

CORRECTIONS IMPACT STATEMENT

SESSION: 23RS BILL # HB 98 Introduced BR # 945 DOC ID #: xxxx

BILL SPONSOR(S): Rep. K. Herron AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to controlled substances.

SUMMARY OF LEGISLATION: Create new sections of KRS Chapter 211 to establish a program for harm reduction centers; amend possession of controlled substance statutes to reduce penalty; amend KRS 218A.275 to provide for referrals to treatment for persons charged with possession of controlled substances; amend KRS 218A.500 to decriminalize possession of items to test, store, or consume controlled substances; repeal KRS 218A.14151, 218A.1450, 218A.1451, 218A.1452, and 218A.276.

AMENDMENT: .

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 checked="" 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 \$105.23. 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 \$40.11 per day, which includes \$35.34 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 decriminalizing several drug offenses would have a significant impact on incarceration and the Department of Corrections. The legislation would reduce the incarcerated and supervised population at the state and local level, providing a substantial cost savings.

The legislation establishes harm reduction centers under KRS 211. Harm reduction centers will provide education, referrals for counseling, and substance abuse testing.

The legislation decriminalizes several drug charges, such as Possession of Controlled Substance, instead requiring up to fifteen (15) hours of community service and evidence-based programming:

- ◆ KRS 218A.1415 Possession of Controlled Substance 1st Degree is a Class D felony with a maximum term of three (3) years and possible deferred prosecution for 1st or 2nd Offenses.
- ◆ KRS 218A.1416 Possession of Controlled Substance 2nd Degree is a Class A misdemeanor.
- ◆ KRS 218A.1417 Possession of Controlled Substance 3rd Degree is a Class A misdemeanor.
- ◆ KRS 218A.1422 Possession of Marijuana is a Class B misdemeanor with a maximum term of forty-five (45) days.
- ◆ KRS 218A.1430 Possession of Synthetic Drugs is a Class A misdemeanor for a 1st Offense and Class D felony for each subsequent offense.

Pretrial Services shall assess defendants under these offenses and provide treatment recommendations to the court, with the court referring to the appropriate treatment programs. Current statute indicates that for Possession of Controlled Substance the court may order to the appropriate treatment or recovery program. Language related to dismissing of charges through deferred prosecution is removed under the legislative draft. KRS 533.280 related to the behavioral health conditional dismissal program also removes reference to deferred prosecution.

Under KRS 218A.500 the definition for drug paraphernalia is modified, removing language indicative of personal use. Language about drug testing equipment is removed.

Several statutes are repealed:

- KRS 218A.14151 Deferred prosecution program
- KRS 218A.1450 Trafficking in salvia
- KRS 218A.1451 Possession of salvia
- KRS 218A.1452 Salvia cultivation
- KRS 218A.276 Treatment program for possessors of marijuana, synthetic drugs, or salvia
- KRS 27A.099 Deferred prosecution

Currently, the inmates in the custody of the Department have 6,779 convictions for Possession charges specified in the legislation. Offenders on community supervision have 27,817 felony convictions and 4,687 misdemeanor convictions for possession charges within the legislation.

AOC records for FY 22 indicate just a little of 28,000 convictions for offenses listed in the legislation.

Changes to these offenses would impact current supervision and treatment assessment protocols. Changes would be required in the offender management system as well.

Cost to Incarcerate

A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost KY \$146,389.42 to \$731,947.13
1 Class D Felon costs KY \$14,638.94 to \$73,194.71	100 Class D Felons cost KY \$1,463,894.26 to \$7,319,471.31

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 \$40.11 cost to incarcerate for the Department of Corrections, including \$35.34 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)

The legislation would provide a cost savings for the Department and significantly reduce the jail population. However, the loss of per diem from state inmates would be a loss of revenue for the jails.

The legislation would reduce the county jail population by eliminating future Class D convictions serving a state sentence for Possession of Controlled Substance and other offenses identified in the legislation.

While this would remove overcrowding concerns for the county detention centers and reduce costs at an estimated cost to incarcerate of \$40.11 per day, it would also remove the \$35.34 per diem the detention centers currently receive for housing state inmates under these offenses.

In addition, if passed, the legislation would reduce misdemeanor convictions related to these offenses, which are direct costs to the county.

Cost to Incarcerate

A Class A misdemeanor is 90 days to 1 year in jail.	10 Class A misdemeanants: \$36,096.02 to \$146,389.42
1 Class A misdemeanant: \$3,609.60 to \$14,638.94	100 Class A misdemeanants: \$360,960.22 to \$1,463,894.26
A Class B misdemeanor is up to 90 days in jail.	10 Class B misdemeanants: up to \$36,096.02
1 Class B misdemeanant: up to \$3,609.60	100 Class B misdemeanants: up to \$360,960.22

PROJECTED IMPACT FROM AMENDMENTS:

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

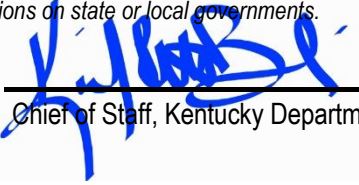
**All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers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

2/1/2023

Date