

CORRECTIONS IMPACT STATEMENT

SESSION: 17RS

BILL #: HB 352 Introduced

BR #: 415

DOC ID#: XXXX

BILL SPONSOR(S): Rep. G. Watkins **AMENDMENT SPONSOR(S):**

SUBJECT: AN ACT relating to crimes and punishments.

SUMMARY OF LEGISLATION: Create a new section of KRS Chapter 218A to apply a uniform penalty of mandatory drug treatment and community service to persons convicted of possessing certain drugs and paraphernalia; amend KRS 218A.140 to revise possession of counterfeit substances from a Class D felony to a Class A misdemeanor; amend KRS 218A.1415 to revise possession of a controlled substance from a Class D felony to a Class A misdemeanor; amend KRS 218A.1437 to lower possession of a methamphetamine precursor from a Class D felony to a Class A misdemeanor; amend KRS 218A.276 to require that defendants convicted of possession of a counterfeit substance under KRS 218A.140, marijuana under KRS 218A.1422, synthetic drugs under 218A.1430, methamphetamine precursors under 218A.1437, salvia under KRS 218A.1451, or drug paraphernalia under KRS 218A.500 complete a drug treatment program; amend KRS 218A.275 to require that defendants convicted of possession of a controlled substance under various sections of Chapter 218A complete a drug treatment program; amend KRS 431.078 to conform.

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|--|---|
| <input type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input type="checkbox"/> Increases penalty for existing crime(s) | <input checked="" type="checkbox"/> Decreases penalty for existing crime(s) |
| <input type="checkbox"/> Increases incarceration | <input type="checkbox"/> Decreases incarceration |
| <input type="checkbox"/> Reduces inmate/offender services | <input checked="" type="checkbox"/> Increases inmate/offender services |
| <input checked="" type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions |
| <input type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) _____ | |

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$66.82. Most Class D felons are housed in one of 76 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$31.41 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

Projected Impact: NONE MINIMAL MODERATE SIGNIFICANT

Potential Impact:

The legislation requires anyone convicted under KRS 218A.140 (False Statement to Obtain Prescription and similar charges), KRS 218A.1437 (Unlawful Possession of a Methamphetamine Precursor), KRS 218A.500 (Drug Paraphernalia), or any misdemeanor offense in Chapter 218A that includes possession of a controlled substance as an element of an offense shall be required to perform community service and complete a drug treatment program. Data from AOC for CY2016 reports the number of felony and misdemeanor convictions under KRS 218A.140, KRS 218A.1437, and KRS 218A.500 as 4,319 from Circuit Court and 7,357 from District Court. In addition, it is estimated that CY2016 misdemeanor convictions under Chapter 218A that include possession of controlled substance as an element of the offense is 3,105 out of Circuit Court and 16,848 out of District Court. Note: Misdemeanors under 218A.140, 218A.1437, and 218A.500 are also represented in this query. Juvenile convictions are not included.

The legislation moves violations under KRS 218A.140(2) (No Person shall Affix any False or Forged Label to a Package or Receptacle Containing a Controlled Substance) from a Class D felony to a Class A misdemeanor. The other subsections under this KRS remain a Class D felony.

Modifications to KRS 218A.1415 under this legislation include changing Possession of Controlled Substance 1st Degree from a Class D Felony to a Class A Misdemeanor and strikes the maximum term of incarceration of no greater than three years, notwithstanding KRS Chapter 532. AOC data reports 5,171 convictions out of Circuit Court in CY2016 for Possession Controlled Substance 1st Degree. Currently, the Department has 4,106 inmates and 12,928 offenders on supervision who have received convictions for Possession of Controlled Substance 1st Degree. If HB 352 had been law at the time of their convictions, the 4,106 currently incarcerated inmates for a Class D felony offense would instead be county misdemeanor convictions. The cost savings

to the state, at \$11,464.07 annual cost to incarcerate, could be as high as \$47,071,471.42. Note: Offenders may also be serving on other felony charges.

Modifications to KRS 218A.1437 under this legislation include changing Unlawful Possession of a Methamphetamine Precursor from a Class D Felony to a Class A Misdemeanor for the 1st Offense. It remains a Class C felony for subsequent offenses. AOC data reports 265 convictions out of Circuit Court in CY2016 for Class D Unlawful Possession of a Methamphetamine Precursor. Currently, the Department has 582 inmates and 1,168 offenders on supervision who have received convictions for Unlawful Possession of a Methamphetamine Precursor 1st Offense. If HB 352 had been law at the time of their convictions, the 582 currently incarcerated inmates for a Class D felony offense would instead be county misdemeanor convictions. The cost savings to the state, at \$11,464.07 annual cost to incarcerate, could be as high as \$6,672,088.74. Note: Offenders may also be serving on other felony charges.

Under this legislation, the Department shall be required to perform an assessment for most possession of a controlled substance offenses and selected trafficking in controlled substances offenses. Under current statute, judges may request this assessment. This proposed change would be a significant increase in workload for the Department, specifically for drug convictions from District Court. Currently, only a few District Court judges request assessments under this statute. With a workload that could feasibly double, the Department would need significant additional staffing to complete assessments for District Court. The Department would need to add 28 additional Social Service Clinicians. The cost for a Social Service Clinician is \$57,793.37 annually.

Under this legislation, the court shall order the defendant to the appropriate treatment or recovery program for 90 days to 1 year, including community, faith-based, or residential treatment programs. Unless the offender's income is at or below 125% of the annual poverty guidelines, the offender shall be responsible for the payment of treatment services.

LOCAL IMPACT: 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. While the expense varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

Projected Impact: NONE MINIMAL MODERATE SIGNIFICANT

Potential Impact:

Under the proposed legislation Class D felony convictions would become misdemeanor offenders under county jurisdiction. This bill would reduce the number of Class D felons housed in county jails, which would result in a cost savings for the Department. However, the loss of per diem from state felony inmates would be a loss of revenue for the jails.

At the same time, moving Possession of Controlled Substance 1st Degree and Unlawful Possession of a Methamphetamine Precursor from a felony to a misdemeanor will impact the local facilities as the county would absorb costs that previously would have fallen under state jurisdiction.

This would have a significant fiscal impact for county jails.

A Class A misdemeanor is 90 days to 1 year in jail

10 Class A misdemeanants: \$28,270 to \$114,640

1 Class A misdemeanor: \$2,827 to \$11,464

100 Class A misdemeanants: \$282,700 to \$1,146,400

The following offices contributed to this Corrections Impact Statement:

Dept. of Corrections Dept. of Kentucky State Police Administrative Office of the Courts Parole Board Other

NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments.

APPROVED BY:

Commissioner, Kentucky Department of Corrections

Date