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FISCAL IMPACT REPORT

SPONSOR: Gubbels DATE TYPED: 03/11/01 HB 251/aHJC/aSJC
 SHORT TITLE: Safe Haven Act SB _____
 ANALYST: Chabot

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
	NFI				

Duplicates SB 94

SOURCES OF INFORMATION

LFC Files
 Administrative Office of the Courts (AOC)
 Children, Youth and Families Department (CYFD)
 Commission On The Status Of Women (CSW)
 Health Policy Commission (HPC)

No Response
 Office of Indian Affairs (OIA)
 Department of Health (DOH)

SUMMARY

Synopsis of the SJC Amendment

This amendment changes House Bill 251 to read the same as Senate Bills 94 & 366 (copy of the FIR attached).

TECHNICAL ISSUES

On page 1, line 12, strike “NEWBORN” and insert “INFANT”. This will change the title to read the same as SBs 94 & 366.

Synopsis of HJC Amendment

The House Judiciary Committee amendment will change the bill sections to read as follows:

House Bill 251/aHJC/aSJC -- Page 2

1. Section 5. A. Upon receiving a report of a newborn left at a hospital pursuant to the provision of the Safe Haven Act, the children, youth and families department shall immediately conduct an investigation, pursuant to the provisions of the Abuse and Neglect Act, ~~to determine if the child has been abused or neglected.~~
- 2 and 3. Section 8. [NEW MATERIAL] IMMUNITY.—A hospital and its employees are immune from criminal liability and civil liability only for accepting a newborn in compliance with the provisions of the Safe Haven Act but not for any subsequent negligent medical care or treatment of the newborn.
- 4, 5, and 6. 30-6-1. D. If a parent, guardian or custodian of a newborn, as defined in the Safe Haven Act, safely leaves the newborn at a hospital in compliance with the provisions of that act, the parent, guardian or custodian shall not be prosecuted for abandonment of a child; provide that a parent may be prosecuted for abuse of a child for actions of the parent that occurred before the parent left the newborn at the hospital.

Synopsis of Original Bill

This bill enacts new statutes to provide protections for newborn children, not more than 30 days old, who might otherwise be abandoned and amends Section 30-6-1 NMSA 1978 defining abandonment and abuse of a child. The bill creates a procedure for hospitals to accept a newborn without any consequence to the mother, provides for medical services for the newborn and identification procedures for the mother if she later changes her mind on abandoning the child, and gives custody of the child to CYFD. The hospital is immune from all civil liability involving their participation in the process and the mother is immune from criminal prosecution. The bill has an emergency clause.

Significant Issues

According to HPC, 14 states have passed “safe haven” laws and they vary widely from state-to-state. This bill addresses the problem of newborns left at a hospital and provides a mechanism for a mother who changes her mind about abandoning the child. She may later apply to CYFD to adopt the child using the matching identification bracelet as proof of standing in adoption proceedings.

A number of issues have been raised by agency responses.

1. CYFD notes that there is no requirement for a medical history of the mother, father or child, which could complicate medical treatment.
2. CYFD identifies that there is nothing in the bill about the rights of the father. HPC extends this concern to the rights of the grandparents in the adoption process.
3. HPC also expresses concern about medical treatment for the mother at the time the newborn is left at the hospital.
4. CYFD is concerned about an individual or family that adopts the newborn and then the mother decides she wants the baby. There is no time limit on the birth mother’s right to try to change any adoption decision.
5. CSW mentions that there are no funds for administering the program and is concerned that if the program is not advertised, the “safe haven” will not be used.

6. CYFD asks that immunity for civil prosecution be provided for the agency, as is for hospitals, in carrying out their responsibilities under the safe haven act.
7. Finally, AOC expresses concern that a person possessing a matching identification bracelet to the newborn has standing regarding the newborn under the Adoption Act. It makes no provision for individuals who fraudulently obtain the identification bracelet.

ADMINISTRATIVE IMPLICATIONS

CYFD will have to developed procedures to implement the provision. Costs, not identified, will be incurred in notifying hospitals of the statute and printing brochures, pamphlets, and other advertisements to make the public aware of the program.

DUPLICATION

This bill duplicates SB 94.

TECHNICAL ISSUES

According to AOC, the limitation of prosecution does not extend to abuse or neglect that may have occurred prior to the time the parent brings the newborn to the hospital. They recommend a wording change to 30-6-1 to read "...the parent shall not be prosecuted for abandonment of a child. However, the parent may be prosecuted for abuse or neglect from actions taken prior to the placement of the child at the hospital if the circumstances warrant."

GAC/njw:ar
Attachment