

# CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # SB 84 HCS BR # 175 DOC ID #: SB008410.100 - 175 - XXXX

BILL SPONSOR(S): Sen. J. Adams, K. Berg, M. McGarvey, G. Neal, A. Southworth, D. Thayer, W. Westerfield

AMENDMENT SPONSOR(S): Sen. J. Adams

TITLE: AN ACT relating to crimes and administration of punishments.

**SUMMARY OF LEGISLATION:** Create a new section of KRS Chapter 196 to establish restrictive housing and medical observation of inmates who are pregnant or in the immediate postpartum period; define "immediate postpartum period"; create a new section of KRS Chapter 196 to establish notice of availability and access to applicable community-based programs and social workers; establish parameters for care of the infant for the 72-hour period after birth; create a new section of Chapter 196 to require an annual restricted housing report be filed with the Legislative Research Commission; amend KRS 510.060, rape in the third degree, to include a peace officer who subjects a person in custody or under arrest to sexual intercourse; amend KRS 510.090, sodomy in the third degree, to include a peace officer who subjects a person in custody or under arrest to deviate sexual intercourse; amend KRS 510.120, sexual abuse in the second degree, to include a peace officer who subjects a person in custody or under arrest to sexual contact.

**AMENDMENT:** Create a new section of KRS Chapter 196 to establish restrictive housing and medical observation of inmates who are pregnant or in the immediate postpartum period; define "immediate postpartum period"; create a new section of KRS Chapter 196 to establish notice of availability and access to applicable community-based programs and social workers; establish parameters for care of the infant for the 72-hour period after birth; create a new section of Chapter 196 to require an annual restricted housing report be filed with the Legislative Research Commission.

**AMENDMENT:** Create a new section of KRS Chapter 196 to establish restrictive housing and medical observation of inmates who are pregnant or in the immediate postpartum period; define "immediate postpartum period"; create a new section of KRS Chapter 196 to establish notice of availability and access to applicable community-based programs and social workers; establish parameters for care of the infant for up to a 72-hour period after birth; create a new section of Chapter 196 to require an annual restricted housing report be filed with the Legislative Research Commission; make technical changes.

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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 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 type="checkbox"/> Changes elements of offense for existing crime(s) |  |

Otherwise impacts incarceration (Explain) *Impacts Department of Corrections Policy.*

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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 SB 84 pregnant inmates or those in immediate postpartum are prohibited from being placed in restrictive housing, administrative segregation, or in solitary confinement for medical observation. This directive is not the same as placing an inmate in a single occupancy cell or hospital room. The prohibiting is applicable for jails, state prisons, and reentry service centers. Immediate postpartum period is defined as six weeks following childbirth, but can be extended by a physician.

Pregnant inmates shall receive notice of, access to, and applications for community based programs serving pregnant and new mothers. Notice shall include program qualifications and appeal process. If the community based program accepts the inmate, but the inmate is denied access to the facility, the facility shall provide to the inmate written notice the

safety and security concerns that led to the denial. The facility shall refer the inmate to a social worker, with specific informational requirements about placement of the infant.

The legislation requires that a newly born infant remain with the mother seventy-two (72) hours after birth, unless a medical professional determines it a safety risk. Diapers and other necessities shall be provided free of charge to indigent inmates.

In KRS 439.3110 the exception for pregnancy release for jails providing substance abuse treatment is removed. Annual reporting measures are included.

In FY20 the Department of Corrections had twenty-six (26) pregnant inmates housed in our prison facility, with twenty-three (23) deliveries.

The legislation also adds sex offenses committed by a peace officer to KRS 510.060 Rape 3rd Degree, KRS 510.090 Sodomy 3rd Degree, and KRS 510.120 Sexual Abuse 2nd Degree. Sexual intercourse, deviate sexual intercourse, or sexual contact is prohibited by a peace officer with an individual under criminal investigation, a traffic stop, active warrants, arrest, in custody, or under supervision, evaluation, or treatment by Department of Corrections, the Department of Juvenile Justice, detention facility, or contracted agency.

Rape 3rd Degree and Sodomy 3rd Degree are Class D felonies. Sexual Abuse 2nd Degree is a Class A misdemeanor. Under KRS 439.3401, the KRS Chapter 510 felonies are violent offenses, subject to 85% parole eligibility. The KRS Chapter 510 felonies are also subject to sex offender registration.

Under KRS 532.100, Class D sex offenders are subject to housing at county jails at a cost of \$37.35, unless the sentence is two (2) years or longer in length, in which the offender will be housed at a prison facility at a higher cost of \$80.24 daily cost to incarcerate.

Of offenders with current convictions for Rape 3rd Degree, Sodomy 3rd Degree, or Sexual Abuse 2nd Degree, it is not possible to identify if any of these offenses were committed by a peace officer.

It is not known how many additional convictions for these offenses would occur under this legislation, but the fiscal impact would not be expected to be significant.

**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)

Class D sex offenders with less than two (2) year sentences are housed at county detention facilities with the jail receiving \$31.34 daily reimbursement.

Misdemeanor offenders convicted of Sexual Abuse 2nd Degree are subject to county costs.

It is not possible to estimate a number of convictions which may occur under this legislation. Given the specific elements of the offense, while the number of convictions may be limited, the conduct may result in incarceration.

Overall, the impact to incarceration costs would be minimal.

The legislation would also have a significant policy impact for county jails. County jails incur similar challenges related to management of pregnant individuals. Jails may house individuals that are not eligible for pregnancy release under KRS 439.3110 or have not been granted pregnancy release by the Court. There would be similar concerns for management of a pregnant or postpartum female inmate who is assaultive or engaged in self-harm.

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

**PROJECTED CORRECTIONS IMPACT FROM AMENDMENTS:**

Senate Committee Substitute: The Senate Committee Substitute removes from SB 84 modifications to the criminal offenses of Rape 3<sup>rd</sup> Degree, Sodomy 3<sup>rd</sup> Degree, and Sexual Abuse 2<sup>nd</sup> Degree.

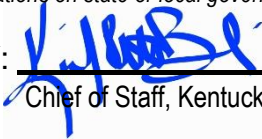
House Committee Substitute: The House Committee Substitute changes language from the infant is allowed to remain with the mother for seventy-two (72) hours to "up to" seventy-two (72) hours. The language provides for circumstances where the mother may be released from the hospital within that period of time.

*\*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

3/4/2021  
Date