

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4097S.05P
 Bill No.: Perfected SS for SCS for SB 683
 Subject: Children and Minors; Department of Elementary and Secondary Education;
 Department of Health and Senior Services; Department of Social Services
 Type: Original
 Date: April 13, 2022

Bill Summary: This proposal modifies provisions relating to child care.

FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|--|---------------------------------------|---------------------------------------|---------------------------------------|
| FUND AFFECTED | FY 2023 | FY 2024 | FY 2025 |
| General Revenue | (Could exceed \$1,372,669) | (Could exceed \$1,685,656) | (Could exceed \$2,057,486) |
| Total Estimated Net Effect on General Revenue | (Could exceed \$1,372,669) | (Could exceed \$1,685,656) | (Could exceed \$2,057,486) |

| ESTIMATED NET EFFECT ON OTHER STATE FUNDS | | | |
|---|------------|------------|------------|
| FUND AFFECTED | FY 2023 | FY 2024 | FY 2025 |
| Correctional Center Nursery Program* | \$0 | \$0 | \$0 |
| Total Estimated Net Effect on <u>Other</u> State Funds | \$0 | \$0 | \$0 |

*Income, transfer-in from GR and costs net to \$0.

Numbers within parentheses: () indicate costs or losses.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|------------|------------|------------|
| FUND AFFECTED | FY 2023 | FY 2024 | FY 2025 |
| | | | |
| | | | |
| Total Estimated Net Effect on <u>All</u> Federal Funds | \$0 | \$0 | \$0 |

| ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE) | | | |
|---|---------------|---------------|---------------|
| FUND AFFECTED | FY 2023 | FY 2024 | FY 2025 |
| General Revenue | 14 FTE | 14 FTE | 14 FTE |
| Correctional Center Nursery Program | 1 FTE | 8 FTE | 8 FTE |
| | | | |
| Total Estimated Net Effect on FTE | 15 FTE | 22 FTE | 22 FTE |

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | |
|--|------------|------------|------------|
| FUND AFFECTED | FY 2023 | FY 2024 | FY 2025 |
| | | | |
| Local Government | \$0 | \$0 | \$0 |

FISCAL ANALYSIS

ASSUMPTION

§§208.044, 208.046, 208.053, 210.027, 210.201, 210.102, 210.203, 210.211, 210.221, 210.223, 210.231, 210.241, 210.245, 210.251, 210.252, 210.254, 210.255, 210.256, 210.258, 210.275, 210.278, 210.1007, and 210.1080 – Provisions relating to child care

In response to a previous version of this proposal, officials from the **Department of Elementary and Secondary Education (DESE)** assumed the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for DESE for these sections.

Officials from the **Department of Health and Senior Services (DHSS)** defer to DESE for a response regarding the potential fiscal impact of this proposal on their organization.

In response to an earlier version of this proposal, officials from the **Office of Administration - Administrative Hearing Commission** assumed these provisions would have no fiscal impact on their organization. **Oversight** has no information to the contrary and will present no fiscal impact for this agency.

Oversight notes §210.211 has an emergency clause.

§§210.127, 210.305 and 210.565 – “Diligent search” for relatives of foster children

Officials from the **Department of Social Services (DSS), Children’s Division (CD)** state the Children’s Division 2020 Annual Report indicated that 6,912 children came into or re-entered foster care, which would require the diligent search proposed in this legislation. As a result, CD anticipates needing 12 FTE total (2 Associate Social Services Specialists per region * 6 regions in the state) in order to carry out diligent searches.

DSS estimates the cost of 12 Associate Social Services Specialists with a starting salary of \$37,346 will cost approximately \$780,000 per year in personal service and fringe benefits plus other expenses; 100% GR. **Oversight** does not have information to the contrary and therefore, Oversight will reflect the estimates as provided by the DSS/CD.

Officials from the **DSS, Division of Legal Services (DLS)** anticipate a fiscal impact to DLS that could be covered by two (2) attorneys. DLS believes the bill will generate additional CD requests for assistance from DLS litigation or permanency attorneys in seeking judicial orders releasing CD from “diligent search” efforts. DLS notes the legislation could have a significant fiscal impact on CD because the bill would dramatically expand CD’s duties to identify and locate biological parents, grandparents, and “relatives” (with “relatives” likely including all persons related by blood or affinity and all persons with a close relationship to the child or the child's

family); makes several search-effort duties ongoing until a court excuses search efforts or such persons are located and identified (and in some cases until the child is placed with a relative); and requires CD report its efforts to locate and identify such persons at each court hearing until excused by the court or the child's "relatives" are located. In addition, the bill could increase the number of potential placement "relatives" for which background checks would need to be conducted.

