

CORRECTIONS IMPACT STATEMENT

SESSION: 24RS BILL #: HB 5 Introduced. BR #: 128

BILL SPONSOR(S): Rep. J. Bauman, et al.

AMENDMENT SPONSOR(S):

TITLE: AN ACT relating to crimes and punishments.

SUMMARY OF LEGISLATION: Create new sections of KRS Chapter 532 to define "violent felony" and enhance sentencing for a person convicted of a third violent felony; prohibit probation, parole, or other form of release for a person who commits a crime using a weapon that is stolen, defaced, loaded with restricted ammunition, or otherwise violates state law; amend KRS 610.070 to require a parent, legal guardian, or custodian to be present at court proceedings involving a child in the juvenile justice system; create a new section of KRS Chapter 610 to establish penalty; amend KRS 507.020 to expand offense of murder; amend KRS 507.030 to expand offense of manslaughter in the first degree; amend KRS 507.040 to expand offense of manslaughter in the second degree; amend KRS 218A.1412 to provide increased penalties for certain trafficking offenses; create a new section of KRS Chapter 515 to create a new offense of carjacking; amend KRS 512.020 and 512.030 to lower the threshold for criminal mischief in the first degree to \$500; amend KRS 149.410, 506.160, and 525.220 to conform; amend KRS 520.050 to enhance promoting contraband to a Class B felony if the dangerous contraband is fentanyl, carfentanil, or a fentanyl derivative; amend KRS 16.220 to allow purchase of a confiscated firearm by a person who bids under the condition that they not take possession of the firearm, but instead leave it with the Department of Kentucky State Police for destruction; prohibit government agencies from purchasing the firearm; make technical corrections; create new sections of KRS Chapters 511, 198A, and 65 to establish the offense of criminal street camping and provide exceptions; amend KRS 503.080 to conform; amend KRS 202C.050 to reduce requirements to find a person subject to involuntary commitment pursuant to KRS Chapter 202C; amend KRS 186.417 to include felony offenders released from county jails and local correctional facilities among those who may be issued personal identification cards or operator's licenses under certain conditions; amend KRS 431.510 to define terms; prohibit any charitable bail organization from posting bail in excess of \$5,000; prohibit any charitable bail organization from posting bail for any offense of domestic violence and abuse or dating violence and abuse, and for any offense under a civil court order or warrant under KRS 222.430 to 222.437; establish that any bond ordered forfeited following a new criminal offense shall be distributed to the victim of the new offense; require publication of records and annual reporting to the General Assembly; create new section of KRS Chapter 507 to create the offense of murder of a first responder and establish penalties; amend KRS 506.010 to conform; amend KRS 532.025 to include the murder of first responders as an aggravating circumstance for the death penalty; amend KRS 532.036 to allow restitution following a conviction for Murder of a first responder; amend KRS 439.320 to provide that members of the Parole Board shall serve at the pleasure of the Governor, that panels of the board shall consist of not less than three and not more than six members, and that all members of the panel must agree on a decision or the matter shall be referred to the full board; amend KRS 439.330 to require that parole be granted upon a two-thirds vote of the full board; amend KRS 433.236 to limit liability for shopkeepers; amend KRS 439.3401 to add a person who has been convicted of or entered a plea of guilty to a Class B felony violation of KRS 520.050 to the definition of "violent offender" and to include carjacking and attempted murder in the list of violent offenses; amend KRS 508.075 and 508.078, relating to terroristic threatening, to include any workplace or any gathering of 3 or more persons; amend KRS 524.040 to include harassing communications as conduct constituting intimidation of a participant in the legal process; amend KRS 439.340 to allow the Parole Board to order participation in a specific violence reduction program as a condition of parole; amend KRS 533.030 to allow a court to require participation in a specific violence reduction program as a condition of probation or conditional discharge; amend KRS 403.763 and 456.180 to enhance a second or subsequent violation of an order of protection within a five-year period to a Class D felony; amend KRS 500.080 to include family members, members of an unmarried couple, and persons in a dating relationship, in application of a particular definition of serious physical injury; amend KRS 514.020 to reduce the time required to establish prima facie evidence of theft by deception of rented or leased property that is not returned to the owner from 10 days to four days; amend KRS 196.031 to require the annual report to also include the percentage of offenders who commit new offenses within two years; amend KRS 520.095 to enhance fleeing or evading police in the first degree to a Class C felony; provide that the defendant shall not be released on probation, shock probation, conditional discharge, or parole until he or she has served at least 50 percent of the sentence imposed; amend KRS 520.100 to enhance fleeing or evading police in the second degree to a Class D felony; amend KRS 532.100 to provide sentences for two or more felony sec crimes shall run consecutives; provide that the defendant shall not be released on probation, shock probation, conditional discharge, or parole until he or she has served at least 50 percent of the sentence imposed; amend KRS 158.155 to require school employees to report certain enumerated crimes to law enforcement;

repeal KRS 512.040, which establishes the crime of criminal mischief in the third degree and KRS 158.154, which deals with discipline in schools; EFFECTIVE, in part, August 1, 2025.

