



Sections 2 & 3 – possession of a controlled substance in the first and second degrees (KRS 218A.1415 & KRS 218A.1416)

Under Section 2, possession of a controlled substance, including synthetic drugs, in the first degree is a Class D felony, but the maximum term of incarceration shall be no more than 3 years. For the first or second offense, the individual charged may be subject to a period of deferred prosecution or presumptive probation. Section 3 includes synthetic drugs within the purview of KRS 218A.1416, second degree possession. This is accomplished by removing synthetic drugs from the statute's exclusionary language. Possession of a controlled substance in the second degree is a Class A misdemeanor.

Section 4 – selling controlled substances to a minor (KRS 218A.1401)

A person is guilty of selling controlled substances to a minor when he knowingly transfers any quantity of a controlled substance, including synthetic drugs, to any person under 18. Selling controlled substances to a minor is a Class C felony for the first offense, and a Class B felony for each subsequent offense, unless a more severe penalty is applicable. Section 4 amends 218A.1401 by deleting synthetic drugs from the statute's exclusionary language so that the selling of synthetic drugs to children would be treated as a felony offense.

Section 5 – properties associated with crimes that are subject to forfeiture (KRS 218A.410)

HB 66 includes any property where sale or possession of synthetic drugs occurred as subject to forfeiture. Once again, the bill accomplishes this by striking language that excluded synthetic drugs from the statute's scope.

Sections 6 & 7 – unlawful transaction with a minor in the first and second degrees (KRS 530.064 & KRS 530.065)

HB 66 creates stiffer penalties for an unlawful transaction with a minor involving synthetic drugs. Under the proposed legislation, engaging a minor in an activity involving synthetic drugs is an unlawful transaction with a minor in the first degree. Illegal activity with a minor involving synthetic drugs would no longer be considered an unlawful transaction in the second degree. Unlawful transaction with a minor in the first degree is a Class C felony if the minor is less than 18, Class B if the minor is less than 16, and a Class A felony if the minor is physically injured in the commencement of the crime.

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

#### **HB 66 is expected to provide cost savings to local governments.**

Currently, trafficking in synthetic drugs is a Class A misdemeanor for the first offense, and a Class D felony for subsequent offenses. During the last three (3) calendar years, there were approximately 556 misdemeanor charges for trafficking in synthetic drugs. HB 66 makes the minimum penalty for trafficking in synthetic drugs a Class D felony for the first offense, if the amount is less than 4 grams, and a Class C felony for anything greater.

Possession of synthetic drugs is a Class B misdemeanor, and unless an exception applies, the defendant cannot be incarcerated longer than 30 days. During the last three (3) calendar years, there were approximately 2,174 charges for possession of synthetic drugs. Because proposed legislation includes synthetic drugs in the same category as controlled substances, possession in the first degree is a Class D felony, with a maximum penalty of three (3) years, and in the second degree is a Class A misdemeanor.

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. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

When a court denies bail to a Class D or Class C 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 \$31.34 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. Class C felons, however, 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. The Department of Corrections pays local jails \$31.34 per day to house Class D and Class C felons. Since the per diem pays for the estimated average cost of housing a Class D and a Class C felon, the per diem may be less than, equal to, or greater than the actual housing cost.

It is likely that local jails will realize the most cost savings with the repeal of KRS 218A.1430, for local jails would be reimbursed per diem for any costs of incarceration before the disposition of the case. However, local jails may experience a cost increase if many of the former possession of synthetic drugs charges become possession of a controlled substance in the second degree. Under this scenario, local jails would bear all of the inmate's housing costs before the disposition of the case, plus up to a year after sentencing, if the inmate is found guilty.

The proposed changes to HB 66 involving unlawful sales or transactions with a minor, which include synthetic drugs, would have minimal impact on local jails. Selling controlled substances to a minor, and unlawful transaction with a minor carry felony penalties.

**Data Source(s):** Kentucky Jailers Association; Administrative Office of the Courts

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