

sentencing, then the court may establish an installment payment plan in accordance with Section 4.

Section 4: The court may establish a time frame and specify the installment plan for payment of court costs, fees, or fines. If the court does not make such conditions part of the sentence, then payment is due immediately. Failure to pay may result in jail time and released upon payment or completion of daily credit pursuant to Section 6.

Section 5: Amends KRS 534.060 to remove the current standard of fine payment installments and issuance of an arrest warrant. Also removes the current time periods for imprisonment for intentional refusal to pay fines.

In the case of a corporation's willful nonpayment of fines or court cost, the person authorized to make disbursements for the corporation and their superior are subject to the same terms of imprisonment as above.

Deletes language that stipulates following a default in payment of the fines, may now be collected by any means authorized.

Section 6: The defendant sentenced to jail for failure to pay shall receive credit towards payment of the fees, fines, or court costs for each day spent in jail at the following rates:

- The rate for a defendant who does not work at \$50 per day.
- The rate for a defendant who works at \$100 per day.

The defendant shall be released from jail once sufficient credit is earned to satisfy the fees, fines, or court costs and unless the defendant is incarcerated as a result of other cases.

***Sections 12 through 14 deal with the parole, parole compliance credit, and reentry supervision.**

Section 12: Defines "parole compliance credit" as a credit on a paroled individual's sentence for program credit, work-for-time credit, educational accomplishment, or meritorious service.

Defines "supervised compliance credit" as a credit on a supervised individual's sentence for compliance with supervision.

Section 13: Defines "eligible" as an offender being supervised for a Class D felony that is not a violent offender or a sexual offender, or guilty of assault in the third degree where the victim was a peace officer; or as in the case of a Class C felony, an offender who is not a persistent felony offender, is not a violent offender or sexual offender, and whose conviction was not related to controlled-substances.

"Substantially compliant" is defined as compliance with the terms of the individual's case plan, no new arrests, and makes scheduled monthly payments for restitution.

Regarding Class D felonies, after one full month of being substantially compliant, a supervised individual eligible shall receive thirty days of supervised compliance credit for every full month of compliancy. After serving at least **one year** on supervision, this credit shall be applied towards the individual's sentence.

Regarding Class C felonies, after one full month of being substantially compliant, a supervised individual eligible shall receive thirty days of supervised compliance credit for every full month of compliancy. After serving at least **two years** on supervision, this credit shall be applied towards the individual's sentence.

Section 14: Increases the amount of time from thirty to sixty days in any one calendar year that a supervised individual who is on probation and who violates the conditions of community supervision must spend in a state or **local** correctional or detention facility or residential center. **The DOC shall reimburse the local facility for cost.**

Places a supervised individual serving a period of parole or post-release supervision and who violates the conditions of community supervision in a state or **local** correctional or detention facility or residential center for a period of no more the thirty days consecutively and not to exceed sixty days in any one calendar year. **The DOC shall reimburse the local facility for cost.**

Place any supervised individual who is on parole and who violates the conditions of community supervision in a state or local correctional or detention facility or residential center for a period of time a supervised individual awaits admission to a residential alcohol or substance use treatment program. **The DOC shall reimburse the local facility for cost.**

Section 15: If an inmate is recommitted to prison for a violation of probation, shock probation, parole, or conditional discharge, has not served at least six months since being recommitted, or has twice been released on mandatory reentry supervision, the inmate is not eligible for reentry supervision.

Section 16: No person shall be required to register as a sex crimes offender and other offenses that require registration for a juvenile adjudication if such an adjudication in this Commonwealth would not create a duty to register. This paragraph shall be retroactive.

***Sections 17 through 24 deal with the drug supervision pilot program.**

Section 17: provides definitions for Sections 17 to 24 of the Act.

- Defines "drug" as alcohol or a controlled substance.
- Defines "Department" as the Department of Corrections (DOC).
- Defines "drug supervision session" as a meeting between the reentry team and the participant to discuss the participant's progress.
- Defines "participant" as an inmate or parolee selected to participate in the reentry drug supervision pilot program.

- Defines “reentry drug supervision pilot program” or “pilot program” as the program created under Section 15.
- Defines “reentry team” as the team organized under Section 16 to administer and oversee the reentry drug supervision pilot program.
- Defines “substance use disorder” to have the same meaning as in the current edition of the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders.

