

CORRECTIONS IMPACT STATEMENT

SESSION: 17RS

BILL #: SB 14 HCS 1

BR #: 463

DOC ID#: SB001430.100 - 463 - 5846

BILL SPONSOR(S): Sen. J. Schickel, D. Seum, R. Alvarado, T. Buford, J. Carpenter, D. Carroll, C. Embry Jr., R. Girdler, P. Hornback, A. Kerr, C. McDaniel, S. Meredith, W. Schroder, D. Thayer, S. West, W. Westerfield, M. Wise

AMENDMENT SPONSOR(S): Rep. J. Fischer

SUBJECT: AN ACT relating to controlled substances.

SUMMARY OF LEGISLATION:

HCS1 - Delete original provisions; amend KRS 218A.010 to define "fentanyl," "carfentanil," and "fentanyl derivatives"; amend KRS 218A.020 to expand the authority of the Office of Drug Control Policy to request the rescheduling of a substance; amend KRS 218A.050 to schedule fentanyl derivatives as Schedule I controlled substances; amend KRS 218A.1410 to include carfentanil, fentanyl, or fentanyl derivatives; amend KRS 218A.1412 to make trafficking in any amount of fentanyl, carfentanil, or fentanyl derivatives subject to elevated penalties, and specify that a person who has a substance use disorder involving heroin and traffics in less than two grams of heroin is guilty of a Class D felony; amend KRS 218A.142 to include carfentanil, fentanyl, or fentanyl derivatives; amend KRS 218A.205 to require state licensing boards to promulgate regulations limiting prescriptions for Schedule II controlled substances for acute pain to a three day supply, with certain exceptions; create a new section of KRS Chapter 218A to create a new offense of trafficking in a misrepresented controlled substance.

HCA1- Make title amendment.

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 checked="" type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input checked="" type="checkbox"/> Increases incarceration | <input type="checkbox"/> Decreases incarceration |
| <input type="checkbox"/> Reduces inmate/offender services | <input type="checkbox"/> Increases inmate/offender services |
| <input type="checkbox"/> Increases staff time or positions | <input type="checkbox"/> Reduces staff time or positions |
| <input checked="" 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 Cost:

The proposed legislation requires that anyone convicted of Trafficking in Heroin or Fentanyl 1st offense, regardless of the quantity, shall be guilty of a Class C felony. Currently, Trafficking in Heroin 1st degree less than 2 Grams is a Class D felony for a first offense. By removing the quantity threshold for heroin and adding fentanyl, incarceration timeframes would increase from 1-5 years (Class D felony) to 5-10 years (Class C felony) with increased costs associated with longer periods of incarceration.

One Class D Felony sentence of 1 - 5 years costs Kentucky an average of \$11,464 - \$57,320.

One Class C Felony sentence of 5 - 10 years costs Kentucky an average of \$121,995 - \$243,910.

Class D offenders are housed in local jails at a cost to the Department of \$31.41 per day for housing. If the Class C felon is not statutorily eligible to be housed in a jail facility, higher incarceration costs are incurred at \$66.82 per day for housing at a state prison facility. All offenders convicted of a second offense must be housed in an institution.

Currently there are 793 offenders incarcerated for Trafficking in First Degree for Heroin or Fentanyl. Of these, 497 show a record of Class D Trafficking 1st Offense less than 2 Grams that under this legislation would become a higher felony class.

There are an additional 66 offenders incarcerated for Trafficking in Controlled Substance 2nd or Greater Offense for Heroin (Class C), which under the proposed statute would become a Class B felony.

Additionally, there are 1,268 offenders on supervision for Trafficking in Heroin. Eight hundred ninety-nine (899) of these are Class D Trafficking 1st Offense less than 2 Grams that would be impacted by this legislation.

The statute requires that anyone convicted of a Class C trafficking in heroin shall serve fifty percent (50%) of the sentence imposed prior to release on probation, shock probation, parole, conditional discharge, or other early release. Currently, an inmate convicted of a Class D trafficking in heroin would be subject to twenty percent (20%) of the sentence imposed prior to becoming eligible for parole. Increasing the parole eligibility rate from twenty percent to fifty percent would increase costs associated with a longer period of incarceration.

Class D Heroin/Fentanyl traffickers historically serve an average of 304 days before release on parole. Class C Heroin traffickers, on average, serve 1223 days before reaching 50% parole eligibility. The difference between the two is the additional time that Class D Heroin traffickers would serve before becoming parole eligible under the proposed legislation. If SB 14 had been law at the time of their convictions, the 497 incarcerated offenders estimated to be impacted by this legislation would serve at least an additional 919 days of incarceration until they meet 50% parole eligibility. At \$66.82 per day, the estimated cost would be \$30,519,567.26. This calculation assumes that all offenders would parole at 50%. In addition, this calculation does not include second or subsequent offenders.

Senate Committee Substitute:

Under the proposed substitute, a person convicted of a Class C or higher but trafficking less than 2 grams of heroin would be subject to 20% parole eligibility.

