

CORRECTIONS IMPACT STATEMENT

SESSION: 21RS BILL # SB 9 GA BR # 13 DOC ID #: 2450

BILL SPONSOR(S): Sen. W. Westerfield AMENDMENT SPONSOR(S): . .

TITLE: AN ACT relating to the protection of born-alive infants and declaring an emergency.

SUMMARY OF LEGISLATION: Create new sections of KRS Chapter 311 to prohibit a person from denying or depriving a born-alive infant of nourishment with the intent to cause or allow the death of the infant; prohibit a person from denying or depriving a born-alive infant of medically appropriate and reasonable medical care, medical treatment, or surgical care; require a physician performing an abortion to take all medically appropriate and reasonable steps to preserve the life and health of a born-alive infant; specify that if the physician is unable to perform those duties then an attending physician assistant, advanced practice registered nurse, nurse, or other healthcare worker shall assume the duties; provide that a born-alive infant shall be treated as a legal person under the laws of the Commonwealth; specify that any born-alive infant, whose parents file a petition for voluntary termination of parental rights, shall become a ward of the Cabinet for Health and Family Services; specify that this section shall not be construed as preventing a born-alive infant's parent or guardian from refusing medical care that is not medically appropriate or reasonable; specify that the parent or guardian of a born-alive infant shall not be held criminally or civilly liable for the actions of a physician, physician assistant, advanced practice registered nurse, or other healthcare provider that acted without his or her consent; provide for civil and administrative penalties for violations of this Act; allow for severability; allow the General Assembly by joint resolution to appoint members to intervene as a matter or right in any case that challenges the constitutionality of this Act; amend KRS 311.595, 311.850, 314.091, and 315.121 to suspend or revoke the license of any physician, physician assistant, advanced practice registered nurse, nurse, or pharmacist who violates this Act; amend KRS 311.990 to establish criminal penalties for violations; establish the short titles of "Born-Alive Infant Protection Act" and "Avacyn Act"; 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) . | |
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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)

SB9, the Born Alive Infant Protection and Avacyn Act, prohibits the 1) deprivation of a born alive infant from nourishment with the intent to cause or allow death or 2) deprivation of reasonable and medically appropriate care or treatment. The legislation includes a definition for born alive infants. Physicians performing an abortion are expected to take all medically appropriate and reasonable steps to preserve the life and health of an infant born alive. Information is provided specific to the location of the abortion. The legislation also includes civil liability and professional licensing standards.

Under the legislation, KRS 311.990 is amended to include a Class D felony for a medical healthcare provider who violates the provisions in this legislation.

Current AOC data for FY2018-2020 reports zero (0) convictions for abortion related offenses under KRS 311. The Department of Corrections does not currently have any offenders incarcerated or on supervision for criminal offenses relating to abortion.

As a Class D offender, if incarcerated, offenders would serve their sentence in a county jail at a cost to the state of \$37.35.

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. As such, the expected impact to the Department under this legislation would be very minimal. Based on the relevant AOC data and to the Department of Correction's knowledge, there do not appear to be any reported criminal incidents in Kentucky that fall under this statute. Any such incidents would appear to be covered by existing criminal statutes.

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)

As a Class D offender, offenders incarcerated for this offense would serve their sentence in a county jail at an average cost to incarcerate of \$37.35 per day, with the jail receiving \$31.34 daily reimbursement for housing the state inmate. This does provide additional revenue for jails. However, additional incarceration also has an impact on the occupancy of jail beds.

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

Projected Corrections Impact from Amendments:

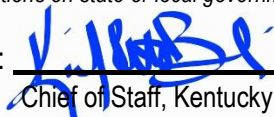
**All projections are based on the daily rate x 365 days x number of years. The cost to incarcerate as calculated by the Department is shown here as rounded to the hundredths. Offenders may have multiple offenses or be incarcerated on other charges unless otherwise noted. Unless otherwise noted, numbers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

1/6/2021

Date