

AGENDA
COLORADO SUPREME COURT
ADVISORY COMMITTEE ON
RULES OF CRIMINAL PROCEDURE

Friday, April 21, 2023, 12:45 p.m.
Ralph L. Carr Colorado Judicial Center
2 E. 14th Ave., Denver, CO 80203
Fourth Floor, Supreme Court Conference Room

- I. Call to Order
- II. Approval of Minutes from the January 20, 2023 Meeting
- III. Announcements from the Chair
- IV. Old Business
- V. New Business
 - A. HB23-1187 (Karen Yacuzzo)
 - B. Appointment of a Legislative Subcommittee (Judge Dailey)
- VI. Future Meetings
 - A. July 21; October 20
- VII. Adjourn

NOTICE
ANYONE WISHING TO INQUIRE ABOUT AN AGENDA ITEM
MAY CONTACT THE CHAIRPERSON OF THE COMMITTEE,
JUDGE JOHN DANIEL DAILEY, AT 720-625-5342.

**COLORADO SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE
Minutes of Meeting**

Friday, January 20, 2023

A quorum being present, the Colorado Supreme Court’s Advisory Committee on the Rules of Criminal Procedure was called to order by Judge John Dailey at 12:45 p.m. in the Supreme Court Conference Room. Members present at or excused from the meeting were:

Name	Present	Excused
Judge John Dailey, Chair	X	
Sheryl Berry	X	
Christian Champagne	X	
Judge Kandace Gerdes	X	
Judge Shelley Gilman	X	
Matt Holman		X
Abe Hutt	X	
Judge Chelsea Malone	X	
Kevin McGreevy	X	
Judge Dana Nichols	X	
Robert Russel	X	
Karen Taylor	X	
Sheryl Uhlmann	X	
Judge Vincente Vigil	X	
Non-Voting Participant		
Karen Yacuzzo	X	

I. Attachments & Handouts

- A. January 20, 2023 agenda
- B. October 21, 2022 minutes
- C. Subcommittee Report on the OARC’s Request to Address Crim. P. 16 Discovery Limited Dissemination

II. Approval of Minutes

The October 21, 2022 minutes were approved by acclamation with the following changes: altered 9) to (9) at the bottom of page 1; inserted *to* before *consider* in the middle of page 2; and deleted the extra quotation mark prior to *phrase* also in the middle of page 2.

III. Announcements from the Chair

Judge Dailey announced that Colorado Court of Appeals Judge Elizabeth L. Harris will be taking over as Chair of the committee in July. Judge Dailey then had Judge Harris and the members of the committee introduce themselves. Judge Dailey also announced that the April meeting will be Robert Russel’s final meeting as a member of the committee, and that Johanna Coats will fill the vacancy caused by his leaving. Finally, Judge Dailey

noted that February 7th is the public hearing on the committee's Rule 24 proposal to combat implicit bias in jury selection.

IV. Old Business

A. Crim. P. 16—OARC Request (Judge Gerdes)

Judge Gerdes reported for the subcommittee on the Office of Attorney Regulation Counsel (OARC)'s request to consider amending Crim. P. 16 to permit the disclosure to OARC of information in criminal cases against attorneys charged with a crime. After meeting with OARC attorney Jessica Yates to discuss this matter, the subcommittee recommended that no further action be taken on the proposal. The subcommittee based its position on the limited number of times this issue comes up in a calendar year. A motion was made, seconded, and approved by a vote of 12-0, to take no further action on the proposal. The subcommittee will inform Ms. Yates of the committee's decision.

V. New Business

The committee had no new business.

VI. Future Meetings

2023 Meetings: April 21; July 21; October 20

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 23-0510.04 Alana Rosen x2606

HOUSE BILL 23-1187

HOUSE SPONSORSHIP

Bacon and Amabile, Boesenecker, Brown, deGruy Kennedy, Dickson, Duran, English, Epps, Froelich, Garcia, Herod, Jodeh, Joseph, Lindsay, Lindstedt, Mabrey, Michaelson Jenet, Ricks, Sharbini, Sirota, Story, Titone, Vigil, Weissman, Willford, Woodrow

SENATE SPONSORSHIP

Gonzales and Fields,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING ALTERNATIVES IN THE CRIMINAL JUSTICE SYSTEM FOR
102 PREGNANT PERSONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

In determining bond or alternative sentences for a pregnant or postpartum defendant (defendant), the bill requires the court to consider whether the defendant poses a substantial risk to the public and whether that substantial risk outweighs the risks of incarceration.

If a defendant is arrested or in custody at a county jail or correctional facility, the defendant may request a pregnancy test following

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

HOUSE
3rd Reading Unamended
March 3, 2023

HOUSE
Amended 2nd Reading
March 2, 2023

admission to the county jail or correctional facility. A sheriff or department of corrections staffperson shall provide a pregnancy test to the defendant within 24 hours after the request. Requesting the test, taking the test, and results of the test are confidential medical information and must not to be disclosed, except when the defendant receives medical care.

The bill allows a court to consider the following forms of alternative sentencing for the defendant:

- A diversion;
- A deferred judgment and sentence;
- A stay of execution (stay); or
- An unaccompanied furlough (furlough).

If the defendant is convicted of a new crime or violates substantive conditions imposed by a court while a stay or furlough is imposed, the court may add conditions, issue warrants, end the stay or furlough, or continue the stay or furlough.

On or before December 1, 2024, and on or before each December 1 thereafter, the judicial branch is required to submit an annual report to the judiciary committees of the house of representatives and the senate, or their successor committees, with information on, among other things, the total number of defendants who were sentenced or released.

The bill applies to pregnant or postpartum juveniles (juvenile). In determining commitment, bond, or alternative sentences for a juvenile, the bill requires the court to consider whether the juvenile poses a substantial risk to the public and whether that substantial risk outweighs the risks of commitment. The bill allows the following forms of alternative sentencing for the juvenile:

- A diversion;
- A deferred judgment and sentence;
- A stay; or
- A furlough.

On or before December 1, 2024, and on or before each December 1 thereafter, the department of human services is required to submit an annual report to the judiciary committees of the house of representatives and the senate, or their successor committees, with information on, among other things, the total number of juveniles who were sentenced or released.

Current law requires a court to admit in a criminal proceeding information that is reported by mandatory reporters related to a defendant's substance use discovered in the course of medical care related to pregnancy. The bill eliminates the requirement.

1 **SECTION 1.** In Colorado Revised Statutes, **add** 18-1.3-103.7 as
2 follows:

3 **18-1.3-103.7. Alternative options for pregnant and postpartum**
4 **people - legislative declaration - definitions.** (1) (a) THE GENERAL
5 ASSEMBLY FINDS AND DECLARES THAT:

6 (I) THERE IS AN INCREASING FEMALE POPULATION IN PRISONS AND
7 JAILS;

8 (II) WHILE NO SYSTEM IS PERFECT IN RESPONDING TO THE MEDICAL
9 CONDITIONS OF PREGNANCY, CORRECTIONAL FACILITIES AND COUNTY
10 JAILS ARE PARTICULARLY ILL-EQUIPPED TO DO SO;

11 (III) DURING CRIMINAL CASES INVOLVING A PREGNANT OR
12 POSTPARTUM DEFENDANT, THE PHYSICAL AND MENTAL HEALTH NEEDS OF
13 THE PREGNANT DEFENDANT OR THE POSTPARTUM DEFENDANT AND
14 NEWBORN MUST BE CONSIDERED AT ALL STAGES OF THE PROCEEDING AS
15 A MATTER OF COMMUNITY HEALTH AND SAFETY;

16 (IV) TIMELY ATTENTION TO MEDICAL CONDITIONS AND MENTAL
17 HEALTH DURING THE PERINATAL PERIOD CAN IMPROVE HEALTH AND
18 WELFARE FOR MULTIPLE GENERATIONS OF A FAMILY UNIT;

