



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

**Drafting Number:** LLS 11-0578  
**Prime Sponsor(s):** Rep. Waller; Bradford  
 Sen. Steadman

**Date:** March 7, 2011  
**Bill Status:** House Judiciary  
**Fiscal Analyst:** Kirk Mlinek (303-866-4782)

**TITLE:** CONCERNING CRIMES AGAINST AN UNBORN CHILD, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

<b>Fiscal Impact Summary</b>	<b>FY 2011-2012</b>	<b>FY 2012-2013</b>
<b>State Revenue</b> Fines Collection Cash Fund	<\$5,000	<\$5,000
<b>State Transfers or Diversions</b> Transfer from the General Fund to the Capital Construction Cash Fund	(\$93,934)	
<b>State Expenditures</b> General Fund Cash Funds - Capital Construction Fund Appropriation to the Corrections Expansion Reserve Fund	\$93,934	\$28,797
<b>FTE Position Change</b>		
<b>Effective Date:</b> July 1, 2011.		
<b>Appropriation Summary for FY 2011-2012:</b> See State Appropriations section.		
<b>Local Government Impact:</b> See Local Government section.		

**Summary of Legislation**

The bill creates a new article in the criminal code for offenses against pregnant women and their unborn children. The new offenses include unlawful termination of pregnancy in the first, second, third, and fourth degrees; vehicular unlawful termination of pregnancy; and aggravated vehicular unlawful termination of pregnancy. Termination of a pregnancy resulting from medical care consented to by the mother is exempt from prosecution. The bill also:

- repeals the criminal abortion statutes; and
- includes language to clarify that the status of "person" is not conferred upon a human embryo, fetus, or unborn child at any stage of development prior to live birth.

### **State Revenue**

The bill may increase state revenues from fines, but by less than \$5,000 per year. Under current law, individuals convicted of felonies and misdemeanors may be required to pay a fine. The law provides a range of fines that may be assessed by the court and the range varies by the class of felony or misdemeanor. For the felony classes in the bill, the range of fines is \$2,000 to \$1,000,000; the range for the class 1 misdemeanor is \$500 to \$5,000. To the extent that the court imposes fines for persons convicted under the bill, additional state revenue will be generated. Such fine revenue is deposited in the Fines Collection Cash Fund.

### **State Transfer or Diversions**

Pursuant to the requirements of Section 2-2-703, C.R.S., and Section 17-1-116, C.R.S., the bill transfers \$93,934 from the General Fund to the Capital Construction Fund in FY 2011-12, then appropriates the money to the Corrections Expansion Reserve Fund. Thus, this amount will not be available for General Fund appropriations. This transfer is explained in more detail in the Five-Year Fiscal Impact on Correctional Facilities section.

### **State Expenditures**

The bill increases state expenditures by \$93,934 in FY 2011-12 and \$28,797 in FY 2012-13.

***Department of Corrections (DOC).*** The bill creates additional expenditures for the DOC of \$93,934 in FY 2011-12 and \$28,797 General Fund for operating costs in FY 2012-13. The five-year expenditure impact is estimated at \$210,122. These costs are based on the estimate that the DOC will see one new offender convicted of a felony 3 in the next five years as a result of the bill.

The estimate that the bill's enactment will result in one new prison admission in the next five years is predicated on the fact that persons charged with the unlawful termination of another person's pregnancy likely will be charged with other crimes currently in statute for the harm caused to the mother, whether or not the mother survives. Examples of charges currently available to prosecutors include second degree murder, vehicular homicide, assault in the first degree, assault in the second degree, manslaughter, and vehicular assault. New court filings as a direct result of the bill, therefore, are expected to be minimal. The filing of additional charges means that persons convicted of crimes against pregnant women could end up with longer prison sentences. The fiscal note assumes that there will be one new admission every five years as a result of the bill.

***Office of the State Public Defender (OSPD).*** The OSPD may see an increase in its workload due to new case filings and increases in the time to litigate cases. The number of case filings associated with the crimes created by the bill is expected to be low and OSPD will absorb the associated costs.

*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. Assuming one such case per year, the ADC will absorb the costs and does not require an appropriation.

*Judicial Department.* The new crimes created in the bill will not necessarily create new court filings, rather, perpetrators charged with crimes such as vehicular assault, assault, and DUI will be subject to additional charges as set forth in the bill. The expected increase in the courts' workload is expected to be minimal and will be absorbed.

The new criminal penalties created in the bill have the potential to increase convictions and subsequent sentences to probation. Again, it is assumed that there is an existing offense that will accompany those added by the bill. As a result, the probation workload is not expected to increase at a level to require additional resources.

### **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.* The construction and operating costs presented in Table 1 have been prorated accordingly.

If an inmate is placed in a state correctional facility, the additional construction costs are estimated to be \$130,046 per inmate bed. Operating costs are \$88.59 per bed per day or \$32,335 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 \$52.69 per bed per day for inmates placed in private prisons. The total cost to the department is therefore \$19,232 per private prison bed per year.

<b>Table 1. Five-Year Fiscal Impact On Correctional Facilities</b>				
<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
FY 2011-12	0.0	\$94,934	\$0	\$94,934
FY 2012-13	5.0	0	28,797	28,797
FY 2013-14	5.0	0	28,797	28,797
FY 2014-15	4.7	0	28,797	28,797
FY 2015-16	3.0	0	28,797	28,797
<b>Total</b>		\$94,934	\$115,188	\$210,122

**State Appropriations**

In FY 2011-12, an appropriation of \$94,934 to the Corrections Expansion Reserve Fund is required.

**Local Government Impact**

The bill creates the crime of unlawful termination of pregnancy in the fourth degree for a person who recklessly causes the unlawful termination of the pregnancy of another person, and establishes a class 1 misdemeanor for the offense. The penalty for a class 1 misdemeanor is 6 to 18 months in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jail varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$50.44 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

**Departments Contacted**

Judicial      Corrections      Law      Public Safety