

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2024**

As Agreed to April 5, 2023

Brief*

HB 2024 would amend the Revised Kansas Code for Care of Children (Code) relating to the Newborn Infant Protection Act (Act) to provide an alternate means to legally surrender an infant pursuant to the Act; to create a program within the Kansas Department of Health and Environment (KDHE) for the training of and payment for Child Abuse Review and Evaluation (CARE) providers who conduct CARE exams; and would enact the Representative Gail Finney Memorial Foster Care Bill of Rights (Bill of Rights) to enumerate and codify in statute the rights of children in need of care in the child welfare system (foster youth) and the rights of foster parents and kinship caregivers.

The bill would be in effect upon publication in the *Kansas Register*.

Newborn Infant Protection Act Amendments—Newborn Safety Devices

Impact of Newborn Infant Protection Act on Indian Child Welfare Act of 1978 (ICWA)

The bill would state the Act would not abridge the rights or obligations created by ICWA, and would add the Act to the list of statutes that may not apply when an Indian child is involved in such proceedings, thereby invoking ICWA, in the statute governing jurisdiction of child in need of care proceedings.

Surrender to Newborn Safety Device

The bill would authorize a parent or other person having lawful custody of an infant who is not more than 60 days old and who has not suffered great bodily harm as determined by a person licensed to practice medicine or surgery, an advanced practice registered nurse, or licensed physician assistant to surrender physical custody to a newborn safety device, defined by the bill, installed at a police station, sheriff's office, law enforcement center, fire station, city or county health department, hospital, ambulatory surgical center, or recuperation center (authorized facility). [Note: Current law provides that an infant may only be physically surrendered to an employee of an authorized facility.]

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The bill would make the relinquishing parent who follows the above procedure immune from civil or criminal liability for surrendering an infant meeting the criteria stated above.

The bill would require that after the infant has been surrendered to a newborn safety device, an employee of the authorized facility where the device is located would be required to take physical custody of the infant without a court order. The bill would also specify that after an employee of the authorized facility notifies a law enforcement agency of a surrender pursuant to the bill, such agency would be required to report the surrender to the Secretary for Children and Families (Secretary), in addition to the requirement for the agency to deliver the infant to a facility or person designated by the Secretary in continuing law.

Definitions

The bill would define "newborn safety device" as a device or container designed to safely accept delivery of an infant and that is:

- Voluntarily installed in an authorized facility that is staffed 24 hours a day by an employee of such facility, or has a dual alarm system that will dispatch first responders when all employees of the facility are unavailable;
- Located on a structural wall in an area that is conspicuous and visible to employees of the authorized facility;
- Equipped with an automatic lock that would restrict access to the device from the outside of the authorized facility when an infant is placed inside the device;
- Equipped with a temperature control; and
- Equipped with an alarm system that complies with requirements established elsewhere in the bill and that is triggered by an infant being placed inside the device.

The bill would also amend the definitions of "non-relinquishing parent" and "relinquishing parent" to reflect the new provisions added by the bill.

Alarm System Requirements

The bill would provide that an authorized facility that installs a newborn safety device must also install a dual alarm system connected to the physical location of the device, which would require weekly testing and twice-daily visual checks to ensure the system is in working order.

Genetic Testing of Non-relinquishing Parent

The bill would amend a provision in the Act governing the procedure for a non-relinquishing parent to establish parental rights after the surrender of an infant to specify when a person seeks to establish parental rights, the court would require the person to submit, at such person's own expense, to a genetic test to verify that person is the biological parent of the child.

Determining Tribal Status of Infant or Parent

The bill would require an employee of an authorized facility to ask the person surrendering an infant pursuant to the Act if the infant or either biological parent is a member of, or eligible for membership in, a federally recognized Indian tribe, and the identity of the tribe. For authorized facilities utilizing a newborn safety device, the facility would be required to provide a means for surrendering persons to provide information pertaining to tribal status. The employee taking custody of the infant after inquiring about tribal status would be required to send the information to the Secretary. The Secretary would then be required to provide such information to the court with jurisdiction over the infant.

