

HB 333 GA defined “carfentanil”, “fentanyl” and “fentanyl derivative” and provided that unlawfully “importing” any quantity of these drugs or derivatives is a Class C felony. **HB 333 SCS** amended KRS 218A.1412 to add fentanyl and carfentanil to the list of controlled substances for which “trafficking in the first degree” is a Class C felony for the first offense, and Class B for the second. KRS 218A.1412 was also amended to provide that persons convicted of Class C felonies for trafficking in fentanyl, carfentanil, or fentanyl derivatives must serve 50% of their sentence before parole/probation eligibility. The bill amended KRS 218A.142 to define aggravated trafficking as a Class B felony, with established baseline amounts per substance involved. The bill provided for a prohibition on practitioners issuing prescriptions for Schedule II controlled substances for more than 3 (with 6 identified exemptions). A new section of KRS Chapter 218A was created to define “misrepresented controlled substance” and provided for a Class D felony penalty for trafficking in a misrepresented controlled substance.

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

HB 333 SCS will have an indeterminate and minimal fiscal impact on local law enforcement and county jails. **HB 333 SCS** effectively creates new crimes and punishments relating to controlled substances. This will likely result in a small increase in Class D and Class C felony arrests, charges and incarcerations. On the other hand, it is not possible to estimate how many offenders under this legislation will qualify for the lower (Class D felony) penalty based on the substance abuse disorder. Allowing these offenders to qualify to the Class D felony will result in an increase in Class D felony incarcerations in county jails.

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. Class D felons are incarcerated in county jails; and the jails are reimbursed \$31.34 per day, which equals the average per diem and medical that DOC pays jails to house felony offenders.

The impact of Class D and Class C felonies on local jails is identified below:

Class D and Class C felons:

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 76 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs to the state by an estimated average of \$31.34 per day, which equals the per diem and medical cost that Department of Corrections pays jails to house felony offenders. 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 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.

When a court denies bail to a Class C felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky's 76 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, which equals the per diem and medical that Department of Corrections pays jails to house felony offenders. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 24 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. 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.

Substance Abuse Program:

Twenty-three full service jails provide an in-patient substance abuse program (SAP) to nearly 1,100 convicted felons incarcerated in the jails. The estimated average cost of jailing a convicted felon participating in a SAP is \$40.34 per day. This amount is reimbursed by the Department of Corrections and is \$9 more than the estimated average cost of \$31.34 per day reimbursement. Since the \$40.34 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.

Data Source(s): Kentucky Sheriffs Association, Kentucky Association of Chiefs of Police, Kentucky Jailers Association

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