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FISCAL IMPACT REPORT

SPONSOR <u>Gallegos</u>	LAST UPDATED _____ ORIGINAL DATE <u>02/14/2023</u>
SHORT TITLE <u>Surrender of Infants</u>	BILL NUMBER <u>Senate Bill 311</u>
ANALYST <u>Chilton</u>	

APPROPRIATION* (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		
	\$70.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent version of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CYFD expenses		\$75.0	\$150.0	\$225.0	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent version of this legislation.

Duplicates 2023 House Bill 327 and is a near duplicate of 2021 House Bill 16 and previous legislation.

Sources of Information

LFC Files

Responses Received From

Department of Public Safety (DPS)
 Administrative Office of the Courts (AOC)
 Office of the Attorney General (NMAG)
 Children, Youth and Family Department (CYFD)
 Homeland Security and Emergency Management Department (DHSEM)

SUMMARY

Synopsis of Senate Bill 311

Senate Bill 311, Surrender of Infants, amends the Safe Haven for Infants Act (Section 24-22 NMSA 1978) to allow surrender of infants that might otherwise be abandoned, in safety devices approved by the legislature and installed, probably in fire stations and health care facilities in

New Mexico. The Safe Haven for Infants Act already allows persons to leave infants with designated safe haven sites, usually staffed by first responders.

Section 2 of the bill defines a “surrender safety device” as a location where the following must be characteristics:

- 1) The infant will be safe there for up to three hours, and have enough oxygen;
- 2) The unit can be attached to the outside of a building and be accessible by an attendant from within the building;
- 3) The inside portion of the box must have a transparent door so an infant in the box can be seen by someone inside the building; and
- 4) The device sets off an alarm when an infant is placed into the device.

Section 3 of the bill would strike two segments of the current act (in Section 24-22-3):

- An infant must have been born within 90 days of being left; and
- The safe haven site must be deemed to have consent for medical services.

Section 4 refers to information that a first responder at a safe haven site should share with the person leaving the infant, including about adoption. The first responder at the site should inquire as to whether the infant could be a member of an Indian tribe. The first responder will also notify CYFD and transmit to CYFD any information known about the infant.

Section 5 makes the person leaving the infant immune from prosecution if left in a designated safe surrender site, and the infant is left in a condition that would not be considered abandonment, securely within the device.

Section 6 makes requirements similar to those in Sections 4 and 5 of first responders accepting infants at safe haven sites.

Section 7 states that an infant left at a safe haven site is deemed to have consent for medical services.

Section 8 amends the act removing CYFD from the language, inasmuch as in the definitions, CYFD is identified as “the department,” and has the following responsibilities:

- CYFD is deemed to have emergency custody of such infants;
- CYFD will investigate whether abuse or neglect of the infant has occurred;
- If the infant appears to be an Indian child, the tribe shall be notified, and placement will follow state Infant Family Welfare Act rules regarding preference for placement with Native American families;
- The public will be made aware of the safety devices and other provisions of the Safe Havens for Infants Act by CYFD; and
- Infants left at a safe haven act location will be deemed eligible for Medicaid.

Section 8 indicates necessary characteristics of surrender safety devices, responsibilities of safe haven sites for monitoring the condition and restocking the safety device and instructing personnel on procedures according to the act.

Section 9 indicates the need for safe license sites to be designated as such by CYFD, which shall

also inspect the device prior to its use; if repair is necessary, CYFD will re-inspect and in either case attach a sticker indicating successful passage of the inspection. Requirements for 24-hour monitoring of the device and warning of either an unsafe site or inability of the site to accept infants more than 90 days old must be posted on the device. CYFD must inspect each such device at least monthly, and operators of the sites must do so at “regular intervals” established by CYFD.

Section 10 deals with initial inspection of the device by CYFD and subsequent inspections after repairs have been made. CYFD must ascertain that a surrender safety device:

1. Allows the infant to be safe if left for at least three hours;
2. Has a transparent door so the infant can be seen through it;
3. Is attached securely to the wall of a site staffed at all times;
4. Contains a safety alarm to alert attendants to the presence of an infant; and
5. Is labeled with means of use of the device.

The department must notify operators of a safe surrender device if it is not found to be safe, and it is to be marked as “unsafe.”

Section 11 gives immunity to staff at a safe haven site from civil and criminal liability for accepting an infant into the safe surrender device, but not from any subsequent negligence.

Section 12 gives CYFD authority to adopt rules regarding surrender of infants, including into safety surrender devices.

