

2025 SENATE JUDICIARY

SB 2115

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2115
1/15/2025
10:00 a.m.

A BILL for an Act to create and enact a new subsection to section 54-23.3-04 of the North Dakota Century Code, relating to authorization for children of inmates to reside at the Heart River correctional center; and to amend and reenact section 32-12.2-02 of the North Dakota Century Code, relating to limitation of liability for children residing at the Heart River correctional center.

10:01 a.m. Chair Larson opened the hearing.

Members Present: Chair Larson, Vice-Chair Paulson, Senators Braunberger, Castaneda, Cory, Luick, Myrdal.

Discussion Topics:

- Similar Programs Success
- Application Process
- Expectation Policy
- Liability
- Cost of Program

10:02 a.m. Colby Braun, Director, DOCR, testified in favor.

10:03 a.m. Cheryl Thomas, Women's Services Manager, ND DOCR , testified in favor and submitted testimony #29063.

10:32 a.m. Chelsea Flory, Director Burleigh County Human Service Zone, testified in favor and submitted testimony #29244.

10:38 a.m. Tag Anderson, Director of Risk Management, OMB, testified in favor.

10:42 a.m. Colby Braun, Director, DOCR, testified in favor.

10:46 a.m. Jaclyn Hall, Executive Director of the ND Association for Justice, testified in opposition and submitted testimony #29143.

Additional Written Testimony:

Kathleen Atkinson, Executive Director of Ministry on the Margins, submitted testimony in favor #29092.

10:49 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

**SENATE JUDICIARY COMMITTEE
SENATOR DIANE LARSON, CHAIR
JANUARY 15, 2025**

**CHERYL THOMAS, WOMEN'S SERVICES MANAGER
PRESENTING TESTIMONY IN SUPPORT OF SENATE BILL 2115**

Chairwoman Larson and members of the Judiciary Committee, my name is Cheryl Thomas, and I am the Women's Services Manager for the North Dakota Department of Corrections and Rehabilitation (DOCR). The DOCR has made tremendous gains regarding our incarcerated women's population by implementing gender responsive and trauma informed care, along with having a deeper understanding that women's pathways into incarceration are much different than men. We also know that relationships are critical to women, as women's identities are often relationally based. Women are often the main care givers of their children, as most incarcerated women are parents to children under the age of 18. From 1991 to 2016, there was a 96 percent increase in incarcerated mothers.¹ There is significant research that supports a mother and their babies bond starting during gestation and continuing to grow after birth.² I stand before you today to provide testimony in support of Senate Bill 2115 which will authorize the children of incarcerated women to reside at the Heart River

¹ Ghandnoosh, Ph.D., N., Stammen, E., & Muhitch, K. (2021, November 17). *Parents in Prison*. Retrieved from The Sentencing Project: <https://www.sentencingproject.org/policy-brief/parents-in-prison/>

² Team, S. (2024, March 13). The Mom - Baby Bond: The Science Behind the Magic. Retrieved from soulside: <https://www.getsoulside.com/blog/the-mom-baby-bond-the-science-behind-the-magic>

Correctional Center (HRCC) and will create and enact a new subsection to section North Dakota Century Code §54-23.3-04 and amend and reenact North Dakota Century Code §32-12.2-02, relating to limitation of liability for children residing at HRCC.

In my career, I have been on the front lines of child welfare, working at the county level within Foster Care case management, In-home, which at the time was called Wrap-Around case management, as well as in Child Protection Services. I stayed working within child welfare as a case manager at Prairie Learning Center, formally a boys group home in Raleigh, ND. Almost 17 years ago I joined the DOCR, working for the Division of Juvenile Services (DJS). My last three years has been as the Women's Services Manager where I also lead the Children of Incarcerated Parents Initiative (COIPI) for the department. Through these positions, I have witnessed the impact that an out of home placement of a child can have on the child and family. Children affected by parental incarceration are at a higher risk of adverse childhood experiences (ACE), insecure attachment, social stigma, unstable family relationships, physical and mental health issues and low educational attainment.³ I have also seen the impact of having an incarcerated parent on her children. Contact between incarcerated parent(s) and their children can help reduce risk factors for the children affected by parental incarceration as well as reducing recidivism for the

³ Turney, Kristin (2018, June). *Adverse childhood experiences among children of incarcerated parents*. Retrieved from Children and Youth Services Review: <https://www.sciencedirect.com/science/article/pii/S0190740918300525>

incarcerated parent, as more than 40% of incarcerated parents lived with their children prior to their incarceration.⁴

