

jails, or other local detention centers for the provision or contracting of substance abuse treatment programs for non-state inmates with opiate or other substance abuse disorders. Grants are provided from the Kentucky Agency for Substance Abuse Policy (KY-ASAP) programs for treatment. Section 3 requires KY-ASAP to distribute a portion of funds to community mental health centers for substance abuse treatment resources and programming. KY-ASAP is also required to provide supplemental grant funding for residential treatment services for pregnant women to address neonatal abstinence syndrome as well as supplemental funding for traditional KY-ASAP substance abuse programming under KRS Chapter 15A.

Section 6 amends KRS 216B.020 to exempt certain inpatient substance abuse treatment facilities and outpatient behavioral health treatment programs from Chapter 216's provisions relating to the issuance of a certificate of need.

Section 7 creates a new section of KRS Chapter 216B to provide, among other things, that when a person is admitted to a hospital emergency room or department for treatment of a drug overdose, that person shall be informed of available substance use disorder treatment services that are known by the hospital to be provided by that hospital, other local hospitals, the local community mental health centers, and any other local treatment programs licensed under KRS 222.231.

Section 8 amends KRS 217.186 to *permit*, but not require, peace officers, jailers, firefighters, paramedics, emergency medical technicians and others to receive a naloxone prescription, possess naloxone and related equipment needed for its use, and to administer naloxone to an individual suffering from an apparent opiate-related overdose. A person administering naloxone that is received pursuant to this section shall be immune from criminal and civil liability for the administration, unless personal injury results from the gross negligence or willful or wanton misconduct of the person administering the drug.

Section 11 provides that a person shall not be prosecuted for possession of a controlled substance or the possession of drug paraphernalia if that person: (a) responds to a drug overdose by seeking medical assistance from local law enforcement or other first responders or a health practitioner; (b) remains with the overdose victim until help arrives; and (c) if the evidence for such a prosecution was obtained as a result of the drug overdose and the need for medical assistance. In order for this immunity to apply, the person seeking medical assistance must be doing so because he or she is requesting medical assistance for himself or herself, or is acting in concert with another person who is requesting medical assistance, or he or she appears to be in need of medical assistance and is the individual about whom the request was made.

This immunity shall not extend to the investigation and prosecution of any other crimes committed by a person who otherwise qualifies under this section. Section 11(5) prohibits civil liability for police officers who make arrests in contravention of this section if the arrest was based on probable cause.

Section 11 also requires local health department personnel to make contact with the

person who requested assistance in order to offer referrals to substance abuse treatment, if appropriate.

Section 12 requires substance abuse treatment or recovery service providers that receive state funding to give priority to serving pregnant women. Such treatment centers are also forbidden from refusing service solely due to pregnancy if the provider's services are appropriate for pregnant women.

Section 13 is a new section of KRS Chapter 218A which creates a separate offense of importing heroin into the Commonwealth with the intent to sell or distribute, punishable as a Class C felony. The defendant must serve 50% of the sentence imposed.

HB 412 SCS also amends certain drug offense statutes. Currently, KRS 218A.1412 establishes the crime of trafficking in a controlled substance in the first degree and provides the penalties. A person who traffics in four or more grams of cocaine; two or more grams of heroin or methamphetamine; ten or more dosage units of a controlled substance that is classified in Schedule I or II and is a narcotic drug or a controlled substance analogue; or any quantity of LSD, GBH, or flunitrazepam is guilty of a Class C felony for a first offense and a Class B felony for a second or subsequent offense. However, a person who traffics in less than four grams of cocaine; less than two grams of heroin or methamphetamine; or less than ten dosage units of a controlled substance that is classified in Schedule I or II and is a narcotic drug or a controlled substance analogue is guilty of a Class D felony for the first offense and a Class C felony for a second or subsequent offense.

Section 14 of HB 412 SCS amends KRS 218A.1412 by stating, at Subsection (3)(a), that it is a Class C felony for a first offense and a Class B felony for a second or subsequent offense to traffic: (1) in 4 or more grams of cocaine; (2) in 2 or more grams of heroin, fentanyl, or methamphetamine; (3) in 10 or more dosage units of a controlled substance that is classified in Schedules I or II and is a narcotic drug or a controlled substance analogue; or (4) in any quantity of LSD and GHB, among others. The inclusion of fentanyl is new language from HB 412 SCS.

Section 14 further amends KRS 218A.1412 by altering the early release eligibility for trafficking in amounts less than those currently specified in Subsection (1)(a),(b), or (c), if certain circumstances are met. Section 14 states that a person must serve at least 50% of the sentence imposed if the trafficked substance was heroin and the offense was committed while the person possessed one or more of the articles itemized in this section. Section 14 also states that a person convicted of a Class C or higher offense shall not be granted any form of early release until he or she has served at least 50% of the sentence imposed if the trafficked substance was heroin.

