



Legislative Council Staff  
Nonpartisan Services for Colorado's Legislature

# Final Fiscal Note

**Drafting Number:** LLS 23-0751  
**Prime Sponsors:** Rep. Bottoms

**Date:** May 11, 2023  
**Bill Status:** Postponed Indefinitely  
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**Bill Topic:** ABOLISHING ABORTION IN COLORADO

- Summary of Fiscal Impact:**
- State Revenue
  - State Expenditure
  - State Transfer
  - TABOR Refund
  - Local Government
  - Statutory Public Entity

The bill would have defined "person" to include an unborn human child at all stages of gestation as it relates to a private right of action and current homicide and assault provisions. It may have increased state and local expenditures on an ongoing basis beginning in FY 2023-24.

**Appropriation Summary:** No appropriation was required.

**Fiscal Note Status:** The fiscal note reflects the introduced bill. This bill was postponed indefinitely by the House Health and Insurance Committee on February 17, 2023; therefore, the impacts identified in this analysis do not take effect.

**Table 1**  
**State Fiscal Impacts Under HB 23-1119**

|                      |                      | Budget Year<br>FY 2022-23 | Out Year<br>FY 2023-24 |
|----------------------|----------------------|---------------------------|------------------------|
| Revenue              |                      | -                         | -                      |
| Expenditures         | General Fund         | -                         | \$27,101               |
| Transfers            |                      | -                         | -                      |
| Other Budget Impacts | General Fund Reserve | -                         | \$4,065                |

## **Summary of Legislation**

The bill defines "person" to include an unborn human child at all stages of gestation as it relates to a private right of action and current homicide and assault provisions. The bill requires the state to enforce homicide and assault provisions. A judge who voids or overrules any provision of the bill is subject to impeachment. The bill includes a severability clause.

## **Background**

Federal law requires that state health programs receiving federal funding provide coverage for abortion services if the pregnancy results from rape or incest or if continuing the pregnancy would put the woman's life in danger. Colorado's Medicaid and Children's Health Plan Plus (CHP+) programs, which are administered by the Department of Health Care Policy and Financing (HCPF) are subject to these requirements.

Colorado's constitution prohibits the state, its agencies, or political subdivisions to pay or otherwise reimburse, directly or indirectly, any person, agency, or facility for the performance of any induced abortion, with limited exceptions for appropriations made through legislation. The Prevention Services Division and Family Planning Program in the Department of the Public Health and Environment (CDPHE) are thus prohibited from providing abortion services with funds appropriated to the program.

According to CDPHE data, there were 11,580 abortions performed in Colorado in 2021.

## **Comparable Crime Analysis**

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 an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

**Prior conviction data.** This bill modifies the existing offenses of homicide and assault to include terminating the life of an unborn child. These offenses can constitute up to a class 1 felony. To form an estimate on the prevalence of this new crime, the fiscal note analyzed the existing offense of unlawful termination of pregnancy in the first degree, a class 2 felony, as a comparable crime. From FY 2019-20 to FY 2021-22, one person has been convicted and sentenced for this existing offense. The person convicted was a Black male. However, since abortions are a medical procedure, this existing offense is not directly comparable to the new offense and additional considerations are weighed when estimating the prevalence of this new crime.

**Assumptions.** This fiscal note assumes a high rate of compliance with the provisions of the bill. This analysis assumes that there will be less than five criminal case filings per year for the offense under the bill and that approximately one offender every five years will be convicted of a class 1 felony and sentenced to the Department of Corrections (DOC). The average DOC length of stay for a class 1 felony is 480 months, or about 40 years. There is no fine for a class 1 felony. Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## **State Revenue**

**Criminal fines and court fees.** To the extent offenders are charged with lower level offenses than assumed in the Comparable Crime Analysis, the bill will increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2023-24, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. Additionally, court fees may be imposed on a case-by-case basis for a variety of court-related costs, such as probation supervision, drug surcharges, or late fees. Because the courts have the discretion of incarceration, imposing a fine, or both, a precise state revenue impact cannot be determined. Criminal fine and court fee revenue is subject to TABOR.

## **State Expenditures**

Beginning in FY 2023-24, the bill may increase costs and workload in the Judicial Department, the Department of Regulatory Agencies, the Department of Law, the Department of Health Care Policy and Financing, and the Department of Corrections. These impacts are detailed below.

