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FISCAL IMPACT REPORT

SPONSOR Gallegos
LAST UPDATED 02/14/2024
ORIGINAL DATE 01/23/2024
SHORT TITLE Infants in First Responder Safety Devices
BILL NUMBER Senate Bill 91
ANALYST Chilton

APPROPRIATION* (dollars in thousands)

FY24	FY25	Recurring or Nonrecurring	Fund Affected
	\$500.0	Recurring	General Fund

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
PED, CYFD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

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

Relate to Senate Bill 164

Sources of Information

LFC Files

Agency Analysis Received From

New Mexico Attorney General (NMAG)
 Department of Public Safety (DPS)
 Department of Homeland Security and Emergency Management (DHSEM)
 Department of Health (DOH)

Agency Analysis was solicited but Not Received From

Children, Youth and Families Department (CYFD)
 Administrative Office of the Courts (AOC)
 Public Education Department (PED)

SUMMARY

Synopsis of Senate Bill 91

Senate Bill 91 describes a method that can be used to safely surrender infants for whom parents feel they must abandon care, without being considered having committed a crime or child abuse when the infant is surrendered. It defines a list of public servants who can receive surrendered children, including in safety boxes that could be installed in specified locations. In many sections of the bill, the term “children, youth and families department” is replaced by “the department,” although in Section 1, “department” is defined as CYFD.

Defining terms in Section 1, allows law enforcement officers, firefighters, and emergency medical service providers as the “first responders” able to receive surrendered infants less than 90 days of age. “Surrender safety devices” would provide appropriate heat and oxygen to an infant for at least three hours, would be attached to a building, and would have a clear door and an alarm so that responders could know when an infant was inside.

Section 2 amends Section 24-22-3 NMSA 1978, allowing infants to be surrendered not only to safe haven sites but also to first responders other than in those sites. It removes the provision that permission for medical care of the infant is assumed when the infant is surrendered, but a similar provision is inserted as Section 6 of this bill. Section 3 provides for the surrendering person to be given information about options for the person (often a parent) and the infant. Section 5 makes the same requirement of safe haven sites. It details information to be requested of the surrendering person, while noting that the surrendering person is not obliged to respond to these questions. In the instance that an infant is surrendered away from a safe haven site, the receiving public servant is to transport the infant and any information about the infant to a safe haven site.

Section 4 adds new material to Section 24-22-4 NMSA 1978, indicating that a person surrendering an infant in a safety box would not be prosecuted for abandonment or abuse.

Section 5 applies the same requirements of a first responder receiving a surrendered child as are applied to safe haven sites as to information to be sought and provided. Like safe haven sites, first responders receiving surrendered infants would ask if the infant is Native American, with reference to the state and federal laws relevant to the situation, though the surrendering person is not required to answer that question.

In Section 7, CYFD responsibilities are enumerated regarding surrendered infants, including those subject to the federal Indian Child Welfare Act and the state Indian Family Protection Act. CYFD, along with the Public Education Department are given responsibility to educate the public about the Safe Haven Act and surrender safety device locations.

Section 6 states that an infant left at a safe haven site is deemed to have consent for medical services.

Section 7 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 8 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 9 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:

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

The department, which is to inspect the devices on a monthly basis, 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 10 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, and Section 11 gives CYFD authority to adopt rules regarding surrender of infants, including into safety surrender devices.

Section 13 of the bill repeals Section 24-22-1.1 NMSA 1978, which states the purpose of the Safe Haven for Infants Act.

Senate Bill 91 appropriates \$500 thousand from the general fund to the Public Education Department for the purpose of creating and disseminating information about first responder safety devices and their location and use during the years 2025 to 2027.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

The appropriation of \$500 thousand contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY27 shall revert to the general fund.

SIGNIFICANT ISSUES

The National Safe Haven Alliance (nationalsafehavenalliance.org) estimates that 4,707 infants have been saved through its programs around the country since 1999, which include promotion of baby boxes. The only apparently available devices meeting the specifications of Senate Bill 91 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, 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 or to a first responder may provide other useable safe options 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.

DOH reports the following:

Safe Haven Baby Boxes, a non-profit organization, manufactures surrender safety devices detailed in the bill and have installed these devices in five sites in New Mexico: Española Main Fire Department, Belen Fire Department, Gerald Champion Regional Medical Center, Carlsbad Fire Department #1, and the Hobbs Fire Station. Throughout the U.S. Safe Haven Baby Boxes are part of Safe Haven Laws in Arizona, Arkansas, Indiana, Maine, Missouri, Mississippi, Ohio, Kentucky, Virginia, Tennessee, Texas, Iowa, Montana, Alabama, Oklahoma, Louisiana, West Virginia, Kansas, Wisconsin, and Pennsylvania. The Safe Haven Baby Boxes organization has a website, a toll-free number for parents in crisis, and map of where these safety devices are located. (<https://www.shbb.org/>)...

This bill will allow infants to be surrendered by parents in crisis who may be facing several socioeconomic challenges to thrive. If the infant is surrendered to state custody they will be able to access care and other social services which may otherwise prove challenging to access by their family of origin. (<https://www.cyfd.nm.gov/protective-services/new-mexico-safe-haven-for-infants-act/>)

Providing families with economic stipends to support their ability to maintain healthcare, shelter, and food could prevent infant abandonment and allow families to thrive [a universal basic income, as provided for in SB 164].

On the other hand, as noted by AOC in a response to 2023 Senate Bill 311, “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 mentioned an article stating that, “Baby boxes still remain controversial in part because it ‘creates a method for people to surrender children without the parent’s consent.’”

DHSEM, DPS, and NMAG do not identify other significant issues with SB91.

RELATIONSHIP

Related to 2023 Senate Bill 311/House Bill 327, which are almost identical, although the appropriation has been increased from \$70 thousand to \$500 thousand in the current bill.

Relates to 2024 Senate Bill 164, which would provide a pilot program giving underresourced families a monthly income, which might enable them to keep and care for, rather than giving up, a newborn baby.

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