

# CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # SB 179 SCS 1 BR # 1256 DOC ID #: SB017940.100 - 1256 - XXXX

BILL SPONSOR(S): Sen. D. Carroll, R. Mills, J. Howell, W. Westerfield, M. Wilson AMENDMENT SPONSOR(S): . . .

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

**SUMMARY OF LEGISLATION:** Amend KRS 500.080 to define "natural or man-made disaster"; amend KRS 508.025, 511.020, 511.030, 511.040, 511.060, 511.070, 511.080, 512.020, 512.030, 512.040, 514.110 and 515.020 to provide an enhanced penalty if the offense occurred during a declared emergency arising from a natural or man-made disaster and within the area covered by the emergency declaration; amend KRS 514.030 to provide that any classification of theft by unlawful taking or disposition shall be charged one level higher if the offense occurred during a declared emergency arising from a natural or man-made disaster and within the area covered by the emergency declaration; amend KRS 514.040 to provide that any classification of theft by deception shall be charged one level higher if the offense occurred during a declared emergency arising from a natural or man-made disaster and within the area covered by the emergency declaration; amend various statutes to conform.

**AMENDMENT:** Retain original provisions; amend KRS 515.030 to provide an enhanced penalty if the offense occurred during a declared emergency arising from a natural or man-made disaster and within the area covered by the emergency declaration.

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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 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:

- ◆ KRS 508.025 Assault 3<sup>rd</sup> Degree – enhanced from a Class D felony to a Class C felony
- ◆ KRS 511.020 Burglary 1<sup>st</sup> 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 1<sup>st</sup> Degree would only be classified as violent if accompanied by other specified offenses.
- ◆ KRS 511.030 Burglary 2<sup>nd</sup> Degree – enhanced from a Class C felony to a Class B felony
  - Burglary 2<sup>nd</sup> 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 3<sup>rd</sup> Degree – enhanced from a Class D felony to a Class C felony
- ◆ KRS 511.060 Criminal Trespass 1<sup>st</sup> Degree – enhanced from a Class A misdemeanor to a Class D felony
- ◆ KRS 511.070 Criminal Trespass 2<sup>nd</sup> Degree – enhanced from a Class B misdemeanor to a Class A misdemeanor
- ◆ KRS 511.080 Criminal Trespass 3<sup>rd</sup> Degree – enhanced from a violation to a Class B misdemeanor
- ◆ KRS 512.020 Criminal Mischief 1<sup>st</sup> Degree – enhanced from a Class D felony to a Class C felony
- ◆ KRS 512.030 Criminal Mischief 2<sup>nd</sup> Degree – enhanced from a Class A misdemeanor to a Class D felony

- ◆ KRS 512.040 Criminal Mischief 3<sup>rd</sup> Degree – enhanced from a Class B misdemeanor to a Class A misdemeanor
- ◆ KRS 514.030 Theft by Unlawful Taking – enhance one level higher than otherwise specified
- ◆ KRS 514.040 Theft by Deception – enhance one level higher than otherwise specified
- ◆ KRS 514.110 Receiving Stolen Property – enhance one level higher than otherwise specified
- ◆ KRS 515.020 Robbery 1<sup>st</sup> Degree – enhanced from a Class B felony to a Class A felony
  - Under current statute, Robbery 1<sup>st</sup> Degree is a violent offense (KRS 439.3401) subject to 85% parole eligibility.
- ◆ KRS 500.080 adds a definition for natural or man-made disaster. KRS 61.168, KRS 61.912, and KRS 61.914 conform.

DOC records reflect the following incarceration numbers (*offenders may be in custody with multiple charges*):

- 657 Assault 3<sup>rd</sup> Degree
- 740 Burglary 1<sup>st</sup> Degree
- 1,317 Burglary 2<sup>nd</sup> Degree
- 1,429 Burglary 3<sup>rd</sup> Degree
- 976 Criminal Mischief 1<sup>st</sup> Degree
- 2,970 Theft by Unlawful Taking
- 2,440 Receiving Stolen Property
- 1,641 Robbery 1<sup>st</sup> Degree

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

- 155 Assault 3<sup>rd</sup> Degree
- 76 Burglary 1<sup>st</sup> Degree
- 493 Burglary 2<sup>nd</sup> Degree
- 1,127 Burglary 3<sup>rd</sup> Degree
- 3,933 Criminal Trespass (misdemeanor)
- 647 Criminal Mischief 1<sup>st</sup> Degree
- 2,361 Criminal Mischief (misdemeanor)
- 1,807 Theft by Unlawful Taking (felony)
- 9,427 Theft by Unlawful Taking (misdemeanor)
- 1,358 Receiving Stolen Property (felony)
- 832 Receiving Stolen Property (misdemeanor)
- 159 Robbery 1<sup>st</sup> Degree

It must be noted that convictions for these offenses do not indicate how many offenses may be committed during an emergency.

The average sentence length for Burglary 1<sup>st</sup> 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.

1 Class A Felon costs KY a minimum of \$712,478.35

10 Class A Felons cost KY a minimum of \$7,124,783.52

100 Class A Felons cost KY a minimum of \$71,247,835.20

A Class B Felony sentence is 10 to 20 years.

1 Class B Felon costs KY \$356,239.18 to \$712,478.35

10 Class B Felons cost KY \$3,562,391.76 to \$7,124,783.52

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.

1 Class C Felon costs KY \$178,119.59 to \$356,239.18

10 Class C Felons cost KY \$1,781,195.88 to \$3,562,391.76

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)

It is unknown how many offenses would occur during an emergency, but overall, this legislation is not likely to have a significant reduction in bed space or revenue for county detention centers.

Class D or Community Custody Class C offenders 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 under the legislation may preclude community custody eligibility for placement in a local detention center.

The legislation also includes enhancement for specified misdemeanor offenses which may occur during an emergency. These proposed modifications are not likely to have a substantial impact on local incarceration.

Misdemeanors are subject to the jurisdiction and cost of the county.

Cost to Incarcerate

A Class A misdemeanor is 90 days to 1 year in jail.  
1 Class A misdemeanor: \$3,188.68 to \$12,931.86

10 Class A misdemeanants: \$31,886.78 to \$129,318.61  
100 Class A misdemeanants: \$318,867.80 to \$1,293,186.06

A Class B misdemeanor is up to 90 days in jail.  
1 Class B misdemeanor: up to \$3,188.68

10 Class B misdemeanants: \$31,886.78 to \$129,318.61  
100 Class B misdemeanants: up to \$318,867.80

**PROJECTED IMPACT FROM AMENDMENTS:**

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

Senate Committee Substitute:

The Senate Committee Substitute adds an offense to the legislation, with the overall impact to incarceration under SB 179 remaining the same.

Robbery 2<sup>nd</sup> Degree is added to the list of offenses enhanced if occurring during an emergency:

- ◆ KRS 515.030 Robbery 2<sup>nd</sup> Degree – enhanced from a Class C felony to a Class B felony
  - Robbery 2<sup>nd</sup> Degree offenders are housed at a state prison facility.

DOC currently has 1,170 inmates with convictions for Robbery 2<sup>nd</sup> Degree. It is unknown how many Robbery 2<sup>nd</sup> Degree offenses would occur during an emergency.

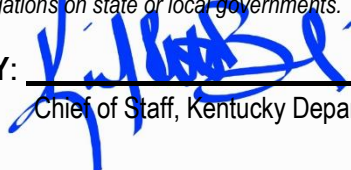
*\*All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers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

3/18/2022

Date