

1 AN ACT relating to performance-based incentives for jails and making an
2 appropriation therefor.

3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

4 ➔Section 1. KRS 197.045 is amended to read as follows:

5 (1) Any person convicted and sentenced to a state penal institution:

6 (a) Shall receive a credit on his or her sentence for:

- 7 1. Prior confinement as specified in KRS 532.120;
- 8 2. Successfully receiving a High School Equivalency Diploma or a high
9 school diploma, a college degree, a completed vocational or technical
10 education program, or a correspondence postsecondary education
11 program which results in a diploma or degree, as provided, defined, and
12 approved by the department in the amount of ninety (90) days per
13 diploma, degree, or technical education program completed;
- 14 3. Successfully completing a drug treatment program, evidence-based
15 program, or any other promising practice or life skills program approved
16 by the department, in the amount of not more than ninety (90) days for
17 each program completed. The department shall determine criteria to
18 establish whether a life skills or promising practice program is eligible
19 for sentence credits. Programs shall demonstrate learning of skills
20 necessary for reintegration into the community to minimize barriers to
21 successful reentry. Approval of programs shall be subject to review by
22 the cabinet; and

23 (b) May receive a credit on his or her sentence for:

- 24 1. Good behavior in an amount not exceeding ten (10) days for each month
25 served, to be determined by the department from the conduct of the
26 prisoner;
- 27 2. Performing exceptionally meritorious service or performing duties of

1 outstanding importance in connection with institutional operations and
2 programs, awarded at the discretion of the commissioner in an amount
3 not to exceed seven (7) days per month; and

4 3. Acts of exceptional service during times of emergency, awarded at the
5 discretion of the commissioner in an amount not to exceed seven (7)
6 days per month.

7 (2) Except for a sentencing credit awarded for prior confinement, the department may
8 forfeit any sentencing credit awarded under subsection (1) of this section previously
9 earned by the prisoner or deny the prisoner the right to earn future sentencing credit
10 in any amount if during the term of imprisonment, a prisoner commits any offense
11 or violates the rules of the institution.

12 (3) When two (2) or more consecutive sentences are to be served, the several sentences
13 shall be merged and served in the aggregate for the purposes of the sentencing credit
14 computation or in computing dates of expiration of sentence.

15 (4) Until successful completion of the sex offender treatment program, an eligible
16 sexual offender may earn sentencing credit. However, the sentencing credit shall not
17 be credited to the eligible sexual offender's sentence. Upon the successful
18 completion of the sex offender treatment program, as determined by the program
19 director, the offender shall be eligible for all sentencing credit earned but not
20 otherwise forfeited under administrative regulations promulgated by the Department
21 of Corrections. After successful completion of the sex offender treatment program,
22 an eligible sexual offender may continue to earn sentencing credit in the manner
23 provided by administrative regulations promulgated by the Department of
24 Corrections. Any eligible sexual offender, as defined in KRS 197.410, who has not
25 successfully completed the sex offender treatment program as determined by the
26 program director shall not be entitled to the benefit of any credit on his or her
27 sentence. A sexual offender who does not complete the sex offender treatment

1 program for any reason shall serve his or her entire sentence without benefit of
2 sentencing credit, parole, or other form of early release. The provisions of this
3 section shall not apply to any sexual offender convicted before July 15, 1998, or to
4 any sexual offender with an intellectual disability.

5 (5) (a) The Department of Corrections shall, by administrative regulation, specify the
6 length of forfeiture of sentencing credit and the ability to earn sentencing
7 credit in the future for those inmates who have civil actions dismissed because
8 the court found the action to be malicious, harassing, or factually frivolous.

9 (b) Penalties set by administrative regulation pursuant to this subsection shall be
10 as uniform as practicable throughout all institutions operated by, under
11 contract to, or under the control of the department and shall specify a specific
12 number of days or months of sentencing credit forfeited as well as any
13 prohibition imposed on the future earning of sentencing credit.

