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SENATE BILL 311

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

David M. Gallegos

AN ACT

RELATING TO CHILDREN; ALLOWING PERSONS TO LEAVE INFANTS WITH
FIRST RESPONDERS 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; MAKING AN APPROPRIATION.

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

SECTION 1. Section 24-22-1.1 NMSA 1978 (being Laws 2005,
Chapter 26, Section 2, as amended) is amended to read:

"24-22-1.1. PURPOSE.--The purpose of the Safe Haven for
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1 Infants Act is to promote the safety of infants and to immunize
2 a parent from criminal prosecution for leaving an infant
3 ~~[ninety days of age or less, at]~~ with a first responder, the
4 staff of a safe haven site [this] or inside a surrender safety
5 device pursuant to the requirements of that act. The Safe
6 Haven for Infants Act is not intended to abridge the rights or
7 obligations created by the [federal Indian Child Welfare Act of
8 1978] Indian Family Protection Act or the rights of parents."

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

12 "24-22-2. DEFINITIONS.--As used in the Safe Haven for
13 Infants Act:

14 A. "department" means the children, youth and
15 families department;

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

18 C. "first responder" means a public safety employee
19 whose duties include responding rapidly to an emergency and who
20 is:

21 (1) a law enforcement officer;

22 (2) a firefighter or certified volunteer
23 firefighter; and

24 (3) an emergency medical services provider;

25 ~~[B.]~~ D. "hospital" means an acute care general

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1 hospital or health care clinic licensed by the state;

2 ~~[G.]~~ E. "Indian child" means an Indian child as
3 defined by the ~~[federal Indian Child Welfare Act of 1978]~~
4 Indian Family Protection Act;

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

8 ~~[E.]~~ G. "law enforcement agency" means a law
9 enforcement agency of the state or a political subdivision of
10 the state;

11 ~~[F.]~~ H. "safe haven site" means a hospital, law
12 enforcement agency or fire station that has staff on site at
13 the time an infant is left at such a site; ~~[and~~

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

17 J. "surrender safety device" means an
18 environmentally controlled incubator device that is:

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

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

25 (3) equipped with a transparent door through

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1 which an infant is visible and may be retrieved by a person
2 from inside the building; and

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

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

9 "24-22-3. LEAVING AN INFANT WITH A FIRST RESPONDER OR THE
10 STAFF OF A SAFE HAVEN SITE.--

11 A. A person may leave an infant with the staff of a
12 safe haven site or with a first responder at a location other
13 than a safe haven site without being subject to criminal
14 prosecution for abandonment or abuse [~~if the infant was born~~
15 ~~within ninety days of being left at the safe haven site, as~~
16 ~~determined within a reasonable degree of medical certainty,~~
17 ~~and~~] if the infant is left in a condition that would not
18 constitute abandonment or abuse of a child pursuant to Section
19 30-6-1 NMSA 1978.

20 B. A safe haven site or a first responder may ask
21 the person leaving the infant pursuant to this section for the
22 name of the infant's biological father or biological mother,
23 the infant's name and the infant's medical history, but the
24 person leaving the infant is not required to provide that
25 information to the safe haven site.

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1 ~~[G. The safe haven site is deemed to have received~~
2 ~~consent for medical services provided to an infant left at a~~
3 ~~safe haven site in accordance with the provisions of the Safe~~
4 ~~Haven for Infants Act or in accordance with procedures~~
5 ~~developed between the children, youth and families department~~
6 ~~and the safe haven site.]"~~

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

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

10 A. A person may leave an infant with a first
11 responder at a location other than a safe haven site, arranged
12 before the transfer of infant to state custody.

13 B. Upon notice that a person plans to surrender a
14 child to emergency medical services at a location other than a
15 safe haven site, the first responder shall meet at the arranged
16 location and shall accept the infant in accordance with the
17 provisions of the Safe Haven for Infants Act.

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

23 (1) information about adoption services,
24 including the availability of private adoption services;

25 (2) brochures or telephone numbers for

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1 agencies that provide adoption services or counseling services;
2 and

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

6 D. A first responder shall ask a person leaving an
7 infant at an arranged site whether the infant has a
8 parent who is either a member of an Indian tribe or is eligible
9 for membership in an Indian tribe, but the person leaving the
10 infant is not required to provide that information to the safe
11 haven site.

