

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 15-1065
Prime Sponsor(s): Sen. Cadman

Date: April 20, 2015
Bill Status: Senate Judiciary
Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: OFFENSES AGAINST UNBORN CHILDREN

| Fiscal Impact Summary* | FY 2015-2016 | FY 2016-2017 |
|--------------------------------------|---------------------|---------------------|
| State Revenue | <\$5,000 | <\$5,000 |
| Cash Funds | <\$5,000 | <\$5,000 |
| State Expenditures | | |
| General Fund | | Potential increase. |
| TABOR Set Aside | Potential increase. | |
| FTE Position Change | <\$5,000 | <\$5,000 |
| Appropriation Required: None. | | |

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

Summary of Legislation

This bill defines an unborn child as a person for the purposes of charging homicide or assault offenses. These offenses include:

- murder in the first degree (class 1 felony);
- murder in the second degree (class 2 or class 3 felony);
- manslaughter (class 4 felony);
- criminally negligent homicide (class 5 felony);
- vehicular homicide (class 3 or class 4 felony);
- assault in the first degree (class 3 or class 5 felony);
- assault in the second degree (class 3, class 4, or class 6 felony);
- assault in the third degree (class 1 misdemeanor); and
- vehicular assault (class 4 or class 5 felony).

The bill provides exceptions for acts committed by the mother of the unborn child; medical procedures performed by a physician or other licensed medical professional at the request of the mother or the mother's legal guardian; or the lawful dispensation or administration of lawfully prescribed medication.

Background

House Bill 13-1154 created a new article in the criminal code for offenses against pregnant women that resulted in termination of a pregnancy. It created new offenses for unlawful termination of pregnancy in the first, second, third, and fourth degrees; vehicular unlawful termination of

pregnancy; aggravated unlawful termination of pregnancy; and careless driving resulting in unlawful termination of pregnancy. These crimes carry penalties ranging from a class 1 misdemeanor for careless driving resulting in unlawful termination of pregnancy to a class 2 felony for unlawful termination in the first degree. Since its enactment, there have been seven convictions under the new law.

State Revenue

Beginning in FY 2015-16, this bill could increase state revenue if terminations of a pregnancy are filed as homicide or assault cases in lieu of or in addition to charges under the existing offenses concerning termination of a pregnancy. Depending on the crimes, fines range from \$500 to \$1,000,000 and are credited to the Fines Collection Cash Fund in the Judicial Department. Because the courts have the discretion of incarceration, imposing a fine, or both, and due to the low number of existing cases of unlawful termination of a pregnancy, the precise impact to state revenue cannot be determined, but is assumed to be less than \$5,000 per year.

TABOR Impact

This bill may increase revenue from fines, which will increase the amount required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

State Expenditures

Beginning in FY 2015-16, this bill may increase workload and costs for the trial courts, agencies of the Judicial Department, and the Department of Corrections (DOC).

Courts. If district attorneys choose to prosecute cases at either a higher felony level than current law provides, or in addition to existing charges, workload and costs will increase for the trial courts.

Office of the State Public Defender and Office of the Alternate Defense Counsel. The bill may increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. As of this writing, the fiscal note assumes any such increases are minimal. Should costs increase significantly, these agencies can request additional appropriations through the annual budget process.

Department of Corrections. To the extent that any additional convictions of homicide or assault charges occur and a person is sentenced to a longer or consecutive term of incarceration, costs for the DOC will increase. For informational purposes, offenders placed in a private contract prison cost the state about \$60.46 per offender per day, including the current daily rate of \$55.08 and an estimated \$5.38 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. The fiscal note assumes that any costs in future years arising under SB15-268 will be addressed through the annual budget process.

Local Government Impact

This bill may increase workload and costs for district attorneys to prosecute offenses against unborn children at a higher level felony than current law provides for.

In addition, the bill provides for charges of assault in the third degree against an unborn child, which is a class 1 misdemeanor. To the extent that this occurs within the City and County of Denver, revenue and costs for Denver County Court and its probation division will increase. To the extent that this bill increases misdemeanor convictions and offenders are sentenced to jail, costs will increase. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact of this bill will be minimal.

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. While the number of cases involving homicide and assault generally is much higher, this analysis assumes that, for purposes of this fiscal note, the comparable offenses are for the existing offenses for unlawful termination of a pregnancy. Since 2013, there have been seven convictions for such offenses. Of the offenders, three were Caucasian males, three were Black males, and one was a Caucasian female.

Effective Date

The bill takes effect and applies to offenses committed on or after July 1, 2015.

State and Local Government Contacts

Corrections

District Attorneys

Judicial