14 (6) *If a state prisoner is confined in a jail pursuant to KRS 532.100 and earns*
15 *sentencing credits under subsection (1)(a)2. or (1)(a)3. of this section while*
16 *confined in that jail, at the end of that prisoner's period of confinement in that*
17 *jail the department shall pay a fee to the unit of local government or regional jail*
18 *authority responsible for the administration of that jail as follows:*

19 *(a) For every program completed which resulted in the issuance of a ninety*
20 *(90) day sentencing credit, a payment of one thousand dollars (\$1000) shall*
21 *be made;*

22 *(b) For every program completed which resulted in the issuance of a sixty (60)*
23 *day sentencing credit, a payment of six hundred dollars (\$600) shall be*
24 *made; and*

25 *(c) For every program completed which resulted in the issuance of a thirty (30)*
26 *day sentencing credit, a payment of three hundred dollars (\$300) shall be*
27 *made.*

1 (7) The provisions in subsection (1)(a)2. of this section shall apply retroactively
2 to July 15, 2011.

3 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) For the purposes of this section:

6 (a) "Classification" means the assignment of individuals to particular custody
7 levels; and

8 (b) "Qualified jail staff" means a jailer or deputy jailer with a minimum of
9 four (4) years' experience in the corrections field.

10 (2) If a jail is housing a convicted Class D felon who has not received an initial
11 custody classification from the department within thirty (30) days of the date the
12 felony conviction was entered, qualified jail staff may classify that felon for the
13 purposes of determining the safety requirements, health care needs, and
14 programming eligibility of the felon.

15 (3) The department shall review classifications made under this section and may
16 reclassify the individual at the department's discretion.

17 ➔Section 3. KRS 532.100 is amended to read as follows:

18 (1) When an indeterminate term of imprisonment is imposed, the court shall commit
19 the defendant to the custody of the Department of Corrections for the term of his
20 sentence and until released in accordance with the law.

21 (2) When a definite term of imprisonment is imposed, the court shall commit the
22 defendant to the county or city correctional institution or to a regional correctional
23 institution for the term of his sentence and until released in accordance with the law.

24 (3) When a sentence of death is imposed, the court shall commit the defendant to the
25 custody of the Department of Corrections with directions that the sentence be
26 carried out according to law.

27 (4) (a) The provisions of KRS 500.080(5) notwithstanding, if a Class D felon is

1 sentenced to an indeterminate term of imprisonment of five (5) years or less,
2 he shall serve that term in a county jail in a county in which the fiscal court
3 has agreed to house state prisoners; except that, when an indeterminate
4 sentence of two (2) years or more is imposed on a Class D felon convicted of
5 a sexual offense enumerated in KRS 197.410(1), or a crime under KRS
6 17.510(11) or (12), the sentence shall be served in a state institution. Counties
7 choosing not to comply with the provisions of this paragraph shall be granted
8 a waiver by the commissioner of the Department of Corrections.

9 (b) The provisions of KRS 500.080(5) notwithstanding, a Class D felon who
10 received a sentence of more than five (5) years for nonviolent, nonsexual
11 offenses, but who currently has less than five (5) years remaining to be served,
12 may serve the remainder of his or her term in a county jail in a county in
13 which the fiscal court has agreed to house state prisoners.

14 (c) 1. The provisions of KRS 500.080(5) notwithstanding, and except as
15 provided in subparagraph 2. of this paragraph, a Class C or D felon with
16 a sentence of more than five (5) years who is classified by the
17 Department of Corrections as community custody shall serve that term
18 in a county jail in a county in which the fiscal court has agreed to house
19 state prisoners if:

- 20 a. Beds are available in the county jail;
- 21 b. State facilities are at capacity; and
- 22 c. Halfway house beds are being utilized at the contract level as of
23 July 15, 2000.

24 2. When an indeterminate sentence of two (2) years or more is imposed on
25 a felon convicted of a sex crime, as defined in KRS 17.500, or any
26 similar offense in another jurisdiction, the sentence shall be served in a
27 state institution.

