

## **VIII. JAILER**

### **Background**

The Kentucky Constitutions of 1792 and 1799 did not refer to the office of jailer. Article VI, Section 1, of the 1850 Constitution required each county to elect a jailer, and two provisions of the present Constitution refer specifically to the office. Section 99 provides for the election of a jailer in each county. Section 105 permits the legislature to consolidate the offices of sheriff and jailer in any or all counties, provided the office of sheriff is retained and the jailer's duties are assumed by the sheriff. This provision results from a compromise between two factions of the 1890 constitutional convention, one wanting to abolish the office of jailer, and the other urging retention of the offices of sheriff and jailer.<sup>31</sup>

The Kentucky constitutional provisions relating to the office of jailer are unique. No other state constitution refers to jailers.<sup>32</sup> In most states the sheriff or one of his deputies would perform the duties assigned to a Kentucky jailer.<sup>33</sup>

### **Qualifications**

A jailer's qualifications are prescribed by constitutional provision. He must give bond as required by law, must be at least twenty-four years of age, must have two years' residence in the state and a year in the county in which he is a candidate (Ky. *Const.*, Secs. 100 and 103). Before assuming office, he takes the oath prescribed by the Constitution (Sec. 228) and executes bond before the judge/executive of the county in which he is elected. Sureties for this bond are approved by the fiscal court for a minimum of \$10,000, and the bond is filed in the county clerk's office. No coroner, sheriff, sheriff's deputy, county judge/executive, circuit judge, county or circuit clerk, or attorney may be a surety for the bond (KRS 71.010).

A vacancy in the office of jailer is filled by an appointment of the county judge/executive. The length of appointment is governed by the Kentucky Constitution, Section 152, and KRS 63.220.

### **County Jail System**

The fiscal court of each county is required to provide for the incarceration of prisoners arrested in the county or sentenced or held by order of the courts in the county. This responsibility may be met in several ways. The fiscal court may provide and maintain a jail or contract with another county or a city for the incarceration and care of its prisoners. If the fiscal court contracts with another county or city, it must provide for the

transportation of prisoners, including provision of vehicles, drivers and guards. A county may provide facilities for holding prisoners for limited periods of time, and contract with another county or a city for longer periods of incarceration. A county may also enter into an interlocal agreement, pursuant to KRS 65.210 to 65.300 to provide or to use jail facilities (KRS 441.025). Thus a county has the flexibility to maintain its own jail, to contract with another county or a city for the use of its facilities, or to participate in a regional jail system, should such a system be established.

Providing for the incarceration of prisoners is an expensive undertaking for counties. County jails will become more expensive as Kentucky seeks to upgrade them, pursuant to its own standards and regulations and as a part of a nationwide response to federal court mandates for better jail facilities and correctional programs. State government does provide considerable assistance to counties to help them fund their jails. Under KRS 441.206, monies appropriated for county jails are required at least to equal those for fiscal year 1983-84 or, in the case of certain counties, the amount that should have been paid in 1983-84. Any additional amounts are to be allocated on the basis of the following formula:

- a) Sixty percent of the allocation shall be based on the amount of the 1983-84 funding formula each county received, or should have received;
- b) Ten percent of the allocation is to be based on each county's comparative ranking of median household income in inverse order, as determined by the 1980 federal census of population; and
- c) Thirty percent of the allocation is based on the proportion of each county's age at risk population (ages 18-34) to the state total, as determined by the 1980 federal census of population.

In no event shall any county receive less than \$24,000 from the state treasury for the care and maintenance of prisoners charged with or convicted of violations of state law (KRS 441.206(4)). The state will also provide training for jailers and their deputies through the Department of Corrections; a jailer's expense allowance of \$300 a month helps defray the cost of the jailer's participation in the training program (KRS 441.115). Finally, the state has imposed a \$5 court cost increment on criminal cases in district court to be paid to the county treasurer for jail operation costs and the transportation of prisoners, and an additional \$10 in court costs to be paid to the state treasury for the Kentucky Local Correctional Facilities Construction Authority (KRS 24A.175(5) & (6)).