AMENDMENT:

This bill amendment committee substitute is expected to:

Have the following Corrections impact

Have no Corrections impact.

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|---|---|
| <input checked="" type="checkbox"/> Creates new crime(s) | <input checked="" 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 checked="" type="checkbox"/> Increases inmate/offender services. |
| <input checked="" type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions. |
| <input checked="" type="checkbox"/> Changes elements of the 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 \$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)

HB 5 will have a significant increase in operational costs at the state level.

Significant changes will be needed to the Kentucky Offender Management System (KOMS). A significant amount of work would be necessary to get all stipulations incorporated into KOMS with an approximate cost of \$75,000.

Changing the definitions of offenses will increase the number of individuals convicted of this offense.

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

On average increasing Parole Eligibility from 20% to 85% correlates with additional costs:

A Class A Felony sentence is 20 years or more = additional 4,745 days = \$554,832.85 per offender

A Class B Felony sentence is 10 to 20 years = additional 3,559 days = \$416,153.87 per offender

A Class C Felony sentence is 5 to 10 years = additional 2,373 days = \$277,474.89 per offender

A Class D Felony sentence is 1 to 5 years = additional 1,186 days = \$138,678.98 per offender

There will be an increased need for services to meet the needs of the aging population. Offenders will face physical and mental health problems, including dementia. The cost of incarcerating offenders at the medical institution is \$30.58/day/offender more than the average cost to incarcerate.

With longer incarceration times, the challenge of reentry back into the community will become more difficult.

A Class A Felony sentence is 20 years or more. One (1) Class A Felon costs KY a minimum of \$853,589.00.

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 C Felony sentence is 5 to 10 years. One (1) Class C Felon costs KY \$213,397.25 to \$426,794.50.

A Class D Felony sentence is 1 to 5 years. One (1) Class D Felon costs KY \$16,414.05 to \$82,070.25.

Section 1: KRS Chapter 532 – Changes to the term of imprisonment for offenders with 3 violent convictions.

DOC has been able to identify 40 current inmates who would have met the proposed criteria. Nine (9) of these offenders are serving less than 20 years. Twenty-six (26) are serving for 20 years or more. Five (5) are serving life sentences.

Due to the complex sentence calculations and auditing that will be required, an additional position will be needed for an Offender Information Specialist. Agency costs are approximately \$75,000 per employee in this position.

Section 5: KRS 507.020 – New fentanyl component to the existing crime of Murder

Changing the definitions could increase the number of individuals convicted of a Capital felony.

Capital felons will serve time in state prison. Capital Felony sentence is death, life without parole, life without parole for 25 years, or a sentence of 20-50 years. One (1) Class A/Capital Felon costs KY a minimum of \$853,589.00.

Section 6: KRS 507.030 – New fentanyl component to the existing crime of Manslaughter 1st

Changing the definitions could increase the number of individuals convicted of 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.

Expanding the definition of offenses considered to be violent offenders would require offenders to serve 85% of their sentences. A Class B Felony sentence is 10 to 20 years, an increase of an additional 3,559 days = \$416,153.87 per offender.

Section 7: KRS 507.040 – Proposes manslaughter deaths where fentanyl was involved no longer Manslaughter 2nd.

Changing the definitions could increase the number of individuals convicted of a Class B felony as opposed to the previous Class C. 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.

This section also eliminates the requirement that the offender receive compensation in exchange for the controlled substance which could lead to additional Class C offenders. A Class C Felony sentence is 5 to 10 years. One (1) Class C Felon costs KY \$213,397.25 to \$426,794.50.

Section 8: KRS 218A.1412 – Enhance sentence of Trafficking in Controlled Substance 1st

Increasing penalties for fentanyl-related offenses one (1) level higher will result in longer sentence lengths. Offenders convicted of these enhanced sentences will require a prison bed.

Section 9: KRS Chapter 515 – New offense of carjacking – Class B

DOC does not anticipate many offenders with this new conviction. 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.

Section 15: KRS 520.050 Promoting Contraband – Fentanyl

DOC cannot anticipate the number of new convictions this legislation would generate, however, the fiscal impact of increasing a Class D felony to a Class B is significant. These offenders would no longer be housed in county jail. 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.

Expanding the definition of offenses considered to be violent offenders would require offenders to serve 85% of their sentences. A Class B Felony sentence is 10 to 20 years, an increase of an additional 3,559 days = \$416,153.87 per offender.

Section 18: KRS 198A – Homeless housing without treatment.

