

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  
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. [NEW MATERIAL] 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.

1           Section 4.   [NEW MATERIAL] HOSPITAL PROCEDURES. --

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

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

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

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

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

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

23          D.   No later than twenty-four hours after receiving  
24   an infant in accordance with the provisions of the Safe Haven  
25   for Infants Act, a hospital shall inform the children, youth

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1 and families department that the infant has been left at the  
2 hospital.

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

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

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

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

22 D. The children, youth and families department  
23 shall perform public outreach functions necessary to educate  
24 the public about the Safe Haven for Infants Act, including  
25 developing literature about that act and distributing it to

1 hospitals.

2 E. An infant left at a hospital in accordance with  
3 the provisions of the Safe Haven for Infants Act shall  
4 presumptively be deemed eligible and enrolled for medicaid  
5 benefits and services.

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

13 Section 7. [NEW MATERIAL] PROCEDURE IF REUNIFICATION IS  
14 SOUGHT. --

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

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

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

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

8           "30-6-1.   ABANDONMENT OR ABUSE OF A CHILD. --

9           A.   As used in this section:

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

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

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

22           B.   Abandonment of a child consists of the parent,  
23 guardian or custodian of a child intentionally leaving or  
24 abandoning the child under circumstances whereby the child may  
25 or does suffer neglect.   Whoever commits abandonment of a

1 child is guilty of a misdemeanor, unless the abandonment  
2 results in the child's death or great bodily harm, in which  
3 case he is guilty of a second degree felony.

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

8 ~~[E.]~~ D. Abuse of a child consists of a person  
9 knowingly, intentionally or negligently, and without  
10 justifiable cause, causing or permitting a child to be:

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

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

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

16 Whoever commits abuse of a child ~~[which]~~ that does not  
17 result in the child's death or great bodily harm is, for a  
18 first offense, guilty of a third degree felony and for second  
19 and subsequent offenses is guilty of a second degree felony.  
20 If the abuse results in great bodily harm or death to the  
21 child, he is guilty of a first degree felony.

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

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

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underscored material = new  
[bracketed material] = delete