The county may receive revenue from the federal government, cities or other counties for holding prisoners for those units of government (KRS 441.025, 441.035). In addition, if a Class D felon is sentenced to an

indeterminate term of five years or less, he will serve that term in a county jail. Counties which choose not to house Class D felons will be granted a waiver by the Commissioner of the Department of Corrections. Counties which do house Class D felons will receive a per diem amount determined according to KRS 431.215(2).

Prisoners in work release status may be charged up to twenty-five percent of gross daily wages, not to exceed forty dollars per day, nor be less than twelve dollars per day, for the costs of their imprisonment (KRS 439.179). The district court may assess a reimbursement fee, subject to the same maximums applicable to work release prisoners, payable to the county, urban-county, or charter county treasurer, on convicted misdemeanor offenders to help pay for their room and board in the jail (KRS 534.045).

### **Medical Expenses**

KRS 441.045 sets out the applicable law on health care in county jails. The county is required to pay for the cost of providing necessary medical, dental and psychological care for indigent prisoners in the county jail from the county jail budget. The cost of providing necessary medical, dental, or psychological care for prisoners held pursuant to a contractual agreement with another county or a city is paid as provided by contract between the counties or the city and county. When the cost of such care for a prisoner exceeds \$2,000, as calculated by using the maximum allowable costs to similar persons or facilities for the same or similar services under the Kentucky medical assistance program, the state is required to reimburse the county for that portion of the costs that exceeds \$2,000. The state reimbursement is subject to the following terms and conditions:

- (a) The care is necessary, meaning the care is of a nonelective nature that cannot be postponed until after the period of confinement without hazard to the life or health of the prisoner. The physician attending the prisoner shall certify, under oath, that the care was necessary;
- (b) The prisoner is indigent, as defined pursuant to KRS 31.120, or is uninsured; and
- (c) No state reimbursement to the county for care provided by physicians, hospitals, laboratories, or other health care providers shall exceed the maximum payments allowed to similar persons or facilities for the same or similar services under the Kentucky medical assistance program, except as otherwise provided by law.

### **Jail Standards and Inspections**

The state Department of Corrections promulgated regulations establishing minimum standards for jails of counties which elect to house state prisoners in their jails. These standards include provisions for health and safety conditions, fire safety, jail operations, recordkeeping and administration, curriculum of basic and continuing annual training for jailers and jail personnel, custody, care and treatment of prisoners, medical care and jail equipment, renovation and construction. The Department of Corrections provides technical assistance to local governments to help them comply with the standards (KRS 441.055). The Department must also adopt the standards of the Jail Standards Commission and promulgate regulations for those counties that elect not to hold state prisoners. However, these standards must be limited to health and life safety conditions. The fiscal court or urban-county council is also required to prescribe rules for the government, security, safety, and cleanliness of county jails and the comfort and treatment of prisoners, so long as such rules are consistent with state laws and regulations (KRS 441.045).

The Department of Corrections employs jail inspectors, who inspect each jail at least twice a year. The jailer must allow the department inspectors access to the jail or any part of the jail at any reasonable time, as well as access to all books, records and data pertaining to the jail which the department deems necessary to fulfill its jail regulation responsibilities (KRS 441.064). The department submits an annual report of its inspections to the jailer and the fiscal court. The county judge/executive may also inspect the jail at any reasonable time (KRS 441.045).

When the Department of Corrections finds violations of the state laws or regulations pertaining to jails housing state prisoners, the commissioner of the department or his designee must order that the violations be corrected. The commissioner may order that a jail or a part of a jail be closed, he may order that the jail not house certain types of prisoners, he may order that a county contract with another county for the incarceration of prisoners, or he may order that the jail cease housing state prisoners (KRS 441.075). A report of violations of the health and life safety regulations (KRS 441.055) in any jail by the Department to the commissioner will result in an order for immediate correction. The commissioner may order the jail closed until the violations are corrected.

