



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 19-1103

**FINAL
FISCAL NOTE**

Drafting Number: LLS 19-0051
Prime Sponsors: Rep. Humphrey; Saine

Date: May 23, 2019
Bill Status: Postponed Indefinitely
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Bill Topic: PROTECT HUMAN LIFE AT CONCEPTION

**Summary of
Fiscal Impact:**

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

This bill prohibits a licensed physician from performing abortions except in limited circumstances and makes offenses a class 1 felony. The bill increases workload for state courts and local governments and increases expenditures for the Department of Corrections. These impacts are ongoing.

**Appropriation
Summary:**

This bill requires a five-year appropriation of \$334,755 to the Department of Corrections.

**Fiscal Note
Status:**

The fiscal note reflects the introduced bill. This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

**Table 1
State Fiscal Impacts Under HB 19-1103**

		FY 2019-20	FY 2020-21
Revenue		-	-
Expenditures	General Fund	-	\$39,701
Transfer	General Fund	(\$178,471)	-
	Cash Funds	\$178,471	-
TABOR Refund		-	-

Summary of Legislation

This bill prohibits licensed physicians from performing abortions except:

- when an abortion is necessary to preserve the life of the woman and the physician has made a reasonable medical effort to preserve both the life of the woman and her unborn child; or
- when the physician provides medical treatment to a woman that results in the accidental injury or death of the unborn child.

Offenses under the bill are punishable as a class 1 felony, and a conviction constitutes unprofessional conduct for the purposes of physician licensing.

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 are subject to these requirements.

According to the Guttmacher Institute, there were approximately 13,160 abortions performed in Colorado in 2014, the most recent year for which data is available.

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 creates the new offense of terminating the life of an unborn child, a class 1 felony. To form an estimate on the prevalence of new crimes, fiscal notes analyze a comparable crime. There is the existing offense of unlawful termination of pregnancy in the first degree. From 2016 to 2018 there has been one conviction and sentence for this existing offense. However, "unlawful termination of pregnancy" refers to the termination of a pregnancy by any means other than birth or a medical procedure, instrument, agent, or drug, for which consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained, or for which the pregnant woman's consent is implied by law. Therefore, the existing offense is not an appropriate comparable crime for the new offense and it is not used in the fiscal note comparable crime assumptions.

Assumptions. The fiscal note assumes a high rate of compliance with the provisions of the bill. This analysis assumes there will be less than five criminal cases filed for this offense and that approximately one offender will be convicted and sentenced to Department of Corrections (DOC) every five years. The penalty for a class 1 felony is life in prison or death. The average length of stay for a class 1 felony is 480 months, or about 40 years. There is no fine for a class 1 felony; therefore, this bill does not increase state revenue.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Transfers

This bill requires a one-time transfer of \$178,471 from the General Fund to the Capital Construction Fund in FY 2019-20. These funds must then be appropriated to the Corrections Expansion Reserve Fund. This amount is required to cover future DOC capital construction and may be used by the DOC for prison construction, expansion, or renovation projects that are approved by the General Assembly. DOC capital construction costs from the projected increase in prison population under this bill are discussed in the State Expenditure section.

State Expenditures

Starting in FY 2019-20, this bill is anticipated to increase workload and state expenditures in the Judicial Department, the Department of Regulatory Agencies, and the Department of Health Care Policy and Financing. Beginning in FY 2019-20, the bill will also increase state General Fund expenditures by \$334,755 in the Department of Corrections (DOC) over a five-year period, including funds transferred for capital construction.

Judicial Department. Starting in FY19-20, the bill is anticipated to result in a minimal increase in criminal case filings against licensed physicians, which will increase workload for the trial courts. The expected increase in the courts' workload is minimal and can be accomplished within existing appropriations.

Agencies providing representation to indigent persons. Workload and costs for the Office of the State Public Defender and the Office of the Alternate Defense Counsel may increase under the bill. The exact impact will depend on the number of cases filed and the financial situation of defendants. To the extent that costs increase, this analysis assumes the affected offices will request an increase in appropriations through the annual budget process.

Department of Corrections - Five-year fiscal impact. Based on the assumptions provided in the Comparable Crime Analysis section, this bill increases prison operating and capital construction costs for the DOC by a total of \$334,755 over the five-year period beginning in FY2019-20. The fiscal note assumes no prison operating impacts 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, he or she is assigned to parole; however, since the average length of stay is 40 years, any parole impact falls outside the five-year estimate. Table 2 shows the estimated cost of the bill over the next five fiscal years.

**Table 2
 Prison and Parole Costs Under HB 19-1103**

Prison Bed Impact				
Fiscal Year	Number	Operating Cost	Construction Cost	Total Cost
FY 2019-20	0	-	\$178,471	\$178,471
FY 2020-21	1	\$39,071	-	\$39,071
FY 2021-22	1	\$39,071	-	\$39,071
FY 2022-23	1	\$39,071	-	\$39,071
FY 2023-24	1	\$39,071	-	\$39,071
Total Cost		\$156,284	\$178,471	\$334,755

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. This increase in workload is anticipated to be minimal and can be accomplished within existing appropriations.

Department of Health Care Policy and Financing. As described above, Colorado's Medicaid and Children's Health Plan Plus (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 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.

Local Government

This bill will increase workload and costs for district attorneys that investigate and prosecute offenses under the bill. Because legal abortions are currently performed by licensed physicians, the fiscal note assumes a high rate of compliance with the provisions of the bill and that any increase in workload for district attorneys will be minimal.

Effective Date

The bill was postponed indefinitely by the House Health, Insurance, and Environment Committee on February 13, 2019.

State Appropriations

For FY 2019-20, this bill requires an appropriation of \$178,471 from the Capital Construction Fund to the Corrections Expansion Reserve Fund for DOC capital construction costs. Additionally, this bill requires a General Fund appropriation of \$156,284 for the five-year DOC operating impacts identified in Table 2. The total DOC five-year appropriation required by this bill is \$334,755.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Regulatory Agencies

Information Technology