



**Section 3 of HB 4 GA** amends KRS 530.064 to expand the crime of unlawful transaction with a minor in the first degree to include knowingly inducing, assisting, or causing a minor to engage in illegal synthetic drugs activity. Unlawful transaction with a minor in the first degree is a: Class C felony if the minor is less than 18, Class B felony if the minor is less than 16, and Class A felony if the minor incurs physical injury.

**Section 4 of HB 4 GA** amends KRS 530.065 with a conforming amendment to limit the crime of unlawful transaction with a minor in the second degree by excluding knowingly inducing, assisting, or causing a minor to engage in illegal synthetic drugs activity. (Unlawful transaction with a minor in the second degree is a Class D felony.) This conforming amendment eliminates any conflict between Section 4 of HB 4 GA and Section 3.

**Section 5 of HB 4 GA** declares an emergency.

**HB 4 SCS makes numerous changes to HB 4 GA.**

**Sections 1 through 8 of the SCS are additions.**

Section 1 (17) of the SCS amends KRS 218A.010 to define “Hydrocodone combination product.”

Sections 2, 4, 5, 6, 7, and 8 amend KRS 218A.020, 218A.070, 218A.090, 314.011, 320.210, and 320.240, respectively, to classify all hydrocodone products as Schedule II rather than Schedule III controlled substances and to preserve the authority of certain individuals to write prescriptions for hydrocodone combination products.

Section 3 amends KRS 218A.050 to add synthetic opioids W-18 and W-15 to the list of controlled substances under Schedule I.

**Except for one change, Section 9 of the SCS is identical to Section 1 of the GA.**

Section 9 preserves the Class D felony for a second or subsequent possession of a synthetic drug but eliminates the three year limit on the sentence that may be imposed, allowing a maximum five year prison sentence per KRS 532.060(2).

**The SCS deletes Sections 2, 3, 4, and 5 of HB 4 GA.**

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

**The fiscal impact of HB 4 SCS on local governments is indeterminable but expected to range from a minimal to moderate increase in costs to a minimal to moderate savings, depending on the provision of the bill.**

According to the Administrative Office of the Courts, there has been an upsurge in synthetic drugs crimes over the last few years. In 2012, there was one conviction for trafficking in synthetic drugs (first offense). In 2015, there were 105 convictions. These

convictions were punished under KRS 218A.1430 (1) (b) as Class A misdemeanors. In 2012, there were no convictions for trafficking in synthetic drugs (second offense). In 2015, there were five convictions. These convictions were punished under KRS 218A.1430 (1) (b) as Class D felonies. In 2012, there were eight convictions for possession of synthetic drugs. In 2015, there were 760 convictions. These convictions were punished under KRS 218A.1430 (2) (b) as Class B misdemeanors.

Section 9 of HB 4 SCS increases the penalties for these offenses. Trafficking in synthetic drugs becomes a Class D felony for the first offense and a Class C felony for a second or subsequent offense. Possession of synthetic drugs becomes a Class A misdemeanor for the first offense and a Class D felony for a second or subsequent offense. These increases in penalties are identical to those found in the GA, with one exception. Section 9 of the SCS preserves the Class D felony for a second or subsequent possession of a synthetic drug but eliminates the three year limit on the sentence that may be imposed, allowing a maximum five year prison sentence per KRS 532.060(2).

**By increasing the penalties, HB 4 SCS increases some costs for jails while decreasing others.**

**With regard to Class B and Class A misdemeanors, passage of Section 9 of the SCS will result in hundreds of more convictions for Class A misdemeanors for possession of synthetic drugs and no Class B misdemeanor convictions for possession of synthetic drugs.** A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. However, a person convicted of a Class A misdemeanor may be incarcerated for up to one year. Misdemeanants are housed in one of Kentucky's 78 full service jails or five life safety jails. Though the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.92 per day. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.92 per day. **Since Class A misdemeanants serve longer jail sentences than Class B misdemeanants, it is safe to assume that by changing possession of a synthetic drug from a Class B misdemeanor into a Class A misdemeanor that will involve hundreds of convictions, HB 4 SCS will increase jail costs by a minimal to moderate amount.**

