

CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # HB 460 Introduced BR # 1152 DOC ID #: xxxx

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

TITLE: AN ACT relating to abortion and declaring an emergency.

SUMMARY OF LEGISLATION: Amend KRS 311.732, relating to performance of an abortion upon a minor, to require the informed written consent of a parent or legal guardian to include a copy of that parent's or legal guardian's government-issued identification, and to include specific language; require the physician to keep a copy of the informed written consent for at least 7 years; require the physician to execute an affidavit; require additional criteria and standards for when a court determines whether to allow a minor to self-consent to an abortion; require the court hearing to remain confidential and be held in a private, informal setting within the courthouse; require, in the case of a medical emergency, for the physician to notify the parent or legal guardian within 24 hours of the abortion; amend KRS 311.595 to allow the Kentucky Board of Medical Licensure to suspend or revoke the license of any physician for violations; amend KRS 311.990 to establish criminal penalties for violations; establish penalties for a person who violates Section 5 to 11 of this Act; amend KRS 213.101 to expand the statistical reporting system for abortions; require the Vital Statistics Branch report to include verification of compliance with the certification requirement of KRS 311.727; specify that the Inspector General, Cabinet for Health and Family Services, audit of the required reporting; prohibit the audit from including personally identifying information of any pregnant woman upon whom an abortion was performed or attempted; specify that any personally identifying information viewed or recorded by the Inspector General in conducting the audit is not subject to the Open Records Act; require an annual report to be submitted including findings from the audit and abortion facility inspections to the General Assembly and the Attorney General; require an annual in-person report to be presented to the Interim Joint Committee on Health, Welfare, and Family Services; create new sections of KRS 311.710 to 311.820 to define terms; prohibit abortion-inducing drugs from being provided outside of required procedures or by courier, delivery, or mail service; establish requirements for qualified physician providing abortion-inducing drugs; require informed consent by patient for being provided abortion-inducing drugs; list requirements for informed consent form; require each abortion-inducing drug provided to be reported to the Cabinet for Health and Family Services on a report form; list requirements for report form; require report to the cabinet of treatment for adverse event or complication related to a drug-induced abortion; list requirements for report; prohibit provisions from being construed as creating or recognizing a right to abortion, making lawful an abortion that is otherwise unlawful, or overriding any existing laws; prohibit the provision of abortion-inducing drugs in any school facility or on state grounds; provide additional remedies to comply with Sections 5 to 11; create new sections of KRS Chapter 213 to require the cabinet to publish information about the potential ability to reverse the effects of abortion-inducing drugs; require the cabinet to create and distribute the consent forms and reporting forms for abortion-inducing drugs; require the cabinet to keep reported data confidential; require the cabinet to communicate reporting requirements to required reporters; create new sections of KRS Chapter 315 to require the Board of Pharmacy to create a certification program for the distribution of abortion-inducing drugs; require physicians, manufacturers, and distributors to be certified; establish requirements for certification; require the board to enforce certification requirements; require the board to develop a complaint portal for violations and review complaints; amend KRS 213.081 to include fetal remains, but to prohibit simultaneous cremations of fetal remains; amend KRS 213.096 to include abortions on the combination birth-death certificate; create a new section of KRS 311.710 to 311.820 to define "fetal remains," require within 24 hours before a surgical or chemical abortion the health care facility or abortion clinic to inform the parents both orally and in writing of their rights to determine the final disposition of the fetal remains; if a chemically induced abortion, inform the mother she may expect to expel a fetus after leaving the facility and she may return the remains to the facility for final disposition; require the parents to inform the facility of their choice for the disposition of the fetal remains; amend KRS 367.97501 to exclude fetal remains from the definition of "pathological waste"; amend KRS 311.715 to provide that public agency funds shall not be paid to any entity, organization, or individual that performs, induces, refers for, or counsels in favor of abortions; establish exceptions; create new sections of KRS 311.710 to 311.820 to require reporting to the cabinet information about complications, medical treatment, or death related to an abortion; permit the General Assembly to appoint members who sponsored or cosponsored this Act to intervene in any case to which the constitutionality is challenged; require provisions of this Act to be severable; EMERGENCY.