12 E. Immediately after receiving an infant in
13 accordance with the provisions of the Safe Haven for Infants
14 Act, a first responder shall inform the department that the
15 infant has been left at an arranged site and transport the
16 infant to a safe haven site. The safe haven site shall provide
17 the department with all available information regarding the
18 infant and the parents, including the identity of the infant
19 and the parents, the location of the parents and the infant's
20 medical records."

21 SECTION 5. A new section of the Safe Haven for Infants
22 Act is enacted to read:

23 "[NEW MATERIAL] LEAVING AN INFANT IN A SURRENDER SAFETY
24 DEVICE.--On or after July 1, 2023, a person may leave an infant
25 inside a surrender safety device without being subject to

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1 criminal prosecution for abandonment or abuse of a child if:

2 A. the surrender safety device is:

3 (1) located on the property and attached as a
4 fixture to a safe haven site;

5 (2) conspicuously marked as a safe surrender
6 location pursuant to rules issued by the department; and

7 (3) not otherwise marked as unsafe for use;

8 B. the person properly secures the infant inside
9 the surrender safety device pursuant to instructions provided
10 at the site of the surrender safety device; and

11 C. the infant is left in a condition that would not
12 constitute abandonment or abuse of a child pursuant to Section
13 30-6-1 NMSA 1978."

14 SECTION 6. Section 24-22-4 NMSA 1978 (being Laws 2001,
15 Chapter 31, Section 4 and Laws 2001, Chapter 132, Section 4, as
16 amended) is amended to read:

17 "24-22-4. SAFE HAVEN SITE PROCEDURES.--

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

22 B. In conjunction with the ~~[children, youth and~~
23 ~~families]~~ department, a safe haven site shall develop
24 procedures for appropriate staff to accept and provide
25 necessary medical services to an infant left at the safe haven

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1 site and to the person leaving the infant at the safe haven
2 site, if necessary.

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

7 (1) information about adoption services,
8 including the availability of private adoption services;

9 (2) brochures or telephone numbers for
10 agencies that provide adoption services or counseling services;
11 and

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

15 D. A safe haven site shall ask [~~the~~] a person
16 leaving [~~the~~] an infant with the staff of a safe haven site
17 pursuant to Section 24-22-3 NMSA 1978 whether the infant has a
18 parent who is either a member of an Indian tribe or is eligible
19 for membership in an Indian tribe, but the person leaving the
20 infant is not required to provide that information to the safe
21 haven site.

22 E. Immediately after receiving an infant in
23 accordance with the provisions of the Safe Haven for Infants
24 Act, a safe haven site shall inform the [~~children, youth and~~
25 ~~families~~] department that the infant has been left at the safe

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1 haven site. The safe haven site shall provide the [~~children,~~
2 ~~youth and families~~] department with all available information
3 regarding the [~~child~~] infant and the parents, including the
4 identity of the [~~child~~] infant and the parents, the location of
5 the parents and the [~~child's~~] infant's medical records."

6 SECTION 7. A new section of the Safe Haven for Infants
7 Act is enacted to read:

8 "[NEW MATERIAL] CONSENT FOR MEDICAL SERVICES.--A safe
9 haven site or a first responder is deemed to have received
10 consent for medical services provided to an infant left at a
11 safe haven site in accordance with the provisions of the Safe
12 Haven for Infants Act or in accordance with the procedures
13 developed between the department and the safe haven site."

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

17 "24-22-5. RESPONSIBILITIES OF THE [~~CHILDREN, YOUTH AND~~
18 ~~FAMILIES~~] DEPARTMENT.--

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

24 B. Upon receiving a report of an infant left at a
25 safe haven site pursuant to the provisions of the Safe Haven

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1 for Infants Act, the [~~children, youth and families~~] department
2 shall immediately conduct an investigation, pursuant to the
3 provisions of the Abuse and Neglect Act.

4 C. When an infant is taken into custody by the
5 [~~children, youth and families~~] department, the department shall
6 make reasonable efforts to determine whether the infant is an
7 Indian child. If the infant is an Indian child:

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

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

15 D. The [~~children, youth and families~~] department,
16 in collaboration with the public education department, shall
17 perform public outreach functions necessary to educate the
18 public about the Safe Haven for Infants Act, including
19 developing literature about that act and the locations of
20 surrender safety devices and distributing it to safe haven
21 sites.