Section 18: Provides for the implementation of a reentry drug supervision pilot program to be implemented by March 2018. The reentry drug supervision program shall last four years and adhere to the following:

- Administered and overseen by a reentry team.
- Composed of inmates and parolees.
- Consist of two phases.
- Provide a continuum of substance use treatments and rehab services.
- Monitor participants with frequent drug testing.
- Implement a coordinated strategy to govern the program’s response to participants’ response.
- Require ongoing reentry team interaction with each participant.
- Forge partnerships among public agencies and community-based organizations.

The DOC shall provide an annual report to the LRC and to the Interim Joint Committee on Judiciary by January 1 of each year the program is in operation as well as the following three years (total of seven years).

Section 19: The reentry team shall administer and oversee the reentry drug supervision pilot program and shall consist of the following:

- DOC hearing officer shall lead the team and be the final decision maker.
- Parole officer who shall have parole officer duties including drug testing.
- Reentry liaison / facilitator from the Division of Probation and Parole.
- Social Service clinician.
- Public Defender or designated representative who may or may not be an attorney.
- Designated representative from a community mental health center

The Administrative Offices of the Courts shall train reentry team members regarding drug courts as well as their roles within the team.

The reentry team may provide incentives including service credits, which include but not limited to:

- Promotion to the next phase as outlined in Section 18 of this Act;
- Certificates and tokens;
- Compliance credit or any other parole credit approved by the reentry team;
- Decreased supervision;
- Increased privileges and responsibilities;
- Praise from the hearing officer and reentry team;

- Extended curfews; and
- Other individual incentives approved by the reentry team.

The reentry team may also impose sanctions which include but not limited to: electronic monitoring, home incarceration, and imprisonment in a state of **local** correctional or detention facility or residential center, and consider alternatives to incarceration.

A parole officer may arrest a participant without first consulting the reentry team if the parole officer believes the participant poses an imminent threat to himself or herself or others. The officer shall immediately notify the reentry team of the arrest at which time the team shall determine whether or not to impose additional sanctions.

Reentry team proceedings are confidential and shall be closed unless otherwise authorized by the hearing officer.

Section 20: DOC shall implement the reentry drug supervision pilot program. Inmates or parolees may be referred to the Parole Board as candidates for the program by DOC's Division of Substance Abuse Programming or DOC's hearing officers. After sentencing and after conducting a substance abuse assessment of the inmates who qualify for the program, the Division shall refer to the Parole Board those inmates determined to be candidates for the program.

If a parolee is having a parole revocation hearing and is suspected of suffering from a substance use disorder, the hearing officer may order a one month deferment to conduct a substance abuse assessment of the parolee. The hearing officer may then recommend that the parolee be placed into the pilot program instead of having his parole revoked.

Before the inmate or parolee is allowed to participate in the reentry drug supervision program, the Parole Board shall notify the victim who will be given the opportunity to submit a written victim impact statement for consideration.

Upon an inmate's acceptance into the program, the **inmate** is immediately paroled into the program. The inmate shall have no contact with victims if applicable, pay restitution if applicable, and meet all program requirements.

Upon a parolee's acceptance into the program, the parolee is immediately entered into the program. The parolee must adhere to the conditions established by the Parole Board, and all program requirements.

Participants shall remain on parole until their sentence is completed unless the reentry team terminates or discharges the participant from the program, at which time the participant shall be referred to the Parole Board for revocation.

Section 21: The reentry drug supervision pilot program consist of two phases, lasting a minimum of twelve months or until sentence completion. The first phase is an education phase and the second phase is the self-motivation phase. Both phases require completion

of specific requirements. Participants may be ordered during any phase to comply with additional requirements.

Completion of the phases include drug testing, group therapy sessions, employment, education, housing, payment of court obligations and fees related to probation and parole, self-help programs, and remain drug-free for 90 consecutive days.

If the participant has not completed his or her sentence after successfully completing the second phase, the participant shall move to regular parole.

The participant shall be referred to the Parole Board for revocation if he or she is terminated from the pilot program. The reentry team shall determine whether the participant may receive credit toward the remainder of his or her sentence for time spent in the pilot program.

