



Legislative Council Staff

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FISCAL NOTE

Drafting Number: LLS 20-0585
Prime Sponsors: Rep. Humphrey; Saine
Sen. Marble

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Bill Status: House Health & Insurance
Fiscal Analyst: Erin Reynolds | 303-866-4146
Erin.Reynolds@state.co.us

Bill Topic: PROTECT HUMAN LIFE AT CONCEPTION

- Summary of Fiscal Impact:
- State Revenue
- TABOR Refund
- State Expenditure
- Local Government
- State Transfer
- Statutory Public Entity

This bill prohibits a licensed physician from performing abortions except in limited circumstances and makes offenses a class 1 felony. Beginning in FY 2020-21, the bill increases workload for state courts and local governments and increases expenditures for the Department of Corrections. These impacts are ongoing.

Appropriation Summary: This bill requires a total five-year appropriation of \$170,660 to the Department of Corrections. In addition, capital construction funding of \$178,471 may be appropriated. See State Appropriations section.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under HB 20-1075

Table with 3 columns: Category, FY 2020-21, FY 2021-22. Rows include Revenue, Expenditures (General Fund), Transfer, and TABOR Refund.

Summary of Legislation

This bill prohibits licensed physicians from performing abortions except:

- when an abortion is necessary to preserve the life of the woman and the physician has made a reasonable medical effort to preserve both the life of the woman and her unborn child; or
- when the physician provides medical treatment to a woman that results in the accidental injury or death of the unborn child.

Offenses under the bill are punishable as a class 1 felony, and a conviction constitutes unprofessional conduct for the purposes of physician licensing.

Background

Federal law requires that state health programs receiving federal funding provide coverage for abortion services if the pregnancy results from rape or incest or if continuing the pregnancy would put the woman's life in danger. Colorado's Medicaid and Children's Health Plan Plus (CHP+) programs are subject to these requirements.

According to the Guttmacher Institute, there were 12,390 abortions performed in Colorado in 2017, the most recent year for which data is available.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

Prior conviction data. This bill creates the new offense of terminating the life of an unborn child, a class 1 felony. To form an estimate on the prevalence of new crimes, fiscal notes analyze a comparable crime. There is the existing offense of unlawful termination of pregnancy in the first degree. From 2017 to 2019, there has been one conviction and sentence for this existing offense. However, "unlawful termination of pregnancy" refers to the termination of a pregnancy by any means other than birth or a medical procedure, instrument, agent, or drug, for which consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained, or for which the pregnant woman's consent is implied by law. Therefore, this existing offense is not directly comparable to the new offense and additional considerations are weighed when estimating the prevalence of this new crime.

Assumptions. The fiscal note assumes a high rate of compliance with the provisions of the bill. This analysis assumes there will be less than five criminal cases filed for this offense and that approximately one offender will be convicted and sentenced to Department of Corrections (DOC) every five years. The penalty for a class 1 felony is life in prison or death. The average length of stay for a class 1 felony is 480 months, or about 40 years. There is no fine for a class 1 felony; therefore, this bill does not increase state revenue.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Expenditures

Beginning in FY 2020-21, the bill will increase state General Fund expenditures by a total of at least \$170,660 in the DOC over a five-year period. The bill may also increase future capital construction costs in the DOC. Additionally, this bill is anticipated to increase workload and state expenditures in the Judicial Department, the Department of Regulatory Agencies, and the Department of Health Care Policy and Financing. These impacts are described below.

Department of Corrections operating and parole costs (five-year fiscal impact). Based on the assumptions provided above, this bill increases prison operating costs for the DOC by a total of \$170,660 over the five-year period beginning in FY 2020-21. The fiscal note assumes no prison operating impacts will occur in the first year due to the amount of time required for criminal filing, trial, disposition and sentencing of each case. Once an offender is released from prison, he or she is assigned to parole; however, since the average length of stay is 40 years, any parole impact falls outside the five-year estimate. Table 2 shows the estimated cost of the bill over the next five fiscal years.

**Table 2
Prison and Parole Costs Under Bill**

Fiscal Year	Estimated Bed Impact	Operating Cost
FY 2020-21	0	-
FY 2021-22	1	\$42,665
FY 2022-23	1	\$42,665
FY 2023-24	1	\$42,665
FY 2024-25	1	\$42,665
Total Cost		\$170,660

Department of Corrections capital construction costs. In addition to the five-year operating and parole impacts discussed above, Section 2-2-703, C.R.S. requires that the General Assembly consider capital construction costs for the DOC to house additional inmates. Based on the average per bed construction costs of previous prison facilities, capital construction costs of \$178,471 would be required to increase prison bed space by one bed, in line with the estimated increase in prison population under this bill. If the General Assembly determines that additional prison bed space is needed, this bill should include a transfer of General Fund to the Capital Construction Fund and a reappropriation of this funding to the Corrections Expansion Reserve Fund. Money in the Corrections Expansion Reserve Fund is available for future DOC construction projects, which would be identified and funded through the annual budget process based on the state's overall prison needs.

Judicial Department. Starting in FY 2020-21, the bill is anticipated to result in a minimal increase in criminal case filings against licensed physicians, which will increase workload for the trial courts. The expected increase in the courts' workload is minimal and can be accomplished within existing appropriations.

Additionally, workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel may increase under the bill. The exact impact will depend on the number of cases filed and the financial situation of defendants. To the extent that costs increase, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process.

Department of Regulatory Agencies. Under the bill, a conviction for providing unauthorized abortion services constitutes unprofessional conduct by a licensed physician. The bill may result in additional complaints or disciplinary procedures for the State Medical Board and the Division of Professions and Occupations. This increase in workload is anticipated to be minimal and can be accomplished within existing appropriations.

Department of Health Care Policy and Financing. As described in the Background section, Colorado's Medicaid and CHP+ programs are subject to federal requirements mandating that a state provide coverage for abortion services if the pregnancy results from rape or incest or if continuing the pregnancy would put the woman's life in danger. To remain compliant with federal law, the department may be required to transport a woman who is pregnant as a result of rape or incest to another state to obtain an abortion. As it is unknown how often this will occur, the fiscal impact cannot be determined. The fiscal note assumes such instances are rare, and that the department will not require an increase in appropriations.

Local Government

This bill will increase workload and costs for district attorneys that investigate and prosecute offenses under the bill. Because legal abortions are currently performed by licensed physicians, the fiscal note assumes a high rate of compliance with the provisions of the bill and that any increase in workload for district attorneys will be minimal.

Effective Date

The bill takes effect July 1, 2020, and applies to offenses committed on or after this date.

State Appropriations

Starting in FY 2020-21, this bill requires a General Fund appropriation of \$170,660 for the five-year DOC operating impacts identified in Table 2.

As discussed in the DOC capital construction costs section above, the General Assembly may appropriate \$178,471 for prison bed construction, if needed.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Regulatory Agencies

Information Technology