



Counties could see reduced incarcerations through the reduction from certain misdemeanor traffic offenses to violations. Overall, **the number of offenders or days of incarceration under these offenses is not expected to be significant.**

**Sections 7-33** of the bill raises the felony threshold level for fraud and theft offenses. This section establishes a Class B misdemeanor if the offense amount is below \$100 and redefines the Class A misdemeanor to amounts between \$100 and \$2,000. The Class D felony threshold amount is moved to amounts between \$2,000 and \$10,000. Numerous statutes are adjusted to reflect these changes. These changes would significantly reduce the population of felony offenders incarcerated in state prison facilities or in local jails (reimbursed by the state), and increases the population of misdemeanor offenders in local jails at an expense to the county.

In addition, if two or more separate offenses occur within 180 days, the offenses may be aggregated. This shall not apply if the criminal behavior is determined by the Court to be substance abuse related. In making the determination, the Court may consider a clinical assessment or convictions within the last two years.

In FY 2017, AOC data reflects 3,707 convictions for Class D felony offenses under the fraud and theft statutes included in these sections. AOC data reports 1,802 Circuit Court and 24,547 Class A misdemeanor convictions in FY 2017 for offenses under statutes specified in this legislation. In addition, under the proposed legislation, a portion of the current Class D felony offenses would become misdemeanor level offenses under county jurisdiction. It is not possible to determine how many of the current felony offenders would be misdemeanants under the proposed thresholds; however, **there is potential for the impact on the counties to be significant.**

For Class D offenses included in these sections, the Department of Corrections currently has 4,883 Class D offenders incarcerated on 6,243 fraud or theft offenses (some offenders will have multiple offenses). Additionally, 11,389 Class D felony offenders are under community supervision for 13,290 separate felony fraud or theft offenses. Of the inmates currently serving on fraud or theft convictions as identified in this bill, 772 offenders are serving on these offenses only.

If this legislation had been law at the time of their convictions, and if it is assumed that they are incarcerated for an amount that would be affected by the threshold change, for the 772 offenders incarcerated for Class D felony offenses included in this legislation, the savings for the Department of Corrections could be \$8,863,177.60 for one year of incarceration and the expense of incarceration is shifted to local jails.

It is not possible to know how many of the offenders currently incarcerated for Class D offenses listed in this legislation would be affected by the threshold change proposed in the legislation. Some cases will have theft amounts above the \$2,000 threshold, which would not change the offense class under the proposed legislation. Others would have an amount that currently classifies the offense as a felony, but under the new statutory

proposal, would reduce the offense from a Class D felony to a Class A misdemeanor. The fiscal amount of the crime is not tracked by the Department of Corrections.

**This bill would reduce the number of Class D felons housed in county jails, resulting in a decrease in revenue for county jails who house these inmates.** There would be a significant increase in the number of individuals under county jurisdiction for misdemeanor fraud and theft charges which previously would have fallen into a felony category. **Jails would not receive a per diem for these misdemeanor offenders as they previously would have for a Class D felony state inmate under these statutes.** Additionally, counties are responsible for the incarceration cost for the time Class A misdemeanor offenders would serve in the local jail.

**Under Section 34 of HB 396,** Possession of Controlled Substance 1st Degree 1st offense would become a Class A misdemeanor. This offense shall be probated if not placed on deferred prosecution. An exception shall be for convictions within the last five (5) years for a violent offense, sexual offense, or interpersonal/domestic violence, in which case, the maximum term of imprisonment shall be one (1) year. For a 2nd offense, the Class A misdemeanor shall be subject to deferred prosecution and presumptive probation (unless not eligible, in which the maximum term of imprisonment shall be one (1) year). For a 3rd or subsequent offense, it shall be a Class D felony, with presumptive probation (unless not eligible) and a maximum term of imprisonment of three (3) years.

The Court may order a substance abuse assessment to be conducted by a community mental health center or other provider approved by the Office of Drug Control Policy, with a subsequent condition of probation to complete the recommended treatment.

AOC data reports 6,176 Circuit Court convictions in FY 2017 for Possession Controlled Substance 1st Degree. There were 110 offenders specifically convicted of Possession of Controlled Substance 3rd or Greater Offense. The Crime & Justice Institute indicates from a review of Kentucky Class D felony drug possession cases that an estimated 76% had one or no prior possession convictions.

Currently, the Department of Corrections has 4,662 inmates and 14,766 offenders on supervision who have received convictions for Possession of Controlled Substance 1st Degree. Of the 4,662 inmates currently serving on a Class D felony Possession of Controlled Substance conviction, 912 offenders are serving on Possession of Controlled Substance 1st Degree only. **If HB 396 had been law at the time of convictions, these offenders would now be county misdemeanor convictions subject to county costs. The local jail cost of shifting these 912 offenders to county supervision would be approximately \$10,470,489 per year.**

**Section 35** moves Possession of Controlled Substance 2nd Degree from a Class A misdemeanor to a Class B misdemeanor.

Under the proposed legislation a good portion of current Class D felony convictions would become misdemeanor offenders under county jurisdiction. **This bill would reduce**