The use of the word “permanent” in this section should prevent an impact on the department. P&P only uses resources to provide temporary transitional housing until permanent housing can be obtained. If this provision is applied to the temporary transitional housing placement for released offenders, then DOC would need to establish criteria to require participation in programming. Low-cost “flop” houses do not use state resources.

Section 25: KRS chapter 507 – definition of first responder

This section expands the definition of first responder as well as increases the penalty to a capital offense. The change in sentence will have an impact but DOC does not anticipate many convictions.

Class A/Capital felons will serve time in state prison. A Class A/Capital Felony sentence is 20 years or more. One (1) Class A/Capital Felon costs KY a minimum of \$853,589.00.

Section 26: KRS 506.010 – Criminal attempt

This section increases the penalty for criminal attempt of the new provision established regarding first responders to a capital offense. The change in sentence will have an impact but DOC does not anticipate many convictions.

Class A/Capital felons will serve time in state prison. A Class A/Capital Felony sentence is 20 years or more. One (1) Class A/Capital Felon costs KY a minimum of \$853,589.00.

Section 27: KRS 532.025 – expanding Definition of when death can be imposed.

This section expands the definition of circumstances eligible for the death penalty. The change in sentence will have an impact but DOC does not anticipate many convictions.

Section 32: - KRS 439.3401 – Violent offender definition

This section adds additional offenses to the definition of violent crime. The changes will have an impact, but DOC does not anticipate many convictions.

Requiring Class C and Class D offenders with prior violence to serve 85%. A Class D Felony sentence is 1 to 5 years = additional 1,186 days = \$138,678.98 per offender. A Class C Felony sentence is 5 to 10 years = additional 2,373 days = \$277,474.89 per offender.

There are currently 141 inmates serving on a violent Class D or C felony with a prior violent offense. However, only 9 of these offenders are not already serving enhanced time computations.

For comparison, there are currently 2,057 inmates currently serving 85% sentences. The sentence range between 1,460 - 35,307 days with an average sentence length of 7,782.

Section 33: KRS 508.075 – Terroristic Threatening 1st

This section changes the component of an existing offense leading to additional offenders convicted of a Class C Felony. 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.

Section 37: Criminal Conspiracy with a minor

This section increases the penalty of offense to one level higher than the level provided. Increases in felony level will increase overall costs of incarceration and length of stay.

Section 41: Release on Parole – Violent Offender program

This section would require additional staff needed for Offender Information Services and Reentry. Agency costs are approximately \$75,000 per employee. Current law requires DOC to offer programs that have been demonstrated to reduce recidivism. However, DOC does not currently have a program designed specifically to reduce violence. Therefore, evidence-based curriculum and assessment measures would need to be surveyed and purchased to establish the program.

Section 42: Conditions of Probation – Violent Offender program

This section would require additional staff needed for Offender Information Services and Reentry. Agency costs are approximately \$75,000 per employee. Current law requires DOC to offer programs that have been demonstrated to reduce recidivism. However, DOC does not currently have a program designed specifically to reduce violence. Therefore, evidence-based curriculum and assessment measures would need to be surveyed and purchased to establish the program.

Section 45: KRS 500.080 – Defining Serious Physical Injury

Expanding the definition of a Serious physical injury could lead to additional offenders being convicted.

Section 46: KRS 514.020 – Theft of rental property

Changing the component of an offense could lead to additional offenders being convicted.

Section 47: 196.031 – Annual report

DOC is not the owner of all criminal offense data and would need an agreement with AOC to report on offense data for these offenders.

Section 48: KRS 520.095 – Fleeing or Evading 1st

This section will have a significant increase to incarceration costs by changing the existing Class D offense to a Class C. There are currently 1581 offenders serving on Fleeing or Evading 1st. 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

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)

HB 5 will have a significant increase in operational costs at the local level.

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.

Misdemeanor offenders are subject to the jurisdiction and cost of the county.

A Class A misdemeanor is 90 days to 1 year. One (1) Class A misdemeanor: \$4,047.30 to \$16,414.05 A Class B misdemeanor is up to 90 days. One (1) Class B misdemeanor: up to \$4,047.30

Expanding the definition of violent offenders and requiring additional offenders to serve 85% will likely impact the controlled intake population housed in county jails. Longer prison sentences increase the length of stay and ultimately decrease available prison bed space.

Section 1: KRS Chapter 532 – Changes to term of imprisonment for offenders with 3 violent convictions.

Prohibiting early release of offenders impacts available prison beds reducing the beds available for incoming jail admissions through controlled intake. However, this would also result in fewer offenders on supervision.

Section 2: KRS Chapter 532 – Use of unlawful firearm – no early release

DOC cannot identify the exact number of offenders who would have been impacted. The use of an unlawful firearm would need to be noted in the Pre-Sentence Investigation and indicated in KOMS. A modification to the KOMS system would be needed to identify these offenses.

