

**COMMONWEALTH OF KENTUCKY FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2024 REGULAR SESSION**

MEASURE

2024 BR NUMBER 128

HOUSE BILL NUMBER 5 GA

TITLE AN ACT relating to crimes and punishments.

SPONSOR Representative Jared Bauman

FISCAL SUMMARY

STATE FISCAL IMPACT: YES NO UNCERTAIN

OTHER FISCAL STATEMENT(S) THAT MAY APPLY: ACTUARIAL ANALYSIS
 LOCAL MANDATE CORRECTIONS IMPACT HEALTH BENEFIT MANDATE

APPROPRIATION UNIT(S) IMPACTED: Corrections; Behavioral Health, Developmental & Intellectual Disabilities; Vehicle Regulation

FUND(S) IMPACTED: GENERAL ROAD FEDERAL RESTRICTED _____

FISCAL ESTIMATES	2023-2024	2024-2025	2025-2026	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES				
EXPENDITURES		Indeterminable	Indeterminable	Indeterminable
NET EFFECT		(Indeterminable)	(Indeterminable)	(Indeterminable)

() indicates a decrease/negative

PURPOSE OF MEASURE: The purpose of the measure is to amend applicable statutes to either modify or create new penalties for various criminal offenses. Other provisions in the bill impact the expenditure of state funds on permanent housing for the homeless, conditions necessary for involuntary commitment, programming used as conditions for probation and parole, the issuance of personal identification to felons upon release, and the circumstances in which charitable bail organizations can operate.

FISCAL EXPLANATION: The fiscal impact of the measure in aggregate is indeterminable but likely a significant increase in expenditures primarily due to increased incarceration costs for the Department of Corrections. Various sections either enhance current penalties or create new criminal offenses, and it is unknown how many new offenders would result from or be impacted by the changes. However, the differences in incarceration costs between offense levels, as well as changes in penalties and offenses made in the bill, illustrate the possible magnitude of cost increases related to incarceration.

The total cost to incarcerate a single offender at the different levels of felony offense using annual rates of \$16,414 for Class D felons who serve time in county jails and \$42,679 for Class A, B, and C felons who serve time in state prisons are as follows:

Felony Offense Level	Sentence Length	Total Cost Range
Class A Felony	20 years or more	Minimum of \$853,589
Class B Felony	10 to 20 years	\$426,794 to \$853,589
Class C Felony	5 to 10 years	\$213,397 to \$426,794
Class D Felony	1 to 5 years	\$16,414 to \$82,070

The following sections enhance criminal penalties and could increase incarceration costs associated with higher levels of felony offense and sentence length:

- Sections 1 and 2– KRS 532 – Creates a new requirement for violent offenders who have had two prior convictions for violent felonies to be sentenced to death or life imprisonment without the possibility of release and creates a new requirement for offenders who possess a firearm in the commission of their offense in certain circumstances to serve their entire sentence without the possibility of release. These provisions would increase costs as currently violent offenders are eligible for release after serving 50-85% of their sentence depending on the nature of the offense.
- Section 8 – KRS 218A.1412 – Increases penalty for fentanyl-related trafficking in controlled substances offense by one level. For example, Class D trafficking offenses involving fentanyl would rise to a Class C felony.
- Section 15 – KRS 520.050 – Increases penalty for promoting fentanyl-related contraband in the first degree from a Class D felony to a Class B felony.
- Section 26 – KRS 506.010 – Increases penalty for criminal attempt to commit murder of a first responder to either 20-50 years, life, or life without release until serving 25 years.
- Section 27 – KRS 532.025 – Expands aggravating circumstances that may be considered for the death penalty.
- Section 30 – KRS 439.3401 – Expands the types of offenses defined as violent crime and require violent offenders to serve 85% of sentence length prior to any release. The Department of Corrections estimates that requiring Class D and Class C violent felony offenders to serve 85% of sentences could increase the cost per offender by \$138,679 and \$277,475, respectively.
- Sections 36 and 37 – KRS 506.040 and 218A.1402 – Increases penalty for criminal conspiracy with a minor offense by one level. For example, Class C criminal conspiracy involving a minor would rise to a Class B felony.
- Sections 47 and 48 – KRS 520.095 and 520.100 – Increases penalties for fleeing or evading police in the 1st degree from a Class D to Class C felony and in the 2nd degree from Class A misdemeanor to Class D felony. The Department of Corrections estimates that 629 offenders are currently on supervision for fleeing or evading in the 2nd degree. If just 20% of this number were convicted under the enhanced penalty, incarceration costs could increase by \$2.1 million annually.
- Section 50 – KRS 532.110 – Removes cap on sentence length for multiple sentences running consecutively for certain felony sex crimes which could increase overall costs for those offenses.

- Section 51 – KRS 514.030 – Increases the aggregate timeframe in which theft by unlawful taking offenses may be combined as one offense and allows offenses from different jurisdictions to be combined. These changes could increase the number of felony class convictions.

