



**Legislative Council Staff**

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**Fiscal Note**

**Drafting Number:** LLS 21-0785  
**Prime Sponsors:** Sen. Buckner  
Rep. Herod

**Date:** April 20, 2021  
**Bill Status:** Senate Judiciary  
**Fiscal Analyst:** Will Clark | 303-866-4720  
Will.Clark@state.co.us

**Bill Topic:** **PROTECTION OF PREGNANT PEOPLE IN PERINATAL PERIOD**

**Summary of Fiscal Impact:**

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

The bill makes changes to statute concerning care for pregnant persons, which addresses medical malpractice insurance coverage, policies for health facilities that provide labor and delivery services, and the treatment of pregnant persons in correctional facilities. The bill increases state and local expenditures on an ongoing basis.

**Appropriation Summary:** For FY 2021-22, this bill requires an appropriation of \$198,998 to multiple state agencies.

**Fiscal Note Status:** This fiscal note reflects the introduced bill.

**Table 1**  
**State Fiscal Impacts Under SB 21-193**

	<b>Budget Year FY 2021-22</b>	<b>Out Year FY 2022-23</b>
<b>Revenue</b>	-	-
<b>Expenditures</b>		
General Fund	\$198,998	\$191,266
Centrally Appropriated	\$42,323	\$39,940
<b>Total Expenditures</b>	<b>\$241,322</b>	<b>\$231,206</b>
<b>Total FTE</b>	<b>1.9 FTE</b>	<b>2.2 FTE</b>
<b>Transfers</b>	-	-
<b>TABOR Refund</b>	-	-

## **Summary of Legislation**

The bill makes changes to statute regarding care for pregnant persons. The bill:

- requires every insurer that offers a policy of medical malpractice to cover care during the entire course of a person's vaginal birth after a previous caesarian birth;
- extends the statute of limitations from two to three years for legal actions by pregnant persons alleging a lack of informed consent to recover damages from a healthcare institution or professional;
- repeals language that disallows a pregnant person with a viable fetus, or someone acting on their behalf, from executing a declaration that life-sustaining procedures be withheld or withdrawn;
- requires wardens of private contract prisons, as well as the Executive Director of the Department of Corrections (DOC) or their designee, to submit records annually to the General Assembly about the use of restraints on pregnant persons in their facilities, as well as the number of births by pregnant people who are in their custody;
- establishes requirements for facilities that incarcerate or have custody of people with the capacity for pregnancy, including local jails. The bill requires training for staff; development of policies to promote health and safety of pregnant persons; provision of certain health-related services for pregnant persons; transferring health records for pregnant persons to community service providers; and, connecting pregnant persons or individuals in their postpartum period to community-based resources;
- authorizes the Colorado Civil Rights Commission to receive reports from people alleging that proper maternity care is not being provided to pregnant persons; and
- by January 1, 2022, requires the Department of Public Health and Environment (CDPHE) to ensure health facilities that provide services related to labor and childbirth have policies that allow a birthing person to have a companion in addition to their partner or spouse; allow newborns to remain with their families; not exclude persons who are giving physiologic birth from receiving care; and, accept transfers of pregnant persons from their home or a birthing center without discriminating against them based on their protected class or planned place of birth.

## **Background**

The DOC currently has a policy to provide pregnant offenders with medical and social service options related to birth control, pregnancy, child placement, as well as abortion under certain circumstances. Female offenders under the age of 55 are screened for pregnancy as part of DOC intake procedures. If an inmate is confirmed to be pregnant during intake or after, they may be housed at the Denver Women's Correctional Facility or the Youthful Offender System to receive pre-natal care.

DOC typically arranges for childbirth to take place at a hospital outside of the institution, and is not allowed to restrain inmates during labor and delivery, except that inmates may be placed in wrist restraints if it is determined that they pose an immediate and serious risk of harm to themselves or others, or pose a substantial escape risk. Inmates are not permitted to bring their newborn back with them to their permanent facility, and are not allowed visitors while they are at the hospital. Newborn children are placed in the community based on a pregnancy plan. Upon return to their permanent assigned facility, inmates are scheduled to meet with a mental health clinician.

**State Expenditures**

The bill increases General Fund expenditures for multiple agencies by \$241,321 and 1.9 FTE in FY 2021-22, and \$231,206 and 2.2 FTE in FY 2022-23. These costs are shown in Table 2, and described below.

