

The fiscal impact of HB 71 GA would be nil to minimal.

HB 71 GA would create a new crime that could arguably expand the current definition of “obscene” in KRS 531.010(3), where the bill references as examples of an “obscene visual image” – the distribution of which is illegal – “exposure of uncovered human genitals, buttocks, or nipple of the female breast.” Such expansion of the definition of “obscene” could increase the number of persons prosecuted and held in local jails. However, HB 71 GA would criminalize only the distribution of such matter when the person depicted is “identifiable,” either from the image itself or from material distributed with the image, and if disclosure would cause a reasonable person to suffer harm.

HB 71 GA would create a new Class A misdemeanor, new Class D felony and new Class C felony. A person convicted of a Class A misdemeanor may be incarcerated for up to one year. Misdemeanants are housed in one of Kentucky’s 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

The number of persons who would be charged with a felony violation of HB 71 GA is unknown, but is expected to be minimal. However, when a court denies bail to a Class D felony defendant, the local government is responsible for incarcerating the defendant until disposition of the case in one of Kentucky’s 76 full service jails or four life safety jails. A person convicted of a Class D felony may be incarcerated for 1 to 5 years. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day. Upon sentencing, a Class D felon is housed in one of Kentucky’s full service jails for the duration of his or her sentence. The Department of Corrections pays a local jail \$31.34 per day to house a Class D felon. Since the per diem pays for the estimated average cost of housing a Class D felon, the per diem may be less than, equal to, or greater than the actual housing cost.

Part III: Differences to Local Government Mandate Statement from Prior Versions

The local mandate analysis for HB 70 GA is the same as the analysis for HB 71 HCS. The House adopted the HCS and did not adopt any additional amendments.

The HCS would create a new section of KRS Chapter 411 to establish a cause of action against a person for failing to remove a sexually explicit image when requested to do so, and would establish a 2 year limitations period for bringing an action.

Data Source(s): LRC staff

Preparer: Mary Stephens **Reviewer:** KHC **Date:** 1/31/18