



**Section 7** amends KRS 218A.133 to add charges for which persons are immune from prosecution for possession of a controlled substance or of drug paraphernalia if they take steps to give medical attention to or contact EMS, law enforcement, or health practitioners for individuals undergoing a drug overdose. The section makes individuals immune from second degree manslaughter and first degree trafficking in a controlled substance if the source of the charge would be distributing or trafficking fentanyl.

**Section 8** amends KRS 218A.1412 to increase the penalty for trafficking in a controlled substance if the substance is fentanyl or a fentanyl derivative and the introduction of which causes the death of a person. In such circumstances the penalty for the offense is one level higher than it otherwise would have been.

**Section 10** amends KRS 512.020 to lower the monetary threshold of property defacement which constitutes criminal mischief in the first degree from \$1,000 to \$500. It also lowers the penalty for criminal mischief in the first degree from a Class D felony to Class B misdemeanor for the first offense and Class A misdemeanor for subsequent offenses if the defendant repairs or replaces the defaced property prior to trial, or performs community service as required by the court. The number of hours of community service shall not be less than 60 hours.

**Section 11** amends KRS 512.030 to lower the monetary threshold of property defacement which constitutes criminal mischief in the second degree from \$1,000 to \$500. It also lowers the penalty for criminal mischief in the second degree to a Class B misdemeanor if the defendant repairs or replaces the defaced property prior to trial, or performs community service as required by the court. The number of hours of community service shall not be less than 15 hours.

**Section 13** amends KRS 506.160 to remove criminal mischief in the third degree from the list of offenses which necessitate a separate proceeding if the defendant is alleged by the prosecuting attorney to have been a member of a criminal gang at the time of the commission of the offense. This is removed because **Section 53** repeals criminal mischief in the third degree.

**Section 14** amends KRS 525.220 to remove criminal mischief in the third degree from the list of offenses for which a person can be convicted of assault on a service animal if the offenses arose out of the same incident. This is removed because **Section 53** repeals criminal mischief in the third degree.

**Section 15** amends KRS 520.050 to raise the penalty for promoting contraband in the first degree from a Class D felony to a Class C felony if the contraband is fentanyl, carfentanyl, or a fentanyl derivative.

**Section 17** creates a new section of KRS Chapter 511 to prohibit a new offense, unlawful camping. Unlawful camping is defined as entering a number of public spaces with the intent to sleep or camp in the area. Unlawful camping is a violation for the first offense

and a Class B misdemeanor for the second and each subsequent offense, or if during the first offense the individual refuses to cease the offense.

**Section 18** creates a new section of KRS Chapter 198A to prohibit any state or local office from expending funds to provide permanent housing to homeless people if those initiatives lack certain behavioral and rehabilitative requirements. These rules require that such initiatives facilitate appropriate mental health and substance abuse treatment and prohibit criminal activity. However, this does not apply to domestic violence shelters or statutorily created housing programs.

**Section 19** creates a new section of KRS Chapter 65 to permit local governments to designate certain defined areas separate from public spaces as a temporary camping location for unsheltered homeless individuals. Such areas must contain potable water and adequate sanitary facilities. Individuals utilizing these areas shall not be in violation of Section 17.

**Section 20** creates a new section of KRS Chapter 65 to prohibit government officials or bodies from adopting or enforcing any policy which hinders the enforcement of any law prohibiting unlawful camping as set forth in Section 17. Local governments may not discourage any peace officer or prosecuting attorney from enforcing the law, but does not prohibit policies that encourage diversion programs in lieu of a citation or arrest. This section shall also not be interpreted to interfere with general orders that involve resource allocation made by a governmental body, create any cause of action, or permit a peace officer to disobey an order from an official within his or her chain of command. The Attorney General may bring a civil suit against local governments that violate this section and may recover reasonable expenses incurred in any civil action.

**Section 21** amends KRS 503.080 to permit the use of physical force by a defendant if a person is committing unlawful camping on property owned or leased by the defendant, the person has been told to cease, and the person committing the offense has used force or threatened to use force against the defendant.

