

CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # SB 224 Introduced BR # 1714 DOC ID #: xxxx

BILL SPONSOR(S): Sen. J. Schickel AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to sentencing by juries.

SUMMARY OF LEGISLATION: Amend KRS 532.055 to allow a jury to recommend that a Class D felony be designated and sentenced as a Class A misdemeanor if the jury finds that a felony conviction would be unduly harsh; amend KRS 532.080 to allow a jury to decide whether a person found to be a persistent felony offender should be sentenced to an increased term of imprisonment, rather than imposing automatic increases in sentencing.

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 checked="" 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) . | |
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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)

Under the amendment to KRS 532.055 in SB 224, juries who return a guilty verdict for a Class D offense may consider setting the offense as a Class A misdemeanor. The jury shall consider the nature and circumstance of the crime and the history and character of the defendant in determining if a felony conviction would be too harsh.

Amendment to KRS 532.080 changes wording from juries shall impose a Persistent Felony Offender (PFO) enhancement, to juries may impose the enhanced sentence.

Under the legislation, PFO 2nd Degree offenders not subject to enhanced sentencing under PFO laws will be sentenced as authorized for the offense they presently stand convicted of.

- ◆ Persistent Felony Offender 2nd Degree enhancement is an increase to the next highest degree above the offense for which the offender stands convicted. For example, a Class D one to five (1-5) year sentence may be enhanced to a Class C five to ten (5-10) year sentence.

PFO 1st Degree offenders not subject to enhanced sentencing under PFO laws may be sentenced as a PFO 2nd Degree or for the offense they presently stand convicted of.

- ◆ Persistent Felony Offender 1st Degree for underlying Class C or D felony convictions is a term of imprisonment of ten to twenty (10-20) years. If the underlying conviction is for a Class A or B felony, or the person was previously convicted of a sex crime against a minor and presently stands convicted of a subsequent sex crime, the term of imprisonment is twenty to fifty (20-50) years, life, or life without parole for twenty-five (25) years for a sex crime committed against a minor.

It is not possible to predict the number of cases in which juries may consider imposing a Class A misdemeanor rather than the Class D felony. Imposition of the misdemeanor rather than the felony would be a cost savings to the state.

- ◆ The Department of Corrections reports 3,298 Persistent Felony Offenders currently incarcerated: 1,078 are PFO 1st Degree; 1,959 are PFO 2nd Degree; and 261 have both PFO 1st and 2nd Degree sentences. Of the total number, 533 are Persistent Felony Offenders on a violent sentence.
- ◆ For PFO 1st Degree, the average sentence length is twenty-four (24) years. For PFO 2nd Degree, the average length is twenty-one (21) years. If the number of Persistent Felony Offenders who were convicted in 2019 (423) were reduced by 1%, (using the prison cost to incarcerate of \$80.24/day and estimating a reduction in sentence length of approximately 10 years) the cost savings could be \$1,734,411.67.

The language in this legislation changing from a “shall” to a “may” impose a PFO could have a significant impact on the number of PFO sentences imposed. It should be noted that only a portion of all convictions stem from jury trials. It is difficult to estimate the overall impact of the legislation as the Department does not have data on how many convictions result from jury trials. It is further unknown how many juries may elect to retain the PFO conviction instead of imposing the lower penalty.

While it is not possible to predict if, under the legislation, juries would elect to impose the enhanced sentence, the legislation may result in fewer Persistent Felony Offenders. Additionally, if a PFO is not imposed, offenders which may not have been eligible for probation under the PFO enhancement may receive probation under the legislation, also reducing incarceration costs.

A reduction in the number of Persistent Felony Offenders would significantly reduce sentence lengths and the number of offenders incarcerated as a Persistent Felony Offender, resulting in significant incarceration cost savings. Cost savings would also be realized if a number of felony convictions were instead imposed as misdemeanor offenses.

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 imposition of a misdemeanor rather than a felony would be a cost savings to the state. This would be loss of revenue for the jail, with the county picking up the jurisdiction and cost for the misdemeanor offense.

It is not possible to predict how often the lower penalty would be imposed by a jury. Only a portion of Class D convictions are determined by jury cases.

- ◆ For those current Class D offenders in the Department’s custody as inmates, the average sentence length is six (6) years (due to consecutive sentences).
- ◆ If subject to a twelve (12) month misdemeanor sentence rather than a one (1) to five (5) year Class D felony sentence, the savings for each year beyond year one (1) would be \$13,634.54 annually.

Overall most Persistent Felony Offenders are not eligible to be housed in a county detention center. Fewer individuals receiving PFOs under the legislation may result in additional offenders who may be eligible, based on the underlying felony and classification level, to serve their sentence in the county detention center.

The impact of this legislation is indeterminable as it is not possible to estimate frequency of occurrence. However, the legislation could, in fact, have a significant impact to the state and the counties.

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:  **2/24/2021**
Chief of Staff, Kentucky Department of Corrections Date