

CORRECTIONS IMPACT STATEMENT

SESSION: 15RS

BILL #: HB 112

BR #: 301

DOC ID#: BR030100.100 - 301 - 1010

BILL SPONSOR(S): Rep. M. Denham AMENDMENT SPONSOR(S):

SUBJECT: AN ACT relating to controlled substances and creating an emergency.

SUMMARY OF LEGISLATION: Amend KRS 72.026 to increase the scope of mandatory coroner reporting in deaths involving Schedule I controlled substances; amend KRS 189A.010 to create drugged driving defense provision; create a new section of KRS Chapter 205 to specify the controlled substance treatment services to be offered by the Department for Medicaid Services; amend KRS 217.186 to increase the availability of opioid-overdose drug Naloxone; create a new section of KRS Chapter 218A to provide a "good samaritan" defense to those seeking emergency help in drug overdose situations; create a new section of KRS Chapter 218A to provide safe harbor provisions for drug-addicted pregnant women who are in treatment; amend KRS 218A.1412 to establish a 50% minimum time service requirement for higher-level traffickers in heroin or methamphetamine, with the ability to deviate from that requirement in cases where the defendant provides assistance to the prosecution; amend KRS 218A.1413 to clarify persistent felony offender applicability in trafficking offenses; amend KRS 218A.1414 to increase penalty for first offense of trafficking in the third degree if involving 120 or more dosage units and clarify persistent felony offender status; amend KRS 218A.500 to exempt suspects who warn officers of sharp objects from some charges; amend KRS 625.050 to prohibit petitions to terminate the parental rights of pregnant women in treatment; amend various sections of Chapter 222 regarding involuntary treatment for alcohol and drug abuse; encourage the Cabinet for Health and Family Services to study community response to opioid addiction and to make any recommendation for legislation relating to substance abuse to the Interim Joint Committee on Health and Welfare by November 30, 2015; encourage the Department of Criminal Justice Training to offer voluntary regionalized in-service training on the topic of heroin; EMERGENCY.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|---|--|
| <input type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input checked="" type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input checked="" type="checkbox"/> Increases incarceration | <input type="checkbox"/> Decreases incarceration |
| <input type="checkbox"/> Reduces inmate/offender services | <input type="checkbox"/> Increases inmate/offender services |
| <input type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions |
| <input checked="" type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) _____ | |

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$60.38. Most Class D felons are housed in one of 79 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$32.92 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

Projected Impact: NONE MINIMAL MODERATE SIGNIFICANT

Potential Impact: Section 5 Provides that a person shall have a defense for a violation of a criminal offense prohibiting the possession of a controlled substance or the possession of drug paraphernalia for persons seeking emergency help in drug overdose situations. DOC would request an exemption for prisoners housed in a correctional setting in order to ensure the safety and security at all correctional facilities.

Section 7(1). Provides that any substance in this section where the substance contains even a detectable amount is guilty of trafficking in a controlled substance in the first degree. While it is not possible to predict how many additional felony convictions this bill would generate, there will be an increase in costs associated with additional felony convictions.

Section 7(3). Creates a fifty percent minimum service requirement for any person convicted of trafficking in one (1) or more substances containing a detectable amount of heroin and/or methamphetamine in an aggregate amount of four (4) grams or greater. Creating a minimum service requirement for heroin and/or methamphetamine convictions is expected to increase costs associated with longer periods of incarceration. Current provisions reflect a person is guilty of trafficking in the first degree when there is two (2) grams or more of heroin or methamphetamine, by establishing a minimum service requirement for heroin and/or methamphetamine convictions based on an aggregate amount of four (4) grams or greater has the potential to increase custody levels, which could lead to an increase in housing costs. Additionally, by establishing a minimum service requirement for a quantity that differs from the offense and is not specified in a court judgment would make it difficult to ensure accurate sentence and parole calculations and inmate classification.

