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SENATE BILL 91

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

David M. Gallegos

AN ACT

RELATING TO CHILDREN; ALLOWING PERSONS TO LEAVE INFANTS WITH
FIRST RESPONDERS OR 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; REPEALING A SECTION OF THE
SAFE HAVEN FOR INFANTS ACT; MAKING AN APPROPRIATION.

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

SECTION 1. Section 24-22-2 NMSA 1978 (being Laws 2001,
Chapter 31, Section 2 and Laws 2001, Chapter 132, Section 2, as
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1 amended) is amended to read:

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

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

6 ~~[A.]~~ B. "fire station" means a fire station that is
7 certified by the state fire marshal's office;

8 C. "first responder" means a public safety employee
9 acting within the scope of the person's employment whose duties
10 include responding rapidly to an emergency and who is:

11 (1) a law enforcement officer;

12 (2) a firefighter or certified volunteer
13 firefighter; or

14 (3) an emergency medical services provider;

15 ~~[B.]~~ D. "hospital" means an acute care general
16 hospital or health care clinic licensed by the state;

17 ~~[C.]~~ E. "Indian child" means an Indian child as
18 defined by the federal Indian Child Welfare Act of 1978;

19 ~~[D.]~~ F. "infant" means a child no more than ninety
20 days old, as determined within a reasonable degree of medical
21 certainty;

22 ~~[E.]~~ G. "law enforcement agency" means a law
23 enforcement agency of the state or a political subdivision of
24 the state;

25 ~~[F.]~~ H. "safe haven site" means a hospital, law

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1 enforcement agency or fire station that has staff on site at
2 the time an infant is left at such a site; [~~and~~

3 ~~G.]~~ I. "staff" means an employee, contractor, agent
4 or volunteer performing services as required and on behalf of
5 the safe haven site; and

6 J. "surrender safety device" means an
7 environmentally controlled incubator device that is:

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

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

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

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

20 SECTION 2. Section 24-22-3 NMSA 1978 (being Laws 2001,
21 Chapter 31, Section 3 and Laws 2001, Chapter 132, Section 3, as
22 amended) is amended to read:

23 "24-22-3. LEAVING AN INFANT WITH A FIRST RESPONDER OR THE
24 STAFF OF A SAFE HAVEN SITE.--

25 A. A person may leave an infant with the staff of a

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1 safe haven site or with a first responder at a location other
2 than a safe haven site without being subject to criminal
3 prosecution for abandonment or abuse [~~if the infant was born~~
4 ~~within ninety days of being left at the safe haven site, as~~
5 ~~determined within a reasonable degree of medical certainty,~~
6 ~~and~~] if the infant is left in a condition that would not
7 constitute abandonment or abuse of a child pursuant to Section
8 30-6-1 NMSA 1978.

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

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

21 SECTION 3. A new section of the Safe Haven for Infants
22 Act is enacted to read:

23 "[NEW MATERIAL] TRANSFER OF INFANT AT AGREED LOCATION.--

24 A. A person may leave an infant with a first
25 responder at a location other than a safe haven site, arranged

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1 before the transfer of infant to state custody.

2 B. Upon notice that a person plans to surrender a
3 child to a first responder at a location other than a safe
4 haven site, the first responder shall meet at the arranged
5 location and shall accept the infant in accordance with the
6 provisions of the Safe Haven for Infants Act.

7 C. Upon receiving an infant who is left with a
8 first responder at an arranged site in accordance with the
9 provisions of the Safe Haven for Infants Act, the first
10 responder may provide the person leaving the infant, to the
11 extent practicable, with:

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

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

17 (3) written information regarding whom to
18 contact at the department if the parent decides to seek
19 reunification with the infant.

20 D. A first responder shall ask a person leaving an
21 infant at an arranged site whether the infant has a parent who
22 is either a member of an Indian tribe or is eligible for
23 membership in an Indian tribe, but the person leaving the
24 infant is not required to provide that information to the first
25 responder.

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1 E. Immediately after receiving an infant in
2 accordance with the provisions of the Safe Haven for Infants
3 Act, a first responder shall inform the safe haven site that
4 the infant has been left at an arranged site and transport the
5 infant to a safe haven site. The safe haven site shall provide
6 the department with all available information regarding the
7 infant and the parents, including the identity of the infant
8 and the parents, the location of the parents and the infant's
9 medical records."

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

12 "[NEW MATERIAL] LEAVING AN INFANT IN A SURRENDER SAFETY
13 DEVICE.--On or after July 1, 2024, a person may leave an infant
14 inside a surrender safety device without being subject to
15 criminal prosecution for abandonment or abuse of a child if:

- 16 A. the surrender safety device is:
- 17 (1) located on the property and attached as a
 - 18 fixture to a safe haven site;
 - 19 (2) conspicuously marked as safe for use
 - 20 pursuant to rules issued by the department; and
 - 21 (3) not otherwise marked as unsafe for use;

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

25 C. the infant is left in a condition that would not

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1 constitute abandonment or abuse of a child pursuant to Section
2 30-6-1 NMSA 1978."

