Local Government Mandate Statement Kentucky Legislative Research Commission 2020 Regular Session

Part I: Measure Information

Bill Request #: 1409)
Bill #: SB 188	
Document ID #: 494	<u>15</u>
Bill Subject/Title:	AN ACT relating to competency to stand trial.
Sponsor: Sen. Morg	an McGarvey
Unit of Government:	X City X County Urban-County Unified Local
	X Charter County X Consolidated Local X Government
Office(s) Impacted:	County attorney offices; jails
Requirement:	Mandatory Optional
Effect on Powers & Duties:	Modifies Existing Adds New Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

SB 188 establishes a new type of involuntary commitment under newly created KRS Chapter 202C for certain violent criminal defendants who are incompetent to stand trial with no substantial probability of attaining competency. It amends KRS 504.110 (relating to alternative handling of a defendant depending on competency to stand trial) to require the prosecutor's office to immediately petition the court (that had found the defendant incompetent to stand trial) to initiate an involuntary commitment proceeding if the defendant is charged with, or has a past criminal conviction for, a capital offense, Class A felony, Class B felony resulting in death or serious physical injury, rape in the first degree, or sodomy in the first degree.

The bill allows for assignment of a guardian ad litem and creates hearing procedures, commitment criteria, and a schedule and procedures for review hearings. A defendant, or the respondent in the proceeding, could be involuntarily committed if, after hearing, it is determined that the person is a danger to self or others, needs care/training/treatment to mitigate or prevent the harm, and would not benefit from a less-restrictive alternative mode

of treatment. If involuntarily committed, the respondent would be placed in a forensic psychiatric facility.

SB 188 would have a minimal fiscal impact on local governments. A respondent could be in county jail during the pendency of the involuntary commitment proceeding if the respondent, as a defendant, had been unable to post bond on the underlying charges. A commitment hearing must be held within 20 days of the filing of a petition. From the time of the initial finding that the defendant/respondent was incompetent to stand trial through the petition process, hearing, and resolution, the respondent might be incarcerated in the jail for an additional period of 25-30 days or more. *Currently, a petition could be filed with a respondent who is in a county jail for a period of time before being transported to a psychiatric facility.* Thus, the length of stay in a jail for a period of time until disposition of the petition may not significantly change current practice. Both county attorney and Commonwealth's attorneys could file petitions under this bill.

The total number of individuals involved would not be significant for most counties. In 2019, there were 76 cases in Kentucky resulting in persons who were found incompetent to stand trial for any felony, misdemeanor, or traffic offense. Of these, 13 were in Circuit Court. Of the remaining 63 cases in District Court, 49 were in Jefferson County. **Only four involved a Class A or Class B felony offense.**

There would some minimal cost to jails and county attorney offices for staff training related to the bill's provisions.

Local governments are responsible for costs associated with incarcerating persons charged with felony defendants (which the respondents would be under the involuntary commitment proceedings of this bill) until resolution of the case. The expense varies by jail, but the estimated impact is \$31.34 per day, which equals the per diem and medical that the Department of Corrections pays to jails to house felony offenders. The cost for an additional 30-day incarceration for one respondent would be \$940.20.

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

Part II, above, relates to the bill as introduced.

Data Source(s): LRC staff; Administrative Office of the Courts; Jefferson County

Commonwealth's Attorney; Department of Corrections

Preparer: Robert Jenkins **Reviewer:** KHC **Date:** 3/4/20