



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 21-0566
Prime Sponsors: Rep. Neville

Date: June 10, 2021
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 would have prohibited a licensed physician from performing abortions except in limited circumstances and made the offense a class 1 felony. Beginning in FY 2021-22, the bill would have increased state expenditures on an ongoing basis.

Appropriation Summary:

This bill would have required a total five-year appropriation of \$186,953 to the Department of Corrections. In addition, capital construction funding may have been appropriated. See State Appropriations section.

Fiscal Note Status:

This 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 21-1017

Table with 4 columns: Category, Budget Year FY 2021-22, Out Year FY 2022-23, and values for Revenue, Expenditures, Transfers, and 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 12,390 abortions performed in Colorado in 2017, the most recent year for which data are 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 this new crime, the fiscal note analyzed the existing offense of unlawful termination of pregnancy in the first degree as a comparable crime. From 2018 to 2020, 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 pregnancy woman's consent is implied by law. Therefore, 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 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; therefore, this bill does not increase state revenue. Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## State Expenditures

Beginning in FY 2021-22, this bill increases state General Fund expenditures by at least \$186,953 in the DOC over a five-year period. The bill may also increase future capital construction costs in the DOC. Additionally, this bill may increase workload and costs in the Judicial Department and agencies that provide representation to indigent persons.

**Department of Corrections operating costs (five-year fiscal impact).** Based on the assumptions above, the bill increases prison operating costs for the DOC by a total of \$186,953 over the five-year period beginning in FY 2021-22. 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 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 Operating Costs Under HB 21-1017**

<b>Fiscal Year</b>	<b>Bed Impact</b>	<b>Operating Cost</b>
FY 2021-22	-	-
FY 2022-23	1	\$46,738
FY 2023-24	1	\$46,738
FY 2024-25	1	\$46,738
FY 2025-26	1	\$46,738
<b>Total Prison Operating Cost</b>		<b>\$186,953</b>

**Department of Corrections 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.

**Judicial Department.** Starting in FY 2021-22, this bill will increase workload for the trial courts in the Judicial Department to process any additional criminal case filings. This impact will be minimal and can be accomplished within existing appropriations. Workload and costs may also increase for public defenders. It is assumed that any increase in costs will be addressed through the annual budget process, if needed.

**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 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.

## Local Government

Beginning in FY 2021-22, this bill is expected to increase local government 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 and Insurance Committee on March 24, 2021.

## State Appropriations

Starting in FY 2021-22, this bill would have required a General Fund appropriation of \$186,953 for the five-year DOC operating impacts identified in Table 2.

As discussed in the DOC capital construction costs section above, the General Assembly may appropriate \$178,471 for prison bed construction, as necessary.

## State and Local Government Contacts

Corrections  
Judicial

District Attorneys  
Regulatory Agencies

Information Technology