

AMENDED CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # SB 223 Introduced BR # 1776 DOC ID #: xxxx

BILL SPONSOR(S): Sen. B. Storm AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to pretrial release.

SUMMARY OF LEGISLATION: Amend KRS 431.066 and 431.520 to require that conditions of pretrial release for a person released on an unsecured bond be the least restrictive to reasonably mitigate the risk of flight or danger to others.

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 type="checkbox"/> Increases penalty for existing crime(s) | <input 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 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)

SB 223 modifies wording related to pretrial release. The requirement in KRS 431.066(4) for judges to consider global positioning system (GPS) monitoring for moderate flight risks is changed to "may". Wording is added for conditions imposed by the Court for an unsecured bond or release on recognizance to be the least restrictive necessary. GPS monitoring, controlled substance testing, or home confinement shall be ordered only if no less restrictive condition would mitigate risk, with a review by the court in thirty (30) days with a rebuttable presumption for relief if compliance is demonstrated. Individuals denied pretrial release shall receive trial, unless waived by the defendant, within sixty (60) days for a misdemeanor and 180 days for a felony offense from their first appearance.

In KRS 431.520(4) wording specific to the conditions related to use of controlled substances is modified, including waiver of fees based on indigency. Wording for least restrictive release is added under this statute as well.

While the Commonwealth's pretrial system does not directly impact post-adjudication incarceration, modifications pre-adjudication impact incarceration at the local level with a corresponding impact for the Department of Corrections.

Days in custody prior to conviction are awarded toward a defendant's sentence, though as a pre-adjudication offender, the cost is assumed by the county.

- ◆ Based on pre-sentence investigation reports completed by the Division of Probation & Parole in 2020, the average number of days in custody prior to sentencing for a felony (excluding capital offenses) was 186 days.
- ◆ Of the 14,601 pre-sentence investigation reports completed by the Division of Probation & Parole in 2020, 77% were probated and 23% were sentenced to serve a sentence of incarceration.
- ◆ Of the 2020 admissions to prison, 68% were Class D offenders and 22% were Class C offenders.
- ◆ Upon commitment, offenders will serve the remainder of their sentence as a state inmate, at a daily cost to incarcerate for the Commonwealth of either \$80.24 for those serving in a prison or \$37.35 for those Class D and community custody Class C state inmates serving in the county jail.

For offenders ultimately sentenced to incarceration, fewer days of jail custody credit is a cost savings for the county but equates to a higher number of days left to serve on their sentence, which is a corresponding cost increase for the state.

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)

Under KRS 532.100 Class D and community custody Class C offenders serve their sentence of incarceration at a local detention center. Jails receive \$31.34 in per diem reimbursement for these offenders.

Under the proposed legislation, pre-adjudication detainees, unless waived, may receive a trial within a set number of days. This could provide shorter incarceration periods and reduced fiscal costs pre-adjudication.

Of the pre-trial interviews conducted by AOC conducted in in March 2019-2020, 70% received pretrial release. Specifically, 22,669 (12%) were released on administrative release, 40,484 (22%) were released on a financial bond, 59,329 (32%) were released on a non-financial bond (ex: released on own recognizance), and 4% had other specific circumstances.

- ◆ The median number for pretrial releases was two (2) days in custody prior to release, with an exception for those released after a 60-day review of pretrial custody.
- ◆ Considering those individuals, the average of the median number of days offenders spent in custody prior to being released on a financial or non-financial bond was nineteen (19) days.
- ◆ For those who did not receive pretrial release, the median number of days detained until disposition was twelve (12) days. Those who were held for indictment, transferred to another secure facility or substance abuse treatment facility, or escaped/released in error served a median of forty-four (44) to fifty-five (55) days in custody.

The legislation could have an impact at the local level in terms of cost savings for counties. Those inclined to waive the time-frames for trial would likely be those facing imprisonment for felony charges.

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

3/15/2021

Date