

CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # SB 109 Introduced BR # 1552 DOC ID #: xxxx

BILL SPONSOR(S): Sen. D. Harper Angel AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to sexual offenses.

SUMMARY OF LEGISLATION: Amend KRS 510.010 to include alcohol in the definition of "physically helpless"; amend KRS 510.060 to create an additional element of rape in the third degree; amend KRS 510.090 to create an additional element of sodomy in the third degree.

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 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) . | |

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 widens conduct which would be applied to sexual offenses under KRS Chapter 510. The estimated impact from the legislation is unknown, though it could have a considerable impact on incarceration.

The legislation would allow voluntary intoxication causing physical helplessness as an element of the offenses of Rape 1st Degree & Sodomy 1st Degree.

- The legislation adds alcohol to the definition of physically helpless under KRS 510.010, which currently only applies as a result of being under the influence of a controlled substance or legend drug.
- Physically helpless is an element in the offenses of Rape 1st Degree and Sodomy 1st Degree (Class B level of the felony offenses).
- Current statute language for Rape and Sodomy 2nd Degree (Class C felonies) encompasses victims who are mentally incapacitated, defined under KRS 510.010 as being rendered temporarily incapable of assessing or controlling their own conduct as a result of the influence of an intoxicating substance administered without his or her consent.

The legislation also adds voluntary intoxication causing substantial impairment of his or her conduct as an element of the offenses of Rape 3rd Degree & Sodomy 3rd Degree.

- The legislation adds language to KRS 510.060 Rape 3rd Degree & KRS 510.090 Sodomy 3rd Degree (Class D felonies) prohibiting sexual intercourse with another person knowing his or her ability to appraise or control his or her own conduct is substantially impaired.

The following indicates those currently incarcerated or on supervision under the Department of Corrections for which the offense code indicates physically helpless. It should be noted that not all convictions may be coded in such a manner that allows this identification.

Offense	Indication for Physically Helpless	Total Number of Inmates	Indication for Physically Helpless	Total Number of Supervised Individuals
Rape 1 st Degree	9	784	1	166
Rape 2 nd Degree	12	285	5	123

Rape 3 rd Degree	0	261	0	233
Sodomy 1 st Degree	13	895	5	165
Sodomy 2 nd Degree	1	242	1	114
Sodomy 3 rd Degree	0	175	0	140

It is unknown how many additional convictions may be incurred based on these changes. The inclusion of someone as physically helpless or unable to assess their own conduct due to alcohol intoxication may result in additional conduct being prosecuted under the offense of Rape. The change to the legislation may increase reporting for occurrences of this nature. Additionally, if this conduct is currently prosecuted at a lower felony level, under the legislation, there would be a substantial increase in days incarcerated at the higher felony level.

Cost to Incarcerate

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 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)

The proposed legislation may increase offenders incarcerated for the criminal offense of rape.

Under KRS 532.100(5)(a) only Class D sex offenders with a sentence of less than two (2) years would be housed in a state prison facility.

Class D offenders serving their sentence in a county detention facility cost the Department \$35.43 per day, including \$31.34 in daily reimbursement to the local detention center.

PROJECTED IMPACT FROM AMENDMENTS:

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

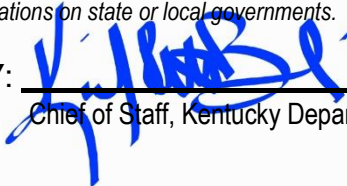
**All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers 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

3/7/2022

Date