

HOUSE BILL No. 2811

By Committee on Appropriations

Requested by Representative Concannon on behalf of Representative Concannon
and Senator O'Shea

2-20

1 AN ACT concerning children and families; relating to incarcerated
2 expectant mothers; directing the department of corrections to establish
3 a correctional center nursery; requiring the secretary of corrections to
4 establish correctional center nursery policies and procedures; relating to
5 the Kansas family law code; amending the factors considered in
6 determination of legal custody, residency or parenting time; relating to
7 the revised Kansas code for care of children; amending K.S.A. 23-3203
8 and 38-2276 and K.S.A. 2023 Supp. 38-2202 and repealing the existing
9 sections; also repealing K.S.A. 2023 Supp. 38-2202a.

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 New Section 1. (a) Subject to appropriations, the department of
13 corrections shall establish a women's correctional center nursery on the
14 grounds of the Topeka correctional facility not later than January 1, 2026.
15 The correctional center nursery shall house the nursery program for
16 incarcerated moms, where an eligible offender and a child born to such
17 offender while in the custody of the secretary may reside together in the
18 nursery for up to 36 months following the birth of such a child. An
19 offender's participation in the program shall not affect, modify or interfere
20 with such offender's custodial rights to the child or establish legal custody
21 with the department or the secretary.

22 (b) Except as provided in subsection (i), an offender is eligible to
23 participate in the program if such offender:

24 (1) Is expected to give birth or gives birth to the child after sentencing
25 or while in the custody of the secretary;

26 (2) has 36 months or less remaining on such offender's sentence;

27 (3) meets any other criteria established by the secretary or the
28 secretary's designee; and

29 (4) has a child that meets any other criteria established by the
30 secretary or the secretary's designee.

31 (c) (1) Placement of an offender into the program shall be at the
32 discretion of the Topeka correctional facility nursery team and the
33 secretary or the secretary's designee. Placement of an offender into the
34 program shall not be ordered by a sentencing court.

1 (2) Prior to placing an offender into the program, the secretary or the
2 secretary's designee shall:

3 (A) Determine that the offender meets all requirements under this
4 section and any rules and regulations or policies adopted by the secretary;
5 and

6 (B) determine that the program is an appropriate placement for the
7 offender and that such placement is in the best interests of the child. To
8 determine whether placing the offender in the program is in the best
9 interests of the child, the secretary shall obtain information from the
10 department for children and families regarding any current or prior child in
11 need of care case involving the offender.

12 (d) In order to participate in the program, each eligible offender
13 selected by the secretary or the secretary's designee shall agree in writing
14 to:

15 (1) Comply with all department policies, procedures and other
16 requirements related to the program and rules that apply to the Topeka
17 correctional facility generally;

18 (2) if eligible, have the child participate in the state children's health
19 insurance program as provided in K.S.A. 38-2001, and amendments
20 thereto;

21 (3) comply with any court decisions regarding legal custody,
22 residency and parenting time for the child;

23 (4) specify the individual with whom the child shall be placed if the
24 offender's participation in the program is revoked for any reason other than
25 release from confinement; and

26 (5) sign any release of information waivers required to allow
27 information regarding current or prior child in need of care cases involving
28 the offender to be shared with the department of corrections.

29 (e) The secretary or the secretary's designee may revoke any
30 offender's participation in the program if:

31 (1) The offender is not complying with the program's requirements as
32 established by this section and polices adopted by the secretary or the
33 secretary's designee;

34 (2) the offender fails to comply with the agreement signed pursuant to
35 subsection (d);

36 (3) the offender's child becomes seriously ill, cannot receive the
37 necessary medical care or otherwise is unable to safely participate in the
38 program;

39 (4) a court of competent jurisdiction enters a temporary or permanent
40 order awarding residency of the child to an agency or a person other than
41 the offender; or

42 (5) the offender is released from the Topeka correctional facility. If
43 the offender violates a condition of release resulting in such offender's

1 reincarceration, the offender's child shall not be eligible to reenter the
2 program.

3 (f) The secretary or the secretary's designee shall establish policies
4 for the operation of the program. Such policies shall include, but not be
5 limited to, criteria and guidelines for participating in the program.