19 (V) PREGNANCY IS A TIME-SENSITIVE PROCESS THAT HAS MANY
20 POTENTIAL OUTCOMES AND VARIATIONS. A PREGNANT PERSON MAY FEEL
21 HEALTHY AND EXPERIENCE NO COMPLICATIONS. A PREGNANT PERSON MAY
22 ALSO EXPERIENCE SUDDEN, HARMFUL MEDICAL CONDITIONS, SUCH AS
23 PREECLAMPSIA OR PLACENTAL ABRUPTION, OR DEVELOP COMPLEX
24 MEDICAL CONDITIONS THAT RESULT IN THE EARLY TERMINATION OF A
25 PREGNANCY OR THREATEN THE LIFE OF THE PREGNANT PERSON, SUCH AS
26 AN ECTOPIC PREGNANCY. AT ANY STAGE OF THE PERINATAL PERIOD,
27 SITUATIONS CAN OCCUR THAT CAUSE LONG-TERM PHYSICAL AND MENTAL

1 HEALTH TRAUMA FOR THE PREGNANT PERSON.

2 (VI) CRIMINAL PROCEEDINGS ARE NOT RESPONSIVE TO THE
3 TIMELINE OR COMPLEXITY OF THE PERINATAL PERIOD;

4 (VII) WHEN A SUBSTANCE USE DISORDER INTERSECTS WITH A
5 PREGNANCY, IT IS BEST HANDLED AS A HEALTH CONDITION. INCREASING
6 THE TIME A PREGNANT PERSON WITH A SUBSTANCE USE DISORDER IS IN A
7 CORRECTIONAL FACILITY OR COUNTY JAIL IS COUNTER TO PUBLIC HEALTH
8 AND MAY DRIVE THE PREGNANT PERSON AWAY FROM MEDICAL CARE AND
9 SUPPORT SERVICES.

10 (VIII) THE END OF THE PREGNANCY DOES NOT IMMEDIATELY
11 TERMINATE THE EFFECTS OF THE PREGNANCY ON THE PERSON WHO WAS
12 PREGNANT;

13 (IX) THE POSTPARTUM PERIOD IS AN ESSENTIAL TIME FRAME FOR
14 BOTH THE PERSON WHO GAVE BIRTH AND THE NEWBORN. IT IS AN
15 OPPORTUNITY FOR THE NEWBORN:

16 (A) TO DEVELOP HEALTHY PHYSIOLOGIC RESPONSES; AND

17 (B) TO BENEFIT FROM THE ATTACHMENT AND BONDING THAT
18 OCCURS DURING THIS PERIOD;

19 (X) BONDING BETWEEN A NEWBORN AND PARENT DURING THE
20 POSTPARTUM PERIOD CAN IMPROVE CONDITIONS FOR OTHER CHILDREN
21 AND CARE PROVIDERS IN THE SAME FAMILY UNIT AND PREVENT CHILD
22 ABUSE AND NEGLECT; AND

23 (XI) BONDING BETWEEN A NEWBORN AND A PARENT CAN IMPROVE
24 THE OVERALL HEALTH OF THE NEWBORN AND THE PARENT AND MAY
25 PREVENT OR REDUCE LONG-TERM HEALTH RISKS THAT MAY BE INCREASED
26 BY SEPARATING THE NEWBORN FROM THE PARENT. FOR EXAMPLE:

27 (A) A POSTPARTUM PERSON WHO DOES NOT BREASTFEED OR

1 CHESTFEED A NEWBORN MAY HAVE AN INCREASED LIKELIHOOD OF
2 PREMENOPAUSAL BREAST CANCER, OVARIAN CANCER, OR TYPE 2
3 DIABETES;

4 (B) A NEWBORN WHO IS NOT BREASTFED OR CHESTFED MAY HAVE
5 AN INCREASED LIKELIHOOD OF CHILDHOOD OBESITY, ASTHMA, TYPE 1 OR
6 TYPE 2 DIABETES, LEUKEMIA, OR SUDDEN INFANT DEATH SYNDROME; AND

7 (C) A CHILD WHO IS SEPARATED FROM ANY PARENT MAY
8 EXPERIENCE STRESS HORMONES, WHICH MAY LEAD TO DIFFICULTY
9 SLEEPING, DEVELOPMENTAL REGRESSION, HEART DISEASE, HYPERTENSION,
10 OBESITY, DIABETES, OR DECREASED LIFE SPAN. A NEWBORN WHO IS
11 SEPARATED FROM A PARENT MAY ALSO EXPERIENCE PERMANENT
12 ARCHITECTURAL CHANGES IN THE BRAIN, INCLUDING A LOWER
13 INTELLIGENCE QUOTIENT OR AN INCREASED LIKELIHOOD OF DEPRESSION,
14 SUICIDAL IDEATION, OR ADDICTION TO ALCOHOL OR GAMBLING.

15 (b) THE GENERAL ASSEMBLY FINDS, THEREFORE, THAT ALL
16 ALTERNATIVES TO PROSECUTION, COMMITMENT, AND INCARCERATION OF
17 A PREGNANT OR POSTPARTUM PERSON MUST BE CONSIDERED, INCLUDING
18 A STAY OF CRIMINAL PROCEEDINGS OR SENTENCING TO REDUCE THE
19 LIKELIHOOD OF NEGATIVE HEALTH AND SOCIAL OUTCOMES FOR THE
20 PARENT, NEWBORN CHILD, AND COMMUNITY.

21 (c) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT A PERSON
22 WHO COERCES OR EXTORTS A PREGNANT OR POSTPARTUM PERSON IN THE
23 COMMISSION OF CRIMES SHOULD BE SUBJECT TO BEING INVESTIGATED AND,
24 AS APPROPRIATE, PROSECUTED FOR A CRIMINAL ACT PURSUANT TO THIS
25 TITLE 18.

26 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
27 REQUIRES:

1 (a) "NEWBORN" MEANS A PERSON WHO HAS BEEN BORN AND WHO
2 IS LESS THAN ONE YEAR OLD.

3 (b) "POSTPARTUM PERIOD" MEANS A PERIOD OF ONE YEAR AFTER
4 THE END OF A PREGNANCY, REGARDLESS OF WHETHER THE PREGNANCY
5 ENDS WITH A LIVE BIRTH.

6 (c) "PREGNANT OR POSTPARTUM DEFENDANT" MEANS A PERSON
7 WHO IS PREGNANT OR IN A POSTPARTUM PERIOD WHO HAS BEEN ACCUSED
8 OR CONVICTED OF A CRIME.

9 (d) "STAY OF EXECUTION" MEANS DELAYING THE IMPOSITION OF
10 A SENTENCE OR THE INCARCERATION PORTION OF THE SENTENCE FOR A
11 PREGNANT OR POSTPARTUM DEFENDANT UNTIL AFTER THE SENTENCE IS
12 ANNOUNCED BY A COURT.

13 (e) "UNACCOMPANIED FURLOUGH" MEANS A PERIOD OF
14 TEMPORARY RELEASE FOR A PREGNANT OR POSTPARTUM DEFENDANT
15 FROM SERVING A SENTENCE OF INCARCERATION IN A CORRECTIONAL
16 FACILITY OR COUNTY JAIL THAT DOES NOT REQUIRE A SHERIFF OR
17 DEPARTMENT OF CORRECTIONS STAFFPERSON TO ACCOMPANY THE
18 PREGNANT OR POSTPARTUM DEFENDANT.

19 (3) (a) THERE IS A PRESUMPTION AGAINST DETENTION AND
20 INCARCERATION OF A PREGNANT OR POSTPARTUM DEFENDANT. AFTER THE
21 APPLICATION OF THE APPLICABLE LEGAL STANDARD SET FORTH IN
22 SUBSECTIONS (3)(a)(I) TO (3)(a)(VI) OF THIS SECTION, THE COURT SHALL
23 ONLY DETAIN OR INCARCERATE THE PREGNANT OR POSTPARTUM
24 DEFENDANT WHEN THE COURT MAKES SPECIFIC FINDINGS ON THE RECORD
25 THAT THE PREGNANT OR POSTPARTUM DEFENDANT POSES A SUBSTANTIAL
26 RISK TO THE PUBLIC AND THAT SUBSTANTIAL RISK TO THE PUBLIC
27 OUTWEIGHS THE RISK OF INCARCERATION. THE COURT SHALL APPLY THE

1 PRESUMPTION DESCRIBED IN THIS SUBSECTION (3)(a) TO A PREGNANT OR
2 POSTPARTUM DEFENDANT IN DETERMINING WHETHER TO:

3 (I) ISSUE BOND PURSUANT TO ARTICLE 4 OF TITLE 16;

4 (II) ACCEPT A DIVERSION AGREEMENT PURSUANT TO SECTION
5 18-1.3-101;

6 (III) ACCEPT OR CONTINUE A DEFERRED JUDGMENT PURSUANT TO
7 SECTION 18-1.3-102;

8 (IV) IMPOSE A SENTENCE PURSUANT TO SECTION 18-1-102.5,
9 INCLUDING WHETHER TO GRANT PROBATION PURSUANT TO PART 2 OF THIS
10 ARTICLE 1.3;

11 (V) IMPOSE AN ALTERNATIVE SENTENCE PURSUANT TO SECTION
12 18-1.3-104 OR 18-1.3-106; OR

13 (VI) GRANT AN UNACCOMPANIED FURLOUGH OR A STAY OF
14 EXECUTION PURSUANT TO THIS SECTION.