DSS estimates the cost of 2 Attorneys with a starting salary of \$65,410 will cost approximately \$200,000 per year in personal service and fringe benefits plus other expenses; 100% GR. **Oversight** does not have information to the contrary and therefore, Oversight will reflect the estimates as provided by the DSS/DLS.

Senate Amendment 1 - §§217.940, 217.941, 217.942, 217.943, 217.944, 217.945, 217.946, and 217.947 – Correctional Center Nursery Program

Officials from the **Department of Corrections (DOC)** state this amendment establishes a Correctional Center Nursery Program that will allow the department to house eligible inmates and children born to them while in the custody of the department for a period of up to 18 months. The program must be in operation no later than July 1, 2025. While the bill provides the department discretion to determine program eligibility criteria, it does list some specific eligibility requirements. The bill also establishes a new fund in the state treasury to collect appropriations, donations, and any support or public assistance funds received on behalf of the mother.

Potential Number of Eligible Program Participants:

In 2020, a total of 26 women gave birth while in the department's custody. Of that number, 11 had drug offenses, 6 had nonviolent offenses, 1 had a sex offense, and 7 had violent offenses. Twenty-two of the 26 women have been released from custody as of 12/1/21, the average post-delivery time served was 2.32 months.

In 2021, a total of 25 women gave birth while in the department's custody (as of 12/1/21). Of that number, 10 had drug offenses, 13 had nonviolent offenses, and 2 had violent offenses. Fifteen of the 25 women have been released from custody as of 12/1/21, the average post-delivery time served was 3.1 months.

Identifiable Costs:

The costs depend significantly based on the size of the program. Based on the potential number of eligible female offenders discussed above, the department anticipates that the conversion of one wing of one housing unit to establish a seven-bed capacity nursery wing will likely meet the capacity needs of the program due to the typically short stays of the offenders post-delivery. However, please note there may be instances where capacity limits delay or prevent a women's ability to enter the program. Based on the scenario of converting one wing of one housing unit the costs would be:

7-Bed Unit:

| | |
|------------------------|---|
| One-Time Costs: | |
| \$14,000 | Furnishings/equipment/toys |
| \$190,832 | One-Time conversion |
| \$26,887 | Vehicle (7 passenger minivan) for appointments, etc. |
| \$16,000 | Startup for staff – uniforms, office furniture, etc. |
| \$247,719 | Total One-Time Costs |
| On-Going Costs: | |
| \$112,000 | On-Going Operating Cost (formula, diapers, pump, etc.) (\$16k/year/bed) |
| \$100,000 | Contract Pediatrician Services |
| \$8,400 | Caregiver wages (\$100/month, per caregiver, 7 caregivers) |
| \$140,000 | Reentry Services (\$5,000 per mother/child at 28 women per year) |
| \$315,246 | Staff PS 8 FTE (5 Correctional Officers I, 2 Correctional Case Managers, 1 Functional Unit Manager/Program Administrator) |
| \$224,046 | Staff fringe |
| \$899,692 | Total On-Going Costs |

Given the delayed implementation date, the costs listed will be phased over the first three fiscal years.

Year 1:

- \$247,719 – one-time startup costs to convert and equip the housing unit wing
- \$47,252 Personal Services and one (1) FTE as the Program Administrator
- \$30,635 Staff fringe
- **\$325,606 Total**

Year 2:

- \$323,127 Personal Services and eight (8) FTE* (\$315,246 * 1.025)
- \$229,647 Staff fringe* (\$224,046 * 1.025)
- **\$552,774 Total**

Year 3 and on-going:

- \$323,127 Personal Services and eight (8) FTE
- \$229,647 Staff fringe
- \$360,400 Expense and equipment for program operating costs
- **\$913,174 Total**

***Oversight** notes these costs include an inflation rate of 2.5 percent in year 2; however, DOC did not apply the inflation rate for year 3 and on-going.