**Section 24** amends KRS 431.510 to restrict charitable bail organizations from furnishing bail or making bonds on the behalf of persons charged with criminal offenses in certain instances. Such organizations may not furnish bail or make bonds totaling \$5,000 or more for persons charged with any criminal offense before any court in the state. If a person is alleged to have committed an offense of domestic violence and abuse, dating violence and abuse, an offense that would classify the person as a violent offender, is held under a civil court order or warrant issued under KRS 222.430 to 222.437, or has previously received bail, funds, or property from a charitable bail organization, then charitable bail organizations may not furnish bail for any amount.

**Section 31** amends KRS 433.236 to expand actions that are allowable when a person is believed to have stolen goods from a business. It allows peace officers, security agents, merchants, or merchant's employees to use a reasonable amount of force necessary to protect themselves or to prevent the escape of a person detained or the loss of goods for

sale. Persons who use a reasonable amount of force shall be immune from criminal liability for exercising granted authority. Deadly force to protect property is not justified except as provided by KRS Chapter 503.

**Section 32** amends KRS 439.3401 to add offenses which classify a convicted person as a "violent offender". Among these is wanton endangerment in the first degree as described in Section 39 involving the discharge of a firearm, as well as robbery in the second degree and strangulation in the first degree. A person convicted of a Class C or D felony and has previously been classified as a violent offender shall not be eligible for any form of early release until they have served at least 85% of the sentence imposed.

**Section 34** amends KRS 508.075 to broaden the range of locations where making terroristic threats is considered first-degree terroristic threatening. This expansion includes workplaces and any building hosting a gathering of three or more people. Terroristic threatening in the first degree is a Class C felony.

**Section 35** amends KRS 508.078 to similarly broaden the range of locations where making terroristic threats is considered second-degree terroristic threatening, now including workplaces or gatherings of three or more people. It also stipulates that the act can be by any means, including the use of a firearm. Terroristic threatening in the second degree is a Class D felony except under additional circumstances in which case it would be a Class C felony.

**Section 36** amends KRS 158.155 to revise reporting requirements for school employees who have reasonable cause to believe that certain offenses will be or have been committed on school property. If a school employee has reasonable cause to believe that a person has made threats or plans of violence against a school or students, or who knows that a firearm is present on school property, then they are required to report it to local law enforcement and the Kentucky State Police. They must similarly make a report if they have reasonable cause to believe that an assault resulting in serious injury, a sexual offense, kidnapping, assault with a weapon, unlawful possession of a firearm or deadly weapon, use, possession or sale of a controlled substance, or damage to property has occurred on school property or school-sponsored event. Intentional violation of these provisions is a Class B misdemeanor for the first offense, a Class A misdemeanor for the second, and a Class D felony for subsequent offenses.

**Section 38** amends KRS 506.040 to escalate the charge of criminal conspiracy to the severity level of the offense targeted by the conspiracy when the individual conspires with a minor.

**Section 39** amends KRS 218A.1402 to conform with Section 36.

**Section 40** amends KRS 508.060 to increase the penalty of wanton endangerment in the first degree from a Class D to Class C felony if the person discharges a firearm in the commission of the offense.

**Section 41** amends KRS 524.040 to expand what may constitute intimidating a participant in the legal process, now including harassing communications as described in KRS 525.080. Intimidating a participant in the legal process is a Class D felony.

**Section 44** amends KRS 500.080 to change the definition of serious physical injury. The criteria for serious physical injury that previously only applied to children under 12 years of age now apply to family members of the perpetrator, or members of an unmarried couple, or a dating relationship.

**Section 45** amends KRS 514.020 to revise what shall be considered prima facie evidence of intent to commit theft by deception in cases which involve a leased or rented property. The number of days which a person may stay in a leased or rented property after the expiration of the lease or rental agreement before it is assumed to be intent to commit theft by deception is reduced from ten to four days.

**Section 47** amends KRS 520.095 to increase the penalty of fleeing or evading police in the first degree. The penalty is increased from a Class D to Class C felony, and the defendant shall not be eligible for any form of early release until they have served at least 50% of their sentence.

**Section 48** amends KRS 520.100 to increase the penalty of fleeing or evading police in the second degree. The penalty is increased from a Class A misdemeanor to a Class D felony, and the defendant shall not be eligible for any form of early release until they have served at least 50% of their sentence.