- 1 3. Counties choosing not to comply with the provisions of this paragraph
2 shall be granted a waiver by the commissioner of the Department of
3 Corrections.
- 4 (d) Any jail that houses state inmates under this subsection shall offer programs
5 as recommended by the Jail Standards Commission. The Department of
6 Corrections shall adopt the recommendations of the Jail Standards
7 Commission and promulgate administrative regulations establishing required
8 programs for a jail that houses state inmates under this subsection.
- 9 (e) Before housing any female state inmate, a county jail shall be certified
10 pursuant to KRS 197.020.
- 11 (5) The jailer of a county in which a Class D felon or a Class C felon is incarcerated
12 may request the commissioner of the Department of Corrections to incarcerate the
13 felon in a state corrections institution if the jailer has reasons to believe that the
14 felon is an escape risk, a danger to himself or other inmates, an extreme security
15 risk, or needs protective custody beyond that which can be provided in a county jail.
16 The commissioner of the Department of Corrections shall evaluate the request and
17 transfer the inmate if he deems it necessary. If the commissioner refuses to accept
18 the felon inmate, and the Circuit Judge of the county that has jurisdiction of the
19 offense charged is of the opinion that the felon cannot be safely kept in a county
20 jail, the Circuit Judge, with the consent of the Governor, may order the felon
21 transferred to the custody of the Department of Corrections.
- 22 (6) (a) Class D felons and Class C felons serving their time in a local jail shall be
23 considered state prisoners, and the Department of Corrections shall pay the
24 jail in which the prisoner is incarcerated a per diem amount determined
25 according to KRS 431.215(2). For other state prisoners and parole violator
26 prisoners, the per diem payments shall also begin on the date prescribed in
27 KRS 431.215(2).

- 1 **(b) 1. The per diem amount paid to the jail shall be increased by two dollars**
2 **(\$2) per day for those inmates enrolled in evidence-based programs**
3 **approved by the department and that do not require instructors to have**
4 **completed any postsecondary education; and**
5 **2. The per diem amount paid to the jail shall be increased by ten dollars**
6 **(\$10) per day for those inmates enrolled in evidence-based programs**
7 **approved by the department and that require instructors to have**
8 **completed particular postsecondary courses.**
- 9 (7) State prisoners, excluding the Class D felons and Class C felons qualifying to serve
10 time in county jails, shall be transferred to the state institution within forty-five (45)
11 days of final sentencing.
- 12 (8) (a) Class D felons eligible for placement in a local jail may be permitted by the
13 warden or jailer to participate in any approved community work program or
14 other form of work release with the approval of the commissioner of the
15 Department of Corrections.
- 16 (b) The authority to release an inmate to work under this subsection may be
17 exercised at any time during the inmate's sentence, including the period when
18 the court has concurrent authority to permit work release pursuant to KRS
19 439.265.
- 20 (c) The warden or jailer may require an inmate participating in the program to pay
21 a fee to reimburse the warden or jailer for the cost of operating the community
22 work program or any other work release program. The fee shall not exceed the
23 lesser of fifty-five dollars (\$55) per week or twenty percent (20%) of the
24 prisoner's weekly net pay earned from the community work program or work
25 release participation. In addition, the inmate may be required to pay for any
26 drug testing performed on the inmate as a requirement of the community work
27 program or work release participation.

- 1 (d) This subsection shall not apply to an inmate who:
- 2 1. Is not eligible for work release pursuant to KRS 197.140;
- 3 2. Has a maximum or close security classification as defined by
- 4 administrative regulations promulgated by the Department of
- 5 Corrections;
- 6 3. Is subject to the provisions of KRS 532.043; or
- 7 4. Is in a reentry center as defined in KRS 441.005.

8 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 441 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) A unit of local government or regional jail authority responsible for the
11 administration of a jail may elect to request a performance-based contract
12 agreement with the department by meeting the requirements of this section. If
13 such contract is approved by the parties, it shall result in a negotiated per diem
14 payment for state inmates housed in the jail based on the programming,
15 standards, and conditions within the jail.

16 (2) A request under this section shall be submitted to the commissioner on forms
17 created and disseminated by the department and shall contain:

18 (a) An initial staffing level plan for the jail; and

19 (b) Documentation of current programming offered by the jail, and for any
20 planned programming to be offered if the contract is approved. Current or
21 planned programming shall include evidence-based cognitive behavioral
22 programming comparable to programs offered in state penitentiaries and
23 led by facilitators with comparable training.

