

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1411 (Delegate Howard)
 Judiciary

Correctional Facilities - Correctional Nursery Program - Establishment

This bill requires the Department of Public Safety and Correctional Services (DPSCS) to establish the Correctional Nursery Program to allow eligible incarcerated individuals and children born to eligible incarcerated individuals while in custody to reside together in a correctional facility. The bill establishes requirements for participation in and termination from the program. Generally, an incarcerated individual is eligible for participation in the program if the individual (1) is pregnant at the time the individual is brought into custody of the department; (2) gives birth while incarcerated; and (3) has 12 months or less remaining on the individual’s sentence when the child is born. A court may not require an incarcerated individual to participate in the program. The Governor must include in the annual budget bill an appropriation sufficient to fund the operation of the program. DPSCS must adopt regulations to implement the program.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$1.3 million in FY 2025; future years are annualized, adjusted for inflation, and reflect minimum ongoing costs. No effect on total capital spending, which is established annually by the Governor and the General Assembly through the capital budget process. Revenues are not affected.

(\$ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1.3	1.5	1.6	1.7	1.7
Net Effect	(\$1.3)	(\$1.5)	(\$1.6)	(\$1.7)	(\$1.7)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not anticipated to materially affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary: An incarcerated individual may not participate in the program unless the incarcerated individual voluntarily enters into a written contract with DPSCS that clearly sets forth the obligations, duties, responsibilities, and expectations with which the incarcerated individual must comply. A DPSCS representative must explain to the incarcerated individual the benefits of the program, the provisions of the contract specified, and the consequences of termination from the program.

An incarcerated individual's participation in the program may be terminated by DPSCS if (1) the incarcerated individual fails to comply with the contract entered into with the department; (2) the incarcerated individual's child becomes seriously ill; (3) DPSCS determines that the individual's child cannot safely participate in the program; (4) a court of competent jurisdiction issues an order that grants temporary, permanent, or legal custody of the child to a person or agency other than the incarcerated individual; or (5) the incarcerated individual is released from imprisonment.

Current Law:

Pregnant Incarcerated Individuals

If a representation is made to the managing official of a State correctional facility that an incarcerated individual in the facility is pregnant and about to give birth, the managing official must make an investigation and, if the facts require, recommend through the Maryland Parole Commission that the Governor exercise executive clemency. Without notice, the Governor may parole the incarcerated individual, commute the incarcerated individual's sentence, or suspend the execution of the incarcerated individual's sentence for a definite period or from time to time.

If the Governor suspends the execution of an incarcerated individual's sentence, the managing official of the correctional facility must, in a reasonable time before the anticipated birth, have the incarcerated individual transferred from the correctional facility to another facility that provides comfortable accommodations, maintenance, and medical care under supervision and safeguards that the managing official determines necessary to prevent the incarcerated individual's escape from custody. The managing official must also require the incarcerated individual to be returned to the correctional facility as soon after giving birth as the incarcerated individual's health allows.

Chapter 212 of 2014 requires that the medical professional responsible for the care of an incarcerated individual determines when the incarcerated individual's health allows the incarcerated individual to be returned to a correctional facility after giving birth.

If a representation is made to the managing official of a local correctional facility that an incarcerated individual in the custody of the managing official is pregnant, the managing official may (1) before the anticipated birth, have the incarcerated individual transferred from the local correctional facility to another facility that provides comfortable accommodations, maintenance, and medical care under supervision and safeguards that the managing official determines necessary to prevent the incarcerated individual's escape from custody and (2) return the incarcerated individual to the local correctional facility as soon after giving birth as the incarcerated individual's health allows, as determined by the medical professional responsible for the care of the incarcerated individual.

Chapters 827 and 828 of 2018 require each State and local correctional facility to have a written policy in place regarding the medical care of pregnant incarcerated individuals, as specified. The managing official of a correctional facility must provide the required written policy to an incarcerated individual at the time of a positive pregnancy test result. The Maryland Commission on Correctional Standards must review each correctional facility's policy during regular inspections.

DPSCS may allow an incarcerated individual to participate in programming and to retain custody of the newborn child in or out of custody if (1) the environment and program is consistent with the best interests of the child and consistent with public safety and (2) the custody is not inconsistent with the parental rights of any individual who is not detained or confined in a correctional facility.

State Expenditures: The bill requires the Governor to include in the annual budget bill an appropriation sufficient to fund the operation of the program. However, advice provided by the Attorney General indicates that a mandatory appropriation must either include an exact dollar figure for the funding or a funding formula that makes it possible to compute the level of funding required. The bill does neither and, therefore, any funding for the program is discretionary.

Actual costs incurred under the bill depend largely on the size of the program. However, DPSCS anticipates the need for a 10-bed single cell unit with cells large enough to house incarcerated individuals and their infants as well as shared nursery space and a medical unit, resulting in additional capital and operating costs. It is unclear at this time if DPSCS would renovate an existing facility or if it would need to construct a new space for the program. Although the Department of Legislative Services is unable to independently verify these estimates, DPSCS estimates that costs total more than \$4.0 million to renovate an existing facility and more than \$10.0 million to construct a new space. Any capital costs incurred by DPSCS do not increase the State's total capital spending. The State's capital program is determined annually through the capital budget process subject to debt affordability limits. As total spending is fixed each year, to the extent any new projects are added, other projects may receive less funding, be delayed, or get canceled.

With respect to operating costs of the program, general fund expenditures increase by at least \$1.3 million in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring nine correctional officers, two correctional officer sergeants, one program administrator, three child care assistants, one contractual pediatrician, one contractual pediatric nurse, and one contractual lactation consultant to staff the program. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	15.0
Contractual Positions	3.0
Salaries and Fringe Benefits (Regular)	\$845,085
Salaries and Fringe Benefits (Contractual)	317,277
Equipment/Supplies/Operating Expenses	<u>166,608</u>
Minimum FY 2025 State Expenditures	\$1,328,970

Future year expenditures – which also reflect minimum costs – reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act. In addition, this estimate does not include costs for the following, as they cannot be reliably estimated at this time:

- any necessary modifications to the medical contract for pediatric services for infants;
- any necessary modifications to the pharmacy contract; and
- any additional training needed for staff.

DPSCS can adopt the required regulations using existing budgeted resources.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Public Safety and Correctional Services; Department of Legislative Services

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km/lgc

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