


Colorado Legislative Council Staff Fiscal Note
STATE
FISCAL IMPACT

Drafting Number: LLS 10-0487
Prime Sponsor(s): Rep. Bradford; Summers

Date: February 15, 2010
Bill Status: House Judiciary
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TITLE: CONCERNING VIOLENT ACTS THAT HARM UNBORN CHILDREN, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
Cash Funds		
Fines Collection Cash Fund	<\$5,000	<\$5,000
State Transfers or Diversions		
Transfer from the General Fund to the Capital Construction Cash Fund	(\$91,370)	(\$103,336)
State Expenditures		
General Fund	\$14,659	\$45,658
Cash Funds- Capital Construction Fund Appropriation to the Corrections Expansion Reserve Fund	91,370	103,336
FTE Position Change	0.3 FTE	0.3 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2010-2011: See State Appropriations section.		
Local Government Impact: None.		

Summary of Legislation

The bill makes killing an unborn child a class 1 felony, if the fetus has surpassed 16 weeks in utero, and one of the following circumstances occurs:

- an individual intends to cause the death or harm of another person and causes the death of a fetus;
- an individual knows that his or her actions may cause the harm or death of another person and causes the death of a fetus; or
- an individual attempts or commits a felony and causes the death of a fetus.

The bill also creates the felony 3 crime of voluntary manslaughter of an unborn child, if the fetus has surpassed 16 weeks in utero, and one of the following circumstances occurs:

- an individual intends to cause the death of another person during a heat of passion and causes the death of a fetus;
- an individual commits a misdemeanor with such force that the death or serious bodily harm of another could be foreseen and this causes the death of a fetus; or
- an individual causes the death of a fetus because of threats or coercion.

The bill specifies that the law is not applicable to the death of a fetus during medical treatment or in an act of self-defense.

State Revenue

Under current law individuals convicted of a class 3 felony may be required to pay a fine ranging from \$3,000 to \$750,000. This bill creates a new felony 3 crime for voluntary manslaughter of an unborn child. To the degree that the court imposes a fine under this bill, it will generate additional state revenue. Any new fine revenue received is deposited into the Fines Collection Cash Fund.

State Transfers or Diversions

Pursuant to the requirements of Section 2-2-703, C.R.S., and Section 17-1-116, C.R.S., this bill transfers \$91,370 from the General Fund to the Capital Construction Fund in FY 2010-11, then appropriates the money to the Corrections Expansion Reserve Fund. Thus, this amount will not be available for General Fund appropriations. For a further explanation of this transfer and appropriation, see the section related to the five-year impact on correctional facilities.

State Expenditures

Office of the State Public Defender (OSPD). The OSPD requires \$14,659 and 0.3 FTE in FY 2010-11 and \$16,020 and 0.3 FTE in FY 2011-12. These costs are for attorney and support staff to try one additional felony 1 case each year as a result of the bill. The bill makes killing an unborn child a class 1 felony; however, this provision only applies to a crime when the mother lives, but the fetus dies. Any instance where the mother and the fetus die already is considered murder in the first degree. The bill also makes voluntary manslaughter of an unborn child a class 3 felony; the fiscal note estimates that the OSPD also will have one of these cases each year

Office of the Alternate Defense Counsel (ADC). The ADC represents clients when the OSPD has a conflict; therefore, the ADC may have costs associated with the bill. It is not possible to predict when it would be necessary for the ADC to represent a defendant instead of the OSPD so these costs are not estimated for the fiscal note. It is assumed that, if necessary, the ADC would request funding through the annual budget process.

Department of Corrections. The bill will create additional expenditures for the Department of Corrections (DOC) of \$91,370 in FY 2010-11 and \$132,974 in FY 2011-12. The five year expenditure impact is estimated at \$395,659. These costs are based on the estimate that the DOC will see two new offenders every five years. One new offender is for the new felony 3 of voluntary manslaughter of an unborn child and one offender with an increased length of stay for the felony 1 crime of killing an unborn child. The fiscal note assumes that some cases seen by the OSPD will result either in acquittal or a plea bargain so the convictions sent to DOC are lower than the estimated number of cases seen by the OSPD.

Five-Year Fiscal Impact on Correctional Facilities

Section 2-2-703, C.R.S., specifies that no bill can be passed by the General Assembly which results in a net increase in periods of imprisonment in *state correctional* facilities unless it contains an appropriation of money sufficient to cover the increased capital construction costs and operating costs in each of the first five fiscal years of the bill. Sections 17-1-102, 104.9, and 105.5, C.R.S., authorize the department to permanently place inmates classified as medium custody and below in private contract prisons. Inmates classified higher than medium custody cannot be placed in private contract prisons, except under "correctional emergency" conditions. *The fiscal note assumes that the new inmates identified in this bill will be allocated between state correctional facilities and private contract prisons according to historical patterns.*

If an inmate is placed in a state correctional facility, the additional construction costs are estimated to be \$125,165 per inmate bed. Operating costs are \$88.60 per bed per day or \$32,339 per bed per year. It should be noted that the construction costs reflect the funding needed to construct inmate beds in the fiscal year prior to when additional offenders are expected to enter the system. This lag accounts for the estimated time for criminal filing, trial, disposition, and sentencing. If an inmate is placed in a private contract prison, the state incurs no additional capital construction costs; however, the state pays a rate of \$61.19 per bed per day for inmates placed in private prisons. The total cost to the department is therefore \$22,334 per private prison bed per year. Departmental data indicates that 27 percent of class 3 felonies and 4 percent of class 1 felonies are housed in private prisons, and both the construction and operating costs presented in Table 1 have been prorated accordingly.

Table 1 Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2010-11	0.0	\$91,370	\$0	\$91,370
FY 2011-12	1.0	\$103,336	\$29,638	\$132,974
FY 2012-13	1.9	\$0	\$57,105	\$57,105
FY 2013-14	1.9	\$0	\$57,105	\$57,105
FY 2014-15	1.9	\$0	\$57,105	\$57,105
Total				\$395,659

Expenditures Not Included

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. The centrally appropriated costs subject to this policy are summarized in Table 2.

Table 2. Expenditures Not Included Under HB 10-1261*		
Cost Components	FY 2010-11	FY 2011-12
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$2,130	\$2,130
Supplemental Employee Retirement Payments	545	725
TOTAL	\$2,675	\$2,855

**More information is available at: <http://www.colorado.gov/cs/Satellite/CGA-LegislativeCouncil/CLC/1200536133924>*

State Appropriations

For FY 2010-11, the following departments require an appropriation:

- \$14,659 General Fund and 0.3 FTE for the Office of the State Public Defender; and
- \$91,370 from the Corrections Expansion Reserve Fund for the Department of Corrections.

Departments Contacted

Judicial Law Corrections Public Safety