

CORRECTIONS IMPACT STATEMENT

SESSION: 18RS BILL #: HB 62 Prefiled

BR #: 373

DOC ID#: BR037300.100 - 373 - XXXX

BILL SPONSOR(S): Rep. Gerald 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 KRS 218A.1430, methamphetamine precursors under KRS 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 \$70.12. 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 \$31.45 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 MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

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 to perform community service and complete a drug treatment program. Data from AOC for FY2017 reports the number of felony and misdemeanor convictions under KRS 218A.140, KRS 218A.1437, and KRS 218A.500 as 4,714 from Circuit Court and 7,532 from District Court. In addition, there are an estimated 3,310 convictions from Circuit Court and 16,908 from District Court for Chapter 218A misdemeanors that include possession of controlled substance as an element of the offense in FY2017. Note: Misdemeanors under 218A.140, 218A.1437, and 218A.500 are also represented in this query.

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 include changing Possession of Controlled Substance 1st Degree from a Class D Felony to a Class A Misdemeanor and striking the maximum term of incarceration of no greater than three years, notwithstanding KRS Chapter 532. AOC data reports 6,176 Circuit Court convictions in FY2017 for Possession Controlled Substance 1st Degree. Currently, the Department has 4,662 inmates and 14,766 offenders on supervision who have received convictions for Possession of Controlled Substance 1st Degree.

If HB 62 had been law at the time of their convictions, the 4,662 currently incarcerated inmates with a Class D felony Possession of Controlled Substance 1st Degree conviction would instead have a misdemeanor Possession conviction. The cost savings to the state, at \$11,480.80 annual cost to incarcerate, could hypothetically be as high as \$53,523,489.60. Note: offenders serving on Possession of Controlled Substance 1st Degree will likely be also serving on other felony charges and therefore not all of this amount would be realized.

It is not possible to predict the exact impact to sentence calculations for all offenders with a Possession of Controlled Substance 1st Degree conviction, especially for offenders serving on multiple offenses. An offender subject to a consecutive felony sentences

under current statute, for example, could receive a felony sentence with a concurrent misdemeanor Possession charge under the proposed legislation. The State would incur considerable savings, but would still retain custody of the offender under the felony offense.

Modifications to KRS 218A.1437 under this legislation also 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 127 Circuit Court convictions in FY2017 for Class D Unlawful Possession of a Methamphetamine Precursor. Currently, the Department has 482 inmates and 1,107 supervised offenders for Unlawful Possession of a Methamphetamine Precursor 1st Offense. If HB 62 had been law at the time of their convictions, for example, 482 offenders sentenced to incarceration for this Class D felony offense would instead receive county misdemeanor convictions. 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 an estimated 28 additional Social Service Clinicians to complete assessments for District Court. The cost for a Social Service Clinician is \$60,469.05 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.

A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$114,790 to \$573,960
1 Class D Felons cost KY \$11,479 to \$57,396	100 Class D Felons cost KY \$1.1M 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 MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

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 would significantly impact local corrections as the county would absorb costs that previously would have fallen under state jurisdiction.

Of the 4,662 inmates currently serving on a Class D felony Possession of Controlled Substance conviction, 912 offenders are serving on Possession of Controlled Substance 1st Degree only. If HB 62 had been law at the time of convictions, these offenders would now be county misdemeanor convictions subject to county costs. The cost savings to the state would be the removal of the state inmate per diem of \$11,480.80 annually per inmate. These savings could be estimated at a minimum of \$10,470,489.60, which would potentially be shifted as a cost to the county.

There is no way to predict judicial sentencing if Possession of a Controlled Substance would become a misdemeanor offense rather than a felony. However, a shift from a felony to a misdemeanor offense for Possession of Controlled Substance 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: \$28,310 to \$114,790
1 Class A misdemeanants: \$2,831 to \$11,479	100 Class A misdemeanants: \$283,100 to \$1,147,900

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. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.

APPROVED BY:  **1/5/2018**
Commissioner, Kentucky Department of Corrections Date