

**STATE
FISCAL IMPACT**

Drafting Number: LLS 14-0016
Prime Sponsor(s): Rep. Joshi

Date: January 14, 2014
Bill Status: House Judiciary
Fiscal Analyst: Kerry White (303-866-3469)

SHORT TITLE: OFFENSES AGAINST UNBORN CHILDREN

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue		
Cash Funds		Potential increase.
State Expenditures		
General Fund		Potential increase.
FTE Position Change		
Appropriation Required: None.		

* This summary shows changes from current law under the bill for each fiscal year.

Summary of Legislation

This bill allows for a second charge to be filed if a crime committed against a pregnant woman is the proximate cause of injury or death to her unborn child.

Background

Under current law, several serious offenses against a pregnant woman trigger enhanced sentencing if the defendant knew, or reasonably should have known, that the victim was pregnant. For example, for class 1 felonies, crimes against a pregnant woman are an aggravating factor in determining whether to sentence an offender to life imprisonment or the death penalty. In addition, an offender is required to be sentenced to at the least the midpoint and up to twice the presumptive range for certain offenses if the victim is a pregnant woman. These offenses include:

- murder in the second degree;
- manslaughter;
- criminally negligent homicide;
- vehicular homicide;
- assault in the first degree;
- assault in the second degree; or
- vehicular assault.

House Bill 13-1154 created a new article in the criminal code for offenses against pregnant women and new offenses for unlawful termination of pregnancy in the first, second, third, and fourth degrees; vehicular unlawful termination of pregnancy; aggravated vehicular unlawful termination of pregnancy; and careless driving resulting in unlawful termination of a pregnancy. That bill also clarified that first or second degree unlawful termination of pregnancy are crimes of violence and are subject to the enhanced sentencing as described above.

For at least the past two years, there have been no filings or convictions for any of the above offenses against pregnant women.

State Revenue

State revenue may increase if a judge increases fines for an offender who has multiple charges as a result of one or more crimes committed against a pregnant woman that injures or causes the death of her unborn child. As it is unknown whether this will occur, the amount of any increase in state revenue cannot be determined. Fine revenue is credited to the Fines Collection Cash Fund in the Judicial Branch.

State Expenditures

Overall, this bill could increase state expenditures by a minimal amount. However, because there have been no recent cases of offenses against a pregnant woman that caused the injury or death of her unborn child, the increase in costs cannot be estimated at this time. This analysis is based on the following assumptions:

- because no new crimes are created, no new court filings will occur;
- certain defendants charged with one or more crimes may be subject to additional charges if a victim was pregnant and her unborn child was injured or killed;
- as current law already provides for enhanced penalties for violent crimes against pregnant women, increased workload for state agencies would primarily be for lower level offenses and violent crimes when the defendant did not know the victim was pregnant;
- offenders may receive longer sentences if a judge orders the sentence for the second charge to be served consecutively versus concurrently; and
- timing is such that no impact is expected until FY 2015-16.

Judicial Department. The bill will not necessarily create new court filings, rather, persons charged with crimes may be subject to additional charges, resulting in lengthier trials. 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 increases in the time to litigate cases. In addition, because there is no language in the bill defining what constitutes injury to the unborn child, costs of at least \$2,500 per case to produce expert testimony may be incurred. To the extent this occurs, this analysis assumes the OSPD will request additional appropriations 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 similar to those described for the OSPD.

Department of Corrections. Beginning in FY 2015-16, the Department of Corrections may experience an increase in costs if persons who commit offenses against pregnant women are sentenced to longer sentences under this bill. To the extent this occurs, this analysis assumes the department will request an increase in appropriations through the annual budget process.

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. Any offenders who *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 \$58.86 per offender per day, including the current daily rate of \$53.74 and an estimated \$5.12 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing.

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. As discussed in the Background section, offenses committed against pregnant women may already be prosecuted under current law. Under this bill, if those crimes cause the injury or death of a woman's unborn child a separate charge may be filed. However, according to the Judicial Department, there have been no charges filed or convictions for offenses against pregnant women for at least the past two years. As a result, this bill is anticipated to have a minimal impact and no gender and minority data are available.

Effective Date

The bill takes effect July 1, 2014 and applies to offenses committed on or after that date.

State and Local Government Contacts

Corrections

District Attorneys

Judicial