

Section 6 would require, if a fetal heartbeat is detected, that no abortion may be performed until at least 24 hours after all of the following requirements are met:

1. The physician has informed the pregnant woman in writing that the unborn baby has a fetal heartbeat;
2. The physician has informed the pregnant woman of the statistical probability of bringing an unborn baby with a heartbeat to term; and
3. The pregnant woman has signed a form acknowledging that she has been informed the unborn child has a fetal heartbeat and is aware of the statistical probability of bringing the fetus to term.

Section 6 would also provide that it does not repeal or limit other KRS provisions relating to informed consent for an abortion.

Section 7 would prohibit an abortion if a fetal heartbeat has been detected with the specific intent of causing or abetting the termination of the life of the unborn human individual; the prohibition would not apply to a physician who performs a medical procedure to prevent death or serious risk of substantial and irreversible impairment of a major bodily function of a woman. Subsection (1) of Section 7 specifically would not repeal or limit any other KRS provisions that restrict or regulate abortion by a particular method or at a particular stage of pregnancy.

SB 9 would provide exceptions to the requirements in Sections 4 - 7 where a medical emergency necessitates termination of a woman's pregnancy, so long as the required documentation of medical emergency is maintained in the physician's records. "Medical emergency" is defined as risk of death or serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman if the pregnancy continues.

Section 18 would exempt Sections 1 – 17 of the bill from operation of KRS 6.945, which prohibits the Legislature from imposing any expenditure or tax levy mandate on cities unless the mandate is fully funded or is contingent on city approval.

Section 20 would declare an emergency and mandate the bill effective on its becoming law.

SB 9 would create three new Class D felonies: failure to determine whether a fetus has a heartbeat in the absence of a documented medical emergency; performing or inducing an abortion where a fetal heartbeat has been detected without complying with the informed consent requirements established in Section 6; and performing or inducing an abortion with the specific intent of causing or abetting the termination of the life of the unborn human individual after a fetal heartbeat has been detected. A pregnant woman on whom an abortion is performed or induced in violation of the provisions of SB 9 would not be guilty of a violation.

The fiscal impact of SB 9 on local governments would be minimal. While the creation of three new felony crimes suggests some impact on local law enforcement and jail facilities, the likelihood of criminal prosecution and incarceration under the new felonies is small. The Administrative Office of the Courts reports that from January 1, 2017 to December 31, 2018 there were **no** criminal prosecutions and **no** incarcerations for violations of current

abortion laws in KRS 311.723 - 311.787, which include informed consent and other requirements similar to those in SB 9.

If a person is arrested, prosecuted, and incarcerated for violation of SB 9 there could be some expense to local government. A Class D felony defendant is generally released on bail; however, 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 76 full service jails or four life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day, which equals the 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. Since the per diem pays for the estimated average cost of housing 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

The Part II section above pertains to the bill as drafted and there are not any prior versions of the bill to complete the Part III section.

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

Preparer: Mary Stephens **Reviewer:** KHC **Date:** 1/4/19