Information to be Made Available to Relinquishing Parent

The bill would require an authorized facility receiving an infant pursuant to the Act to make available, if possible, the following information to the relinquishing parent:

- A notice stating that 60 days after the surrender of the infant to the facility, the Secretary shall commence proceedings for termination of parental rights and placement of the infant for adoption;
- A list of providers that provide counseling services on grief, pregnancy, and adoption or other placement or care regarding an infant;
- The language of this section, the rights of birth parents, including a questionnaire that a birth parent may use to answer questions about medical or background information of the child, including any information pertaining to tribal status; and
- A brochure on postpartum health.

The bill would state that the relinquishing parent would not be required to accept the information provided by an authorized facility. The bill would state the form and manner of the information under this section would be prescribed by the Secretary, who would be required to maintain the questionnaire described above on a public website.

Disclosure of Information

The bill would require an employee taking custody of an infant to reveal all personal information received from the relinquishing parent when such parent indicates the infant or parent is a tribal member (or eligible for tribal membership) or there is a reasonable suspicion that the infant has suffered great bodily harm.

Additionally, the bill would specify the individuals who are prohibited from publicly disclosing any information concerning the relinquishment of an infant and individual involved except as otherwise required by law. The bill would state the prohibition would apply to medical professionals, employees, and other persons engaged in the administration or operation of:

- An authorized facility;
- A newborn safety device;

- Agencies providing services for children in need of care; or
- Any location where an infant has been surrendered under the Act.

Amendment to Child Abandonment Statute

The bill would amend the criminal child abandonment statute to reflect language amended in the Act.

Technical Amendments

The bill also would make technical changes to ensure clarity and consistency in statutory phrasing.

Child Abuse Review and Evaluation (CARE) Program

Definitions

The bill would add the following definitions to the Code:

- “Child abuse medical resource center” would mean a medical institution affiliated with an accredited children’s hospital or a recognized institution of higher education that has an accredited medical school program with board-certified child abuse pediatricians who provide training, support, mentoring, and peer review to CARE providers on CARE exams;
- “Child abuse review and evaluation exam” or “CARE exam” would mean a forensic medical evaluation of a child alleged to be a victim of abuse or neglect conducted by a CARE provider;
- “Child abuse review and evaluation network” or “CARE network” would mean a network of CARE providers, child abuse medical resource centers, and any medical provider associated with a child advocacy center that has the ability to conduct a CARE exam, that collaborate to improve services provided to a child alleged to be a victim of abuse or neglect;
- “Child abuse review and evaluation provider” or “CARE provider” would mean a person licensed to practice medicine and surgery, advanced practice registered nurse, or licensed physician assistant who performs CARE exams of and provides medical diagnosis and treatment to a child alleged to be a victim of abuse or neglect and who receives:
 - Kansas-based initial intensive training regarding child maltreatment from the CARE network;
 - Continuous trainings on child maltreatment from the CARE network; and
 - Peer review and new provider mentoring regarding medical evaluations from a child abuse medical resource center; and

- “Child abuse review and evaluation referral” or “CARE referral” would mean a brief written review of allegations of physical abuse, emotional abuse, medical neglect, or physical neglect submitted by the Secretary for Children and Families or law enforcement agency to a child abuse medical resource center for a recommendation of such child’s need for medical care that may include a CARE exam.

CARE Referrals

Continuing law in the Code requires, as part of any investigation of reports of child abuse or neglect, the Secretary or the investigating law enforcement agency to visually observe the child who is the alleged victim of abuse or neglect.

The bill would amend the Code to require the Secretary for Children and Families or a law enforcement agency, upon investigation by law enforcement or assignment by the Secretary of any investigation of physical abuse or physical neglect, pursuant to this provision, that concerns a child five years of age or younger, to make a CARE referral for such child. The bill would allow, in any other investigation of physical abuse, emotional abuse, medical neglect, or physical neglect conducted pursuant to the section, the Secretary, the law enforcement agency, or the agency’s designee to make a CARE referral for such child.

