

AN ACT

RELATING TO CHILD PROTECTION; ENACTING THE SAFE HAVEN FOR INFANTS ACT; PROVIDING PROTECTIONS FOR NEWBORN CHILDREN WHO MIGHT OTHERWISE BE ABANDONED; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. SHORT TITLE. -- Sections 1 through 8 of this act may be cited as the "Safe Haven for Infants Act".

Section 2. DEFINITIONS. -- As used in the Safe Haven For Infants Act:

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

B. "Indian child" means an infant who is the biological child of an enrolled member of an Indian nation, pueblo or tribe;

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

D. "staff" means an employee, contractor, agent or volunteer performing services as required and on behalf of the hospital.

Section 3. LEAVING AN INFANT. --

A. A person may leave an infant with the staff of a hospital without being subject to prosecution for

abandonment or abuse if the infant was born within ninety days of being left at the hospital, 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 hospital may ask the person leaving the infant 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 hospital.

C. The hospital is deemed to have received consent for medical services provided to an infant left at a hospital 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 hospital.

Section 4. HOSPITAL PROCEDURES. --

A. A hospital shall accept an infant who is left at the hospital in accordance with the provisions of the Safe Haven For Infants Act.

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

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

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

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

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

D. No later than twenty-four hours after receiving an infant in accordance with the provisions of the Safe Haven for Infants Act, a hospital shall inform the children, youth and families department that the infant has been left at the hospital.

Section 5. RESPONSIBILITIES OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT. --

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

B. Upon receiving a report of an infant left at a

hospital 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, 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 hospitals.

E. An infant left at a hospital 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 6. CONFIDENTIALITY. -- Information regarding a person leaving an infant at a hospital in compliance with the Safe Haven for Infants Act or information received during an abuse or neglect investigation by the children, youth and families department shall remain confidential, pursuant to

the confidentiality section of the Abuse and Neglect Act.

Section 7. PROCEDURE IF REUNIFICATION IS SOUGHT. --

A. If a person seeks reunification with the infant previously left at the hospital and the person's DNA matches the infant's DNA, that person shall have standing to participate in all proceedings regarding the infant pursuant to the provisions of the Abuse and Neglect Act.

B. There shall be no presumption of abuse or neglect against a person seeking reunification pursuant to Subsection A of this section provided that the person seeks reunification within thirty days of the date the infant was left at a hospital in accordance with the provisions of the Safe Haven for Infants Act.

Section 8. IMMUNITY. -- A hospital and its staff are immune from criminal liability and civil liability for accepting an infant 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 9. Section 30-6-1 NMSA 1978 (being Laws 1973, Chapter 360, Section 10, as amended) is amended to read:

"30-6-1. ABANDONMENT OR ABUSE OF A CHILD. --

A. As used in this section:

(1) "child" means a person who is less than eighteen years of age;

(2) "neglect" means that a child is without

proper parental care and control of subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and

(3) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. Whoever commits abandonment of a child is guilty of a misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case he is guilty of a second degree felony.

C. A parent, guardian or custodian who leaves an infant less than ninety days old in compliance with the Safe Haven for Infants Act shall not be prosecuted for abandonment of a child.

D. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

(1) placed in a situation that may endanger the child's life or health;

(2) tortured, cruelly confined or cruelly punished; or

(3) exposed to the inclemency of the weather.

Whoever commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm or death to the child, he is guilty of a first degree felony.

E. A person who leaves an infant less than ninety days old at a hospital may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the hospital."

Section 10. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. _____