Section 22: If the participant cannot continue in the reentry drug supervision pilot program due to inpatient treatment or similar where the participant is being monitored by an authorized third party, the participant shall be placed on suspended status; able to return to the program once released from inpatient treatment.

Section 23: If the participant leaves the program through no fault of his or her own, or is administratively discharged, DOC shall determine whether to move the participant to regular parole or refer the participant to the Parole Board for revocation. If administratively discharged, the participant shall receive credit toward the remainder of his or her sentence for the time spent in the pilot program.

Section 24: If the participant voluntarily leaves the program, the participant shall be referred to the Parole Board for revocation. The reentry team shall determine whether the participant may receive credit toward the remainder of his or her sentence.

Section 25: A law enforcement agency may create a program to refer a person to treatment for substance use who voluntarily seeks assistance from the law enforcement agency.

The person shall not be arrested or prosecuted, and shall be paired with a volunteer mentor and referred to an entity for substance use treatment. A person is not eligible for placement if he or she has an outstanding arrest warrant, been convicted of three or more drug-related offenses, or is under the age of 18 and does not have consent of a parent or guardian.

Section 26: An attorney, either court-appointed or privately retained by the respondent, shall be given access to the court records relating to a petition filed seeking hospitalization of the respondent in regards to mental illness.

***Sections 27 and 28 deals with the Prison Industry Enhancement Certification Program.**

DOC may administer a Prison Industry Enhancement Certification Program and may lease the voluntary labor of state prisoners within the boundaries of the state's DOC facilities for the production of nonagricultural goods for sale to both public and private buyers. Prisoners would be paid a fair wage for this work. DOC is responsible for the security and custody of the prisoners at no expense to the lessee.

DOC or the lessee shall deduct from the prisoner's gross wages applicable federal, state, and **local taxes**.

***Section 29 through 84 refers to hiring practices and licensing with regards to past convictions.**

Section 29: Removes language to define "conviction of a crime" as convictions of felonies or misdemeanors, removing all other conditions.

Section 30: Removes language referencing KRS 335B.010 (4) defining "conviction of crime" as it pertains to disqualifying a person from public employment or from pursuing, practicing, or engaging in a profession for which a license is required. It also provides that the passage of time since a crime in determining if a conviction directly relates to the position of public employment sought or for which the license is sought.

Removes language referencing KRS 335B.020-070 which in their entirety provide that past convictions only are not reason for disqualification from public employment, nor an occupation for which a license is required except for a conviction defined in KRS 335B.010(4); nor for lack of good moral character. These statutes shall not apply to the practice of law, nor nonelective peace officers for whom qualifications are set forth in KRS 61.300.

Section 31: A hiring or licensing authority shall provide the individual with a written notice that a prior conviction may disqualify the person from employment explaining the connection between the conviction and the license being sought and affording the individual an opportunity to be personally heard before the board making the decision to disqualify the individual. If the license is denied after the hearing, the individual may further appeal to the Franklin Circuit Court.

Section 32: Exempts peace officer and other law enforcement personnel unless preempted by federal law from the statutes forbidding the non-hiring of an individual due solely to a past criminal conviction.

Section 33: Repeals KRS 335B.040, denial of license on the ground of absence of good moral character.

Sections 34 through 84: Amended to conform to language that adds "conviction of a crime" and /or the provisions of KRS Chapter 335B if applicable as conditions for

determining licensing or hiring. KRS Chapter 335B deals with licensing and public employment qualifications.

***Sections 85 and 86 deal with work release programs.**

Section 85: Provides that Class D felons who are eligible for placement in a **local jail** or if incarcerated, may be released to participate in a community work program pending approval of the DOC Commissioner provided they meet certain conditions. The inmate may have to pay a fee for the cost of operating the community work program; not to exceed \$55 or twenty percent of the prisoner's weekly net pay.

Section 86: Defines "county jail" to mean all detention and penal facilities of a county, charter county, urban-county government, unified local government, or consolidated local government for adult offenders, together with all its rehabilitative facilities for adult offenders, including facilities operated by private agencies under contract with the county, charter county, urban-county government, unified local government, or consolidated local government.

Defines "day reporting program" or "program" to mean a community-based, structured sentencing program operated by a county jail that combines enhanced community supervision with resources and services tailored to meet identified offender needs.