CARE Exams and Review

The bill would require a CARE provider, when a CARE referral by a child abuse medical resource center recommends a CARE exam be conducted by such CARE provider during an investigation of child abuse or neglect, to report a determination in a completed review that a child has been subject to physical abuse, emotional abuse, medical neglect, or physical neglect to the Secretary for Children and Families, the local law enforcement agency, or the agency’s designee, if such a determination is made. The bill would require the Secretary, upon receipt of such review, to consider and include the review in making recommendations regarding the care, safety, and placement of the child and maintain the review in the case record.

The bill would provide such review to be confidential and not be disclosed, with certain exceptions outlined in the bill and in continuing law.

The bill would specify that in order to provide forensic evaluation services to a child alleged to be a victim of physical abuse, emotional abuse, medical neglect, or physical neglect in investigations that include a CARE exam:

- Child abuse medical resource centers be allowed to collaborate directly or through technology with CARE providers to provide forensic medical evaluations, medical training, support, mentoring, and peer review to enhance the skill and role of child abuse medical resource centers and the CARE providers in a multidisciplinary context;
- CARE providers and child abuse medical resource centers be required to provide and receive specialized training for medical evaluations conducted in a hospital or child advocacy center, or by a private health care professional, without the need for an agreement between such center and provider; and

- The CARE network be required to develop recommendations concerning the medical-based screening process and forensic evidence collection for a child and provide such recommendations to CARE providers, child advocacy centers, hospitals, and licensed practitioners.

Responsibilities of the Secretary of Health and Environment

The bill would require the Secretary of Health and Environment to implement and administer training for CARE providers to establish and maintain compliance with the requirements of the Code and assist in the implementation of the bill's provisions.

The bill would require the Secretary of Health and Environment to pay for and manage a network referral system and to adopt rules and regulations as necessary, subject to available appropriations. A CARE provider would be required to submit all charges for payment of reviews and CARE exams to the Secretary within 90 days of performing a CARE review or exam. The Secretary would be required to pay all charges directly to a CARE provider within 30 days after being submitted. The bill would specify such payment amount to be only for the exam at a rate not to exceed \$750, excluding treatment that may be required due to the diagnosis, or any facility fees, supplies, or laboratory or radiology testing.

The bill also would ban a provider found to have submitted fraudulent charges from the CARE network, require the Secretary of Health and Environment to report such incident to the provider's licensing board, and require such licensing board to investigate the Secretary's report to determine whether unprofessional conduct had occurred.

The bill would also require the Secretary of Health and Environment to prepare and present, on or before January 31, 2024, a report to House Committee on Child Welfare and Foster Care and the Senate Committee on Public Health and Welfare, or their successor committees, of the activities and operations under the CARE Program. The bill would require the report to include specified items.

CARE Fund

The bill would establish in the State Treasury the Child Abuse Review and Evaluation Fund (Fund), to be administered by the Secretary of Health and Environment. The bill would require all expenditures from the Fund to be for payments of CARE exams, training of CARE providers, and the implementation and administration of the CARE program, as described above. The bill would require all expenditures from the Fund to be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Secretary or the Secretary's designee. The bill would require all moneys received for CARE exams and CARE provider training to be remitted to the State Treasurer and require the State Treasurer to deposit the entire amount in the State Treasury to the credit of the Fund.

Representative Gail Finney Memorial Foster Care Bill of Rights

Jurisdiction, Indian Child Welfare Act

The bill would amend law governing jurisdiction of proceedings under the Code to specify the provisions contained in the Bill of Rights could not apply when an Indian child is involved in a child in need of care (CINC) proceeding, and would state the ICWA applies instead.

Definition of “Kinship Caregiver”

The bill would add a definition of “kinship caregiver” to the Code: an adult that the Secretary for Children and Families has selected for placement for a CINC with whom the child or child’s parent already has close emotional ties.

Rights of Foster Youth

The bill would provide that, consistent with the policy of the State expressed in the Code to provide proper care and protection of foster youth, such youth would have certain rights, as described by the bill, unless otherwise ordered by the court.