Section 13 makes an appropriation of \$70 thousand for public education about safe haven sites, including safety surrender devices, within each county.

Section 14 establishes an effective date of July 1, 2023.

Senate Bill 311 appropriates \$70 thousand from the general fund to CYFD for the purpose of educating the public about safe haven infant sites and devices.

FISCAL IMPLICATIONS

The appropriation of \$70 thousand contained in this bill is recurring expense (through FY2026) to the general fund. Any unexpended or unencumbered balance remaining at the end of FY26 shall revert to the general fund.

DPS and DHSEM indicate no fiscal impact to those agencies, as, lacking 24-hour staffing, their sites cannot accommodate a safe surrender device. AOC and NMAG see minimal fiscal impact upon the courts and the attorney general’s office.

CYFD comments: “As previously explained in 2020 and 2021, CYFD continues to have no experience as an agency, or staff with experience, in developing or implementing rules regarding the installation, inspection and monitoring of surrender safety devices. This will require FTE for which no appropriation has been made. CYFD may be able to absorb this fiscal implication, depending on how many surrender safety devices are installed. However, again as in previous years, while the safe haven site and staff are immunized from criminal and civil liability concerning the surrender safety device, CYFD is most definitely not, and anticipates litigation in

the event that something goes wrong.”

Travel and FTE are anticipated to cost \$75 thousand in the first year and \$150 thousand in the second.

SIGNIFICANT ISSUES

The National Safe Haven Alliance (nationalsafehavenalliance.org) estimates that 4,709 infants have been saved through its programs, which include promotion of baby boxes. The only apparently available devices meeting the specifications of Senate Bill 311 are manufactured by a non-profit organization, Safe Haven Baby Boxes, which has boxes installed in Ohio (6 installed boxes), Indiana (131), Pennsylvania (1), Kentucky (16), Arizona (4), Florida (1), North Carolina (1), Arkansas (11) and one in New Mexico, in Española; the organization’s website, shbb.org, indicated that, as of 2021, that 10 infants had been safely left in its boxes in Indiana, and one had been left in the Arkansas box. The Safe Haven Baby Box organization makes potential users aware of their availability in states where they have located the devices, through billboards, a website (shbb.org) and a toll-free telephone line. There is no mention on either website of sabotage being carried out using one of these devices.

Being able to surrender an infant into an anonymous safety box may provide another useable safe option for parents who might be shamed or fearful at having to turn an infant over in person. Proponents indicate that their availability may reduce the incidence of infanticide. On the other, as noted by AOC, “Opponents of baby boxes say that the boxes pose a national security risk (i.e., place for bombs), could put the infant’s life at risk in the case of a power outage, prevent face to face contact with the mother who may need medical attention or someone to talk to about her options, and distract from the causation and prevention of the abandonment.” In addition, AOC mentions an NPR article that states “that baby boxes still remain controversial in part because it ‘creates a method for people to surrender children without the parent’s consent’.”

ADMINISTRATIVE IMPLICATIONS

This bill adds provisions for safe haven sites to install and maintain surrender safety devices and for the department to promulgate rules regulating the installation, inspection and monitoring of surrender safety devices. These provisions additionally require CYFD to develop a new area of expertise in order to promulgate and implement rules regarding the installation, inspection and monitoring of surrender safety devices; and to hire or train existing staff on determining whether surrender safety devices adequately provide for the safety of an infant if the infant is properly secured within the device for a period of at least three hours and the other requirements for a surrender safety device.

DUPLICATION

This is a near duplicate of 2021 House Bill 16 and a complete duplicate of 2023 House Bill 327.

TECHNICAL ISSUES

NMAG identifies several concerns, two of which are as follows:

- Section 2 of HB 327 enumerates “law enforcement officer,” “a firefighter or

certified volunteer firefighter,” or “an emergency medical services provider” as potential “first responders” who an infant might be surrendered to. However, without further definition that these individuals are working within the scope of their employment, might raise issues of personal liability.

- Sections 3(A) and 5(C) discuss how there might be liability under NMSA 1978, Section 30-6-1 for infants left in a condition that constitutes abandonment or abuse. However, there since no information of the person leaving the infant is required, there is no mechanism by which to identify the person who leaves the infant or even the identity of the infant.

CYFD points out that “There is no method for identifying a person leaving an infant in one of these devices if the child be left in a condition in violation of NMSA 30-6-1.”

ALTERNATIVES

CYFD suggests “To minimize fiscal and administrative impact, provide for regulation of surrender safety devices by an agency, other than CYFD, that already has expertise in conducting oversight and licensing of similar devices.”

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