Defines "eligible defendant" to mean an individual convicted of a misdemeanor or a Class D felony who is eligible to serve all or part of his or her sentence in a county jail or who is found in contempt of court and who meets the intake criteria established by the day reporting program to which the person would be sentenced.

A court may sentence an eligible defendant to a local day reporting program for a period of time not to exceed the defendant's maximum potential period of incarceration.

A defendant may be temporarily released from the program for the following reasons:

- Seeking employment; or
- Working at his employment; or
- Conducting his own business or other self-employment occupation including, in the case of a woman, housekeeping and attending the needs of her family; or
- Attendance at an educational institution; or
- Medical treatment.

The program will track weekly all violations of the program's terms and conditions for each participant and forward to the sentencing court, prosecutor, and defendant. The programs may alter the terms and conditions in response to a minor breach of the program's terms and conditions. After written notice and a hearing, a court may revoke a defendant's participation in a day reporting program or impose additional sentencing or other sanctions as a result of the defendant's failure to comply with the terms and conditions.

***Sections 87 through 95 deals with reentry centers.**

Section 87: Defines “reentry center” as being a supervised community residential facility operated by a local correctional facility, **county jail**, or regional jail.

Section 88: Provides for the operation of a reentry center by a **local** correctional facility, **county jail**, or regional jail and as approved by DOC. Residents may be assigned to a reentry center by DOC, the jailer, the court, or the parole board.

Section 89: DOC shall establish standards of operation or reentry centers, analyze data in order to reduce recidivism and engagement of the residents in employment and in the community. Placement of inmates in reentry center by the DOC or parole board shall prioritize placement in higher-performing centers, as determined by DOC.

Sections 90 through 95: Conforming language regarding reentry centers.

Section 96: Establishes the length of time at reentry centers to no more than 12 months. While at a reentry center the defendant shall be employed; enrolled in a treatment program; pay restitution, fees, and fines; and comply with other conditions.

Section 100: Creates the criminal justice reinvestment fund. Interest earned shall become part of the fund. All criminal justice reinvestment funds shall be appropriated ninety days after the close of the fiscal year as follows:

- twenty percent to the DOC for evidence-based substance use disorder treatment programs for inmates
- twenty percent to the Office of Drug Control Policy for evidence-based substance use disorder treatment programs including neonatal abstinence syndrome
- twenty percent to the crime victim’s compensation fund
- twenty percent to DOC for reentry services including vocational training
- twenty percent to the community corrections fund

Criminal justice reinvestment funds shall not replace any other state or county appropriations that the programs would have received.

SB 120 HCS 2 retains the major provisions of SB 120 HCS 1 and makes the following changes in the bill:

- In Section 98, language is returned that puts the Attorney General and the Kentucky State Police Commissioner or their designees on the Criminal Justice Council. This has no effect on local governments.

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

Overall, SB 120 HCS 2 lessens the number of inmates in correctional facilities including county jails by alternative sentences inclusive of parole, drug supervision programs, work release programs, and reentry programs. It also deals with the training of inmates through *prison industry enhancement programs* and once released, aiding the job application process and job retention by removing a past conviction from the initial employment process. The effect on local governments would be less populations in their jails. Whereas, reimbursement from the DOC is based on the number of inmates, local governments will realize a decrease in reimbursement. However, they might be housing fewer inmates.

***Sections 1 through 6 deals with the defendant’s inability to pay fines or court cost.** Deals primarily with the posting of bail. If an individual is unable to post bail or pay court cost due to lack of funds and meets the definition of a “poor person”, he or she will not be held in jail and the court may consider alternative sanctions. These sanctions include reduction of the fine and court cost based on the sliding scale of indigency established by the Supreme Court of Kentucky., extension of time to pay, implementation of a payment plan, community service, and waiver or suspension of amount due.

However, if the court determines that failure to pay was willful and not due to inability to pay, no alternative sanctions will be made available and the court may sentence the individual to jail. The term of imprisonment shall not exceed:

- Six months if the result of a felony conviction.
- One-third of the maximum term if the result of a misdemeanor conviction.
- Ten days if the result of a violation.

The amount of actual jail time will affect the reimbursement amount from the DOC. The local jail’s actual expense of incarcerating an inmate may be more or less than the reimbursement.