Rights of Foster Parents and Kinship Caregivers

The bill would provide that, consistent with the policy of the State expressed in the Code to ensure active participation of foster parents and kinship caregivers as an integral, indispensable, and vital role in the State’s efforts to care for foster youth, such foster parents and kinship caregivers shall have certain rights, as described by the bill, unless otherwise ordered by the court.

Notification of Rights; Prohibition on Private Right of Action

The bill would require the Secretary to provide written and oral notification of the Bill of Rights as well as information for filing complaints to foster youth, foster parents, and kinship caregivers, and make the Bill of Rights available on the Secretary’s website.

The bill would also require case management providers to make available physical and digital copies of the Bill of Rights.

The bill would specify that the Bill of Rights would not create a private right of action independent of the Code, but may be enforced through equitable relief in a corresponding CINC case.

Conference Committee Action

The Conference Committee agreed to the contents of HB 2024, as passed by the Senate, regarding the Newborn Infant Protection Act (Act), with the provisions effective upon publication in the *Kansas Register*.

The Conference Committee agreed to add the contents of HB 2034, as amended by the Senate Committee on Public Health and Welfare, regarding the CARE Program. The Conference Committee further agreed to include a reporting requirement for the Secretary of Health and Environment on the activities and operations of the CARE Program.

The Conference Committee also agreed to add the contents of HB 2194, as amended by the House Committee on Child Welfare and Foster Care, regarding the Representative Gail Finney Memorial Foster Care Bill of Rights.

Background

The Conference Committee agreed to the contents of HB 2024 and agreed to add the contents of HB 2034 and HB 2194.

HB 2024 (Newborn Infant Protection Act)

HB 2024 was introduced by the Joint Committee on Child Welfare System Oversight.

House Committee on Child Welfare and Foster Care

In the House Committee hearing on January 23, 2023, a representative of Safe Haven Baby Boxes and the City of McPherson Fire Chief testified as **proponents** of the bill, explaining the need for devices such as the one contemplated by the bill, and successful uses of such devices in other jurisdictions. Written-only proponent testimony was provided by a representative of the Department for Children and Families (DCF).

A representative of Brien Law, LLC testified as neutral on the bill, expressing concern over the bill's potential impact on the ability of a child's tribe to be involved in custody proceedings pursuant to ICWA and suggested amendments regarding notice to ensure compliance with ICWA.

Written-only opponent testimony was provided by representatives of the Adoptee Rights Law Center, PLLC, and Bastard Nation.

The House Committee adopted amendments to:

- Change terminology referencing “infant refuge bassinet” to “newborn safety device” throughout the bill;
- Modify the definition of “newborn safety device” to:
 - Clarify installation of such devices would be voluntary;

- Add a requirement that such devices be located on a structural wall in an authorized facility; and
- Add an alternative to the 24-hour staffing requirement by requiring a dual alarm system capable of dispatching first responders should all employees be unavailable when an infant is placed in a device;
- Require a non-relinquishing parent to submit to genetic testing to verify biological parentage of a child surrendered pursuant to the Act when seeking to establish parental rights in a proceeding regarding termination of parental rights;
- Add language stating the Act shall not abridge the rights and obligations created by ICWA; and
- Require an employee taking custody of an infant surrendered pursuant to the Act to ask the relinquishing parent to provide certain information regarding tribal member status, require facilities maintaining a newborn safety device to provide the means for the relinquishing parent to provide such information, and require an employee of the facility taking custody of an infant to provide any such information received to the Secretary.

[*Note:* The Conference Committee retained these amendments.]

On February 8, 2023, the House Committee of the Whole adopted a motion to send the bill back to committee.

On February 15, 2023, the House Committee further amended the bill to:

- Modify the criteria required of relinquishing persons to legally surrender an infant pursuant to the Act and to be immune from civil or criminal penalty;
- Add a requirement that a determination by a medical professional be made to ensure great bodily harm to an infant does not exist;
- Add a requirement that law enforcement report a surrender under the bill to the Secretary;
- Reconcile language in the criminal child abandonment statute;
- Add a requirement that authorized facilities provide certain information to relinquishing parents; and
- Add a prohibition against publicly disclosing information related to an infant surrender pursuant to the Act.

[*Note:* The Conference Committee retained these amendments.]

