

CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # HB 142 Introduced BR # 983 DOC ID #: xxxx

BILL SPONSOR(S): Rep. J. Calloway AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to controlled substances.

SUMMARY OF LEGISLATION: Amend KRS 218A.010 to define "kratom"; amend KRS 218A.1412 to include kratom to the list of controlled substances that are unlawful to traffic; amend KRS 218A.1415 to include kratom in the list of controlled substances that are unlawful for a person to possess.

AMENDMENT: .

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

- | | |
|--|--|
| <input checked="" 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 type="checkbox"/> Changes elements of offense for existing crime(s) | |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) . | |
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STATE IMPACT: Class A, B, & C felonies are based on an average daily prison rate of \$97.60. Community Custody Class C and most Class D felons are housed in one of seventy-four (74) full service or regional jails for up to five (5) years. Department of Corrections' cost to incarcerate a felony inmate in a jail is \$35.43 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs (substance abuse treatment not included).*

Projected Impact: NONE MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

The proposed legislation adds Kratom to the list of controlled substances. A definition of Kratom is added to KRS 218A.010.

Under KRS 218A.1415, kratom is added as a Class D felony for Possession of Controlled Substances 1st Degree.

Under KRS 218A.1412, kratom is added as a Class C felony for a first offense and a class B felony for a second or subsequent offense for any quantity of the substance under Trafficking in Controlled Substances 1st degree. This offense will be subject to 20% parole eligibility.

Class B offenders incarcerated under the legislation would be housed at a state prison facility. If not eligible for community custody, Class C offenders would also be housed at a state prison. For offenders housed at a prison, incarceration costs are \$97.60 per day. Community custody Class C and Class D offenders would serve a sentence of incarceration at a local detention center at a lower cost for the Commonwealth.

While it is not known how many convictions for Kratom would be incurred under the legislation, the number of offenses are not likely to be significant.

Drug offenders comprise a significant portion of the incarcerated population (14% as of November 2021). Of offenders with KRS 218A drug crimes, the percentages by offense level are as follows: (*note: offenders may have multiple offenses*)

| <u>Drug Crimes</u> | <u>Misdemeanant</u> | <u>Class D Felony</u> | <u>Class C Felony</u> | <u>Class B Felony</u> |
|-----------------------|---------------------|-----------------------|-----------------------|-----------------------|
| Incarcerated | 0% | 66% | 25% | 9% |
| Community Supervision | 21% | 64% | 10% | 4% |

The Department of Corrections does not currently have testing capabilities for Kratom and may incur drug testing costs. Additionally, the Department would adapt its software system to denote Kratom as a scheduled narcotic. Overall, the impact from adding Kratom as a controlled substance is not expected to be significant.

Cost to Incarcerate

A Class B Felony sentence is 10 to 20 years.
1 Class B Felon costs KY \$356,239.18 to \$712,478.35

10 Class B Felons cost KY \$3,562,391.76 to \$7,124,783.52
100 Class B Felons cost KY \$35,623,917.60 to \$71,247,835.20

A Class C Felony sentence is 5 to 10 years.
1 Class C Felon costs KY \$178,119.59 to \$356,239.18

10 Class C Felons cost KY \$1,781,195.88 to \$3,562,391.76
100 Class C Felons cost KY \$17,811,958.80 to \$35,623,917.60

A Class D Felony sentence is 1 to 5 years.
1 Class D Felon costs KY \$12,931.86 to \$64,659.30

10 Class D Felons cost KY \$129,318.61 to \$646,593.03
100 Class D Felons cost KY \$1,293,186.06 to \$6,465,930.31

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. The estimated impact will be based on the \$35.43 cost to incarcerate for the Department of Corrections, including \$31.34 per diem and medical that DOC pays jails to house felony offenders. This cost to incarcerate may not be the actual housing cost for the jail. Kentucky jails report their actual cost to incarcerate is closer to an average of \$45 per day.*

Projected Impact: NONE MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

Class C Trafficking in Controlled Substances 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. These inmates, in addition to the Class D Possession of Controlled Substances offenders, would serve their sentence in a county jail at a cost to the state of \$35.43 per day, with \$31.34 daily reimbursement to the local detention center.

Adding Trafficking or Possession of Kratom as a criminal offense provides additional revenue for jails through state inmate per diem.

As the number of convictions specific to Kratom are not likely to be significant, the proposed legislation would have a minimal impact for local corrections.

PROJECTED IMPACT FROM AMENDMENTS:

NONE MINIMAL to MODERATE (< \$1 million) SIGNIFICANT (> \$1 million)

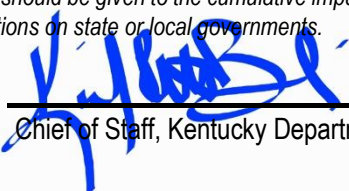
**All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

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, lengthens the term or incarceration, or impose new obligations on state or local governments.

APPROVED BY: _____



Chief of Staff, Kentucky Department of Corrections

1/18/2022

Date