6 (g) (1) There is hereby established in the state treasury the nursery
7 program for incarcerated moms fund. Such fund shall be administered by
8 the secretary of corrections. All expenditures from the nursery program for
9 incarcerated moms fund shall be for the purpose of operating and
10 maintaining the program established by this section. All expenditures from
11 the nursery program for incarcerated moms fund shall be made in
12 accordance with appropriation acts upon warrants of the director of
13 accounts and reports issued pursuant to vouchers approved by the
14 secretary or the secretary's designee. All moneys received pursuant to the
15 provisions of this section shall be remitted to the state treasurer in
16 accordance with the provisions of K.S.A. 75-4215, and amendments
17 thereto. Upon receipt of each such remittance, the state treasurer shall
18 deposit the entire amount in the state treasury to the credit of the nursery
19 program for incarcerated moms fund.

20 (2) Any support payment paid through the central unit for
21 collection and disbursement of support payments designated pursuant to
22 K.S.A. 39-7,135, and amendments thereto, for a child residing in the
23 program shall be forwarded to the department for deposit into the
24 offender's inmate account and made available to the offender in such
25 manner and for such purposes as authorized by the secretary or the
26 secretary's designee.

27 (h) Notwithstanding any provision of law to the contrary, the program
28 and the department shall not be subject to any licensing, oversight or
29 regulation by the department of health and environment or the department
30 for children and families unless the department voluntarily agrees to such
31 licensing, oversight or regulation.

32 (i) This section shall not apply to any offender who:

33 (1) Is sentenced to imprisonment for an off-grid offense;

34 (2) is under sentence of death or life without the possibility of parole;

35 or

36 (3) has a prior or current conviction for:

37 (A) An inherently dangerous felony as defined in K.S.A. 21-5402,
38 and amendments thereto;

39 (B) a felony violation of an offense described in article 55 of chapter
40 21 of the Kansas Statutes Annotated, and amendments thereto, in which
41 the victim of the crime was a minor;

42 (C) a felony violation of article 56 of chapter 21 of the Kansas
43 Statutes Annotated, and amendments thereto, in which the victim of the

1 crime was a minor, excluding criminal nonsupport, K.S.A. 21-5606, and
 2 amendments thereto;

3 (D) commercial exploitation of a child, as described in K.S.A. 21-
 4 6422, and amendments thereto; or

5 (E) human trafficking, as described in K.S.A. 21-5426, and
 6 amendments thereto.

7 (j) As used in this section:

8 (1) "Department" means the department of corrections;

9 (2) "program" means the nursery program for incarcerated moms
 10 established by this section;

11 (3) "secretary" means the secretary of corrections; and

12 (4) "Topeka correctional facility nursery team" means the following
 13 individuals: Security manager, program director, classification manager,
 14 behavioral health manager and unit team manager.

15 Sec. 2. K.S.A. 23-3203 is hereby amended to read as follows: 23-
 16 3203. (a) In determining the issue of legal custody, residency and
 17 parenting time of a child, the court shall consider all relevant factors,
 18 including, but not limited to:

19 (1) Each parent's role and involvement with the minor child before
 20 and after separation;

21 (2) the desires of the child's parents as to custody or residency;

22 (3) the desires of a child of sufficient age and maturity as to the
 23 child's custody or residency;

24 (4) the age of the child;

25 (5) the emotional and physical needs of the child;

26 (6) the interaction and interrelationship of the child with parents,
 27 siblings and any other person who may significantly affect the child's best
 28 interests;

29 (7) the child's adjustment to the child's home, school and community;

30 (8) the willingness and ability of each parent to respect and appreciate
 31 the bond between the child and the other parent and to allow for a
 32 continuing relationship between the child and the other parent;

33 (9) evidence of domestic abuse, including, but not limited to:

34 (A) A pattern or history of physically or emotionally abusive
 35 behavior or threat thereof used by one person to gain or maintain
 36 domination and control over an intimate partner or household member; or

37 (B) an act of domestic violence, stalking or sexual assault;

38 (10) the ability of the parties to communicate, cooperate and manage
 39 parental duties;

40 (11) the school activity schedule of the child;

41 (12) the work schedule of the parties;