### **Training for Jailers and Jail Personnel**

The Department of Corrections conducts a jail staff training program to instruct jailers and jail personnel in implementing state jail standards. Jailers will serve with professionals in jail administration on a curriculum advisory committee to advise the department on training needs. The state will provide each jailer with a \$300 monthly expense allowance to help pay for the cost of

training the jailer. In order to qualify for this allowance, the jailer must complete a basic training course within one year of taking office, and he must complete annual continuing training (KRS 441.115). However, in order to receive the expense allowance during their first year in office, jailers who have been elected to the office for the first time must, before taking office, successfully complete the basic jailer training program. Time extensions are permitted for illness (KRS 441.115).

## **Powers and Duties**

### **Keeping the Jail**

Each county jailer has custody, rule and charge of the county jail and all persons in the jail. If there is a residence in the jail, either he or one of his deputies may live in it (KRS 71.020). The jail must be kept comfortable, warm, clean, and free from vile odors. Prisoners confined in the jail must have sufficient bed clothing (paid for out of the county levy) (KRS 71.030).

At the time of booking, the jailer receives and keeps in jail all persons lawfully committed to his custody until they are discharged, unless prisoners are in need of emergency medical attention, in which case the arresting officer is required to obtain medical attention for them prior to their delivery to the jail. During their confinement, he must treat them humanely and furnish them proper food and lodging. If a prisoner dies during confinement, the jailer delivers his body to friends, if requested, or has it decently buried at the expense of the county (KRS 71.040).

### **Transportation of Prisoners**

KRS Chapter 441 mandates the fiscal court of each county to provide for the transportation of prisoners, as necessary, from the jail budget. All vehicles used for the purpose of transporting prisoners must be equipped with security screens and two-way radios. The fiscal court is not required to provide for the transportation of prisoners on work release or to prisoners being held out of the county at the time of their release.

KRS 441.510 establishes the procedures for the transportation of prisoners. Its provisions are as follows:

- (1) If an accused is confined in a detention facility, he shall be transported as necessary in accordance with the following provisions, unless otherwise ordered by the court:
  - (a) If he is lodged in an urban-county facility in the county where the trial is to be held, the jailer must carry out this duty.

- (b) In all other cases the sheriff or jailer of the county where the prisoner is incarcerated must carry out this duty.
- (2) If an accused is sentenced to confinement, the sheriff must deliver him to the proper detention facility, with the exception that:
  - In the case of a sentence to an urban-county detention facility, the jailer must carry out this duty.
- (3) In each county the fiscal court, or the legislative body of a charter county government, as appropriate, must adopt a transportation plan which establishes the party responsible for transporting prisoners as necessary:
  - (a) The fiscal court, or the legislative body of a charter county government, as appropriate, may require the jailer to serve as transportation officer, to be responsible for transporting prisoners as necessary; or
  - (b) The fiscal court, or the legislative body of a charter county government, as appropriate, may require the sheriff to serve as transportation officer, to be responsible for transporting prisoners as necessary; or
  - (c) The fiscal court, or the legislative body of a charter county government, as appropriate, may adopt any reasonable transportation plan, so long as the party responsible for transporting prisoners is specified.
- (4) In any county where there is no jail and the jailer does not transport prisoners, the jailer will serve as a bailiff to the circuit and district courts of the county, as provided for in KRS 71.050. The fiscal court may also employ the jailer as superintendent of county buildings and grounds, as provided for in KRS 67.130, but the jailer must agree, and compensation for these services shall be in addition to the regular salary paid the jailer.

## **Jail Budget**

The county jailer has statutory responsibilities in the preparation of the jail budget. Working with the judge/executive and treasurer, he must develop and provide to the fiscal court a proposed line item budget and an estimate of revenues from all sources. This must be done by April 1 of each year (KRS 441.215(1)). The fiscal court must consult with the jailer before making any amendments to the jail budget, and only the court has the authority to transfer funds between line items (KRS 441.215(3)). If the jailer feels that a proposed or amended budget is inadequate, he must notify the fiscal court and, if the jail

holds state prisoners, the Department of Corrections, in writing (KRS 441.215(4)).