Section 15 creates the offense of "aggravated trafficking in a controlled substance in the first degree." A person is guilty of this offense when he or she knowingly and unlawfully traffics in 250 or more grams of heroin. Aggravated trafficking in the first degree is a Class B felony and those convicted of this offense must serve at least 50% of the sentence imposed before becoming eligible for any form of early release.

Section 16 amends KRS 218A.1414, trafficking in a controlled substance in the third degree. Currently, a person who is guilty of trafficking in the third degree is convicted as a Class A misdemeanor for a first offense and a Class D felon for a second and subsequent offense. HB 412 SCS amends this provision by making it a Class A misdemeanor to traffic in 120 or fewer dosage units of a Schedule IV or V controlled substance and a Class D felony for a first offense involving more than 120 dosage units. The current language regarding second and subsequent offenses remains unchanged. Section 16 also retains KRS 218A.1414's current prohibition and punishment of trafficking in Schedule IV or V controlled substances in quantities less than 20 or more dosage units

Section 18 amends KRS 218A.500 to **permit** a local health department to operate a substance abuse treatment outreach program which allows participants to exchange hypodermic needles and syringes. Items exchanged through the program shall not be deemed drug paraphernalia under this section. In order to exercise this option, however, a local health department **shall obtain the consent** (which is revocable) of the local board of health and (1) the legislative body for the 1st class or home rule class city in which the program would operate, and (2) the legislative body of the county, urban-county government, or consolidated local government in which the program would operate.

Section 18 further amends KRS 218A.500 to permit a peace officer, prior to searching a person, a person's premises, or a person's vehicle, to inquire as to the presence of needles or other sharp objects in the areas to be searched that may cut or puncture the officer. When making the inquiry, an officer may offer to not charge a person with possession of drug paraphernalia if the person notifies the officer of the presence of needles or other sharp objects. If prior to the search, the person alerts the officer to the presence of the needle or other sharp object, the person shall not be charged for possession of drug paraphernalia for the needle or sharp object or for possession of a controlled substance for residual or trace amounts present on the needle or sharp object. This exemption from prosecution shall not apply to any other drug paraphernalia that may be found during a search or to controlled substances present in other than residual or trace amounts.

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

The fiscal and administrative impact of HB 412 SCS on local governments is expected to be a minimal to moderate impact.

Under current law, in situations in which a post-mortem examination is mandated by KRS 72.025, coroners and medical examiners are required to test bodies for controlled substances. Section 1 of HB 412 SCS amends KRS 72.026 by requiring such tests to be done through the use of "biological" samples, as opposed to "blood" samples.

HB 412 SCS requires that a coroner notify the local Commonwealth's attorney and a local law enforcement agency of a drug overdose death. **According to the Kentucky Coroner's Association and the Office of Drug Control Policy (ODCP), this reporting requirement will impose a nil to minimal cost on coroners in most counties.** The

impact on coroners will depend on location. If a coroner works in a county where there are numerous drug overdose deaths then that coroner will incur a greater cost and experience more of a burden compared to coroners in counties with fewer overdose deaths. In most counties that cost will be minimal, according to ODCP, but in some counties, it may be minimal to moderate, according to the Kentucky Coroner's Association.

HB 412 SCS's impact on coroners will depend on location in another aspect. The language of Section 1(2)(c) requires coroners to notify the Commonwealth's Attorney and law enforcement "in the circuit where the death occurred." For coroners, there is often a dichotomy between location of the overdose and location of the death. Some coroners work in counties in which a hospital is located. Others do not. According to the Kentucky Coroner's Association, for coroners in counties which have a hospital, Section 1(2) (c) has the potential to increase their workload a great deal more so than it would for coroners located in counties without a hospital. This is because patients are often transported to a hospital outside of the county in which they overdosed. If a patient dies in a hospital, it becomes a coroner's case for the coroner in whose county the death occurred as opposed to the county in which the overdose occurred (if, in fact, it is not the same county).

Section 3 contains new language which would provide additional funding for various programs and resources designed to further drug treatment

According to the **Kentucky Association of Regional Programs**, with the exception of the allocation for jails, the KY-ASAP allocations will not have any impact on local governments. This is because the programs that will receive the money are not affiliated with local governments. Community mental health centers, for example, are all non-profit organizations. The **Kentucky League of Cities (KLC)** is unaware of any city-operated treatment facilities or services that are associated with KY-ASAP

Section 6 exempts inpatient substance abuse treatment facilities with 16 or fewer beds and outpatient behavioral health treatment programs from the provisions of KRS 216B regarding the issuance of certificates of need. Again, **KLC** is unaware of any such programs that are run by cities.

Several provisions of HB 412 SCS pertain to **county jails** and other county detention facilities.

--Section 3(5)(b) allocates a portion of the savings brought about by 2011 RS HB 463 to substance abuse treatment programs in county jails. These treatment programs must provide evidence-based behavioral health treatment or medically assisted treatment for non-state inmates.