42 (13) the location of the parties' residences and places of employment;

43 (14) the location of the child's school;

1 (15) whether a parent is subject to the registration requirements of the
2 Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments
3 thereto, or any similar act in any other state, or under military or federal
4 law;

5 (16) whether a parent has been convicted of abuse of a child, K.S.A.
6 21-3609, prior to its repeal, or K.S.A. 21-5602, and amendments thereto;

7 (17) whether a parent is residing with an individual who is subject to
8 registration requirements of the Kansas offender registration act, K.S.A.
9 22-4901 et seq., and amendments thereto, or any similar act in any other
10 state, or under military or federal law; ~~and~~

11 (18) whether a parent is residing with an individual who has been
12 convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A.
13 21-5602, and amendments thereto; *and*

14 (19) *whether a parent is participating in the nursery program for*
15 *incarcerated moms pursuant to section 1, and amendments thereto.*

16 (b) To aid in determining the issue of legal custody, residency and
17 parenting time of a child, the court may order a parent to undergo a
18 domestic violence offender assessment conducted by a certified batterer
19 intervention program and may order such parent to follow all
20 recommendations made by such program.

21 Sec. 3. K.S.A. 2023 Supp. 38-2202 is hereby amended to read as
22 follows: 38-2202. As used in the revised Kansas code for care of children,
23 unless the context otherwise indicates:

24 (a) "Abandon" or "abandonment" means to forsake, desert or, without
25 making appropriate provision for substitute care, cease providing care for
26 the child.

27 (b) "Adult correction facility" means any public or private facility,
28 secure or nonsecure, that is used for the lawful custody of accused or
29 convicted adult criminal offenders.

30 (c) "Aggravated circumstances" means the abandonment, torture,
31 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

32 (d) "Child in need of care" means a person less than 18 years of age
33 at the time of filing of the petition or issuance of an ex parte protective
34 custody order pursuant to K.S.A. 38-2242, and amendments thereto, who:

35 (1) Is without adequate parental care, control or subsistence and the
36 condition is not due solely to the lack of financial means of the child's
37 parents or other custodian;

38 (2) is without the care or control necessary for the child's physical,
39 mental or emotional health. *A child who is residing in a correctional*
40 *center nursery with the child's mother as part of the nursery program for*
41 *incarcerated moms pursuant to section 1, and amendments thereto, shall*
42 *not be found without the care or control necessary for the child's physical,*
43 *mental or emotional health due solely to the mother's participation in the*

1 *program pursuant to section 1, and amendments thereto;*

2 (3) has been physically, mentally or emotionally abused or neglected
3 or sexually abused;

4 (4) has been placed for care or adoption in violation of law;

5 (5) has been abandoned or does not have a known living parent;

6 (6) is not attending school as required by K.S.A. 72-3421 or 72-3120,
7 and amendments thereto;

8 (7) except in the case of a violation of K.S.A. 41-727, 74-8810(j), 79-
9 3321(m) or (n), or K.S.A. 21-6301(a)(14), and amendments thereto, or,
10 except as provided in paragraph (12), does an act which, when committed
11 by a person under 18 years of age, is prohibited by state law, city
12 ordinance or county resolution, but which is not prohibited when done by
13 an adult;

14 (8) while less than 10 years of age, commits any act that if done by an
15 adult would constitute the commission of a felony or misdemeanor as
16 defined by K.S.A. 21-5102, and amendments thereto;

17 (9) is willfully and voluntarily absent from the child's home without
18 the consent of the child's parent or other custodian;

19 (10) is willfully and voluntarily absent at least a second time from a
20 court ordered or designated placement, or a placement pursuant to court
21 order, if the absence is without the consent of the person with whom the
22 child is placed or, if the child is placed in a facility, without the consent of
23 the person in charge of such facility or such person's designee;

24 (11) has been residing in the same residence with a sibling or another
25 person under 18 years of age, who has been physically, mentally or
26 emotionally abused or neglected, or sexually abused;

27 (12) while less than 10 years of age commits the offense defined in
28 K.S.A. 21-6301(a)(14), and amendments thereto;

29 (13) has had a permanent custodian appointed and the permanent
30 custodian is no longer able or willing to serve; or

31 (14) has been subjected to an act that would constitute human
32 trafficking or aggravated human trafficking, as defined by K.S.A. 21-5426,
33 and amendments thereto, or commercial sexual exploitation of a child, as
34 defined by K.S.A. 21-6422, and amendments thereto, or has committed an
35 act which, if committed by an adult, would constitute selling sexual
36 relations, as defined by K.S.A. 21-6419, and amendments thereto.