***Sections 12 through 14 deal with parole, compliance credit, and reentry supervision.**

Parole and supervised compliance credit would lessen jail time for Class D and Class C felons once they complete conditions required by the program. However, any noncompliance could result in additional jail time being served. Shorter or longer jail times would affect the expense realized and the reimbursement due from DOC for local jails. Reimbursement to local jails from DOC for felons follows.

Class D and Class C felons:

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky’s 76 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 \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a

Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a D felon. Since the per diem pays for 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.

When a court denies bail to a Class C felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 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 \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 24 months or less to their minimum expiration date or parole eligibility date. The Department of Corrections pays local jails \$31.34 per day to house these Class C felons. Since the per diem pays for the estimated average cost of housing a Class C felon, the per diem may be less than, equal to, or greater than the actual housing cost.

***Sections 17 through 24 deal with the drug supervision pilot program.**

Alternative programs inclusive of alcohol and drug treatments in lieu of jail time or as a credit against jail time. The effect would also lessen the number of inmates incarcerated and the length of time inmates are incarcerated. Shorter jail times; less expense; less DOC reimbursement. Again, the actual cost of housing inmates may be more or less than the reimbursement amount.

- The current reimbursement regarding substance abuse programs which would be affected by the alternative programs and drug supervision programs discussed above is:
- Twenty-three full service jails provide an in-patient substance abuse program (SAP) to over 1,100 convicted felons and 166 non-state offenders incarcerated in the jails.
- The estimated average cost of jailing a convicted felon participating in a SAP is \$40.34 per day.
- This amount is reimbursed by the Department of Corrections and is \$9 more than the estimated average cost of \$31.34 per day reimbursement.

Since the \$40.34 per diem pays for the estimated average cost of housing a convicted felon participating in a SAP, the per diem may be less than, equal to, or greater than the actual housing cost.

***Sections 27 and 28 deal with the Prison Industry Enhancement Certification Program.**

This program will allow prisoners to work for a fair wage for employers "leasing" their services from the jail. It is hoped this will provide incentive for prisoners to not commit future crimes and not return to prison, thus reducing recidivism. Additionally, inmates will learn a trade helping them find employment once released.

***Sections 29 through 84 deals with hiring practices and licensing with regards to past convictions.**

It is hoped this will also reduce recidivism by assisting former inmates with finding employment. Failure to obtain a license will affect the person's ability to find work. This would have an effect of local future economies in the form of occupational tax, property tax resulting from homeownership, and the individual's ability to be a contributing member of the community. Additionally, a reduction in recidivism will mean fewer inmates. Again affecting local jail expenses and DOC reimbursements.

***Sections 85 and 86 deal with work release programs.**

This would be an administrative cost to the local government and may entail additional employees to actually implement the program. The inmate may have to pay a fee for the cost of operating the community work program; not to exceed \$55 or twenty percent of the prisoner's weekly net pay. Payment of the fee will be at the jailer's discretion.

Class D felons who are either eligible for placement in a **local jail** or if incarcerated, may be released to participate in a work release program pending approval of the DOC Commissioner provided they meet certain conditions.

Reimbursement to local jails from DOC for felons is below.

Class D felons:

When a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 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 \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a D felon. Since the per diem pays for 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.

***Sections 87 through 95 deal with reentry centers.**

These provide assistance to inmates who are nearing release by providing a safe, structured, supervised environment, as well as employment counseling, job placement, financial management assistance, and other programs and services. The county jail is responsible for the cost of this program. By moving inmates out of a secured environment may reduce payroll for the local jail.

***Section 100**

Local governments that house inmates in local jails may benefit with funds available from the criminal justice reinvestment funds. If a local jail has implemented or will implement an evidence-based substance use disorder treatment program or a reentry services program, then the cost of such programs might be at least partially paid for by funds derived from the criminal justice reinvested fund. Exactly how these funds would

be distributed is not detailed in the proposed legislation, nor do we know which counties currently have such programs or which counties might implement a future program based on the proposed legislation, so a fiscal impact isn't available.

Data Source(s): LRC Staff, Administrative Offices of the Court

Preparer: Wendell F. Butler **Reviewer:** KHC **Date:** 3/15/17