



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

# Initiative # 120

## INITIAL FISCAL IMPACT STATEMENT

**Date:** August 19, 2019

**Fiscal Analyst:** Ariel Hammerquist (303-866-3469)

**LCS TITLE:** PROHIBITION ON LATE-TERM ABORTIONS

Fiscal Impact Summary	FY 2019-20	FY 2020-21	FY 2021-22
<b>Revenue</b>	-	-	-
<b>Expenditures</b>	-	-	-

***Disclaimer.** This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.*

### Summary of Measure

The measure prohibits licensed physicians from performing an abortion if the gestational age is at least 22 weeks, as determined using best medical practices. The measure requires physicians to make a determination of the probable gestational age before performing any abortion. Under the measure, performing or attempting to perform an abortion after 22 weeks gestational age is a class 1 misdemeanor. Persons convicted of this offense may only be subject to a fine penalty and not jail time. Performing a prohibited abortion constitutes unprofessional conduct for the purposes of physician licensing. A licensed physician found in violation will have his or her license suspended for at least three years. Abortion after 22 weeks gestational age is not a crime if, in the reasonable medical judgement of the physician, it is necessary to save the life of the mother. In addition, a woman who has an abortion performed or any person who fills a prescription or provides equipment used during an abortion does not commit an offense under this measure.

### Background

Gestational age, as defined by the measure, is measured as the time that has elapsed from the first day of the woman's last menstrual period.

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.

### Comparable Crime Analysis

Legislative Council Staff includes certain information in fiscal notes for any measure 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 measure and discuss assumptions on future rates of criminal convictions under the measure.

**Prior conviction data.** This measure creates the crime of performing or attempting to perform an abortion if the probable gestational age is at least 22 weeks, a class 1 misdemeanor. To form an estimate on the prevalence of new crimes, the fiscal note considered the comparable crime of unlawful termination of pregnancy in the first degree. From 2016 to 2018 there has been one person convicted and sentenced for this existing offence. The person convicted was female and white. However, unlawful termination of pregnancy refers to the termination of a pregnancy by any means other than birth or a medical procedure. This offense is not applicable to the new crime created by this measure; therefore, this data was not used in the fiscal note assumptions.

**Assumptions.** The fiscal note assumes a high rate of compliance with the provisions of the measure. This analysis assumes that there will be less than five criminal cases filed for this offense and that approximately one offender will be convicted and assessed a fine penalty every five years.

Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

### State Revenue

Starting in FY 2020-21, the measure potentially increase state revenue by a minimal amount, as described below.

**Criminal fines and court fees.** By creating a new misdemeanor offense, the measure may increase state revenue from criminal fines and court fees by a minimal amount beginning in FY 2020-21, credited to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. The fine penalty for a class 1 misdemeanor is \$500 to \$5,000. 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.

**Civil penalties and fees.** This measure may also increases civil fine and fee revenue related to physician licensing by a minimal amount. To the extent physicians are found to have committed an unprofessional practice under the measure, they could be assessed a fine penalty by the State Medical Board, or when a license is suspended, may be required to pay additional fees to have the license reinstated. This analysis assumes a high level of compliance by licensed physicians and that any revenue will be minimal. This revenue will be deposited to the Division of Professions and Occupations Cash Fund.

### State Expenditures

Starting in FY 2020-21, this measure 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.

**Judicial Department.** Starting in FY 2020-2021, the measure 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 measure. 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 Regulatory Agencies.** Under the measure, a conviction for providing unlawful abortion services constitutes unprofessional conduct by a licensed physician. The measure may result in additional complaints or disciplinary actions 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. This analysis assumes such instances are rare, and that any change in appropriations will be addressed through the annual budget process, if required.

## Local Government Impact

Beginning in FY 2020-21, this measure is expected to increase local government revenue, costs, and workload as described below. Because legal abortions are currently performed by licensed physicians, the fiscal note assumes a high rate of compliance with the provisions of the measure and that any increase in costs and workload will be minimal.

**District attorneys.** The measure increases workload and costs for district attorneys to investigate and prosecute a new class 1 misdemeanor offense. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

**Denver County Court.** The measure may increase revenue, costs, and workload for the Denver County Court, which is managed and funded by the City and County of Denver, to try misdemeanor cases under the measure. Probation services in the Denver County Courts may also experience an increase in revenue, costs, and workload revenue to supervise persons convicted under the measure within Denver County.

## Economic Impact

Under this measure, women who seek an abortion after 22 weeks gestational age will not be able to obtain one in Colorado unless their life is at risk. Pregnant women and abortion providers will likely change their behavior as a result of this prohibition. To the extent this measure results in more pregnancies being carried to term, the measure could alter labor market participation and/or shift household expenditures and economic activity toward child care and other child-rearing industries. The measure may also change the economic decisions of abortion providers, potentially affecting providers' income by altering the variety and quantity of services they provide.

**Effective Date**

If approved by voters at the 2020 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

**State and Local Government Contacts**

Corrections  
Judicial

District Attorneys  
Regulatory Agencies

## **Abstract of Initiative 120: PROHIBITION ON LATE-TERM ABORTIONS**

*The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at [www.ColoradoBlueBook.com](http://www.ColoradoBlueBook.com) and the abstract will be included in the ballot information booklet that is prepared for the initiative.*

**This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of August 19, 2019, identifies the following impacts:**

**State revenue.** The measure will minimally increase state revenue from criminal fines and court fees beginning in FY 2020-21, to the Fines Collection Cash Fund, various other cash funds in the Judicial Department, and the General Fund. It may also increase revenue from civil penalties and regulatory fees by a minimal amount.

**State expenditures.** Starting in FY 2020-21, this measure will minimally increase workload in the Department of Regulatory Agencies and may increase costs in the Department of Health Care Policy and Financing.

**Local government impact.** Starting in FY 2020-21, this measure will increase costs and workload for district attorneys and may increase revenue, costs, and workload for the Denver County Court.

**Economic impacts.** Under this measure, women who seek an abortion after 22 weeks gestational age will not be able to obtain one in Colorado unless their life is at risk. Pregnant women and abortion providers will likely change their behavior as a result of this prohibition. To the extent this measure results in more pregnancies being carried to term, the measure could alter labor market participation and/or shift household expenditures and economic activity toward child care and other child-rearing industries. The measure may also change the economic decisions of abortion providers, potentially affecting providers' income by altering the variety and quantity of services they provide.