

**Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2016 Regular Session**

CORRECTED 3/15/16

Part I: Measure Information

Bill Request #: 1565

Bill #: HB 368

Bill Subject/Title: AN ACT relating to trial by jury in criminal cases

Sponsor: Representative Dennis Horlander

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

Office(s) Impacted: Jailers

Requirement: Mandatory X Optional

Effect on
Powers & Duties: Modifies Existing X Adds New Eliminates Existing

Part II: Purpose and Mechanics

The purpose of HB 368 is to allow the Commonwealth an opportunity to request a jury trial in certain criminal cases. HB 368 would allow the Commonwealth the option to request that a jury hear and decide criminal prosecutions of offenses relating to the operation of motor vehicles, aircraft, boats, and other vehicles while under the influence of alcohol, drugs, or other impairing substances. KRS 29A.270 currently affords only a *defendant* the option to request a jury trial in criminal matters. HB 368 would amend KRS 29A.270 to afford that right to the Commonwealth when prosecuting impaired driving cases under KRS 183.061, KRS 189.520, KRS 189A.010, KRS 235.240, or KRS 281A.210.

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

HB 368 would have minimal fiscal impact on local governments.

A jury trial is generally more expensive than a bench trial, which is heard only by a judge; however, the expenses of conducting a jury trial are paid for or reimbursed by the Commonwealth and not by county government. Therefore, a jury trial should result in no additional expense to the county. Conventional wisdom is that judges tend to be harder on

impaired driving defendants than are juries; however, in jurisdictions in Kentucky that do not accord the Commonwealth the right to request a jury trial it is reported that more DUI cases are dismissed, possibly resulting in fewer incarcerations in the local jail. In these jurisdictions, if the Commonwealth is allowed to, and does, request jury trials in DUI cases it is likely there would be some minimal increase in number of convictions and number, or length, of incarcerations in the local jail. This increase could result in a minimal increase in costs to local jails.

The majority of DUI convictions are for first offenses for which there is no mandatory jail time. A conviction for DUI second or third within 5 years is treated as a misdemeanor and calls for mandatory jail time, of 7 days to 6 months or 30 days to 12 months, respectively. Additional convictions for second and third offenses would increase the financial burden on local governments because they are responsible for the cost of incarcerating persons who are convicted of, or who do not make bail when charged with, a misdemeanor. While the majority of misdemeanor defendants are granted bail, those who do not will cost local jails an average of \$31.92 per day. While the expense of housing inmates varies by jail, each additional inmate will increase facility costs by an estimated average of \$31.92 per day.

A DUI fourth conviction within 5 years is a Class D felony. Additional felony convictions resulting from fewer dismissed cases could increase revenues to local governments. Local governments are responsible for the costs of incarcerating persons charged with a felony (if they do not make bail) until disposition of the case in one of Kentucky's 78 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.92 per day. Upon sentencing, a Class D felon is housed in one of Kentucky's 78 local full service jails for the duration of his or her sentence. The Kentucky Department of Corrections (DOC) pays local jails \$31.92 a day to house a Class D felon. Under HB 368, to the extent fewer case dismissals resulted in more felony convictions, there would be an increase in funds paid by DOC to local jails to house the felons. 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.

Data Source(s): Kentucky County Attorneys' Association, LRC Staff

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