

# CORRECTIONS IMPACT STATEMENT

SESSION: 24RS BILL #: HB 278 HCS 1

BR #: 868

BILL SPONSOR(S): Rep. M. Lockett, D. Fister, S. Baker, et al

AMENDMENT SPONSOR(S):

TITLE: AN ACT relating to the protection of children.

**SUMMARY OF LEGISLATION:** Amend KRS 15A.190 to require the Justice and Public Safety Cabinet to include crimes involving childhood sexual assault or abuse in the JC-3 form; amend KRS 17.500 to include distribution of matter portraying a sexual performance by a minor in the definition of "sex crime"; amend KRS 413.249 to remove the statute of limitations for civil actions arising from childhood sexual assault or abuse; require every civil action arising from childhood sexual assault or abuse to be accompanied by a motion to seal the record; amend KRS 439.3401 to include possession or viewing of matter portraying a sexual performance by a minor and distribution of matter portraying a sexual performance by a minor in the definition of "violent offender"; amend KRS 510.060 to enhance the penalty to a Class C felony if the person is in a position of authority or position of special trust and the victim is under 12 years old; amend KRS 510.090 to enhance the penalty to a Class C felony if the person is in a position of authority or position of special trust and the victim is under 12 years old; amend KRS 510.155 to enhance the penalty of unlawful use of electronic means to induce a minor to a Class C felony; enhance the penalty to a Class B felony if the minor or perceived minor is under 12 years old, the offender is a person is in a position of authority or position of special trust, the offender is a registered sex offender, or a person travels into the Commonwealth for the purpose of procuring or promoting the use of a minor; amend KRS 529.100 to enhance the penalty for human trafficking to a Class B felony, unless the victim is a minor, in which case it is a Class A felony; amend KRS 529.110 to enhance the penalty for promoting human trafficking to a Class C felony unless the victim is a minor, in which case it is a Class B felony; amend KRS 531.010 to include computer-generated image, picture, or motion picture in the definition of "matter"; make technical corrections; amend KRS 531.300 to define "child sex doll" and "traffic"; create new sections of KRS 531.310 to 531.370 to prohibit the possession, trafficking, importing, and advancing of a child sex doll; amend KRS 531.340 to enhance the penalty for distribution of matter portraying a sexual performance by a minor to a Class C felony if the victim is under 18 years old and a Class B felony if the victim is under 12 years old; amend KRS 532.060 to require a person who has been convicted of a violation of KRS 529.100, 529.110, 531.320, 531.335, or 531.340 to serve five years of post incarceration supervision; amend KRS 532.200 to redefine "violent felony offense" as an offense that would classify a person as a violent offender under KRS 439.3401; make technical corrections.

**HCS 1:** Retain original provisions, except remove KRS 17.500, 439.3401, 531.010, and 531.300 in their entirety; remove new sections of KRS 531.310 to 531.370 prohibiting the possession, trafficking, importing, and advancing of a child sex doll; amend KRS 160.380 to provide that a superintendent shall not employ any person who has been convicted of an offense that would classify the person as a violent offender, a sex crime, a misdemeanor offense under KRS Chapter 510, or who is required to register as a sex offender; make technical corrections; amend KRS 510.050 and 510.080 to provide an enhanced penalty when the defendant is a person in a position of authority or position of special trust; amend KRS 510.155 to provide enhanced penalties when the child procured or promoted is for human trafficking where the offense involves commercial sexual activity; amend KRS 531.340 to provide that any person convicted of distribution of matter portraying a sexual performance by a minor shall not be released on probation or parole until he or she serves 85 percent of the sentence imposed.

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This  bill  amendment  committee substitute is expected to:

**Have the following Corrections impact**

- Creates new crime(s)
- Increases penalty for existing crime(s)
- Increases incarceration
- Reduces inmate/offender services
- Increases staff time or positions
- Changes elements of the offense for existing crime(s)
- Otherwise impacts incarceration (Explain):

**Have no Corrections impact.**

- Repeals existing crime(s)
- Decreases penalty for existing crime(s)
- Decreases incarceration.
- Increases inmate/offender services.
- Reduces staff time or positions.

