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Fiscal Note

Drafting Number: LLS 23-0510 **Date:** February 20, 2023
Prime Sponsors: Rep. Bacon; Amabile **Bill Status:** House Judiciary
 Sen. Gonzales; Fields **Fiscal Analyst:** Aaron Carpenter | 303-866-4918
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Bill Topic: ALTERNATIVES IN CRIMINAL JUSTICE SYSEM & PREGNANT PERSONS

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill limits when the courts detain or incarcerate a pregnant person. The bill increases state expenditures in FY 2023-24, and may decrease state expenditures starting in FY 2024-25. In addition, the bill will impact local expenditures starting in FY 2023-24.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$624,640 to multiple state departments.

Fiscal Note Status: This fiscal note reflects the introduced bill. Due to time constraints, this analysis is preliminary and will be updated following further review and any additional information received.

Table 1
State Fiscal Impacts Under HB 23-1187

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$624,640	-
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$93,696	-

Summary of Legislation

The bill creates a presumption against detention and incarceration of a pregnant or postpartum person and requires the court to only detain or incarcerate the defendant if the court makes specific findings that the defendant poses a substantial risk to the public and that risk outweighs the risk of incarceration. The bill does not make the defendant eligible for any sentence that they would have been ineligible for under current law. The presumption is applied to determining bond; diversion agreements; deferred judgements; probation; alternative sentences; and unaccompanied furloughs or stays of execution. During the course of a trial, a pregnant or postpartum defendant may raise the issue of pregnancy or postpartum period and must provide evidence of the pregnancy to the district attorney. The court must hold a hearing if the district attorney contests that the defendant is pregnant. The bill also allows the defendant to request a stay of execution or unaccompanied furlough by filing the request to the court.

The bill requires staff at a county jail, in the Department of Corrections (DOC), or a juvenile detention facility to provide a pregnancy test to any adult or juvenile who requests one.

Finally, the bill requires the Judicial Department and the Department of Human Services (DHS) to track cases with a pregnant or postpartum adult or juvenile and to report the information to the General Assembly.

State Expenditures

The bill increases state General Fund expenditures in the Judicial Department and the DHS by \$624,640 in FY 2023-24 only. In addition, the bill may decrease expenditures in the DOC and DHS starting in FY 2023-24. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under HB 23-1187

	FY 2023-24	FY 2024-25
Judicial Department		
Computer Programming	\$614,640	-
Judicial Subtotal	\$614,640	-
Department of Human Services		
Computer Programming	\$10,000	-
DHS Subtotal	\$10,000	-
Total	\$624,640	-

Judicial Department. The bill will increase expenditures in the Judicial Department to modify its case tracking system. In addition, the bill will increase workload to the trial courts and the Probation Division, as described below.

- **Computer programming.** Starting in FY 2023-24, the Judicial Department will update its case management system to capture data required the bill. First, the department will develop a separate screen to enter information about when a defendant brings up pregnancy or a postpartum period. Costs assume 6 months of programming by a software engineer at the contract rate of \$123 per hour, a business analyst at a contract rate of \$111 per hour, and a quality assurance analyst at a rate of \$111 per hour. In addition, the department currently does not have coding to distinguish the types of probation and incarceration sentences and does not capture gender identity; coding costs require 12 months of a software engineer at a contract rate of \$123 per hour.

In addition, the bill requires information that is not currently tracked by the department but is tracked by other state departments, including the DOC, or local governments, such as jails. Workload will increase to the department to reach out to the other departments to acquire the information. The fiscal note assumes that cases with pregnant or postpartum defendants will be minimal, and workload can be accomplished within current appropriations.

- **Trial courts.** Starting in FY 2023-24, workload to the trial courts will increase to denote pregnancy or postpartum information through the case management system, to hold additional hearings to determine if an alternative sentence is appropriate, and to determine if a defendant violated conditions of release, if there are additional violations due to alternative sentencing. The fiscal note assumes the number of hearings will be minimal and can be accomplished within existing appropriations.
- **Probation.** Starting in FY 2023-24, to the extent more defendants are sentenced to probation in lieu of a sentence to incarceration, workload to the Probation Division will increase. The fiscal note assumes that the increased number of sentences will be minimal and that no change in appropriation is required.

Department of Human Services. In FY 2023-24 only, the bill will increase expenditures by \$10,000 in the DHS to make updates to their Electronic Health Record System to capture data on the number of pregnant or postpartum juveniles in DHS custody. In addition, to the extent juveniles are given an alternative sentence in lieu of detention or commitment in a Division of Youth Services facility, costs to the DHS will decrease.

Department of Corrections. Starting in FY 2023-24, the bill will decrease expenditures in the DOC to the extent more individuals are given an alternative sentence in lieu of a sentence of incarceration in the DOC. In the last 5 years, the DOC has seen, on average, about 23 new commits per year who were pregnant. Because it is unknown how many of these individuals would be given an alternative sentence instead of incarceration, an exact decrease in costs cannot be determined at this time. In addition, to the extent an order for incarceration is stayed or furlough is granted, costs will shift to future fiscal years. For informational purposes, currently the average daily cost to the DOC to operate a prison bed is \$74.25 or \$155.52 per day depending on if the offender is in a privately run or state-run facility. Finally, the DOC currently provides pregnancy tests upon request after admission to a correctional facility within 24 hours of the request; therefore, the provision of the bill requiring pregnancy tests can be accomplished within existing appropriations.

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. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

District attorneys. Similar to the state, to the extent the bill results in more hearings to determine if an alternative sentence is appropriate or if a defendant violated conditions of release, district attorney workload will increase.

County jails. To the extent additional defendants sentenced are given an alternative sentence in lieu of incarceration in a county jail, or that additional defendants are released on bond, costs to county jails will decrease. To the extent a county jail must provide a pregnancy test and is not already providing tests upon request, costs will increase.

Denver County Court. Similar to the state, to the extent there are additional hearings under the bill, Denver County Court workload will increase.

Technical Note

The effective date of the bill does not accommodate the estimated time it will take to provide information technology modifications by the various state departments.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires a total appropriation of \$624,640 from the General Fund including:

- \$614,640 to the Judicial Department; and
- \$10,000 to the Department of Human Services.

State and Local Government Contacts

Corrections
Information Technology

District Attorneys
Judicial

Human Services
Public Safety

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: leg.colorado.gov/fiscalnotes.