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FISCAL IMPACT REPORT

SPONSOR Castellano/ Montoya, RE **ORIGINAL DATE** 02/09/21 **LAST UPDATED** 02/17/21 **HB** 18
SHORT TITLE Safety Devices for Surrender of Infants **SB** _____
ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
CYFD Personnel		\$73.0	\$73.0	\$146.0	Recurring	General Fund
Purchase of Safety Boxes		\$555.0*	\$0.0	\$555.0*	Nonrecurring	General Fund
Total		\$628.0*	\$73.0	\$701.0*	Mixed	General Fund

(Parenthesis () Indicate Expenditure Decreases) *Refers to the cost of purchasing and installing 25 devices.

Duplicate of 2020 House Bill 190

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Department of Public Safety (DPS)

Office of the Attorney General (NMAG)

Human Services Department (HSD)

Children Youth and Families Department (CYFD; to 2020 HB 190)

SUMMARY

Synopsis of Bill

House Bill 18 amends the Safe Haven for Infants Act 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.

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;

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- 3) The inside portion of the box must have a glass 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 NMSA 1978):

- 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 of the bill makes provision for the surrender safety device use.

Section 5 amends Section 24-22-4 NMSA 1978 requiring procedures to be put in place at each site with a safety device, including the requirement that information about adoption and counseling be made available to persons leaving infants there and information about how to contact CYFD to seek reunification with the infant. If practicable, the safe haven site is to provide CYFD with all available information about the infant.

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 assumed 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 law (Section 32A-5-5 978 NMSA 1978) 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 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 grants immunity to safe haven sites for accepting infants, adding to Section 24-22-8 NMSA 1978 immunity clause language dealing with safe haven surrender devices.

Section 11 gives CYFD authority to adopt rules regarding surrender of infants, including into safety surrender devices.

Section 12 establishes an effective date of July 1, 2021.

FISCAL IMPLICATIONS

CYFD, in its response to the identical 2020 bill, indicates a moderate impact on its budget regarding this bill:

“Funding will be needed to support additional FTE required by CYFD, including administrative and programmatic personnel, to complete the initial and monthly ongoing inspections of surrender safety devices required by this bill. A minimum of one FTE will be needed to begin with, with additional FTE becoming necessary as installations of equipment increase.”

The amount entered into the table of “estimated operating budget impact” consists of the average salary of one state FTE; in addition, there would be travel costs to inspect the devices, which cannot be estimated at this time because the locations cannot be known now.

The cost of a device is approximately \$15 thousand, to which would be added the cost of installation and maintenance. DPS calculates the cost for one to be placed at each of its 25 sites throughout the state as \$555 thousand, although it is not clear from the bill how many would be installed or how they would be paid for.

SIGNIFICANT ISSUES

DPS mentions a significant concern with placement of safety boxes at law enforcement agencies:

“the device may be utilized for other purposes than what it is meant for. It is a large device with a large opening. With the current dislike of law enforcement this device allows for access of certain dangerous items being placed inside the device that may cause harm to staff inside the building.”

The National Safe Haven Alliance (nationalsafehavenalliance.org) estimates that more than 4,152 infants have been saved through its programs, which include promotion of baby boxes. The only apparently available devices meeting the specifications of House Bill 18 are manufactured by a non-profit organization, Safe Haven Baby Boxes, which has boxes installed in Ohio (4 installed boxes), Indiana (53), Arizona (6), Florida (1), and Arkansas (1); the organization’s website, shbb.org, indicates that ten infants have been safely left in its boxes in Indiana, and one has been left in the Arkansas box. This number was confirmed by a phone call to the manufacturer. The Safe Haven Baby Box organization makes potential users aware of their availability in states where they have located the devices, through billboards 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 by having to turn an infant over in person. Proponents indicate that their availability may reduce the incidence of infanticide. As pointed out by DOH, “This bill could have a positive effect on public health by reducing infanticide and injury/death as a result of unsafe abandonment.”

CYFD adds the following points regarding its added duties:

Firefighters, law enforcement agencies, and hospital staff are critical in maintaining the welfare of infants and children in New Mexico. Those personnel help CYFD determine what cases may need immediate intervention and which families may be in need of support services. The existing Safe Haven Act is part of a continuum of services available to at-risk families.

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. The regulatory provisions CYFD the department to develop 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.

While this bill accounts for immunity for the Safe Haven sites for the operation, installation and maintenance of the devices, it does *not* provide any similar immunity to CYFD for its inspection or approval of the devices. Should a device malfunction, CYFD could face liability for the injury or potential death of a child.

There is no method for holding someone accountable for leaving an infant over 90 days in one of these devices.

There is no method for identifying a person leaving an infant in one of these devices should the child be left in a condition in violation of NMSA 30-6-1. [OAG makes the same point.]

TECHNICAL ISSUES

NMAG offers the following suggested changes:

A proposed amendment to NMSA 1978, Section 24-22-1.1 reads: “The purpose of the Safe Haven for Infants Act is to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant [~~ninety days of age or less, at~~ with the staff of a safe haven site [this] or inside a surrender safety device pursuant to the requirements of that act.” It may be appropriate to change the phrase “that act” to “this act” because this statute is within the Safe Haven for Infants Act.

Proposed amendments to NMSA 1978, Section 24-22-4(E) replace “child” with “infant.” But in the new proposed section entitled “Requirements for Location and Monitoring of a Surrender Safety Device,” subparagraph 5 reads, in relevant part: “a child over the age of ninety days shall not be placed in the surrender safety device.” For consistency, consider changing “child” to “infant.

HSD adds the following suggestion, related to the provision of medical care to an infant left in a surrender safety container:

“HB18 states that the safe haven site is deemed to have received consent for medical services provided to an infant left at a safe haven site in accordance with the provisions of the Safe Haven for Infants Act or in accordance with the procedures developed between the department and the safe haven site. It is not clear if the intent is for the Safe Haven site to provide services and bill Medicaid or if they are responsible to ensure that the infant receives medical services as needed.”

ALTERNATIVES

CYFD suggests adding inspection duties to a different agency that has more experience with inspections of similar devices.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Infants could be surrendered by a parent or other person according to the current provisions of the Safe Haven for Infants Act, but parents would not have the option of leaving them anonymously in a safe surrender device like the Safe Haven Baby Box.

LAC/sb/rl