The chart below reflects the average number of new admissions to DOC for trafficking in a controlled substance and the difference in prison days if those offenders served 50% of their sentences. DOC cannot determine how many inmates trafficked in heroin and/or methamphetamine since some trafficking convictions do not specify in the judgment which drug(s) was involved (as indicated in the All Other Trafficking field below). However, the following example calculates the additional cost to DOC for ten and one hundred new admissions that would meet the criteria specified in this bill proposal. As indicated, the impact on DOC could be substantial.

	Average Sentence	Average Time Served before Release	50% Of Average Sentence	Difference	Average Admissions Per Year
Trafficking Methamphetamine	2007 Days	437 Days	1004 Days	567 Days	137
Trafficking Heroin	2007 Days	313 Days	1004 Days	691 Days	268
All Other Trafficking	1864 Days	543 Days	932 Days	389 Days	1,589

10	100	New admissions for Trafficking in Controlled Substance Heroin
691	691	Avg. additional days served to satisfy 50% of sentence
<u>\$ 60.38</u>	<u>\$ 60.38</u>	Avg. state facility cost (Class B or C convictions)
\$ 417,225.80	\$4,172,258.00	Additional cost to DOC per year
10	100	New admissions for Trafficking in Controlled Substance Meth
567	567	Avg. additional days served to satisfy 50% of sentence
<u>\$ 60.38</u>	<u>\$ 60.38</u>	Avg. state facility cost (Class B or C convictions)
\$ 342,354.60	\$3,423,546.00	Additional cost to DOC per year

Section 7(4). Provides the court the ability to deviate from the minimum parole eligibility service requirement in cases where the defendant provides assistance to the prosecution. By allowing the court to determine a parole eligible service requirement, without service restrictions, would hinder the Departments ability to provide accurate population projections. The Department would be amenable to the court deviating from the minimum parole eligibility service requirement by reverting to the parole board KAR governing parole eligibility.

Section 9. Increases the penalty for anyone guilty of trafficking in a controlled substance in the third degree from a Class A misdemeanor to a Class D felony if the offense involves trafficking in one hundred twenty (120) or more dosage units. While it is not possible to predict how many additional felony convictions this bill would generate, there is a potential for increased in costs associated with an increase in incarceration.

A Class D Felony sentence is 1 to 5 years.

10 Class D Felons cost \$120,145 to \$600,724.

1 Class D Felon costs Ky. \$12,014 to \$60,072.

100 Class D Felons cost \$1.2M to \$6M.

Section 10. Would permit a peace officer to ask if an individual has a sharp object before a search and if the individual complies allow that object to not be charged as drug paraphernalia or for possession of a controlled substance for residual or trace drug amounts present on the needle or sharp object. This subsection would allow jail or prison inmates, offenders under probation or parole supervision, visitors, and/or vendors at secured facilities to avoid consequences for promoting dangerous contraband, which place staff and inmates at risk by simply admitting they have such an item. In the probation or parole setting, allowing probationers and parolees to easily avoid the consequences of possession of dangerous drug paraphernalia would defeat the efforts of probation and parole officers to regulate the conduct of the offender to use various sanctions to encourage him or her to comply with the law and their conditions of supervision. DOC personnel have the same authority and powers as peace officers while acting for the Department in any capacity. DOC would request an exemption from the effects of this proposal for prisoners of a correctional facility, probationers and parolees, or anyone on the grounds of a correctional facility or contract facility.

LOCAL IMPACT: Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and

felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$32.25 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

Potential Impact: Section 9. Increases the penalty for anyone guilty of trafficking in a controlled substance in the third degree from a Class A misdemeanor to a Class D felony if the offense involves trafficking in one hundred twenty (120) or more dosage units. While it is not possible to predict how many additional felony convictions this bill would generate, there is a potential for an increase in the state inmate population serving in the Class D program in county jails.

Dept. of Corrections Dept. of Kentucky State Police Administrative Office of the Courts Parole Board Other DOCJT

NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments.

APPROVED BY:

Commissioner, Kentucky Department of Corrections

Date