The following sections either create new offenses or add or change components to existing offenses and could increase incarceration costs associated with additional offenders convicted, although it is not possible to know how many new convictions may occur:

- Sections 5 and 6 – KRS 507.030 and 507.040 – Adds a fentanyl-related component to manslaughter in the 1st and 2nd degree which could lead to additional Class B and Class C felony convictions.
- Section 9 – KRS 515 – Creates a new offense of carjacking which would be a Class B felony.
- Sections 10 and 11 – KRS 512.020 and 512.030 – Lowers the monetary threshold for criminal mischief in the 1st degree to \$500 or more and for criminal mischief in the 2nd degree to less than \$500. Lower thresholds could increase the number of Class D and Class C felony offenders unless the offender can repair, replace, or make complete restitution for the value of the property, in which case the offense would be reduced to a Class A or B misdemeanor.
- Section 25 – KRS 507 – Defines first responder and creates a capital offense for murder of a first responder for which the sentence would be death or life imprisonment without the possibility of release.
- Sections 32 and 33 – KRS 508.075 and 508.078 – Expands the circumstances for which an offense would qualify as terroristic threatening in the 1st and 2nd degree which could lead to additional Class D and Class C felony convictions.
- Section 38 – KRS 508.060 – Adds a firearm-related component to wanton endangerment in the 1st degree which could lead to additional Class C felony convictions.
- Section 39 – KRS 524.040 – Adds a harassing communications component to intimidating a participant in a legal process offense which could lead to additional Class D felony convictions.
- Sections 42 and 43 – KRS 403.763 and 456.180 – Creates a new Class D felony for second and subsequent violations of protective orders in certain circumstances.
- Section 44 – KRS 500.080 – Expands definition of serious physical injury which could lead to additional felony convictions in which serious physical injury is an aggravating circumstance.
- Section 45 – KRS 514.020 – Changes a component of intent to commit theft by deception by reducing the number of days one has to return leased or rented property to the owner from 10 to 4 days. This could lead to additional Class D and Class C felony convictions depending on the value of the property.

Additional potential fiscal impacts of provisions in the bill include the following:

- Costs associated with necessary updates to the Kentucky Offender Management System related to offense and penalty changes made by the bill are estimated by the Department of Corrections at \$75,000.
- Sections 40 and 41 – KRS 439.340 and KRS 533.030 – Allows for the participation in a program designed to reduce violence as a condition of probation and parole. While not

mandated, the Department of Corrections anticipates additional Offender Information Services and Reentry staff will be necessary, as well as the cost to purchase programming. Staff costs are estimated at \$75,000 per employee, although the exact number of additional staff needed is unknown.

- Section 16 – KRS 16.220 – Allows for the public auction purchase of firearms used in homicides contingent upon the firearms being committed to the Kentucky State Police for destruction after the auction is complete. There may be minimal costs associated with the destruction of such firearms.
- Section 18 – KRS 198A – Prohibits the expenditure of state funds on permanent housing initiatives for the homeless which lack behavioral or rehabilitative requirements, while exempting statutory programs and domestic violence shelters. It is unclear what impact this might have, but could reduce expenditures to the extent that state funds are being used for programs that do not meet the allowable criteria.
- Section 22 – KRS 202C.050 – Expands the definitions of who can be considered for involuntary commitment in a forensic psychiatric hospital by the Cabinet for Health and Family Services. The Cabinet estimates increased costs of \$3.65 million annually based on an additional 10 individuals per day at a cost of \$1,000 per day, as well as costs of \$850,000 annually for an increased number of competency evaluations due to provisions in the bill. Additionally, KRS 31.110 prescribes that the Department of Public Advocacy provide representation to individuals subject to involuntary commitment proceedings. Additional resources could be necessary to provide representation if the number of individuals subject to proceedings increases.
- Section 23 – KRS 186.417 – Requires the Transportation Cabinet, contingent upon available funds, to issue a personal identification card or operator’s license to felony offenders released from a county jail or regional correctional facility. Statute puts the cost burden of the identification card or license on the offender, but Corrections and the Transportation Cabinet have partnered on a pilot program to assist offenders with obtaining the necessary documentation and paying the license or identification fee. To expand the pilot to all county jails, Corrections estimates 30 additional reentry coordinators would be necessary costing up to \$2.2 million; and Transportation estimates 3 additional staff would be necessary, costing approximately \$280,000.
- Section 24 – KRS 431.510 – Limits the circumstances in which charitable bail organizations can provide bail support to individuals charged with an offense. This could increase the number of individuals detained pre-trial, with subsequent impacts to the time credited on sentences if convicted.

DATA SOURCE(S): LRC Staff; Justice and Public Safety Cabinet; Transportation Cabinet; Cabinet for Health and Family Services

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