

## AMENDED CORRECTIONS IMPACT STATEMENT

**SESSION: 17RS**      **BILL #: SB 14**    **SCS 1**                      **BR #: 463**      **DOC ID#: SB001460.100 - 463 - 3087**

**BILL SPONSOR(S):** Sen. Schickel                      **AMENDMENT SPONSOR(S):**

**SUBJECT:** AN ACT relating to trafficking in heroin.

**SUMMARY OF LEGISLATION:** Amend KRS 218A.1412 to require that persons who traffic in heroin or fentanyl be charged as Class C felons for the first offense.

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This  bill     amendment     committee substitute is expected to:

Have the following Corrections impact     Have no Corrections impact

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

**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 2<sup>nd</sup> 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.

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

**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 is expected to minimally impact 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.

**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:**

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Commissioner, Kentucky Department of Corrections

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Date