

**Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2016 Regular Session**

Part I: Measure Information

Bill Request #: 1420

Bill #: SB 136 GA

Bill Subject/Title: Controlled substances.

Sponsor: Senator Whitney Westerfield

Unit of Government: City County Urban-County
 Charter County Consolidated Local Unified Local
Government

Office(s) Impacted: Local law enforcement and local jails

Requirement: Mandatory Optional

Effect on

Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

Sections 1, 2, 4, 5, 6, 7, and 8 of SB 136 GA amend various KRS sections 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 Kratom, as defined in Section 1, and synthetic opioids W-18 and W-15 to the list of controlled substances under Schedule I.

KRS 218A.1430 (1) establishes the crime of trafficking in synthetic drugs punishable as a Class A misdemeanor for a first offense and a Class D felony for each subsequent offense. Section 9 of SB 136 GA amends the statute to punish the crime as a Class D felony for a first offense and a Class C felony for each subsequent offense.

KRS 218A.1430 (2) establishes the crime of possession of synthetic drugs punishable as a Class B misdemeanor. Section 9 of SB 136 GA amends the statute to punish the crime as a Class A misdemeanor for a first offense and a Class D felony for each subsequent offense.

Sections 11 to 15 contain amendments that conform to the amendments to Sections 16 and 17.

Section 16 amends KRS 218A.1450 to punish trafficking in Kratom as a Class A misdemeanor.

Section 17 amends KRS 218A.1451 to punish possession of Kratom as a Class B misdemeanor.

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

The fiscal impact of SB 136 GA on local governments is indeterminable but expected to range from a minimal to moderate increase in costs to a minimal 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.

SB 136 GA 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.

By increasing the penalties, SB 136 GA increases some costs for jails while decreasing others.

With regard to Class B and Class A misdemeanors, passage of SB 136 GA 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 \$31.34 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. **Since Class A misdemeanants serve longer jail sentences than Class B misdemeanants, it is likely that by changing possession of a synthetic drug from a Class B misdemeanor into a Class A misdemeanor that will involve hundreds of convictions, SB 136 GA will increase jail**

costs by at least a minimal to moderate amount. Much will depend on how the police, prosecutors, judges, and juries view possession of synthetic drugs.

However, SB 136 GA changes some Class B and Class A misdemeanors into Class D felonies. Possession of synthetic drugs (second offense) is changed from a Class B misdemeanor to a Class D felony and trafficking in synthetic drugs (first offense) is changed from a Class A misdemeanor to a Class D felony. 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 \$31.34 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. The Department of Corrections pays a jail \$31.34 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.**

SB 136 GA also converts a Class D felony (trafficking in synthetic drugs second offense) into a Class C felony. 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 \$31.34 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. The Department of Corrections pays a jail \$31.34 per day to house a Class 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. With a couple of exceptions, Class C felony defendants and convicts are treated the same as Class D felony defendants and convicts. Pursuant to KRS 532.060 and 532.070, a Class D felon may be incarcerated for not less than one year and not more than five years, and a Class C felon shall be incarcerated for not less than five years and not more than 10 years. In addition, 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. The Department of Corrections pays local jails \$31.34 per day to house these Class C felons. This rate covers the estimated average cost of housing a Class C felon.

According to the Administrative Office of the Courts, in 2012 there were no convictions for trafficking in synthetic drugs (second offense), and in 2015 there were five convictions. If SB 136 GA becomes law, convictions for trafficking in synthetic drugs (second offense) will be Class C felonies rather than Class D felonies. **Since the state**

pays for the cost of incarcerating Class D and Class C felons, this change in the law will likely have no fiscal impact on local jails.

Research indicates that at present, Kratom is sold legally throughout Kentucky. Hundreds, if not thousands, of individual consume the drug. SB 136 GA makes possession of Kratom a Class B misdemeanor and trafficking in Kratom a Class A misdemeanor. The fiscal impact of passage of SB 136 GA on local jails is indeterminate. If the police focus on the sale and possession of Kratom, then there will be hundreds of Class B misdemeanor convictions for possession and dozens of Class A misdemeanor convictions for trafficking. These convictions might result in jail time that costs a jail \$31.34 per day as discussed above. The likely police attitude to the criminalization of Kratom is discussed in the second paragraph below.

Section 3 of SB 136 GA adds synthetic opioids W-18 and W-15 to the list of controlled substances under Schedule I. It is anticipated that there will be few convictions for trafficking in these synthetic opioids, and that most of the convictions will be for felonies under statutes such as KRS 218A.1413. When a person is convicted of a felony, the state pays for incarceration in a jail (Class D felony) or incarcerates the felon (Class C, B, or A felony). A local jail incurs little, if any, cost. A local jail does have to cover the cost of \$31.34 per day for housing an individual who has been denied bail.

According to the Kentucky Association of Chiefs of Police, passage of SB 136 GA will result in a minimal increase in costs for local law enforcement. Since the measure stiffens 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. With regard to criminalizing Kratom, the police are now focusing on cocaine and heroin trafficking. Passage of SB 136 GA will probably not change this focus. Furthermore, most drug traffickers will sell Kratom in addition to salvia, synthetic drugs, marijuana, or another illegal drug. Therefore, a police officer will arrest an individual for trafficking in some other drug at the same time that he or she arrests that individual for trafficking in Kratom. This will result in little impact on police officer duties. It is unlikely that police will focus on possession of a drug such as Kratom.

Sections 1, 2, 4, and 5 of SB 136 GA 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.**

Data Source(s): Administrative Office of the Courts; Department of Corrections; Kentucky Association of Chiefs of Police; KRS; KAR; Kentucky Kratom Co.; Kratom Online; Discount Smokes

Preparer: Scott Varland **Reviewer:** JWN **Date:** 2/22/16