

## **Newborn Safety Devices; CARE Program; Representative Gail Finney Memorial Foster Care Bill of Rights; HB 2024**

**HB 2024** amends 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; creates 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 enacts 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 takes 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 states the Act does not abridge the rights or obligations created by ICWA, and adds 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 authorizes 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.]

The bill makes 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 requires, after the infant has been surrendered to a newborn safety device, an employee of the authorized facility where the device is located to take physical custody of the infant without a court order. The bill also specifies that, after an employee of the authorized facility notifies a law enforcement agency of a surrender pursuant to the bill, such agency is 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 defines "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 restricts 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 also amends the definitions of "non-relinquishing parent" and "relinquishing parent" to reflect the new provisions added by the bill.

## *Alarm System Requirements*

The bill provides 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 requires weekly testing and twice-daily visual checks to ensure the system is in working order.

## *Genetic Testing of Non-relinquishing Parent*

The bill amends 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 must 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 requires 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. An authorized facility utilizing a newborn safety device is 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 is required to send the information to the Secretary. The Secretary is then required to provide such information to the court with jurisdiction over the infant.

### *Information to be Made Available to Relinquishing Parent*

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

### *Disclosure of Information*

The bill requires 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.

The bill specifies 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 states the prohibition applies 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 amends the criminal child abandonment statute to reflect language amended in the Act.

## ***Child Abuse Review and Evaluation (CARE) Program***

### *Definitions*

The bill adds the following definitions to the Code:

- “Child abuse medical resource center” means 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” means 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” means 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” means 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” means 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 amends 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 allows, 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 requires 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 requires 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 provides such review to be confidential and not be disclosed, with certain exceptions outlined in the bill and in continuing law.

The bill specifies 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 requires 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 requires 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 is 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 is required to pay all charges directly to a CARE provider within 30 days after charges are submitted. The bill specifies 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 bans a provider found to have submitted fraudulent charges from the CARE network, requires the Secretary of Health and Environment to report such incident to the provider's licensing board, and requires such licensing board to investigate the Secretary's report to determine whether unprofessional conduct had occurred.

The bill also requires 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 requires the report to include specified items.

#### *CARE Fund*

The bill establishes in the State Treasury the Child Abuse Review and Evaluation Fund (Fund), to be administered by the Secretary of Health and Environment. The bill requires 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 requires 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 requires all moneys received for CARE exams and CARE provider training to be remitted to the State Treasurer and requires 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 amends law governing jurisdiction of proceedings under the Code to specify the provisions contained in the Bill of Rights may not apply when an Indian child is involved in a child in need of care (CINC) proceeding, and states the ICWA applies instead.

##### *Definition of "Kinship Caregiver"*

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

### *Rights of Foster Parents and Kinship Caregivers*

The bill states 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 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 requires the Secretary for Children and Families 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 also requires case management providers to make available physical and digital copies of the Bill of Rights.

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