

**FINAL
FISCAL NOTE**

Drafting Number: LLS 12-0417
Prime Sponsor(s): Rep. Joshi
 Sen. Mitchell

Date: May 17, 2012
Bill Status: Postponed Indefinitely
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TITLE: CONCERNING OFFENSES AGAINST AN UNBORN CHILD.

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue Cash Funds Fines Collection Cash Fund		Potential increase.
State Expenditures General Fund		Increase - See State Expenditures section.
FTE Position Change		
Effective Date: The bill was postponed indefinitely by the Senate Judiciary Committee on April 11, 2012.		
Appropriation Summary for FY 2012-2013: None.		
Local Government Impact: None.		

Summary of Legislation

This bill allows for a second charge to be filed if a crime committed against a pregnant woman is the proximate cause of injury or death to her unborn child. The committee expanded the scope of the original bill from vehicle-related and unlawful termination of pregnancy offenses to include all criminal offenses involving a pregnant woman.

Background

Under current law, several serious offenses against pregnant woman trigger enhanced sentencing if the defendant knew, or reasonably should have known, that the victim was pregnant. For example, for class 1 felonies, crimes against a pregnant woman are an aggravating factor in determining whether to sentence an offender to life imprisonment or the death penalty. In addition, an offender is required to be sentenced to at the least this midpoint and up to twice the presumptive range for certain offenses if the victim is a pregnant woman. These offenses include:

- murder in the second degree;
- manslaughter;
- criminally negligent homicide;

- vehicular homicide;
- assault in the first degree;
- assault in the second degree; or
- vehicular assault.

Finally, assault in the third degree requires a sentence of at least six months imprisonment and prohibits the sentence from being suspended in whole or in part.

State Revenue

To the extent that a judge increases fines for an offender that has multiple charges as a result of one or more crimes committed against a pregnant woman that injures or causes the death of her unborn child, state revenue may increase. As it is unknown whether this will occur, the amount of any increase in state revenue cannot be determined. Fine revenue is credited to the Fines Collection Cash Fund in the Judicial Branch.

State Expenditures

Overall, this bill is anticipated to increase state expenditures. However, because no data is available on the number of pregnant victims or the cases where unborn children were injured or killed, the increase in costs cannot be estimated at this time. This analysis is based on the following assumptions:

- because no new crimes are created, no new court filings will occur;
- certain defendants charged with one or more crimes may be subject to additional charges if a victim was pregnant and her unborn child was injured or killed;
- as current law already provides for enhanced penalties for violent crimes against pregnant women, increased workload for state agencies would primarily be for lower level offenses and violent crimes when the defendant did not know the victim was pregnant;
- offenders may receive longer sentences either as a result of being sentenced to a higher penalty in the presumptive range for the specified offense or because a judge orders the sentence for the second charge to be served consecutively versus concurrently; and
- timing is such that no impact is expected until FY 2013-14.

Judicial Department. The bill will not necessarily create new court filings, rather, persons charged with crimes may be subject to additional charges, resulting in lengthier trials. The expected increase in the courts' workload is minimal and can be absorbed within existing appropriations.

Office of the State Public Defender (OSPD). The OSPD may experience an increase in workload due to increases in the time to litigate cases. In addition, because language defining injury to the unborn child is vague, costs of at least \$2,500 per case to produce expert testimony may be incurred. To the extent this occurs, this analysis assumes the OSPD will request additional appropriations through the annual budget process.

Office of the Alternate Defense Counsel (ADC). The ADC represents clients when the OSPD has a conflict and, therefore, may incur costs under the bill. These costs have not been estimated but are anticipated to be minimal.

Department of Corrections. Beginning in FY 2013-14, the Department of Corrections may experience an increase in costs resulting from changes in the length of prison sentences. To the extent this occurs, this analysis assumes the department will request an increase in appropriations through the annual budget process.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. As state-run facilities are currently at or near capacity, any such offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, *this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.*

Offenders placed in a private contract prison cost the state about \$56.73 per offender per day, including the current daily rate of \$52.69 and an estimated \$4.04 per offender per day for medical care provided by the DOC.

Departments Contacted

Corrections Judicial Public Health and Environment Revenue