-- Section 12 creates the offense of importing heroin

--Section 14 amends KRS 218A.1412, trafficking in the first degree.

-- Section 15 creates aggravated trafficking in the first degree

--Section 16 amends KRS 218A.1414, trafficking in the third degree.

A person *convicted* of a Class A or Class B felony is not housed in a local jail. However, anyone *charged* with any felony is at held, at least temporarily, in a county jail prior to disposition of the charge(s).

When a court denies bail to a felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 78 full service jails or five Life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. The Department of Corrections pays a jail \$31.34 per day to house a D felon. 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.

Certain Class C felons are housed in one of Kentucky's full service jails for a portion of their sentences. The Department of Corrections pays the same per diem rate (\$31.34 on average) for these Class C felons as it does for Class D felons. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 18 months or less to their minimum expiration date or parole eligibility date.

Eighteen full service jails provide an in-patient substance abuse program (SAP) to nearly 1000 convicted felons incarcerated in the jails. The estimated average cost of jailing a convicted felon participating in a SAP is \$40.34 per day. This amount is reimbursed by the Department of Corrections and is \$9 more than the estimated average cost of \$31.34 per day, including medical costs, to jail an individual not participating in a SAP. Since the \$40.34 per diem pays for the estimated average cost of housing a convicted felon participating in a SAP, the per diem may be less than, equal to, or greater than the actual housing cost.

According to the Administrative Office of the Courts, in FY 2014, there were 1,210 Circuit Court cases involving 1,858 charges for heroin trafficking. Six hundred and sixty four of the Circuit Court cases resulted in a conviction on one or more heroin trafficking charges. The majority of those cases were for heroin trafficking 1st offense in an amount less than two grams. Under current law, trafficking less than two grams of heroin is a Class D Felony for a 1st offense and a Class C felony for subsequent offenses.

HB 412 SCS also contains several provisions that pertain to local law enforcement. **The Kentucky Association of Chiefs of Police has provided analysis of these provisions.**

--Section 3 allows for additional grant money to flow to local jails through KY-ASAP. **HB 412 SCS's provisions pertaining to treatment programs will have a minimal to moderate impact on law enforcement depending on the effectiveness of the treatment programs.** If treatment programs are effective, it should lower the workload for law enforcement agencies.

--Section 8 permits peace officers, among others, to administer naloxone to a person suffering from an apparent opiate-related overdose. If a peace officer administers naloxone in good faith, the peace officer shall be immune from criminal and civil liability. According to the Police Chiefs, **the cost to local law enforcement**, if required by local law to possess and administer naloxone, will be determined by **whether local law enforcement will have to pay for training and the purchase of naloxone.** KLC is concerned whether the Good Samaritan law would apply to peace officers who are trained in naloxone administration, thereby potentially exposing cities to liability in court.

--Section 11 provides for immunity from prosecution for possession of a controlled substance or possession of drug paraphernalia if a person seeks medical assistance from a local law enforcement officer, among others, for a drug overdose. This opportunity is also extended to the victim of an overdose.

--Section 13 creates the offense of importing heroin.

--Section 14 amends 218A.1412, trafficking in the first degree.

--Section 15 creates the offense of aggravated trafficking in the first degree.

--Section 15 amends KRS 218A.1414, trafficking in the third degree.

The changes made in Sections 11 to 15 are expected to have a minimal impact on law enforcement.

--Section 18 permits a peace officer to question a person prior to searching that person, that person's premises, or that person's vehicle. The peace officer may ask about the presence of needles or other sharp objects that may injure the peace officer in the course of his or her search. If the person notifies the peace officer prior to the search about hypodermic needles or other sharp objects, that person shall receive criminal immunity. Peace officers already question individuals about hypodermic needles and other sharp objects. **The criminal immunity incentive will provide a minimal benefit to local law enforcement.**

As for one final provision in the bill not related to law enforcement, **Section 12** requires substance abuse treatment or recovery service providers that receive state funding to give priority to serving pregnant women. The **KLC states that this requirement that "should not have any cost to cities."** Under this provision, pregnant women would simply be placed ahead of others for participation in treatment programs. KLC is unaware, however, of any city governments that operate these programs.

Overall, however, **KLC** states that HB 412 SCS will impose some direct costs and at least a minimal impact on Kentucky cities due to the mandatory education and training requirements for law enforcement and emergency services personnel regarding the administration of naloxone. **The needle exchange program is optional so there is no mandate.** However, KLC states there is a potential for increased costs associated with any needle exchange program adopted by any local health department or local government. A needle exchange program, like any new program, would likely require additional training of local health department staff and additional financial resources that may be necessary for the disposal of hazardous materials and the dispensing of clean needles.

Data Source(s): Kentucky Association of Chiefs of Police; Ky Coroner's Assoc.; Office of Drug Control Policy; Dept. of Corrections; Kentucky Association of Regional Programs; Kentucky League of Cities; Administrative Office of the Courts; Kentucky Association of Counties; LRC Staff.

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