

Sections 2 and 3 amend KRS 196.286 and KRS 196.288, respectively, to provide additional funding for the Kentucky Agency for Substance Abuse Policy (KY-ASAP) programs operating in county jails or in facilities supervised by county jails. Additionally, Section 3 requires KY-ASAP to distribute a portion of funds to community mental health centers for the purpose of offering treatment to heroin or other opiate abuse disorders.

Section 5 of SB 5 SCS with CA amends KRS 217.186 to *permit*, but not require, peace officers, firefighters, paramedics, or emergency medical technicians to receive a naloxone prescription, possess naloxone, and administer naloxone to an individual suffering from an apparent opiate-related overdose. A person or agency administering naloxone 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 6 provides that a person shall be eligible for a deferred prosecution for an offense involving the possession of a controlled substance or the possession of drug paraphernalia. A person is eligible for a deferred prosecution if certain conditions are met. First, that person must respond to a drug overdose by seeking medical assistance from local law enforcement, among others. Secondly, the person must remain with the overdose victim until the requested assistance arrives. Third, the conduct for which the deferred prosecution is sought must arise from the same course of events from which the drug overdose arose. Lastly, that person must participate in and comply with a secular or faith-based substance abuse treatment or recovery program. The opportunity for a deferred prosecution shall extend to the person who suffered the drug overdose if that person complies with a substance abuse treatment or recovery program prior to trial. The deferred prosecution opportunity is limited in that it may be asserted only once in a defendant's lifetime and it shall not extend to the investigation and prosecution of any other crimes, including drug trafficking crimes, committed by the person.

Current law (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 7 of SB 5 SCS with CA makes several changes to KRS 218A.1412. First, this section deletes heroin from the "two (2) grams or more" element of trafficking and instead prohibits the trafficking of "any quantity" of heroin. Secondly, Section 7 also adds fentanyl to the "any quantity" prohibition. Thirdly, the prohibition against trafficking in ten or more dosage units of Schedule I and II narcotics is expanded to

include “the equivalent” of ten or more dosage units. Next, this section provides that if a defendant traffics in heroin or fentanyl, the defendant must serve at least 50% of the sentence imposed before being eligible for any form of early release. The addition of “fentanyl” to the 50% mandatory minimum provision is a result of the committee amendment to the committee substitute. The final change to KRS 218A.1412 in Section 7 is its provision allowing a defendant who has provided substantial assistance in the investigation or prosecution of another defendant to be given a sentence which imposes a minimum service of time that is less than the aforementioned 50% requirement.

Section 9 of SB 5 SCS with CA amends KRS 439.3401 to require that an offender who has been convicted of a homicide or fetal homicide offense under KRS Chapter 507 or 507A in which the victim of the offense died as the result of an overdose of a Schedule I controlled substance and who is not otherwise subject to the violent offender statute shall not be released on probation, shock probation, parole, conditional discharge, or other form of early release until he or she has served at least 50% of the sentence imposed.

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

The fiscal and administrative impact of SB 5 SCS with CA on local governments is expected to be a minimal to moderate impact, but will vary depending on the local government agencies involved.

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 SB 5 SCS with CA amends KRS 72.026 by requiring such tests to be done through the use of “biological” samples, as opposed to “blood” samples.

SB 5 SCS with CA requires that a coroner or a medical examiner 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.** If the medical examiner takes the lead in providing notifications, then the coroner will have no additional cost. If on the other hand, a coroner comes from a county where there are numerous drug overdose deaths and the coroner takes the lead in providing notifications, then the coroner will incur a cost. 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.

Location will also be a factor for SB 5 SCS with CA’s potential impact on coroners 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).

Although Section 5(3) *does not mandate* that law enforcement and other first responders possess and administer naloxone, there is a potential impact if local governments require first responders to do so. If so, the Kentucky Board of Emergency Medical Services and the Kentucky Firefighters Association state that this provision should have a **minimal impact**. The Kentucky League of Cities (KLC), however, is unsure how much training would be required to adequately educate police officers on heroin-related overdoses and the administration of naloxone. KLC is also 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.

