

CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # SB 31 SCS 1 BR # 1210 DOC ID #: SB003140.100 - 1210 - 94762 - 5374v

BILL SPONSOR(S): Sen. B. Storm AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to pretrial release.

SUMMARY OF LEGISLATION: Amend KRS 431.066 and 431.520 to require that conditions of pretrial release for a person released on an unsecured bond be the least restrictive to reasonably mitigate the risk of flight or danger to others.

AMENDMENT: Retain original provisions; further amend KRS 431.066 and 431.520 to allow delays for forensic testing of any evidence; include limits on the duration of pretrial detention based upon the seriousness of the offenses charged; remove the requirement that danger to a specific person be demonstrated.

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 checked="" 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 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 modifies practices related to pretrial release. KRS 431.066 allows judges to consider global positioning system (GPS) monitoring for moderate flight risk defendants. Wording is established for bond conditions imposed by the Court for an unsecured bond or release on recognizance to be the least restrictive necessary. GPS monitoring, drug testing, or home confinement shall be ordered only if no lesser restrictive condition would mitigate flight risk.

Defendants not receiving pretrial release shall be granted a trial, unless waived by the defendant, within ninety (90) days for a misdemeanor and 180 days for a felony from their first appearance in court. If a defendant is not brought to trial within the timeframes established, the defendant shall be released unless the individual poses a safety risk. The established timeframes may be extended for good cause and exceptions are provided for delay in forensic laboratory testing and competency examination.

KRS 431.520 reiterates the least restrictive bond conditions, adding a waiver of certain fees based on indigency, as well as the newly established trial timelines, etc.

While the Commonwealth's pretrial system does not directly impact post-adjudication incarceration, modifications pre-adjudication do impact incarceration at the local level as well as have a correlated impact on sentence lengths for the Department of Corrections.

Days in custody prior to conviction and sentencing are awarded towards a defendant's sentence, though prior to sentencing, the incarceration cost is assumed by the county.

- ◆ The 2021 average number of days of jail credit for days spent in custody prior to sentencing for a felony offense for those sentenced to incarceration (excluding capital offenses) was 173.5 days.
- ◆ From Department of Corrections sentencing records, 79% were probated and 21% received a sentence of incarceration and were subsequently admitted into Department of Corrections custody.

- ◆ Of the 2021 admissions to prison, 65% were Class D offenders and 23% were Class C offenders.
- ◆ Upon commitment, offenders will serve the remainder of their sentence as a state inmate, at a daily cost to incarcerate for the Commonwealth of either \$97.60 for those serving in a prison or \$35.43 for those Class D and community custody Class C state inmates serving in the county jail.

For offenders ultimately sentenced to incarceration, fewer days of jail custody credit is a cost savings for the county but equates to a higher number of days left to serve on their sentence, which is a cost increase 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)

Under KRS 532.100 Class D and community custody Class C offenders serve their sentence of incarceration at a local detention center at a cost to the Department of \$35.43 per day. Jails receive \$31.34 in per diem reimbursement for these offenders.

Under the proposed legislation, pre-adjudication detainees, unless waived, may receive a trial within a set number of days. This could provide shorter incarceration periods and reduced pre-adjudication fiscal costs. Those defendants inclined to waive the proposed timeframes for trial would likely be those facing imprisonment for felony charges.

Of the 138,699 pre-trial interviews conducted by AOC conducted in 2021, 31,994 (23%) received administrative release, 64,749 (45%) were released on a financial bond, and 44,960 (32%) were released on a non-financial bond (ex: released on own recognizance).

- ◆ The median average for pretrial releases was two (2) days in custody.
 - Those released on administrative release served a median average of zero (0) days.
 - Offenders released on a non-financial release or financial bond spent a median average of two (2) days prior to release. Those who were released via the 60-day rule served a median number of seventy-seven (77) days prior to release.
- ◆ Those who were not released (detained until disposition or ending with indictment) spent a median average of twenty-seven (27) days in custody prior to release.
 - At the District Court level the median average until indictment was fifty-two (52) to fifty-five (55) days.
 - Those detained until disposition at the Circuit Court level served a median number of 109 days prior to release.

The legislation could have an impact at the local level in terms of cost savings for counties.

PROJECTED IMPACT FROM AMENDMENTS:

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

Senate Committee Substitute:

The overall impact to incarceration from the legislation remains similar under the Senate Committee Substitute.

Under KRS 431.066 draft language is modified related to bond conditions. The timeframe for the speedy trial hearing is modified to create a range of fourteen (14) days prior and seven (7) days after the expiration of the speedy trial timeframe outlined in the legislation. In addition, language is modified around the risk of harm for release, exclusions to the speedy

trial timeframe for items such as laboratory testing, and calculation of the speedy trial timeframe when things such as new charges or bond revocation occur. Provision of notice of the hearing to victims is added.

Language is also added that a defendant shall not remain in detention due to inability to meet pre-trial release conditions longer than the maximum term which can be imposed for a misdemeanor or the minimum term which may be imposed for the felony offense, dependent on the charges the defendant is facing.

Bond conditions for an individual who has a history of alcohol or substance abuse is discussed in KRS 431.520, along with adding the same language and timeframe changes as in KRS 431.066. Language is added that the court may modify a prior finding for the defendant's risk. KRS 431.530 and KRS 431.535 are added to conform.

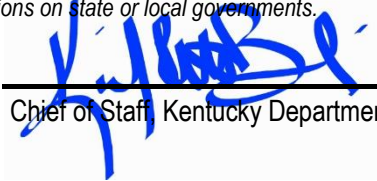
**All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers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