

Colorado Legislative Council Staff Fiscal Note

**FINAL
FISCAL NOTE**

Drafting Number: LLS 15-0201
Prime Sponsor(s): Rep. Nordberg

Date: May 26, 2015
Bill Status: Postponed Indefinitely
Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: BAN SEX-SELECTION ABORTIONS

Fiscal Impact Summary*	FY 2015-2016	FY 2016-2017
State Revenue		
Cash Funds	<\$5,000	<\$5,000
State Expenditures		<u>\$22,068</u>
General Fund		\$22,068
FTE Position Change		
TABOR Set Aside	<\$5,000	<\$5,000
Appropriation Required: \$88,272 - Department of Corrections (FY 2015-16 through FY 2019-20).		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill makes performing an abortion and other related actions for purposes of sex selection a class 2 felony. The bill identifies other actions as including coercion of a sex-selection abortion, solicitation or acceptance of funds for a sex-selection abortion, or transporting a woman into Colorado to obtain a sex-selection abortion. The bill requires the court to sentence an offender to between the minimum and twice the maximum presumptive range for a Class 2 felony. Exceptions are made for saving the life or preserving the health of the unborn child, spontaneous abortion, and removing an ectopic pregnancy.

Background

According to the Guttmacher Institute, there were approximately 14,710 abortions performed in Colorado in 2011, the most recent year for which data were available. It is not known whether any of these abortions were performed for purposes of sex selection.

Under current law, the presumptive range for a class 2 felony is 8 to 24 years in prison. Under House Bill 15-1162, a person convicted of a class 2 felony would be sentenced to a term in prison of between 8 and 48 years.

State Revenue

Beginning in FY 2015-16, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a class 2 felony is \$5,000 to \$1,000,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed in 2014, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

TABOR Impact

This bill may increase state revenue from criminal fines, which will increase the amount required to be refunded under TABOR.

State Expenditures

This bill will increase state expenditures by \$22,068 per year, beginning in FY 2016-17. Costs are in the Department of Corrections. Workload and costs will also increase for agencies within the Judicial Department as discussed below.

Five-Year Fiscal Impact on Correctional Facilities

This bill is anticipated to increase state General Fund expenditures by an estimated \$22,068 per year beginning in FY 2016-17 for the Department of Corrections (DOC). This increase assumes at least one offender will be sentenced to prison for a class 2 felony every five years and have an average length of stay of 217.8 months. Because legal abortions are currently performed by licensed physicians and it is not known whether or how many abortions are performed for the purposes of sex selection, the fiscal note assumes a high rate of compliance with the provisions of the bill. However, should additional convictions occur, the fiscal note assumes the Department of Corrections will request additional appropriations through the annual budget process.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. Any offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

Offenders placed in a private contract prison cost the state about \$60.46 per offender per day, including the current daily rate of \$55.08 and an estimated \$5.38 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. Table 1 shows the estimated cost of the bill over the next five fiscal years.

Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2015-16	0.0	\$0	\$0	\$0
FY 2016-17	1.0	\$0	\$22,068	\$22,068
FY 2017-18	1.0	\$0	\$22,068	\$22,068
FY 2018-19	1.0	\$0	\$22,068	\$22,068
FY 2019-20	1.0	\$0	\$22,068	\$22,068
Total				\$88,272

Judicial Department. The bill may result in new case filings against licensed physicians or other persons who perform sex-selection abortions, which will increase workload for the trial courts. The expected increase in the courts' workload is minimal and can be accomplished within existing appropriations.

Office of the State Public Defender (OSPD). In the event that a licensed physician or other person would be determined to be indigent, workload and costs for the OSPD may increase in order to provide representation. To the extent this occurs, this analysis assumes the OSPD will request additional appropriations through the annual budget process.

Office of the Alternate Defense Counsel (ADC). The ADC represents clients when the OSPD has a conflict and, therefore, may incur costs under the bill. These costs have not been estimated but are anticipated to be similar to those described for the OSPD.

Local Government Impact

This bill will increase workload and costs for district attorneys that investigate and prosecute offenses under the bill. The fiscal note assumes that these increases will be minimal.

Comparable Crime

Pursuant to Section 2-2-322 (2.5), C.R.S., 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 the existing crime that creates a new factual basis for the offense. The behavior prohibited under HB15-1162 is currently legal. For this reason, no information about the likely offenders or victims is available. Due to the professional nature of providers performing abortion services, the fiscal note assumes a high rate of compliance with the provisions of this bill.

Effective Date

The bill was postponed indefinitely by the House State, Veterans, and Military Affairs Committee on March 16, 2015.

State Appropriations

The Department of Corrections requires the five-year appropriations shown in Table 1.

State and Local Government Contacts

Corrections
Health Care Policy and Financing
Public Health and Environment

District Attorneys
Judicial