

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

**Part I: Measure Information**

**Bill Request #:** 1748

**Bill #:** HB 504

**Bill Subject/Title:** AN ACT relating to driving under the influence

**Sponsor:** Representative Robert J. Benvenuti

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

Office(s) Impacted: Jailer

Requirement:   X   Mandatory      Optional

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

**Part II: Purpose and Mechanics**

The purpose of HB 504 is to discourage driving under the influence of drugs or alcohol (“DUI”). Under current law, KRS Chapter 189A imposes increasingly severe fines, jail time and additional consequences (license revocation, ignition interlock device, alcohol or substance abuse education or treatment, surrender of license plates) for each DUI or related offense that occurs within five years of the first DUI (the “look back” period). Section 1 of HB 504 would amend KRS 189A.200 to define “prior offenses” to include offenses committed within a **10** year period and offenses committed with an aggravating circumstance listed in subsection KRS 189A.200 (11), regardless how long ago it occurred. Under that language a DUI with an aggravating circumstance would continue as a prior offense to enhance consequences for subsequent DUIs forever. Sections 2, 3, 4 and 5 of the bill would make conforming amendments to KRS Chapter 189A.

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

**The fiscal impact of HB 504 on local governments could be substantial.**

The cost of operating a county jail represents one of the largest impacts on fiscal court budgets. The majority of DUI convictions are for first offenses for which there is no mandatory jail time. Under present law, a conviction for DUI second or third within five years calls for mandatory jail

time of seven days to six months or 30 days to 12 months, respectively. Between January 1, 2015 and December 31, 2015 there were 16,988 convictions for first offense DUI in Kentucky, 3,556 convictions for second offense DUI, 757 DUI third convictions, and 87 convictions for DUI 4<sup>th</sup> offense. It is not known how many people convicted of a DUI offense would have been convicted of a higher classification DUI, and subject to more mandatory jail time, if the “look back” period for prior DUIs had been 10 years rather than five. As an indication, though, one local county attorney’s office reports that, from November 2013 to November 2014 there were 327 convictions for DUI first offense in his jurisdiction. Of those 327 convictions 91, or 28% of the defendants had at least one conviction for a DUI occurring more than five years prior. Under HB 504 the earlier DUIs, if they occurred within 10 years of the subject DUI, would have been captured to enhance the consequences for the subsequent DUIs. For example, if the 91 DUI first convictions had been captured as DUI second convictions, those defendants would have spent cumulatively a mandatory minimum additional 637 days (7 days x 91 inmates) in the local jail. While the example illustrates that it is likely increasing the look back period to 10 years would result in additional convictions for DUI second and third and so increase the number of mandatory days in local jails, it is indeterminable how many additional such convictions would occur. The 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. That means the 91 additional DUI second convictions described above would have cost the jurisdiction’s local jail approximately an additional \$20,333.04 (637 days x \$31.92).

It is likely that the bill would result in additional DUI 4<sup>th</sup> offense convictions, also. Under current law a DUI 4<sup>th</sup> conviction within five years is a Class D felony. Additional felony convictions resulting from enlarging the look-back period for capturing previous DUIs to 10 years 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 their sentence. The Kentucky Department of Corrections (DOC) pays local jails \$31.92 a day to house a Class D felon. Under HB 504, to the extent the enlarged look back period resulted in more felony convictions, there would be an increase in funds paid by DOC to local jails to house them. 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):** Administrative Office of the Courts; LRC Staff, Kentucky Association of County Attorneys

**Preparer:** Mary Stephens      **Reviewer:** JWN      **Date:** 3/13/16