

Also under current law, a minor may petition a court for an order granting the right to self-consent to an abortion. The court is required to hold a hearing as to the minor's emotional development, maturity, intellect, understanding of the consequences and alternatives to an abortion, and other evidence to assist the court in determining consent or whether the abortion is in the minor's best interests. HB 96 would require the court to also make specific findings as to the minor's age, stability, credibility and demeanor as a witness, ability to accept responsibility, ability to assess the immediate and long-range consequences, ability to understand and explain the medical risks of the abortion and to apply the understanding to the minor's decision, and whether there is undue influence by another person. The court may grant the abortion if it finds "by clear and convincing evidence" that the minor is mature to decide on the abortion and either (a) by clear and convincing evidence that the requirements (for informed written consent by the parent/legal guardian) are not in the best interest of the minor, or (b) by a preponderance of the evidence that the minor is the victim of child abuse or sexual abuse inflicted by a parent or legal guardian. Any hearings and appeals must remain confidential and closed to the public.

Under HB 96, the Kentucky Supreme Court must report to LRC on the number of petitions filed each year and the timing and manner of disposition. For each petition that is granted, the reason for the waiver must be included.

The requirements for the informed written consent or court petition do not apply if "a medical emergency exists that so complicates the pregnancy as to require an immediate abortion." In that case, the physician must make reasonable attempts to contact a parent or legal guardian and may proceed with the abortion, but must document the reasons for the medical necessity in the minor's medical records. The physician must inform the parent/legal guardian by phone within 24 hours of the abortion and give details of the medical emergency that necessitated the abortion without the parent/guardian's consent. The physician must also provide the information in writing to the parent/guardian at his/her last known address by first-class or certified mail, return receipt requested, with delivery restricted to the parent/guardian.

HB 96 would allow the Board of Medical Licensure to take disciplinary action against a physician who fails to comply with the requirements. The bill also makes it a Class D felony for a "person who intentionally or recklessly performs an abortion upon a minor without obtaining the required consent." A "person who intentionally or knowingly fails to conform to" the informed written consent or court petition procedures would be guilty of a Class A misdemeanor.

The Administrative Office of the Courts reports that there has been one prosecution related to Kentucky's abortion laws since 2017, with none in 2020. The prosecution related to discrimination for refusal to submit to an abortion (KRS 311.810), and the ultimate disposition was a "not guilty" finding on an amended charge.

The fiscal impact of HB 96 on local governments is expected to be minimal. The number of persons who would violate the law, if similar to the number of people who violate current abortion laws, is expected to be few. There would be some additional

training for law enforcement, and there would be increased demands on work load for law enforcement, jails, and county attorneys associated with the number of arrests, prosecutions, and incarcerations.

A person convicted of a Class A misdemeanor may be incarcerated for from 90 days to 12 months. Misdemeanants are housed in one of Kentucky's 77 full service jails or three life safety jails. While the expense of housing inmates varies by jail, this estimated impact will be based on an average cost to incarcerate of \$37.35 per day. The majority of misdemeanor defendants are granted bail, but who do not will also cost local jails an average of \$37.35 per day. The average cost to incarcerate a single Class A misdemeanor serving the complete sentence after conviction would range from \$3,361.50 (90 days x 37.35) to \$13,632.75 (365 days x \$37.35).

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 77 full service jails or three life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an average cost to incarcerate of \$37.35, which includes the \$31.34 per diem and medical expenses that the Department of Corrections pays jails to house felony offenders. 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 jail \$31.34 per day to house 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

Part II, above, relates to the introduced version of the bill.

Data Source(s): LRC Staff; Department of Corrections; Administrative Office of the Courts

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