KRS 441.235 mandates the county treasurer to keep books of accounts of all receipts and disbursements from the jail budget and to make such reports as are required by the state local finance officer. The county treasurer, in cooperation with the jailer, is required to make a monthly report to the fiscal court on:

- (a) All purchases from the jail account for the preceding month for final fiscal court approval; and
- (b) The current condition of the jail account, including all jail revenues received, expenditures for the month, expenditures for the year-to-date and unexpended balances by line item.

## **Reports**

Under KRS 441.105(2), the jailer must report monthly to the Department of Corrections the following information on each prisoner:

1. Whether the prisoner is charged with a felony or a misdemeanor;
2. The statute or ordinance the prisoner is charged with violating;
3. The unit of government whose law or ordinance the prisoner is charged with violating
4. Whether the prisoner is awaiting trial or has been convicted;
5. The age and sex of the prisoner; and
6. The county responsible for incarcerating the prisoner.

The jailer must also report quarterly to the fiscal court on the physical condition of the jail, the number of jail personnel, and personnel needs (KRS 441.105(1)).

## **Court Services**

The jailer is an officer of the circuit and district courts of his county. In any county where there is no jail and the jailer does not transport prisoners, the jailer is required to serve as a bailiff to the circuit and district courts (KRS 71.050). Summonses or orders for provisional remedies in a civil action or proceeding may be directed to the jailer at the request of the party in whose

behalf they are issued, provided the jailer is not an interested party (KRS 454.140).

### **Responsibility for County Buildings**

The fiscal court of each county is responsible for the maintenance and operation of all county buildings, grounds and other properties. The county judge/executive has the duty of carrying out or executing fiscal court policy in relation to county buildings and property. With agreement by the jailer, the fiscal court may hire the jailer as the superintendent of any buildings or properties at the county seat (KRS 67.130).

**Jail and County Property.** The jailer must take charge of furniture, bedding, and property belonging to the jail and any other county property for which he may act as superintendent. If any property is lost or destroyed by reason of the jailer's negligence, he may be liable on his official bond (KRS 67.170).

**Jailer's Residence.** If the county owns the jailer's residence, the fiscal court must make an annual appropriation sufficient to maintain it in clean, comfortable, and presentable condition. Funds appropriated for the jailer's residence are to be expended by the jailer (KRS 67.130).

### **Jail Canteen**

The jailer may operate a canteen for the benefit of the prisoners. He may assign jail employees or prisoners to work in the canteen. The jailer must maintain accounts on the receipts and disbursements of the canteen, and he must report to the county treasurer annually on the canteen account. Profits from the canteen may be used only for the benefit or recreation of the prisoners (KRS 441.135).

### **Preparing Bail Bond**

With the approval of the fiscal court, the jailer may prepare a bail bond pursuant to KRS 30A.060(3). He must collect a fee of five dollars from the defendant and provide the defendant a receipt. He must pay bonding fees to the county treasurer by the tenth day of each month. The treasurer must deposit the bonding fees in the jail fund (KRS 431.5305).

### **Work and Educational Release for Misdemeanants**

Persons sentenced to jail for a misdemeanor, non-payment of a fine or forfeiture, or contempt of court may be granted by the court the privilege of leaving the jail during reasonable hours for the purpose of seeking

employment, working, conducting business, attending an educational institution, obtaining medical treatment, or in the case of a woman, attending to the needs of her family. The jailer shall advise the court in establishing criteria to determine a prisoner's eligibility for work release. The jailer is required to notify the Cabinet for Human Resources of unemployed prisoners, and that Cabinet is required to seek employment for them. Every prisoner gainfully employed is liable for the cost of his board in the jail for an amount up to twenty-five percent of his gross daily wages, not to exceed forty dollars per day. The jailer may refuse to let the prisoner leave the jail for any breach of discipline or other violation of jail regulations, for a period not to exceed five days (KRS 439.179).

