

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

**Drafting Number:** LLS 12-0765  
**Prime Sponsor(s):** Sen. Harvey  
 Rep. Holbert

**Date:** February 6, 2012  
**Bill Status:** Senate Judiciary  
**Fiscal Analyst:** Kerry White (303-866-3469)

**TITLE:** CONCERNING CRIMES AGAINST AN UNBORN CHILD.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014	FY 2014-2015
<b>State Revenue</b>			
Cash Funds			
Fines Collection Cash Fund	<\$5,000	<\$5,000	<\$5,000
<b>State Expenditures</b>			
General Fund	\$1,776	\$165,652	\$139,199
<b>FTE Position Change</b>			
<b>Effective Date:</b> The bill takes effect and applies to offenses committed on or after July 1, 2012.			
<b>Appropriation Summary for FY 2012-2013:</b> See State Appropriations section.			
<b>Local Government Impact:</b> See Local Government Impact section.			

**Summary of Legislation**

This bill creates a new article in the criminal code for offenses against pregnant women and their unborn children. The bill creates new offenses for 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 pregnancy resulting from medical care consented to by the woman is exempt from prosecution. The bill also modifies several provisions of current law by:

- increasing the penalty for criminal abortion in which the woman does not die from a class 4 felony to a class 2 felony;
- reducing the penalty for leaving the scene of an accident resulting in death from a class 3 felony to a class 4 felony; and
- adding a class 4 felony penalty for leaving the scene of an accident resulting in unlawful termination of pregnancy.

**State Revenue**

Beginning in FY 2012-13, state revenue is anticipated to increase by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Branch. Under current law, individuals convicted of felonies and misdemeanors may be required to pay a fine. Depending on the offense committed, the law provides a range of fines that may be assessed by the court. For the felony classes in the bill, fines range from \$2,000 to \$1 million, and the class 1 misdemeanor fine range is \$500 to \$5,000. To the extent that the court imposes fines on persons convicted under this bill, state revenue will increase. This amount is estimated to be less than \$5,000 per year.

**State Expenditures**

**Due to the time required to adjudicate new cases, this bill is not anticipated to increase state expenditures in FY 2012-13, except for one-time costs of \$1,776 for computer changes. State expenditures will increase by \$165,652 in FY 2013-14 and \$139,199 in FY 2014-15.** These costs will be paid from the General Fund and are based on the assumptions shown in Table 1.

<b>Table 1. Assumptions on Convictions Under House Bill 12-1130</b>			
<b>Crime</b>	<b>Old Sentence</b>	<b>New Sentence</b>	<b>Number Affected</b>
Unlawful termination, 1st degree	Class 4 felony	Class 1 felony	1 every 5 years
Unlawful termination, 2nd degree	-	Class 2 felony	1 every 5 years
Unlawful termination, 3rd degree	-	Class 4 felony	1 every 5 years
Unlawful termination, 4th degree	-	Class 5 felony	1 per year
Aggravated vehicular termination	-	Class 3 felony	1 every 5 years
Vehicular termination	-	Class 4 felony	1 every 5 years
Leaving scene, unlawful termination	-	Class 4 felony	1 every 3 years
Leaving scene, resulting in death	Class 3 felony	Class 4 felony	4 per year
Careless driving, unlawful termination	-	Class 1 misdemeanor	65 per year
Criminal abortion	Class 4 felony	Class 2 felony	1 every 5 years

**Department of Revenue.** One-time costs of \$1,776 in FY 2012-13 are required to program the driver's license system database with common codes for traffic violations. Common codes are used by law enforcement personnel in issuing citations and by the Department of Revenue (DOR) to identify individuals for driver's license revocations.

**Judicial Department.** The new crimes created in the bill will not necessarily create new court filings, rather, persons 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 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 new case filings and increases in the time to litigate cases. The number of case filings associated with crimes created under the bill is expected to be low. The fiscal note assumes that should the OSPD experience higher rates of filings than those shown in Table 1, it will address any increased costs 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 minimal.

**Department of Corrections.** Beginning in FY 2013-14, the Department of Corrections will experience an increase in costs resulting from changes in the length of prison sentences and an increased number of offenders admitted to the system in each year.

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. As state-run facilities are currently at or near capacity, any such 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 \$56.73 per offender per day, including the current daily rate of \$52.69 and an estimated \$4.04 per offender per day for medical care provided by the DOC. Table 2 shows the estimated cost of the bill over the next five fiscal years.

<b>Fiscal Year</b>	<b>Inmate Bed Impact</b>	<b>Construction Cost</b>	<b>Operating Cost</b>	<b>Total Cost</b>
<b>FY 2012-13</b>	0.0	\$0	\$0	\$0
<b>FY 2013-14</b>	8.00	-	\$165,652	\$165,652
<b>FY 2014-15</b>	6.72	-	\$139,199	\$139,199
<b>FY 2015-16</b>	7.68	-	\$158,957	\$158,957
<b>FY 2016-17</b>	3.72	-	\$77,080	\$77,080
<b>Total</b>		\$0	\$540,887	\$540,887

**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. This bill changes the classification for certain crimes and adds new crimes. The assumed prevalence of this crime is shown in Table 1 on page 2 of this fiscal note. For existing crimes, this analysis assumes that the current prevalence will remain consistent into the future.

**Local Government Impact**

This bill impacts local governments by creating the new crime of careless driving resulting in unlawful termination of pregnancy. This offense is established as a class 1 misdemeanor. 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 jails 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 bill will be minimal.

**State Appropriations**

For FY 2012-13, the Department of Revenue requires an appropriation of \$1,776, General Fund, which should be reappropriated to the Governor's Office of Information Technology. The Department of Corrections requires the five-year costs detailed in Table 2.

**Departments Contacted**

Corrections      Judicial      Public Health and Environment      Revenue