

SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2024

As Further Amended by House Committee on
Child Welfare and Foster Care

Brief*

HB 2024, as further amended, would amend the Newborn Infant Protection Act (Act) within the Revised Kansas Code for Care of Children to provide an alternate means to legally surrender an infant pursuant to the Act.

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

*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>

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 would make the relinquishing parent that 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 authorized facilities 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 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.

Background

The bill 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 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 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.

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.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, 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.

Newborn Infant Protection Act; newborn safety device; legal surrender of infant; Indian Child Welfare Act