

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2023 Regular Session**

Part I: Measure Information

Bill Request #: 35

Bill #: HB 78 HCS 1

Document ID #: 4620

Bill Subject/Title: AN ACT relating to sex crimes.

Sponsor: Representative Kim Banta

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

Office(s) Impacted: Law Enforcement; 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**

HB 78 HCS 1 clarifies that along with uncles, aunts, brothers and sisters, individuals that can be charged with incest also includes parents, children, grandparents, grandchildren, great-grandparents, great-grandchildren, nephew, niece, ancestor, or descendant.

HB 78 HCS 1 expands the elements necessary to prove incest:

- as a Class C felony to include acts committed by consenting persons (currently adults);
- as a Class B felony to include acts committed with a person who is less than 18 by a person three or more years older or with a person incapable of consent because he or she is physically or mentally incapacitated*; and
- as a Class A felony to include a person less than 12 years of age or without consent causing serious physical injury.

** "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of an intoxicating substance*

administered to him or her without his or her consent or as a result of any other act committed upon him or her without his or her consent (KRS 510.010),

The fiscal impact of HB 78 HCS 1 on local governments is expected to be minimal. Current law already provides for these crimes. The elements of the crime have been expanded as detailed above.

For the years 2019, 2020, and 2021, there were 96, 54, and 36, respectively, charges resulting in convictions for incest-related crimes in the state. Additionally, for the years 2019, 2020, and 2021, there were 129, 65, and 96, respectively, charges resulting in convictions for rape and sodomy-related crimes in the state. *These numbers do not represent the number of cases since there may be multiple charges per case.*

There may be minimal cost in educating local law enforcement officers as to the change in law, but should be easily absorbed in current training.

Class A and B felons are not housed in local jails. Class C felons are eligible to be housed in local jails under the following circumstances:

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 \$40.11, which includes the \$35.34 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 a jail \$35.34 per day to house a Class C 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 refers to HB 78 HCS 1. HB 78 HCS 1 retains the original provisions of HB 78 as introduced, except for removing a first cousin as a prohibited relationship under the crime of incest. The change is expected to have little if any effect on the fiscal impact.

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

Preparer: WB (RB) **Reviewer:** KHC **Date:** 2/22/23