Senate Committee on Public Health and Welfare

In the Senate Committee hearing on March 13, 2023, a private citizen testified as a **proponent** of the bill, explaining the need for devices such as the one contemplated by the bill, and successful uses of such devices in other jurisdictions. Written-only proponent testimony was provided by representatives of DCF and the City of McPherson Fire Chief.

Written-only opponent testimony was provided by a representative of the Adoptee Rights Law Center, PLLC.

The Senate Committee amended the bill to change its effective date to publication in the *Kansas Register*. [Note: The Conference Committee retained this amendment.]

HB 2034 (Child Abuse Review and Evaluation (CARE) Program)

HB 2034 was introduced by the House Committee on Child Welfare and Foster Care at the request of a representative of the Kansas Chapter of the American Academy of Pediatrics (KAAP).

[Note: A similar bill, HB 2632, was introduced in 2022 by the House Committee on Children and Seniors at the request of KAAP. The bill passed the House, as amended by the House Committee of the Whole, but died in the Senate Committee on Public Health and Welfare. However, a proviso was included in Section 24 of 2022 HB 2510 (the appropriations bill for FY 2022, FY 2023, and FY 2024) that required expenditures to be made in FY 2023 from the CARE program account to train health care providers to recognize signs of child abuse and reimburse reviews and examinations conducted by such trained health care providers. The proviso also required KDHE, on or before January 9, 2023, to submit a report to the House Committee on Appropriations and the Senate Committee on Ways and Means on services provided and the location of services provided by the program.]

House Committee on Child Welfare and Foster Care

In the House Committee hearing, two representatives of KAAP provided **proponent** testimony, stating KDHE, DCF, and KAAP have been collaborating on the coordination of the CARE program since July 2022 to help assure that every potential case of child maltreatment is thoroughly investigated. The representatives stated the 2022 Legislature enacted a proviso to help provide a foundation for the CARE provider network, but enactment of this bill is needed to sustain the program and for the network to reach its full potential to serve Kansas children and save young lives. The KAAP representatives reported on the accomplishments of the CARE program since July 1, 2022, including the creation of the CARE network with an increased number of CARE providers throughout the state, a statewide referral system, and a payment system for CARE exams.

Written-only proponent testimony was provided by representatives of Children's Alliance of Kansas, DCF, and KDHE, and a representative of the Kansas Association of Chiefs of Police (KACP), Kansas Peace Officers Association (KPOA), and Kansas Sheriffs Association (KSA).

No other testimony was provided.

House Committee of the Whole

The House Committee of the Whole amended the bill to require the Secretary for Children and Families or a law enforcement agency to require a CARE referral for a child five years of age or younger upon any investigation by law enforcement of physical abuse or physical neglect. [Note: The Conference Committee retained this amendment.]

Senate Committee on Public Health and Welfare

In the Senate Committee hearing, two representatives of KAAP and a representative of KACP, KSA, and KPOA provided **proponent** testimony. The KAAP representatives stated DCF, KAAP, and KDHE have been collaborating on the coordination of the CARE program since July 2022 to help assure every potential case of child maltreatment is thoroughly investigated. The KAAP representatives noted a 2022 Legislature-enacted proviso helped provide a foundation for the CARE provider network, but enactment of this bill is needed to sustain the program and for the network to reach its full potential to serve Kansas children and save young lives. The KAAP representatives reported on the accomplishments of the CARE program since July 1, 2022. The representative of KACP, KPOA, and KSA stated support for the provisions addressing the source of funding to cover the costs of the examinations and the provisions requiring law enforcement to refer a child five years of age and under for a CARE evaluation and allowing law enforcement to refer a child over five years of age for such evaluation.

Written-only proponent testimony was provided by representatives of the Children's Alliance of Kansas, DCF, and KDHE.

No other testimony was provided.

The Senate Committee amended the bill to set the payment rate for the CARE exam in an amount not to exceed \$750. The Senate Committee also amended the bill to ban a provider found to have submitted fraudulent charges from the CARE network, require the Secretary of Health and Environment to report such incident to the provider's licensing board, and require such licensing board to investigate whether unprofessional conduct occurred. [Note: The Conference Committee retained these amendments.]