**Judicial Department.** Starting in FY 2023-24, this bill will increase workload for the trial courts in the Judicial Department to process any additional criminal or civil case filings. If costs increase for any independent judicial agency to provide legal representation or other services as a result of the bill, this will be addressed through the annual budget process. Finally, to the extent additional persons are sentenced to probation, workload to the appropriation department will increase. The fiscal note assumes that medical professionals will comply with the law and that impacts will be minimal and accomplished within existing appropriations.

**Department of Regulatory Agencies.** Under the bill, a conviction for providing unauthorized abortion services constitutes unprofessional conduct by a licensed physician. The bill may result in additional complaints or disciplinary procedures for the State Medical Board and the Division of Professions and Occupations. The fiscal note assumes medical professionals will comply with the law; therefore, this workload increase is anticipated to be minimal and can be accomplished within existing appropriations.

**Department of Law.** The Department of Law may require appropriations to take required legal action on behalf of the state and the Judicial Department. Resources will be sought through the annual budget process as needed.

**Department of Health Care Policy and Financing.** As described in the Background section, Colorado's Medicaid and CHP+ programs are subject to federal requirements mandating that a state provide coverage for abortion services if the pregnancy results from rape or incest or if continuing the pregnancy would put the woman's life in danger. To remain compliant with federal law, the department may be required to transport a woman who is pregnant as a result of rape or incest to another state to obtain an abortion. As it is unknown how often this will occur, the fiscal impact cannot be determined. The fiscal note assumes such instances are rare, and that the department will not require an increase in appropriations.

**Department of Corrections.** Section 2-2-701, C.R.S., requires Legislative Council Staff to provide information to the General Assembly on long-term costs for prison capital construction, operations, and parole for any bill that potentially increases periods of imprisonment in the Department of Corrections. These impacts are described below.

- **Operating costs (five-year fiscal impact).** Based on the assumptions above, the bill increases prison operating costs for the DOC by a total of \$108,405 over the five-year period beginning in FY 2023-24. This fiscal note assumes no prison operating costs will occur in the first year due to the amount of time required for criminal filing, trial, disposition, and sentencing of each case. Once an offender is released from prison, they are assigned to parole; however, since the average length of stay for a class 1 felony is 40 years, parole impact falls outside the five-year estimate. Table 2 shows the estimated cost of the bill over the next five fiscal years. The fiscal note assumes that the DOC will shift prisoners as necessary to utilize the private prison rate of \$27,101 per year.

**Table 2**  
**Prison Operating Costs Under HB 22-1079**

| <b>Fiscal Year</b>                 | <b>Bed Impact</b> | <b>Operating Cost</b> |
|------------------------------------|-------------------|-----------------------|
| FY 2023-24                         | -                 | -                     |
| FY 2024-25                         | 1                 | \$27,101              |
| FY 2025-26                         | 1                 | \$27,101              |
| FY 2026-27                         | 1                 | \$27,101              |
| FY 2027-28                         | 1                 | \$27,101              |
| <b>Total Prison Operating Cost</b> |                   | <b>\$108,405</b>      |

- **Capital construction costs.** In addition to the five-year operating and parole impacts discussed above, Section 2-2-703, C.R.S., requires that the General Assembly consider increased capital construction costs for the DOC to house additional inmates. Based on the average per bed construction costs of previous prison facilities, capital construction costs of \$178,471 would be required to increase prison bed space in line with the estimated increase in prison population under this bill. If the General Assembly determines that additional prison bed space is needed, this bill should include a transfer of General Fund to the Capital Construction Fund, to be reappropriated to the Corrections Expansion Reserve Fund. Money in the Corrections Expansion Reserve Fund is available for future DOC construction projects, which would be identified and funded through the annual budget process based on the state's overall prison needs.

## Other Budget Impacts

**General Fund reserve.** Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase General Fund held in reserve by amounts shown in Table 1, which will decrease the amount of General Fund available for other purposes.

## Local Government

Beginning in FY 2023-24, this bill is expected to increase local government workload and costs for district attorneys that investigate and prosecute offenses under the bill. If individuals are convicted for lower level offenses under the bill, costs for county jails and workload for the Denver County Court will increase.

## Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature. It applies to crimes committed on or after the effective date of the act. For the purposes of the act, a crime is committed before the effective date of the act if any element of the crime occurs before the effective date.

## State and Local Government Contacts

Connect for Health Colorado  
Health Care Policy and Financing  
Judicial

Corrections  
Human Services  
Law

Counties  
Information Technology  
Public Health and Environment