

**532.100 Place of imprisonment -- Commitment when death sentence imposed -- Housing for female state inmates -- Transfer of prisoners when jail is over capacity, limitations, refusal of transfer by jailer, reduction in jail's per diem -- Incarceration of certain Class C and D felons and felons convicted of sex crimes -- Work release for certain inmates.**

- (1) As used in this section, "jail" means a "jail" or "regional jail" as defined in KRS 441.005.
- (2) When an indeterminate term of imprisonment is imposed, the court shall commit the defendant to the custody of the Department of Corrections for the term of his or her sentence and until released in accordance with the law.
- (3) When a definite term of imprisonment is imposed, the court shall commit the defendant to a jail for the term of his or her sentence and until released in accordance with the law.
- (4) When a sentence of death is imposed, the court shall commit the defendant to the custody of the Department of Corrections with directions that the sentence be carried out according to law.
- (5)
  - (a) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is sentenced to an indeterminate term of imprisonment of five (5) years or less, he or she shall serve that term in a jail in a county in which the fiscal court has agreed to house state prisoners; except that, when an indeterminate sentence of two (2) years or more is imposed on a Class D felon convicted of a sexual offense enumerated in KRS 197.410(1), or a crime under KRS 17.510(11) or (12), the sentence shall be served in a state institution. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.
  - (b) The provisions of KRS 500.080(5) notwithstanding, a Class D felon who received a sentence of more than five (5) years for nonviolent, nonsexual offenses, but who currently has less than five (5) years remaining to be served, may serve the remainder of his or her term in a jail in a county in which the fiscal court has agreed to house state prisoners.
  - (c)
    1. The provisions of KRS 500.080(5) notwithstanding, and except as provided in subparagraph 2. of this paragraph, a Class C or D felon with a sentence of more than five (5) years who is classified by the Department of Corrections as community custody shall serve that term in a jail in a county in which the fiscal court has agreed to house state prisoners if:
      - a. Beds are available in the jail;
      - b. State facilities are at capacity; and
      - c. Halfway house beds are being utilized at the contract level as of July 15, 2000.
    2. When an indeterminate sentence of two (2) years or more is imposed on a felon convicted of a sex crime, as defined in KRS 17.500, or any similar offense in another jurisdiction, the sentence shall be served in a

state institution.

3. Counties choosing not to comply with the provisions of this paragraph shall be granted a waiver by the commissioner of the Department of Corrections.
- (d) Any jail that houses state inmates under this subsection shall offer programs as recommended by the Jail Standards Commission. The Department of Corrections shall adopt the recommendations of the Jail Standards Commission and promulgate administrative regulations establishing required programs for a jail that houses state inmates under this subsection. The Department of Corrections shall approve programming offered by jails to state inmates for sentencing credits in accordance with KRS 197.045.
  - (e) Before housing any female state inmate, a jail shall be certified pursuant to KRS 197.020.
  - (f)
    1.
      - a. If a jail is at or over one hundred fifty percent (150%) capacity, the Department of Corrections may direct the jail to transfer a specified number of state prisoners to vacant beds at other designated jails or state institutions. As used in this paragraph, "capacity" means the capacity listed on the certificate of occupancy issued each year to the jail by the Department of Corrections.
      - b. The Department of Corrections shall choose which state prisoners are eligible for transfer based on the security level of the vacant bed at the receiving jail or state institution.
      - c. State prisoners who are approved for transfer to a Department of Corrections facility for necessary medical treatment and care pursuant to KRS 441.560 shall not be transferred to another jail.
      - d. State prisoners enrolled in a Department of Corrections approved program pursuant to KRS 197.045 shall not be transferred.
      - e. State prisoners awaiting trial in the county they are being housed shall not be transferred.
      - f. Jails that receive state prisoners pursuant to this subparagraph shall be responsible for the transportation of those prisoners to the jail.
    2. If the Department of Corrections directs the transfer of a state prisoner pursuant to subparagraph 1. of this paragraph, the jailer has fourteen (14) days to transfer the state prisoner. If the jailer refuses to release custody of the state prisoner to the receiving jail within fourteen (14) days, the department shall reduce the per diem for the jail for an amount equal to the per diem of that prisoner for each day the jailer refuses to comply with the direction.
    3. If the Department of Corrections directs the transfer of a state prisoner pursuant to subparagraph 1. of this paragraph, the jailer of the receiving jail shall accept the transfer and transport the state prisoner in accordance with subparagraph 1.f. of this paragraph. If, after receiving a copy of the direction, the jailer refuses to accept and transport the state

prisoner, the Department of Corrections shall reduce the per diem for the receiving jail for an amount equal to the per diem of that prisoner for each day the jailer refuses to comply with the direction.

