

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

Part I: Measure Information

Bill Request #: 479 R5

Bill #: HB 412

Bill Subject/Title: AN ACT relating to crimes and punishments.

Sponsor: Representative Yonts

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

Office(s) Impacted: City and County Jails

Requirement: Mandatory Optional

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

Part II: Purpose and Mechanics

HB 412 amends various provisions in KRS Chapters 197, 218A, 431, 439, 441, 500, 516, 530, 532, 533, and 534 dealing with gross misdemeanors, crimes, jail credits, work releases, consecutive terms for persistent felony offenders, and supervision violation.

Gross Misdemeanor

Sections 1, 3, and 6 create a new penalty: gross misdemeanor, an indeterminate sentence of no more than twenty-four (24) months for select crimes committed. A gross misdemeanor is a more serious offense than a Class A misdemeanor, which has a maximum penalty of twelve (12) months, but less serious than a Class D felony, which carries a penalty of one (1) to five (5) years. Section 1 amends KRS 500.080(5) to differentiate a gross misdemeanor from a felony.

The provisions in HB 412 treat a person convicted of a gross misdemeanor similar to a person convicted of a Class D felony. **Persons convicted of a gross misdemeanor are housed in county jails, but are considered prisoners of the state**, so the Department of Corrections will reimburse county jails for the length of time a person is housed in the

county jail at a per diem rate equivalent to that of a Class D felon [See Section 7(7) & (8)].

Parole privileges [Section 13(1)] and service credits [Section 15(1)] available to Class A and B misdemeanants **are not** available to persons convicted of a gross misdemeanor. Instead, a person convicted of a gross misdemeanor will follow the same parole and service credit processes as a felon, which, for parole, is at least 15% of the sentence, or two months, whichever is longer, unless the person has committed a violent or sexual offense, or has committed a disciplinary violation that involves violence [See Section 14(3)(a)]. The maximum deferment, if parole is denied to a gross misdemeanor, is six (6) months [See Section 14(14)].

Gross misdemeanants shall receive service credit for prior confinement, pursuant to KRS 532.120, service credit of ninety (90) days for completion of a high school diploma, GED, college or technical degree, or a drug treatment program, and may receive credit, at the discretion of the commissioner, of ten (10) days for each month of good behavior, and seven (7) days for performing exceptionally meritorious service or exceptional service during an emergency [See Section 23(1)(a) & (b)].

Similar to Class C and D felons, gross misdemeanants are able to serve the remainder of their sentence under home incarceration or conditional release, if they meet certain qualifications (Section 9). However, the jailer in each county may deny work release privileges to a gross misdemeanor who violates standards of discipline or other jail regulations. [Section 10(13)].

Pretrial diversion is available for gross misdemeanants whose criminal, medical, or mental health record indicates a need or benefit from a substance abuse treatment program, if the treatment is suitable for the defendant and space is available [Section 11 (1)].

Unless a gross misdemeanor is otherwise ineligible for probation, the sentence will be probated as the court deems necessary [Section 4(2)]. If the trial court determines that the sentence is too harsh, then the trial court may sentence the gross misdemeanor to a term of one (1) year or less [Section 5(2)].

HB 412 also amends various sections of the penal code to reclassify certain crimes from Class D felonies to gross misdemeanors. Anyone convicted of flagrant nonsupport (Section 2), forgery, second degree under \$500 (Section 17), or criminal possession of a forged instrument, second degree under \$500 (Section 18), will now be guilty of a gross misdemeanor, rather than a Class D felony. Any forgery or criminal possession of a forged instrument over \$500, remains a Class D felony.

Other Provisions

Pretrial Release and Bail

Section 16 amends KRS 218A.135 to deny pretrial release to any defendant who is found by clear and convincing evidence, after considering the pretrial risk assessment report, to present a flight risk or to be a danger to others. The court shall document reasons specific to the defendant for denying the release in a written order. Similarly, Section 20 denies any defendant found to be a flight risk or a substantial danger to the community \$100 per day credit toward bail.

Credits Against Fines and Court Costs

Section 19 amends KRS 534.070 to increase credits against fines and costs owed to the court by a defendant who fails to appear in court to address nonpayment of fines or court costs. The rate would increase from \$50 to \$100 per day if the defendant does not work in a community service or labor program, and from \$100 to \$150 per day if the defendant works 8 hours per day in a community service or labor program. If the defendant does not work a full 8 hours per day, the rate will be prorated by 1/8 of \$150 for each hour worked.

Consecutive Sentences

Section 8 amends KRS 532.110 to set the maximum limit of consecutive definite sentences to the length of the longest extended term authorized for the highest crime for which any of the sentences are imposed.

Persistent Felony Offenders

Section 21 amends sentencing provisions to persons found as persistent felony offenders in the first and second degree.