22 E. An infant left at a safe haven site or delivered
23 to a safe haven site by a first responder in accordance with
24 the provisions of the Safe Haven for Infants Act shall
25 presumptively be deemed eligible and enrolled for medicaid

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1 benefits and services."

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

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

6 A. On or after July 1, 2023, an operator of a safe
7 haven site may install a surrender safety device on the
8 property of and as a fixture attached to the safe haven site.

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

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

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

16 (b) in a manner that permits staff from
17 inside the safe haven site to view and retrieve through a
18 transparent door an infant located within the surrender safety
19 device;

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

23 (3) regularly monitor the surrender safety
24 device by visually and physically checking the device at
25 regular intervals pursuant to rules issued by the department;

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1 (4) keep instructions posted on or near the
2 surrender safety device for use of the surrender safety device
3 in a form and manner prescribed by the department and including
4 instructions for securing an infant in the surrender safety
5 device and engaging a security alarm on the device; and

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

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

13 "[NEW MATERIAL] REQUIREMENTS FOR INSTALLATION, INSPECTION
14 AND MONITORING OF A SURRENDER SAFETY DEVICE.--

15 A. Prior to the operation of a surrender safety
16 device, the operator of a safe haven site shall obtain for that
17 surrender safety device a safe surrender location designation
18 by the department pursuant to Subsection C of this section.

19 B. At least forty days before installation or
20 repair of a surrender safety device at a safe haven site, the
21 operator of the safe haven site shall deliver written notice to
22 the department of the date of the planned installation or
23 repair. The department shall deliver written confirmation of
24 receipt of that notice to the safe haven site within five days
25 and inform the operator that the department will inspect the

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1 surrender safety device on the date of installation or repair.

2 C. The department shall inspect each surrender
3 safety device on the date of installation or repair and after
4 receipt of a notice from the operator of a safe haven site
5 pursuant to Subsection B of this section. During the
6 inspection, the department shall determine if the installed
7 surrender safety device constitutes a safe surrender location
8 pursuant to rules issued by the department. If the department
9 determines that a surrender safety device is a safe surrender
10 location, the department shall affix to the surrender safety
11 device a decal that conspicuously designates the surrender
12 safety device as a safe surrender location and the date of that
13 designation. To designate a surrender safety device as a safe
14 surrender location, the department shall find that:

15 (1) the surrender safety device:

16 (a) adequately provides for the safety
17 of an infant if the infant is properly secured within the
18 device for a period of at least three hours;

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

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

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

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

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

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

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

17 D. If the department determines that a surrender
18 safety device is not a safe surrender location, it shall
19 immediately inform the operator of the safe haven site of that
20 determination, securely seal the surrender safety device from
21 use and conspicuously mark "UNSAFE--DO NOT USE" on the
22 surrender safety device. The operator of the safe haven site
23 upon which the surrender safety device is located shall
24 maintain the seal and markings made by the department until any
25 defects are corrected to the satisfaction of the department.

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1 E. The department shall inspect each surrender
2 safety device on a monthly basis to determine whether the
3 surrender safety device meets the requirements of a safe
4 surrender location as provided pursuant to Subsection C of this
5 section.

6 F. An operator of a safe haven site upon which a
7 surrender safety device is located shall test the functionality
8 of the surrender safety device in regular intervals pursuant to
9 rules issued by the department. If the operator knows or
10 reasonably should know that the surrender safety device is not
11 functional, the operator shall securely seal the surrender
12 safety device from use and conspicuously mark "UNSAFE--DO NOT
13 USE" on the surrender safety device until any defects are
14 corrected and the department has subsequently inspected the
15 device and determined that the surrender safety device is a
16 safe surrender location."

17 SECTION 11. Section 24-22-8 NMSA 1978 (being Laws 2001,
18 Chapter 31, Section 8 and Laws 2001, Chapter 132, Section 8, as
19 amended) is amended to read:

20 "24-22-8. IMMUNITY.--A safe haven site and its staff are
21 immune from criminal liability and civil liability for
22 accepting an infant or installing, operating or maintaining a
23 surrender safety device in compliance with the provisions of
24 the Safe Haven for Infants Act but not for subsequent negligent
25 medical care or treatment of the infant."

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