DOC notes the bill establishes a new fund in the state treasury to collect appropriations, donations, and assistance payments from supporting parties or public assistance programs. It is

unknown if the revenues into this fund would be sufficient to fund the on-going operating costs of the program.

The bill also specifies that financial support for the mother/child is to be forwarded to the department to deposit into the mother's inmate banking account.

Unknown costs:

Legal liability for damages or injury to the child. Section 537.600, RSMo, grants the state of Missouri sovereign immunity from liability and suit for negligent acts or omissions. However, that statute includes two exemptions:

- when there are injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of a motor or motorized vehicle within the course of their employment, and
- when injuries are caused by the condition of a public entity's property if the plaintiff establishes that the property was in "dangerous condition" at the time of the injury, that the injury directly resulted from the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an employee within the course of his employment created the dangerous condition or the public entity had actual or constructive notice of the dangerous condition in sufficient time prior to injury to have taken measures to protect against the dangerous condition.

The DOC operates and maintains prisons. These prisons are not built for babies. They are institutional buildings built of concrete and steel with heavy locking doors, heavy furniture, and numerous features that could constitute a "dangerous condition" for a baby. Further, these prisons house violent offenders who have already admitted to or been proven guilty of committing bodily harm on others. There are only so many mitigating actions the department can take to make a prison "baby-safe" and still maintain the security of the facility. The potential legal exposure to the state of housing a baby in an adult correctional center represents an unknown potential cost to the state.

Custody of child. The bill states in §217.1050.3 that "neither the inmate's participation in the program nor any provisions of [the law] shall affect, modify or interfere with the inmate's custodial rights to the child nor does it establish legal custody of the child with the department." This language means that the mother, and possibly another person, could have legal custody of the child and the authority to make all decisions regarding the child's health and welfare. The DOC will have no legal authority to make those decisions and it is probable that issues will arise for department staff overseeing the program.

For example, if staff observe the child is in need of medical care but the mother refuses to accept medical treatment for the child's distress, it is unclear on whether the department could be legally liable to the child. On the flip side, what if mom thinks the child needs to go to the doctor or urgent care (accompanied by mom) every time they have a fever – is the department required to allow her to make those decisions, and therefore, leave the institution whenever she

claims it is medically necessary for the child? The department is unclear of the legal implications of having legal custody over the mother, but not of the child that the mother has legal custody of and is the primary caregiver. These issues represent a potential unknown cost to the state.

The department has and continues to reach out to other states that have similar programs within their correctional centers. As the DOC continues to learn more from the operational and policy experience of the other states, the operational approach (and, therefore, cost projections) may be changed going forward.

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's estimated impact for fiscal note purposes, including the potential unknown liability costs.

Oversight notes §217.945 establishes a new fund from moneys collected under this section and §217.944 as well as any appropriations made by the General Assembly, gifts, grants, or donations. Oversight assumes an unknown income to the Correctional Center Nursery Program Fund from gifts, grants, or donations. For fiscal note purposes, Oversight assumes services provided under this proposal will equal income/appropriations and net to zero.

Oversight notes the Division of Child Support Enforcement will forward support payments to the DOC for deposit into the inmate's banking account as outlined in §217.944.

Oversight states, according to [The Benefits of Prison Nursery Programs](#), nine states currently operate prison nursery programs—California, Illinois, Indiana, Nebraska, New York, Ohio, South Dakota, Washington, and West Virginia.

In response to a previous version (SCS SB 834), officials from the **Office of the State Courts Administrator** assumed the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this agency.

Bill as a whole

Officials from the **Attorney General's Office**, the **Department of Public Safety - Missouri Highway Patrol**, the **Newton County Health Department** and the **Office of the State Treasurer** each assume the proposal will have no fiscal impact on their respective organizations. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

Officials from the **Office of the Secretary of State (SOS)** note many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with its core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight only reflects the responses received from state agencies and political subdivisions; however, other local public health agencies were requested to respond to this proposed legislation but did not. A listing of political subdivisions included in the Missouri Legislative Information System database is available upon request.