**the number of Class D felons housed in county jails, which would result in a cost savings for the Department of Corrections. However, the loss of per diem from state felony inmates would be a loss of revenue for local jails.**

At the same time, **moving Possession of Controlled Substance from a felony to a misdemeanor would significantly impact local corrections as the county would absorb costs that previously would have fallen under state jurisdiction.**

Administrative Office of the Courts data reports 1,180 Circuit Court and 5,587 District Court convictions in FY 2017 for misdemeanor Possession of Controlled Substance. In addition, **under the proposed legislation, a portion of the current Class D felony Possession of Controlled Substance offenses would become misdemeanor level offenses under county jurisdiction.**

Overall, there is no way to predict if judicial sentencing of Possession of a Controlled Substance, Fraud, and Theft charges would become misdemeanor offenses rather than a felony. **A shift from felony to misdemeanor level offenses would have a significant fiscal impact for county jails.**

**Jails would acquire more misdemeanor offenders under this legislation, losing the state per diem for those amounts that would have previously qualified as a state felony conviction. However, as the counties would incur the cost of incarcerating these offenders, there would be fewer pre-conviction offenders incarcerated under the reform of monetary bond which may provide some level of an offset.**

**Section 37** modifies Burglary 3rd Degree by excluding all vehicles other than a recreational vehicle from the definition of a building. Burglary 3rd Degree is a Class D felony. Currently the Department of Corrections has twenty-eight (28) offenders incarcerated or on supervision for Burglary 3rd Degree.

**Under Sections 40-42** administrative parole is established. Class C and D non-violent, non-sex offenders are eligible and shall be administratively released on the offender's parole eligibility date without a parole hearing, unless a victim requests a hearing or the offender has had a serious category III or IV disciplinary violation within a year of the parole eligibility date.

The proposed legislation for certain non-violent, non-sexual offenders to be released on parole automatically has the potential to reduce the state inmate population and reduce administrative staff functions. Based on a two year average, 9,319 inmates who met the criteria for administrative parole were considered for parole by the Parole Board. Of those, an average of 4,002 were not granted parole. These offenders served an average of 297 additional days. The administrative parole would save the Department of Corrections \$37,250,535.96 in incarceration costs. **There will be a decrease in Class C and D felony offenders housed in local jails and a decrease in revenue to local jails as a result of administrative parole.**

**Sections 43-44** provide instructions to the Court on responding to violations. Graduated sanctions may be imposed for new misdemeanor or felony convictions, but will be imposed for technical violations and absconding.

**Sections 45-46** extend home incarceration from nine (9) to twelve (12) months for Class D and C felony inmates and requires a risk and needs assessment and case plan. Graduated sanctions may be imposed for technical violations and shall take effect January 1, 2019.

Home Incarceration Program: The Department of Corrections released an average of 1,278 offenders to home incarceration over the past three (3) years. Home incarceration costs \$26.77 less than incarceration, taking into consideration the daily program cost of \$4.57 for each offender. **For the three additional months on home incarceration, the state will save an average of \$3,079,085.40 in incarceration costs, which could potentially also be a decrease in revenue to local jails as reimbursement for housing certain Class D and C felony inmates.**

**Section 48** imposes graduated sanctions for supervised individuals, who violates the conditions of community supervision in a local correctional facility, for a first absconding violation, unless there is an arrest for new criminal activity or the offender is a violent or sex offender. For second or subsequent abscondings, graduated sanctions may be used. To be implemented by January 1, 2019.

**These graduated sanctions will be in lieu of revocation which would potentially decrease the amount of state inmates housed in county jails.**

**Section 50** requires a preliminary revocation hearing for technical violations to occur within fifteen (15) days of detainment. The period of detainment shall not exceed the period of incarceration for the technical violation. A show cause hearing is required if beyond the timeframe or the offender shall be released.

**Section 51** waives the supervision fee for offenders on administrative supervision. Fees shall be suspended for the first six (6) months of community supervision if the individual does not have ability to pay. Willful non-payment is clarified as a technical violation. Currently, misdemeanor fees are to be not less than \$10 per month and no more than \$500 per year which is payable to the local government's general fund. The waiving and suspending payment of fees for individuals on community supervision will result in a decrease of revenue for local government.

**Sections 52-53** speaks to parole revocation processes. The bill allows for a summons rather than a warrant to be issued by the Parole Board for technical violations of parole and requires a final revocation hearing to be held within 30 days. The period of detainment shall not exceed the period of incarceration for the technical violation. A show cause hearing is required if beyond the timeframe or the offender shall be released. For technical violations, the Parole Board may continue supervision or revoke and impose a term of imprisonment for thirty (30) days for a first revocation, a term of ninety

(90) days for the second revocation, a hundred-eighty (180) days for a third revocation, and for a fourth or subsequent revocation, two (2) years.

For a selected year, an average of 961 parole, home incarceration, and mandatory reentry supervision offenders incarcerated on a revocation served, on average, 287 days prior to re-release back out to supervision.

