



**Section 3** of the bill would authorize a civil action against a person who does not remove a sexually explicit image on request of the person depicted and would establish a requirement that the civil action must be brought within 2 years.

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

HB 71 SCS 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” “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 SCS would criminalize the distribution of such matter only 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 SCS 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 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 SCS is unknown, but is expected to be minimal. However, when a court denies bail to a Class C or 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. Upon sentencing, a Class D felon is housed in one of Kentucky’s full service jails for the duration of his or her sentence. Class C felons are ineligible for placement in local jails until they are classified at the lowest custody level with 24 months or less to their minimum expiration date or parole eligibility date. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day. The Department of Corrections pays a local jail \$31.34 per day to house a Class C or Class D felon. Since the per diem pays for the estimated average cost of housing a Class C or 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**

HB 71 SCS amends HB GA to include additional elements to the crime of intentional distribution of sexually explicit images without consent. The local mandate statement for the SCS is the same as the GA version. The SCS would have no additional fiscal impact on local governments.

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

The HCS is changed from the bill as introduced and would create a new section of KRS Chapter 411 to establish a civil 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):** Department of Corrections; LRC staff

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