

OMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4438H.02C
 Bill No.: HCS for HB Nos. 1897 & 2414
 Subject: Corrections, Department of; Children and Minors; Health Care
 Type: Original
 Date: February 1, 2022

Bill Summary: This proposal establishes the Correctional Center Nursery Program.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue	Greater than (\$1,000,000)	Greater than (\$1,000,000)	Greater than (\$1,000,000)
Total Estimated Net Effect on General Revenue	Greater than (\$1,000,000)	Greater than (\$1,000,000)	Greater than (\$1,000,000)

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

*Revenue and expenditures net to zero.

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
Correctional Center Nursery Program Fund	8 FTE	8 FTE	8 FTE
Total Estimated Net Effect on FTE	8 FTE	8 FTE	8 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

§§217.1050, 217.1052, 217.1054, 217.1056, 217.1058, 217.1060, 217.1062, and 217.1064 – Correctional center nurseries

Officials from the **Department of Corrections (DOC)** state this proposal establishes a Correctional Center Nursery Program that will allow eligible inmates and children born to them while in the custody of the department to reside together in the institution for up to 18 months. While the bill provides the department discretion to determine program eligibility criteria, it does list some specific eligibility requirements and requires the offender to participate in any educational, counseling, or other programming. 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 cost depends significantly 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	
\$105,000	On-Going operating cost
\$100,000	Contract pediatrician services
\$8,400	Caregiver wages
\$140,000	Reentry services – case worker to help establish support system outside of prison
\$315,246	Staff PS 8 FTE (5 Correctional Officers I, 2 Correctional Case Managers, 1 Functional Unit Manager)
\$224,046	Staff fringe
\$899,642	Total Annual On-Going Costs

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.

Unknown Costs: There are two issues that potentially represent costs to the department/state that are unknown. One is the issue of legal liability and the other is custody of the child.

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 Department of Corrections 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 subsection 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 department 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 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 of. 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 department continues to learn more from the operational and policy experience of the other states, the operational approach (and, therefore, cost projections) may change going forward.

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC’s impact for fiscal note purposes.

Oversight notes §217.1060 establishes a new fund from moneys collected under this section and section 217.1058 through child support payments to a specific inmate or child participating in the program minus ten percent of the moneys which are to be placed in the personal account of the mother maintained by the DOC, in addition to appropriations made by the General Assembly, gifts, grants, or donations. However, the Department of Social Services (DS)S has stated requiring the FSD Child Support (CS) to send payments to DOC would put Missouri out of compliance with its state plan requirements. Therefore, for fiscal note purposes, Oversight will reflect the amount of state appropriations for this program as Greater than (\$1,000,000) to the General Revenue Fund. Oversight also 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 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 (HB 1897), officials from the **Department of Social Services (DSS)** stated an inmate cannot receive Temporary Assistance for Needy Families (TANF) or receive Medicaid while incarcerated. The child would be eligible to participate in the state children's health insurance program (CHIP) referenced in 217.942.2 if eligibility factors were met. Family Services Division (FSD) could establish paternity and obtain a child support order if the mother applied for services and cooperated with FSD. Federal regulation 45 CFR 302.38 and Missouri's state plan provide that any payment required to be made under 45 CFR 302.32 and 45 CFR 302.51 to a family must be made directly to the resident parent, legal guardian, caretaker relative having custody of or responsibility for the child or children, judicially--appointed conservator with a legal and fiduciary duty to the custodial parent and the child, or alternate caretaker designated in a record by the custodial parent. Therefore, the requirement in 217.1058 requiring FSD Child Support (CS) to send payments to DOC would put Missouri out of compliance with its state plan requirements.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for this agency.

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.

Officials from the **Department of Health and Senior Services** and the **Office of the State Treasurer** assume the proposal will have no fiscal impact on their organizations.

In response to a previous version (HB 1897), officials from the **Department of Elementary and Secondary Education** and the **Office of the State Courts Administrator** assumed the proposal will have no fiscal impact on their organizations.

Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for these agencies.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE FUND			
<u>Transfer Out</u> – To the Correctional Center Nursery Program Fund p. 5	<u>Greater than (\$1,000,000)</u>	<u>Greater than (\$1,000,000)</u>	<u>Greater than (\$1,000,000)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>Greater than (\$1,000,000)</u>	<u>Greater than (\$1,000,000)</u>	<u>Greater than (\$1,000,000)</u>
CORRECTIONAL CENTER NURSERY PROGRAM FUND			
<u>Income</u> – Gifts, grants, or donations p. 5	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Transfer In</u> – From General Revenue Fund p. 5	Greater than \$1,000,000	Greater than \$1,000,000	Greater than \$1,000,000
<u>Cost</u> – DOC (§§217.1050 through 217.1064) Nursery program, includes costs for 8 FTE p. 3-5	<u>(\$1,147,361 to Unknown)</u>	<u>(\$899,642 to Unknown)</u>	<u>(\$899,642 to Unknown)</u>
FTE Change - DOC	8 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	8 FTE	8 FTE	8 FTE

<u>FISCAL IMPACT – Local Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT – Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill establishes the "Correctional Center Nursery Program", which requires the Missouri Department of Corrections to establish a Correctional Center Nursery in one or more centers operated by the Department. Mothers who are inmates shall be permitted to reside with infants for up to 18 months. The program has no effect on child custody and participation is at the discretion of the Department rather than sentencing courts.

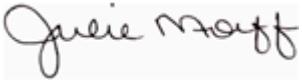
The program is paid for by the "Correctional Center Nursery Program Fund" which is created by the bill and which can receive funds by appropriation, assignment of child support by inmates, and gifts, grants, and donations.

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

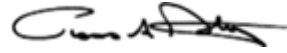
SOURCES OF INFORMATION

- Department of Elementary and Secondary Education
- Department of Health and Senior Services
- Department of Corrections
- Department of Social Services
- Joint Committee on Administrative Rules
- Office of the State Courts Administrator
- Office of the Secretary of State
- Office of the State Treasurer

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