

# CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # HB 211 Introduced BR # 1214 DOC ID #: xxxx

BILL SPONSOR(S): Rep. M. Meredith AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to jails.

**SUMMARY OF LEGISLATION:** Create a new section of KRS Chapter 431 to provide that the state pay a per diem, to include additional fees that may be applicable under KRS 532.100(7), for the amount of time an inmate serves in a jail or other local correctional facility when the inmate is convicted of a felony and the sentence in whole or in part includes the amount of time served prior to conviction.

**AMENDMENT:** .

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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 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 checked="" type="checkbox"/> Otherwise impacts incarceration (Explain) <i>establishes per diem payments.</i> |  |
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**STATE IMPACT:** Class A, B, & C felonies are based on an average daily prison rate of \$97.60. Community Custody Class C and most Class D felons are housed in one of seventy-four (74) full service or regional jails for up to five (5) years. Department of Corrections' cost to incarcerate a felony inmate in a jail is \$35.43 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)

HB 211 would have a significant fiscal impact for the Commonwealth, with a potential estimated annual cost of \$112.5 to \$138.7 million for days in custody prior to sentencing, \$64.6 million for those sentenced to felony incarceration and \$47.9 - \$74 million for those receiving a probated sentence. If the per diem rate rises to the amount in the House's 2022-24 budget the estimated annual costs would be \$126.9 - \$156.4 million.

The legislation would provide for payment to counties from the state for time spent in custody from arrest to sentencing for those convicted of a felony and whose sentence includes spent time in custody prior to conviction. As presented, this would apply regardless of whether the sentence is probated or sentenced to imprisonment. The reimbursement payments would equal the amount paid to jails for housing state inmates at \$31.34 per day.

Currently, time spent in custody prior to sentencing is a cost incurred by the county. KRS 431.215 initiates payments by the state for incarceration beginning the date of sentencing. Under the legislation, every day felony detainees spend in custody would be reimbursed by the state.

In addition, the legislation includes an additional per diem payment to jails under KRS 532.100(7) for program attendance for DOC approved programs in the amount of \$2 or \$10 per day, depending on the type of program.

From the pre-sentence investigation reports, from FY17-FY21, there were a total of 2,062,497.40 average days of jail custody credit (i.e. time spent in custody prior to sentencing) per fiscal year for those individuals sentenced to felony incarceration. Jail custody credit is calculated in accordance with KRS 532.120(3). At the per diem rate of \$31.34 per day, this would equate to \$64,638,668.52 in reimbursement costs. It should be noted that the average number of days in custody decreased during the COVID-19 pandemic.

The Department is not able to report the equivalent number of jail days custody credit for those who receive a sentence of probation. If we consider the average number of days of jail credit for time spent in custody prior to a sentence of incarceration for a felony offense (excluding capital offenses) for FY17-FY21 (129.4), and take into account the average

number of annual admissions to probation for the five (5) years (11,809), at a per diem rate of \$31.34, it would equate to an estimated annual cost of \$47,890,982.44.

To provide a comparison, however, the number of days spent in custody prior to a sentence of felony incarceration for 2021 was 173.5 days, and taking into account the number of individuals who were probated (13,615), it would equate to an estimated annual cost of \$74,031,426.35.

AOC records indicate a total median number of 108 days spent in pre-trial custody by defendants for felony Circuit Court cases. The median number of days increase from seventy-one (71) days for Class D offenses, 111 for Class C offenses, 191 for Class B offenses, to 343 for Class A offenses. It is likely defendants were in custody through arraignment to indictment as well, with felony cases in District Court reporting a total median stay of forty-two (42) days. This number increases from thirty-seven (37) for Class D offenses to 113 for Class A offenses. Note: This is representative of the offense level for those in pretrial custody and not related to the corresponding disposition.

Currently, Department of Corrections' offender management system does not track pre-adjudication detainees. Therefore, it is not possible to estimate the additional programming per diem cost for offenders in custody prior to sentencing. There would be a cost for the Department under the legislation to modify the offender management to track and provide payments to jails for pre-adjudication detainees. In addition, the Department would require additional staffing to process the volume of payments involved.

Similar appropriations to each county under KRS 441.206 would not require the amount of tracking that would be needed for a per diem payment under the proposed legislation.

The legislation would provide considerable assistance to local detention centers yet hold a sizeable cost 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 \$35.43 cost to incarcerate for the Department of Corrections, including \$31.34 per diem and medical that DOC pays jails to house felony offenders. This cost to incarcerate may not be the actual housing cost for the jail.\*

**Projected Impact:**  NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

The legislation would have a significant impact for counties and county detention centers, who would no longer incur the cost of housing felony detainees prior to sentencing. This would substantially reduce county costs related to felony detention.

**PROJECTED IMPACT FROM AMENDMENTS:**

NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

*\*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

3/2/2022

Date