



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# INITIAL FISCAL IMPACT STATEMENT

**Date:** June 18, 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>	General Fund	-	up to \$178,471	\$23,159

***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 abortion if the gestational age is at least 22 weeks, as determined by a licensed physician using best medical practices. The measure requires physicians to make a determination of the probable gestational age before performing any abortion. Performing or attempting to perform an abortion after 22 weeks gestational age is a class 3 felony, and a conviction constitutes unprofessional conduct for the purposes of physician licensing. Abortion after 22 weeks gestational age is not a crime if it is necessary to save the life of the mother and the physician terminates the pregnancy in a manner that provides the best opportunity for the fetus to survive, unless that manner would pose a greater risk of death to 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 is measured by 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 is required to include certain information in the fiscal note 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 3 felony. To form an estimate on the prevalence of new crimes, fiscal notes analyze a comparable crime and the existing offense of unlawful termination of pregnancy in the first degree was analyzed. From 2016 to 2018 there has been one person convicted and sentenced for this existing offense. 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 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 average DOC length of stay for a nonviolent class 3 felony is approximately 47 months, followed by 40 months on parole.

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

## State Revenue

**Criminal fines and court fees.** By creating a new felony 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 3 felony is \$3,000 to \$750,000. 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.

## 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. The measure will also increase state General Fund expenditures by \$318,843 in the Department of Corrections (DOC) over a five-year period, including potential capital construction costs.

**Judicial Department.** Starting in FY 2020-201, 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 Corrections - Five-year fiscal impact.** Based on the assumptions provided in the Comparable Crime Analysis section, this measure increases prison operating and capital construction costs for the DOC by a total of \$318,843 over the five-year period beginning in FY 2020-21. Given the effective date of the measure and due to the year that typically elapses between arrest and sentencing, DOC sentencing impacts are not expected to begin until December 2021, and are therefore prorated for seven months in FY 2021-22. Once an offender is released from prison, he or she is assigned to parole; however, since the average length of stay is approximately 47 months, any parole impact falls outside the five-year estimate. Table 2 shows the estimated cost of the measure over the next five fiscal years. Should this measure contribute to the need for additional prison bed space, the DOC will have costs of up to \$178,471, based on the average cost per bed in recently built prison facilities. Additional appropriation adjustments if needed, will be addressed through the annual budget process based on prison population and future bed impact projections.

**Table 2  
 Prison and Parole Costs Under Initiative #108**

<b>Prison Bed Impact</b>				
<b>Fiscal Year</b>	<b>Number</b>	<b>Operating Cost</b>	<b>Construction Cost</b>	<b>Total Cost</b>
FY 2020-21	0	-	\$178,471	<b>\$178,471</b>
FY 2021-22	1	\$23,159	-	<b>\$23,159</b>
FY 2022-23	1	\$39,071	-	<b>\$39,071</b>
FY 2023-24	1	\$39,071	-	<b>\$39,071</b>
FY 2024-25	1	\$39,071	-	<b>\$39,071</b>
<b>Total Cost</b>		<b>\$140,372</b>	<b>\$178,471</b>	<b>\$318,843</b>

**Department of Regulatory Agencies.** Under the measure, a conviction for providing unauthorized 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. The fiscal note assumes such instances are rare, and that the department will not require an increase in appropriations.

**Local Government Impact**

The measure will increase workload and costs for district attorneys that investigate and prosecute offenses under this measure. 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 workload for district attorneys will be minimal.

## **Economic Impact**

Under this measure, women who seek an abortion after 22 weeks gestational age will not be able to obtain one in Colorado. 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 2019 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

District Attorneys

Judicial

Regulatory Agencies

## **Abstract of Initiative 108: 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 June 18, 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.

**State expenditures.** Beginning in FY 2020-21, the measure will increase state General Fund expenditures by up to \$318,843 in the Department of Corrections over a five-year period, including potential capital construction costs.

**Local government impact.** The measure will minimally increase workload and costs for district attorneys that investigate and prosecute offenses under this measure.

**Economic impacts.** Under this measure, women who seek an abortion after 22 weeks gestational age will not be able to obtain one in Colorado. 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.