37 (e) "Child abuse medical resource center" means a medical institution
38 affiliated with an accredited children's hospital or a recognized institution
39 of higher education that has an accredited medical school program with
40 board-certified child abuse pediatricians who provide training, support,
41 mentoring and peer review to CARE providers on CARE exams.

42 (f) "Child abuse review and evaluation exam" or "CARE exam"
43 means a forensic medical evaluation of a child alleged to be a victim of

1 abuse or neglect conducted by a CARE provider.

2 (g) "Child abuse review and evaluation network" or "CARE network"
3 means a network of CARE providers, child abuse medical resource centers
4 and any medical provider associated with a child advocacy center that has
5 the ability to conduct a CARE exam that collaborate to improve services
6 provided to a child alleged to be a victim of abuse or neglect.

7 (h) "Child abuse review and evaluation provider" or "CARE
8 provider" means a person licensed to practice medicine and surgery,
9 advanced practice registered nurse or licensed physician assistant who
10 performs CARE exams of and provides medical diagnosis and treatment to
11 a child alleged to be a victim of abuse or neglect and who receives:

12 (1) Kansas-based initial intensive training regarding child
13 maltreatment from the CARE network;

14 (2) continuous trainings on child maltreatment from the CARE
15 network; and

16 (3) peer review and new provider mentoring regarding medical
17 evaluations from a child abuse medical resource center.

18 (i) "Child abuse review and evaluation referral" or "CARE referral"
19 means a brief written review of allegations of physical abuse, emotional
20 abuse, medical neglect or physical neglect submitted by the secretary or
21 law enforcement agency to a child abuse medical resource center for a
22 recommendation of such child's need for medical care that may include a
23 CARE exam.

24 (j) "Citizen review board" is a group of community volunteers
25 appointed by the court and whose duties are prescribed by K.S.A. 38-2207
26 and 38-2208, and amendments thereto.

27 (k) "Civil custody case" includes any case filed under chapter 23 of
28 the Kansas Statutes Annotated, and amendments thereto, the Kansas
29 family law code, article 11 of chapter 38 of the Kansas Statutes Annotated,
30 and amendments thereto, determination of parentage, article 21 of chapter
31 59 of the Kansas Statutes Annotated, and amendments thereto, adoption
32 and relinquishment act, or article 30 of chapter 59 of the Kansas Statutes
33 Annotated, and amendments thereto, guardians and conservators.

34 (l) "Court-appointed special advocate" means a responsible adult
35 other than an attorney guardian ad litem who is appointed by the court to
36 represent the best interests of a child, as provided in K.S.A. 38-2206, and
37 amendments thereto, in a proceeding pursuant to this code.

38 (m) "Custody" whether temporary, protective or legal, means the
39 status created by court order or statute that vests in a custodian, whether an
40 individual or an agency, the right to physical possession of the child and
41 the right to determine placement of the child, subject to restrictions placed
42 by the court.

43 (n) "Extended out of home placement" means a child has been in the

1 custody of the secretary and placed with neither parent for 15 of the most
2 recent 22 months beginning 60 days after the date at which a child in the
3 custody of the secretary was removed from the child's home.

4 (o) "Educational institution" means all schools at the elementary and
5 secondary levels.

6 (p) "Educator" means any administrator, teacher or other professional
7 or paraprofessional employee of an educational institution who has
8 exposure to a pupil specified in K.S.A. 72-6143(a), and amendments
9 thereto.

10 (q) "Harm" means physical or psychological injury or damage.

11 (r) "Interested party" means the grandparent of the child, a person
12 with whom the child has been living for a significant period of time when
13 the child in need of care petition is filed, and any person made an
14 interested party by the court pursuant to K.S.A. 38-2241, and amendments
15 thereto, or Indian tribe seeking to intervene that is not a party.

