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

Part I: Measure Information

Bill Request #: 1737
Bill #: HB 544
Bill Subject/Title: Assault
Sponsor: Rep. J. Bell
Unit of Government: X City X County X Urban-County Unified Local X Charter County X Consolidated Local X Government
Office(s) Impacted: Local jails
Requirement: X Mandatory Optional
Effect on Powers & Duties: X Modifies Existing X Adds New Eliminates Existing

Part II: Purpose and Mechanics

Sections 1 and 2 of HB 544 amend KRS 508.020 and KRS 508.025 respectively. Section 3 creates a new section of KRS Chapter 508. When read together, these sections elevate the crime of assault in the second degree from a Class C felony to a Class B felony. They delete most of 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. Lastly, when the three sections are read together, they enhance the penalty for assault in the fourth degree from a Class A misdemeanor to a Class D felony when the victim is one of the individuals identified in Section 3. With one addition, the victims listed are almost identical to the victims listed under the current assault in the third degree statute that is a Class D felony. The addition is that a new class of victims is added to the list: a "family member" or "member of an unmarried couple" as defined in KRS 403.720. By adding this class of victim to the list, the measure enhances the penalty for domestic violence assault in the fourth degree. Under current law (KRS 508.032), domestic violence assault in the fourth degree is punished as a Class A misdemeanor for the first two offenses in a five year period. For the third and each subsequent offense in a five year period, domestic violence assault in the fourth degree is punished as a Class D felony. Section 3 makes domestic violence assault in the fourth degree a Class D felony for every offense, and Section 6 repeals KRS 508.032.

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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