

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2022 Regular Session**

Part I: Measure Information

Bill Request #: 878

Bill #: SB 333

Document ID #: 7135

Bill Subject/Title: AN ACT relating to persistent felony offenders.

Sponsor: Senator Adrienne Southworth

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

Office(s) Impacted: 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

This legislation changes KRS 532.080 to amend the definition of a persistent felony offender in both the first and second degrees classifications. In addition to existing requirements, any new felony conviction must be within the same chapter of the Kentucky Revised Statutes (KRS) as a previous felony conviction in order for the persistent felony offender sentence to apply.

For example, under the current law an offender with a felony conviction for burglary under KRS 511 that is also convicted of a felony for bribery under KRS 521 is considered a persistent felony offender in the second degree. Under this Act, the two felonies would not trigger the persistent felony offender classification since the felonies are under separate KRS Chapters and thus, they would not be sentenced under the persistent felony offender enhanced penalty.

Similarly, a persistent felony offender in the first degree must have been convicted of two or more previous felonies or one or more felony sex crimes against a minor conviction. SB

333 requires that the previous felony or felonies must be within the same chapter of KRS as the new felony conviction for the offender to be considered a persistent felony offender in the first degree.

The fiscal impact of this legislation is indeterminable. It is expected that this measure will reduce the number of felons who will be considered a persistent felony offender and have the enhanced penalty applied to their sentence. This should reduce the length of jail time for some multi-felony offenders.

A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A persistent felony offender in the second degree shall not be eligible for probation, shock probation or conditional discharge unless all of the offenses are Class D felonies and do not involve a violent act against a person.

A persistent felony offender in the first degree that stands presently convicted of a Class C or Class D felony shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than 10 years nor more than 20 years. If all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person or a sex crime defined in KRS 17.500, the offender may be granted probation, shock probation, or a conditional discharge.

Most Class D felons are housed in one of seventy-four (74) full service or regional jails for up to five (5) years. The Department of Corrections pays a jail \$31.34 per day to house a Class D felon. Jail costs are further defined below.

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 74 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 \$35.43, 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.

Class C felons:

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 74 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 \$35.43, 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.

Class A, B, & C felonies are based on an average daily prison rate of \$97.60. Community Custody Class C and most Class D felons are housed in one of seventy-four (74) full service or regional jails for up to five (5) years. Department of Corrections' cost to incarcerate a felony inmate in a jail is \$35.43 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs (substance abuse treatment not included).

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

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

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

Preparer: MJO (wfb) **Reviewer:** KHC **Date:** 3/8/22