

# CORRECTIONS IMPACT STATEMENT

SESSION: 15RS

BILL #: HB 412 SCS

BR #: 532

DOC ID#: HB041240.100 - 532 - 6266

BILL SPONSOR(S): Rep. R. Adkins, D. Graham

AMENDMENT SPONSOR(S): Sen. W. Westerfield

SUBJECT: Title Amendment from "AN ACT relating to reorganization" to "AN ACT relating to controlled substances and declaring an emergency."

SUMMARY OF LEGISLATION: Confirm Executive Orders 2014-460 and 2014-559, which reorganize various offices in the Department of Education; amend various KRS sections to conform; repeal KRS 156.017 to conform.

SCS - Replace original provisions with new sections that 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 substance abuse treatment, prevention, and court-related activities; 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; create a new section of KRS Chapter 216B to authorize substance abuse treatment outreach in overdose situations brought to a hospital ER; 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; create a new section of KRS Chapter 218A to authorize a pilot project relating to data analysis of substance abuse trends; 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 charge protections 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 a new section of KRS Chapter 218A to create an offense for importing heroin into the Commonwealth; amend KRS 218A.1214 to adjust probation and parole eligibility for various heroin offenders; create a new section of KRS Chapter 218A to create the offense of aggravated heroin trafficking; amend KRS 218A.1414 to increase the penalties for high volume violators of that section; create a new section of KRS Chapter 218A to facilitate faith-based substance abuse treatment; 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 10 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; declare an EMERGENCY.

SCA (1/Title, W. Westerfield) - Make title amendment.

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 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 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 3. Under this proposal, fifty percent (50%) of HB 463 savings shall be distributed to the Department of Corrections; a portion of those funds shall be distributed to provide or to contract for the provision of substance abuse treatment in county jails. Under this proposal an additional portion of the allocated fifty percent (50%) HB 463 savings shall also be utilized for the purchase of an FDA-approved extended release treatment for the prevention of relapse to opiate dependence. 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. **It also should be noted this bill proposal does not determine how the division of the 50% savings will be allocated.**

Section 10. Proposes to add acetylfentanyl to the list of schedule I controlled substances identified in KRS 218A.050. 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 11. 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 13. Establishes a new Class C felony offense for importing any quantity of heroin and requires anyone convicted of importing heroin to serve fifty percent of the sentence imposed prior to being eligible for probation, shock probation, conditional discharge, or parole. Currently, an inmate convicted of trafficking in heroin is required to serve twenty percent of the sentence imposed prior to becoming eligible for parole. Increasing the parole eligibility rate from twenty percent to fifty percent could increase costs associated with a longer period of incarceration. Although it is unknown how many new convictions this would generate, the below chart reflects the average number of new admissions to DOC for Class C felony trafficking in a controlled substance (Note: not limited to heroin).

Admission Type	2010	2011	2012	2013	2014	AVERAGE
Class C Trafficking	1565	1426	976	774	766	1101.4

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.

Section 14. Would add fentanyl as a Class C felony trafficking offense when the amount trafficked is greater than two grams. This has the potential to increase the number of individuals who may serve time for trafficking in fentanyl and increase costs associated with incarceration. This section would also require anyone convicted of Class D felony trafficking in a controlled substance that is accompanied by factors that indicate the substance trafficked was involved in commercial activity, or anyone convicted of Class C or Class B felony trafficking in heroin to serve a mandatory minimum of fifty percent of the imposed sentence.

Although it is not possible to determine how many convictions this would generate, current data reflects by imposing a 50% minimum service requirement for persons convicted of Class C or Class B Heroin trafficking would result a 380 day increase in the average length of stay for at least an average of 60 new offenders each fiscal year. In turn, this would result in a cost to the Department equivalent to at least 22,800 days of incarceration for inmates admitted each fiscal year and additional costs of \$1,376,664.

During FY 2012, FY 2013 and FY2014 data reflects an average of 60 new commitments for Class B or Class C trafficking per year. Over the same time period, inmates serving on Class B and C Heroin trafficking were released 380 days before reaching 50% of the sentence imposed for the Heroin trafficking conviction. Note that this could include any form of release (e.g., Shock probation, Parole, Mandatory Reentry supervision, etc.).

### Time Served for All Class B and C Heroin Trafficking Releases - FY2012, FY2013 and FY 2014

Note: Inmates May be serving on Non-Trafficking Convictions in addition to Trafficking Convictions

Trafficking Offense Type	Average Sentence (In days)	Average Time Served Before First Release	Addl Time To Serve for 50% Minimum
Class B Heroin Trafficking	5475 Days	1200 Days	1538 Days
Class C Heroin Trafficking	2283 Days	775 Days	367 Days
<b>Class B and C Heroin Trafficking Average</b>	<b>2320 Days</b>	<b>780 Days</b>	<b>380 Days</b>

### Class B and C FY2012 - FY2014 Heroin Trafficking Commitments

Note: Inmates May be serving on Non-Trafficking Convictions in addition to Trafficking Convictions

Trafficking Offense Type	FY 2012	FY 2013	FY 2014
Class B Heroin Trafficking	3	4	7
Class C Heroin Trafficking	24	41	101
<b>Class B and C Heroin Trafficking Total</b>	<b>27</b>	<b>45</b>	<b>108</b>

Section 15. Establishes a new Class B felony offense for aggravated trafficking heroin when the amount trafficked is 250 grams or greater and would require the service of fifty percent of the sentence imposed prior to being eligible for probation, shock probation, conditional discharge, or parole. Currently, an inmate convicted of trafficking in heroin is required to serve twenty percent of the sentence imposed prior to becoming eligible for parole. Increasing the parole eligibility rate from twenty percent to fifty percent would increase costs associated with a longer period of incarceration. Although it is unknown how many new convictions this would generate, the below chart reflects the average number of new admissions to DOC for Class B felony trafficking in a controlled substances (Note: not limited to heroin).

Admission Type	2010	2011	2012	2013	2014	AVERAGE
Class B Trafficking	55	75	54	39	45	53.6

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.

Section 16. Amends trafficking in a controlled substance in the third degree from a Class A misdemeanor for first offense to a Class D felony if the amount trafficked is greater than one hundred twenty (120) dosage units. Although it is not possible to determine how many new convictions this would generate, this has a potential to increase costs associated with 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 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. 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.

Section 19. Provides that any offender who has been convicted of a homicide or fetal homicide under KRS 507 or 507A where the victim of the offense died as a result of an overdose of a Schedule I controlled substance and who is not otherwise subject to the provisions of paragraphs (a), (b), or (c) of this subsection would be required to serve a 50% minimum service of the sentence imposed. Currently, any offender who has been convicted of homicide or fetal homicide under KRS 507 or 507A is subject to serving 85% of the sentence imposed, except for KRS 507A.040 (fetal homicide, 3rd degree, a Class C felony) and KRS 507A.050 (fetal homicide 4th degree, a Class D felony). Only ten offenders have been committed to DOC for either of these two crimes since they were enacted in 2004. Of these ten offenders, eight were considered for parole; however, only one of those eight who were considered actually received parole. The paroled offender served more than 50% of the imposed sentence prior to being paroled.

**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 3. 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 & 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