16 (s) "Jail" means:

17 (1) An adult jail or lockup; or

18 (2) a facility in the same building or on the same grounds as an adult
19 jail or lockup, unless the facility meets all applicable standards and
20 licensure requirements under law and there is: (A) Total separation of the
21 juvenile and adult facility spatial areas such that there could be no
22 haphazard or accidental contact between juvenile and adult residents in the
23 respective facilities; (B) total separation in all juvenile and adult program
24 activities within the facilities, including recreation, education, counseling,
25 health care, dining, sleeping and general living activities; and (C) separate
26 juvenile and adult staff, including management, security staff and direct
27 care staff such as recreational, educational and counseling.

28 (t) "Juvenile detention facility" means any secure public or private
29 facility used for the lawful custody of accused or adjudicated juvenile
30 offenders that must not be a jail.

31 (u) "Juvenile intake and assessment worker" means a responsible
32 adult authorized to perform intake and assessment services as part of the
33 intake and assessment system established pursuant to K.S.A. 75-7023, and
34 amendments thereto.

35 (v) "Kinship care placement" means the placement of a child in the
36 home of an adult with whom the child or the child's parent already has
37 close emotional ties.

38 (w) "Kinship caregiver" means an adult who the secretary has
39 selected for placement for a child in need of care with whom the child or
40 the child's parent already has close emotional ties.

41 (x) "Law enforcement officer" means any person who by virtue of
42 office or public employment is vested by law with a duty to maintain
43 public order or to make arrests for crimes, whether that duty extends to all

1 crimes or is limited to specific crimes.

2 (y) "Multidisciplinary team" means a group of persons, appointed by
3 the court under K.S.A. 38-2228, and amendments thereto, that has
4 knowledge of the circumstances of a child in need of care.

5 (z) "Neglect" means acts or omissions by a parent, guardian or person
6 responsible for the care of a child resulting in harm to a child, or
7 presenting a likelihood of harm, and the acts or omissions are not due
8 solely to the lack of financial means of the child's parents or other
9 custodian. Neglect may include, but ~~shall is not be~~ limited to:

10 (1) Failure to provide the child with food, clothing or shelter
11 necessary to sustain the life or health of the child;

12 (2) failure to provide adequate supervision of a child or to remove a
13 child from a situation that requires judgment or actions beyond the child's
14 level of maturity, physical condition or mental abilities and that results in
15 bodily injury or a likelihood of harm to the child; or

16 (3) failure to use resources available to treat a diagnosed medical
17 condition if such treatment will make a child substantially more
18 comfortable, reduce pain and suffering, or correct or substantially diminish
19 a crippling condition from worsening. A parent legitimately practicing
20 religious beliefs who does not provide specified medical treatment for a
21 child because of religious beliefs shall, not for that reason, be considered a
22 negligent parent; however, this exception shall not preclude a court from
23 entering an order pursuant to K.S.A. 38-2217(a)(2), and amendments
24 thereto.

25 (aa) "Parent" when used in relation to a child or children, includes a
26 guardian and every person who is by law liable to maintain, care for or
27 support the child.

28 (bb) "Party" means the state, the petitioner, the child, any parent of
29 the child and an Indian child's tribe intervening pursuant to the Indian
30 child welfare act.

31 (cc) "Permanency goal" means the outcome of the permanency
32 planning process, which may be reintegration, adoption, appointment of a
33 permanent custodian or another planned permanent living arrangement.

34 (dd) "Permanent custodian" means a judicially approved permanent
35 guardian of a child pursuant to K.S.A. 38-2272, and amendments thereto.

36 (ee) "Physical, mental or emotional abuse" means the infliction of
37 physical, mental or emotional harm or the causing of a deterioration of a
38 child and may include, but ~~shall is not be~~ limited to, maltreatment or
39 exploiting a child to the extent that the child's health or emotional well-
40 being is endangered.

41 (ff) "Placement" means the designation by the individual or agency
42 having custody of where and with whom the child will live.

43 (gg) "Qualified residential treatment program" means a program

1 designated by the secretary for children and families as a qualified
2 residential treatment program pursuant to federal law.

