



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated February 20, 2023)

Drafting Number:	LLS 23-0510	Date:	March 13, 2023
Prime Sponsors:	Rep. Bacon; Amabile Sen. Gonzales; Fields	Bill Status:	Senate Judiciary
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Bill Topic: ALTERNATIVES IN CRIMINAL JUSTICE SYSTEM & PREGNANT PERSONS

Summary of Fiscal Impact:	<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill limits when the courts may detain or incarcerate a pregnant person or a person in a postpartum period. The bill increases state and local expenditures beginning in FY 2023-24, and may minimally decrease state expenditures beginning in FY 2024-25.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$774,596 to the Judicial Department.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill.

**Table 1
State Fiscal Impacts Under HB 23-1187**

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$774,596	\$418,023
	Centrally Appropriated	\$85,820	\$93,421
	Total Expenditures	\$860,416	\$511,444
	Total FTE	4.6 FTE	5.0 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$116,189	\$62,703

Summary of Legislation

The bill creates a presumption against detention and incarceration of a pregnant or postpartum person. It requires the court to only detain or incarcerate the defendant if the court makes a specific finding that the defendant poses a substantial risk to the public and that risk outweighs the risk of incarceration. If a stay of execution or unaccompanied furlough for a pregnancy and postpartum period is granted by the court, the pregnant or postpartum person must be supervised by the Probation Division in the Judicial Department.

The bill does not make the defendant eligible for any sentence that they would have been ineligible for under current law. The presumption is applied to determining bond, diversion agreements, deferred judgments, probation, alternative sentences, and unaccompanied furloughs or stays of execution. During the course of a trial, a pregnant or postpartum defendant may raise the issue of pregnancy or a postpartum period and must provide related evidence to the district attorney. The court must hold a hearing if the district attorney contests that the defendant is pregnant.

The bill requires staff at a county jail, in the Department of Corrections (DOC), or a juvenile detention facility to provide a pregnancy test to any adult or juvenile who requests one.

Assumptions

Pregnant persons in the criminal justice system. According to DOC data, an average of 23 new commitments are pregnant per year. In the last three years, there were an average of 626 new female commitments per year. Using these data points, the fiscal note assumes that 3.7 percent of new commitments to both county jail and state prison are pregnant.

According to the [Jail Data Dashboard](#) maintained by the Division of Criminal Justice, there are an average of 340 females sentenced to jails per quarter, or 1,360 per year. Using the assumed 3.7 percent pregnancy assumption outlined above, the fiscal note assumes that there are 50 pregnant persons sentenced to jail per year.

Postpartum persons in the criminal justice system. Since the bill defines the postpartum period as occurring one year after giving birth, the fiscal note assumes that this doubles the impacted population described above.

Population impacted by the bill. The fiscal note assumes that individuals sentenced to the DOC would not be granted a furlough or stay under the bill, due to public safety concerns. Therefore, the bill is assumed to primarily impact the jail population, or 100 individuals per year. Given the bill's requirement for probation supervision for pregnant persons receiving a stay or furlough under the bill, this represents a shift in costs from counties to the state.

State Expenditures

The bill increases state General Fund expenditures in the Judicial Department by about \$860,000 in FY 2023-24 and \$511,000 in FY 2024-25. In addition, the bill may decrease expenditures in the DOC and DHS starting in FY 2024-25. Expenditures are shown in Table 2 and detailed below.

**Table 2
Expenditures Under HB 23-1187**

	FY 2023-24	FY 2024-25
Judicial Department		
Personal Services	\$375,166	\$409,273
Operating Expenses	\$6,750	\$6,750
Capital Outlay Costs	\$33,880	\$2,000
Computer Programming	\$358,800	-
Centrally Appropriated Costs ¹	85820	\$93,421
Total Cost	\$860,416	\$511,444
Total FTE	4.6 FTE	5.0 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. The bill will increase expenditures in the Judicial Department to modify its case tracking system and for the Probation Division to oversee any offenders that are placed on furlough or a stay from incarceration. In addition, workload will increase in the trial courts. These impacts are described below.

- **Computer programming.** In FY 2023-24 only, the Judicial Department will update its case management system to track cases involving a pregnant or postpartum defendant. Due to this information reflecting a health condition, the department will track this information in compliance with medical privacy standards. Costs assume six months of programming by a software engineer at the contract rate of \$123 per hour, a business analyst at a contract rate of \$111 per hour, and a quality assurance analyst at a rate of \$111 per hour.
- **Probation.** Starting in FY 2023-24, the Probation Division requires 4.0 FTE to supervise approximately 100 offenders furloughed or with a stayed sentence based on the work standards for maximum supervision. In addition, because the division does not currently oversee DOC or jail inmates, 1.0 FTE program assistant will create standards, procedures, and protocols; liaise with county sheriffs and DOC facilities; and provide coordination and management of the 4.0 probation supervision staff. Costs in FY 2023-24 are prorated for the General Fund pay date shift.

- **Trial courts.** Starting in FY 2023-24, workload in the trial courts will increase to denote pregnancy or postpartum information in the case management system, to hold additional hearings to determine if an alternative sentence is appropriate, and to determine if a defendant violated conditions of release, if there are additional violations due to alternative sentencing. The fiscal note assumes the number of hearings will be minimal and can be accomplished within existing appropriations.

Department of Corrections. Starting in FY 2023-24, the bill may decrease DOC expenditures to the extent more individuals are given an alternative sentence in lieu of a sentence of incarceration in the DOC. As discussed in the Assumptions section, the DOC sees an average of 23 new pregnant commits per year. Because future sentencing decisions cannot be estimated, this amount cannot be determined.

To the extent an order for incarceration is stayed or furlough is granted, costs will shift to future fiscal years. For informational purposes, currently the average daily cost to the DOC to operate a prison bed is \$74.25 or \$155.52 per day depending on if the offender is in a privately run or state-run facility.

Finally, the DOC currently provides pregnancy tests upon request after admission to a correctional facility within 24 hours of the request; therefore, the provision of the bill requiring pregnancy tests can be accomplished within existing appropriations.

Department of Human Services. Starting in FY 2023-24, to the extent juveniles are given an alternative sentence in lieu of detention or commitment in a Division of Youth Services facility, costs to the DHS will decrease. Finally, the DHS currently provides pregnancy tests upon request after admission to a correctional facility within 24 hours of the request; therefore, the provision of the bill requiring pregnancy tests can be accomplished within existing appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

District attorneys. Similar to the state, to the extent the bill results in more hearings to determine if an alternative sentence is appropriate or if a defendant violated conditions of release, district attorney workload will increase.

County jails. Starting in FY 2023-24, costs in county jails will decrease as offenders are furloughed or have their sentences stayed. In addition, to the extent additional defendants are given an alternative sentence in lieu of incarceration in a county jail, or that additional defendants are released on bond, costs to county jails will decrease. To the extent a county jail must provide a pregnancy test and is not already providing tests upon request, costs will increase.

Denver County Court. Similar to the state, to the extent there are additional hearings under the bill, Denver County Court workload will increase.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires an appropriation of \$774,596 from the General Fund to the Judicial Department with 4.6 FTE.

State and Local Government Contacts

Corrections
Information Technology

District Attorneys
Judicial

Human Services
Public Safety