Prison nursery programs, where incarcerated mothers can care for their child within a correctional facility, have proven to offer significant benefits to both the mothers and their children. When an incarcerated mother can care for her child, it has a profound positive effect on mothers' mental health and rehabilitation. Incarcerated mothers often face overwhelming challenges related to separation from their children, which can intensify feelings of hopelessness and depression. Allowing mothers to bond with their infants in a supportive environment gives them a sense of purpose and responsibility, which can help reduce recidivism rates.⁵ Studies show that incarcerated mothers who are able to maintain a connection with their children are more likely to succeed upon reentry into the community. There are currently 11 states that have a nursery within their women's correctional facilities and four more, including North Dakota, in the process of planning or expanding their current program. New York state started their program in 1901, Washington state, started their program in 1999, resulting in a decrease in recidivism by 3 to 5 percent. Nebraska opened their nursery program in 1994, has seen a 10 percent decrease in recidivism, Indiana opened their nursery program in 2008, and saw a 16 percent decrease in

⁴ Martin, Eric (2017, March 01). *Hidden Consequences: The Impact of Incarceration on Dependent Children*. Retrieved from National Institute of Justice Journal: <https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children>

⁵ John, C. (2018, March 04). *Parenting in prison: Ohio nursery offers inmate moms, children a chance to bond*. Retrieved from Cleveland.com: https://www.cleveland.com/metro/2018/03/parenting_behindBars_ohios_pr.html

recidivism, due to these programs. Children raised in a nursery program are provided an opportunity to form an early attachment to their mother, which is crucial for their emotional and cognitive development. Research consistently highlights the importance of maternal bonding during the early stages of life. Having a nursery at HRCC would decrease a child's likelihood of separation trauma, avoiding the harmful effects of being placed away from their mother.

Currently there is no fiscal note associated with this bill. However, it should be noted that the cost of maintaining a nursery unit is often lower than the expense of housing children in a child welfare setting. Improving outcomes for mothers will reduce future incarceration costs associated with reoffending.

A fundamental goal of the DOCR is rehabilitation. Authorizing the DOCR to allow incarcerated mothers to keep their child after birth, aligns with this purpose by helping women maintain familial bonds and empowering them to become better parents and citizens upon their release. More than 95 percent of the current DOCR incarcerated population return to our communities. This program supports goals of the North Dakota Health and Human Services and the Child and Family Services Divisions, as well as the Federal Families First Act and the goal of minimizing out of home placement of children by keeping a mother and a child together.

I urge this committee to consider the long-term benefits that a prison nursery program can offer. They provide a unique opportunity to support incarcerated mothers in their journey toward rehabilitation, while promoting the well-being of their children. The evidence shows that these programs foster

stronger families, reduce recidivism, and can ultimately lead to a safer community.

Thank you for your time and for considering this important matter. I will stand to answer any questions. Thank you.

Kathleen Atkinson, osb
701.426.8747

Committee Testimony for Senate Bill 2115
Senate Judiciary Committee

Madam Chair and Members of the Committee.

Thank you for considering my testimony today. I serve as the Executive Director of Ministry on the Margins and am currently out of town but feel very strongly about this legislation.

It is an often-used phrase, “I was raised in a totally different world than her.” However, I remember the moment I was sitting in the North Dakota Women’s Prison and knew – knew very deeply – that I was conceived into a different world than the woman before me. My mother didn’t smoke, drink, or use drugs while she was pregnant with me. She watched her nourishment; had comfortable housing and a supportive spouse while I was being formed in her womb. I was born in a hospital, mom was assisted in mothering skills, I was cared for and carried home to the song “I will take you home Kathleen.” I began my life connected to family.

Senate Bill 2115 offers the opportunity for a child whose growth in the womb happens while his or her mother is in prison to also have a strong start in life (maybe a different song). SB 2115 recognizes that because mom is incarcerated, this baby and mother probably have better maternal care than ever with medical attention, housing, nutrition, non-abuse, and drug/alcohol free. This bill continues a hopeful trajectory of success by allowing mother-baby bonding to continue post birth, immediately wrapping both in formation for good mothering skills.

If the baby is born with Fetal Alcohol Syndrome or other challenges, early intervention can happen without delay. If the mother is victim of generational patterns of neglectful parenting, new skills can be taught. Financial costs within the foster care system can be saved. Financial costs and the burden of transportation for mother-baby visits can be saved. Financial costs of deferred intervention can be saved.

