

# CORRECTIONS IMPACT STATEMENT

SESSION: 15RS

BILL #: SB 5 SCS 1

BR #: 59

DOC ID#: BR005900.100 - 59 - 765

**BILL SPONSOR(S):** Sen. Christian McDaniel **AMENDMENT SPONSOR(S):**

**SUBJECT:** AN ACT relating to controlled substances.

**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 196.286 and 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 funding of KY-ASAP programs operating in or under the supervision of county jails, and a portion to community mental health centers offering substance abuse treatment for heroin and other opiate abuse disorders; create a new section of KRS Chapter 205 to specify the controlled substance treatment services to be offered under Medicaid; amend KRS 217.186 to increase the availability of Naloxone for use as a rescue drug for narcotic overdose situations; create a new section of KRS Chapter 218A to provide an opportunity for deferred prosecution for persons seeking emergency help in drug overdose situations; amend KRS 218A.1412 to establish a 50 percent minimum time service requirement for higher-level traffickers in heroin, to remove the quantity thresholds in heroin and fentanyl prosecutions, and to provide the ability to deviate from the service requirement in cases where the defendant provides assistance to the prosecution; amend KRS 218A.500 to exempt needles and sharps declared to a peace officer prior to a search of a defendant's person; amend KRS 439.3401 to require a minimum 50 percent time service requirement for homicide and fetal homicide offenders in situations in which the decedent died due to a Schedule I drug overdose; direct the Department of Criminal Justice Training to conduct regionalized heroin-specific in-service training for law enforcement officers by December 31, 2015.

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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 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) _____              |  |

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**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 2. Provides that beginning with the budget request for 2012-2014 fiscal biennium, estimated savings resulting from new or amended sections of KRS Chapter 218A under the provisions of 2011 HB463 must be used solely for the expansion and enhancement of treatment programs that employ evidence-based or promising practices. The estimated savings described in this section is \$6.7 M in FY 15 and \$6.7M in FY 16. The department utilizes these funds for the expansion and enhancement of treatment programs, primarily in the area of substance abuse programming. This section of the bill creates a new earmark of 25% of those savings to provide supplemental funding for KY-ASAP programs operating under KRS Chapter 15A. If the 25% for KY-ASAP is taken from the \$6.7M funding under this proposal, the negative impact to the DOC would mean reduced funding for expansion and enhancement of evidence-based programs. DOC requires all appropriated SAP funding for FY15 and FY16. The DOC budget for community substance abuse treatment programs is \$9,820,500 for FY15 and \$9,891,500 for FY16. The DOC budget for community substance abuse treatment programs includes the \$6.7M to expand and enhance evidence-based programs; which includes contracts with the fourteen Community Mental Health Centers and ten Recovery Kentucky Centers for substance abuse programming for parolees and probationers. If 25% of this funding is cut, then DOC will have to reduce the funding for these contracts/programs by 25%. Additionally the substance abuse treatment programs are currently overseen by the DOC which ensures the quality of the programs and provides standardized treatment to all state inmates and supervised offenders. The Department contracts with eighteen county jails that provide twenty substance abuse programs, for a total of 985 treatment beds in these facilities. The state inmates serving in county jails are serving for less serious felonies; the loss of program funds to DOC would mean less treatment for more serious offenders. Current statute allows for reinvestment of savings into evidence based programs, this proposal would restrict programming to substance abuse treatment specifically. The ever changing program needs of the population require the ability of the department to provide treatment based on the current need.

Section 3. [5][b] Provides that beginning with the budget request for 2012-2014 fiscal biennium, estimated savings resulting from new or amended sections of KRS Chapters 27A, 196, 197, 431, 439, 532, 533 and 534 under the provisions of 2011 HB463 shall be allocated or distributed according to the statute. Twenty-five percent (25%) shall be distributed to the local corrections assistance fund and the remainder shall be reinvested, per the General Assembly, to (a) expanded treatment programs and probation & parole services and (b) additional pretrial services and drug court case specialists through AOC. The estimated net savings described in this section is \$22.4 M in FY15 and \$23.2M in FY16. The Local Corrections Assistance Fund receives 25% of these funds. In addition, the department needs \$6.7M of the FY15 savings and \$8.26M of the FY16 savings to expand treatment programs and probation & parole services. This section of the bill creates a new earmark of 25% of those savings to provide supplemental funding for KY-ASAP programs operating under KRS Chapter 15A. If the 25% for KY-ASAP is taken from the \$6.7M (FY15) & \$8.26M (FY16) under this proposal, the negative impact to the DOC would mean reduced funding for expansion and enhancement of evidence-based programs.

Section 3. [5][c] Provides that beginning with the budget request for 2012-2014 fiscal biennium, estimated savings resulting from new or amended sections of KRS Chapters 27A, 196, 197, 431, 439, 532, 533 and 534 under the provisions of 2011 HB463 shall be allocated or distributed according to the statute. Twenty-five percent (25%) shall be distributed to the local corrections assistance fund and the remainder shall be reinvested, per the General Assembly, to (a) expanded treatment programs and probation & parole services and (b) additional pretrial services and drug court case specialists through AOC. The estimated net savings described in this section is \$22.4 M in FY15 and \$23.2M in FY16. The Local Corrections Assistance Fund receives 25% of these funds. In addition, the department needs \$6.7M of the FY15 savings and \$8.26M of the FY16 savings to expand treatment programs and probation & parole services. This section of the bill creates a new earmark of an additional 25% of those savings to provide supplemental funding for KY-ASAP programs operating in community mental health centers. If an additional 25% for KY-ASAP is taken from the \$6.7M (FY15) & \$8.26M (FY16) under this proposal, the negative impact to the DOC would mean reduced funding for expansion and enhancement of evidence-based programs.

Overall, under this proposal the Department will face a potential financial loss of evidence based programming and substance abuse programming in the future fiscal years for a population that has already has been identified as needing these programs the greatest.

Section 6. Provides an opportunity for deferred prosecution 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 7. [1][d] Requires that anyone convicted of trafficking in heroin 1st offense, regardless of the quantity, shall be guilty of a Class C felony. Currently, trafficking in heroin 1st degree less than two grams is a Class D felony for a first offense. By removing the quantity threshold for heroin, incarceration timeframes are expected to increase from 1-5 years (Class D felony) to 5-10 years (Class C felony) and is expected to increase costs associated with longer periods of incarceration. One Class D Felony sentence of 1 - 5 years costs Kentucky an average of \$12,014 - \$60,072 yearly. One Class C Felony sentence of 5-10 years costs Kentucky an average of \$110, 191 - \$220, 382. Additionally, by removing the quantity threshold for heroin will also impact the substance abuse treatment program with the Department by increasing attendance, create longer waiting lists based on bed availability, and increase administrative costs associated with providing treatment.

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 7. [3][a][2] Requires that anyone convicted of trafficking in heroin shall 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 potentially increase costs associated with a longer period of incarceration.

Section 7. [4] Provides the court the ability to deviate from the minimum parole eligibility service requirement in cases where the defendant provides assistance to the prosecution. By allowing the court to determine a parole eligible 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 current twenty percent requirement, as specified in the judgment, .

Section 9. 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 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.

**Overall, the provisions of this bill are expected to have a significant impact on the Department of Corrections.**

**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 Justice and Public Safety Cabinet, 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:**

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Commissioner, Kentucky Department of Corrections

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Date