

Medical Licensure against, a local government health care provider for fraudulent assisted reproduction could be substantial.

It is expected that violations of SB 108 by a health care provider employed by a local government would be few. In fact, based on best information, there are no cities that currently employ a health care provider licensed pursuant to KRS 311 or 314. However, there are county or regional health facilities that employ such health care providers. Each incidence of violation of SB 108 would give rise to costs to the local jail.

A Class D felony conviction is subject to 1 to 5 years' incarceration. 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 74 full service jails or three life safety jails. Upon sentencing, a Class D felon is housed in one of Kentucky's full service jails for the duration of his or her sentence. While the expense of housing inmates varies by jail, each additional inmate increases jail costs by an average of \$35.43 per day. The Department of Corrections (DOC) pays a jail a \$31.34 per diem for housing, medical costs and central office administrative costs for each Class D inmate. The per diem may be less than, equal to, or greater than the actual housing cost. For example, based on the average cost and the amount paid by DOC to the local jails, each person convicted of fraudulent assisted reproduction might cost a jail \$4.09/day ($\$35.43/\text{day}$ (average cost) - $\$31.34$ (per diem paid to jail by DOC) = $\$4.09$). If sentenced to the minimum one year in jail such inmate would cost a local jail an average of \$1,472.40/year over the per diem paid by DOC ($\$4.09/\text{day} \times 360$ days).

The Kentucky Board of Medical Licensure (KBML) and the Federation of State Medical Boards (FSMB) were contacted for input. The KBML is only aware of one licensee against whom such allegations were made and that was for conduct occurring in the 1970's.

A local government may be shielded from liability for the criminal conduct of its employees by sovereign immunity or other defense. However, in the event of a successful lawsuit against a local government for the fraudulent assisted reproduction activity of its employee(s), the local government would incur costs of litigation and would be liable for payment of a judgment for damages awarded to the victim. According to Kentucky League of Cities, most cities, especially smaller ones, retain a city attorney on contract and pay on an hourly basis. In FY 2020, the average hourly rate was \$107 (data on the hourly rate paid by counties for legal services is unavailable at this time). Because of many variables related to the difference in hourly rates, lack of complete data, complexity of lawsuits, final dispositions, and appeals, the costs of defending a lawsuit seeking damages for fraudulent assisted reproduction are unknown. A money judgment in favor of the victim against a local government found liable in a case of fraudulent assisted reproduction would likely be substantial, and could increase liability insurance premiums.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II applies to SB 108 as drafted. There is no earlier version for comparison.

Data Source(s): LRC staff; Kentucky League of Cities; Kentucky Board of Medical Licensure; Federation of State Medical Boards; Kentucky Department of Corrections

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