**Section 49** creates a new section of KRS Chapter 520 and defines fleeing or evading police in the third degree as knowingly or wantonly disobeying a direction to stop by a peace officer, and in fleeing the person creates substantial risk of physical injury to any person. The offense is a Class A misdemeanor.

**Section 51** amends KRS 514.030 to increase the time within which two or more separate offenses of theft by unlawful taking can be combined and treated as a single offense from 90 days to one year.

**Section 52** amends KRS 520.015 to expand the definition of attempting to escape a penitentiary to include obstructing, disabling, tampering with, removing, damaging, or destroying any video recording or monitoring device within the penitentiary. Attempting to escape from the penitentiary is a Class D felony.

**Section 53** creates a new section of KRS Chapter 15A and proposes the creation of local juvenile restorative justice advisory committees in each county, with the option for joint committees in counties within the same judicial district. Membership of these committees includes various stakeholders such as the Chief District Judge, county attorney, representatives from relevant state departments, law enforcement, local school districts, community members reflecting diversity, and a representative from a victims advocacy

group. The committees are required to meet quarterly and report to the Department of Juvenile Justice, Office of Community and Mental Health Services.

**Section 54** repeals criminal mischief in the third degree, which is a Class B misdemeanor unless it is during an emergency declaration in which case it is a Class A misdemeanor.

**The fiscal impact of HB 5 SCS 1 is indeterminable.** The bill addresses a broad array of issues, and its amendments and updates to current statutes could have diverse financial impacts on local governments, depending on the specific changes enacted. All relevant sections of HB 5 SCS 1 are likely to have some effect on expenditures, but the aggregate effect of all these sections together on expenditures can't be presently determined. However, the impact of a number of individual sections of the bill may be projected.

**Section 8** would have a positive fiscal effect on local jails because it would cause some offenders to be considered Class B felons as opposed to Class C felons because it increases penalties when fentanyl or fentanyl derivatives are involved. Some of these individuals would serve time in state prisons that they otherwise would have served in local jails, resulting in a corresponding cost saving for local jails.

**Section 7** would have a slightly positive fiscal effect on local jails as it would make marginally more persons immune from conviction for possession of a controlled substance and possession of drug paraphernalia.

**Section 10** would have an indeterminate fiscal effect on local jails. The lowered financial threshold of property defacement may result in more individuals charged with criminal mischief in the first degree. Additionally, lowering the penalty from a Class D felony to a Class A or Class B misdemeanor in some cases may result in some individuals serving time in local jails that they otherwise would have served in state prisons. However, it's not clear if this would be offset by the shorter sentences that could be served by such offenders.

**Sections 11, 12, 13, 14, and 53** would have an indeterminate fiscal effect on local jails. The lowered financial threshold of property defacement may result in more individuals charged with criminal mischief in the second degree. Individuals who deface between \$500 and \$1,000 of property would now be charged with third degree criminal mischief, a Class B misdemeanor. However, defacement in that range could result in being charged with a Class A misdemeanor or Class D felony as a result of these sections. The enhanced penalties may result in more time served for more offenders, which would represent an additional cost to local jails, though lowering the penalty in some cases may result in less time served in such instances.

**Section 15** would have an indeterminate positive fiscal effect on local jails. As this section raises the penalty for the offense from a Class D to Class B felony, more individuals would serve time in a state prison who otherwise would have served time in local jails.

**Sections 17 through 21** would have an indeterminate, though likely somewhat negative fiscal effect on local government, law enforcement, and local jails. As these sections deal with a new crime, there is no past conviction data available to project how many convictions would result from this offense. However, every person incarcerated in local jails as a result of this new offense would represent an increase in expenditures for local jails. Section 18 requires local offices that provide permanent housing to homeless individuals put in place certain behavioral requirements as a condition of the aid. Enforcement of these new requirements may necessitate greater personnel expenditures, though the likely level of expenditures required is not clear. Facilitating mental health and substance abuse treatment would also entail a significant expense. However, if the net result of these requirements is that fewer individuals being eligible for such aid, then any additional required expenditures may be offset by lower required funds to administer the aid. Section 19 allows local governments to designate certain areas as temporary camping locations for unsheltered homeless individuals. This would represent a negative fiscal effect for any local government that chooses to designate and construct these areas. Section 20 would have a negative fiscal effect on any local government that is assessed civil damages by the Attorney General, though these cases are likely to be rare. Section 21 would likely have a minimal effect on local law enforcement or jails. The use of force outlined in this section is justified if the person committing the offense has used force or threatened the use of force against the defendant. Such force, if used in self-defense, would already be allowable in most circumstances under current statute. However, to the extent that this section protects individuals who otherwise wouldn't have been protected from prosecution and incarceration, then it would have a slight positive fiscal effect on local jails.