**However, Section 9 of the SCS also changes some Class B and Class A misdemeanors into Class D felonies.** Trafficking in synthetic drugs (first offense) becomes a Class D felony as does possession of synthetic drugs (second and subsequent offenses). When a court denies bail to a Class D 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 \$31.92 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 \$31.92 per day to house a Class D felon. The per diem pays for the estimated average cost of housing a Class D felon. Therefore, the per diem may be less than, equal to, or greater than the actual housing cost. **Since the state reimburses**

**jails for housing Class D felons but not Class B and Class A misdemeanants, it is assumed that jails will experience savings from housing Class D felons rather than Class B and Class A misdemeanants that will more than offset any costs incurred from bail being denied to Class D felony defendants. Therefore, jails will save a minimal amount of money.**

**Sections 2, 3, and 4 of HB 4 GA amend KRS 218A.1401, 530.064, and 530.065, respectively, so that various crimes committed against minors are no longer Class A misdemeanors and Class D felonies but rather Class C, Class B, and Class A felonies.** When a court denies bail to a Class D, C, B, or A felony defendant, the local jail 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 \$31.92 per day. Upon conviction, Class B and A felons are ineligible for placement in local jails. The state pays the entire cost of incarceration. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 18 months or less until their minimum expiration date or parole eligibility date. The Department of Corrections pays local jails \$31.92 per day to house these Class C felons. Since the per diem pays for the estimated average cost of housing a Class C felon, the per diem may be less than, equal to, or greater than the actual housing cost. **By changing some Class A misdemeanors and Class D felonies to Class C, B, and A felonies, HB 4 GA shifts much of the cost of incarceration upon conviction from local jails to the state. This savings should be greater than the local jail cost of housing a felony defendant denied bail while awaiting trial. Therefore, under HB 4 GA, jails should save an indeterminable amount of money ranging from minimal to moderate. By deleting the HB 4 GA amendments, the SCS restores the current law which makes the relevant crimes Class A misdemeanors and Class D felonies. Local jails will continue to pay the cost of incarcerating Class A misdemeanants as well as Class D felony defendants denied bail.**

HB 4 SCS changes trafficking in a synthetic drug (second offense) from a Class D felony to a Class C felony. Since a jail pays for incarceration of Class D felony defendants and Class C felony defendants if they are denied bail and the state pays for the incarceration of convicted Class D and Class C felons, the HB 4 SCS change will have very little if any impact.

**According to the Kentucky Association of Chiefs of Police, passage of the HB 4 SCS provisions discussed above will result in a minimal increase in costs for local law enforcement.** Since these provisions stiffen penalties, defendants will fight the charges more strenuously. As a consequence, police officers will spend more time in court at a minimal additional cost to local law enforcement.

Sections 1, 2, 4, and 5 of HB 4 SCS classify all hydrocodone combination products as Schedule II rather than Schedule III controlled substances. These amendments conform to Kentucky emergency regulation 902 KAR 55:020 E which in turn conforms to a federal Drug Enforcement Regulation. As the Kentucky emergency regulation states,

“...[T]his emergency administrative regulation is being amended to ensure consistency with the DEA’s rescheduling of hydrocodone combination products by adding these types of painkillers to Kentucky’s list of Schedule II drugs. This action must be taken on an emergency basis to enhance the health, safety, and welfare of Kentucky’s citizens in accordance with KRS 13A.190 (1) (a) by allowing law enforcement agencies and prosecutors to appropriately charge individuals who traffic in hydrocodone combination products or who possess hydrocodone combination products without a valid prescription or beyond the scope of the prescription. Failure to enact this administrative regulation...will compromise the state’s ability to act quickly in its efforts to address crimes involving hydrocodone combination products.” **Since Sections 1, 2, 4, and 5 conform to federal and state administrative regulations, the sections likely have no fiscal impact on local governments.**

Please note that the SCS deletes Section 5 from the GA. Section 5 of the GA declares an emergency.

**Data Source(s):** Administrative Office of the Courts; Department of Corrections; Kentucky Association of Chiefs of Police; KRS; KAR

**Preparer:** Scott Varland      **Reviewer:** JWN      **Date:** 3/21/16