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

6 "24-22-4. SAFE HAVEN SITE PROCEDURES.--

7 A. A safe haven site shall accept an infant who is
8 left at ~~[the]~~ a safe haven site or delivered to a safe haven
9 site by a first responder in accordance with the provisions of
10 the Safe Haven for Infants Act.

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

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

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

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

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

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

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

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

22 "[NEW MATERIAL] CONSENT FOR MEDICAL SERVICES.--A safe
23 haven site or a first responder is deemed to have received
24 consent for medical services provided to an infant left at a
25 safe haven site in accordance with the provisions of the Safe

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1 Haven for Infants Act or in accordance with the procedures
2 developed between the department and the safe haven site."

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

6 "24-22-5. RESPONSIBILITIES OF THE [~~CHILDREN, YOUTH AND~~
7 ~~FAMILIES~~] DEPARTMENT.--

8 A. The [~~children, youth and families~~] department
9 shall be deemed to have emergency custody of an infant who has
10 been left at a safe haven site or delivered to a safe haven
11 site by a first responder according to the provisions of the
12 Safe Haven for Infants Act.

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

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:

22 (1) the child's tribe shall be notified as
23 required by [~~Section 32A-1-14 NMSA 1978 and~~] the federal Indian
24 Child Welfare Act of 1978 and the Indian Family Protection Act;
25 and

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1 (2) pre-adoptive placement and adoptive
2 placement of the Indian child shall be in accordance with the
3 provisions of [~~Section 32A-5-5 NMSA 1978~~] the Indian Family
4 Protection Act regarding Indian child placement preferences.

5 D. The [~~children, youth and families~~] department,
6 in collaboration with the public education department, shall
7 perform public outreach functions necessary to educate the
8 public about the Safe Haven for Infants Act, including
9 developing literature about that act and the locations of
10 surrender safety devices and distributing it to safe haven
11 sites.

12 E. An infant left at a safe haven site or delivered
13 to a safe haven site by a first responder in accordance with
14 the provisions of the Safe Haven for Infants Act shall
15 presumptively be deemed eligible and enrolled for medicaid
16 benefits and services."

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

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

21 A. On or after July 1, 2024, an operator of a safe
22 haven site may install a surrender safety device on the
23 property of and as a fixture attached to the safe haven site.

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

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

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

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

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

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

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

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

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

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

5 A. Prior to the operation of a surrender safety
6 device, the department shall determine that the location of the
7 surrender safety device is safe pursuant to Subsection C of
8 this section and inform the operator of the safe haven site.

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

17 C. The department shall inspect each surrender
18 safety device on the date of installation or repair and after
19 receipt of a notice from the operator of a safe haven site
20 pursuant to Subsection B of this section. During the
21 inspection, the department shall determine the safety of the
22 installed surrender safety device pursuant to rules issued by
23 the department. If the department determines that a surrender
24 safety device is safe, the department shall affix to the
25 surrender safety device a decal that conspicuously designates

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1 the surrender safety device as safe for use and the date of
2 that designation. To designate a surrender safety device as
3 safe for use, the department shall find that:

4 (1) the surrender safety device:

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

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

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

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

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

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

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

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

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

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

19 F. An operator of a safe haven site upon which a
20 surrender safety device is located shall test the functionality
21 of the surrender safety device in regular intervals pursuant to
22 rules issued by the department. If the operator knows or
23 reasonably should know that the surrender safety device is not
24 functional, the operator shall securely seal the surrender
25 safety device from use and conspicuously mark "UNSAFE--DO NOT

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1 USE" on the surrender safety device until any defects are
2 corrected and the department has subsequently inspected the
3 surrender safety device and determined that the surrender
4 safety device is safe for use."

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

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

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

16 "[NEW MATERIAL] RULEMAKING.--The department shall issue
17 rules to implement the provisions of the Safe Haven for Infants
18 Act, including rules for the determination of whether a
19 surrender safety device is safe for use and for the operation,
20 monitoring and inspection of a surrender safety device."

21 SECTION 12. APPROPRIATION.--Five hundred thousand dollars
22 (\$500,000) is appropriated from the general fund to the public
23 education department for expenditure in fiscal years 2025
24 through 2027 to educate the public about the location of safe
25 haven sites within each county. Any unexpended or unencumbered

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1 balance remaining at the end of fiscal year 2027 shall revert
2 to the general fund.

3 SECTION 13. REPEAL.--Section 24-22-1.1 NMSA 1978 (being
4 Laws 2005, Chapter 26, Section 2, as amended) is repealed.