4. If a jail has a vacant bed and has a Class C or Class D felon who, based on the Department of Corrections classification system, is eligible to be housed in that vacant bed, the department may direct the jail to transfer the state prisoner to that bed. If the jailer refuses to transfer the state prisoner to the vacant bed, the Department of Corrections shall reduce the per diem for the jail for an amount equal to the per diem of that prisoner for each day the jailer refuses to comply with the direction.
  5. The per diem reduced pursuant to subparagraph 2., 3., or 4. of this paragraph shall be enforced by withholding the amount from the per diem paid to the jail pursuant to KRS 431.215(2).
  6. If a jail that is at or over one hundred fifty percent (150%) capacity requests the transfer of a specified number of state prisoners, the Department of Corrections may, if vacant beds are available at other jails, direct the transfer in accordance with subparagraph 1. of this paragraph.
    - (g) If a jail has vacant beds in an area of the jail usually reserved for state prisoners, the jail may house county prisoners in that area.
- (6) The jailer of a county in which a Class D felon or a Class C felon is incarcerated may request the commissioner of the Department of Corrections to incarcerate the felon in a state corrections institution if the jailer has reasons to believe that the felon is an escape risk, a danger to himself or herself or other inmates, an extreme security risk, or needs protective custody beyond that which can be provided in a jail. The commissioner of the Department of Corrections shall evaluate the request and transfer the inmate if he or she deems it necessary. If the commissioner refuses to accept the felon inmate, and the Circuit Judge of the county that has jurisdiction of the offense charged is of the opinion that the felon cannot be safely kept in a jail, the Circuit Judge, with the consent of the Governor, may order the felon transferred to the custody of the Department of Corrections.
  - (7) Class D felons and Class C felons serving their time in a jail shall be considered state prisoners, and, except as provided in subsection (5)(f) of this section, the Department of Corrections shall pay the jail in which the prisoner is incarcerated a per diem amount determined according to KRS 431.215(2). For other state prisoners and parole violator prisoners, the per diem payments shall also begin on the date prescribed in KRS 431.215(2), except as provided in subsection (5)(f) of this section.
  - (8) State prisoners, excluding the Class D felons and Class C felons qualifying to serve time in jails, shall be transferred to the state institution within forty-five (45) days of final sentencing.
  - (9)
    - (a) Class D felons eligible for placement in a jail may be permitted by the warden or jailer to participate in any approved community work program or other form of work release with the approval of the commissioner of the

Department of Corrections.

- (b) The authority to release an inmate to work under this subsection may be exercised at any time during the inmate's sentence, including the period when the court has concurrent authority to permit work release pursuant to KRS 439.265.
- (c) The warden or jailer may require an inmate participating in the program to pay a fee to reimburse the warden or jailer for the cost of operating the community work program or any other work release program. The fee shall not exceed the lesser of fifty-five dollars (\$55) per week or twenty percent (20%) of the prisoner's weekly net pay earned from the community work program or work release participation. In addition, the inmate may be required to pay for any drug testing performed on the inmate as a requirement of the community work program or work release participation.
- (d) This subsection shall not apply to an inmate who:
  - 1. Is not eligible for work release pursuant to KRS 197.140;
  - 2. Has a maximum or close security classification as defined by administrative regulations promulgated by the Department of Corrections;
  - 3. Is subject to the provisions of KRS 532.043; or
  - 4. Is in a reentry center as defined in KRS 441.005.

**Effective:** April 24, 2020

**History:** Amended 2020 Ky. Acts ch. 109, sec. 3, effective April 24, 2020. -- Amended 2018 Ky. Acts ch. 115, sec. 4, effective January 1, 2019. -- Amended 2017 Ky. Acts ch. 158, sec. 85, effective June 29, 2017. -- Amended 2011 Ky. Acts ch. 2, sec. 40, effective June 8, 2011. -- Amended 2006 Ky. Acts ch. 182, sec. 46, effective July 12, 2006. -- Amended 2000 Ky. Acts ch. 384, sec. 3, effective July 14, 2000; and ch. 401, sec. 36, effective July 14, 2000. -- Amended 1996 Ky. Acts ch. 108, sec. 7, effective July 15, 1996. -- Amended 1992 Ky. Acts ch. 211, sec. 134, effective July 14, 1992; and ch. 262, sec. 8, effective July 14, 1992. -- Amended 1986 Ky. Acts ch. 331, sec. 58, effective July 15, 1986. -- Amended 1976 (1st Extra. Sess.) Ky. Acts ch. 15, sec. 5, effective December 22, 1976. -- Created 1974 Ky. Acts ch. 406, sec. 282, effective January 1, 1975; and ch. 74, Art. V, sec. 24(14).

**Legislative Research Commission Note** (1/1/2019). Pursuant to 2018 Ky. Acts ch. 115, sec. 12, that Act shall be known as the Women's Dignity in the Justice System Act. This statute was amended in Section 4 of that Act.