

Section 2:

SB 211 GA expands the grounds for using defensive force to include fear of death or great bodily harm in the following circumstances:

- during the course of a riot;
- use of defensive force is justified and resulting from being in the process of unlawful or forcible entry or had unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle;
- in an attempt to escape the immediate vicinity of the unlawful and forcible entry; and
- the person against whom the defensive force was used was intentionally blocking or preventing the person from escape.

Section 3:

SB 211 GA provides for enhanced sentences if a crime was the result of a riot, occurred during and in the reasonable proximity to the riot, and with knowledge a riot was occurring. Unless a jury trial has been waived, a separate hearing shall be called subsequent to a conviction to determine if this criteria has been met. The enhanced sentences shall be:

If the underlying offense is a Class B misdemeanor, the person shall not be released on probation, shock probation, parole, conditional discharge, or any form of early release prior to the expiration of twenty percent sentence, and a fine of \$250.

If the underlying offense is a Class A misdemeanor, the person shall not be released on probation, shock probation, parole, conditional discharge, or any form of early release prior to the expiration of twenty percent sentence, and a fine of \$500.

If the underlying offense is a Class D felony, the person shall not be released on probation, shock probation, parole, conditional discharge, or any form of early release prior to the person's initial parole eligibility date, and a fine of \$5,000.

If the underlying offense is a Class C felony, the person shall not be released on probation, shock probation, parole, conditional discharge, or any form of early release prior to the person's initial parole eligibility date, and a fine of \$7,500.

If the underlying offense is either a Class B or A felony, the person shall not be released on probation, shock probation, parole, conditional discharge, or any form of early release prior to the person's initial parole eligibility date, and a fine of \$10,000.

Section 4:

A person charged with an offense during the course of a riot shall not be released before 48 hours have passed since the time of arrest and before appearing before a judge.

Sections 5 thru 13:

The chart below list the affected crimes with their current classification and the proposed classification and punishment. In some instances the classification stays the same although the scope of the crime has expanded punishment was increased per Section 3.

Section 14:

Expands the definition of “violent offender” to any person convicted or who has pled guilty to assault in the second or third degree if committed during the course of a riot. A violent offender convicted of assault in the second or third degree during the course of a riot shall not be released on probation or parole until he or she has served at least 85% of the sentence imposed.

Section 17:

Defines “local government” to be any city, county, charter county, urban-county government, consolidated local government, or unified local government. Clarifies that individuals may recover the full amount of damage to property from local governments if proven the local government could have prevented the damage. A person injured by an officer, agent, or employee of a local government will be able to bring an action for personal injury or property damage if the injury or damage is the result of gross negligence on behalf of the local government in preventing the destruction. No officers, agents, or employees shall be held liable from following an order or directive from a supervisor to not act to prevent damage caused by a riot or tumultuous assemblage.

The fiscal impact of SB 211 GA on local governments is indeterminable. Fortunately, riot scenarios are few and far between, many communities never experiencing a riot. **However, the impact could be significant** in the event a riot occurs, the local government is held liable for damages, and the damages are significant.

Additionally, SB 211 GA provides for increased incarceration times if specific crimes occur during the course of a riot. This would have a direct impact regarding the per diem a local jail receives from the Department of Corrections.

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 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 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.

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 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. 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. The per diem may be less than, equal to, or greater than the actual housing cost.

Crime	Current Classification	Current Fine	Proposed Classification	Proposed Fine
Assault Third Degree expanded by SB 211 to include intentionally causing physical injury to law enforcement or emergency services personnel by means of chemical agents or fireworks and inclusive of all official-capacity personnel listed in KRS 508.25 (1)(a)and (b).	Class D Felony	1-5 years, fine is \$1,000 - \$10,000 or double the gain from the commission of the offense	Class D Felony	No early release. Fine of \$5,000. Restitution for pecuniary loss
Assault third degree: intentially causing a peace officer to come in contact with bodily fluids and feces	Class B Misdemeanor	up to 90 days, \$250	Class A Misdemeanor	Minium of 20% of the sentence. Fine of \$500. Restitution for pecuniary loss.
Assault with bodily fluids or feces by someone with a serious communicable disease.	Class A Misdemeanor	up to 12 months, \$500	Class D Felony	No early release. Fine of \$5,000. Restitution for pecuniary loss.
Assault fourth degree expanded to include shining a light, laser, or activated horn or other noise-making device towards the head of law enforcement or emergency services personnel.	Class A Misdemeanor	up to 12 months, \$500	Class A Misdemeanor	Minium of 20% of the sentence. Fine of \$500. Restitution for pecuniary loss.
Unlawful camping on state property expanded to include camping on an area not designated as a camping area and camping during the course of a riot or within 24 hours of a riot, and coninues to camp or returns to camp within 24 hours of being warned. No homeless individual shall be convicted of unlawful	n/a	n/a	Class A Misdemeanor	Minium of 20% of the sentence. Fine of \$500. Restitution for pecuniary loss.
Unlawful camping on state property, second or subsequent offense.	n/a	n/a	Class D Felony	No early release. Fine of \$5,000
Resisting arrest	Class A Misdemeanor	up to 12 months, \$500	Class D Felony	No early release. Fine of \$5,000
Obstructing an emergency responder, first offense is a violation, second and subsequent are Class B misdemeanors	Class B Misdemeanor	up to 90 days, \$250	Class D Felony	No early release. Fine of \$5,000. Restitution for pecuniary loss.
Riot first degree expanded by SB 211 to include knowingly providing supplies to a riot that can be used as weapons or dangerous instruments.	Class D Felony	1-5 years, fine is \$1,000 - \$10,000 or double the gain from the commission of the offense	Class D felony	No early release. Fine of \$5,000. Restitution for pecuniary loss.
Riot second degree expanded to include knowingly providing supplies to a riot that can be used as weapons or dangerous instruments.	Class A Misdemeanor	up to 12 months, \$500	Class A Misdemeanor	Minium of three months. Fine of \$500. Restitution for pecuniary loss.
Disorderly conduct second degree expanded by SB 211 to include accosting, insulting, taunting, or challenging at a law enforcement officer.	Class B Misdemeanor	up to 90 days, \$250	Class B Misdemeanor	Minimum 20% of the sentence. Fine of \$250. Restitution for pecuniary loss.
Obstructing a highway or other public passage expanded by SB 211 to include persons acting alone or with others, intentionally or wantonly preventing law enforcement officers from access.	Class B Misdemeanor	up to 90 days, \$250	Class D felony	No early release. Fine of \$5,000. Restitution for pecuniary loss.

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

SB 211 GA keeps most of the provisions of SB 211 SCS 1 and makes the following changes:

- replaces the word “punishments” with “sentence”;
- changes the minimum sentence regarding class A and B misdemeanors to include 20 % of the time served before the possibility of being released;
- provides that a person injured by an officer, agent, or employee of a local government will be able to bring an action for personal injury or property damage if the injury or damage is the result of gross negligence on behalf of the local government.
- Removes language regarding the Commonwealth waiving a sovereign immunity defense.

SB 211 SCS 1 makes the following changes to SB 211 as introduced:

- deletes the definition for “public assistance benefits”
- adds the definition for “riot”
- provides enhanced punishments for each classification of crime, not the individual crime.
- rearranges and renumbers some sections.

Data Source(s): LRC Staff, Department of Corrections

Preparer: Wendell F. Butler **Reviewer:** KHC **Date:** 3/12/21