

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 221

As Amended by Senate Committee on Public
Health and Welfare

Brief*

SB 221 would amend the Revised Kansas Code for Care of Children (Code) and the Newborn Infant Protection Act (Act) within the Code.

Revised Kansas Code for Care of Children

Definitions

The bill would amend definitions in the Code as follows:

- “Extended out of home placement” to specify removal from the home means from the child’s home;
- “Kinship care” changed to “Kinship care placement,” to mean the placement of a child in the home of an adult with whom the child or the child’s parent already has close emotional ties; and
- “Relative” to remove language indicating the term does not include the child’s other parent when referring to a relative of a child’s parent.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Interested Parties

The bill would clarify that, in addition to the parties, interested parties also would be entitled to notice of the time and place of the dispositional hearing.

Placement of a Child

The term “extended out of home placement” would be deleted and replaced in various sections in the Code with the specific time frame defined as when a child has been in the custody of the Secretary for Children and Families (Secretary) and placed with neither parent for 15 of the most recent 22 months beginning 60 days after the date on which the child was removed from the child’s home. In continuing law, this time frame is considered when a court is determining whether reintegration is a viable alternative and when a court is making a determination of unfitness.

Permanency Plan

If a child’s permanency plan is either adoption or appointment of a custodian, prior to a hearing to consider the termination of parental rights, either or both parents would be able to relinquish parental rights to the child to the Secretary, consent to an adoption, or consent to appointment of a permanent custodian with the approval of the guardian *ad litem* and the acceptance and approval of the Secretary. Current law requires consent from both the guardian *ad litem* and the Secretary for the parental decision.

Adoption

The bill would revise adoption provisions to clarify the process for a child in custody of the Secretary to proceed to adoption. If a child is in the custody of the Secretary and the parental rights of both parents have been terminated or one parent has had parental rights terminated or has relinquished parental rights of the child to the Secretary, adoption could be

allowed by persons approved by the Secretary and the court. The bill also would add language to specify that if a child was no longer in the custody of the Secretary, the court would be authorized to approve adoption of a child by persons who both parents consent to adopt or one parent consents to adopt, if the parental rights of the other parent have been terminated.

Newborn Infant Protection Act

The bill would add language to state the purpose of the Act is to protect newborn children from injury and death caused by abandonment by a parent and to provide safe and secure alternatives to such abandonment.

Definitions

The following definitions would be added and references throughout the Act would be updated:

- “Non-relinquishing parent” to mean the biological parent of an infant who does not leave the infant with any person specified in accordance with the Act; and
- “Relinquishing parent” to mean the biological parent or person having legal custody of an infant who leaves the infant with any person in accordance with the Act.

The bill would change the defined age of an infant for purposes of the Act from 45 days old or younger to 60 days old or younger and state that provisions of the Act would be applicable to persons purporting to be an infant’s parent.

Relinquishment of Infant at a Facility

An employee of a facility where an infant was left would be allowed to take physical custody of the child without a court order. References to “person or facility” throughout the Act would be amended to clarify when provisions would be applicable to employees of any facility specified in the Act, any facility specified, or both.

When an infant is delivered to a facility pursuant to the Act that is not a medical care facility, the employee taking physical custody of the infant would be required to make arrangements for the immediate transportation of the infant to the nearest medical care facility. The medical care facility, its employees, agents, and medical staff would be required to perform treatment in accordance with the prevailing standard of care as necessary to protect the physical health and safety of the infant.

Immunity

Provisions regarding a specified facility’s civil and criminal immunity would be amended to clarify the immunity applied to employees of such facilities. Administrative immunity would be added for facilities specified in the Act and employees of such facilities. Such immunity would not extend to any acts or omissions, including negligent or intentional acts or omissions, occurring after the acceptance of the infant.

Any medical care facility receiving the infant from another facility pursuant to the Act would be immune from administrative, civil, and criminal liability for treatment performed consistent with standards as specified in the Act.

The bill would also add provisions providing immunity from civil or criminal liability for a relinquishing parent if the following conditions were met:

- The relinquishing parent voluntarily delivered the infant safely to the physical custody of an employee at a facility specified in the Act;
- The infant was no more than 60 days old when delivered by the relinquishing parent to the physical custody of an employee at a facility specified in the Act; and
- The infant was not abused or neglected by the relinquishing parent prior to such delivery.

Parental Rights to Relinquished Infant

A relinquishing parent's voluntary delivery of an infant in accordance with the Act would constitute the parent's implied consent to the adoption of the infant and a voluntary relinquishment of such parent's parental rights.

The bill would establish notice by publication requirements for termination of parental rights proceedings initiated after relinquishment of an infant pursuant to the Act. The bill would require a non-relinquishing parent seeking to establish parental rights to notify the court where the proceeding is filed of the parent's intentions regarding the infant within 30 days after publication of such notice. The court would be required to initiate proceedings to establish parentage if no person notifies the court within 30 days. An examination of the putative father register would be required to determine previous attempts to preserve parental rights to the infant and, if such attempts were made, the State would be required to make reasonable efforts to provide notice of the abandonment of the infant to such putative father.

A non-relinquishing parent seeking to preserve parental rights to an infant relinquished pursuant to the Act would be required to take necessary steps to establish parentage within 30 days after the published notice and, if the non-relinquishing parent fails to do so, the bill would allow for the

termination of such parent's rights with respect to the child. If a non-relinquishing parent inquires at a facility specified in the Act regarding an infant whose custody was relinquished pursuant to the Act, such facility would be required to refer the non-relinquishing parent to the Kansas Department for Children and Families (DCF) and the court exercising jurisdiction over the child.

Technical Amendments

The bill would make technical amendments to remove outdated terms and language throughout the Code and other statutes pertaining to children and minors, clarify references to "children in need of care" means children in need of care as defined within the Code, update statutory references, and reconcile effective dates with current law.

Background

The bill was introduced by the Senate Committee on Public Health and Welfare during the 2017 Legislative Session. At the Senate Committee hearing during the 2018 Session, a Johnson County District Judge and a representative of DCF testified in support of the bill. The proponents stated the bill provided clarification and guidance within the Code. No other testimony was provided.

On February 7, 2018, the Senate Committee made technical amendments to remove outdated terms and language throughout the Code and other statutes pertaining to children and minors, clarify references to "children in need of care" means children in need of care as defined within the Code, and update statutory references. On February 8, 2018, the Senate Committee further considered the bill and adopted an additional technical amendment to reconcile effective dates with current law.

According to the fiscal note prepared by the Division of the Budget, enactment of the bill would have no fiscal effect on the Office of Judicial Administration or DCF.