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Final Fiscal Note

Drafting Number: LLS 21-0785
Prime Sponsors: Sen. Buckner
Rep. Herod

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Bill Status: Signed into Law
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Bill Topic: **PROTECTION OF PREGNANT PEOPLE IN PERINATAL PERIOD**

Summary of Fiscal Impact:

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill makes changes to statute concerning care for pregnant persons, which addresses medical malpractice insurance coverage, policies for health facilities that provide labor and delivery services, and the treatment of pregnant persons in correctional facilities. The bill increases state and local expenditures on an ongoing basis.

Appropriation Summary: For FY 2021-22, this bill requires and includes an appropriation of \$198,998 to multiple state agencies.

Fiscal Note Status: This fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under SB 21-193

	Budget Year FY 2021-22	Out Year FY 2022-23
Revenue	-	-
Expenditures		
General Fund	\$198,998	\$191,266
Centrally Appropriated	\$42,323	\$39,940
Total Expenditures	\$241,321	\$231,206
Total FTE	1.9 FTE	2.2 FTE
Transfers	-	-
TABOR Refund	-	-

Summary of Legislation

The bill makes various changes to statute regarding care for pregnant persons. Specifically, the bill:

- requires every insurer that offers a policy of medical malpractice to provide the Department of Public Health and Environment (CDPHE) with information about their policies related to labor and delivery services upon request;
- repeals language that disallows a pregnant person with a viable fetus, or someone acting on their behalf, from executing a declaration that life-sustaining procedures be withheld or withdrawn;
- requires wardens of private contract prisons, as well as the Executive Director of the Department of Corrections (DOC) or their designee, to submit records annually to the General Assembly about the use of restraints on pregnant persons in their facilities, as well as the number of births by pregnant people who are in their custody;
- establishes requirements for facilities that incarcerate or have custody of people with the capacity for pregnancy, including local jails. The bill requires training for staff; development of policies to promote health and safety of pregnant persons; provision of certain health-related services for pregnant persons; transferring health records for pregnant persons to community service providers; and, connecting pregnant persons or individuals in their postpartum period to community-based resources;
- authorizes the Colorado Civil Rights Commission to receive reports from people alleging that proper maternity care is not being provided to pregnant persons;
- by January 1, 2022, requires the CDPHE to ensure health facilities that provide services related to labor and childbirth have policies that allow a birthing person to have a companion in addition to their partner or spouse; prioritize newborns bonding with their families; not exclude persons who are giving physiologic birth from receiving care; detail the facility's process for receiving information from another provider where a pregnant person has been given care; and, establish a process to transfer and receive pregnant patients across the facility's levels of care according to their ability; and
- by January 1, 2022, requires CDPHE to ensure health facilities that provide services related to labor and childbirth to a person who is in custody have a policy that prioritizes newborns bonding with their families unless the parent or guardian of the newborn consents to medical treatment, the newborn is released to a legal guardian, or the birthing person is released from labor and deliver; and, will not exclude persons who are giving physiologic birth from receiving care without the informed consent of the birthing person.

Background

The DOC currently has a policy to provide pregnant offenders with medical and social service options related to birth control, pregnancy, child placement, as well as abortion under certain circumstances. Female offenders under the age of 55 are screened for pregnancy as part of DOC intake procedures. If an inmate is confirmed to be pregnant during intake or after, they may be housed at the Denver Women's Correctional Facility or the Youthful Offender System to receive pre-natal care.

DOC typically arranges for childbirth to take place at a hospital outside of the institution, and is not allowed to restrain inmates during labor and delivery, except that inmates may be placed in wrist restraints if it is determined that they pose an immediate and serious risk of harm to themselves or others, or pose a substantial escape risk. Inmates are not permitted to bring their newborn back with

them to their permanent facility, and are not allowed visitors while they are at the hospital. Newborn children are placed in the community based on a pregnancy plan. Upon return to their permanent assigned facility, inmates are scheduled to meet with a mental health clinician.