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**STATE IMPACT:** Class A, B, & C felonies are based on an average daily prison rate of \$116.93. 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 jail is \$44.97 per day, which includes \$35.34 per diem, medical costs, and central office administrative costs (substance abuse treatment not included).\*

**Projected Impact:**  NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

The legislation would likely have a significant increase in operational costs. The necessary appropriations associated with the costs estimated in this corrections impact statement require a continuation of current service funding for adult correctional institutions.

Changes to the definition of violent and sex crimes would subject these offenders to longer sentences and lengthen the overall length of stay due to the removal of possible early release.

New sentence calculation formulas would need to be added to the Kentucky Offender Management System (KOMS). The most recent modification to KOMS regarding the calculation of violent offenders was cost \$92,000.00. At minimum, the cost would be similar.

Currently, there are 111 inmates in custody and 71 offenders on supervision for Distribution Of Matter Portraying Sex Performance By Minor, 1st Off.

Possession/Distribution matter portraying a sex perf by minor are both Class D felonies – they only serve their time in jail if their sentence is less than 2 years. Making them violent offenses will increase time to serve and affect the CI population as they are in secure custody. Class D felons are housed in a county jail and DOC pays counties a per diem for housing those inmates. A Class D Felony sentence is 1 to 5 years. One (1) Class D Felon costs KY \$16,414.05 to \$82,070.25.

Increasing Rape 3rd and Sodomy 3rd to a Class C will automatically make the offender serve their time in an institution with increased time to serve. Class C felons may still be able to serve their time in a county jail, but only if community custody. A Class C Felony sentence is 5 to 10 years. One (1) Class C Felon costs KY \$213,397.25 to \$426,794.50.

Increasing Human Trafficking to a Class B or A will require institutional housing and lengthen the time to serve. Class A and B felons will serve time in state prison. A Class B Felony sentence is 10 to 20 years. One (1) Class B Felon costs KY \$426,794.50 to \$853,589.00. A Class A Felony sentence is 20 years or more. One (1) Class A Felon costs KY a minimum of \$853,589.00.

DOC does not anticipate many convictions for offenses involving a "sex doll".

Changing the definition of "sex crime" would require those offenders to complete SOTP before being eligible for parole or sentence credits lengthening their overall length of stay.

Changing the definition of "violent crime" would require those offenders to serve 85% of their sentence.

**LOCAL IMPACT:** Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until the disposition of the case. The estimated impact will be based on the \$44.97 cost to incarcerate for the Department of Corrections, including \$35.34 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)

Possession/Distribution matters portraying a sex performance by a minor are both Class D felonies – they only serve their time in jail if their sentence is less than 2 years. Making them violent offenses will increase time to serve and affect the CI population as they are in secure custody. Class D felons are housed in a county jail and DOC pays counties a per diem for housing those inmates. A Class D Felony sentence is 1 to 5 years. One (1) Class D Felon costs KY \$16,414.05 to \$82,070.25.

The legislation adds five years of post-incarceration supervision to offenders convicted of KRS 529.100, 529.110, 531.320, 531.335, or 531.340. There are currently, 404 inmates in custody and 205 offenders on supervision for these offenses.

The increase of offenders on supervision could create additional needs for Probation & Parole regarding officers, support staff, equipment, and leased space. Probation & Parole - The cost to Supervise each offender is \$4.41 per day. An additional 5 years of supervision equates to \$8,048.25 per offender.

Any increase to the sex offender population based on the creation of additional sex offenses could impact contract beds with Reentry Service Centers (RSCs) who house sex offenders with residency restrictions in addition to program beds for Sex Offender Treatment Program (SOTP).

**PROJECTED IMPACT FROM AMENDMENTS:**  NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

HCS 1: Removes the enhancement of Rape 3<sup>rd</sup> and Sodomy 3<sup>rd</sup> and instead enhances the penalty for Rape 2<sup>nd</sup> and Sodomy 2<sup>nd</sup> when the defendant is a person of authority or special trust resulting in a Class B felony. Class B felons will serve time in state prison. A Class B Felony sentence is 10 to 20 years. One (1) Class B Felon costs KY \$426,794.50 to \$853,589.00.

There are currently 415 inmates in custody and 191 offenders on supervision for Rape 2<sup>nd</sup> or Sodomy 2<sup>nd</sup> however, it is unknown if the offender was in a position of authority.

*\*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, lengthen the term of incarceration, or impose new obligations on state or local governments.

APPROVED BY: \_\_\_\_\_

  
Chief of Staff, Kentucky Department of Corrections

3/6/2024

Date