24 (3) Any contract entered pursuant to this section between the department and a unit
25 of local government or regional jail authority shall include, at minimum, terms
26 which comply with the following:

27 (a) The jail shall attain, and shall maintain for the length of the contract,

1 accreditation under the American Correction Association's Jail Core
2 Standards;

3 (b) The jail shall attain, and shall maintain for the length of the contract,
4 compliance with the standards of the Prison Rape Elimination Act, 42
5 U.S.C. secs. 15601 to 15609;

6 (c) The jailer or jail administrator shall have a minimum of five (5) years'
7 experience in corrections or law enforcement and five (5) years' experience
8 in administration;

9 (d) Any change in the staffing level plan during the contract term shall be pre-
10 approved by the department;

11 (e) Any change in programming during the contract term shall be pre-
12 approved by the department;

13 (f) The canteen shall set prices in accordance with those established by the
14 Department of Corrections Inmate Canteen Board;

15 (g) The jail shall provide a variety of indoor and outdoor recreational and
16 leisure time activities, including television, radio, library materials, and
17 recreational facilities, with inmate access at least once daily to exercise out
18 of the inmate living area; and

19 (h) The jail shall employ a chaplain or secure the services of a volunteer
20 chaplain, approved by the department, who possesses the same
21 qualifications as those employed by state penitentiaries. The chaplain and
22 any religious programming shall meet the standards within the Religion
23 Reference Manual promulgated through administrative regulation by the
24 department.

25 (4) A contract entered pursuant to this section may waive payments authorized under
26 Sections 1 and 3 of this Act.

27 (5) Inspectors from the Justice and Public Safety Cabinet shall confirm continued

1 compliance with the terms of the contract through monthly review of reports
2 submitted by the county government or regional jail authority and, at the
3 cabinet's discretion, in-person inspections of the jail facilities and in-person
4 interviews of state inmates in the jail.

5 ➔Section 5. KRS 441.055 is amended to read as follows:

6 (1) The Department of Corrections shall for those counties which elect to house state
7 prisoners in their jail:

8 (a) Adopt the recommendations of the Jail Standards Commission created
9 pursuant to Executive Order Number 81-1026 and promulgate regulations
10 pursuant to KRS Chapter 13A establishing minimum standards for jails.
11 These standards shall include, but not be limited to, rules governing the
12 following areas:

- 13 1. Health and safety conditions;
- 14 2. Fire safety;
- 15 3. Jail operations, recordkeeping, and administration;
- 16 4. Curriculum of basic and continuing annual training for jailers and jail
17 personnel;
- 18 5. Custody, care, and treatment of prisoners;
- 19 6. Medical care; and
- 20 7. Jail equipment, renovation, and construction;

21 (b) Develop a jail standards review process, which shall include the participation
22 of persons knowledgeable of jail operations to review and amend the
23 standards as necessary. The jail standards shall be reviewed no later than
24 December 31, 1992, and at least every two (2) years thereafter. Fifty percent
25 (50%) of the participants in the review process shall be appointed from
26 persons representing county interests and fifty percent (50%) shall be
27 appointed from persons representing state interests; and

- 1 (c) Provide technical assistance and consultation to local governments in order to
2 facilitate compliance with standards.
- 3 (2) The department shall, for those counties that elect not to hold state prisoners in their
4 jails, adopt the recommendations of the Jail Standards Commission and promulgate
5 administrative regulations pursuant to KRS Chapter 13A to establish minimum
6 standards for those jails. These standards shall be limited to health and life safety.
- 7 (3) *The department shall, for those units of local government or regional jail*
8 *authorities which elect to seek performance-based contract incentives under*
9 *Section 4 of this Act, promulgate administrative regulations to establish*
10 *performance-based standards for those jails which address the requirements of*
11 *Section 4 of this Act.*
- 12 (4) All minimum standards promulgated by the department applying to jails shall
13 include requirements for adequate nutrition for pregnant prisoners, an adequate
14 number of hygiene products for female prisoners, and an appropriate number of
15 undergarments for female prisoners.
- 16 (5)~~(4)~~ The department may establish classifications of jails based on the maximum
17 permissible period of incarceration or other criteria and promulgate standards for
18 each class of jail.