



Sections 4 and 5 are conforming amendments.

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

**The fiscal impact of HB 544 on jails is indeterminate, but it is quite possible that jails will receive a moderate reduction in costs due to passage of the measure.**

Sections 1, 2, and 3 of the measure elevate assault in the second degree from a Class C felony to a Class B felony and delete the old assault in the third degree and create a new assault in the third degree that is a Class C felony rather than the current Class D felony assault in the third degree. Elevating these penalties will have relatively little impact on jails. A jail does not house a Class B felon post-conviction. When a jail houses a Class C or D felon post-conviction, that jail is reimbursed by the state at the rate of \$31.92 per day. Since the per diem pays for the estimated average cost of housing an inmate, the per diem may be less than, equal to, or greater than the actual housing cost.

Sections 1, 2, and 3 also repeal and re-enact the language in the current assault in the third degree. This is achieved by making assault in the fourth degree a Class D felony when a victim is identified in the current assault in the third degree, a Class D felony. In essence, with one exception, the policy behind the current Class D felony assault in the third degree is maintained.

**The exception is very important. Under HB 544, domestic violence assault in the fourth degree will no longer be classified as a Class A misdemeanor for the first and second offenses in a five year period and a Class D felony thereafter. Rather every domestic violence assault in the fourth degree will be classified as a Class D felony.** KRS 403.720 provides a long list of possible victims of domestic violence: spouse, former spouse, grandparent, grandchild, child, stepchild, a member of an unmarried couple that allegedly has a child in common, any child of that couple, and a member of an unmarried couple who are living together or have formerly lived together. **Since domestic violence is broadly defined and domestic violence is generally widespread, it is expected that each year there will be over 100 instances of domestic violence assault in the fourth degree that will no longer be punished as Class A misdemeanors but rather Class D felonies.** The state does not reimburse a jail for housing a Class A misdemeanant. However, the state does reimburse a jail for housing a Class D felon in the amount of \$31.92 per day which pays for the estimated average cost of housing the felon.

HB 544 shifts the cost of housing an individual convicted of domestic violence assault in the fourth degree from jails to the state. It is hard to predict how many individuals convicted of the crime will serve time in jail. It is important to note that while a Class D felon is sentenced to not less than one year and not more than five years per KRS 532.060(2)(d), a judge has discretion under KRS 532.070(2) to sentence a Class D felon to jail for one year or less.

**Data Source(s):** Department of Corrections; KRS

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