

**COMMONWEALTH OF KENTUCKY STATE FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2017 REGULAR SESSION**

MEASURE

2017 BR NUMBER **0463**

SENATE BILL NUMBER **14SCS1**

RESOLUTION NUMBER _____

AMENDMENT NUMBER _____

SUBJECT/TITLE **An ACT relating to trafficking in heroin.**

SPONSOR **Senator Schickel**

NOTE SUMMARY

FISCAL ANALYSIS: IMPACT NO IMPACT INDETERMINABLE IMPACT

LEVEL(S) OF IMPACT: STATE LOCAL FEDERAL

BUDGET UNIT(S) IMPACT: **Department of Corrections, Administrative Office of the Courts**

FUND(S) IMPACT: GENERAL ROAD FEDERAL RESTRICTED AGENCY _____ OTHER

FISCAL SUMMARY

FISCAL ESTIMATES	2016-2017	2017-2018	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES		Indeterminable	Indeterminable
EXPENDITURES		Indeterminable	Indeterminable
NET EFFECT		Indeterminable	Indeterminable

() indicates a decrease/negative

MEASURE’S PURPOSE: The purpose of this legislation is to increase the penalties and mandatory minimum sentencing periods for first and second offenses relating to trafficking in heroin and fentanyl.

PROVISIONS/MECHANICS: The bill amends KRS 218A.1412 to remove heroin or fentanyl from subsection (1)(b) and add those specific controlled substances to subsection (1)(d). These provisions would make any amount of heroin or fentanyl a Class C felony for a first offense and a Class B felony for a second or subsequent offense.

Subsection (3)(b) is amended to remove the requirement for a person to serve no less than 50% of their imposed sentence before qualifying for parole for a heroin offense that included more than one item of paraphernalia. Section (3)(c) is amended to include that anyone convicted of a Class C felony, or higher, for trafficking less than two grams of heroin be eligible for probation, shock probation, parole, conditional discharge, or other form of early release once that individual has served at least 20% of their imposed sentence.

FISCAL EXPLANATION: This legislation has the potential to increase state and local costs associated with incarceration. According to data retrieved from Administrative Office of the

Courts (AOC) regarding first time adult offenses for heroin and fentanyl under these specific provisions, the number of overall charges and cases in CY 2015 were greater in number than were realized in CY 2016. Below is a chart that depicts the number of felony convictions for first degree, first time offenses for trafficking in a controlled substance (TICS), specifically for fentanyl and heroin, for CYs 2015 and 2016.

During the 2015 Regular Session, SB 192 made alterations to then-current law regarding KRS 218A.1412. These recent changes, combined with data delineated by CY, will make the interpretation of all data more complex. For example, CY 2016 below shows a total of eight case convictions for fentanyl-related crimes while CY 2015 shows zero. This is most likely because 2015 RS SB 192 added fentanyl to the list of controlled substances to which these penalties apply.

There were few juvenile convictions regarding these provisions, with CY 2015 realizing a total of two charges and cases for heroin-related offenses and CY 2016 realizing a total of five charges and cases for heroin-related offenses. Excluding the dynamics of juveniles in these specific circumstances, only adult convicted charges and cases are addressed in this analysis.

Trafficking Charge, Quantity	Conviction	Charges / Cases in CY 2015	Charges / Cases in CY 2016
TICS, 1 st Degree, 1 st Offense - Fentanyl (≥ 2 Grams)	C Felony	0 / 0	2 / 1
TICS, 1 st Degree, 1 st Offense - Heroin (≥ 2 Grams)	C Felony	194 / 117	130 / 120
TICS, 1 st Degree, 1 st Offense - Fentanyl (< 2 Grams)	D Felony	0 / 0	9 / 7
TICS, 1 st Degree, 1 st Offense – Heroin (< 2 Grams)	D Felony	749 / 519	678 / 499

This data does not include inchoate convictions for the exception of complicity and conspiracy punishable by a Class C or D felony. Charges for enhancement have been included if the drug weight would have led to a Class C or D felony conviction if the aggravating issue had not been present at time of offense.

If it is assumed that the existing declining rate, from CY 2015 to CY 2016, continues into future years, then a total of 493 Class D felony case convictions would be reclassified as Class C felony case convictions under the provisions of SB 14. A Class D felony is punishable by between one to five years of incarceration, while a Class C felony is punishable by between five to ten years of incarceration. The current cost to the Department of Corrections (DOC) for housing one Class C felon is between \$31.41/day and \$66.82/day while housing one Class D felon costs \$31.41/day. These costs do not include substance abuse treatment, which acts as additional expenditures to DOC. Some Class C felons, who are statutorily eligible, may be housed at a local jail facility, which would constitute a lower cost to DOC. However, it should be noted that an offender convicted of a second offense must be housed in a state prison at an average cost of \$66.82 per inmate per day, which amounts to over \$24,000 annually. Also, an initial conviction

of a Class C felony would mean any second or subsequent offense would be considered a Class B felony, and would require mandatory housing at a state prison facility and not a local jail.

SB 14 provisions stipulate that an offender will be required to serve at least 50% of their sentence before qualifying for early release with the exception of a person who was convicted of trafficking less than two grams of heroin. If under this threshold, an offender would only need to serve at least 20% of their imposed sentence prior to being considered for early release.

Under current statute, one individual who is trafficking in less than 2 grams of heroin for the first offense will be guilty of a Class D felony and must serve between 20-50% of their sentence before qualifying for any type of early release depending on if there was paraphernalia at the time of the offense. Based on data from DOC, the average Class D heroin/fentanyl trafficker serves 304 days before reaching parole eligibility. Under current statute it costs DOC, on average, \$9,549 to house one first time, first offense individual.

Under the provisions of SB 14, one individual who is trafficking in less than 2 grams of heroin for the first offense will be guilty of a Class C felony and must serve at least 20% of their sentence before qualifying for any type of early release. Based on data from DOC, the average Class C heroin trafficker serves 1,223 days before reaching 50% parole eligibility. At this rate, the average days served for 20% parole eligibility would be 489 days. Under SB 14 it would cost DOC, on average, \$15,359 to house one first time, first offense individual.

Based on these estimates and anticipating that the identified trend from the above table remains constant, the state can expect to expend no less than \$2,864,330 (\$5,810 is the average increased cost to house one first time, first offense individual, multiplied by 493 anticipated reclassified Class C felony case convictions). This calculation does not include any second or subsequent offenders, which will be extensive, as there is currently no realized recidivism rates for heroin/fentanyl-related trafficking. Currently, DOC has a drug crime recidivism rate of 38.77% which does not include heroin/fentanyl related trafficking offenses. DOC has concluded that it sees more heroin traffickers who are also users. Drug offenders recidivate more frequently because of their continued drug use. Under SB 14, any individual who recidivates will be charged with no less than a Class B felony. Class B felony offenses are required to be housed at a state institution and have a mandatory sentence of 10-20 years. The cost to house one Class B felon is between \$243,893 and \$487,786.

DATA SOURCE(S): Department of Corrections, Administrative Office of the Courts,
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