Records show 46 Class C inmates currently incarcerated for Trafficking in Heroin less than 2 grams and 493 Class D inmates for Trafficking Heroin less than 2 Grams (who if this legislation was in effect at the time of their sentencing would become Class C felons). In addition, 18 Class C inmates are currently incarcerated for Trafficking in Heroin over 2 grams and 215 Class D inmates are incarcerated for Trafficking over 2 Grams (who if this legislation was in effect at the time of their sentencing would also become Class C felons).

The Committee Substitute would allow 539 offenders of Trafficking in Heroin less than 2 grams to be subject to 20% parole eligibility and 233 offenders of Trafficking in Heroin more than 2 grams to be subject to 50% parole eligibility.

Note: Calculations below reflect an average sentence of Class C and Class D Heroin Traffickers with an amount specified in the Corrections database. This calculation assumes that all offenders would parole at parole eligibility.

Five hundred thirty-nine offenders for Trafficking in Heroin less than 2 grams subject to 20% parole eligibility would serve an average of 282 days at \$66.82 per day, for a cost of \$10,156,506.36.

Two hundred thirty-three offenders for Trafficking in Heroin more than 2 grams subject to 50% parole eligibility would serve an average of 1455 days at \$66.82 per day, for a cost of \$22,652,982.30.

House Committee Substitute:

The bill provides a definition for carfentanil, fentanyl, and fentanyl derivatives. An addition to the definition of marijuana excludes a cannabidiol product approved as prescription medication by the FDA. The bill also outlines guidelines for prescribing opioids for chronic pain. Fentanyl derivatives are added as a Schedule I controlled substance.

The bill establishes a new Class C felony of Importing Carfentanil, Fentanyl, or Fentanyl Derivatives, and a new Class D felony of Trafficking in a Misrepresented Controlled Substance. It is not known how many additional offenders would be convicted under these new offenses.

Aggravated Trafficking in a Controlled Substance 1st Degree adds 28 grams or more of fentanyl or 10 grams or more of carfentanil or fentanyl derivatives and is a Class B felony. Incarceration costs for a Class B felon is between \$243,910 to \$487,820 for a 10-20 year sentence. It is not known how many offenders would be convicted of Aggravated Trafficking in Fentanyl, but the number is not expected to be significant.

The proposed floor amendment specifies a person trafficking in any quantity of fentanyl, carfentanil, or fentanyl derivatives or trafficking 2 grams or more of heroin shall be guilty of a Class C felony for a 1st offense and a Class B felony for a 2nd or subsequent offense.

A person trafficking less than two grams of heroin shall be guilty of a Class C felony for a 1st offense and a Class B felony for a 2nd or subsequent offense, except if at the time of the offense, the defendant is determined by the court to have a substance abuse disorder, to which the defendant shall be guilty of a Class D felony for a 1st offense and a Class C felony for a 2nd or subsequent offense.

Under current statute, Trafficking in Heroin or Fentanyl 1st degree under 2 Grams is a Class D felony for a 1st offense.

It is not possible to estimate how many offenders under this legislation would qualify for the lower penalty based on the substance abuse disorder, but it is expected that the number would be substantial. Allowing these offenders to qualify to the Class D felony would substantially reduce incarceration costs through shorter sentences and a lower cost to incarcerate.

The legislation requires that anyone convicted of a Class C Trafficking in Heroin or Fentanyl serve 50% of the sentence imposed prior to release on probation, shock probation, parole, conditional discharge, or other early release.

Under the House Committee Substitute, the parole eligibility rate for Fentanyl traffickers is increased from 20% to 50%, which increases costs associated with a longer period of incarceration. Currently, the Department has 7 offenders serving on Trafficking in Controlled Substances 1st Degree - Fentanyl. It is not possible to predict the number of additional offenders who would be charged with Trafficking in Fentanyl; however, offenders entering the criminal justice system under Fentanyl charges are expected to increase.

Overall, the continued effects of the heroin and fentanyl epidemic will have a significant impact for the Department of Corrections.

A Class B Felony sentence is 10 to 20 years	10 Class B Felons cost \$2.4M to \$4.878M
1 Class B Felon costs KY \$243,910 to \$487,820	100 Class B Felons cost \$24.4M to \$48.8M
A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost \$1.2M to \$2.4M
1 Class C Felon costs KY \$121,955 to \$243,910	100 Class C Felons cost \$12.2M to \$24.4M
A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost \$114,640 to \$573,200
1 Class D Felon costs KY \$11,464 to \$57,320	100 Class D Felons cost \$1.146M to \$5.7M

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:

SB 14 does not have a significant impact on the county jails because the trafficking of heroin and fentanyl was already a felony level offense, regardless of the amount.

A Class C offender must be within 24 months of the parole eligibility date and meet community custody classification requirements in order to be housed at a county jail. Some of the increased number of Class C felons under this legislation could continue to be housed in a county jail if certain classification criteria are met. Other offenders that previously would have been Class D felons housed at a county jail would now be Class C felons that may not meet the eligibility criteria for housing at a county jail. This would decrease revenue for jails.

House Committee Substitute:

Under the House Committee Substitute, offenders subject to the Class D felony for Trafficking in Heroin less than two grams due to a substance abuse disorder would qualify for placement at the county jails. Trafficking in a Misrepresented Controlled Substance would be eligible for placement at a county jail as a Class D felony.

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