

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3494S.06C
Bill No.: SCS for SB 834
Subject: Children and Minors; Department of Corrections; Prisons and Jails
Type: Original
Date: March 8, 2022

Bill Summary: This proposal creates provisions relating to a Correctional Center Nursery Program.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2023	FY 2024	FY 2025
General Revenue	Could exceed (\$325,606)	Could exceed (\$552,774)	Could exceed (\$913,174)
Total Estimated Net Effect on General Revenue	Could exceed (\$325,606)	Could exceed (\$552,774)	Could exceed (\$913,174)

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	1 FTE	8 FTE	8 FTE
Total Estimated Net Effect on FTE	1 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

§§217.940, 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 bill 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 1.025 percent in year 2; however, DOC did not apply the inflation rate for year 3 and on-going.

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:

DOC states 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.

- 1) 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.

- 2) 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) maybe changed going forward.

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

Oversight notes §217.945 establishes a new fund from moneys collected under this section and section 217.944 as well as appropriations made by the General Assembly, gifts, grants, or donations. The provisions of this proposal state the program needs to be established no later than July 1, 2025. Therefore, Oversight will reflect DOC's estimated impact for this program as Greater than (\$325,606) in FY 2023, Greater than (\$552,774) in FY 2024, and Greater than (\$913,174) in FY 2025 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 notes the Division of Child Support Enforcement will forward support payments to the DOC for deposit into the inmate's personal 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.

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 Elementary and Secondary Education**, the **Department of Health and Senior Services**, the **Department of Social Services**, and the **Office of the State Courts Administrator** assume the proposal will have no fiscal impact on their organization.

In response to a previous version (SB 834), officials from the **Office of the State Treasurer** 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 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.4)	<u>Could exceed</u> <u>(\$325,606)</u>	<u>Could exceed</u> <u>(\$552,774)</u>	<u>Could exceed</u> <u>(\$913,174)</u>
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>Could exceed</u> <u>(\$325,606)</u>	<u>Could exceed</u> <u>(\$552,774)</u>	<u>Could exceed</u> <u>(\$913,174)</u>
CORRECTIONAL CENTER NURSERY PROGRAM FUND			
<u>Income</u> – Gifts, grants, donations (p.6)	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Transfer In</u> – From General Revenue Fund	Could exceed \$325,606	Could exceed \$552,774	Could exceed \$913,174
<u>Cost</u> – DOC (§§217.940 through 217.947) Nursery program, includes costs for FTE (p.3)	<u>(\$325,606 to</u> <u>Unknown)</u>	<u>(\$552,774 to</u> <u>Unknown)</u>	<u>(\$913,174 to</u> <u>Unknown)</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 (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 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 is pregnant at the time she is delivered into custody of the Department;
- She gives birth on or after the program is implemented;
- She has a sentence of 5 years or less;
- She has a presumptive release date of 21 months 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. An 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.

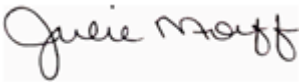
This act also established the "Correctional Center Nursery Program Fund" which shall be used to maintain the program.

Finally, neither the Department of Corrections, nor the program, shall be subject to regulation, licensing, or oversight by the Department of Health and Senior Services or Office of Childhood unless both departments and the Office jointly agree to voluntary regulation, licensing, or oversight.

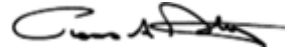
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

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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March 8, 2022



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