15 (b) A COURT SHALL NOT USE A PREGNANT OR POSTPARTUM
16 DEFENDANT'S PREGNANCY OR POSTPARTUM PERIOD AS A BASIS FOR
17 IMPOSING A GREATER RESTRICTION ON THE DEFENDANT'S LIBERTY THAN
18 A SIMILARLY SITUATED DEFENDANT WHO IS NOT PREGNANT OR
19 POSTPARTUM, INCLUDING WHEN A PREGNANT OR POSTPARTUM DEFENDANT
20 HAS A SUBSTANCE USE DISORDER.

21 (4) (a) A PERSON WHO MAY BE PREGNANT OR POSTPARTUM WHO
22 IS ARRESTED OR IN CUSTODY IN A COUNTY JAIL OR CORRECTIONAL
23 FACILITY MAY REQUEST A PREGNANCY TEST UPON OR FOLLOWING
24 ADMISSION TO THE COUNTY JAIL OR CORRECTIONAL FACILITY. STAFF AT
25 THE COUNTY JAIL OR CORRECTIONAL FACILITY SHALL PROVIDE A
26 PREGNANCY TEST UPON REQUEST AND ALLOW THE PERSON TO TAKE THE
27 PREGNANCY TEST WITHIN TWENTY-FOUR HOURS AFTER THE REQUEST.

1 (b) REQUESTING A PREGNANCY TEST, TAKING A PREGNANCY TEST,
2 AND THE RESULTS OF A PREGNANCY TEST ARE CONFIDENTIAL MEDICAL
3 INFORMATION. THIS CONFIDENTIAL MEDICAL INFORMATION MUST NOT BE
4 DISCLOSED TO OUTSIDE PARTIES UNLESS THE INFORMATION IS REQUIRED
5 FOR THE PERSON TO RECEIVE MEDICAL CARE OR TO ALLOW STAFF AT THE
6 COUNTY JAIL OR CORRECTIONAL FACILITY TO PROVIDE NECESSARY CARE.

7 (c) IF A PERSON IS REPRESENTED BY AN ATTORNEY IN A CRIMINAL
8 PROCEEDING AND THE COUNTY JAIL OR CORRECTIONAL FACILITY HAS A
9 SIGNED MEDICAL RELEASE FROM THE PERSON, THE COUNTY JAIL OR
10 CORRECTIONAL FACILITY SHALL GIVE NOTICE TO THE PERSON'S ATTORNEY
11 WITHIN FORTY-EIGHT HOURS, EXCLUDING STATE HOLIDAYS AND
12 WEEKENDS, CONCERNING THE PERSON'S REQUEST FOR A PREGNANCY TEST
13 PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION.

14 (5) (a) A PREGNANT OR POSTPARTUM DEFENDANT MAY RAISE THE
15 ISSUE OF THE DEFENDANT'S PREGNANCY OR POSTPARTUM PERIOD AT ANY
16 TIME DURING CRIMINAL PROCEEDINGS OR WHILE SERVING A SENTENCE. IF
17 THE PREGNANCY OR POSTPARTUM PERIOD IS RAISED, THE PREGNANT OR
18 POSTPARTUM DEFENDANT SHALL PROVIDE NOTICE TO THE DISTRICT
19 ATTORNEY BY PROVIDING EVIDENCE OF THE PREGNANCY OR THE START OF
20 THE POSTPARTUM PERIOD WITH A LIMITED WAIVER OF PRIVILEGE. A
21 POSITIVE PREGNANCY TEST OR MEDICAL RECORD CONFIRMING PREGNANCY
22 OR THE END OF PREGNANCY, OR A BIRTH CERTIFICATE OF A NEWBORN, IS
23 PRIMA FACIE EVIDENCE OF PREGNANCY OR THE START OF THE POSTPARTUM
24 PERIOD.

25 (b) IF THE PROSECUTION CONTESTS THAT THE DEFENDANT IS
26 PREGNANT OR IN A POSTPARTUM STATE, THE COURT SHALL HOLD A
27 HEARING TO MAKE A DETERMINATION AS SOON AS PRACTICABLE, BUT NO

1 LATER THAN FOURTEEN DAYS AFTER THE ISSUE IS RAISED, UNLESS THE
2 DEFENDANT REQUESTS THE HEARING BE HELD LATER THAN FOURTEEN
3 DAYS AFTER THE ISSUE IS RAISED. IF THE DEFENDANT REQUESTS A LATER
4 HEARING, THE COURT SHALL MAKE THE DETERMINATION WITHIN THE
5 TIMELINE REQUESTED. THE COURT SHALL HOLD THE HEARING
6 IMMEDIATELY IF THE CIRCUMSTANCES OF THE DEFENDANT OR THE
7 DEFENDANT'S NEWBORN REQUIRE IT. THE DEFENDANT SHALL PROVE, BY
8 A PREPONDERANCE OF THE EVIDENCE, THAT THE DEFENDANT IS A
9 PREGNANT OR POSTPARTUM DEFENDANT.

10 (c) THE COURT SHALL PROTECT MEDICAL INFORMATION PROVIDED
11 TO THE COURT AS CONFIDENTIAL MEDICAL INFORMATION. A DEFENDANT'S
12 WAIVER OF MEDICAL PRIVILEGE TO PRESENT MEDICAL EVIDENCE OF
13 PREGNANCY OR THE END OF A PREGNANCY IN COURT IS LIMITED TO
14 INFORMATION RELEVANT TO DETERMINE WHETHER THE DEFENDANT IS OR
15 WAS PREGNANT AND WHETHER THE PREGNANCY HAS ENDED.

16 (6) (a) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A
17 COURT SHALL NOT:

18 (I) SET OR RELEASE THE PREGNANT OR POSTPARTUM DEFENDANT
19 ON BOND IF THE PREGNANT OR POSTPARTUM DEFENDANT IS INELIGIBLE FOR
20 BOND;

21 (II) ACCEPT AN AGREEMENT OR IMPOSE AN ALTERNATIVE
22 SENTENCE IF THE PREGNANT OR POSTPARTUM DEFENDANT IS INELIGIBLE
23 FOR A DIVERSION PROGRAM, DEFERRED JUDGMENT, PROBATIONARY
24 SENTENCE, OR ANOTHER FORM OF ALTERNATIVE SENTENCE; OR

25 (III) APPLY THE PRESUMPTION PURSUANT TO THIS SECTION IF A
26 PREGNANT OR POSTPARTUM DEFENDANT WAS CONVICTED OF A CRIME OF
27 VIOLENCE, AS DEFINED IN SECTION 18-1.3-406 (2).

1 (b) THE COURT SHALL IMPOSE ANY MANDATORY SENTENCE
2 REQUIRED BY LAW ON A PREGNANT OR POSTPARTUM DEFENDANT, BUT THE
3 COURT MAY GRANT A STAY OF EXECUTION OR UNACCOMPANIED FURLOUGH
4 AS SET FORTH IN SUBSECTION (7) OF THIS SECTION.

5 (7) (a) ANY PREGNANT OR POSTPARTUM DEFENDANT MAY
6 REQUEST A STAY OF EXECUTION OR UNACCOMPANIED FURLOUGH BY FILING
7 A WRITTEN REQUEST TO THE COURT IF THE PREGNANT OR POSTPARTUM
8 DEFENDANT IS DETAINED OR INCARCERATED IN A COUNTY JAIL OR
9 CORRECTIONAL FACILITY FOR ANY PERIOD OF TIME THROUGH THE END OF
10 THE PREGNANCY OR THE POSTPARTUM PERIOD.

