

# CORRECTIONS IMPACT STATEMENT

SESSION: 22RS BILL # HB 215 GA . BR # 278 DOC ID #: HB021510.100 - 278 - XXXX

**BILL SPONSOR(S):** Rep. C. Fugate, J. Blanton, L. Bechler, D. Bentley, K. Bratcher, R. Bridges, J. Decker, R. Dotson, D. Frazier Gordon, C. Freeland, D. Hale, R. Heath, R. Huff, K. King, D. Lewis, C. Massey, B. Reed, S. Riley, B. Rowland, S. Sheldon, T. Smith, N. Tate, W. Thomas, K. Timoney, T. Truett, K. Upchurch, R. Webber, B. Wesley, S. Westrom

**AMENDMENT SPONSOR(S):** Rep. C. Fugate

**TITLE:** AN ACT relating to crimes and punishments.

**SUMMARY OF LEGISLATION:** Amend KRS 218A.1410, 218A.1412, and 218A.142 to enhance the penalty for importing or trafficking carfentanil, fentanyl, or fentanyl derivatives from a minimum of 50 percent of the sentence served to a minimum of 85 percent of the sentence served and establish prohibition against the use of pretrial diversion for those criminal offenses.

**AMENDMENT:** Retain original provisions; amend KRS 218A.1412 to establish trafficking in one gram or more of fentanyl, carfentanil, or fentanyl derivatives as a Class C felony; establish the name of the Act as Dalton's Law.

**AMENDMENT:** Remove the section that amends KRS 218A.1412 to restore existing language.

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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 checked="" 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 legislation modifies criminal penalties for trafficking carfentanil, fentanyl, or fentanyl derivatives.

The legislation separates the offenses for importing heroin and importing carfentanil, fentanyl, or fentanyl derivatives in KRS 218A.1410. Under current statute, this Class C felony is prohibited from early release until service of at least fifty percent (50%) of the sentence. The legislation expands this to service of eighty-five percent (85%) of the sentence prior to parole eligibility. Additionally, a prohibition for pretrial diversion is clarified.

KRS 218A.1412 also separates trafficking of heroin from trafficking of carfentanil, fentanyl, or fentanyl derivatives. A conviction of Class C or higher for trafficking in carfentanil, fentanyl, or fentanyl derivatives shall be moved from fifty percent (50%) parole eligibility to eighty-five percent (85%) parole eligibility. A prohibition for pretrial diversion is included.

Under KRS 218A.142 the same eighty-five percent (85%) eligibility is applied to Class B aggravated trafficking of carfentanil, fentanyl, or fentanyl derivatives. Aggravated trafficking of heroin remains at fifty percent (50%) parole eligibility. Aggravated trafficking is twenty-eight (28) grams or more of fentanyl or ten (10) grams or more of carfentanil or fentanyl derivatives.

Inmates subject to the 85% parole eligibility under this legislation will be subject to housing at a prison facility at a cost of \$97.60 per day.

The Department of Corrections currently has thirty-five (35) inmates serving on KRS 218A.1410 Importing Heroin. Offenses specific to fentanyl cannot currently be identified for this offense.

Under Trafficking in a Controlled Substances, KRS 218A.1412, for those for which the controlled substance is specified, the Department is able to identify 209 individuals for trafficking in carfentanil, fentanyl, or fentanyl derivatives.

These individuals have an average sentence length of 3,268 days and are currently subject to fifty percent (50%) parole eligibility. They would serve an additional 1,144 days to reach eighty-five percent (85%) parole eligibility. The additional number of days would translate into an additional cost of \$111,634.88 for each inmate. (*note: inmates may not be paroled at time of parole eligibility.*)

Of 479 inmates with convictions for KRS 218A.142 Aggravated Trafficking, five (5) inmates are incarcerated specifically for Aggravated Trafficking of Fentanyl or Carfentanil.

