

# CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # HB 470 GA BR # 893 DOC ID #: xxxx

BILL SPONSOR(S): Rep. C. McCoy AMENDMENT SPONSOR(S): . .

SUBJECT: AN ACT relating to controlled substances.

**SUMMARY OF LEGISLATION:** Amend KRS 217.186 to allow a pharmacist to dispense naloxone to a person or agency who provides training on the use of naloxone as a part of a harm reduction program; amend KRS 218A.1412 to make a technical correction to clarify that heroin trafficking is not eligible for a Class D felony; amend KRS 507.040 to add the unlawful distribution for remuneration of a Schedule I or II drug where the drug is the proximate cause of death to the elements of manslaughter in the second degree.

**AMENDMENT:** .

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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)   | <input type="checkbox"/> Repeals existing crime(s)               |
| <input type="checkbox"/> Increases penalty for existing crime(s)                                    | <input 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 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 checked="" type="checkbox"/> Otherwise impacts incarceration (Explain) Technical correction. |  |
- 

**STATE IMPACT:** Class A, B & C felonies are based on an average daily prison rate of \$71.10. 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 \$32.78 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 to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

HB 470 related to controlled substances. KRS 217.186 authorizes pharmacists to dispense naloxone to entities providing naloxone training as part of a harm reduction program. Dispensation records shall satisfy administrative regulation requirements regarding legend drugs.

KRS 218A.1412 is modified by removal of 50% parole eligibility for Class D Trafficking in a Controlled Substance-Heroin who are in possession of commercial trafficking paraphernalia and the substance abuse disorder exemption.

The Department currently has 947 convictions for Trafficking in a Controlled Substance – Heroin (note: offenders may have multiple offenses or be serving on other charges).

Of these, 474 convictions have a Class D offense for Trafficking in a Controlled Substance - Heroin. The remaining 473 offenders for Trafficking in a Controlled Substance – Heroin are Class C or higher felonies, subject to 20% or 50% parole eligibility depending on the date of their conviction.

AOC records for FY2018 reflect 705 convictions for Trafficking in Heroin (includes inchoate offenses).

KRS 507.040 modifies Manslaughter 2<sup>nd</sup> Degree by adding to the element of the offense unlawful distribution of a Schedule I or II controlled substance when the drug is the proximate cause of death. Manslaughter 2<sup>nd</sup> Degree is a Class C felony.

The Department currently has 265 offenders incarcerated and 118 offenders on supervision for Manslaughter 2<sup>nd</sup> Degree. It is not possible to predict how many additional Manslaughter convictions would be incurred through the addition of controlled substances as sold resulting in death.

Class D offenders serve their sentence in a county jail at a cost to the state of \$31.34 per day to the local jail. Class C offenders may be eligible to serve their sentences at the county jail if qualifying for community custody, based on length of sentence remaining and custody classification. If not community custody eligible, offenders would be housed at a state prison at a cost of \$71.10 per day.

The legislation clarifies statute by removing wording for commercial trafficking and substance abuse exemption for Trafficking in Heroin. Under current statute, heroin traffickers are not eligible for a Class D felony. Trafficking in Heroin in any amount is subject to a Class C felony for a 1<sup>st</sup> Offense and Class B for a 2<sup>nd</sup> or Subsequent Offense. Traffickers of heroin, fentanyl, carfentanil, or fentanyl derivatives are subject to 50% parole eligibility.

For Trafficking in Controlled Substance offenders, the current total average sentence length for those with admissions to prison after June 2017 is 1,994 days. The average number of days to 50% parole eligibility is 997 days.

A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1,297,530.56 to \$2,595,061.12
1 Class C Felon costs KY \$129,753.06 to \$259,506.11	100 Class C Felons cost KY \$12,975,305.58 to \$25,950,611.17
A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$119,648.71 to \$598,243.56
1 Class D Felon costs KY \$11,965.87 to \$59,824.36	100 Class D Felons cost KY \$1,196,487.11 to \$5,982,435.57

**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 to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

**Projected Corrections Impact from Amendments:**

**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:** *Arlene Daily* 2/26/2019  
Deputy Commissioner, Kentucky Department of Corrections Date