HOUSE BILL 18

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

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AN ACT

RELATING TO CHILDREN; ALLOWING PERSONS TO LEAVE INFANTS IN SAFETY DEVICES FOR THE SURRENDER OF INFANTS, UNDER CERTAIN CONDITIONS, WITHOUT CRIMINAL PROSECUTION FOR ABANDONMENT OR ABUSE OF A CHILD; ALLOWING THE INSTALLATION AND OPERATION OF SAFETY DEVICES FOR THE SURRENDER OF INFANTS; PROVIDING REQUIREMENTS FOR INSTALLATION, OPERATION, MONITORING AND INSPECTION OF THOSE DEVICES; PROVIDING LIMITED IMMUNITY FOR OPERATORS OF THOSE DEVICES; REQUIRING THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT TO ISSUE RULES TO IMPLEMENT THE PROVISIONS OF THE SAFE HAVEN FOR INFANTS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 24-22-1.1 NMSA 1978 (being Laws 2005, Chapter 26, Section 2, as amended) is amended to read:

"24-22-1.1. PURPOSE.--The purpose of the Safe Haven for..."
Infants Act is to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant [ninety days of age or less, at] with the staff of a safe haven site [this] or inside a surrender safety device pursuant to the requirements of that act. The Safe Haven for Infants Act is not intended to abridge the rights or obligations created by the federal Indian Child Welfare Act of 1978 or the rights of parents."

SECTION 2. Section 24-22-2 NMSA 1978 (being Laws 2001, Chapter 31, Section 2 and Laws 2001, Chapter 132, Section 2, as amended) is amended to read:

"24-22-2. DEFINITIONS.--As used in the Safe Haven for Infants Act:

A. "department" means the children, youth and families department;

B. "fire station" means a fire station that is certified by the state fire marshal's office;

C. "hospital" means an acute care general hospital or health care clinic licensed by the state;

D. "Indian child" means an Indian child as defined by the federal Indian Child Welfare Act of 1978;

E. "infant" means a child no more than ninety days old, as determined within a reasonable degree of medical certainty;

F. "law enforcement agency" means a law
enforcement agency of the state or a political subdivision of the state;

[F-] G. "safe haven site" means a hospital, law enforcement agency or fire station that has staff on site at the time an infant is left at such a site; [and

G-] H. "staff" means an employee, contractor, agent or volunteer performing services as required and on behalf of the safe haven site; and

I. "surrender safety device" means an environmentally controlled incubator device that is:

(1) designed to keep an infant in a secure and safe environment with sufficient oxygen and at a comfortable temperature for a period of at least three hours;

(2) capable of being attached to a building in a manner that allows a person to access an infant within the device from inside the building;

(3) equipped with a transparent door through which an infant is visible and may be retrieved by a person from inside the building; and

(4) equipped with a safety alarm to immediately notify the operator of the device that an infant is secured within the device."

SECTION 3. Section 24-22-3 NMSA 1978 (being Laws 2001, Chapter 31, Section 3 and Laws 2001, Chapter 132, Section 3, as amended) is amended to read:

.219262.1
"24-22-3. LEAVING AN INFANT WITH THE STAFF OF A SAFE HAVEN SITE.--

A. A person may leave an infant with the staff of a safe haven site without being subject to criminal prosecution for abandonment or abuse [if the infant was born within ninety days of being left at the safe haven site, as determined within a reasonable degree of medical certainty, and] if the infant is left in a condition that would not constitute abandonment or abuse of a child pursuant to Section 30-6-1 NMSA 1978.

B. A safe haven site may ask the person leaving the infant pursuant to this section for the name of the infant's biological father or biological mother, the infant's name and the infant's medical history, but the person leaving the infant is not required to provide that information to the safe haven site.

[6. The safe haven site is deemed to have received consent for medical services provided to an infant left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act or in accordance with procedures developed between the children, youth and families department and the safe haven site.]

SECTION 4. A new section of the Safe Haven for Infants Act is enacted to read:

"[NEW MATERIAL] LEAVING AN INFANT IN A SURRENDER SAFETY DEVICE.--On or after July 1, 2021, a person may leave an infant
inside a surrender safety device without being subject to
criminal prosecution for abandonment or abuse of a child if:

A. the surrender safety device is:

(1) located on the property and attached as a
fixture to a safe haven site;

(2) conspicuously marked as a safe surrender
location pursuant to rules issued by the department; and

(3) not otherwise marked as unsafe for use;

B. the person properly secures the infant inside
the surrender safety device pursuant to instructions provided
at the site of the surrender safety device; and

C. the infant is left in a condition that would not
constitute abandonment or abuse of a child pursuant to Section
30-6-1 NMSA 1978."

