

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3494H.10C
 Bill No.: HCS for SS for SCS for SB 834
 Subject: Department of Corrections; Prisons and Jails; Children and Minors; Probation and Parole
 Type: Original
 Date: April 21, 2022

Bill Summary: This proposal modifies and establishes provisions relating to Department of Corrections programs.

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
Missouri Interstate Compact Fund	Less than \$293,854	Less than \$352,625	Less than \$352,625
Correctional Center Nursery Program Fund*	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	Less than \$293,854	Less than \$352,625	Less than \$352,625

*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

§§217.035, 217.650, 217.670, 217.710, 217.720, 548.241, 589.564, and 589.565 – Interstate compact

Officials from the **Department of Corrections (DOC)** state the additional authority to request adjustments to conditions of supervision introduced in §589.564 prohibits requesting modification of the length of an offender’s sentence. Therefore, there is no expected impact on offender populations from this change. While the requirement of offenders to pay a fee to apply for interstate transfer introduced in §589.565 may reduce the number of such requests, there is no

way for the department to know how many offenders will not apply due to the fee, and how many offenders may have the fee requirement waived by the compact commission because the fee was determined to be an undue economic burden on the offender.

In 2021, Missouri submitted 3,359 outgoing transfers for Interstate Compact. This figure will be used to estimate the number of transfers in all subsequent years. Approximately 40% of transfers or 1,344 offenders (3,359 x .40) are projected to be indigent and would receive a waiver of the \$175 fee. The DOC assumes the remaining 2,015 offenders would be able to pay the \$175 application fee required for transfer.

At most, there will be \$293,854 (2,015 offenders x \$175) revenue deposited into the Missouri Interstate Compact Fund in FY 2023, which shall be used for the costs of administration of these provisions.

	Number of Interstate Compact Transfer Applications	Cost per Transfer	Total Revenue Collected
Year 1	2,015	(\$175)	(\$293,854)
Year 2	2,015	(\$175)	(\$352,625)
Year 3	2,015	(\$175)	(\$352,625)
Year 4	2,015	(\$175)	(\$352,625)
Year 5	2,015	(\$175)	(\$352,625)
Year 6	2,015	(\$175)	(\$352,625)
Year 7	2,015	(\$175)	(\$352,625)
Year 8	2,015	(\$175)	(\$352,625)
Year 9	2,015	(\$175)	(\$352,625)
Year 10	2,015	(\$175)	(\$352,625)

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 under current law, all necessary expenses accrued as a result of a person being returned to Missouri pursuant to the Interstate Compact for the Supervision of Parolees and Probationers shall be paid out of the state treasury. This act repeals this provision and provides that any person being returned to Missouri pursuant to the Interstate Compact for Adult Offender Supervision shall be paid out of either the "Missouri Interstate Compact Fund" or out of the state treasury.

Section 589.565 states a Missouri probationer or parolee requesting a transfer of their supervision through this compact shall pay a \$175 application fee and these moneys will be used for the sole benefit of the DOC in support of the administration of this section. Therefore, for

purposes of this fiscal note, Oversight assumes transportation expenses will be paid out of the Missouri Interstate Compact Fund and will reflect a negative unknown cost to the fund. However, if the Missouri Interstate Compact Fund does not have moneys available due to the number of offenders granted a waiver of the transfer application fee, there could be an impact to the state treasury. Oversight notes the DOC has clarified the state treasury is the General Revenue Fund. Therefore, Oversight will reflect a potential savings from the deletion of §217.810.4.

In response to similar legislation from 2022 (HB 1897), officials from the **Office of the State Courts Administrator (OSCA)** 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 OSCA.

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

§§217.703, 559.036, and 559.115 – Post-conviction treatment programs

Officials from the **Department of Corrections (DOC)** assume the proposal will have no fiscal impact on their organization. Sections 559.036 and 559.115 will continue to be used for sentencing and, therefore, the number of offenders received will not change.

Oversight does not have any information contrary to that provided by DOC. Therefore, Oversight will reflect DOC's no impact for fiscal note purposes.