| <u>FISCAL IMPACT – State Government</u> | FY 2023 | FY 2024 | FY 2025 |
|---|--------------------|--------------------|--------------------|
| | | | |
| CORRECTIONAL CENTER NURSERY PROGRAM FUND | | | |
| | | | |
| <u>Income</u> – Gifts, grants, donations (§§217.940 through 217.947) | \$0 to Unknown | \$0 to Unknown | \$0 to Unknown |
| | | | |
| <u>Transfer In</u> – From General Revenue Fund (§§217.940 through 217.947) | \$325,606 | \$552,774 | \$913,174 |
| | | | |
| <u>Cost</u> – DOC (§§217.940 through 217.947) Nursery program, includes costs for FTE | <u>(\$325,606)</u> | <u>(\$552,774)</u> | <u>(\$913,174)</u> |
| FTE Change – DOC | 1 FTE | 8 FTE | 8 FTE |
| | | | |
| ESTIMATED NET EFFECT ON THE CORRECTIONAL CENTER NURSERY PROGRAM FUND | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> |
| | | | |
| Estimated Net FTE Change to the Correctional Center Nursery Program Fund | 1 FTE | 8 FTE | 8 FTE |
| | | | |
| | | | |

| <u>FISCAL IMPACT – Local Government</u> | FY 2023 | FY 2024 | FY 2025 |
|---|-------------------|-------------------|-------------------|
| | | | |
| | <u>\$0</u> | <u>\$0</u> | <u>\$0</u> |
| | | | |

FISCAL IMPACT – Small Business

This proposal may have an impact on small business child care facilities. (§210.211)

FISCAL DESCRIPTION

This bill requires the Children's Division (CD) within the Department of Social Services (DSS) to make diligent searches for the biological parent or parents in a timely manner after a child is placed into its custody. Additionally, when an initial emergency placement of a child is deemed

necessary, CD is to diligently search and locate grandparents for placement of the child. If grandparents are deemed unavailable or unfit, then CD must make a diligent search to locate other relatives for placement of the child within 30 days from the time the emergency placement is deemed necessary for the child (§210.127; §210.305 and §210.565).

This act establishes the "Correctional Center Nursery Program" which requires the Department of Corrections to establish a correctional center nursery in one or more of the correctional centers for women operated by the Department by July 1, 2025. The program allows eligible inmates and children born to them while in the custody of the Department to reside together in the institution for up to eighteen months post-delivery. Nothing in this act shall affect, modify, or interfere with the inmate's custodial rights to the child nor establish legal custody of the child with the Department.

An inmate is eligible for the program if:

- She delivers the child while in custody of the Department;
- She gives birth on or after the program is implemented;
- She has a presumptive release date of 18 months or less from the date she applies to participate in the program;
- She has no dangerous felony, sexual offense, or offenses against the family convictions; and
- She meets any other criteria established by the Department.

To participate in the program, the inmate must agree to abide by certain requirements set forth in the act. Any inmate's participation in the program can be terminated by the Department for reasons set forth in the act.

The Division of Child Support Enforcement shall collect support payments made under the assignment and such payments shall be deposited in the inmate's banking account. The Department may accept donations on behalf of the program, but no donations shall be made on behalf of one particular inmate or child. Any financial donations for a specific inmate shall be made through the inmate banking system.

This act also established the "Correctional Center Nursery Program Fund" which shall be used to maintain the program.

This act provides that neither the Department of Corrections, nor the program, shall be subject to regulation, licensing, or oversight by the Department of Health and Senior Services, Department of Social Services, Children's Division, juvenile officer of any jurisdiction, or Office of Childhood unless the Department of Corrections agrees to voluntary regulation, licensing, or oversight.

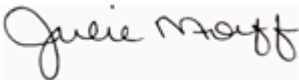
Finally, under this act, the Department of Corrections and its employees shall be immune from any suit or liability brought by or on behalf of children who participated in the program for any injuries or damages arising from correctional facility conditions. A motor vehicle operated by an

employee of the Department who unintentionally causes injury or death to a child resident of the correctional center nursery shall not be liable. (§§217.940 through 217.947)

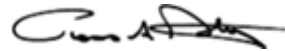
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Office of Administration - Administrative Hearing Commission
Department of Elementary and Secondary Education
Department of Health and Senior Services
Department of Corrections
Department of Public Safety - Missouri Highway Patrol
Department of Social Services
Office of the Secretary of State
Newton County Health Department
Joint Committee on Administrative Rules
Office of the State Treasurer
Office of the State Courts Administrator



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