

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2021 Regular Session**

REVISED 1/29/21

Part I: Measure Information

Bill Request #: 288

Bill #: HB 164

Document ID #: 1040

Bill Subject/Title: AN ACT relating to crimes and punishments.

Sponsor: Representative Regina Huff

Unit of Government: City County Urban-County
 Charter County Consolidated Local Unified Local
Government

Office(s) Impacted: Local Law Enforcement and Local 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

Section 1 amends KRS 508.025, relating to assault in the third degree. It creates a mandatory fine of \$5,000 for a person convicted of intentionally causing a peace officer to come into contact with communicable body fluid. It establishes a minimum sentence of 30-days' incarceration, which is not subject to any form of early release. Further, the mandatory 30-day incarceration applies to a person convicted of intentionally causing or attempting to cause physical injury to a peace officer, or paid or volunteer members of the following services performing job-related duties:

- Emergency medical services personnel (EMS);
- Member of an organized fire department (FD);
- Member of a rescue squad.

Convictions for assault in the third degree for causing a peace officer to come into contact with communicable bodily fluids is a Class A misdemeanor. Convictions for assault in the third degree against a first responder is a Class D felony. Jail costs are described at the end of this mandate.

In FY 2020, the number of assault in the third degree convictions for communicable body fluid was 32. There were 447 convictions under this crime against EMS, FD, Rescue Squads and Peace Officers. The mandatory minimum incarceration for these offenders will impact local jails. Additionally, they may be required to hold the offender until their case is disposed of, in the event bail is denied.

Section 2 amends KRS 508.010 to create a mandatory fine of \$15,000 and a minimum sentence of 90 days' incarceration, which is not subject to any form of early release for assault in the first degree. Assault in the first degree is Class B felony. In FY 2020 there were 90 convictions for this crime.

Section 3 creates a new section of KRS Chapter 512 Criminal Damage to Property. It requires the court to order full restitution in any conviction under KRS 512.020, 512.030, or 512.040, criminal mischief in the first, second or third degree, respectively.

Section 4 amends KRS 525.020, requiring a minimum of 45 days incarceration for convictions of rioting in the first degree, a Class D felony. There were five convictions for this FY 2020.

Section 5 amends KRS 525.030, riot in the second degree, creating a minimum sentence of 30-days' incarceration, which is not subject to any form of early release. Convictions under this crime are Class A misdemeanors. For FY 2020, there were four cases resulting in four charges with one conviction.

Section 6 creates a new section of KRS Chapter 525 Riot, Disorderly Conduct, and Related Offenses. It requires the court to order full restitution in any conviction for riot in the first and second degree (KRS 525.020, 525.030), or inciting to riot (525.040).

Section 7 amends KRS 525.150 to make Disrupting Meetings and Processions a Class A misdemeanor in all cases rather than a Class B misdemeanor.

Section 8 amends KRS 525.140 increasing the penalty for obstructing a highway or other public passageway to a Class A misdemeanor unless the obstruction blocks an emergency vehicle, emergency responder, or an emergency exit in which case it is a Class D felony. In FY 2020, there were 16 convictions for obstructing a highway.

Section 9 creates a new section of KRS Chapter 511 Burglary and Related Offenses, to create a new Class D felony crime of unlawful camping on property owned by the Commonwealth. Any person convicted of this new crime shall be imprisoned for no less than 30 days with no provision for early release and be required to make full restitution for any pecuniary loss. The legislation also provides for the confiscation, seizure and claiming

of any items used to commit this crime. Confiscated property shall be held for 90 days in a secure location. Notice of the confiscation shall contain the contact information of the agency or agent holding the property. It shall be posted at the nearest reasonable location to the place from which the property was removed. The agency or agent may charge reasonable storage fees. If after 90 days the property is not claimed, the property may be disposed of by the agency or agent unless it is needed as evidence in a criminal proceeding.

Localities will likely incur costs related to the confiscation and storage of items. Most law enforcement agencies will probably contract with an agent for these services. The cost of these services may be offset by the reasonable storage fees the agent is allowed to assess. Items needed for evidence will be stored by the local law enforcement agency and may increase their need for additional space in their evidentiary rooms. Local law enforcement agencies have previously reported that space in evidentiary rooms is generally near capacity and any increase in additional space would likely be costly.

Section 10 amends KRS 511.060 to make criminal trespass a Class D felony when the dwelling belongs to or is occupied by a law enforcement officer, active duty member of the military, judge, or elected or appointed government official and the person acts with the intent to harass the person who owns or occupies the residence due to their occupation. The number of convictions for criminal trespass in the first degree was 971 in FY 2020.

Section 11 creates a new section of KRS Chapter 431 to require 12-hour hold for any person charged with violations of:

- Section 4--Riot in the First Degree;
- Section 5--Riot in the Second Degree;
- Section 7--Disrupting Meetings and Processions;
- Section 8--Obstructing a Highway or Public Passageway;
- Section 9--Unlawful Camping;

Section 12 repeals KRS 525.145, relating to disrupting meetings and processions in the first degree.

The overall fiscal impact of this bill is indeterminable. Local jails will have increased costs as a result of the mandatory jail times prescribed by this legislation. Increased incarceration rates will impact local jails in a moderate to significant manner due to increased penalties (i.e. misdemeanor to a felony) and the mandatory jail time with not subject to early release. Additionally, law enforcement will have costs related to confiscation, storage and disposal of personal property under the new criminal trespassing crime as well as procurement and contract costs associated with utilizing an agent for these processes.

Jail Costs Language

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 an average cost to incarcerate of \$37.35 per day. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average cost to incarcerate of \$37.35 per day.

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 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 average cost to incarcerate of \$37.35, which includes the \$31.34 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 Class D 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

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

Data Source(s): LRC Staff, Kentucky Department of Corrections, Administrative Office of the Courts

Preparer: Mark Offerman **Reviewer:** _____ **Date:** _____