And as a person who has accompanied women as they try to re-enter society from prison, I can attest to the overwhelming panic and failure that accompanies re-entry when it is done unprepared with a baby in arms. A baby that had been taken from his/her mother at the time of birth, begun the journey of growth separated from this primary connection, and subsequently removed from whoever had been providing early nurturing and given to another new person – a stranger called mom.

I emphasized the newborn reality of this legislation. It is broader, hence, Section 2 charges the DOCR to establish policies and procedures for this and the continuing mother-child bonding.

Senate Bill 2115 is not primarily for the woman who gives birth while incarcerated. It is for the vulnerable new life born into a totally different world than you and me, and an investment in *THEIR* future.

I ask you to support this legislation.



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The Trial Lawyers of North Dakota

Jaclyn Hall, Executive Director
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Madam Chair Larson and members of the Senate Judiciary Committee, my name is Jaclyn Hall, I am the Executive Director of the North Dakota Association for Justice. Today, I am here to testify in opposition to SB2115.

SB2115 will provide immunity for the Department of Corrections for newborns and children residing and utilizing overnight visitation at Heart River Correctional Center unless the employee is negligent.

The Department of Corrections (DOCR) needs to be held liable for newborns in their prisons and transition centers for several important reasons related to the safety, well-being, and rights of both the infants and their incarcerated parents. Holding the DOCR accountable helps ensure the ethical treatment of these vulnerable individuals, as well as upholding broader societal and legal responsibilities. Some key points for liability include:

Duty of Care and Child Welfare

Even in prison settings, the DOCR has a fundamental duty of care toward the safety and well-being of all individuals, including children. Newborns are particularly vulnerable and require proper care, nutrition, medical attention, and a safe environment. The DOCR is responsible for providing these essential needs to the infant while they are within its custody, much like how parents or guardians are held accountable for their child's welfare outside of incarceration.

Legal and Human Rights Protections

Newborns, like all individuals, have basic legal and human rights that must be protected, regardless of their parents' incarceration. Prisons are often high stress and not conducive to nurturing the parent – child bond. These newborns and children have the right to safety, adequate care, and a healthy environment. If the DOCR fails to meet these basic legal responsibilities, they should be held liable under both domestic and international human rights law.

Rehabilitation and Family Integrity



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When an incarcerated parent is allowed to stay with their newborn, the DOCR has a responsibility to help facilitate a positive bond and ensure the parent has the proper resources and guidance to care for the child. This is part of the broader rehabilitative process that aims to strengthen family relationships, which can help reduce recidivism and improve outcomes for both the parent and the child after release. If the DOCR fails to provide adequate resources or opportunities for this, they may be seen as failing to meet their obligation to assist in rehabilitation and maintaining family integrity.

Ensuring Proper Transition and Aftercare

When an infant is born in prison or a transition center, the DOCR should also ensure that there are proper plans in place for the child's transition after the parent is released or if the child is moved out of the prison. Failing to make appropriate arrangements for the child's transition back to the community could have serious consequences on the child's stability, attachment, and long-term welfare. If immunity exists, can we ensure they meet the necessary standards for preparing both the parent and the child for reentry into society.

Prevention of Child Abuse or Neglect

Prison environments can create situations where neglect or abuse can occur, either by other prisoners or by the stress of the environment itself. If an inmate were to hurt the child, or assault an overnight teenager, where is the liability? Who will protect these children when employees are immune from liability unless they directly cause injury? The DOCR must be held accountable to ensure there is no risk of abuse, either physical or emotional, to infants or children within its care. If the department fails to adequately protect these vulnerable children, it should be held liable for any harm caused.

Public Accountability and Ethical Responsibility

Finally, holding the DOCR accountable for the well-being of infants within their care reinforces ethical standards in the criminal justice system. It sets a precedent that the treatment of incarcerated parents and their children is an important issue for society, demanding that the government and prison



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systems take responsibility for ensuring humane and just conditions for all individuals, including those born in custody.

Conclusion

Holding the Department of Corrections liable for the well-being of newborns in their custody is essential to ensure the protection of the child's rights and to maintain ethical standards within the justice system. Providing immunity does not ensure these children will be cared for at the level they deserve. The DOCR has a responsibility to create environments where infants can be cared for appropriately, and where the safety and emotional health of both the child and the incarcerated parent are prioritized. If the DOC fails in this duty, it must be held accountable for the consequences that arise.

Please consider a Do Not Pass on SB 2115.