**Table 2  
 Expenditures Under SB 21-193**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>Department of Corrections</b>		
Personal Services	\$100,926	\$151,389
Operating Expenses	\$2,025	\$2,700
Capital Outlay Costs	\$12,400	-
Operating units	\$30,432	\$22,720
Basic Training	\$2,900	-
Drug tests and Specialized Training	\$100	\$100
Centrally Appropriated Costs <sup>1</sup>	\$22,132	\$33,698
FTE – Personal Services	1.3 FTE	2.0 FTE
<b>DOC Subtotal</b>	<b>\$170,915</b>	<b>\$210,607</b>
<b>Department of Public Health and Environment</b>		
Personal Services	\$43,070	\$14,357
Operating Expenses	\$945	-
Capital Outlay Costs	\$6,200	-
Centrally Appropriated Costs <sup>1</sup>	\$20,191	\$6,242
FTE – Personal Services	0.6 FTE	0.2 FTE
<b>CDPHE Subtotal</b>	<b>\$70,406</b>	<b>\$20,599</b>
<b>Total</b>	<b>\$241,321</b>	<b>\$231,206</b>
<b>Total FTE</b>	<b>1.9 FTE</b>	<b>2.2 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Corrections.** The department will require 1.3 FTE in FY 2021-22 and 2.0 FTE in FY 2022-23 to provide additional services for pregnant inmates. The FTE estimate for FY 2021-22 assumes a start date of October 1, 2021, and reflects the General Fund paydate shift. Department staffing and service costs are described in more detail below.

*Staffing costs.* The department will require additional staff to provide support for pregnant and postpartum inmates. Support services will include parental skill development, counseling, mental health services, and substance abuse treatment. Services will be provided seven days a week in a specialized unit. These new staff will require additional training and regular drug testing.

*Operating units.* The department will set up five units to provide services for postpartum inmates and their newborns. Initial startup costs include furniture and supplies for the units, as well as a refrigerator, washer and dryer to serve all of the new units. The department will also have ongoing supply costs for an estimated 40 inmates and their newborns.

**Department of Public Health and Environment.** The department requires 0.6 FTE in FY 2021-22 and 0.2 FTE in FY 2022-23 to conduct rule-making for several types of health facilities. This includes an emergency rule-making process to establish basic requirements for facilities by January, 2022, and follow-up rulemaking to further finalize the policies in FY 2022-23. The department currently surveys health facilities every three years and will include the new requirements in those surveys. This will increase the time required for the surveys, but this increase can be accomplished within existing appropriations.

**Department of Human Services.** The bill requires the department to develop and implement additional training, modify existing policies and ensure that connections are developed between agency staff and outpatient providers. These costs can be absorbed within existing appropriations.

**Department of Regulatory Agencies.** The Colorado Civil Rights Division, housed within the Department of Regulatory Agencies, will establish a process for receiving reports of improper prenatal care. This work can be accomplished within existing appropriations.

**Judicial Department.** Extending the timeframe on the statute of limitations for claims by pregnant persons against healthcare facilities and providers may increase the number of civil case filings in trial courts. However, this fiscal note assumes that healthcare facilities and providers will generally follow the law, and any additional claims and work for the trial courts resulting from the bill will be minimal and absorbable within existing resources.

**Centrally appropriated costs.** 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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$42,323 in FY 2021-22 and \$39,940 in FY 2022-23.

## **Local Government**

The bill will increase costs for locally operated jails to train staff, develop policy and provide additional services for pregnant and postpartum inmates. Sheriffs will have additional costs to prepare reports for the General Assembly. These costs have not been estimated and will vary by facility.

## **Effective Date**

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

## **State Appropriations**

For FY 2021-22, the bill requires a General Fund appropriation of \$198,998 and 1.9 FTE. Of this:

- \$148,783 and 1.3 FTE are for the Department of Corrections; and
- \$50,215 and 0.6 FTE are for the Department of Public Health and Environment.

## **State and Local Government Contacts**

Corrections

Health Care Policy and Financing

Information Technology

Law

Municipalities

Public Health and Environment

Counties

Human Services

Judicial

Legislative Council Staff

Personnel

Regulatory Agencies