Aggravating Trafficking for Fentanyl//Carfentanil inmates have an average sentence length of sixteen point six years (16.6) years (6,068 days). This correlates to an average number of 3,034 days of incarceration at fifty percent (50%) parole eligibility, and an increase to 5,158 days to reach eighty-five percent (85%) parole eligibility. The additional number of days would translate into an additional cost of \$207,282.88 for each inmate. (*note: inmates may not be paroled at time of parole eligibility.*)

AOC reports eight (8) convictions in FY21 under 218A.1412 Aggravated Trafficking of Carfentanil, Fentanyl, or Fentanyl derivatives.

The increased incarceration days under the legislation would be a significant increase in cost for offenders convicted for importing, trafficking, or aggravated trafficking of carfentanil, fentanyl, or fentanyl derivatives.

**Cost to Incarcerate**

A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1,781,195.88 to \$3,562,391.76
1 Class C Felon costs KY \$178,119.59 to \$356,239.18	100 Class C Felons cost KY \$17,811,958.80 to \$35,623,917.60
A Class B Felony sentence is 10 to 20 years.	10 Class B Felons cost KY \$3,562,391.76 to \$7,124,783.52
1 Class B Felon costs KY \$356,239.18 to \$712,478.35	100 Class B Felons cost KY \$35,623,917.60 to \$71,247,835.20

**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.\*

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

With the increased parole eligibility date proposed in the legislation, offenders convicted of importing or trafficking carfentanil, fentanyl, or fentanyl derivatives would not be eligible for community custody until they are within forty-eight (48) months of their parole eligibility date, resulting in fewer inmates eligible for housing at the local detention center.

**PROJECTED IMPACT FROM AMENDMENTS:**

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

House Committee Substitute:

The Committee Substitute reduces the impact to incarceration by reducing the number of offenders who would receive the Class C felony and the associated increase from fifty percent (50%) to eighty-five percent (85%) parole eligibility.

The Committee Substitute modifies KRS 218A.1412 by adding the trafficking amount of one (1) gram of more of fentanyl, carfentanil, or fentanyl derivatives. This removes the applied penalty for any amount of fentanyl, carfentanil, or derivatives, therefore making:

- an amount less than one (1) gram a Class D felony for a 1<sup>st</sup> Offense and a Class C felony for a 2<sup>nd</sup> Offense, and
- an amount of one (1) gram or more a Class C felony for a 1<sup>st</sup> Offense and a Class B felony for a 2<sup>nd</sup> Offense.

Per the legislation, those with the Class C felony level or higher would not be eligible for community supervision or early release until service of eighty-five percent (85%) of the sentence, an increase from the current statute requirement of fifty percent (50%).

Of those current inmates identified as trafficking in carfentanil, fentanyl, or fentanyl derivatives, 180 are serving for a 1<sup>st</sup> Offense and twenty-nine (29) are serving for a 2<sup>nd</sup> Offense.

As current statute applies to any quantity of fentanyl, carfentanil, or derivatives, this offense is not always distinguished by amounts. It is therefore unknown how many convictions may fall into an amount of one (1) gram or more.

The proposed modifications to KRS 218A.1410 Importing and KRS 218A.142 Aggravated Trafficking remain in the same in the Committee Substitute.

House Floor Amendment:

The House Floor Amendment lowers the fiscal impact of HB 215, though the overall impact to incarceration from the legislation remains significant.

The Floor Amendment removes the proposed increase in penalties for KRS 218A.1412 Trafficking in Fentanyl, Carfentanil, or Derivatives. Language prohibiting community supervision until service of eighty-five percent (85%) of the sentence is removed, leaving the parole eligibility as currently in statute at fifty percent (50%) of the sentence.

KRS 218A.1410 Importing Carfentanil, Fentanyl, or Derivatives remains in the legislation as a Class C felony not eligible for community supervision until service of eighty-five percent (85%) of the sentence and KRS 218A.142 Aggravated Trafficking of Fentanyl, Carfentanil, or Derivatives also remains as a Class B felony not eligible for community supervision until service of eighty-five percent (85%) of the sentence.

*\*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

3/18/2022

Date