The current average sentence for this offense is 4.7 years (1,708 days).
 - ◇ For FY18-20, AOC records report thirteen (13) convictions for Riot 1st Degree.

If committed during a riot, the following offenses are enhanced to a Class D felony, subject to a minimum imprisonment term of 4 years (with some restricted from eligibility for community supervision or early release until parole eligibility), a \$5,000 fine, and a one (1) year prohibition from public assistance benefits.

- » KRS 508.025 Assault via bodily fluid with a communicable disease, otherwise a Class A misdemeanor
- » KRS 520.090 Resisting Arrest, otherwise a Class A misdemeanor
- » KRS 525.015 Obstructing Emergency Responder, otherwise a violation for a 1st Offense or a Class B misdemeanor for a 2nd or Subsequent Offense
- » KRS 525.140 Obstructing a Highway, otherwise a Class B misdemeanor

If committed during a riot, the following Class A misdemeanor offenses would be subject to six (6) months imprisonment without early release for three (3) months, a \$500 fine, and prohibition from public assistance benefits for six (6) months.

- » KRS 508.030 Assault 4th Degree
- » A new offense of unlawful camping on property owned by the Commonwealth, 1st Offense
- » KRS 512.030 Criminal Mischief 2nd Degree
- » KRS 525.030 Riot 2nd Degree, 2nd Degree
 - ◇ For FY18-20, AOC reports two (2) convictions for Riot 2nd Degree.
 - ◇ The Department of Corrections has zero (0) inmates incarcerated or on supervision for Riot 2nd Degree.
- » KRS 525.040 Inciting to Riot
 - ◇ For FY18-20, AOC report eight (8) convictions for Inciting to Riot.
 - ◇ The Department of Corrections has zero (0) inmates incarcerated or on supervision for Inciting a Riot.

If committed during a riot, the following Class B misdemeanor offense would be enhanced to Class A misdemeanor, subject to six (6) months imprisonment without early release for three (3) months, a \$500 fine, and prohibition from public assistance benefits for six (6) months.

- » KRS 508.025 Assault on a peace officer via bodily fluid

If committed during a riot, the following Class B misdemeanor offenses would be subject to three (3) months imprisonment without early release for forty-five (45) days, a \$250 fine, and prohibition from public assistance benefits for three (3) months.

- » KRS 512.040 Criminal Mischief 3rd Degree
- » KRS 525.060 Disorderly Conduct 2nd Degree
- » KRS 525.160 Failure to disperse

Additional changes to criminal offenses under the legislation:

- » Assault 3rd Degree – adds intentional physical harm to a law enforcement officer or emergency service personnel through chemical agents or fireworks.
- » Assault 4th Degree – adds intentionally shining a light, laser, horn, or other noisemaker towards law enforcement or emergency services personnel, impeding their ability to perform their duty.
- » Riot 1st & 2nd Degree – adds knowingly providing supplies that can be used as weapons or dangerous instruments.
- » Disorderly Conduct 2nd Degree – adds language for accosting, insulting, or taunting a law enforcement officer with offensive or derisive words, gestures, or physical contact.
- » Obstructing a Highway – adds the intentional or wanton prevention of law enforcement officers from accessing a gathering of people.

Justified use of defensive force is articulated under KRS 503.055. KRS 411.100 addresses gross negligence in preventing destruction incurred during a riot and a limited waiver of sovereign immunity defense.

Restitution shall be ordered for the applicable offenses listed in the legislation. For those marked with a prohibition on public assistance benefits, the legislation cites exceptions. Arrests under several sections of the bill would be prohibited from release for forty-eight (48) hours.

Class B and non-Community Custody C offenders will serve the period of incarceration in a state prison at an average cost to incarcerate of \$80.24 per day.

- » It is not possible to know how many of these offenses would be committed during a riot. It should be noted that those currently incarcerated for the criminal offense of Riot involve disturbances occurring while incarcerated. A number of these include convictions for assault. Since occurring while incarcerated, these sentences are often consecutive.

While riot related convictions would be few in number, the additional incarceration requirements and prohibitions against community supervision would dramatically increase incarceration terms and incarceration costs for these offenses.

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)

Class D offenders and Community Custody Class C offenders under the legislation would serve their sentence in a county jail at an average cost to incarcerate of \$37.35 per day, with \$31.34 daily reimbursement to the local detention center.

Several misdemeanors are included in the legislation. Misdemeanors are subject to the jurisdiction and cost of the county.

Under the legislation, specific offenses will require a period of jail time and will not be eligible for community supervision or early release until such amount of time is served. This will impact the number of offenders incarcerated as well as lengthen the time spent in custody, both for misdemeanor and felony convictions.

Additionally, bond is prohibited for forty-eight (48) hours for a number of offenses included in the legislation. This stipulation may impact the number of offenders released pre-adjudication or keep offenders in custody for two (2) days who may have otherwise posted bond immediately.

These factors increase incarceration costs, though the number of convictions or arrests associated with these misdemeanor offenses may be minimal.

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:

Senate Committee Substitute: The public assistance benefit prohibition is removed from the legislation.

An individual shall be subject to an enhanced punishment if the crime would not have been committed except for the riot, and the crime was committed during a riot, in reasonable proximity to the riot, and with knowledge that a riot was occurring. A separate hearing is established to make the determination. The penalties are enhanced as follows:

- » If the underlying offense is a Class B misdemeanor, the person shall not be afforded community supervision or early release for forty-five (45) days and a \$250 fine.
- » If the underlying offense is a Class A misdemeanor, the person shall not be afforded community supervision or early release for three (3) months and a \$500 fine.
- » If the underlying offense is a Class D felony, the person shall not be afforded community supervision or early release prior to the initial parole eligibility date and a \$5,000 fine.
- » If the underlying offense is a Class C felony, the person shall not be afforded community supervision or early release prior to the initial parole eligibility date and a \$7,500 fine.
- » If the underlying offense is a Class B felony, the person shall not be afforded community supervision or early release prior to the initial parole eligibility date and a \$10,000 fine.
- » If the underlying offense is a Class A felony, the person shall not be afforded community supervision or early release prior to the initial parole eligibility date and a \$10,000 fine.

Assault 1st Degree and Assault 2nd Degree penalties are removed from the legislation. Specifications are added to the new offense of unlawful camping on property owned by the Commonwealth, including an exemption for homeless individuals. Criminal Mischief, Inciting to a Riot, and Failure to Disperse are removed from the legislation.

KRS 532.032 is added to speak to restitution. Language is added to protect individuals acting against a directive by a supervisor, etc., to prevent damage caused by a riot.

The impact on incarceration is reduced with the removal and/or reduction of some of the mandatory minimum incarceration periods. The prohibition against supervision or early release for a specified period of time does still have an impact on incarceration terms and associated incarceration costs.

Senate Floor Amendment: Senate Floor Amendment 1 modifies the required period of incarceration before the individual may be afforded community supervision.

- » For Class B misdemeanors, the maximum term is ninety (90) days. Twenty percent (20%) of this period would be eighteen (18) days, which is a reduction from the previously required forty-five (45) days of incarceration.

- » For Class A misdemeanors, the maximum term is three hundred sixty-five (365) days. Twenty percent (20%) of this period would be seventy-three (73) days, which is a reduction from the previously required three (3) months incarceration.

Senate Floor Amendment 2 modifies wording related to civil action and immunity.

The decrease in the mandatory incarceration terms reduces the impact on incarceration for these misdemeanor offenses.

**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