3 (hh) "Reasonable and prudent parenting standard" means the standard
4 characterized by careful and sensible parental decisions that maintain the
5 health, safety and best interests of a child while at the same time
6 encouraging the emotional and developmental growth of the child, that a
7 caregiver shall use when determining whether to allow a child in foster
8 care under the responsibility of the state to participate in extracurricular,
9 enrichment, cultural and social activities.

10 (ii) "Relative" means a person related by blood, marriage or adoption.

11 (jj) "Runaway" means a child who is willfully and voluntarily absent
12 from the child's home without the consent of the child's parent or other
13 custodian.

14 (kk) "Secretary" means the secretary for children and families or the
15 secretary's designee.

16 (ll) "Secure facility" means a facility, other than a staff secure facility
17 or juvenile detention facility, that is operated or structured so as to ensure
18 that all entrances and exits from the facility are under the exclusive control
19 of the staff of the facility, whether or not the person being detained has
20 freedom of movement within the perimeters of the facility, or that relies on
21 locked rooms and buildings, fences or physical restraint in order to control
22 behavior of its residents. No secure facility shall be in a city or county jail.

23 (mm) "Sexual abuse" means any contact or interaction with a child in
24 which the child is being used for the sexual stimulation of the perpetrator,
25 the child or another person. Sexual abuse ~~shall include~~ *includes*, but is not
26 limited to, allowing, permitting or encouraging a child to:

27 (1) Be photographed, filmed or depicted in pornographic material; or

28 (2) be subjected to aggravated human trafficking, as defined in
29 K.S.A. 21-5426(b), and amendments thereto, if committed in whole or in
30 part for the purpose of the sexual gratification of the offender or another,
31 or be subjected to an act that would constitute conduct proscribed by
32 article 55 of chapter 21 of the Kansas Statutes Annotated or K.S.A. 21-
33 6419 or 21-6422, and amendments thereto.

34 (nn) "Shelter facility" means any public or private facility or home,
35 other than a juvenile detention facility or staff secure facility, that may be
36 used in accordance with this code for the purpose of providing either
37 temporary placement for children in need of care prior to the issuance of a
38 dispositional order or longer term care under a dispositional order.

39 (oo) "Staff secure facility" means a facility described in K.S.A. 65-
40 535, and amendments thereto: (1) That does not include construction
41 features designed to physically restrict the movements and activities of
42 juvenile residents who are placed therein; (2) that may establish reasonable
43 rules restricting entrance to and egress from the facility; and (3) in which

1 the movements and activities of individual juvenile residents may, for
2 treatment purposes, be restricted or subject to control through the use of
3 intensive staff supervision. No staff secure facility shall be in a city or
4 county jail.

5 (pp) "Transition plan" means, when used in relation to a youth in the
6 custody of the secretary, an individualized strategy for the provision of
7 medical, mental health, education, employment and housing supports as
8 needed for the adult and, if applicable, for any minor child of the adult, to
9 live independently and specifically provides for the supports and any
10 services for which an adult with a disability is eligible including, but not
11 limited to, funding for home and community based services waivers.

12 (qq) "Youth residential facility" means any home, foster home or
13 structure that provides 24-hour-a-day care for children and that is licensed
14 pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and
15 amendments thereto.

16 (rr) *"Behavioral health crisis" means behavioral and conduct issues*
17 *that impact the safety or health of a child, members of the child's*
18 *household or family or members of the community, including, but not*
19 *limited to, non-life threatening mental health and substance abuse*
20 *concerns.*

21 Sec. 4. K.S.A. 38-2276 is hereby amended to read as follows: 38-
22 2276. (a) *Except as provided in subsection (b), no child under 18 years of*
23 *age shall be detained or placed in any jail pursuant to the code.*

24 (b) *The provisions of subsection (a) shall not apply to a child residing*
25 *in a correctional center nursery with the child's mother pursuant to*
26 *section 1, and amendments thereto.*

27 Sec. 5. K.S.A. 23-3203 and 38-2276 and K.S.A. 2023 Supp. 38-2202
28 and 38-2202a are hereby repealed.

29 Sec. 6. This act shall take effect and be in force from and after its
30 publication in the statute book.