

CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # SB 44 Introduced BR # 2 DOC ID #: xxxx

BILL SPONSOR(S): Sen. D. Carroll AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to public safety.

SUMMARY OF LEGISLATION: Amend KRS 500.080 to define "emergency services personnel," "firework," and "riot"; amend KRS 503.055 to allow a person to use defensive force; create a new section of KRS Chapter 532 to provide enhanced term of imprisonment for any defendant convicted of crimes committed during the course of a riot; create a new section of KRS Chapter 431 to restrict when a person shall be released after an arrest for a violation of an offense of during the course of a riot; amend KRS 508.025, 520.090, 525.015, and 525.140 to provide enhanced penalties for violations of these offenses during the course of a riot; create a new section of KRS Chapter 511 to create the crime of unlawful camping on property owned by the Commonwealth; amend KRS 508.025, 508.030, 525.020, 525.030, and 525.060 to provide additional elements; amend KRS 439.3401 to add violations of KRS 508.020 and 508.025 committed during the course of a riot to the definition of violent offender; amend KRS 532.032 to require restitution be ordered in all cases where a person committed a crime during the course of a riot; create a new section of KRS Chapter 15 to state legislative findings and declarations; amend KRS 411.100 to require gross negligence for a cause of action for property damaged by riotous or tumultuous assemblage of people that a local government could have prevented; amend KRS 61.912, 61.914, 61.168, 525.010, 532.100, and 525.200 to make conforming changes; state the Act may be cited as the Community and First Responder Protection Act.

AMENDMENT: .

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|---|--|
| <input checked="" 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 checked="" 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)

Several offenses are amended under the Community and First Responder Protection Act. While riot related convictions would be few in number, applicable enhancements and prohibitions against community supervision would significantly increase incarceration terms and associated incarceration costs for these offenses.

If committed during a riot, the following enhancements would apply under KRS 532. The offender would not be eligible for release for forty-eight (48) hours after arrest and appearance before a judge. The individual would be prohibited from community supervision and early release until reaching the specified timeframe, along with a fine imposed:

- » Class B misdemeanor - until service of 20% of the sentence and a \$250 fine,
- » Class A misdemeanor - until service of 20% of the sentence and a \$500 fine,
- » Class D felony - until initial parole eligibility date and a \$5,000 fine,
- » Class C felony - until initial parole eligibility date and a \$7,500 fine,
- » Class B felony - until initial parole eligibility date and a \$10,000 fine, and
- » Class A felony - until initial parole eligibility date and a \$10,000 fine.

The following offenses committed during a riot would be added as a violent offense under KRS 439.3401 and subject to service of 85% of the sentence prior to parole eligibility:

- » KRS 508.020 Class C Assault 2nd Degree
- » KRS 508.025 Class D Assault 3rd Degree
- » KRS 508.025 Class D Assault via bodily fluid with a communicable disease

If committed during a riot, the following misdemeanor offenses are enhanced to a Class D felony:

- » KRS 508.025 Assault via bodily fluid with a communicable disease
- » KRS 520.090 Resisting Arrest
- » KRS 525.015 Obstructing Emergency Responder
- » KRS 525.140 Obstructing a Highway

If committed during a riot, the following Class B misdemeanor offense would be enhanced to Class A misdemeanor:

- » KRS 508.025 Assault on a peace officer via bodily fluid

Additions to criminal offenses under the legislation:

- » KRS 508.025 Class D Assault 3rd Degree –intentional physical harm to a law enforcement officer or emergency service personnel through chemical agents or fireworks,
- » KRS 508.030 Class A misdemeanor Assault 4th Degree – intentional shining of a light, laser, horn, or noisemaker towards law enforcement or emergency services personnel, with intent to impede their ability to perform their duties,
- » A new Chapter 511 offense of unlawful camping on property owned by the Commonwealth (during a riot or twenty-four (24) hours following a riot),
 - ◊ Class A misdemeanor for a 1st Offense,
 - ◊ Class D felony for a 2nd or Subsequent Offense,
- » KRS 525.020 Class D Riot 1st & KRS 525.030 Class A misdemeanor Riot 2nd Degree – knowingly provide supplies that can be used as weapons or dangerous instruments,
- » KRS 525.060 Class B misdemeanor Disorderly Conduct 2nd Degree – within six (6) feet of a law enforcement officer, accosts, taunts, or challenges the officer with language as an instrument of assault, gestures, or other physical contact which prevents the officer from performance of duties, and
- » KRS 525.140 Class B misdemeanor Obstructing a Highway – intentional or wanton prevention of law enforcement from accessing a gathering of people.

Justified use of defensive force is articulated under KRS 503.055. KRS 411.100 addresses liability for local governments for injury or damage incurred during a riot. Restitution shall be ordered for the applicable offenses listed in the legislation.

Class A, B, and non-Community Custody C offenders will serve the period of incarceration in a state prison at an average cost to incarcerate of \$97.60 per day.

- » Currently the Department has fourteen (14) inmates for the offense of Riot 1st Degree, with an addition seven (7) individuals on community supervision for Riot 1st Degree and one (1) individual on supervision for misdemeanor Riot 2nd Degree.
- » The Department currently has ten (10) individuals incarcerated specifically for Assault 2nd Degree - Police Officer or Public Official as well as over 400 individuals incarcerated for Assault 3rd Degree – EMS/Fire/Rescue or Police/ Probation Officer.

Under the legislation, Assault 2nd and Assault 3rd Degree offenses occurring during a riot would be subject to the violent offender statute and service of 85% of the sentence prior to parole eligibility:

- » The increase in parole eligibility would increase the number of minimum average days to serve until parole eligibility by 981.4 days for Assault 3rd and 1,957.2 days for Assault 2nd. Using \$31.34 per diem and \$97.60 cost to incarcerate amounts, this equates to \$30,757.08 additional incarceration costs for Assault 3rd and \$191,017.84 additional incarceration costs for Assault 2nd for each person who would be subject to the increased penalty under the legislation.

It is not possible to know how many offenses under the legislation would be committed during a riot.

» AOC records for FY18-21 reflect a total of eighteen (18) convictions for Riot 1st Degree and Riot 2nd Degree.

It should be noted that those currently incarcerated for the criminal offense of Riot involve disturbances occurring while incarcerated. A number of these include convictions for assault. Since occurring while incarcerated, these sentences are often consecutive.

Cost to Incarcerate

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)

Under the legislation, a number of offenses would not be eligible for community supervision or early release until a specific amount of time is served. Though the number of convictions are likely to be few in number, for both misdemeanor and felony convictions, this increases the number of offenders incarcerated and lengthens the time spent in custody.

Class D offenders and Community Custody Class C offenders under the legislation would serve their sentence in a county jail at an average cost to the Department of \$35.43 per day, with \$31.34 daily reimbursement to the local detention center. Class D offenses added to the violent offender statute may remain eligible for jail placement, dependent on additional convictions.

Several misdemeanors are included in the legislation. Misdemeanors are subject to the jurisdiction and cost of the county.

Additionally, bond is prohibited for forty-eight (48) hours for offenses in the legislation committed during a riot. This stipulation may reduce pre-adjudication release and keeps offenders in custody for a period of time who otherwise may have posted bond immediately.

These factors increase incarceration costs, though the number of convictions or arrests associated with these offenses may be minimal.

Cost to Incarcerate

A Class A misdemeanor is 90 days to 1 year in jail.	10 Class A misdemeanants: \$31,886.78 to \$129,318.61
1 Class A misdemeanant: \$3,188.68 to \$12,931.86	100 Class A misdemeanants: \$318,867.80 to \$1,293,186.06
A Class B misdemeanor is up to 90 days in jail.	10 Class B misdemeanants: up to \$31,886.78
1 Class B misdemeanant: up to \$3,188.68	100 Class B misdemeanants: up to \$318,867.80

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

2/17/2022
Date