11 (b) THE COURT SHALL HOLD A HEARING TO DETERMINE THE
12 MATTER AS SOON AS PRACTICABLE, BUT NO LATER THAN FOURTEEN DAYS
13 AFTER THE PREGNANT OR POSTPARTUM DEFENDANT REQUESTS A STAY OF
14 EXECUTION OR UNACCOMPANIED FURLOUGH, UNLESS THE PREGNANT OR
15 POSTPARTUM DEFENDANT REQUESTS A LATER HEARING. IF THE PREGNANT
16 OR POSTPARTUM DEFENDANT REQUESTS A LATER HEARING, THE COURT
17 SHALL MAKE THE DETERMINATION WITHIN THE TIMELINE REQUESTED. THE
18 COURT SHALL HOLD THE HEARING IMMEDIATELY IF THE CIRCUMSTANCES
19 OF THE PREGNANT OR POSTPARTUM DEFENDANT OR NEWBORN REQUIRE IT.
20 THE DEFENDANT SHALL PROVE, BY A PREPONDERANCE OF THE EVIDENCE,
21 THAT THE DEFENDANT IS A PREGNANT OR POSTPARTUM DEFENDANT.

22 (c) IN RULING UPON THE PREGNANT OR POSTPARTUM DEFENDANT'S
23 REQUEST PURSUANT TO SUBSECTION (7)(b) OF THIS SECTION, THE COURT
24 SHALL APPLY THE PRESUMPTION SET FORTH IN SUBSECTION (3)(a) OF THIS
25 SECTION.

26 (d) THE DISTRICT ATTORNEY AND THE COURT SHALL COMPLY WITH
27 THE REQUIREMENTS OF THE "VICTIM RIGHTS ACT" PURSUANT TO PART 3

1 OF ARTICLE 4.1 OF TITLE 24 IN ANY PROCEEDING CONDUCTED PURSUANT
2 TO THIS SECTION.

3 (e) NOTWITHSTANDING THIS SECTION, A PREGNANT OR
4 POSTPARTUM DEFENDANT WHO IS INELIGIBLE FOR BAIL PURSUANT TO
5 SECTION 16-4-101 OR 16-4-201.5 IS NOT ELIGIBLE FOR A STAY OF
6 EXECUTION OR UNACCOMPANIED FURLOUGH.

7 (f) IF THE COURT GRANTS A STAY OF EXECUTION OR
8 UNACCOMPANIED FURLOUGH, THE COURT MAY ORDER A THE PROBATION
9 DEPARTMENT TO SUPERVISE THE PREGNANT OR POSTPARTUM DEFENDANT
10 BY IMPOSING THE LEAST RESTRICTIVE CONDITIONS NECESSARY TO ENSURE
11 THE PREGNANT OR POSTPARTUM DEFENDANT SERVES THE SENTENCE OR TO
12 PROTECT PUBLIC SAFETY DURING THE UNACCOMPANIED FURLOUGH. ■ ■

13 (g) IF THE PREGNANT OR POSTPARTUM DEFENDANT IS CHARGED
14 WITH A NEW VIOLATION OR THE COURT RECEIVES A VERIFIED MOTION
15 FROM THE DISTRICT ATTORNEY OR AN AGENCY RESPONSIBLE FOR
16 SUPERVISING THE PREGNANT OR POSTPARTUM DEFENDANT THAT
17 ESTABLISHES A PRIMA FACIE CASE THAT THE PREGNANT OR POSTPARTUM
18 DEFENDANT HAS VIOLATED THE CONDITIONS OF THE STAY OF EXECUTION
19 OR UNACCOMPANIED FURLOUGH AND PRESENTS A SUBSTANTIAL RISK TO
20 PUBLIC SAFETY, THE COURT SHALL SET A HEARING AND REQUIRE THE
21 PREGNANT OR POSTPARTUM DEFENDANT TO APPEAR. AFTER THE HEARING,
22 THE COURT MAY END THE STAY OF EXECUTION OR UNACCOMPANIED
23 FURLOUGH, ADD NEW CONDITIONS, ISSUE A WARRANT, OR CONTINUE THE
24 STAY OF EXECUTION OR UNACCOMPANIED FURLOUGH.

25 (8) IF A DEFENDANT, WHO IS SENTENCED TO INCARCERATION,
26 LEARNS THAT THE DEFENDANT IS PREGNANT FOLLOWING THE SENTENCING
27 HEARING, OR A POSTPARTUM DEFENDANT EXPERIENCES CHANGES TO THE

1 DEFENDANT'S POSTPARTUM CONDITION FOLLOWING THE SENTENCING
2 HEARING, THIS SECTION DOES NOT PRECLUDE THE PREGNANT OR
3 POSTPARTUM DEFENDANT FROM REQUESTING RECONSIDERATION OF THE
4 SENTENCE PURSUANT TO RULE 35 (b) OF THE RULES OF CRIMINAL
5 PROCEDURE. DURING THE RECONSIDERATION HEARING, THIS SECTION
6 APPLIES.

7

8 **SECTION 2.** In Colorado Revised Statutes, **amend** 13-25-136 as
9 follows:

10 **13-25-136. Criminal actions - prenatal drug and alcohol**
11 **screening - admissibility of evidence.** A court shall not admit in a
12 criminal proceeding information relating to substance use ~~not otherwise~~
13 ~~required to be reported pursuant to section 19-3-304~~, obtained as part of
14 a screening or test performed to determine pregnancy or to provide
15 prenatal or postpartum care, up to one year postpartum, or if a pregnant
16 or parenting ~~woman~~ PERSON discloses substance use during pregnancy
17 while seeking or participating in behavioral health treatment. This section
18 does not prohibit prosecution of any claim or action related to such
19 substance use based on evidence obtained through methods other than
20 those described in this section.

21 **SECTION 3.** In Colorado Revised Statutes, 16-4-103, **add** (7) as
22 follows:

23 **16-4-103. Setting and selection type of bond - criteria.** (7) AT
24 THE FIRST APPEARANCE OF A PREGNANT OR POSTPARTUM DEFENDANT, AS
25 DEFINED IN SECTION 18-1.3-103.7, TO SET BOND, THE COURT OR PERSON
26 DESIGNATED BY THE COURT TO SET BOND SHALL CONSIDER THE
27 DEFENDANT'S PREGNANCY OR POSTPARTUM STATUS WHEN SETTING BOND

1 PURSUANT TO THE RESTRICTIONS SET FORTH IN SECTION 19 OF ARTICLE II
2 OF THE STATE CONSTITUTION AND SECTION 16-4-101.

3 **SECTION 4.** In Colorado Revised Statutes, 17-27-103, **add**
4 (5)(d) as follows:

5 **17-27-103. Community corrections boards - establishment -**
6 **duties.** (5) (d) A COMMUNITY CORRECTIONS BOARD SHALL EXPEDITE A
7 DECISION TO ACCEPT AN OFFENDER WHO IS A PREGNANT OR POSTPARTUM
8 DEFENDANT, AS DEFINED IN SECTION 18-1.3-103.7, IF THE PREGNANT OR
9 POSTPARTUM DEFENDANT DID NOT RAISE THE ISSUE OF THE PREGNANCY
10 OR POSTPARTUM PERIOD PRIOR TO A REQUEST FOR COMMUNITY
11 CORRECTIONS PLACEMENT.

