

# CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # SB 81 Introduced BR # 922 DOC ID #: xxxx

BILL SPONSOR(S): Sen. P. Wheeler AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to jails.

**SUMMARY OF LEGISLATION:** Amend KRS 431.215 to provide that the state pays a fee to counties for lodging prisoners judged guilty of death or confinement to the penitentiary beginning on the date the prisoner is delivered to the penitentiary; create a new section of KRS Chapter 431 to require payment to the county of that fee and, if applicable, the fees set forth in KRS 532.100(7) for each day a prisoner is charged with a felony and lodged in the county with payment, ceasing the day the prisoner is acquitted of the felony charges, or has judgement rendered otherwise involving no felony.

**AMENDMENT:** .

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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 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 type="checkbox"/> Changes elements of offense for existing crime(s)  |  |
| <input checked="" type="checkbox"/> Otherwise impacts incarceration (Explain) <i>establishes per diem payments.</i> |  |

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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)

SB 81 would have a significant fiscal impact for the Commonwealth, with a potential estimated annual cost of \$65 million for days in custody prior to receiving a sentence of incarceration.

The legislation would amend KRS 431.215 to provide payment to counties from the state from the date of arrest until such time the inmate is transferred to the prison and the Department of Corrections takes custody of the inmate. Payment would begin at the time of arrest.

Under current statute, KRS 431.215 initiates payments from the state at the time of sentencing and continues payment for days of service of that felony incarceration sentence.

As such, the legislation would also be applicable for inmates who receive a sentence of imprisonment but under KRS 532.100 serve the sentence of incarceration in a county detention facility (and therefore are not transferred to a state prison facility).

The legislation does not speak to those who leave custody upon a sentence of probation, pretrial diversion, conditional discharge, etc.

The reimbursement payments would equal the amount paid to jails for housing state inmates at \$31.34 per day.

Currently, time spent in custody prior to sentencing is a cost incurred by the county.

In addition, the legislation includes an additional per diem payment to jails under KRS 532.100(7) for program attendance for DOC approved programs in the amount of \$2 or \$10 per day, depending on the type of program.

The legislation halts payment if a defendant is acquitted or receives a judgement for a misdemeanor.

From the pre-sentence investigation reports, from FY17-FY21, there were a total of 2,062,497.40 average days of jail custody credit (i.e. time spent in custody prior to sentencing) per fiscal year for those individuals sentenced to felony incarceration. Jail custody credit is calculated in accordance with KRS 532.120(3). At the per diem rate of \$31.34 per day, this would equate to \$64,638,668.52 in reimbursement costs. It should be noted that the average number of days in custody decreased during the COVID-19 pandemic.

AOC records indicate a total median number of 108 days spent in pre-trial custody by defendants for felony Circuit Court cases. The median number of days increase from seventy-one (71) days for Class D offenses, 111 for Class C offenses, 191 for Class B offenses, to 343 for Class A offenses. It is likely defendants were in custody through arraignment to indictment as well, with felony cases in District Court reporting a total median stay of forty-two (42) days. This number increases from thirty-seven (37) for Class D offenses to 113 for Class A offenses. Note: This is representative of the offense level for those in pretrial custody and not related to the corresponding disposition.

Currently, Department of Corrections' offender management system does not track pre-adjudication detainees. It is not possible to estimate the additional programming per diem cost for offenders in custody prior to sentencing as programming attendance for county prisoners is not reported to DOC. There would be a cost for the Department under the legislation to modify the offender management to track and provide payments to jails for pre-adjudication detainees. In addition, the Department would require additional staffing to process the volume of payments involved.

Similar appropriations to each county under KRS 441.206 (like those made for the bed allotment) would not require the amount of tracking that would be needed for a per diem payment under the proposed legislation.

The legislation would provide considerable assistance to local detention centers yet hold a sizeable cost 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)

The legislation would have a significant impact for counties and county detention centers, who would receive payment for the cost of housing for a number of felony detainees prior to sentencing. This would substantially reduce costs related to county detention.

**PROJECTED IMPACT FROM AMENDMENTS:**

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

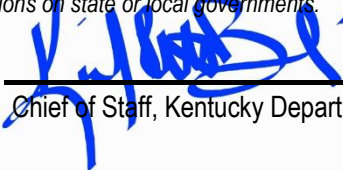
*\*All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers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

**2/24/2022**

Date