

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILLS 94 & 366

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO CHILD PROTECTION; ENACTING THE SAFE HAVEN FOR
INFANTS ACT; PROVIDING PROTECTIONS FOR INFANT 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. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 8 of this act may be cited as the "Safe Haven for
Infants Act".

Section 2. [NEW MATERIAL] 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

1 biological child of an enrolled member of an Indian nation,
2 pueblo or tribe;

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

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

9 Section 3. [NEW MATERIAL] LEAVING AN INFANT. --

10 A. A person may leave an infant with the staff of a
11 hospital without being subject to prosecution for abandonment
12 or abuse if the infant was born within ninety days of being
13 left at the hospital, as determined within a reasonable degree
14 of medical certainty and if the infant is left in a condition
15 that would not constitute abandonment or abuse of a child
16 pursuant to Section 30-6-1 NMSA 1978.

17 B. A hospital may ask the person leaving the infant
18 for the name of the infant's biological father or biological
19 mother, the infant's name and the infant's medical history, but
20 the person leaving the infant is not required to provide that
21 information to the hospital.

22 C. The hospital is deemed to have received consent
23 for medical services provided to an infant left at a hospital
24 in accordance with the provisions of the Safe Haven for Infants
25

underscored material = new
[bracketed material] = delete

1 Act or in accordance with procedures developed between the
2 children, youth and families department and the hospital.

3 Section 4. [~~NEW MATERIAL~~] HOSPITAL PROCEDURES. --

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

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

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

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

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

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

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

6 Section 5. [NEW MATERIAL] RESPONSIBILITIES OF THE
7 CHILDREN, YOUTH AND FAMILIES DEPARTMENT. --

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

12 B. Upon receiving a report of an infant left at a
13 hospital pursuant to the provisions of the Safe Haven for
14 Infants Act, the children, youth and families department shall
15 immediately conduct an investigation, pursuant to the
16 provisions of the Abuse and Neglect Act, to determine if the
17 infant has been abused or neglected.

18 C. When an infant is taken into custody by the
19 children, youth and families department, the department shall
20 make reasonable efforts to determine whether the infant is an
21 Indian child. If the infant is an Indian child, pre-adoptive
22 placement and adoptive placement of the Indian child shall be
23 in accordance with the provisions of Section 32A-5-5 NMSA 1978
24 regarding Indian child placement preferences.
25

1 D. The children, youth and families department
2 shall perform public outreach functions necessary to educate
3 the public about the Safe Haven for Infants Act, including
4 developing literature about that act and distributing it to
5 hospitals.

6 E. An infant left at a hospital in accordance with
7 the provisions of the Safe Haven for Infants Act shall
8 presumptively be deemed eligible and enrolled for medicaid
9 benefits and services.

10 Section 6. [NEW MATERIAL] CONFIDENTIALITY. -- Information
11 regarding a person leaving an infant at a hospital in
12 compliance with the Safe Haven for Infants Act or information
13 received during an abuse or neglect investigation by the
14 children, youth and families department shall remain
15 confidential, pursuant to the confidentiality section of the
16 Abuse and Neglect Act.

17 Section 7. [NEW MATERIAL] PROCEDURE IF REUNIFICATION IS
18 SOUGHT. --

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

24 B. There shall be no presumption of abuse or neglect
25

underscoring material = new
[bracketed material] = delete

1 against a person seeking reunification pursuant to Subsection A
2 of this section provided that the person seeks reunification
3 within thirty days of the date the infant was left at a
4 hospital in accordance with the provisions of the Safe Haven
5 for Infants Act.

6 Section 8. [NEW MATERIAL] IMMUNITY.--A hospital and its
7 staff are immune from criminal liability and civil liability
8 for accepting an infant in compliance with the provisions of
9 the Safe Haven for Infants Act but not for subsequent negligent
10 medical care or treatment of the infant.

11 Section 9. Section 30-6-1 NMSA 1978 (being Laws 1973,
12 Chapter 360, Section 10, as amended) is amended to read:

13 "30-6-1. ABANDONMENT OR ABUSE OF A CHILD.--

14 A. As used in this section:

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

17 (2) "neglect" means that a child is without
18 proper parental care and control of subsistence, education,
19 medical or other care or control necessary for his well-being
20 because of the faults or habits of his parents, guardian or
21 custodian or their neglect or refusal, when able to do so, to
22 provide them; and

23 (3) "negligently" refers to criminal
24 negligence and means that a person knew or should have known of
25

1 the danger involved and acted with a reckless disregard for the
2 safety or health of the child.

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

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

14 [~~C.~~] D. Abuse of a child consists of a person
15 knowingly, intentionally or negligently, and without
16 justifiable cause, causing or permitting a child to be:

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

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

21 (3) exposed to the inclemency of the weather.

22 Whoever commits abuse of a child [~~which~~] that does not
23 result in the child's death or great bodily harm is, for a
24 first offense, guilty of a third degree felony and for second
25

1 and subsequent offenses is guilty of a second degree felony.
2 If the abuse results in great bodily harm or death to the
3 child, he is guilty of a first degree felony.

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

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