



**Colorado
Legislative
Council
Staff**

HB16-1007

**FINAL
FISCAL NOTE**

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-0042

Date: June 13, 2016

Prime Sponsor(s): Rep. Joshi

Bill Status: Postponed Indefinitely

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BILL TOPIC: OFFENSES AGAINST UNBORN CHILDREN

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue		
Cash Funds	Potential increase.	
State Expenditures		
General Fund	Potential increase.	
Appropriation Required: None.		
Future Year Impacts: Potential minimal increase in state revenues and state expenditures.		

NOTE: This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

This bill allows for additional charges to be filed if any crime committed is the proximate cause of injury or death to an unborn person.

Background

Under current law, several offenses against a pregnant woman trigger enhanced sentencing if the defendant knew, or reasonably should have known, that the victim was pregnant. For example, for class 1 felonies, crimes against a pregnant woman are an aggravating factor in determining whether to sentence an offender to life imprisonment or the death penalty. In addition, an offender must be sentenced to at the least the midpoint and up to twice the presumptive range for certain offenses if the victim is a pregnant woman. These offenses include:

- murder in the second degree;
- manslaughter;
- criminally negligent homicide;
- vehicular homicide;
- assault in the first degree;
- assault in the second degree; or
- vehicular assault.

House Bill 13-1154 created a new article in the criminal code for offenses against pregnant women and new offenses for unlawful termination of pregnancy in the first, second, third, and fourth degrees; vehicular unlawful termination of pregnancy; aggravated vehicular unlawful termination of pregnancy; and careless driving resulting in unlawful termination of a pregnancy. That bill also clarified that first or second degree unlawful termination of pregnancy are crimes of violence and subject to enhanced sentencing as described above.

In the past two fiscal years, there have been two convictions for offenses against pregnant women, one for unlawful termination of pregnancy in the first degree and one for careless driving resulting in unlawful termination of pregnancy.

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. As discussed in the Background section, offenses committed against pregnant women may already be prosecuted under current law. Under this bill, if those crimes cause the injury or death of a woman's unborn child a separate charge may be filed.

According to the Judicial Department, there have been two convictions for offenses against pregnant women between July 1, 2013, and June 30, 2015; one of an African American male and one of a Hispanic male.

State Revenue

State revenue may increase if a judge increases fines for an offender who has multiple charges as a result of one or more crimes committed against a pregnant woman that injures or causes the death of her unborn child. As it is unknown whether this will occur, the amount of any increase in state revenue cannot be determined. Fine revenue is credited to the Fines Collection Cash Fund in the Judicial Branch.

State Expenditures

Overall, this bill could increase state expenditures by a minimal amount. This analysis is based on the following assumptions:

- because no new crimes are created, no new court filings will occur;
- certain defendants charged with one or more crimes may be subject to additional charges if a victim was pregnant and her unborn child was injured or killed;
- as current law already provides for enhanced penalties for violent crimes against pregnant women, increased workload for state agencies would primarily be for lower level offenses and violent crimes when the defendant did not know the victim was pregnant; and
- offenders may receive longer sentences if a judge orders the sentence for the second charge to be served consecutively versus concurrently.

Judicial Department. The bill will not necessarily create new court filings, but persons charged with crimes may be subject to additional charges, resulting in lengthier trials. The expected increase in the courts' workload is minimal and can be absorbed within existing appropriations.

Office of the State Public Defender (OSPD). The OSPD may experience an increase in workload due to increases in the time to litigate cases. In addition, because there is no language in the bill defining what constitutes injury to the unborn child, costs of at least \$2,500 per case to produce expert testimony may be incurred. 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.

Department of Corrections (DOC). The Department of Corrections may experience an increase in costs if persons who commit offenses against pregnant women receive longer sentences under this bill. This analysis assumes those increases will not occur for several years. In the event that charges for lower level offenses not previously subject to prison time will result in new sentences to DOC, assumed to be rare, DOC may experience an increase in costs beginning in FY 2017-18. To the extent this occurs, this analysis assumes the department will request an increase in 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 \$59.90 per offender per day, including the current daily rate of \$56.02 and an estimated \$3.88 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.

Effective Date

The bill was postponed indefinitely by the House Business Affairs and Labor Committee on February 11, 2016.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Information Technology