If, at the final revocation hearing, the board finds that the parolee committed a technical violation, the board may continue supervision with additional conditions or revoke parole and impose a term of imprisonment of not more than:

- For the first revocation for a technical violation, thirty (30) days;
- For the second revocation for a technical violation, ninety (90) days;
- For the third revocation for a technical violation, one hundred eighty (180) days; and
- For the fourth and any subsequent revocation for a technical violation, two (2) years; in a state or local correctional or detention facility or residential center before being released and continued on community supervision. However, the term of imprisonment shall not exceed the parolee's sentence expiration date.

**Section 55** establishes probation revocation procedures. It requires the Court to have a hearing to modify the conditions of probation. The final revocation hearing shall be held within thirty (30) days with the same stipulations as listed above. The same revocation caps are established.

If, at the final revocation hearing, the board finds that the parolee committed a technical violation, the board may continue supervision with additional conditions or revoke parole and impose a term of imprisonment of not more than:

- For the first revocation for a technical violation, thirty (30) days;
- For the second revocation for a technical violation, ninety (90) days;
- For the third revocation for a technical violation, one hundred eighty (180) days; and
- For the fourth and any subsequent revocation for a technical violation, two (2) years; in a state or local correctional or detention facility or residential center before being released and continued on community supervision. However, the term of imprisonment shall not exceed the parolee's sentence expiration date.

**Section 59** provides sentence credits for county jail misdemeanor inmates. Section 59 amends KRS 441.127 to provide sentence credits for county misdemeanor inmates. It moves educational credit from thirty (30) to ninety (90) days, provides a service credit of one (1) day for each day in treatment, seven (7) days of meritorious service, and moves good behavior time from five (5) to ten (10) days a month.

**Sentencing credits for misdemeanants would significantly decrease sentence lengths and lower costs associated with shorter periods of incarceration. However, each of the eighty (80) jails across the state will be required to establish a system to award**

**and maintain sentencing credits, and create an adjustment process in the event credit is removed from an inmate due to a disciplinary action.**

**Section 60** revises eligibility for presumptive administrative supervision from twelve (12) to six (6) months and requires no violations within the last six (6) months, rather than twelve (12).

**Section 61** establishes geriatric parole for offenders age sixty-five (65) and older, who have served at least 15% of the sentence, and is not a violent or sex offender. Twenty-seven (27) offenders currently meet the requirements. The average sentence length for these offenders is 14.5 years. Six (6) of these offenders are already subject to a 15% parole eligibility requirement. The remaining twenty-one (21) offenders currently have a 20% parole eligibility. The average difference 20% and 15% parole eligibility is 319 days. Assuming the Parole Board paroled these offenders at 15% parole eligibility under geriatric parole (and would have paroled them at 20%), the cost savings would be between \$209,946.66 - \$469,733.88 (depending if the offenders were housed at a prison facility at a cost of \$70.12 per day or a jail at a cost of \$31.34). **If the offenders were housed at a local jail, the local jail would lose approximately \$209,946.66 in revenue through reimbursement by the Department of Corrections.**

**Section 62** expands medical parole. Currently the statute limits medical parole to terminal conditions. The legislation would expand this to include chronic medical conditions. Under KRS 439.3405, over the last year, eleven (11) offenders qualified for medical parole. Five (5) offenders were paroled, one (1) passed away prior to release, and six (6) offenders were unable to obtain placement in the community. Placement is a challenge for sex offenders as well as offenders requiring long term medical care.

**It is not known how many of these offenders are currently housed at local jails. Any state inmates housed at local jails that qualify for medical parole, would result in a loss of revenue for the local jails through reimbursement by the Department of Corrections.**

Sections 64-74 of the bill are concerned with monetary bond and pretrial services, establishing a preventative detention model that provides limited circumstances where monetary bond may be imposed.

With the reform of monetary bond for low and moderate risk pretrial offenders, there would be fewer pre-conviction detainees. **This would provide some relief in overcrowding at local jails and the fiscal costs associated with these offenders. Fewer pre-conviction inmates held in custody on bond would open beds available to house state inmates, which could provide a revenue source for jails.**

Sections 80-82 create a cost sharing model with the counties and establishes a fiscal incentive grant fund, which would be operational until July 1, 2022. The cost aversion from state beds will assist counties in absorbing the additional misdemeanor offenders

established under this bill. **Additionally the incentive grant fund may provide opportunities for counties to fund programing and treatment at the county level.**

**The fiscal impact of HB 396 will range from moderate to significant.**

**Some time and effort costs would be associated with local law enforcement training related to the changes made by HB 396 to felony and misdemeanor offenses.**

**Local governments and jails are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants** until disposition of the case. While the expense varies by jail, this estimated impact is based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

Below is description of the costs associated with misdemeanor and felony incarcerations.

**Class B and Class A misdemeanors:** A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. A person convicted of a Class A misdemeanor may be incarcerated for up to twelve months. Misdemeanants are housed in one of Kentucky's 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

**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 four 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 four 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.

**Part III: Differences to Local Government Mandate Statement from Prior Versions**

The Part II section above pertains to the bill as introduced and there are not any prior introduced versions of the bill to complete the Part III section.

**Data Source(s):** Kentucky Department of Corrections; Kentucky Administrative Office of the Courts; Kentucky Jailers Association

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