

CORRECTIONS IMPACT STATEMENT

SESSION: 20RS BILL # HB 370 Introduced BR # 427 DOC ID #: xxxx

BILL SPONSOR(S): Rep. N. Tate AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to the dignified treatment of fetal remains.

SUMMARY OF LEGISLATION: Create a new section of KRS 311.710 to 311.830 to require within 24 hours after a spontaneous miscarriage or abortion, a hospital or abortion provider to inform the parents about their right to determine the final disposition of the fetal remains; parents electing a disposition method other than the customary method for that facility are responsible for the costs of disposition; within ten days following a miscarriage or abortion, the abortion provider, hospital, or parent shall provide for final disposition of the fetal remains; establish a Class D felony for failing to appropriately dispose of fetal remains and a Class A misdemeanor for offering to pay for fetal remains; amend KRS 367.97501 to add fetal remains to the definition of "pathological waste."

AMENDMENT: .

This bill amendment committee substitute is expected to:

Have the following Corrections impact Have no Corrections impact

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| <input checked="" type="checkbox"/> Creates new crime(s) | <input type="checkbox"/> Repeals existing crime(s) |
| <input type="checkbox"/> Increases penalty for existing crime(s) | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input 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 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 \$75.91. Community Custody Class C and most Class D felons are housed in one of seventy-seven (77) full service or regional jails for up to five (5) years. Department of Corrections' cost to incarcerate a felony inmate in a jail is \$36.70 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs (substance abuse treatment not included). *Projections are based on the daily rate x 365 days x number of years. Offenders may have multiple offenses or incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

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

HB 370 provides instructions surrounding the disposition of fetal remains. The legislation establishes a felony offense for failing to appropriately dispose of fetal remains and a misdemeanor offense for payment for fetal remains. Under KRS 367.97501 fetal remains are added to definition of pathological waste.

Instructions are provided to hospitals and medical facilities on documenting and disclosing to parents the right to determine the disposition of fetal remains.

The legislation establishes a Class D felony, requiring that within ten (10) days following a miscarriage or an abortion, the hospital, medical facility, or parents shall provide for the final disposition of the fetal remains through cremation or interment in a licensed facility. There is a responsibility to ensure preservation of the fetal remains until final disposition.

The Cabinet for Health and Family Services is tasked with establishing forms surrounding the disposition of fetal remains, including an acknowledgement that it is a Class D felony to flush fetal remains down the toilet, throw away, cremate, or bury fetal remains in any place other than a licensed facility.

Offenders subject to the Class D offense would serve their sentence in a county jail at a cost to the state of \$36.70 per day, with \$31.34 daily reimbursement to the local detention center.

AOC data reports zero (0) convictions for FY2017-2019 for abortion related KRS 311 statutes. The Department of Corrections currently reflects only two (2) convictions for offenders under KRS 311, both for unrelated offenses medical licensure.

Given the limited number of convictions that would be expected under the legislation, the overall impact on incarceration would be negligible.

A Class D Felony sentence is 1 to 5 years.
1 Class D Felon costs KY \$13,396.97 to \$66,984.87

10 Class D Felons cost KY \$133,969.74 to \$669,848.70
100 Class D Felons cost KY \$1,339,697.40 to \$6,698,487.00

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. Since the per diem is an estimated average cost of housing an inmate, the per diem may not be the actual housing cost for the jail. *Projections are based on the daily rate x 365 days x number of years. Offenders may have multiple offenses or incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

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

Offenders convicted under this legislation would be Class D felons housed in a county jail as a state inmate. This provides additional revenue for jails. However, in times of current overcrowding, any additional incarceration has an impact on the occupancy of jail beds.

The bill also establishes a Class A misdemeanor for offering or accepting money or anything of value for an aborted fetus or fetal remains, or accepting reimbursement for costs associated with the preparation, preservation, transfer, shipping, or handling of an aborted fetus or fetal remains. Misdemeanors are subject to the jurisdiction and cost of the county.

Convictions under this legislation would be expected to be minimal, and therefore would not have a significant impact to incarceration at the local level, either through misdemeanor offenses or state inmates housed at the local detention center.

A Class A misdemeanor is 90 days to 1 year in jail.
1 Class A misdemeanor: \$2,820.60 to \$11,439.10

10 Class A misdemeanants: \$28,206.00 to \$114,391.00
100 Class A misdemeanants: \$282,060.00 to \$1,143,910.00

Projected Corrections Impact from Amendments:

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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. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.

APPROVED BY: Kathleen M. Kenney **2/10/2020**
Commissioner, Kentucky Department of Corrections Date