

CORRECTIONS IMPACT STATEMENT

SESSION: 15RS

BILL #: HB 213 GA

BR #: 981

DOC ID#: HB021310.100 - 981 - 4158

BILL SPONSOR(S): Rep. J. Tilley, J. Jenkins, R. Adkins, L. Belcher, T. Burch, D. Butler, L. Combs, W. Coursey, M. Denham, J. Donohue, K. Flood, J. Gooch Jr., C. Harris, J. Kay, D. Keene, M. Marzian, R. Meyer, C. Miller, T. Mills, R. Nelson, S. Overly, R. Rand, J. Richards, T. Riner, D. Schamore, J. Short, A. Simpson, F. Steele, W. Stone, T. Thompson, J. Wayne

AMENDMENT SPONSOR(S):

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

SUMMARY OF LEGISLATION: Amend KRS 72.026 to increase the scope of mandatory coroner and medical examiner examinations and reporting in deaths involving a Schedule I controlled substance; amend KRS 100.982 to mirror federal law in regard to addicted persons and residential care facilities; amend KRS 196.288 to direct that a portion of recaptured savings from criminal justice reforms be directed to jail-based substance abuse treatment programs for prisoners, to community mental health centers for community members, and to KY-ASAP for substance abuse prevention programming; and to combat neonatal abstinence syndrome; and to prosecutorial and defense agencies to fund social workers and expedited prosecutions; amend KRS 205.560 to amend the protocols for Medicaid provider credentialing relative to substance abuse treatment; create a new section of KRS Chapter 205 to require Medicaid to offer a broad array of substance abuse treatment resources; amend KRS 216B.020 to amend the certificate of need process relative to substance abuse treatment facilities; annual reporting to the Legislative Research Commission; amend KRS 217.186 to allow the opiate overdose rescue medication naloxone to be prescribed to persons, agencies, or school employees capable of administering the medication in emergency situations; allow first responders to access and utilize the medication; allow pharmacists certified to do so to prescribe and dispense the medication; amend KRS 218A.050 to include acetylfentanyl in the list of schedule I controlled substances; create a new section of KRS Chapter 218A to create a criminal defense for use in emergency drug overdose situations; create a new section of KRS Chapter 218A to require state-funded substance abuse programs from discriminating against pregnant women; create and amend various sections in KRS Chapter 218A to restructure the existing trafficking in controlled substance offenses into a three-tiered structure based upon peddling, trafficking, and aggravated trafficking; amend KRS 218A.500 to exempt from the drug paraphernalia statute needles exchanged at a local health department operating a treatment outreach program with local approval and needles and sharps declared to a peace officer prior to a search of the defendant's person; amend KRS 625.050 to provide a safe harbor protection for a pregnant addict who complies with prenatal care and substance abuse treatment instructions; include noncodified language encouraging the Cabinet for Health and Family Services to study certain opioid treatment initiatives, establish an evidence-based treatment task force relating to the disease of addiction, develop county and regional wraparound teams for opioid addiction, collaborate with medical schools and post-graduate training programs to include ten hours of coursework on addiction for all medical professionals, increase continuing education units for medical and health professionals relating to the disease of addiction, and make legislative recommendations to the Interim Joint Committee on Health and Welfare; direct the Department of Criminal Justice Training to conduct regionalized heroin-specific in-service training for law enforcement officers by December 31, 2016; EMERGENCY.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|---|--|
| <input checked="" type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input 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 checked="" 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 78 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. Under this proposal, five percent (5%) of HB 463 savings shall be distributed to the Department of Corrections specifically for the purchase and administration of naltrexone for extended-release injectable suspension, for use as a component of a medically assisted substance abuse treatment program operated or supervised by the Department. This statute currently allows for this treatment option and the Department does not want to be held to a specific treatment for offenders and must have flexibility to utilize the most effective and cost efficient resources available. The DOC relies on medical and mental health fields to determine which treatments are most successful through evidence based research which are ever evolving.**

Section 8. Proposes to add acetylfentanyl to the list of schedule I controlled substances identified in KRS 218A.050. While this has the potential to increase the number of individuals who may serve time on charges related to schedule I controlled substances and increase costs associated with incarceration.

Section 9. 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 11, 12, 13, 14, 15, 16, 17. Establishes new sections in KRS 218A to include peddling in controlled substances first, second, and third degree, and aggravated trafficking in a controlled substance based on quantity thresholds and also redistributes quantity thresholds for current trafficking in a controlled substance offenses. Although it is unknown how many new convictions this would generate, the below chart reflects the average number of new admissions to DOC for felony trafficking in a controlled substances - Class A, Class B, Class C, and Class D.

Admission Type	2010	2011	2012	2013	2014	AVERAGE
Class A Trafficking	0	0	0	0	1	0.2
Class B Trafficking	55	75	54	39	45	53.6
Class C Trafficking	1565	1426	976	774	766	1101.4
Class D Trafficking	743	742	1145	1531	1637	1159.6

A Class A Felony sentence is 20 years or more. 10 Class A Felons cost a minimum of \$4.4M.

1 Class A Felon costs Ky. a minimum of \$440,763. 100 Class A Felons cost a minimum of \$44M.

A Class B Felony sentence is 10 to 20 years 10 Class B Felons cost \$2.2M to \$4.4M.

1 Class B Felon costs Ky. \$220,382 to \$440,763. 100 Class B Felons cost \$22M to \$44M.

A Class C Felony sentence is 5 to 10 years. 10 Class C Felons cost \$1.1M to \$2.2M.

1 Class C Felon costs Ky. \$110,191 to \$220,382. 100 Class C Felons cost \$11M to \$22M.

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 18. Would allow a local health department to operate a substance abuse treatment outreach program which allows participants to exchange hypodermic needles and syringes. These items exchanged through the program shall not be deemed drug paraphernalia under this section. This section would also 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 access needles through a needle exchange program and 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 5. Would increase substance abuse services for county jails.

The following offices contributed to this Corrections Impact Statement:

Dept. of Corrections Dept. of Kentucky State Police Administrative Office of the Courts Parole Board Other Justice and Public Safety Cabinet and Office of Drug Control Policy

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