**Section 24** would have an indeterminate, though likely negative, fiscal effect on local jails. This section would decrease the number of individuals eligible to be bailed out by charitable bail organizations. As such, individuals who would have otherwise been released on bail due to the actions of a charitable bail organization would represent a greater daily expense to house these individuals.

**Section 31** would likely have a minimal fiscal impact on local jails and law enforcement. Local law enforcement may need to be informed of the new rules on the reasonable use of force, but this likely wouldn't necessitate any additional expenditures. More individuals who use force as allowed in the section may be immune from prosecution who otherwise wouldn't have, though the amount is not clear.

**Sections 32 and 40** would have an indeterminate, though likely somewhat positive fiscal effect on local jails. It increases the penalty for wanton endangerment in the first degree in certain instances from a Class D to Class C felony. Class C felons are more likely to serve time in state prisons than Class D felons, so any offenders who serve time in state prisons rather than local jails as a result would represent a positive fiscal effect on local jails.

**Sections 34 and 35** would have an indeterminate fiscal effect on local jails. These sections broaden what may be considered terroristic threatening in the first and second

degree, and as such may result in more incarcerations, though the additional number of prosecutions that would result from this change are not known.

**Section 36** would have an indeterminate, though likely minimally negative fiscal effect on local law enforcement and jails. The enhanced reporting requirements may require that law enforcement dedicate more time responding to these reports, but it is not likely that this would necessitate a significant increase in personnel expenditures, as many of the new offenses outlined in the section would already be dealt with by local law enforcement. Violations of this section may result in some additional incarcerations as a result of the new penalties, but there is no basis with which to project how many additional incarcerations there would be.

**Sections 38 and 39** would have an indeterminate fiscal effect on local jails. The fiscal effect in each case depends on the offense that is the object of the conspiracy. If the object of the conspiracy is a Class A misdemeanor, then the effect would be negative if it increases the required time of incarceration. If the object is a felony, then the effect may be slightly positive if offenders serve more time in state prisons rather than local jails as a result.

**Sections 40, 42, 43, 47, and 48** would likely have an indeterminate positive fiscal effect on local jails. These sections all either raise the penalty of an offense from either a Class D to Class C felony or from a Class A misdemeanor to a Class D felony. In either case, more offenders will serve time in state prisons rather than local jails as a result of the increased penalty, resulting in fewer expenditures required by local jails to house inmates.

**Sections 41, 44, 45, and 49** would all have an indeterminate, though likely somewhat negative fiscal effect on local jails. Each of these sections either lower the threshold of what may be considered an offense, or create a new misdemeanor offense. In cases where these expanded criteria result in more convictions and incarcerations in local jails, then there would be a corresponding cost. However, it's not clear how many more convictions and incarcerations would result from these sections.

**Section 51** would have an indeterminate fiscal effect on local jails. The section could increase the number of offenders who would have two or more separate offenses of theft by unlawful taking combined into a single offense. Depending on the effect on offense levels in a given case, the section could have either a positive or negative fiscal effect on local jails. For example, if the offense is raised from a Class B misdemeanor to a Class A misdemeanor, then it would have a negative effect. However, if the offense were raised from a Class A misdemeanor to a felony, then it would have a positive effect by shifting more costs to state correctional facilities.

**Section 52** would have a minimally negative fiscal effect on local jails. Expanding the definition of the offense may result in more convictions and lengthening the term of incarcerations, but as a Class D felony, offenders are more likely to be housed in state correctional facilities than local jails.

**Section 53** would have a minimal fiscal effect on local government. For local representatives of the committee, there may be some costs associated with convening and supporting the newly formed advisory committees, such as administrative expenses, training for members, and coordination efforts.

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 \$44.97 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 \$44.97 per day.

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 \$44.97, 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.

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 \$44.97, 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.

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

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