### **Community-Service Related Work**

When a defendant has been convicted of a crime and sentenced to the county jail, he may be worked at some community-service-related project in the county where he is imprisoned. A community-service-related project means a task for a county, city or a special district, or some agency of one of these units of government. The jailer may advise the fiscal court in the adoption of a written policy on community service work. After the adoption of this written policy, the jailer may permit prisoners to work on community service projects. The county judge/executive must give his written approval to each prisoner's participation in the work program. The county judge/executive selects the place where the prisoners shall work. The jailer and the county judge/executive must consider the physical and mental ability of each prisoner, and the security of the jail and the public, and not assign any prisoner to unduly hazardous work or work that would endanger others. Any prisoner with a valid medical excuse may decline to work at community-service-related projects without penalty or punishment (KRS 441.125).

### **Deputies**

Deputies have the same powers and are subject to the same penalties as the jailer (KRS 71.060). The jailer is liable on his official bond for the conduct of his deputies. KRS 71.060 also gives the jailer the responsibility for the appointment and removal of jail personnel. The jailer may dismiss his deputies at any time with cause. The number of jail personnel is set by the fiscal court in the jail budget. The fiscal court is mandated to establish education and training requirements for deputies as permitted by administrative regulations adopted by the Department of Corrections pursuant to KRS 441.055.

If in any county there is no jail, the jailer is not entitled to nor is he permitted to appoint any jail personnel (KRS 71.065).

Deputy jailers are compensated by a salary set by the fiscal court. Deputies' salaries must be initially set by the first Monday in May of the year in which county officials are elected, but the fiscal court may, by the first Monday in May of successive years, review and adjust such salaries on the request of the jailer (KRS 64.530(4)).

### **Federal, State and City Use of the County Jail**

The federal government may use the jail of any county, and any city within the county may use the county jail. A jailer must receive and confine in jail, until lawfully discharged, persons committed under the laws of the United States or the ordinances of any city within the county (KRS 441.035). The jailer must also receive persons ordered into confinement prior to trial and persons committed to confinement by the process or mandate of a military court (KRS 35.285 and 35.055).

A prisoner being moved from one state to another may be lodged in the county jail. The jailer must receive him and safely keep him until the person having custody of him is ready to proceed. Written evidence showing that the prisoner's extradition has been ordered must be presented by the officer having custody of him. Expenses of keeping the prisoner are charged to the officer responsible (KRS 440.260).

### **Transfer of Prisoners**

A circuit judge may, for security reasons, transfer prisoners from one county jail to another, or to the penitentiary most convenient to the county (KRS 441.520 and 441.540). When the circuit judge is not in the county, the district judge may order such transfers.

As soon as the sheriff receives an order to transfer prisoners, he makes the transfer designated by the order. He delivers with the prisoners a copy of the transfer order, and takes from the receiving jailer a receipt for the prisoners (KRS 441.530).

An order directing transfer is conclusive evidence that the transfer is proper and to the correct jail. Such an order justifies the jailer's holding of any prisoner and protects the jailer in any action against him for false imprisonment (KRS 441.530).

### **Duties of a Jailer on Going Out of Office**

When any jailer goes out of office, he must deliver to his successor the custody of the jail and all confined prisoners. He must give the incoming jailer all official papers by which prisoners were committed to his custody or released from his custody (KRS 71.100).

## **Compensation**

HB 810 enacted by the 1998 General Assembly made significant changes in the way certain county officials, including jailers who operate a full-service jail are compensated.

HB 810 eliminated the maximum salary for the specified officers and established a new salary schedule, based on the varying population of the counties and the years of service of the officeholder. This amendment will result in salaries for some county officials ranging from \$49,567 to \$82,612, beginning the first Monday in January of 1999.

Some controversy has erupted over the provisions of HB 810. Several county officials have voiced opposition to the new salary schedule, citing inadequate funding for the raises in already strained county budgets.

