

SENATE BILL No. 489

By Committee on Public Health and Welfare

2-8

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 nursery center 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.

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

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

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

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

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

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

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

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

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

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

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

32 (2) the offender fails to comply with the agreement signed pursuant to
33 subsection (d);

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

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

40 (5) the offender is released from the Topeka correctional facility. If
41 the offender violates a condition of release resulting in such offender's
42 reincarceration, the offender's child shall not be eligible to reenter the
43 program.

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

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

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

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

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

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

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

32 or

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

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

36 (B) a felony violation of an offense described in article 55 of chapter
37 21 of the Kansas Statutes Annotated, and amendments thereto, in which
38 the victim of the crime was a minor;

39 (C) a felony violation of article 56 of chapter 21 of the Kansas
40 Statutes Annotated, and amendments thereto, in which the victim of the
41 crime was a minor, excluding criminal nonsupport, K.S.A. 21-5606, and
42 amendments thereto;

43 (D) commercial exploitation of a child, as described in K.S.A. 21-

1 6422, and amendments thereto; or

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

4 (j) As used in this section:

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

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

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

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

12 Sec. 2. K.S.A. 23-3203 is hereby amended to read as follows: 23-
13 3203. (a) In determining the issue of legal custody, residency and
14 parenting time of a child, the court shall consider all relevant factors,
15 including, but not limited to:

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

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

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

21 (4) the age of the child;

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

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

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

27 (8) the willingness and ability of each parent to respect and appreciate
28 the bond between the child and the other parent and to allow for a
29 continuing relationship between the child and the other parent;

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

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

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

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

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

38 (12) the work schedule of the parties;

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

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

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

1 law;

2 (16) whether a parent has been convicted of abuse of a child, K.S.A.
3 21-3609, prior to its repeal, or K.S.A. 21-5602, and amendments thereto;

4 (17) whether a parent is residing with an individual who is subject to
5 registration requirements of the Kansas offender registration act, K.S.A.
6 22-4901 et seq., and amendments thereto, or any similar act in any other
7 state, or under military or federal law; ~~and~~

8 (18) whether a parent is residing with an individual who has been
9 convicted of abuse of a child, K.S.A. 21-3609, prior to its repeal, or K.S.A.
10 21-5602, and amendments thereto; *and*

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

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

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

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

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

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

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

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

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

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

- 1 (4) has been placed for care or adoption in violation of law;
- 2 (5) has been abandoned or does not have a known living parent;
- 3 (6) is not attending school as required by K.S.A. 72-3421 or 72-3120,
- 4 and amendments thereto;
- 5 (7) except in the case of a violation of K.S.A. 41-727, 74-8810(j), 79-
- 6 3321(m) or (n), or K.S.A. 21-6301(a)(14), and amendments thereto, or,
- 7 except as provided in paragraph (12), does an act which, when committed
- 8 by a person under 18 years of age, is prohibited by state law, city
- 9 ordinance or county resolution, but which is not prohibited when done by
- 10 an adult;
- 11 (8) while less than 10 years of age, commits any act that if done by an
- 12 adult would constitute the commission of a felony or misdemeanor as
- 13 defined by K.S.A. 21-5102, and amendments thereto;
- 14 (9) is willfully and voluntarily absent from the child's home without
- 15 the consent of the child's parent or other custodian;
- 16 (10) is willfully and voluntarily absent at least a second time from a
- 17 court ordered or designated placement, or a placement pursuant to court
- 18 order, if the absence is without the consent of the person with whom the
- 19 child is placed or, if the child is placed in a facility, without the consent of
- 20 the person in charge of such facility or such person's designee;
- 21 (11) has been residing in the same residence with a sibling or another
- 22 person under 18 years of age, who has been physically, mentally or
- 23 emotionally abused or neglected, or sexually abused;
- 24 (12) while less than 10 years of age commits the offense defined in
- 25 K.S.A. 21-6301(a)(14), and amendments thereto;
- 26 (13) has had a permanent custodian appointed and the permanent
- 27 custodian is no longer able or willing to serve; or
- 28 (14) has been subjected to an act that would constitute human
- 29 trafficking or aggravated human trafficking, as defined by K.S.A. 21-5426,
- 30 and amendments thereto, or commercial sexual exploitation of a child, as
- 31 defined by K.S.A. 21-6422, and amendments thereto, or has committed an
- 32 act which, if committed by an adult, would constitute selling sexual
- 33 relations, as defined by K.S.A. 21-6419, and amendments thereto.
- 34 (e) "Child abuse medical resource center" means a medical institution
- 35 affiliated with an accredited children's hospital or a recognized institution
- 36 of higher education that has an accredited medical school program with
- 37 board-certified child abuse pediatricians who provide training, support,
- 38 mentoring and peer review to CARE providers on CARE exams.
- 39 (f) "Child abuse review and evaluation exam" or "CARE exam"
- 40 means a forensic medical evaluation of a child alleged to be a victim of
- 41 abuse or neglect conducted by a CARE provider.
- 42 (g) "Child abuse review and evaluation network" or "CARE network"
- 43 means a network of CARE providers, child abuse medical resource centers

1 and any medical provider associated with a child advocacy center that has
2 the ability to conduct a CARE exam that collaborate to improve services
3 provided to a child alleged to be a victim of abuse or neglect.

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

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

11 (2) continuous trainings on child maltreatment from the CARE
12 network; and

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

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

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

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

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

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

40 (n) "Extended out of home placement" means a child has been in the
41 custody of the secretary and placed with neither parent for 15 of the most
42 recent 22 months beginning 60 days after the date at which a child in the
43 custody of the secretary was removed from the child's home.

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

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

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

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

13 (s) "Jail" means:

14 (1) An adult jail or lockup; or

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

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

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

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

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

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

42 (y) "Multidisciplinary team" means a group of persons, appointed by
43 the court under K.S.A. 38-2228, and amendments thereto, that has

1 knowledge of the circumstances of a child in need of care.

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

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

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

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

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

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

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

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

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

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

40 (gg) "Qualified residential treatment program" means a program
41 designated by the secretary for children and families as a qualified
42 residential treatment program pursuant to federal law.

43 (hh) "Reasonable and prudent parenting standard" means the standard

1 characterized by careful and sensible parental decisions that maintain the
2 health, safety and best interests of a child while at the same time
3 encouraging the emotional and developmental growth of the child, that a
4 caregiver shall use when determining whether to allow a child in foster
5 care under the responsibility of the state to participate in extracurricular,
6 enrichment, cultural and social activities.

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

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

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

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

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

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

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

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

36 (oo) "Staff secure facility" means a facility described in K.S.A. 65-
37 535, and amendments thereto: (1) That does not include construction
38 features designed to physically restrict the movements and activities of
39 juvenile residents who are placed therein; (2) that may establish reasonable
40 rules restricting entrance to and egress from the facility; and (3) in which
41 the movements and activities of individual juvenile residents may, for
42 treatment purposes, be restricted or subject to control through the use of
43 intensive staff supervision. No staff secure facility shall be in a city or

1 county jail.

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

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

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

18 Sec. 4. K.S.A. 38-2276 is hereby amended to read as follows: 38-
19 2276. (a) *Except as provided in subsection (b)*, no child under 18 years of
20 age shall be detained or placed in any jail pursuant to the code.

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

24 Sec. 5. K.S.A. 23-3203, and 38-2276 and K.S.A. 2023 Supp. 38-2202
25 and 38-2202a are hereby repealed.

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