

CORRECTIONS IMPACT STATEMENT

SESSION: 15RS

BILL #: HB 50 Introduced

BR #: 393

DOC ID#: BR039300.100 - 393 - 1099

BILL SPONSOR(S): Rep. A. Wuchner, J. Fischer, R. Crimm

AMENDMENT SPONSOR(S):

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

SUMMARY OF LEGISLATION: Amend KRS 15.334 to require that the Department of Criminal Justice Training provide basic and mandatory regionalized in-service training on the topic of heroin; amend KRS 72.026 to increase the scope of mandatory reporting of deaths involving Schedule I controlled substances; amend KRS 196.288 to increase the scope of the required cost-savings calculations; direct that a portion of recaptured savings from criminal justice reforms be directed to the Department of Corrections to provide funding for the purchase and administration of naltrexone for extended-release injectable suspension, as a component of substance abuse treatment programs operated or approved by the Department of Corrections or supervised by the Division of Probation and Parole; create a new section of KRS Chapter 205 to enumerate the controlled substance treatment services to be offered by the Department for Medicaid Services; amend KRS 217.186 to provide that peace officers, firefighters, paramedics, emergency medical technicians, and school employees authorized under KRS 156.502 to administer medication may receive, possess, and administer naloxone to a person suffering from an apparent opiate-related overdose; establish requirements relating to the use of naloxone on school premises; create a new section of KRS Chapter 218A to require that all substance abuse treatment or recovery providers that receive state funding give pregnant women priority in accessing services; amend KRS 218A.500 to enumerate that if certain conditions are met, a person who informs a peace officer, prior to a search, of the presence of a hypodermic needle or other sharp object, he or she will not be charged with or prosecuted for possession of drug paraphernalia for the needle or sharp object or for possession of a controlled substance for residual or trace drug amounts present on the needle or sharp object; create a new section of KRS Chapter 218A to provide that a person has a defense for possession of a controlled substance if the person in good faith seeks medical assistance and meets certain additional criteria; amend KRS 218A.1412 to provide minimum service time requirements for persons convicted of trafficking of heroin in the first degree; provide that if a defendant commits the criminal act of trafficking of heroin in the first degree and a person dies as a result of the heroin trafficked by the defendant, this is considered a Class A felony; establish various service fees for persons convicted of trafficking 2 grams or more of heroin and above; provide that any service fees collected pursuant to this section be remitted to KY-ASAP to be used as supplemental funding for substance abuse treatment programs operating in county jails that are located within the region in which the offense was committed; allow, upon a motion by the Commonwealth, that a court may consider lowering the minimum service time requirement for a person who is convicted of trafficking in the first degree who provides substantial assistance to the Commonwealth for the prosecution of another; amend KRS 439.340 to require substance abuse treatment or education courses as a condition of release for persons convicted under KRS Chapter 218A; amend KRS 625.050 to enumerate that if certain conditions are met, a woman's parental rights cannot be terminated solely because of her use of a controlled substance; amend KRS 439.3405 and 640.030 to conform; encourage the Department of Corrections to offer video, audio, oral, and written materials to persons housed at correctional facilities within the state that concentrate on educating inmates on Kentucky's drug trafficking laws, associated penalties, and treatment options; encourage public middle school and high school administrators to provide age-appropriate educational material relating to the potential dangers of heroin abuse to all middle and high school students; title the bill the "Heroin Impact Act"; APPROPRIATION; 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 checked="" type="checkbox"/> Increases inmate/offender services |
| <input checked="" 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 3. Would require the Department of Corrections to determine the average cost of providing naltrexone for extended-release injectable suspension, for use as a component of a medically assisted substance abuse treatment program operated by the Department. 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 by the Department of Corrections for inmates housed in state or local facilities or supervised by the Division of Probation and Parole. 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. Additionally, there has been cost avoidance, however actual savings from HB 463 has not been realized at this time.

Section 7. 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.

Section 8. 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 9. Would amend KRS 218A.1412 (3)(a) by creating a fifty percent (50%) minimum service requirement for any person convicted of trafficking in heroin in an aggregate amount of less than four (4) grams or an eighty-five (85%) percent minimum service requirement for any person convicted of trafficking in heroin in an aggregate amount of four (4) grams or more. Current provisions reflect a person is guilty of trafficking in the first degree when there is two (2) grams or more of heroin. Establishing a minimum service requirement for heroin convictions based on different quantity thresholds 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. This section would also amend KRS 218A.1412 (3)(b) by creating a twenty-five (25%) minimum service requirement for any person convicted of a Class C or Class D felony trafficking in heroin offense. This section also provides the court the ability to deviate from the minimum service requirement in cases where the defendant provides assistance to the prosecution. By allowing the court to determine a 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. Creating a minimum service requirement for heroin convictions is expected to increase costs associated with longer periods of incarceration and costs associated with required software changes.

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.

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 9 creates provisions that if a person dies as a consequence of the use of heroin trafficked by a defendant, the defendant is guilty of a Class B felony and a Class A felony for a second or subsequent offense. This provision is expected to increase incarceration costs associated with Class A and Class B felons.

- 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.

Section 9(4). Provides that any service fees collected pursuant to this section be remitted to KY-ASAP to be used as supplemental funding for substance abuse treatment programs operating in county jails that are located within the region in which the offense was committed. The department concurs that fees collected under this section need to be utilized to support substance abuse treatment programming. While those charged with crimes referred to within this bill may initially be sent to the county jail within the region where the offense was committed, pursuant to the classification of all state inmates, a state inmate may be housed in an institution or in a county jail in an area that differs from the region in which the crime was committed. Some county jails do not have the space requirements in order to facilitate a substance abuse program.

Section 10. Would create a new paragraph in KRS 439.340 to require substance abuse treatment or education courses for persons convicted under KRS Chapter 218 for a trafficking violation. By requiring inmates serving on a trafficking conviction to complete a substance abuse treatment program or establishing a mandatory requirement of any inmate serving on a trafficking conviction to participate in a substance abuse treatment or education program approved by the Department of Corrections in order to be granted parole supervision, would require additional treatment slots in substance abuse program facilities; this would also increase the costs associated with inpatient and/or outpatient treatment services and increase population during the bed availability waiting period.

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.

Creates no new misdemeanor offenses.

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 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