12 
13 **SECTION 5.** In Colorado Revised Statutes, 18-1.3-101, **amend**
14 (3)(b) as follows:

15 **18-1.3-101. Pretrial diversion - appropriation - repeal.**
16 (3) **Guidelines for eligibility.** Each district attorney that uses state
17 money for a diversion program pursuant to this section shall adopt
18 policies and guidelines delineating eligibility criteria for pretrial
19 diversion, including types and levels of offenses so long as those offenses
20 are consistent with subsections (5) to (7) of this section, and may agree
21 to diversion in any case in which there exists sufficient admissible
22 evidence to support a conviction. In determining whether an individual
23 is appropriate for diversion, the district attorney shall consider:

24 (b) Any special characteristics or circumstances of the defendant,
25 which may include whether the defendant has a mental health or other
26 behavioral health disorder OR WHETHER THE DEFENDANT IS A PREGNANT
27 OR POSTPARTUM DEFENDANT, AS DEFINED IN SECTION 18-1.3-103.7;

1 **SECTION 6.** In Colorado Revised Statutes, 18-1.3-203, **amend**
2 (2) introductory portion; and **add** (2)(o) as follows:

3 **18-1.3-203. Criteria for granting probation.** (2) The following
4 factors, or the converse thereof ~~where~~ **WHEN** appropriate, while not
5 controlling the discretion of the court, ~~shall~~ **MUST** be accorded weight in
6 making determinations called for by subsection (1) of this section:

7 (o) **THE DEFENDANT IS A PREGNANT OR POSTPARTUM DEFENDANT,**
8 **AS DEFINED IN SECTION 18-1.3-103.7.**

9 **SECTION 7.** In Colorado Revised Statutes, **add** 19-2.5-1118.5
10 as follows:

11 **19-2.5-1118.5. Sentencing - alternative options for pregnant**
12 **and postpartum juveniles - legislative declaration - definitions.**

13 (1) (a) **THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:**

14

15 **(I)** **WHILE NO SYSTEM IS PERFECT IN RESPONDING TO THE MEDICAL**
16 **CONDITIONS OF PREGNANCY, JUVENILE FACILITIES ARE PARTICULARLY**
17 **ILL-EQUIPPED TO DO SO;**

18 **(II)** **DURING JUVENILE DELINQUENCY CASES INVOLVING A**
19 **PREGNANT OR POSTPARTUM JUVENILE, THE PHYSICAL AND MENTAL**
20 **HEALTH NEEDS OF THE PREGNANT JUVENILE OR POSTPARTUM JUVENILE**
21 **AND NEWBORN MUST BE CONSIDERED AT ALL STAGES OF THE PROCEEDING**
22 **AS A MATTER OF COMMUNITY HEALTH AND SAFETY;**

23 **(III)** **TIMELY ATTENTION TO MEDICAL CONDITIONS AND MENTAL**
24 **HEALTH DURING THE PERINATAL PERIOD CAN IMPROVE HEALTH AND**
25 **WELFARE FOR MULTIPLE GENERATIONS OF A FAMILY UNIT;**

26 **(IV)** **PREGNANCY IS A TIME-SENSITIVE PROCESS THAT HAS MANY**
27 **POTENTIAL OUTCOMES AND VARIATIONS. A PREGNANT PERSON MAY FEEL**

1 HEALTHY AND EXPERIENCE NO COMPLICATIONS. A PREGNANT PERSON MAY
2 ALSO EXPERIENCE SUDDEN, HARMFUL MEDICAL CONDITIONS, SUCH AS
3 PREECLAMPSIA OR PLACENTAL ABRUPTION, OR DEVELOP COMPLEX
4 MEDICAL CONDITIONS THAT RESULT IN THE EARLY TERMINATION OF A
5 PREGNANCY OR THREATEN THE LIFE OF THE PREGNANT PERSON, SUCH AS
6 AN ECTOPIC PREGNANCY. AT ANY STAGE OF THE PERINATAL PERIOD,
7 SITUATIONS CAN OCCUR THAT CAUSE LONG-TERM PHYSICAL AND MENTAL
8 HEALTH TRAUMA FOR THE PREGNANT PERSON.

9 (V) ADJUDICATORY PROCEEDINGS ARE NOT RESPONSIVE TO THE
10 TIMELINE OR COMPLEXITY OF THE PERINATAL PERIOD;

11 (VI) WHEN A SUBSTANCE USE DISORDER INTERSECTS WITH A
12 PREGNANCY, IT IS BEST HANDLED AS A HEALTH CONDITION. INCREASING
13 THE TIME A PREGNANT PERSON WITH A SUBSTANCE USE DISORDER IS IN A
14 JUVENILE FACILITY IS COUNTER TO PUBLIC HEALTH AND MAY DRIVE THE
15 PREGNANT PERSON AWAY FROM MEDICAL CARE AND SUPPORT SERVICES.

16 (VII) THE END OF PREGNANCY DOES NOT IMMEDIATELY
17 TERMINATE THE EFFECTS OF THE PREGNANCY ON THE PERSON WHO WAS
18 PREGNANT;

19 (VIII) THE POSTPARTUM PERIOD IS AN ESSENTIAL TIME FRAME FOR
20 BOTH THE PERSON WHO GAVE BIRTH AND THE NEWBORN. IT IS AN
21 OPPORTUNITY FOR THE NEWBORN:

22 (A) TO DEVELOP HEALTHY PHYSIOLOGIC RESPONSES; AND

23 (B) TO BENEFIT FROM THE ATTACHMENT AND BONDING THAT
24 OCCURS DURING THIS PERIOD;

25 (IX) BONDING BETWEEN A NEWBORN AND PARENT DURING THE
26 POSTPARTUM PERIOD CAN IMPROVE CONDITIONS FOR OTHER CHILDREN
27 AND CARE PROVIDERS IN THE SAME FAMILY UNIT AND PREVENT CHILD

1 ABUSE AND NEGLECT; AND

2 (X) BONDING BETWEEN A NEWBORN AND A PARENT CAN IMPROVE
3 THE OVERALL HEALTH OF THE NEWBORN AND THE PARENT AND MAY
4 PREVENT OR REDUCE LONG-TERM HEALTH RISKS THAT MAY BE INCREASED
5 BY SEPARATING THE NEWBORN FROM THE PARENT. FOR EXAMPLE:

6 (A) A POSTPARTUM PERSON WHO DOES NOT BREASTFEED OR
7 CHESTFEED A NEWBORN MAY HAVE AN INCREASED LIKELIHOOD OF
8 PREMENOPAUSAL BREAST CANCER, OVARIAN CANCER, OR TYPE 2
9 DIABETES;

10 (B) A NEWBORN WHO IS NOT BREASTFED OR CHESTFED MAY HAVE
11 AN INCREASED LIKELIHOOD OF CHILDHOOD OBESITY, ASTHMA, TYPE 1 OR
12 TYPE 2 DIABETES, LEUKEMIA, OR SUDDEN INFANT DEATH SYNDROME; AND

13 (C) A CHILD WHO IS SEPARATED FROM ANY PARENT MAY
14 EXPERIENCE STRESS HORMONES, WHICH MAY LEAD TO DIFFICULTY
15 SLEEPING, DEVELOPMENTAL REGRESSION, HEART DISEASE, HYPERTENSION,
16 OBESITY, DIABETES, OR DECREASED LIFE SPAN. A NEWBORN WHO IS
17 SEPARATED FROM A PARENT MAY ALSO EXPERIENCE PERMANENT
18 ARCHITECTURAL CHANGES IN THE BRAIN, INCLUDING A LOWER
19 INTELLIGENCE QUOTIENT OR AN INCREASED LIKELIHOOD OF DEPRESSION,
20 SUICIDAL IDEATION, OR ADDICTION TO ALCOHOL OR GAMBLING.

21 (b) THE GENERAL ASSEMBLY FINDS, THEREFORE, THAT ALL
22 ALTERNATIVES TO JUVENILE PROCEEDINGS, ADJUDICATION, AND
23 COMMITMENT OF A PREGNANT OR POSTPARTUM JUVENILE MUST BE
24 CONSIDERED, INCLUDING A STAY OF CRIMINAL PROCEEDINGS OR
25 SENTENCING TO REDUCE THE LIKELIHOOD OF NEGATIVE HEALTH AND
26 SOCIAL OUTCOMES FOR THE PARENT, NEWBORN CHILD, AND COMMUNITY.

27 (c) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT A PERSON

1 WHO COERCES OR EXTORTS A PREGNANT OR POSTPARTUM PERSON IN THE
2 COMMISSION OF CRIMES SHOULD BE SUBJECT TO BEING INVESTIGATED AND,
3 AS APPROPRIATE, PROSECUTED FOR A CRIMINAL ACT PURSUANT TO TITLE
4 18.

5 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
6 REQUIRES:

7 (a) "JUVENILE" MEANS A PERSON WHO IS UNDER EIGHTEEN YEARS
8 OF AGE WHEN THE DELINQUENT ACT IS COMMITTED AND UNDER
9 TWENTY-ONE YEARS OF AGE AT THE TIME OF SENTENCING.

10 (b) "NEWBORN" MEANS A PERSON WHO HAS BEEN BORN AND WHO
11 IS LESS THAN ONE YEAR OLD.