HB 2194 (Representative Gail Finney Memorial Foster Care Bill of Rights)

HB 2194 was introduced by the House Committee on Child Welfare and Foster Care at the request of Representative Concannon.

House Committee on Child Welfare and Foster Care

In the House Committee hearing on January 30, 2023, representatives of the Children's Alliance of Kansas and FosterAdopt Connect and Representative Carlin testified as **proponents** of the bill. Proponents stated the need for both foster youth and foster parents to have a clear statement of rights in order to feel empowered in navigating the child welfare system and expressed gratitude that the bill's provisions would be a memorial to the late Representative Finney, who worked to pass similar legislation in years prior.

Written-only proponent testimony was submitted by Representative Sawyer Clayton, a case manager, the Child Advocate, and representatives of the Center for the Rights of Abused Children, Department for Children and Families (DCF), Kansas Appleseed Center for Law and Justice, and TFI Family Services. [Note: Some of the testimony submitted references HB 2112, a bill containing similar provisions introduced by the Joint Committee on Corrections and Juvenile Justice Oversight on January 20, 2023.]

No other testimony was provided.

On February 22, 2023, the bill was withdrawn from the House Calendar and referred to the House Committee on Appropriations (Appropriations). On March 1, 2023, the bill was withdrawn from Appropriations and rereferred to the House Committee on Child Welfare and Foster Care.

On March 15, the House Committee amended the bill to:

- Specify that ICWA applies over the Bill of Rights when an Indian child is involved in a CINC case;
- Add a right provided to foster youth concerning retaliation;
- Clarify a right provided to foster parents and kinship caregivers concerning discrimination;
- Specify notification requirements of the Secretary and case management providers;
- Add a definition of “kinship caregiver” to the Code; and
- Add references to kinship caregivers throughout the bill

[Note: The Conference Committee retained these amendments.]

Fiscal Information

HB 2024 (Newborn Infant Protection Act)

According to the fiscal note prepared by the Division of the Budget on HB 2024, as introduced, the Office of Judicial Administration and DCF indicate enactment of the bill would have no fiscal effect on agency operations. The Kansas Association of Counties indicates counties could see some costs associated with installation of the devices, should a county choose to install them. The League of Kansas Municipalities indicates the bill would increase expenditures of cities that install newborn safety devices.

HB 2034 (CARE Program)

According to the fiscal note prepared by the Division of the Budget on HB 2034, as introduced, KDHE estimates current program expenditures of \$757,000 in FY 2023 and \$758,317 in FY 2024, all from the State General Fund (SGF), which is fully funded in the Governor’s recommended budget. KDHE notes enactment of the bill would not generate

additional expenditures in either fiscal year but would require the addition of 2.0 FTE positions. These positions are funded, but the agency's position count was not increased when the program was funded. KDHE estimates ongoing cost would be determined by the number of providers that need training and certification and also continuing education. Reimbursements would fluctuate based on the number of child abuse cases in which a CARE exam would be needed. KDHE notes the bill does not specify the revenue source for the CARE Fund, and the total revenue could not be estimated. Once an alternative revenue source is identified, the SGF appropriation could be reduced or eliminated based on program revenue and expenditure estimates.

Although provisions of the bill would be added to the Revised Kansas Code for the Care of Children, DCF reports there would be no fiscal effect on agency operations, and all costs for the program would be in KDHE.

Expenditures for the current program in operation at KDHE are reflected in the agency's budget in *The FY 2024 Governor's Budget Report*; however, the 2.0 FTE positions cited as needed by KDHE are not reflected in *The FY 2024 Governor's Budget Report*.

HB 2194 (Representative Gail Finney Memorial Foster Care Bill of Rights)

According to the fiscal note prepared by the Division of the Budget on HB 2194, as introduced, the Office of Judicial Administration and DCF indicate enactment of the bill would have no fiscal effect.

Newborn Infant Protection Act; Revised Kansas Code for Care of Children; child abuse; foster care bill of rights; child in need of care; Indian Child Welfare Act

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