

driver's license may be granted following the license suspension period for a first offense violation of KRS 189A.010(1)(a)(driving with an alcohol concentration of .08 or more), (b)(driving while under the influence of alcohol), or (e)(driving while under the influence of alcohol and any other substance which impairs driving ability) within a ten year, rather than a five year, period.

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

The fiscal impact of SB 56 HCS on local government is the same as SB 56 GA and may be substantial.

New Section 8 of SB 56 HCS bill would require no action of local governments and would impose no mandate on them.

The cost of operating a county jail represents one of the largest impacts on fiscal court budgets. An increase in cases requiring mandatory jail time in local jails could substantially impact fiscal court expenses. The majority of DUI convictions are for first offenses for which there is no mandatory jail time. Under current law a conviction for DUI second or third within five years is 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 do make bail, and the expense of housing inmates varies by jail, each additional jail inmate increases facility costs by an estimated average of \$31.92 per day.

Between January 1, 2015 and December 31, 2015 there were 15,682 convictions for first offense DUI in Kentucky, 3,300 convictions for second offense DUI, 704 DUI third convictions, and 82 convictions for DUI fourth 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 its 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 SB 56 HCS 1, if the earlier DUIs occurred within 10 years of the subject DUI, they would be captured to enhance the consequences for the subsequent DUI. 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. The 91 additional DUI second convictions would have cost the local jail approximately an additional \$20,333.04 (637 days x \$31.92). It is indeterminable how many additional such convictions would result statewide. If 28% of the 15,682 convictions for DUI first in Kentucky in 2015 were captured as DUI second convictions, then a total of approximately 4,390 additional defendants would have been sentenced mandatorily to a minimum of seven days in local

jails, at an additional cost to county fiscal courts of nearly \$1 million dollars. In addition, facing mandatory jail time, more defendants would request a jury trial, which would increase the work load on local prosecutors.

A DUI fourth conviction within five years is a Class D felony. Additional felony convictions resulting from an enlarged look-back period 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. 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 SB 56 HCS 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 jail's actual housing cost.

Data Source(s): Administrative Office of the Courts; LRC Staff, Kentucky Association of County Attorneys

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