

Colorado Legislative Council Staff Fiscal Note

STATE
FISCAL IMPACT

Drafting Number: LLS 10-0013
Prime Sponsor(s): Sen. Schultheis
 Rep. Nikkel

Date: February 15, 2010
Bill Status: Senate SVMA
Fiscal Analyst: Sara McPhee (303-866-4782)

TITLE: CONCERNING FIRST DEGREE MURDER OF A FETUS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
State Transfers or Diversions Transfer from the General Fund to the Capital Construction Cash Fund	(\$120,158)	(\$103,336)
State Expenditures General Fund	\$14,659	\$47,959
Cash Funds- Capital Construction Fund Appropriation to the Corrections Expansion Reserve Fund	\$120,158	\$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 a fetus a class 1 felony in the following circumstances:

- if the death of a fetus occurs in conjunction with the death of another person;
- if an individual commits another crime and causes the death of a fetus; or
- if an individual engages in behavior that creates a grave risk to the fetus and ultimately causes the death of the fetus.

The bill specifies that the law is not applicable to the death of a fetus during medical treatment or caused by a physician who is trying to preserve the life of the mother.

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 \$120,158 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 additional attorney and support staff to try one additional felony 1 case each year as a result of the bill. The bill changes the definition of murder in the first degree to include the death of a fetus; however, this new 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.

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 (DOC). This bill will create additional expenditures for the department of \$120,158 in FY 2010-11 and \$135,275 in FY 2011-12. The five year expenditure impact is estimated at \$433,651. These costs are based on the estimate that the DOC will see one new offender every five years and one offender with an increased length of stay every five years. 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 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	\$120,158	\$0	\$120,158
FY 2011-12	1.0	\$103,336	\$31,939	\$135,275
FY 2012-13	1.9	\$0	\$59,406	\$59,406
FY 2013-14	1.9	\$0	\$59,406	\$59,406
FY 2014-15	1.9	\$0	\$59,406	\$59,406
Total				\$433,651

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 SB 10-113*		
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

In 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
- \$120,158 from the Corrections Expansion Reserve Fund for the Department of Corrections.

Departments Contacted

Judicial

Corrections

Law

Public Safety