12 (c) "POSTPARTUM PERIOD" MEANS A PERIOD OF ONE YEAR AFTER
13 THE END OF A PREGNANCY, REGARDLESS OF WHETHER THE PREGNANCY
14 ENDS WITH A LIVE BIRTH.

15 (d) "PREGNANT OR POSTPARTUM JUVENILE" MEANS A JUVENILE
16 WHO IS PREGNANT OR IN A POSTPARTUM PERIOD WHO HAS BEEN ACCUSED
17 OF A DELINQUENT ACT.

18 (e) "STAY OF EXECUTION" MEANS DELAYING THE IMPOSITION OF
19 A SENTENCE OR THE COMMITMENT PORTION OF THE SENTENCE FOR A
20 PREGNANT OR POSTPARTUM JUVENILE UNTIL AFTER IT IS ANNOUNCED BY
21 A COURT.

22 (f) "UNACCOMPANIED FURLOUGH" MEANS A PERIOD OF
23 TEMPORARY RELEASE FOR A PREGNANT OR POSTPARTUM JUVENILE FROM
24 SERVING A SENTENCE OF DETENTION OR COMMITMENT IN A JUVENILE
25 FACILITY THAT DOES NOT REQUIRE A JUVENILE FACILITY STAFFPERSON OR
26 A SHERIFF TO ACCOMPANY THE PREGNANT OR POSTPARTUM JUVENILE.

27 (3) (a) THERE IS A PRESUMPTION AGAINST DETENTION AND

1 COMMITMENT OF A PREGNANT OR POSTPARTUM JUVENILE. AFTER THE
2 APPLICATION OF THE APPLICABLE LEGAL STANDARD SET FORTH IN
3 SUBSECTIONS (3)(a)(I) TO (3)(a)(VI) OF THIS SECTION, THE COURT SHALL
4 ONLY DETAIN OR COMMIT THE PREGNANT OR POSTPARTUM JUVENILE WHEN
5 THE COURT MAKES SPECIFIC FINDINGS ON THE RECORD THAT THE
6 PREGNANT OR POSTPARTUM JUVENILE POSES A SUBSTANTIAL RISK TO THE
7 PUBLIC AND THAT SUBSTANTIAL RISK TO THE PUBLIC OUTWEIGHS THE RISK
8 OF COMMITMENT OR DETAINMENT. THE COURT SHALL APPLY THE
9 PRESUMPTION DESCRIBED IN THIS SUBSECTION (3)(a) TO A PREGNANT OR
10 POSTPARTUM JUVENILE IN DETERMINING WHETHER TO:

- 11 (I) ISSUE BOND PURSUANT TO SECTION 19-2.5-306;
- 12 (II) ACCEPT ENTRY INTO THE JUVENILE DIVERSION PROGRAM
13 PURSUANT TO SECTION 19-2.5-402;
- 14 (III) ACCEPT OR CONTINUE DEFERRED JUDGMENTS PURSUANT TO
15 SECTION 18-1.3-102;
- 16 (IV) IMPOSE A SENTENCE PURSUANT TO SECTION 19-2.5-1103,
17 INCLUDING WHETHER TO GRANT JUVENILE PROBATION PURSUANT TO
18 SECTION 19-2.5-1106;
- 19 (V) IMPOSE AN ALTERNATIVE SENTENCE PURSUANT TO SECTION
20 19-2.5-1113; OR
- 21 (VI) GRANT AN UNACCOMPANIED FURLOUGH OR STAY OF
22 EXECUTION PURSUANT TO THIS SECTION.

23 (b) A COURT SHALL NOT USE A PREGNANT OR POSTPARTUM
24 JUVENILE'S PREGNANCY OR POSTPARTUM PERIOD AS A BASIS FOR IMPOSING
25 A GREATER RESTRICTION ON THE JUVENILE'S LIBERTY THAN A SIMILARLY
26 SITUATED JUVENILE WHO IS NOT PREGNANT OR POSTPARTUM, INCLUDING
27 CIRCUMSTANCES IN WHICH A PREGNANT OR POSTPARTUM JUVENILE HAS A

1 SUBSTANCE USE DISORDER.

2 (4) (a) A JUVENILE WHO MAY BE PREGNANT WHO IS ARRESTED OR
3 IN CUSTODY IN A JUVENILE FACILITY MAY REQUEST A PREGNANCY TEST
4 UPON OR FOLLOWING ADMISSION TO THE JUVENILE FACILITY. STAFF AT THE
5 JUVENILE FACILITY SHALL PROVIDE A PREGNANCY TEST UPON REQUEST
6 AND ALLOW THE JUVENILE TO TAKE THE PREGNANCY TEST WITHIN
7 TWENTY-FOUR HOURS AFTER THE REQUEST.

8 (b) REQUESTING A PREGNANCY TEST, TAKING A PREGNANCY TEST,
9 AND THE RESULTS OF A PREGNANCY TEST ARE CONFIDENTIAL MEDICAL
10 INFORMATION. THIS CONFIDENTIAL MEDICAL INFORMATION MUST NOT BE
11 DISCLOSED TO OUTSIDE PARTIES UNLESS THE INFORMATION IS REQUIRED
12 FOR THE JUVENILE TO RECEIVE MEDICAL CARE OR TO ALLOW STAFF AT THE
13 JUVENILE FACILITY TO PROVIDE NECESSARY CARE.

14 (c) IF A JUVENILE IS REPRESENTED BY AN ATTORNEY IN A CRIMINAL
15 PROCEEDING AND THE JUVENILE FACILITY HAS A SIGNED MEDICAL RELEASE
16 FROM THE JUVENILE, THE JUVENILE FACILITY SHALL NOTIFY THE
17 JUVENILE'S ATTORNEY WITHIN FORTY-EIGHT HOURS, EXCLUDING STATE
18 HOLIDAYS AND WEEKENDS, CONCERNING THE JUVENILE'S REQUEST FOR A
19 PREGNANCY TEST PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION.

20 (5) (a) A PREGNANT OR POSTPARTUM JUVENILE MAY RAISE THAT
21 THE JUVENILE IS PREGNANT OR POSTPARTUM AT ANY TIME DURING
22 ADJUDICATORY PROCEEDINGS OR WHILE SERVING A SENTENCE. IF THE
23 PREGNANCY OR POSTPARTUM PERIOD IS RAISED, THE PREGNANT OR
24 POSTPARTUM JUVENILE SHALL PROVIDE NOTICE TO THE DISTRICT
25 ATTORNEY BY PROVIDING EVIDENCE OF THE PREGNANCY OR THE START OF
26 THE POSTPARTUM PERIOD WITH A LIMITED WAIVER OF PRIVILEGE. A
27 POSITIVE PREGNANCY TEST OR MEDICAL RECORD CONFIRMING PREGNANCY

1 OR THE END OF PREGNANCY, OR A BIRTH CERTIFICATE OF A NEWBORN, IS
2 PRIMA FACIE EVIDENCE OF PREGNANCY OR THE START OF THE POSTPARTUM
3 PERIOD.

4 (b) IF THE PROSECUTION CONTESTS THAT THE JUVENILE IS
5 PREGNANT OR POSTPARTUM, THE COURT SHALL HOLD A HEARING TO MAKE
6 A DETERMINATION AS SOON AS PRACTICABLE, BUT NO LATER THAN
7 FOURTEEN DAYS AFTER THE ISSUE IS RAISED, UNLESS THE JUVENILE
8 REQUESTS THE HEARING BE HELD LATER THAN FOURTEEN DAYS AFTER THE
9 ISSUE IS RAISED. IF THE JUVENILE REQUESTS A LATER HEARING, THE COURT
10 SHALL MAKE THE DETERMINATION WITHIN THE TIMELINE AS REQUESTED.
11 THE COURT SHALL HOLD THE HEARING IMMEDIATELY IF THE
12 CIRCUMSTANCES OF THE JUVENILE OR THE JUVENILE'S NEWBORN REQUIRE
13 IT. THE JUVENILE SHALL PROVE, BY A PREPONDERANCE OF THE EVIDENCE,
14 THAT THE JUVENILE IS A PREGNANT OR POSTPARTUM JUVENILE.