AMENDMENT: .

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 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) . | |

STATE IMPACT: Class A, B, & C felonies are based on an average daily prison rate of \$80.24. 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 \$37.35 per day, which includes \$31.34 per diem, medical costs, & central office administrative costs (substance abuse treatment not included).*

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

KRS 311.732 would be amended to require an informed written consent before performing an abortion on a minor. Requirements are added for minors petitioning for the right to self-consent to an abortion, including an annual reporting requirement. Instructions are provided if a medical emergency necessitates action before consent can occur. Under KRS 311.595 failure to comply may result in license suspension.

- ◇ KRS 311.990 adds the penalty provision, with intentional or reckless performing an abortion upon a minor without obtaining the required consent subject to a Class D felony.
- ◇ Other intentional or knowing failures to comply with requirements of KRS 311.732 is a Class A misdemeanor. Minors upon whom a violation is performed are not guilty of the criminal offense.

KRS 213.101 adds reporting information to Vital Statistics and auditing under the Office of the Inspector General of the Cabinet for Health and Family Services.

Also added to statute is the requirement that abortion-inducing drugs are only provided to pregnant individuals by physicians following procedures in the legislation. Steps are outlined for physicians providing an abortion-inducing drug. Informed consent is required, with specified timeframes and required components.

- ◇ Under KRS 311.990 the intentional, knowing, or reckless violation of the provisions surrounding an abortion-inducing drug is Class D felony. Patients upon whom a violation a performed are not guilty of a criminal offense.

Reporting requirements, civil liabilities, and professional disciplinary actions are listed. Instructions for the Cabinet, Kentucky Board of Pharmacy, and Kentucky Abortion-Inducing Drug Certification Program are included. The legislation speaks to fetal death and remains. Severability and emergency provisions are included.

- ◇ Current AOC data reports zero (0) convictions for related KRS 311 statutes.
- ◇ While the Department of Corrections has two (2) offenders under supervision for criminal offenses under KRS 311, neither are for violations of the law related to abortion.

While there is no way to predict the number of new convictions this provision would generate, the number of convictions under this legislation would likely be few in number. The expected impact to the Department under this legislation would be very minimal.

Cost to Incarcerate

A Class D Felony sentence is 1 to 5 years.

10 Class D Felons cost KY \$136,345.44 to \$681,727.22

1 Class D Felon costs KY \$13,634.54 to \$68,172.72

100 Class D Felons cost KY \$1,363,454.45 to \$6,817,272.25

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. The estimated impact will be based on the \$37.35 cost to incarcerate while \$31.34 is the per diem and medical that DOC pays jails to house felony offenders. Since the cost to incarcerate is an estimated average cost of housing an inmate, this may not be the actual housing cost for the jail.*

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

Offenders convicted under this legislation would be a Class D felon housed in a county jail as a state inmate at a daily cost to incarcerate of \$37.35, with the jail receiving \$31.34 in daily reimbursement.

The Class A misdemeanor included in the legislation would be subject to the jurisdiction and cost of the county.

Conviction and incarceration rates for these offenses are likely to be low in number.

Overall, any impact to incarceration stemming from this legislation would be, at most, minimal.

Cost to Incarcerate

A Class A misdemeanor is 90 days to 1 year in jail.

10 Class A misdemeanants: \$33,619.42 to \$136,345.44

1 Class A misdemeanant: \$3,361.94 to \$13,634.54

100 Class A misdemeanants: \$336,194.25 to \$1,363,454.45

Projected Corrections Impact from Amendments:

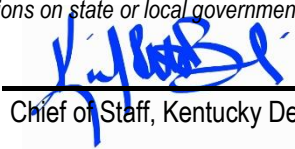
**All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers will include inchoate offenses at the underlying offense level.*

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, lengthens the term or incarceration, or impose new obligations on state or local governments.

APPROVED BY:



Chief of Staff, Kentucky Department of Corrections

2/24/2021

Date