

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

**Part I: Measure Information**

**Bill Request #:** 1618

**Bill #:** SB 225

**Document ID #:** 3755

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

**Sponsor:** Senator Brandon J. Storm

Unit of Government:  City  County  Urban-County  
Unified Local  
 Charter County  Consolidated 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 amends KRS 532.80 changing how and when the persistent felony offender classification is applied.

**Section 1** defines “violent act against a person” to mean “*an offense of which physical injury, serious physical injury, or death is an element.*”

It provides the jury the option to fix an enhanced term of imprisonment, when they find a defendant to be a persistent felony offender.

SB 225 removes the following requirements necessary to be considered a persistent felony offender:

*“Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which the now stands convicted; or”*

*“Was discharged from probation, parole, postincarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted.”*

It requires a person who is found to be a persistent felony offender in the first degree who is presently convicted of a Class A, B, or C felony offense which involves a violent act against a person or a sex crime as defined in KRS 17.500, to serve a minimum term of incarceration of not less than 10 years, unless another sentencing scheme applies. If there was no violent act against a person or a sex crime, the offender may be eligible for parole.

It also removes the language *“A conviction, plea of guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony offense allowing this section to be applied if the offender is subsequently convicted of a different felony offense.”*

The provisions of Section 1 are retroactive.

Section 2 amends KRS 439.3405 to conform.

The fiscal impact of this legislation is indeterminable. It is expected that this measure will reduce the number of felons, who are or 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 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.

**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 \$40.11, which includes the \$35.34 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 \$35.34 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 \$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 local jails \$35.34 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 225 as introduced.

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

**Preparer:** Ryan Brown (WB) **Reviewer:** KHC **Date:** 2/28/23