Prohibiting early release of offenders impacts available prison beds reducing the beds available for incoming jail admissions through controlled intake. However, this would also result in fewer offenders on supervision.

Section 8: KRS 218A.1412 – Enhance sentence of Trafficking in Controlled Substance 1st

Longer prison sentences affect available prison beds reducing the beds available for incoming jail admissions through controlled intake.

Section 9: KRS Chapter 515 – New offense of carjacking – Class B

Expanding the definition of violent offenders and requiring offenders to serve 85% will likely impact the controlled intake population housed in county jails. Longer prison sentences increase the length of stay and ultimately decrease available prison bed space.

Section 10: KRS 512.020 – Criminal Mischief – 1st - \$500 instead of \$1000

This section changes the component of an existing offense. There could be an increase in offenders that meet the new qualifying amount of \$500.

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.

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.

The provision that allows the restitution to be settled would reduce the offense to a misdemeanor. A Class B misdemeanor is up to 90 days in jail. One (1) Class B misdemeanor: up to \$4,047.30

Section 11: KRS 512.030 – Criminal Mischief 2nd – less than \$500 instead of \$500-\$1000

This section changes the component of an existing offense. There could be an increase in offenders who meet the new qualifying amount of less than \$500.

A Class A misdemeanor is 90 days to 1 year in jail. One (1) Class A misdemeanor: \$4,047.30 to \$16,414.05

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 provision that allows the restitution to be settled would reduce the offense to a Class B misdemeanor. A Class B misdemeanor is up to 90 days in jail. One (1) Class B misdemeanor: up to \$4,047.30

Section 17: KRS Chapter 511 – Unlawful Camping.

This section will impact the local jail population by the creation of a new misdemeanor offense. Counties are fiscally responsible for the cost of incarcerating all misdemeanants.

A Class B misdemeanor is up to 90 days in jail. One (1) Class B misdemeanor: up to \$4,047.30

Section 23: KRS 186.417 – Transportation Cabinet issuing ID for Jails

This increase in services will require 30 additional Reentry Coordinators for the additional jails.

Currently, the pilot program is funded by the Kentucky Chamber of Commerce Foundation and by the Kentucky Opioid Response Effort Grant (KORE). Once those funds are depleted the cost impact would be \$15.00/identification card and \$10.00/birth certificate.

Section 24: Charitable bail

Expanding the definition of Bail bondsman could result in additional county prisoners being housed in county jails, but the impact is expected to be minimal. KRS 431.550 – Class A misdemeanor for 1st offense and Class D felony for 2nd offense.

Misdemeanor offenders are subject to the jurisdiction and cost of the county. A Class A misdemeanor is 90 days to 1 year in jail. One (1) Class A misdemeanor: \$4,047.30 to \$16,414.05

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.

A portion of pre-trial detainees may be unable to be released on bail because charitable bail organizations are prohibited from posting their bail for them.

Section 34: KRS 508.078 – Terroristic Threatening 2nd

This section changes the component of an existing offense leading to additional offenders convicted of a Class D Felony. 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.

Section 39: 508.060 – Wanton Endangerment

This section changes the component of an existing offense leading to additional offenders convicted of a Class C Felony that were previously Class D and housed at county jails. 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.

Section 40: KRS 524.040 – Intimidating Participant

This section changes the component of an existing offense leading to additional offenders convicted of a Class D Felony. 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.

Section 43: KRS 403.763 - Violation of Protective Order (Dissolution of marriage)

This section creates a new Class D Felony. 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.

Section 44: KRS 456.180 – Violation of Protective Order (civil orders)

This section creates a new Class D Felony. 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.

Section 48: KRS 520.095 – Fleeing or Evading 1st

Additionally, there is an increase in the penalty for an existing crime which enhances the time computation. These changes will likely impact the controlled intake population housed in county jails. Longer prison sentences increase the length of stay and ultimately decrease available prison bed space.

Section 49: KRS 520.100 - Fleeing or Evading 2nd

This section will have a significant increase to incarceration costs by changing the existing Class A misdemeanor offense to a Class D. There are currently 629 offenders on supervision for Fleeing or Evading 2nd. 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.

Additionally, there is an increase in the penalty for an existing crime which enhances the time computation. These changes will likely impact the controlled intake population housed in county jails. Longer prison sentences increase the length of stay and ultimately decrease available prison bed space.

Section 50: KRS 532.110 – Multiple Sentences

Expands criteria to allow for more exceptions on term limits. An increase in penalties impacts the controlled intake population housed in county jails. Longer prison sentences increase the length of stay and ultimately decrease available prison bed space.

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



APPROVED

BY: 1/18/2024

Date

Chief of Staff, Kentucky Department of Corrections