

**Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2015 Regular Session**

Part I: Measure Information

Bill Request #: 334

Bill #: HB 135

Bill Subject/Title: AN ACT relating to driving under the influence and declaring an emergency

Sponsor: Rep. Mike M. Harmon

Unit of Government: City County Urban-County
 Unified Local
 Charter County Consolidated Local Government

Office(s) Impacted: Local jails

Requirement: Mandatory Optional

Effect on

Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

HB 135 amends KRS Chapter 189A to enhance the consequences for violation of DUI laws. KRS Chapter 189A prohibits operation of a motor vehicle while under the influence of alcohol or drugs. Under current law, the consequences (fines, jail time, license revocation, etc.) for these and related DUI offenses are enhanced for each offense occurring in a five year period, i.e. the “look back” period for prior DUIs is five years. In addition, a third offense DUI is a misdemeanor and there is no provision for forfeiture of motor vehicles.

HB 135 increases the “look back” period for capturing prior DUIs from five years to ten; restructures existing penalties from a four-tier to a three-tier structure; and elevates a third DUI to a Class D felony. HB 135 allows forfeiture of a vehicle used in a DUI if the operator’s license had been previously suspended or revoked for a DUI offense, and allows forfeiture for operating a motor vehicle without a functioning ignition interlock device when required to install such device.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of HB 135 on local governments is expected to be minimal to moderate and the forfeiture provisions could generate revenue.

The majority of DUI convictions are for first offenses. In 2014, there were 18,917 convictions for first offense DUI in Kentucky, 4,048 convictions for a second DUI, 891 DUI third convictions, and 137 DUI fourth convictions. It is unknown how many people convicted of a DUI offense would have been convicted of a higher classification DUI, and subject to more jail time, if the “look back” period for prior DUIs had been ten years rather than five. As an indication, the McCracken County Attorney’s Office reports that, from November 2013 to November 2014 there were 327 convictions for DUI first offense in McCracken County. Of the 327 convictions, 91, or 28%, of the defendants had at least one prior DUI that occurred outside the five year window. Additional second offense DUIs (which remain a misdemeanor under the bill) would increase jail time, which would increase the financial burden on local governments because local governments are responsible for the cost of incarcerating persons who are convicted of, or who do not make bail when charged with, a misdemeanor DUI. While the expense of housing inmates varies by jail, each additional inmate will increase facility costs by an estimated average of \$31.24 per day.

However, additional felony convictions resulting from the longer look-back period and re-classifying third offense DUI from a misdemeanor to a Class D felony could decrease costs to local governments. Local governments are responsible for the cost of incarcerating persons charged with a felony (if they do not make bail) until disposition of the case. Upon sentencing, most Class D felons are housed in one of 78 local full service jails or one of five life safety jails for the duration of their sentence. The Department of Corrections pays local jails \$31.24 a day for these prisoners. Under the bill, in 2014 there would have been at least 891 additional felony DUI convictions in Kentucky for which local governments would be paid \$31.24 a day to house. Again, while the expense of housing inmates varies by jail, it is estimated that each additional inmate will increase facility costs by an estimated average of \$31.24 per day. Since the per diem pays the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

HB 135 will potentially generate revenue for local law enforcement. The bill allows forfeiture of vehicles in certain instances, in compliance with KRS Chapter 218A. That chapter requires the sale or official use of forfeited property by the seizing agency, the agency to keep the proceeds. Co-owned vehicles may be transferred to the co-owner in lieu of forfeiture. Revenue generated is unquantifiable because it is not known how many vehicles will be subject to forfeiture (not co-owned), nor their value.

Data Source(s): Administrative Office of the Courts; LRC Staff, Kentucky Jailer's Association; McCracken County Attorney's Office

Preparer: Mary Stephens **Reviewer:** MCY **Date:** 2/3/15