Several provisions of SB 5 SCS with CA refer to local law enforcement. **The Kentucky Association of Chiefs of Police has provided analysis of these provisions.**

--Sections 2 and 3 allow for additional grant money to flow to local law enforcement through KY-ASAP. **The amount of the additional grant money will determine the economic benefit to local law enforcement.**

--Section 5 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. 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.**

--Section 6 provides the opportunity for a deferred prosecution to a person for possession of a controlled substance or possession of drug paraphernalia if that 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. **This provision will have a minimal impact on local law enforcement.**

--Section 10 requires that by December 31, 2015, the Department of Criminal Justice Training shall offer voluntary regionalized in-service training on the topic of heroin for law enforcement officers employed by agencies that utilize Department of Criminal Justice Training basic training for recruits. **Since the training is voluntary and qualifies for in-service training, local law enforcement will not have to incur a cost.**

SB 5 SCS with CA lengthens the imprisonment of someone convicted of various felonies, which impacts local jails. For example, SB 5 SCS with CA amends the sentencing provisions for certain offenses. Section 7 requires heroin and fentanyl traffickers to serve at least 50% of the sentence imposed prior to eligibility for any form of early release. Meanwhile, Section 7 also allows for a deviation from the 50% time-served requirement

if a convicted person provides substantial assistance in the investigation or prosecution of another person who has committed an offense.

Further, Sections 2 and 3 contain new language which would affect KY-ASAP programs in or supervised by county jails. These sections create three new 25% set-asides of estimated savings from the implementation of 2011 HB 463 to provide supplemental funding for KY-ASAP programs. Section 2 creates a 25% earmark for the savings generated under KRS 196.286 to be used by KY-ASAP. Section 3 creates two additional draws of 25% made on the savings generated under KRS 196.288, each used for KY-ASAP for different purposes – one for jails and the other for community mental health centers.

According to data from the Governor’s Office of Policy Management (GOPM), in FY 2016 an estimated \$6.7 million will be saved due to changes in Kentucky’s drug laws under 2011 HB 463. The GOPM also estimates that \$23.2 million will be saved due to 2011 HB 463’s provisions designed to place more offenders on parole. Section 2 of SB 5 SCS with CA requires 25% of the estimated \$6.7 million in savings under KRS 192.286 to be used for KY-ASAP programs operating in or supervised by county jails. This results in about \$1.7 million in additional funding. Further, Section 3 creates another 25% set-aside, also for the benefit of local jails, out of the estimated savings from 2011 HB 463’s parole revisions. This set-aside is expected to yield another \$5.8 million for local jails. **All total, local jails should expect to receive approximately \$7.5 million in additional funds resulting from SB 5 SCS with CA.**

According to the Office of Drug Control Policy, KY-ASAP programs are not generally part of “local government.” There are, however, some KY-ASAP programs that have a local government entity (such as a fiscal court or a local health department) as their fiscal agent. According to ODCP, the impact of the earmark provisions in Sections 2 and 3 should be **moderately positive** for local governments.

Section 6 provides defendants the opportunity for a deferred prosecution if, while in the presence of someone suffering a drug overdose, they immediately seek medical assistance. An overdose victim is also eligible for a deferred prosecution if certain conditions are met. Deferred prosecutions, by their very nature, eliminate the need for someone to be incarcerated in jail.

A person convicted of a Class A or Class B felony is not housed in a local jail.

When a court denies bail to a Class C or Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky’s 77 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 \$33.26 per day including medical costs. 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 \$33.26 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 (\$33.26 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 \$42.26 per day. This amount is reimbursed by the Department of Corrections and is \$9 more than the estimated average cost of \$33.26 per day, including medical costs, to jail an individual not participating in a SAP. Since the \$42.26 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 2 grams.** Under current law, trafficking less than 2 grams of heroin is a Class D Felony for a 1st offense and a Class C felony for subsequent offenses.

Data Source(s): Kentucky Association of Chiefs of Police; Ky Coroner's Assoc.; Office of Drug Control Policy; Dept. of Corrections; Ky Firefighters Association; Ky Board of Emergency Medical Services; Kentucky Association of Regional Programs; LRC Staff;

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