Testimony Prepared for the
The North Dakota Senate Judiciary Committee
Senate Bill 2115 Related to the Authorization for Children of Inmates to
Reside at the Heart River Correctional Center and Relating to Limitation of
Liability for Children Residing at the Heart River Correctional Center

January 15, 2025

By: Chelsea Flory, Burleigh County Human Service Zone Director

Chair Larson, and members of the North Dakota Senate Judiciary Committee, my name is Cheslea Flory, and I am the Director for the Burleigh County Human Service Zone, which includes the county of Burleigh. In addition, I am a member of the North Dakota Human Service Zone Director Association. I am here today to provide testimony in support of Senate bill 2115 relating to the authorization for children of inmates to reside at the Heart River Correctional Center and relating to limitation of liability for children residing at the Heart River Correctional Center.

Human Service Zones are mandated to provide child welfare services, including child protection services, foster care, and in home case management as well as receiving CHINS (Child in Need of Services) referrals and administering economic assistance programs for the state of North Dakota. It is through these duties that we interact with inmates of DOCR facilities, as well as their children. Often, we are serving as legal custodian for children with incarcerated parents and as the legal custodian we understand the importance of keeping the family connection, as well as supporting the parents with successful re entry to their community. Zones have been collaborating with the Department of Corrections to pilot outreach efforts to include support with application for economic assistance programs, to ensure the inmates have an opportunity for continuum

of services to avoid any gaps in medical coverage, as well as securing additional economic assistance benefits, they may be eligible for.

SB 2115 would provide an opportunity for inmates to care for their children in a supportive environment, with the facility ensuring the safety of the children while supporting the family connection and enhancing parenting competencies from additional collaboration with stakeholders and services providers. Through conversation with the Department of Corrections and Rehabilitation (DOCR) and Heart River Correctional Center (HRCC), it is my understanding that this option for children of inmates to reside at HRCC applies to children birth to eighteen months old, and inmates are selected by an agency committee through an application process. This process would ensure selection of inmates who are in good mental and behavioral health, to allow for safe caregiving and positive engagement.

The North Dakota Human Service Zone Director Association is in support of the fundamental aspects of this proposed bill, however, would look for ongoing collaboration between the Department of Health and Human Services (DHHS), DOCR and HRCC regarding the development and review of policy and procedures relating to this matter. As the director of an agency that administers child protection services to include assessing reported allegations of abuse or neglect, it would be crucial that HRCC have clear policy, procedure and training related to reporting any incidents to ensure the safety of the children. Furthermore, as an agency that administers economic assistance programs, we would want to make sure that policies from DHHS align for inmates and their children to be eligible for services such as Medicaid and Temporary Assistance for Needy Families (TANF) while residing in the facility. Additionally, we would urge that

employed members of HRCC, and any inmates tasked with a caregiving role or responsibility, meet training requirements to include safe sleeping, pediatric CPR and mandated reporting of abuse and neglect. We would also want to ensure that any inmates of HRCC tasked with a caregiving role or responsibility complete necessary checks of registries relating to offenses against children. Additionally, there is no fiscal note associated with this proposed bill and as anyone knows, raising a child comes with additional expenses. There are additional costs for items such as clothing, diapers, wipes, formula, etc. that will need to be considered for fiscal impact, as well as any staffing or structural needs of this proposed program.

In conclusion, our association looks forward to opportunity for collaboration regarding policy and procedure development, review and implementation to ensure desired outcomes for all parties. Thank you for your consideration and I stand for questions from the committee.

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2115
1/15/2025
2:13 p.m.

A BILL for an Act to create and enact a new subsection to section 54-23.3-04 of the North Dakota Century Code, relating to authorization for children of inmates to reside at the Heart River correctional center; and to amend and reenact section 32-12.2-02 of the North Dakota Century Code, relating to limitation of liability for children residing at the Heart River correctional center.

2:13 p.m. Chair Larson opened the hearing.

Members Present: Chair Larson, Vice-Chair Paulson, Senators Braunberger, Castaneda, Cory, Luick, Myrdal.

Discussion Topics:

- Structure of Program
- Success Rate of Other Programs
- Rules & Policies

2:13 p.m. Chair Larson opened discussion on the bill.

2:25 p.m. Senator Cory moved a Do Not Pass.

2:25 p.m. Senator Braunberger seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Castaneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 7-0-0.

Senator Cory will carry the bill.

2:28 p.m. Chair Larson adjourned the meeting.

Kendra McCann, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2115 ([25.8134.01000](#))

Judiciary Committee (Sen. Larson, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2115 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.