State Expenditures

The bill increases General Fund expenditures for multiple agencies by \$241,321 and 1.9 FTE in FY 2021-22, and \$231,206 and 2.2 FTE in FY 2022-23. These costs are shown in Table 2, and described below.

Table 2
Expenditures Under SB 21-193

Cost Components	FY 2021-22	FY 2022-23
Department of Corrections		
Personal Services	\$100,926	\$151,389
Operating Expenses	\$2,025	\$2,700
Capital Outlay Costs	\$12,400	-
Operating units	\$30,432	\$22,720
Basic Training	\$2,900	-
Drug tests and Specialized Training	\$100	\$100
Centrally Appropriated Costs ¹	\$22,132	\$33,698
FTE – Personal Services	1.3 FTE	2.0 FTE
DOC Subtotal	\$170,915	\$210,607
Department of Public Health and Environment		
Personal Services	\$43,070	\$14,357
Operating Expenses	\$945	-
Capital Outlay Costs	\$6,200	-
Centrally Appropriated Costs ¹	\$20,191	\$6,242
FTE – Personal Services	0.6 FTE	0.2 FTE
CDPHE Subtotal	\$70,406	\$20,599
Total	\$241,321	\$231,206
Total FTE	1.9 FTE	2.2 FTE

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

Department of Corrections. The DOC will require 1.3 FTE in FY 2021-22 and 2.0 FTE in FY 2022-23 to provide additional services for pregnant inmates. The FTE estimate for FY 2021-22 assumes a start date of October 1, 2021, and reflects the General Fund payday shift. Department staffing and service costs are described in more detail below.

Staffing costs. The department will require additional staff to provide support for pregnant and postpartum inmates. Support services will include parental skill development, counseling, mental health services, and substance abuse treatment. Services will be provided seven days a week in a specialized unit. These new staff will require additional training and regular drug testing.

Operating units. The DOC will set up five units to provide services for postpartum inmates and their newborns. Initial startup costs include furniture and supplies for the units, as well as a refrigerator, washer and dryer to serve all of the new units. The department will also have ongoing supply costs for an estimated 40 inmates and their newborns.

Department of Public Health and Environment. The CDPHE requires 0.6 FTE in FY 2021-22 and 0.2 FTE in FY 2022-23 to conduct rule-making for several types of health facilities. This includes an emergency rule-making process to establish basic requirements for facilities by January 2022, and follow-up rulemaking to further finalize the policies in FY 2022-23. The CDPHE currently surveys health facilities every three years and will include the new requirements in those surveys. This will increase the time required for the surveys less than 50 hours per year statewide. It is assumed this work can be accomplished within existing appropriations and that, if needed, any additional resources will be addressed through the annual budget process.

Department of Human Services. The bill requires the Department of Human Services to develop and implement additional training, modify existing policies and ensure that connections are developed between agency staff and outpatient providers. These costs can be absorbed within existing appropriations.

Department of Regulatory Agencies. The Colorado Civil Rights Division, housed within the Department of Regulatory Agencies, will establish a process for receiving reports of improper prenatal care. This work 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 estimated to be \$42,323 in FY 2021-22 and \$39,940 in FY 2022-23.

Local Government

The bill will increase costs for locally operated jails to train staff, develop policy and provide additional services for pregnant and postpartum inmates. Sheriffs will have additional costs to prepare reports for the General Assembly. These costs have not been estimated and will vary by facility.

Effective Date

The bill was signed into law by the Governor on July 6, 2021, and took effect on September 7, 2021. Section 1, which is contingent upon Section 5 of Senate Bill 21-194 taking effect, will also take effect on September 7, 2021.

State Appropriations

For FY 2021-22, the bill requires and includes a General Fund appropriation of \$198,998 and 1.9 FTE. Of this:

- \$148,783 and 1.3 FTE are for the Department of Corrections; and
- \$50,215 and 0.6 FTE are for the Department of Public Health and Environment.

State and Local Government Contacts

Corrections
Health Care Policy and Financing
Information Technology
Law
Municipalities
Public Health and Environment

Counties
Human Services
Judicial
Legislative Council Staff
Personnel
Regulatory Agencies