

Colorado Legislative Council Staff Fiscal Note
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 10-1012
Prime Sponsor(s): Sen. Hudak
 Rep. Levy

Date: April 18, 2010
Bill Status: Senate Judiciary
Fiscal Analyst: Sara McPhee (303-866-4782)

TITLE: CONCERNING THE SAFE TREATMENT OF PREGNANT PERSONS IN CUSTODY.

Fiscal Impact Summary	FY 2010-2011	FY 2011-2012
State Revenue		
State Expenditures		
General Fund	\$22,140	\$44,333
FTE Position Change	1.0 FTE	1.0 FTE
Effective Date: January 1, 2011, assuming the General Assembly adjourns May 12, 2010, as scheduled and no referendum petition is filed.		
Appropriation Summary for FY 2010-2011: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

Summary of Legislation

The bill prohibits the use of restraints on pregnant inmates in the Department of Corrections (DOC), private contract prisons, county and municipal jails, and Department of Human Services (DHS) facilities under certain circumstances. The use of any restraints is prohibited in the following situations:

- during labor and delivery;
- during postpartum recovery; or
- during transport to or from a medical facility for childbirth.

Restraints may be used in the above situations if the restraints are necessary for a safe childbirth, the inmate poses serious risk of harm to herself or the medical staff, or the inmate poses a substantial risk for escape. However, leg shackles and waist restraints are always prohibited during these situations. If restraints are used, the facility is to maintain a written record of the restraints used, why they were used, and for how long.

The bill also specifies that during the second and third trimester of an inmate's custody facility staff are to use the least restrictive restraints necessary. When the inmate returns to custody after giving birth, she is also entitled to have a medical staff person present to ensure that any strip search is conducted in a manner that does not increase the risk of infection or cause pain.

State Expenditures

Department of Corrections. The bill increases expenditures in the DOC by \$22,140 and 1.0 FTE in FY 2010-11 and \$44,333 and 1.0 FTE in FY 2011-12. Specific costs are provided in Table 1. The department has about 40 births annually and typically uses some restraints during labor and delivery, postpartum recovery, and transport to and from the hospital. This period is, on average, 48 hours that the offender is away from the facility. All pregnant offenders are housed at the Denver Women's Correctional Facility and they are transported to Denver Health to give birth. The additional FTE identified in the fiscal note would be placed at the Denver Women's Correctional Facility.

Depending upon the custody level of the offender, 1 or 2 correctional officers are required for transport and while the offender is in the hospital. If no restraints are used, in order to ensure public safety, the DOC requires 1 additional correctional officer to accompany the offender, bringing the total to 2 or 3 correctional officers depending upon the custody level of the offender.

Table 1. Expenditures Under SB 10-193		
Cost Components	FY 2010-11	FY 2011-12
Personal Services	\$21,425	\$43,833
FTE	1.0	1.0
Operating Expenses and Capital Outlay	715	500
TOTAL	\$22,140	\$44,333

Department of Human Services. The bill also applies to individuals in DHS facilities and in the Division of Youth Corrections (DYC). Cases of pregnant offenders in these facilities are rare and, therefore, any costs associated with the bill can be absorbed within existing resources.

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 10-193*		
Cost Components	FY 2010-11	FY 2011-12
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$7,100	\$7,100
Supplemental Employee Retirement Payments	815	1,983
TOTAL	\$7,915	\$9,083

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

Local Government Impact

As with the Department of Corrections, local jails are prohibited from using restraints during labor and delivery, postpartum recovery, and transport to and from the hospital. In Colorado, about 60 offenders give birth while in custody each year with about 40 of those in the DOC. With only 20 births a year at the local jails, the fiscal note estimates that each jail may have one birth a year or less and it is assumed that any increased costs could be absorbed within existing resources.

Departmental Differences

To implement the bill, the DOC identified costs of \$105,268 and 5.1 FTE in FY 2010-11 and \$226,09 and 5.1 FTE in FY 2011-12. It is the position of the DOC that 5.1 FTE are necessary to staff a new post at the Denver Women's Correctional Facility. A post is a 24-hour a day position that takes 5.1 FTE to ensure that it is fully staffed at all times. The FTE estimate in the fiscal note is based on the number of hours necessary for an additional correctional officer to accompany an offender to the hospital and provide coverage for the duration of her hospital stay. Assuming 40 births a year and an average stay of 48 hours, the number of hours required is 1,920 which is slightly less than the 2,080 hours required for a full FTE. The fiscal note further assumes that some offenders would be restrained because of the exceptions outlined in the bill, but other offenders may require multiple trips to the hospital or longer stays than 48 hours. Therefore, the 1.0 FTE is appropriate to cover the necessary time periods when an offender would not be restrained.

In addition to the FTE, the DOC also identified costs of \$11,840 for FY 2010-11 to implement the record keeping provisions in the bill. The fiscal note assumes that given the few records that would be required annually, the DOC can meet these requirements with a manual record keeping system in a word processing or spreadsheet document and that costly computer programming is not required. The bill specifically states that the written record is not to be considered a part of the offender's medical record. These costs are not included in the fiscal note.

State Appropriations

To implement the bill, the DOC requires a General Fund appropriation of \$22,140 and 1.0 FTE in FY 2010-11.

Departments Contacted

Corrections

Human Services

Sheriffs