

If the judge orders the transfer before receiving a written agreement between the originating and receiving jailers, the receiving jail shall not be required to house the prisoner nor shall the receiving jailer be subject to contempt for failing to obey the order.

The sheriff of the county where the originating jail is located shall be responsible for transporting the prisoner from the originating jail to a receiving jail. When the transfer is the result of danger or probable danger to a prisoner, the sheriff shall immediately upon receipt of the order transfer the prisoner to the receiving jail. The sheriff will provide the receiving jailer a copy of the order, and take from him or her a receipt for the prisoner which shall be returned to the circuit clerk of the originating county.

Whereas the condition of the prisoner can change, the ordering Circuit Judge shall review all removal orders every sixty days, including any input from the originating and receiving jailers.

HB 361 HCS requires the Department of Corrections to approve programming offered by jails to state inmates for sentencing credits. Per KRS 197.045, this includes educational programs, drug treatment programs, life-skills programs, and sex-offender treatment programs.

If a jail is at 150% capacity, the Department of Corrections may order the jail to transfer state prisoners to vacant beds at other jails or state institutions. The DOC shall choose which prisoners are eligible. Prisoners approved for a DOC facility for medical treatment and care, in a KRS 197.045 program, or awaiting trial in the county they are being housed, shall not be transferred to another jail.

Jails that receive state prisoners due to 150% overcrowding shall be responsible for the transportation of those prisoners to the jail. Once DOC orders the transfer, the jailer has fourteen days to complete the transfer. If the originating jail refuses to transfer the prisoner within fourteen days, DOC shall reduce the per diem of the prisoner for each day the jailer refuses to comply. Likewise, if the receiving jailer refuses to accept and transport the state prisoner, the DOC shall reduce the receiving jails per diem.

If a jail has a vacant bed and also has a Class C or D felon who is eligible to be house in that vacant bed, the DOC may direct the jail to transfer the state prisoner to that bed. If the jailer refuses, the DOC shall reduce the per diem of that prisoner for each day the jailer does not comply.

If a jail that is over 150% capacity request the transfer of state prisoners, the DOC may direct the transfer of prisoners to another jail using the same guidelines and requirements as if the DOC had originally requested the transfer.

If a jail has vacant beds usually reserved for state prisoners, the jail may house county prisoners in that area.

The fiscal impact of HB 361 HCS on local governments is indeterminable. The number of future transfers is unknown and there is no central historical database.

As stated above, HB 361 HCS limits the amount that the receiving jail can charge the originating jail to three times the amount the Department of Corrections reimburses local jails for housing state arrestees. This amount currently works out to \$94.02 or \$121.02 if the prisoner is participating in a substance abuse program

The Kentucky Sheriffs' Association has expressed concern that the proposal does not address either paying the sheriff for transporting the prisoner upfront or for reimbursing the sheriff post-transfer.

Emergency transfers can also put a personnel strain on the receiving jail if the transfer requires more than one deputy, is beyond the immediate area, or if the prisoner is a danger to themselves or others. HB 361 HCS should remedy these concerns.

Transfers can also originate when a defendant is housed far from his or her attorney. To adequately prepare for court, an attorney may request that his client be transferred to a jail closer to them or the court.

Credits resulting from various programs and used to reduce the length of a sentence and DOC-ordered transfers due to overcrowding would affect DOC per diem reimbursements paid to local jails for housing state prisoners.

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 77 full service jails or three 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 77 full service jails or three 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 77 full service jails or three 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

HB 361 HCS 1 retains all the provisions of HB 361 as introduced. The only change is requiring the originating county's sheriff to not only transport a prisoner from the originating jail to a receiving jail, but to transport the prisoner for necessary medical procedures as well while imprisoned at the receiving jail.

Data Source(s): LRC Staff, Department of Corrections, Kentucky Jailer's Association, Department of Public Advocacy

Preparer: Wendell F. Butler **Reviewer:** KHC **Date:** 2/20/20