A lawsuit was filed in the Campbell County Circuit Court, challenging the salary provisions in HB 810. In September 1998, the Campbell County Circuit Court ruled that HB 810 is "...declared unconstitutional to the extent that it declares the offices in issue (county clerks, sheriffs, county judge/executives, and jailers operating a full-service jail) to have duties or jurisdiction co-extensive with that of the Commonwealth without specifying said duties or jurisdiction..." and "...that the Defendant and the parties aligned with the Defendant, Commonwealth of Kentucky, are permanently enjoined from implementing and enforcing these provisions of HB 810 as being in excess of the limits set forth in the Constitution of Kentucky Section 246" (Campbell Circuit Case No. 98-CI-00604 Fisher and Chandler vs. Commonwealth of Kentucky).

The Department for Local Government, among others, has requested that this case be heard by the State Supreme Court and that decision is still pending.

In addition, SB 396 amended KRS 441.245 to specify that no jailer holding office on or after January 6, 1999 shall receive an annual salary of less than \$20,000. The salaries of jailers who are not included in the salary schedule in KRS Chapter 64 may be set at a higher level, if the salary does not exceed the constitutional salary limit applicable to jailers. However, these jailers' salaries shall at least equal the prior year's level and may be adjusted by the fiscal court for the change in the prior year's Consumer Price Index.

## **Consolidation of the Offices of Sheriff and Jailer**

Kentucky's Constitution grants the General Assembly the authority to consolidate the offices of jailer and sheriff in any county, with the sheriff

performing the duties of the jailer (Ky. *Const.*, Sec. 105). The General Assembly has consolidated the offices of sheriff and jailer in counties containing a city of the first class and in urban-county governments (KRS 71.110).

### **The Jefferson County Jail**

KRS Chapter 67B grants fiscal courts in counties containing a city of the first class in which the offices of jailer and sheriff have been consolidated the authority to create a metropolitan correctional services department. Upon the creation of such a department, all the duties and authority of jailers and sheriffs in relation to the county jail or corrections are transferred to the department (KRS 67B.030). The sole remaining duty of the sheriff pertaining to jails is an annual inspection and report on county correctional facilities (KRS 67B.070). KRS 67B.050 lists the responsibilities and powers of a metropolitan correctional services department.

### **Lexington-Fayette Urban-County Jail**

KRS Chapter 67A grants the legislative body of any urban-county government in which the offices of sheriff and jailer have been consolidated the power to create a correctional services division. The division is responsible for all duties, responsibilities and liabilities of the sheriff and jailer with reference to the operation and maintenance of the county jail. The sheriff is responsible for an annual inspection and written report, to be given to the legislative body of the urban-county government and the commissioner of the Department of Corrections (KRS 67A.028).

### **Penalties and Restrictions**

A jailer may be indicted in the county in which he resides for misfeasance or malfeasance in office and for willful neglect in the discharge of his official duties. If convicted, he may be fined not less than \$100 nor more than \$1,000. Upon a judgment of conviction, he must vacate his office (KRS 61.170).

If a jailer denies the United States or a city within his county the use of the jail, or charges these jurisdictions any fees not authorized by law, such act will be considered misfeasance in office, for which he may be fined by the district court or indicted and fined at the discretion of a jury (KRS 441.990(1)).

The office of jailer is incompatible with other county offices (KRS 61.080). No jailer may be a state or city officer or employee at the same time he is serving as jailer (KRS 61.080). A jailer must vacate his office when he accepts an incompatible position (KRS 61.090).

For failing to take custody, rule, and charge of his jail and all persons in it, a jailer is subject to conviction for misfeasance in office. The district court may fine the jailer for misfeasance or he may be indicted by the grand jury (KRS 71.990).

A jailer is liable to the county upon his official bond for the value of any county property in his charge that is lost or destroyed by reason of his negligence or fault. The county may enforce this liability by notice and motion in the district court (KRS 67.170).

Any jailer who willfully conceals or destroys any record with the intent to violate the provisions of KRS Chapter 61 relating to public records shall be guilty of a Class A misdemeanor for each separate violation. Any official of a public agency who fails to produce any record after entry of final judgment directing that such records be produced shall be guilty of contempt (KRS 61.991).