

CORRECTIONS IMPACT STATEMENT

SESSION: 17RS

BILL #: HB 333 Introduced

BR #: 1132

DOC ID#: BR113200.100 - 1132 - XXXX

BILL SPONSOR(S): Rep. K. Moser, J. Fischer, J. Blanton, D. St. Onge

AMENDMENT SPONSOR(S):

SUBJECT: AN ACT relating to controlled substances.

SUMMARY OF LEGISLATION: Amend KRS 218A.010 to define "fentanyl," "carfentanil," and "fentanyl derivatives"; amend KRS 218A.020 to expand the authority of the Office of Drug Control Policy to request the rescheduling of a substance; amend KRS 218A.050 to schedule fentanyl derivatives as Schedule I controlled substances; amend KRS 218A.1410 to include carfentanil, fentanyl, or fentanyl derivatives; amend KRS 218A.1412 to make trafficking in any amount of fentanyl, carfentanil, or fentanyl derivatives subject to elevated penalties; amend KRS 218A.142 to include carfentanil, fentanyl, or fentanyl derivatives; amend KRS 218A.205 to require state licensing boards to promulgate regulations limiting prescriptions for Schedule II controlled substances for acute pain to a three day supply, with certain exceptions; create a new section of KRS Chapter 218A to create a new offense of trafficking in a misrepresented controlled substance.

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 checked="" type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input checked="" 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 type="checkbox"/> Otherwise impacts incarceration (Explain) _____ | |

STATE IMPACT: Class A, B & C felonies are based on an average daily prison rate of \$66.82. 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 \$31.41 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 MODERATE SIGNIFICANT

Potential Impact:

The bill provides a definition for carfentanil, fentanyl, and fentanyl derivatives. An addition to the definition of marijuana excludes a cannabidiol product approved as prescription medication by the FDA. The bill also outlines guidelines for prescribing opioids for chronic pain. Fentanyl derivatives are added as a Schedule I controlled substance.

The bill establishes a crime of Importing Carfentanil, Fentanyl, or Fentanyl Derivatives, which is a Class C felony. It is not known how many additional offenders would be convicted of Importing Carfentanil, Fentanyl, or Fentanyl Derivatives.

An offender is guilty of Trafficking in a Controlled Substance 1st Degree with any quantity of carfentanil, fentanyl, and fentanyl derivatives under this legislation. Currently, the Department has 7 offenders serving on Trafficking in Controlled Substances 1st Degree - Fentanyl.

The proposed legislation requires that anyone convicted of Trafficking in Fentanyl 1st Offense, regardless of the quantity, shall be guilty of a Class C felony. Under current statute, Trafficking in Fentanyl 1st degree under 2 Grams is a Class D felony for a first offense. By removing the quantity threshold for fentanyl, incarceration timeframes would increase from 1-5 years (Class D felony) to 5-10 years (Class C felony) with increased costs associated with longer periods of incarceration. In addition, offenders guilty of Trafficking in Fentanyl 2nd or Subsequent Offense would be elevated to a Class B felony.

The number of offenders currently incarcerated for Trafficking in Fentanyl is not significant as the designation for Fentanyl in the penal code occurred only a few years ago. Unfortunately, it is not possible to predict the number of additional offenders who would be charged with Trafficking in Fentanyl; however, offenders entering the criminal justice system under Fentanyl charges are expected to increase.

The legislation requires that anyone convicted of a Class C Trafficking in Fentanyl serve 50% of the sentence imposed prior to release on probation, shock probation, parole, conditional discharge, or other early release. Under current statute, an inmate convicted of a Class D Trafficking in Fentanyl would be subject to 20% of the sentence prior to becoming eligible for parole. Increasing the parole eligibility rate from 20% to 50% would increase costs associated with a longer period of incarceration.

Class D Fentanyl traffickers currently serve an average of 282 days before release on parole. Class C Fentanyl traffickers, on average, currently serve 1825 days before reaching 50% parole eligibility. The difference between the two is the additional time that Class D Fentanyl traffickers would serve before becoming parole eligible under the proposed legislation. If HB 333 had been law at the time of their convictions, the 7 currently incarcerated Fentanyl traffickers would serve at least an additional 1543 days of incarceration until they meet 50% parole eligibility. At \$66.82 per day, the estimated cost would be \$721,722.82. This calculation assumes that all offenders would parole at 50%. In addition, this calculation does not include second or subsequent offenders.

Aggravated Trafficking in a Controlled Substance 1st Degree adds 28 grams or more of fentanyl or 10 grams or more of carfentanil or fentanyl derivatives and is a Class B felony. Incarceration costs for a Class B felon is between \$243,910 to \$487,820 for a 10-20 year sentence. It is not known how many offenders would be convicted of Aggravated Trafficking in Fentanyl, but the number is not expected to be significant.

A new crime of Trafficking in a Misrepresented Controlled Substance is created when an individual knowingly or unlawfully sells or distributes a Schedule I controlled substance, carfentanil, or fentanyl while misrepresenting the identity of the controlled substance being sold or distributed as a legitimate pharmaceutical product. Trafficking in a Misrepresented Controlled Substance would be a Class D felony, and considered as a separate offense to other violations under KRS 218A occurring during the same course of conduct. It is unknown how many additional Class D offenders would be convicted under Trafficking in a Misrepresented Controlled Substance.

A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost \$1.2M to \$2.4M
1 Class C Felon costs KY \$121,955 to \$243,910	100 Class C Felons cost \$12.2M to \$24.4M
A Class D Felony sentence is 1 to 5 years.	10 Class D Felons cost \$114,640 to \$573,200
1 Class D Felon costs KY \$11,464 to \$57,320	100 Class D Felons cost \$1.146M 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 MINIMAL MODERATE SIGNIFICANT

Potential Impact:

HB 333 is expected to minimally impact the county jails because the trafficking of fentanyl was already a felony level offense, regardless of the amount.

A Class C offender must be within 24 months of the parole eligibility date and meet community custody classification requirements in order to be housed at a county jail. Some of the increased number of Class C felons under this legislation could continue to be housed in a county jail if certain classification criteria are met. Other offenders that previously would have been Class D felons housed at a county jail would now be Class C felons that may not meet the eligibility criteria for housing at a county jail. This would decrease revenue for jails.

Trafficking in a Misrepresented Controlled Substance would be eligible for placement at a county jail as a Class D felony.

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.

APPROVED BY:

Commissioner, Kentucky Department of Corrections

Date