



## Legislative Council Staff *Nonpartisan Services for Colorado's Legislature*

# Fiscal Note

**Drafting Number:** LLS 22-0633  
**Prime Sponsors:** Rep. Williams

**Date:** February 17, 2022  
**Bill Status:** House Health & Insurance  
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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 makes abortion illegal in Colorado and introduces penalties for performing abortions. It increases state and local expenditures on an ongoing basis beginning in FY 2022-23.

**Appropriation Summary:**

This bill requires a total five-year appropriation of \$98,309 to the Department of Corrections. In addition, capital construction funding may be appropriated. See State Appropriations section for detail.

**Fiscal Note Status:**

The fiscal note reflects the introduced bill.

**Table 1  
State Fiscal Impacts Under HB 22-1079**

		<b>Budget Year FY 2022-23</b>	<b>Out Year FY 2023-24</b>
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	-	\$24,577
<b>Transfers</b>		-	-
<b>Other Budget Impacts</b>	General Fund Reserve	-	\$3,687

## **Summary of Legislation**

The bill defines "person" to include an unborn 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. 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 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 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 2018-19 to FY 2020-21, two persons have been convicted and sentenced for this existing offense. Of the persons convicted, both were male; demographically, one was White and one was Black/African American. 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, and 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 Expenditures**

Beginning in FY 2022-23, this bill increases state General Fund expenditures by at least \$98,309 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.

**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 \$98,309 over the five-year period beginning in FY 2022-23. 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 \$24,577 per year.

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

<b>Fiscal Year</b>	<b>Bed Impact</b>	<b>Operating Cost</b>
FY 2022-23	-	-
FY 2023-24	1	\$24,577
FY 2024-25	1	\$24,577
FY 2025-26	1	\$24,577
FY 2026-27	1	\$24,577
<b>Total Prison Operating Cost</b>		<b>\$98,309</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 2022-23, this bill will increase workload for the trial courts in the Judicial Department to process any additional criminal case filings. This impact is anticipated to be minimal and accomplished within existing appropriations. If costs increase for any independent judicial agency as a result of the bill, this will be addressed through the annual budget process.

**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 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.

## 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 2022-23, this bill is expected to increase local government workload and costs for district attorneys that investigate and prosecute offenses under the bill.

## 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

District Attorneys  
Information Technology  
Law  
Regulatory Agencies

Health Care Policy and Financing  
Judicial  
Public Health