

CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # HB 329 Introduced BR # 1343 DOC ID #: xxxx

BILL SPONSOR(S): Rep. C. Massey AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to criminal offenses committed during a declared emergency.

SUMMARY OF LEGISLATION: Amend KRS 511.020, 511.030, and 511.040 to provide an enhanced penalty if the offense occurred during a declared emergency and within the area covered by the emergency declaration; amend KRS 514.030 to provide that the theft of property valued at \$300 or more during a declared emergency and within the area covered by the emergency declaration is a Class D felony; amend KRS 514.110 to provide that receiving stolen property valued at \$300 or more during a declared emergency and within the area covered by the emergency declaration is a Class D felony; create a new section of KRS Chapter 431 to require a 12-hour hold for any person charged with certain offenses; provide exceptions.

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 checked="" 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 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 \$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)

The legislation increases penalties for crimes that occur during an emergency. The legislation would have a significant fiscal impact due to the increase in penalties.

The legislation elevates the penalty for several offenses if committed during an emergency:

- ◆ KSR 511.020 Burglary 1st Degree – enhanced from a Class B felony to a Class A felony
 - As a Class A felony this would subject to the violent offender statute (KRS 439.3401) and 85% parole eligibility. Under current statute, Burglary 1st Degree would only be classified as violent if accompanied by other specified offenses.
- ◆ KRS 511.030 Burglary 2nd Degree – enhanced from a Class C felony to a Class B felony
 - Burglary 2nd Degree as a Class B felony would not be eligible for community custody and would be housed at a state prison facility at a daily cost of \$97.60.
- ◆ KRS 511.040 Burglary 3rd Degree – enhanced from a Class D felony to a Class C felony
- ◆ KRS 514.030 Theft by Unlawful Taking – enhance to a Class D felony if the value is \$300 or more
- ◆ KRS 514.110 Receiving Stolen Property – enhance to a Class D felony if the value is \$300 or more

AOC reports the following convictions in FY21 (*including inchoate offenses*):

- 76 Burglary 1st Degree
- 493 Burglary 2nd Degree
- 1,127 Burglary 3rd Degree
- 9,427 misdemeanor Theft by Unlawful Taking
- 1,807 Class D Theft by Unlawful Taking
- 832 misdemeanor Receiving Stolen Property

- 1,358 Class D Receiving Stolen Property

DOC records provide the following currently incarcerated individuals (*offenders may be in custody with multiple charges*):

- 740 Burglary 1st Degree
- 1,317 Burglary 2nd Degree
- 1,429 Burglary 3rd Degree
- 2,650 Class D Theft by Unlawful Taking
- 2,190 Class D Receiving Stolen Property

It must be noted that convictions for these offenses do not indicate how many offenses may be committed during an emergency. Additionally, it is not possible to know how many offenses could have a value of \$300 or more which would be subject to enhancement under the legislation.

The average sentence length for Burglary 1st Degree is 5,531 days. Increasing from the current parole eligibility to eighty-five percent (85%) parole eligibility would increase, on average, 3,595 additional days in custody. Using the average cost to incarcerate of \$97.60 per day, the increased number of days would correlate into \$350,902.50 in additional incarceration costs for each offender subject to the Class A Burglary offense.

It is likely only a small number of offenses would be committed during an emergency. However, the elevated penalties would result in longer incarceration periods for those receiving a sentence of incarceration under the legislation.

Cost to Incarcerate

A Class A Felony sentence is 20 years or more.	10 Class A Felons cost KY a minimum of \$7,124,783.52
1 Class A Felon costs KY a minimum of \$712,478.35	100 Class A Felons cost KY a minimum of \$71,247,835.20
A Class B Felony sentence is 10 to 20 years.	10 Class B Felons cost KY \$3,562,391.76 to \$7,124,783.52
1 Class B Felon costs KY \$356,239.18 to \$712,478.35	100 Class B Felons cost KY \$35,623,917.60 to \$71,247,835.20
A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1,781,195.88 to \$3,562,391.76
1 Class C Felon costs KY \$178,119.59 to \$356,239.18	100 Class C Felons cost KY \$17,811,958.80 to \$35,623,917.60
A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$129,318.61 to \$646,593.03
1 Class D Felon costs KY \$12,931.86 to \$64,659.30	100 Class D Felons cost KY \$1,293,186.06 to \$6,465,930.31

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)

There is minimal impact to local incarceration under the legislation.

As a Class D or Community Custody Class C offender, offenders subject to these offenses would serve their sentence in a county detention facility at a cost to the Department of \$35.43 per day, with \$31.34 daily reimbursement to the local detention center.

The elevation of certain offenses may preclude community custody eligibility for placement in a local detention center. It is unknown how many offenses would occur during an emergency, but overall, this is not likely to have a significant reduction in bed space or revenue for county detention centers.

Under the legislation, a person shall not be released within twelve (12) hours of arrest when charged with the included offenses committed during an emergency, though there is an exception if determined the defendant is not likely to immediately resume the criminal behavior. Given the timeframe, this stipulation would not have a significant impact on pre-adjudication 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

3/4/2022

Date