SECTION 5. Section 24-22-4 NMSA 1978 (being Laws 2001,
Chapter 31, Section 4 and Laws 2001, Chapter 132, Section 4, as
amended) is amended to read:

"24-22-4. SAFE HAVEN SITE PROCEDURES.--

A. A safe haven site shall accept an infant who is
left at [the] a safe haven site in accordance with the
provisions of the Safe Haven for Infants Act.

B. In conjunction with the [children, youth and
families] department, a safe haven site shall develop
procedures for appropriate staff to accept and provide
necessary medical services to an infant left at the safe haven
site and to the person leaving the infant at the safe haven site, if necessary.

C. Upon receiving an infant who is left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act, the safe haven site may provide the person leaving the infant, to the extent practicable, with:

(1) information about adoption services, including the availability of private adoption services;

(2) brochures or telephone numbers for agencies that provide adoption services or counseling services; and

(3) written information regarding whom to contact at the [children, youth and families] department if the parent decides to seek reunification with the infant.

D. A safe haven site shall ask [the] a person leaving [the] an infant with the staff of a safe haven site pursuant to Section 24-22-3 NMSA 1978 whether the infant has a parent who is either a member of an Indian tribe or is eligible for membership in an Indian tribe, but the person leaving the infant is not required to provide that information to the safe haven site.

E. Immediately after receiving an infant in accordance with the provisions of the Safe Haven for Infants Act, a safe haven site shall inform the [children, youth and families] department that the infant has been left at the safe haven site.
haven site. The safe haven site shall provide the [children, youth and families] department with all available information regarding the [child] infant and the parents, including the identity of the [child] infant and the parents, the location of the parents and the [child's] infant's medical records."

SECTION 6. A new section of the Safe Haven for Infants Act is enacted to read:

"[NEW MATERIAL] CONSENT FOR MEDICAL SERVICES.--A safe haven site is deemed to have received consent for medical services provided to an infant left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act or in accordance with the procedures developed between the department and the safe haven site."

SECTION 7. Section 24-22-5 NMSA 1978 (being Laws 2001, Chapter 31, Section 5 and Laws 2001, Chapter 132, Section 5, as amended) is amended to read:

"24-22-5. RESPONSIBILITIES OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT.--

A. The [children, youth and families] department shall be deemed to have emergency custody of an infant who has been left at a safe haven site according to the provisions of the Safe Haven for Infants Act.

B. Upon receiving a report of an infant left at a safe haven site pursuant to the provisions of the Safe Haven for Infants Act, the [children, youth and families] department
shall immediately conduct an investigation, pursuant to the provisions of the Abuse and Neglect Act.

C. When an infant is taken into custody by the [children, youth and families] department, the department shall make reasonable efforts to determine whether the infant is an Indian child. If the infant is an Indian child:

(1) the child's tribe shall be notified as required by Section 32A-1-14 NMSA 1978 and the federal Indian Child Welfare Act of 1978; and

(2) pre-adoptive placement and adoptive placement of the Indian child shall be in accordance with the provisions of Section 32A-5-5 NMSA 1978 regarding Indian child placement preferences.

D. The [children, youth and families] department shall perform public outreach functions necessary to educate the public about the Safe Haven for Infants Act, including developing literature about that act and distributing it to safe haven sites.

E. An infant left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act shall presumptively be deemed eligible and enrolled for medicaid benefits and services."

SECTION 8. A new section of the Safe Haven for Infants Act is enacted to read:

"[NEW MATERIAL] REQUIREMENTS FOR LOCATION AND MONITORING
OF A SURRENDER SAFETY DEVICE.--

A. On or after July 1, 2021, an operator of a safe haven site may install a surrender safety device on the property of and as a fixture attached to the safe haven site.

B. An operator of a safe haven site that installs a surrender safety device shall:

(1) attach the surrender safety device as a fixture to a safe haven site:

(a) that is, without exception, staffed by a medical services provider seven days each week and twenty-four hours each day; and

(b) in a manner that permits staff from inside the safe haven site to view and retrieve through a transparent door an infant located within the surrender safety device;

(2) locate the surrender safety device in an area that is at all times conspicuous and visible to staff working within the safe haven site;

(3) regularly monitor the surrender safety device by visually and physically checking the device at regular intervals pursuant to rules issued by the department;

(4) keep instructions posted on or near the surrender safety device for use of the surrender safety device in a form and manner prescribed by the department and including instructions for securing an infant in the surrender safety device.
device and engaging a security alarm on the device; and

(5) keep a warning posted conspicuously on or near the surrender safety device that provides information required pursuant to rules issued by the department and indicates that a child over the age of ninety days shall not be placed in the surrender safety device."