15 (c) THE COURT SHALL PROTECT MEDICAL INFORMATION PROVIDED
16 TO THE COURT AS CONFIDENTIAL MEDICAL INFORMATION. A JUVENILE'S
17 WAIVER OF MEDICAL PRIVILEGE TO PRESENT MEDICAL EVIDENCE OF
18 PREGNANCY OR THE END OF A PREGNANCY IN COURT IS LIMITED TO
19 INFORMATION RELEVANT TO DETERMINE WHETHER THE JUVENILE IS OR
20 WAS PREGNANT AND WHETHER THE PREGNANCY HAS ENDED.

21 (6) (a) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A
22 COURT SHALL NOT:

23 (I) SET OR RELEASE THE PREGNANT OR POSTPARTUM JUVENILE ON
24 BOND IF THE PREGNANT OR POSTPARTUM JUVENILE IS INELIGIBLE FOR
25 BOND;

26 (II) ACCEPT OR IMPOSE AN ALTERNATIVE SENTENCE IF THE
27 PREGNANT OR POSTPARTUM JUVENILE IS INELIGIBLE FOR A DIVERSION

1 PROGRAM, DEFERRED JUDGMENT, PROBATIONARY SENTENCE, OR ANOTHER
2 FORM OF ALTERNATIVE SENTENCE; OR

3 (III) APPLY THE PRESUMPTION PURSUANT TO THIS SECTION IF A
4 PREGNANT OR POSTPARTUM JUVENILE WAS ADJUDICATED OF A CRIME OF
5 VIOLENCE, AS DEFINED IN SECTION 18-1.3-406 (2).

6 (b) THE COURT SHALL IMPOSE ANY MANDATORY SENTENCE
7 REQUIRED BY LAW ON A PREGNANT OR POSTPARTUM JUVENILE, BUT THE
8 COURT MAY GRANT A STAY OF EXECUTION OR UNACCOMPANIED FURLOUGH
9 AS SET FORTH IN SUBSECTION (7) OF THIS SECTION.

10 (7) (a) ANY PREGNANT OR POSTPARTUM JUVENILE MAY REQUEST
11 A STAY OF EXECUTION OR UNACCOMPANIED FURLOUGH BY FILING A
12 WRITTEN REQUEST TO THE COURT IF THE PREGNANT OR POSTPARTUM
13 JUVENILE IS DETAINED OR COMMITTED IN A JUVENILE FACILITY FOR ANY
14 PERIOD OF TIME THROUGH THE END OF THE PREGNANCY OR THE
15 POSTPARTUM PERIOD.

16 (b) THE COURT SHALL HOLD A HEARING TO DETERMINE THE
17 MATTER AS SOON AS PRACTICABLE, BUT NO LATER THAN FOURTEEN DAYS
18 AFTER THE PREGNANT OR POSTPARTUM JUVENILE REQUESTS A STAY OF
19 EXECUTION OR UNACCOMPANIED FURLOUGH, UNLESS THE PREGNANT OR
20 POSTPARTUM JUVENILE REQUESTS A LATER HEARING. IF THE PREGNANT OR
21 POSTPARTUM JUVENILE REQUESTS A LATER HEARING, THE COURT SHALL
22 MAKE THE DETERMINATION WITHIN THE TIMELINE REQUESTED. THE COURT
23 SHALL HOLD THE HEARING IMMEDIATELY IF THE CIRCUMSTANCES OF THE
24 PREGNANT OR POSTPARTUM JUVENILE OR NEWBORN REQUIRE IT. THE
25 JUVENILE SHALL PROVE, BY A PREPONDERANCE OF THE EVIDENCE, THAT
26 THE JUVENILE IS A PREGNANT OR POSTPARTUM JUVENILE.

27 (c) IN RULING UPON THE PREGNANT OR POSTPARTUM JUVENILE'S

1 REQUEST PURSUANT TO SUBSECTION (7)(b) OF THIS SECTION, THE COURT
2 SHALL APPLY THE PRESUMPTION SET FORTH IN SUBSECTION (3)(a) OF THIS
3 SECTION.

4 (d) THE DISTRICT ATTORNEY AND THE COURT SHALL COMPLY WITH
5 THE REQUIREMENTS OF THE "VICTIM RIGHTS ACT" PURSUANT TO PART 3
6 OF ARTICLE 4.1 OF TITLE 24 IN ANY PROCEEDING CONDUCTED PURSUANT
7 TO THIS SECTION.

8 (e) NOTWITHSTANDING THIS SECTION, A PREGNANT OR
9 POSTPARTUM JUVENILE WHO IS INELIGIBLE FOR BAIL PURSUANT TO
10 SECTION 19-2.5-306 IS NOT ELIGIBLE FOR A STAY OF EXECUTION OR
11 UNACCOMPANIED FURLOUGH.

12 (f) IF THE COURT GRANTS A STAY OF EXECUTION OR
13 UNACCOMPANIED FURLOUGH, THE COURT MAY ORDER STAFF FROM A
14 JUVENILE PROBATION DEPARTMENT TO SUPERVISE THE PREGNANT OR
15 POSTPARTUM JUVENILE BY IMPOSING THE LEAST RESTRICTIVE CONDITIONS
16 NECESSARY TO ENSURE THE PREGNANT OR POSTPARTUM JUVENILE SERVES
17 THE SENTENCE OR TO PROTECT PUBLIC SAFETY DURING THE
18 UNACCOMPANIED FURLOUGH. ■ ■

19 (g) IF THE PREGNANT OR POSTPARTUM JUVENILE IS CHARGED WITH
20 A NEW VIOLATION OR THE COURT RECEIVES A VERIFIED MOTION FROM THE
21 DISTRICT ATTORNEY OR ANY AGENCY RESPONSIBLE FOR SUPERVISING THE
22 PREGNANT OR POSTPARTUM JUVENILE THAT ESTABLISHES A PRIMA FACIE
23 CASE THAT THE PREGNANT OR POSTPARTUM JUVENILE HAS VIOLATED THE
24 CONDITIONS OF THE STAY OF EXECUTION OR UNACCOMPANIED FURLOUGH
25 AND PRESENTS A SUBSTANTIAL RISK TO PUBLIC SAFETY, THE COURT SHALL
26 SET A HEARING AND REQUIRE THE PREGNANT OR POSTPARTUM JUVENILE
27 TO APPEAR. AFTER THE HEARING, THE COURT MAY END THE STAY OF

1 EXECUTION OR UNACCOMPANIED FURLOUGH, ADD NEW CONDITIONS, ISSUE
2 A WARRANT, OR CONTINUE THE STAY OF EXECUTION OR UNACCOMPANIED
3 FURLOUGH.

4 (8) IF A JUVENILE, WHO IS SENTENCED TO DETENTION OR
5 COMMITMENT, LEARNS THAT THE JUVENILE IS PREGNANT FOLLOWING THE
6 SENTENCING HEARING, OR A POSTPARTUM JUVENILE EXPERIENCES
7 CHANGES TO THE JUVENILE'S POSTPARTUM CONDITION FOLLOWING THE
8 SENTENCING HEARING, THIS SECTION DOES NOT PRECLUDE THE PREGNANT
9 OR POSTPARTUM JUVENILE FROM REQUESTING RECONSIDERATION OF THE
10 SENTENCE PURSUANT TO RULE 35 (b) OF THE RULES OF CRIMINAL
11 PROCEDURE. DURING THE RECONSIDERATION HEARING, THIS SECTION
12 APPLIES.

13
14 **SECTION 8.** In Colorado Revised Statutes, 19-2.5-306, **amend**
15 (4)(a) as follows:

16 **19-2.5-306. Conditions of release - personal recognizance**
17 **bond.** (4) (a) In determining the conditions of release for the juvenile, the
18 judge or magistrate fixing the same shall consider the criteria set forth in
19 section 16-4-103 OR 19-2.5-1118.5.

20 **SECTION 9.** In Colorado Revised Statutes, 24-4.1-302, **add**
21 (2)(x) as follows:

22 **24-4.1-302. Definitions.** As used in this part 3, and for no other
23 purpose, including the expansion of the rights of any defendant:

24 (2) "Critical stages" means the following stages of the criminal
25 justice process:

26 (x) A HEARING HELD PURSUANT TO SECTION 18-1.3-103.7 OR
27 19-2.5-1118.5.

