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MEMORANDUM

To: Chairman Waymaster and members of the House Appropriations Committee

From: Jill A. Wolters, First Assistant Revisor

Date: March 12, 2024

Subject: **HB2811**, directing the department of corrections to establish a correctional center nursery for incarcerated expectant mothers and their child to allow certain expectant mothers to care and bond with their child for up to 36 months while incarcerated.

HB 2811 provides that, subject to appropriations, the department of corrections shall establish a women's correctional center nursery on the grounds of the Topeka correctional facility not later than January 1, 2026. The correctional center nursery shall house the nursery program for incarcerated moms, where an eligible offender and a child born to such offender while in the custody of the secretary may reside together in the nursery for up to 36 months following the birth of such a child. An offender's participation in the program shall not affect, modify or interfere with such offender's custodial rights to the child or establish legal custody with the department or the secretary. An eligible offender may participate in the program if such offender:

- (1) Is expected to give birth or gives birth to the child after sentencing or while in the custody of the secretary;
- (2) has 36 months or less remaining on such offender's sentence;
- (3) meets any other criteria established by the secretary; and
- (4) has a child that meets any other criteria established by the secretary.

Placement of an offender into the program shall be at the discretion of the Topeka correctional facility nursery team and the secretary. Placement of an offender into the program shall not be ordered by a sentencing court.

Prior to placing an offender into the program, the secretary shall:

- (A) Determine that the offender meets all requirements under this section and any rules and regulations or policies adopted by the secretary; and
- (B) determine that the program is an appropriate placement for the offender and that such placement is in the best interests of the child.

In order to participate in the program, each eligible offender shall agree in writing to:

- (1) Comply with all department policies, procedures and other requirements related to the program and rules that apply to the Topeka correctional facility generally;
- (2) if eligible, have the child participate in the state children's health insurance program;
- (3) comply with any court decisions regarding legal custody, residency and parenting time for the child;
- (4) specify the individual with whom the child shall be placed if the offender's participation in the program is revoked for any reason other than release from confinement; and
- (5) sign any release of information waivers required to allow information regarding current or prior child in need of care cases involving the offender to be shared with the department of corrections.

The secretary may revoke any offender's participation in the program if:

- (1) The offender is not complying with the program's requirements and polices;

- (2) the offender fails to comply with the signed agreement;
- (3) the offender's child becomes seriously ill, cannot receive the necessary medical care or otherwise is unable to safely participate in the program;
- (4) a court of competent jurisdiction enters a temporary or permanent order awarding residency of the child to an agency or a person other than the offender; or
- (5) the offender is released from the Topeka correctional facility.

If the offender violates a condition of release resulting in such offender's reincarceration, the offender's child shall not be eligible to reenter the program.

The secretary or the secretary's designee shall establish policies for the operation of the program.

The bill establishes in the state treasury the nursery program for incarcerated moms fund. The fund shall be administered by the secretary of corrections. All expenditures from the nursery program for incarcerated moms fund shall be for the purpose of operating and maintaining the program.

Any support payment paid for a child residing in the program shall be deposited into the offender's inmate account and made available to the offender for the purposes as authorized by the secretary.

The program and the department shall not be subject to any licensing, oversight or regulation by the department of health and environment or the department for children and families unless the department voluntarily agrees to such licensing, oversight or regulation.

The bill does not apply to an offender who:

- (1) Is sentenced to imprisonment for an off-grid offense;
- (2) is under sentence of death or life without the possibility of parole; or
- (3) has a prior or current conviction for:
 - (A) An inherently dangerous;
 - (B) a felony violation of a sex offense in which the victim of the crime was a minor;
 - (C) a felony violation of a crime affecting family relationships and children, in which the victim of the crime was a minor, excluding criminal nonsupport;
 - (D) commercial exploitation of a child; or
 - (E) human trafficking.

Under current law, the court shall consider a list of factors when determining legal custody, residency and parenting time of a child. Section 2 of the bill amends the list and adds whether a parent is participating in the nursery program for incarcerated moms.

Section 3 of the bill amends K.S.A. 38-2202, concerning the definition of a child in need of care. The amendment states that a child who is residing in a correctional center nursery with the child's mother as part of the nursery program for incarcerated moms... shall not be found without the care or control necessary for the child's physical, mental, or emotional health due solely to the mother's participation in the program.

Section 4 of the bill amends K.S.A. 38-2276 by adding that the prohibition placed on detaining a child in jail does not apply to a child residing in a correctional center nursery with the child's mother.

The bill becomes effective upon the publication in the statute book, July 1, 2024.