

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 12 amends KRS 149.410 to provide conforming language with Section 11.

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 51** repeals criminal mischief in the third degree.

Section 14 amends KRS 525.220 to removed 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.

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 B felony if the contraband is fentanyl, carfentanil, 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.

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, or is held under a civil court order or warrant issued under KRS 222.430 to 222.437, then charitable bail organizations may not furnish bail for any amount.

Section 29 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 and civil liability for exercising granted authority.

Section 30 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. 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 31 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.

Section 32 amends KRS 508.075 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.

Section 33 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 a law enforcement agency. 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.

Section 35 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 36 amends KRS 218A.1402 to conform with Section 37.

Section 37 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 38 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.

Section 41 amends KRS 403.763 to increase the penalty for second or subsequent violations of an order of protection within a five-year period from a Class A misdemeanor to a Class D felony. The victim of the second or subsequent order of protection does not have to be the same person who was the victim of the first. The five-year period is determined by the dates on which the violations occurred.

Section 42 amends KRS 456.180 to increase the penalty for second or subsequent violations of an order of protection within a five-year period from a Class A misdemeanor to a Class D felony. The victim of the second or subsequent order of protection does not have to be the same person who was the victim of the first. The five-year period is determined by the dates on which the violations occurred.

Section 43 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 44 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 46 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 47 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 48 creates a new section of KRS Chapter 520 to establish fleeing or evading police in the third degree, defined in subsection 1, as a Class A misdemeanor.

Section 50 amends KRS 514.030 to change the amount of time in which two separate instances of theft by unlawful taking can be combined and treated as a single offense from 90 days to one year. In addition, the section states that offenses committed in different jurisdictions within the Commonwealth may be tried in any of the jurisdictions in which the venue would be proper for at least one of the offenses.

The fiscal impact of HB 5 HCS 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 HCS 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.

Sections 7 and 8 would have a positive fiscal effect on local jails because it would cause some offenders to be considered Class B felons or Class A 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 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 51 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 29 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 30 and 37 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 31 and 32 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 33 would have an indeterminate, though likely minimal fiscal effect on local law enforcement. 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.

Sections 35 and 36 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 37, 41, 42, 46, and 47 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 38, 43, and 44 would all have an indeterminate, though likely somewhat negative fiscal effect on local jails. Each of these sections lower the threshold of what may be considered an 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 48 would have an indeterminate fiscal effect on local jails, as the section creates a new offense. However, each person incarcerated due to the offense would represent an additional expense for jails to house that person.

Section 50 would have an indeterminate fiscal effect on local jails. Combining the value of property being stolen as one offense may raise the offense level for some to the extent that they would be housed longer in local jails. However, if the value is combined such that the offense level is raised to the felony level, then it may actually save money for local jails if the responsibility for housing the inmate is given to state correctional facilities.

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; Kentucky Department of Corrections

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