SECTION 9. A new section of the Safe Haven for Infants Act is enacted to read:

"[NEW MATERIAL] REQUIREMENTS FOR INSTALLATION, INSPECTION AND MONITORING OF A SURRENDER SAFETY DEVICE.--

A. Prior to the operation of a surrender safety device, the operator of a safe haven site shall obtain for that surrender safety device a safe surrender location designation by the department pursuant to Subsection C of this section.

B. At least forty days before installation or repair of a surrender safety device at a safe haven site, the operator of the safe haven site shall deliver written notice to the department of the date of the planned installation or repair. The department shall deliver written confirmation of receipt of that notice to the safe haven site within five days and inform the operator that the department will inspect the surrender safety device on the date of installation or repair.

C. The department shall inspect each surrender safety device on the date of installation or repair and after receipt of a notice from the operator of a safe haven site.
pursuant to Subsection B of this section. During the inspection, the department shall determine if the installed surrender safety device constitutes a safe surrender location pursuant to rules issued by the department. If the department determines that a surrender safety device is a safe surrender location, the department shall affix to the surrender safety device a decal that conspicuously designates the surrender safety device as a safe surrender location and the date of that designation. To designate a surrender safety device as a safe surrender location, the department shall find that:

(1) the surrender safety device:

(a) adequately provides for the safety of an infant if the infant is properly secured within the device for a period of at least three hours;

(b) is equipped with a transparent door through which an infant is visible and may be retrieved by staff from inside of the safe haven site;

(c) is attached as a fixture to a safe haven site that is, without exception, staffed by a medical services provider on a basis of seven days each week and twenty-four hours each day;

(d) is located in an area that is at all times conspicuous, visible and accessible to staff working within the safe haven site from inside of the safe haven site;

(e) contains a functional safety alarm.
to adequately alert a person inside a safe haven site of the presence of an infant within the surrender safety device; and

(f) meets any additional requirements provided pursuant to rules issued by the department;

(2) instructions for use of the surrender safety device are affixed to it in a form and manner prescribed by the department; and

(3) a warning is posted conspicuously on or near the surrender safety device that provides any information required by rules issued by the department and indicates that a child over the age of ninety days shall not be placed in the surrender safety device.

D. If the department determines that a surrender safety device is not a safe surrender location, it shall immediately inform the operator of the safe haven site of that determination, securely seal the surrender safety device from use and conspicuously mark "UNSAFE--DO NOT USE" on the surrender safety device. The operator of the safe haven site upon which the surrender safety device is located shall maintain the seal and markings made by the department until any defects are corrected to the satisfaction of the department.

E. The department shall inspect each surrender safety device on a monthly basis to determine whether the surrender safety device meets the requirements of a safe surrender location as provided pursuant to Subsection C of this .219262.1
section.

F. An operator of a safe haven site upon which a surrender safety device is located shall test the functionality of the surrender safety device in regular intervals pursuant to rules issued by the department. If the operator knows or reasonably should know that the surrender safety device is not functional, the operator shall securely seal the surrender safety device from use and conspicuously mark "UNSAFE--DO NOT USE" on the surrender safety device until any defects are corrected and the department has subsequently inspected the device and determined that the surrender safety device is a safe surrender location."

SECTION 10. Section 24-22-8 NMSA 1978 (being Laws 2001, Chapter 31, Section 8 and Laws 2001, Chapter 132, Section 8, as amended) is amended to read:

"24-22-8. IMMUNITY.--A safe haven site and its staff are immune from criminal liability and civil liability for accepting an infant or installing, operating or maintaining a surrender safety device in compliance with the provisions of the Safe Haven for Infants Act but not for subsequent negligent medical care or treatment of the infant."

SECTION 11. A new section of the Safe Haven for Infants Act is enacted to read:

"[NEW MATERIAL] RULEMAKING.--The department shall issue rules to implement the provisions of the Safe Haven for Infants Act.219262.1"
Act, including rules for the determination of whether a
surrender safety device constitutes a safe surrender location
and for the operation, monitoring and inspection of a surrender
safety device."

SECTION 12. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2021.