

- menacing;
- wanton endangerment in the first degree;
- terroristic threatening in the first and second degrees;
- criminal abuse in the first, second, and third degrees;
- stalking in the first and second degrees;
- unlawful imprisonment in the first and second degrees;
- kidnapping;
- sodomy in the second and third degrees;
- burglary in the first degree;
- arson in the first and second degrees;
- robbery in the first and second degrees;
- assault on a sports official;
- riot in the first degree;
- use of a deadly weapon of mass destruction in the second degree;
- human trafficking;
- promoting human trafficking.

“Money Bail” means any financial condition of release including cash, property, and a percentage of cash bail, secured, unsecured, or otherwise.

“Standard Condition” means the defendant shall not commit a local, state, or federal offense; appear for all court appearances; and avoid all contact with any alleged victim or potential witness.

“Violent or sexual offense” is defined as a violent offense conviction or a sexual offense conviction including prostitution, incest, and illegal sexual activity with a minor.

SB 369 provides the following in regards to defendants being released prior to trial:

All verified and eligible defendants shall be allowed to post a money bail. SB 369 further provides for the use of a pretrial risk assessment tool to determine if a defendant is at risk of failing to appear for court appearances or for further criminal activity while on release. The assessment tool shall show no bias across racial groups, ethnic groups, and genders. SB 369 provides a list of conditions a defendant must meet in order to qualify as a low or moderate risk defendant allowing him or her to be released on his or her own recognizance.

For low and medium risk defendants charged with a violation, misdemeanor, or Class D felony, none of which reflect a violent or sexual offense or an enhanced scrutiny offense, and has not been charged with a number of violations detailed within SB 369, the defendant **shall** be released on his or her own recognizance by a pretrial officer. If the defendant has been convicted of a prior or sexual offense within five years of the current offense, the pretrial officer **may** refer the defendant to the court. The court **may** release the defendant on his or her own recognizance subject to standard conditions, **may** impose additional nonfinancial conditions, or **may** detain the defendant until a detention hearing.

For low risk defendants charged with a Class A, B, or C felony, none of which are a violent or sexual offense or an enhanced scrutiny offense, he or she **shall** be released on their own recognizance subject to standard conditions. If the charge includes an enhanced scrutiny offense, the defendant **shall** be released on his or her own recognizance and **may** have additional nonfinancial conditions imposed. If the charge includes a violent or sexual offense then, the defendant **may** be released on his or her own recognizance, **may** have additional nonfinancial conditions imposed, or **may** be detained until a detention hearing.

For moderate risk defendants charged with a Class A, B, or C felony none of which are a violent or sexual offense or an enhanced scrutiny offense, he or she **shall** be released on their own recognizance and **may** have additional nonfinancial conditions imposed. If the charges include an enhanced scrutiny offense, then the defendant **may** be released on his or her own recognizance subject to standard conditions, **may** have additional nonfinancial conditions imposed, or **may** be detained until a detention hearing. If the charges include either a violent or sexual offense, then the defendant is not eligible for release and **shall** be detained until a detention hearing.

For high risk defendants charged with a Class D felony which is not a violent or sexual offense or an enhanced scrutiny offense, then he or she **shall** be released on their own recognizance subject to standard conditions and **may** have additional nonfinancial conditions imposed.

For high risk defendants charged with a Class A, B, or C felony none of which reflect a violent or sexual offense or an enhanced scrutiny offense, he or she **may** be released on their own recognizance subject to standard conditions, **may** have additional nonfinancial conditions imposed, or **may** be detained until a detention hearing. If the charges include either a violent or sexual offense or an enhanced scrutiny offense, then the defendant is not eligible for release and shall be detained until a detention hearing.

For defendants charged with a controlled substance felony, the court may order substance abuse screening or treatment as recommended by pretrial services. Refusal by the defendant to participate in the screening shall not disqualify the defendant from being granted pretrial release.

Language is removed which provided for a \$100 per day credit towards bail for each day a defendant stays in jail prior to trial.

Section 2:

A detention hearing shall be held within five days of detention at which time the court shall determine the conditions for pretrial release. The court may detain the defendant until trial. In such cases the court shall provide a written statement why pretrial release was denied. If the court becomes aware of information before the trial, the court may reverse its decision regarding detainment or release.

The fiscal impact of SB 369 on local governments is undeterminable, but expected to be a minimal savings if the number of jail days are reduced as a result of less restrictive pretrial release standards. Local jails will see a savings estimated at \$35.43 per prisoner per day for county prisoners charged with a misdemeanor and the difference between estimated expenses of \$35.43 and the Department of Corrections reimbursement of \$31.34 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 74 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 \$35.43 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 \$35.43 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 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.

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.

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

Part II refers to SB 369 as introduced. There are no prior versions of this bill.

Data Source(s): LRC Staff

Preparer: Wendell F. Butler **Reviewer:** KHC **Date:** 3/7/22