

**Local Mandate Fiscal Impact Estimate  
Kentucky Legislative Research Commission  
2017 Regular Session**

**Part I: Measure Information**

**Bill Request #:** 1035

**Bill #:** HB 222 GA

**Bill Subject/Title:** AN ACT relating to shock probation

**Sponsor:** Representative Robert Benvenuti

Unit of Government:	<u>   </u> City	<u>  x  </u> County	<u>  x  </u> Urban-County
	<u>  x  </u> Charter County	<u>   </u> Consolidated Local	<u>  x  </u> Unified Local Government

**Office(s) Impacted:** Jailer

**Requirement:**   x   Mandatory     Optional

**Effect on Powers & Duties:**   x   Modifies Existing     Adds New     Eliminates Existing

**Part II: Purpose and Mechanics**

The purpose of HB 222 GA is to prohibit granting shock probation where a defendant was convicted of driving under the influence and causing a death in specific cases. The bill would amend KRS 439.265 to prohibit shock probation to a defendant who has been convicted of driving under the influence in violation of KRS 189A.010, **and** either KRS 507.040 (manslaughter in the second degree), KRS 507A.040 (fetal homicide in the third degree), KRS 507.050 (reckless homicide), or KRS 507A.050 (fetal homicide in the fourth degree) arising out of the same incident.

**Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost**

**The fiscal impact of HB 222 GA on local governments would be none to minimal**

Manslaughter 2<sup>nd</sup> degree and Fetal Homicide 3<sup>rd</sup> degree are both Class C felony offenses. Reckless Homicide and Fetal Homicide 4<sup>th</sup> degree are Class D felony offenses. The Department of Corrections (DOC) reports that in 2016 six (6) inmates serving jail time on a Manslaughter 2<sup>nd</sup> degree or Reckless Homicide conviction were released on shock probation, and only three (3) of those inmates had an accompanying DUI conviction. Fetal Homicide 3<sup>rd</sup> degree and Fetal Homicide 4<sup>th</sup> degree are Class C and D felonies,

respectfully. The DOC reports that it currently has four (4) offenders incarcerated on Fetal Homicide 3<sup>rd</sup> degree and none incarcerated on Fetal Homicide 4<sup>th</sup> degree. The DOC does not know how many of the Fetal Homicide 3<sup>rd</sup> degree offenses were the result of a violation of KRS 189A.010. While the number of defendants in Kentucky convicted of a DUI offense **and** fetal homicide is unknown it likely is not a high number. Given the likely small number of defendants to whom HB 222 GA would apply, a bill denying consideration of shock probation for such inmates would have little fiscal impact on local governments.

What impact there could be would be due to a local jail holding some state inmates for a longer period because they aren't eligible for shock probation. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the per diem and medical expenses that the Department of Corrections (DOC) pays a jail to house felony offenders. Based on this amount, each felony inmate, whether Class C or D, not eligible for shock probation should cost a local jail \$11,439.10 a year (\$31.34/day x 365 days) and the jail should be reimbursed that same amount. Upon sentencing a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

The local government is responsible for incarcerating a Class C felony defendant until disposition of his or her case in one of Kentucky's 76 full service jails or five (5) life safety jails. While, again, the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which is the amount the DOC pays a local jail for housing a state inmate. Class C felons are ineligible for placement in a local jail until they are classified at the lowest custody level with 24 months or less to their minimum sentence expiration date or parole eligibility date. DOC pays local jails \$31.34 per day to house Class C felons. Since the per diem pays for the estimated average cost of housing a Class C felon, the per diem may be less than, equal to, or greater than the actual housing cost.

**Data Sources:** Kentucky Department of Corrections

**Preparer:** Mary Stephens      **Reviewer:** KHC      **Date:** 2/28/17