A person is found to be a persistent felony offender in the second degree if

1. They over 21, and
2. Stand to be convicted of a felony after being convicted of one (1) previous felony.

A felony for purposes of becoming a persistent felony offender is

1. A sentence of at least one (1) year,
2. The offender was at least 18 when the first felony was committed, and
3. The offender either
 - a. Completed service or was on some form of legal release within five (5) years of committing the current felony, or
 - b. Was in or had escaped custody for any previous felony convictions at the when committing the current felony

A persistent felon in the first degree meets all of the criteria of a persistent felon in the second degree, and, being 21 years of age or older

1. Has either been convicted of two (2) or more felonies, or
2. Has committed a felony sex crime against a minor.

If a person has served two (2) or more felony convictions concurrently or in an uninterrupted consecutive term, it is only considered one (1) conviction, unless an offense was committed while the person was imprisoned.

Section 21 amends KRS 532.080(6) to state that **if a person is found to be a persistent felony offender in the first degree, that person *may* be sentenced as follows: if the person has committed a Class A or Class B felony, or was previously convicted of 1 or more sex crimes against a minor, then she shall be sentenced between twenty (20) and fifty (50) years, life imprisonment, or life imprisonment without parole for 25 years** for a sex crime against a minor. If the persistent felony offender committed a **Class C or Class D felony**, then he shall be sentenced between **ten (10) and twenty (20) years**. If the jury declines to sentence the defendant as persistent felony offender in the first degree, then they may find the defendant as a persistent felony offender in the second degree, and the defendant will serve the next highest degree of sentencing provisions under KRS 532.060(2). If the jury does not find the defendant to be a persistent felony offender in the either the first or second degree, then they shall set sentencing pursuant to KRS 532.060.

Under HB 412, **persistent felony offenders, in either the first or second degree, are not eligible for probation, shock probation, or conditional discharge, unless the individual is convicted of Class D felony offenses**, which do not involve a violent act against a person or a sex crime as defined in KRS 17.500. **If a persistent felony offender (1st or 2nd degree) is convicted of a Class A or B felony, and is found to be a persistent felony offender in the first degree, they are not eligible for parole until the person has served a term of at least 10 years**, unless another sentencing scheme applies. A violent offender who is found to be a persistent felony offender in the first or second degree shall not be eligible for parole except as provided in KRS 439.3401.

Violation of Supervision

Section 22 amends KRS 439.3106 to require the court or board revoking supervision to make specific findings of fact and conclusions of law, stating the requirements of this subsection have been met by clear and convincing evidence. If revocation of suspension or incarceration is considered inappropriate, the court or board shall consider a system of graduated sanctions authorized by KRS 439.3107.

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

The fiscal impact of HB 412 on local jails is indeterminable, but expected to be minimal on local law enforcement.

HB 412 treats persons convicted of a gross misdemeanor similar to persons convicted of a Class D felony. When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant 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 full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.92 per day to house a D felon. Since the per diem pays for 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 412 allows misdemeanants to work on work release programs. Allowing misdemeanants on work release programs would enable them to be eligible for release earlier than they are currently, possibly saving local jails money. Presumptive parole release could result in a cost savings to the state, but could end up saving or costing local jails money, contingent upon whether the reimbursement rate covers the housing costs endured by local jails. Allowing credits to defendants for time served could cost local jails. If an offender is charged with a Class D felony, the county pays for the housing of the offender until the final sentencing day. After accounting for credit served while awaiting final sentencing, the defendant could earn credit for several months prior to the guilty plea, which would not be reimbursed to the county jail, negatively impacting the budget of fiscal courts. Because work release programs may result in cost savings and accounting credit for time served may result in cost increases, the fiscal impact on local jails is indeterminable at this time.

Additionally, HB 412 also allows any gross misdemeanor who may benefit from a substance abuse treatment program to complete substance abuse treatment if appropriate and space is available. Eighteen full service jails provide an in-patient substance abuse program (SAP) to nearly 1000 convicted felons incarcerated in the jails. The estimated average cost of jailing a convicted felon participating in a SAP is \$40.34 per day. This amount is reimbursed by the Department of Corrections and is approximately \$9 more than the estimated average cost of \$31.92 per day reimbursement. Since the \$40.34 per diem pays for the estimated average cost of housing a convicted felon participating in a SAP, the per diem may be less than, equal to, or greater than the actual housing cost, which would make any impact of the substance abuse provision minimal.

A representative from the Kentucky Association of Chiefs of Police found HB 412 to have minimal impact, for most of the bill deals with changes in sentencing and parole.

Data Source(s): Administrative Office of the Courts; Kentucky Jailers Association; Kentucky Association of Chiefs of Police; Kentucky Sheriffs' Association; LRC staff

Preparer: Daniel Carter **Reviewer:** JWN **Date:** 2/29/16