1 **SECTION 10.** In Colorado Revised Statutes, 24-4.1-302.5,
2 **amend** (1)(d)(IX) and (1)(d)(X); and **add** (1)(d)(XI) as follows:

3 **24-4.1-302.5. Rights afforded to victims - definitions.** (1) In
4 order to preserve and protect a victim's rights to justice and due process,
5 each victim of a crime has the following rights:

6 (d) The right to be heard at any court proceeding:

7 (IX) Involving a hearing as described in section 24-31-902 (2)(c);

8 **or**

9 (X) Involving a hearing held pursuant to section 24-72-706,
10 24-72-709, or 24-72-710; OR

11 (XI) INVOLVING A HEARING HELD PURSUANT TO SECTION
12 18-1.3-103.7 OR 19-2.5-1118.5.

13 **SECTION 11. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, or safety.



HB 23-1187

Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated February 20, 2023)

Drafting Number:	LLS 23-0510	Date:	March 13, 2023
Prime Sponsors:	Rep. Bacon; Amabile Sen. Gonzales; Fields	Bill Status:	Senate Judiciary
		Fiscal Analyst:	Aaron Carpenter 303-866-4918 aaron.carpenter@coleg.gov

Bill Topic: ALTERNATIVES IN CRIMINAL JUSTICE SYSTEM & PREGNANT PERSONS

Summary of Fiscal Impact:	<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill limits when the courts may detain or incarcerate a pregnant person or a person in a postpartum period. The bill increases state and local expenditures beginning in FY 2023-24, and may minimally decrease state expenditures beginning in FY 2024-25.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$774,596 to the Judicial Department.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill.

**Table 1
State Fiscal Impacts Under HB 23-1187**

		Budget Year FY 2023-24	Out Year FY 2024-25
Revenue		-	-
Expenditures	General Fund	\$774,596	\$418,023
	Centrally Appropriated	\$85,820	\$93,421
	Total Expenditures	\$860,416	\$511,444
	Total FTE	4.6 FTE	5.0 FTE
Transfers		-	-
Other Budget Impacts	General Fund Reserve	\$116,189	\$62,703

Summary of Legislation

The bill creates a presumption against detention and incarceration of a pregnant or postpartum person. It requires the court to only detain or incarcerate the defendant if the court makes a specific finding that the defendant poses a substantial risk to the public and that risk outweighs the risk of incarceration. If a stay of execution or unaccompanied furlough for a pregnancy and postpartum period is granted by the court, the pregnant or postpartum person must be supervised by the Probation Division in the Judicial Department.

The bill does not make the defendant eligible for any sentence that they would have been ineligible for under current law. The presumption is applied to determining bond, diversion agreements, deferred judgments, probation, alternative sentences, and unaccompanied furloughs or stays of execution. During the course of a trial, a pregnant or postpartum defendant may raise the issue of pregnancy or a postpartum period and must provide related evidence to the district attorney. The court must hold a hearing if the district attorney contests that the defendant is pregnant.

The bill requires staff at a county jail, in the Department of Corrections (DOC), or a juvenile detention facility to provide a pregnancy test to any adult or juvenile who requests one.

Assumptions

Pregnant persons in the criminal justice system. According to DOC data, an average of 23 new commitments are pregnant per year. In the last three years, there were an average of 626 new female commitments per year. Using these data points, the fiscal note assumes that 3.7 percent of new commitments to both county jail and state prison are pregnant.

According to the [Jail Data Dashboard](#) maintained by the Division of Criminal Justice, there are an average of 340 females sentenced to jails per quarter, or 1,360 per year. Using the assumed 3.7 percent pregnancy assumption outlined above, the fiscal note assumes that there are 50 pregnant persons sentenced to jail per year.

Postpartum persons in the criminal justice system. Since the bill defines the postpartum period as occurring one year after giving birth, the fiscal note assumes that this doubles the impacted population described above.

Population impacted by the bill. The fiscal note assumes that individuals sentenced to the DOC would not be granted a furlough or stay under the bill, due to public safety concerns. Therefore, the bill is assumed to primarily impact the jail population, or 100 individuals per year. Given the bill's requirement for probation supervision for pregnant persons receiving a stay or furlough under the bill, this represents a shift in costs from counties to the state.

State Expenditures

The bill increases state General Fund expenditures in the Judicial Department by about \$860,000 in FY 2023-24 and \$511,000 in FY 2024-25. In addition, the bill may decrease expenditures in the DOC and DHS starting in FY 2024-25. Expenditures are shown in Table 2 and detailed below.

**Table 2
 Expenditures Under HB 23-1187**

	FY 2023-24	FY 2024-25
Judicial Department		
Personal Services	\$375,166	\$409,273
Operating Expenses	\$6,750	\$6,750
Capital Outlay Costs	\$33,880	\$2,000
Computer Programming	\$358,800	-
Centrally Appropriated Costs ¹	85820	\$93,421
Total Cost	\$860,416	\$511,444
Total FTE	4.6 FTE	5.0 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. The bill will increase expenditures in the Judicial Department to modify its case tracking system and for the Probation Division to oversee any offenders that are placed on furlough or a stay from incarceration. In addition, workload will increase in the trial courts. These impacts are described below.

- **Computer programming.** In FY 2023-24 only, the Judicial Department will update its case management system to track cases involving a pregnant or postpartum defendant. Due to this information reflecting a health condition, the department will track this information in compliance with medical privacy standards. Costs assume six months of programming by a software engineer at the contract rate of \$123 per hour, a business analyst at a contract rate of \$111 per hour, and a quality assurance analyst at a rate of \$111 per hour.
- **Probation.** Starting in FY 2023-24, the Probation Division requires 4.0 FTE to supervise approximately 100 offenders furloughed or with a stayed sentence based on the work standards for maximum supervision. In addition, because the division does not currently oversee DOC or jail inmates, 1.0 FTE program assistant will create standards, procedures, and protocols; liaise with county sheriffs and DOC facilities; and provide coordination and management of the 4.0 probation supervision staff. Costs in FY 2023-24 are prorated for the General Fund pay date shift.

- **Trial courts.** Starting in FY 2023-24, workload in the trial courts will increase to denote pregnancy or postpartum information in the case management system, to hold additional hearings to determine if an alternative sentence is appropriate, and to determine if a defendant violated conditions of release, if there are additional violations due to alternative sentencing. The fiscal note assumes the number of hearings will be minimal and can be accomplished within existing appropriations.

Department of Corrections. Starting in FY 2023-24, the bill may decrease DOC expenditures to the extent more individuals are given an alternative sentence in lieu of a sentence of incarceration in the DOC. As discussed in the Assumptions section, the DOC sees an average of 23 new pregnant commits per year. Because future sentencing decisions cannot be estimated, this amount cannot be determined.

To the extent an order for incarceration is stayed or furlough is granted, costs will shift to future fiscal years. For informational purposes, currently the average daily cost to the DOC to operate a prison bed is \$74.25 or \$155.52 per day depending on if the offender is in a privately run or state-run facility.

Finally, the DOC currently provides pregnancy tests upon request after admission to a correctional facility within 24 hours of the request; therefore, the provision of the bill requiring pregnancy tests can be accomplished within existing appropriations.

Department of Human Services. Starting in FY 2023-24, to the extent juveniles are given an alternative sentence in lieu of detention or commitment in a Division of Youth Services facility, costs to the DHS will decrease. Finally, the DHS currently provides pregnancy tests upon request after admission to a correctional facility within 24 hours of the request; therefore, the provision of the bill requiring pregnancy tests can be accomplished within existing appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

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. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Local Government

District attorneys. Similar to the state, to the extent the bill results in more hearings to determine if an alternative sentence is appropriate or if a defendant violated conditions of release, district attorney workload will increase.

County jails. Starting in FY 2023-24, costs in county jails will decrease as offenders are furloughed or have their sentences stayed. In addition, to the extent additional defendants are given an alternative sentence in lieu of incarceration in a county jail, or that additional defendants are released on bond, costs to county jails will decrease. To the extent a county jail must provide a pregnancy test and is not already providing tests upon request, costs will increase.

Denver County Court. Similar to the state, to the extent there are additional hearings under the bill, Denver County Court workload will increase.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires an appropriation of \$774,596 from the General Fund to the Judicial Department with 4.6 FTE.

State and Local Government Contacts

Corrections
Information Technology

District Attorneys
Judicial

Human Services
Public Safety