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HOUSE BILL 18

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Ambrose Castellano and Roger Montoya

AN ACT

RELATING TO CHILDREN; ALLOWING PERSONS TO LEAVE INFANTS 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.

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 .219262.1

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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 the staff of a safe haven
4 site [~~this~~] or inside a surrender safety device pursuant to the
5 requirements of that act. The Safe Haven for Infants Act is
6 not intended to abridge the rights or obligations created by
7 the federal Indian Child Welfare Act of 1978 or the rights of
8 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 [~~B.~~] C. "hospital" means an acute care general
19 hospital or health care clinic licensed by the state;

20 [~~C.~~] D. "Indian child" means an Indian child as
21 defined by the federal Indian Child Welfare Act of 1978;

22 [~~D.~~] E. "infant" means a child no more than ninety
23 days old, as determined within a reasonable degree of medical
24 certainty;

25 [~~E.~~] F. "law enforcement agency" means a law

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1 enforcement agency of the state or a political subdivision of
2 the state;

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

6 ~~G.]~~ H. "staff" means an employee, contractor, agent
7 or volunteer performing services as required and on behalf of
8 the safe haven site; and

9 I. "surrender safety device" means an
10 environmentally controlled incubator device that is:

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

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

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

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

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

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1 "24-22-3. LEAVING AN INFANT WITH THE STAFF OF A SAFE
2 HAVEN SITE.--

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

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

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

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

24 "[NEW MATERIAL] LEAVING AN INFANT IN A SURRENDER SAFETY
25 DEVICE.--On or after July 1, 2021, a person may leave an infant
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1 inside a surrender safety device without being subject to
2 criminal prosecution for abandonment or abuse of a child if:

3 A. the surrender safety device is:

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

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

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

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

12 C. the infant is left in a condition that would not
13 constitute abandonment or abuse of a child pursuant to Section
14 30-6-1 NMSA 1978."

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

18 "24-22-4. SAFE HAVEN SITE PROCEDURES.--

19 A. A safe haven site shall accept an infant who is
20 left at ~~[the]~~ a safe haven site in accordance with the
21 provisions of the Safe 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 6. 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 is deemed to have received consent for medical
10 services provided to an infant left at a safe haven site in
11 accordance with the provisions of the Safe Haven for Infants
12 Act or in accordance with the procedures developed between the
13 department and the safe haven site."

14 SECTION 7. 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 according to the provisions of
22 the Safe Haven for Infants Act.

23 B. Upon receiving a report of an infant left at a
24 safe haven site pursuant to the provisions of the Safe Haven
25 for Infants Act, the [~~children, youth and families~~] department

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1 shall immediately conduct an investigation, pursuant to the
2 provisions of the Abuse and Neglect Act.

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

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

10 (2) pre-adoptive placement and adoptive
11 placement of the Indian child shall be in accordance with the
12 provisions of Section 32A-5-5 NMSA 1978 regarding Indian child
13 placement preferences.

14 D. The [~~children, youth and families~~] department
15 shall perform public outreach functions necessary to educate
16 the public about the Safe Haven for Infants Act, including
17 developing literature about that act and distributing it to
18 safe haven sites.

19 E. An infant left at a safe haven site in
20 accordance with the provisions of the Safe Haven for Infants
21 Act shall presumptively be deemed eligible and enrolled for
22 medicaid benefits and services."

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

25 "[NEW MATERIAL] REQUIREMENTS FOR LOCATION AND MONITORING

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1 OF A SURRENDER SAFETY DEVICE.--

2 A. On or after July 1, 2021, an operator of a safe
3 haven site may install a surrender safety device on the
4 property of and as a fixture attached to the safe haven site.

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

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

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

12 (b) in a manner that permits staff from
13 inside the safe haven site to view and retrieve through a
14 transparent door an infant located within the surrender safety
15 device;

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

19 (3) regularly monitor the surrender safety
20 device by visually and physically checking the device at
21 regular intervals pursuant to rules issued by the department;

22 (4) keep instructions posted on or near the
23 surrender safety device for use of the surrender safety device
24 in a form and manner prescribed by the department and including
25 instructions for securing an infant in the surrender safety

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1 device and engaging a security alarm on the device; and

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

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

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

11 A. Prior to the operation of a surrender safety
12 device, the operator of a safe haven site shall obtain for that
13 surrender safety device a safe surrender location designation
14 by the department pursuant to Subsection C of this section.

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

23 C. The department shall inspect each surrender
24 safety device on the date of installation or repair and after
25 receipt of a notice from the operator of a safe haven site

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1 pursuant to Subsection B of this section. During the
2 inspection, the department shall determine if the installed
3 surrender safety device constitutes a safe surrender location
4 pursuant to rules issued by the department. If the department
5 determines that a surrender safety device is a safe surrender
6 location, the department shall affix to the surrender safety
7 device a decal that conspicuously designates the surrender
8 safety device as a safe surrender location and the date of that
9 designation. To designate a surrender safety device as a safe
10 surrender location, the department shall find that:

11 (1) the surrender safety device:

12 (a) adequately provides for the safety
13 of an infant if the infant is properly secured within the
14 device for a period of at least three hours;

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

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

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

25 (e) contains a functional safety alarm

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1 to adequately alert a person inside a safe haven site of the
2 presence of an infant within the surrender safety device; and

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

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

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

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

22 E. The department shall inspect each surrender
23 safety device on a monthly basis to determine whether the
24 surrender safety device meets the requirements of a safe
25 surrender location as provided pursuant to Subsection C of this

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1 section.

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

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

16 "24-22-8. IMMUNITY.--A safe haven site and its staff are
17 immune from criminal liability and civil liability for
18 accepting an infant or installing, operating or maintaining a
19 surrender safety device in compliance with the provisions of
20 the Safe Haven for Infants Act but not for subsequent negligent
21 medical care or treatment of the infant."

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

24 "[NEW MATERIAL] RULEMAKING.--The department shall issue
25 rules to implement the provisions of the Safe Haven for Infants

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1 Act, including rules for the determination of whether a
2 surrender safety device constitutes a safe surrender location
3 and for the operation, monitoring and inspection of a surrender
4 safety device."

5 SECTION 12. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2021.

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