

CORRECTIONS IMPACT STATEMENT

SESSION: 15RS

BILL #: HB 53 Introduced

BR #: 333

DOC ID#: BR033300.100 - 333 - 746

BILL SPONSOR(S): Rep. D. Keene AMENDMENT SPONSOR(S):

SUBJECT: AN ACT relating to substance abuse and declaring an emergency.

SUMMARY OF LEGISLATION: Amend KRS 72.026 to increase the scope of mandatory coroner reporting in deaths involving Schedule I controlled substances; 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 Naloxone for use in situations involving individuals suffering from an apparent opiate-related overdose; create a new section of KRS Chapter 218A to provide safe harbor provisions for drug-addicted pregnant women who are in compliance with substance abuse treatment and prenatal care instructions; amend KRS 218A.040 to provide that subject to the rules of evidence a court is permitted to infer that death resulting from an overdose of a Schedule I controlled substance is a foreseeable result of the consumption or use of that substance; amend KRS 218A.050 to classify any extended release single-agent formulation of hydrocodone bitartrate as a Schedule I controlled substance until the drug is available in an FDA-approved tamper-resistant formulation; amend KRS 218A.1412 to establish a 50% time-served requirement for persons convicted of trafficking in heroin or methamphetamine in the first degree and allow this requirement to be waived in cases where the defendant provides assistance to the prosecution of another; amend KRS 218A.1413 to increase the penalties for a person who is found guilty of trafficking in a controlled substance in the second degree; amend KRS 218A.1414 to increase the penalty for any person who is found guilty of trafficking in a controlled substance in the third degree; amend KRS 218A.500 to allow for the establishment of optional local hypodermic needle exchange programs and provide that in situations where the defendant notifies a peace officer prior to a search that he or she has a hypodermic needle on their person or in their possession, certain immunities are allowed as to related charges; amend KRS 439.3401 to require a minimum 50% time-served requirement for persons convicted of homicide and fetal homicide in situations where the decedent died due to a Schedule I drug overdose; amend KRS 501.060 to provide that for an offense in violation of KRS Chapter 507 or 507A for a death which resulted from an overdose of a Schedule I controlled substance, a court is permitted to infer that death resulting from an overdose of a Schedule I controlled substance is a foreseeable result of the consumption or use of that substance, subject to the applicable rules of evidence; amend KRS 625.050 to prohibit petitions to terminate the parental rights of a pregnant woman who used controlled substances while pregnant if she complies with substance abuse treatment and prenatal care instructions; amend KRS 222.005 to provide a definition of "incapacitated by alcohol and other drug abuse"; amend KRS 222.431 to include a person who is incapacitated by drug abuse as persons who may be required to undergo treatment; amend KRS 222.433 to enumerate the type of evidence that a court must review before determining if there is probable cause to go forth with a petition to order treatment for a person alleged to be incapacitated by drug abuse; encourage the Cabinet for Health and Family Services to study various aspects of medical care related to increasing medication-assisted treatment for opioid-addicted postpartum women; encourage the Cabinet to study evidence-based medical management standards related to treatment for addiction in Kentucky and overdose prevention; encourage the Cabinet to develop county and regional response teams for heroin and opioid addiction; encourage the Cabinet to work with medical school and post-graduate training programs in Kentucky to provide a curriculum on the disease of addiction; encourage the Cabinet to collaborate with licensing boards in applicable fields within Kentucky to include continuing education units on the topic of the disease of addiction; encourage the Cabinet 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 6. Proposes to add Zohydro 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, it is expected to serve as a deterrent.

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 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 will be an increase in costs associated with additional felony convictions.

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 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 of this bill proposal 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. 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.

Section 11 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 shall not be released on probation or parole or any other form of early release until he or she has served at least fifty percent (50%) 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 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.

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