In response to similar legislation from 2022 (HCS HB 2597), 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 OSCA for these sections.

§§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 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:

Section 217.947 removes the applicability of section 537.600, RSMo, which would otherwise have granted the state of Missouri sovereign immunity from liability and suit for negligent acts or omissions, which would include legal liability for damages or injury to the child.

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 §217.940.1 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 department 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.

Oversight notes §217.945 establishes a new fund from moneys collected under this section and section 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 OSCA.

Responses regarding the proposed legislation as a whole

Officials from the **Attorney General's Office**, the **Department of Elementary and Secondary Education**, the **Department of Health and Senior Services**, the **Department of Mental Health**, the **Department of Social Services**, the **Office of Administration**, the **Office of the**

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Governor, the **Missouri Office of Prosecution Services**, and the **Office of the State Treasurer** 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.

<u>FISCAL IMPACT – State Government</u>	FY 2023 (10 Mo.)	FY 2024	FY 2025
GENERAL REVENUE			
<u>Savings</u> – removal of expense in deletion of §217.810.4 p. 4	\$0 or <u>Unknown</u>	\$0 or <u>Unknown</u>	\$0 or <u>Unknown</u>
<u>Transfer Out</u> – To the Correctional Center Nursery Program Fund (§§217.940 through 217.947) p. 5-8	<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 GENERAL REVENUE	<u>Could exceed</u> <u>(\$325,606)</u>	<u>Could exceed</u> <u>(\$552,774)</u>	<u>Could exceed</u> <u>(\$913,174)</u>
MISSOURI INTERSTATE COMPACT FUND			
<u>Revenue</u> – DOC (§589.565) Transfer application fee p. 3-4	\$293,854	\$352,625	\$352,625
<u>Cost</u> – DOC (§589.565) Transportation expense p. 3-4	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
NET EFFECT ON THE MISSOURI INTERSTATE COMPACT FUND	<u>Less than</u> <u>\$293,854</u>	<u>Less than</u> <u>\$352,625</u>	<u>Less than</u> <u>\$352,625</u>
CORRECTIONAL CENTER NURSERY PROGRAM FUND			
<u>Income</u> – Gifts, grants, donations (§§217.940 thru 217.947) p. 5-8	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Transfer In</u> – From General Revenue (§§217.940 thru 217.947) p. 5-8	Could exceed \$325,606	Could exceed \$552,774	Could exceed \$913,174

<u>FISCAL IMPACT – State Government</u> (continued)	FY 2023 (10 Mo.)	FY 2024	FY 2025
<u>Cost – DOC</u> (§§217.940 thru 217.947) Nursery program, includes costs for FTE p. 5-8	<u>Could exceed</u> (\$325,606)	<u>Could exceed</u> (\$552,774)	<u>Could exceed</u> (\$913,174)
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

MISSOURI STATE COMPACT FUND (Section 589.565)

Under this act, a Missouri probationer or parolee seeking transfer of his or her supervision pursuant to the Interstate Compact for Adult Offender Supervision shall pay a \$175 fee for each application, unless waived by the compact commissioner for an undue economic burden on the offender.

This act establishes the "Missouri State Compact Fund" and all fees collected by the commissioners shall be paid to the Fund. The money from the Fund shall be used for the sole benefit of the Department of Corrections to pay the expenses of the Interstate Compact for Adult Offender Supervision.

CORRECTIONAL CENTER NURSERY PROGRAM (Sections 217.940, 217.941, 217.942, 217.943, 217.944, 217.945, 217.946, and 217.947)

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.

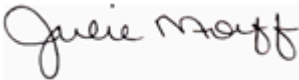
This act provides that neither the Department of Corrections, nor the program, shall be subject to regulation, licensing, or oversight by the Department of Health and Senior Services, Department of Social Services, Children's Division, juvenile officer of any jurisdiction, or Office of Childhood unless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

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
Department of Elementary and Secondary Education
Department of Health and Senior Services
Department of Corrections
Department of Mental Health
Department of Social Services
Missouri Office of Prosecution Services
Office of Administration
Office of the Governor
Office of the State Courts Administrator
Office of the State Treasurer



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