Local Mandate Fiscal Impact Estimate Kentucky Legislative Research Commission 2015 Regular Session

Part I: Measure Information

Bill Request #: 1578
Bill #: HB 393
Bill Subject/Title: AN ACT establishing the Pain Capable Unborn Child Protection Act
Sponsor: Representative Joseph M. Fischer
Unit of Government: X City X County X Urban-County X Charter County X Consolidated Local X Government
Office(s) Impacted: local jails, county attorneys, local law enforcement
Requirement: X Mandatory X Optional
Effect on Powers & Duties: X Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

Current law (KRS 311.780) prohibits knowingly performing or prescribing an abortion of a fetus reasonably expected to have reached viability, except when necessary to preserve the life or health of the woman. A violation of KRS 311.780 is punished as a Class C felony under KRS 311.990(18) or a Class D felony under KRS 311.990(17).

HB 393 would repeal KRS 311.780 and create a new section of KRS Chapter 311, titled the Pain Capable Unborn Child Protection Act. The bill would prohibit an abortion, prescription for abortion, or attempted abortion unless the gestational age of the fetus has been determined and it is less than 20 weeks. An exception is made if, in reasonable medical judgment, the pregnant woman has a condition which so complicates her medical condition that abortion of her pregnancy is necessary to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function. A violation of this prohibition would be punishable as a Class D felony.

The bill would expand the definition of "abortion" and would limit the definition of "medical emergency." The bill would also amend KRS 213.101 to create additional reporting requirements for abortions performed in accordance with its provisions and would establish intentional or reckless falsification of a report as a Class A misdemeanor.

The bill would also authorize a county attorney or a spouse, parent, sibling, Attorney General, or guardian of, or a current or former licensed health-care provider of the pregnant woman to seek injunctive relief when a prohibited abortion occurs.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of HB 393 on local governments would be minimal.

According to the Administrative Office of the Courts, over the last five years there have been no convictions for violating KRS 311.780. It is unlikely that abortion providers would be any more prone to violate the provisions of HB 393 than the prior law. Abortion providers are health care professionals who are licensed and regulated under current law and would continue to be licensed and regulated under HB 393.

A violation of HB 393 would constitute a Class D felony for performing an illegal abortion; the bill would create a new Class A misdemeanor for not complying with the reporting requirements.

Local governments are responsible for the cost of incarcerating individuals who are charged with a felony (if they do not make bail) until disposition of the case. While the expense of housing inmates varies by jail, each additional inmate will increase facility costs by an estimated average of \$31.34 per day including medical costs. Most Class D felons are housed in any one of 78 full service jails for the duration of their sentence. Upon sentencing, the state Department of Corrections pays the jails to house these felony offenders at the rate of \$31.34 which matches the estimated average cost.

A person convicted of a Class A misdemeanor can be incarcerated for up to a year in one of Kentucky's 78 jails. Each additional inmate will increase facility costs by an estimated average of \$31.34 per day including medical costs.

HB 393 could also affect county attorneys. The bill's impact on county attorneys would be minimal. It would permit, but not require, a county attorney to seek injunctive relief when a prohibited abortion occurs in his or her jurisdiction. Since abortion providers are licensed and regulated health care professionals and since they rarely violate abortion law, it is doubtful that many county attorneys would be required to make the decision whether to seek injunctive relief.

 Data Source(s):
 Administrative office of the Courts, LRC Staff, Department of Corrections

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