

LFC Requester:

Rachel Mercer-Garcia

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: Feb. 16, 2025

Check all that apply:

Bill Number: SB360

Original Correction
Amendment Substitute

Sponsor: Sen. Michael Padilla and Sen. David M. Gallegos

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Safe Haven for Infants Act Changes

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: Senate Bill 360 amends the Safe Haven for Infants Act (the “Act”) to include the Children, Youth and Family Department (“CYFD” or the “Department”), and expands the list of acceptable locations for infant relinquishment to include a properly installed, monitored and maintained “infant safety device”. It clarifies that the Act pertains to the relinquishment of children ninety days old or younger and outlines basic procedures for the acceptance of relinquished children by staff at a safe haven location. The bill provides confidentiality for the infant, presumes consent for medical services for the infant, requires certain legal custody procedures by CYFD, determines safety requirements for an infant safety device, and requires CYFD to promulgate rules.

Section 1 amends the definitions within Section 24-22-2 NMSA 1978, to clarify the Children, Youth, and Family Department as the “department,” and define an “infant safety device” as a medical device capable of maintaining an optimal environment for the care of a “newborn” infant affixed to a safe haven site.

Section 2 amends certain language in Section 24-22-3 NMSA 1978, to clarify that it is both the child’s parents, or the parents’ designee that may relinquish the infant without being subject to a criminal prosecution and permits the staff of a safe haven site the opportunity to inquire into whether the infant is a member of an Indian nation, tribe or pueblo.

Section 3 creates a new section of the Act permitting a parent or their designee to relinquish the infant into a conspicuously marked “infant safety device” located on the property of, and attached as a fixture to, a safe haven site, without being subject to criminal prosecution, only if the person relinquishing the infant secures the infant as instructed and the infant is in a condition not consistent with abuse or neglect.

Section 4 amends Section 24-22-4 NMSA 1978, to strike language requiring staff at a safe haven site to provide medical attention to the parent or their designee relinquishing the infant. The bill amends the permissive language for staff to provide information about adoption services and requires staff to immediately contact law enforcement to determine if the child is a missing or abducted child.

Section 5 creates a new section providing confidentiality for any infant relinquished at a site, subject to limited disclosure required for child welfare investigations. The amendment includes civil penalties of up to \$500 per occurrence for a person who violates the provision.

Section 6 creates a new section which expressly provides consent for medical services for at safe haven site, and presumably the staff determining such care.

Section 7 amends Section 24-22-5 NMSA 1978, to strike language requiring an immediate investigation by CYFD pursuant to the Abuse and Neglect Act, remove CYFD's requirement to provide public outreach pertaining to the Act, and eliminate CYFD's requirement to make reasonable efforts to determine if the infant is an Indian child – allowing CYFD to determine if the infant is an Indian child based on certain information presumably provided. The amendment further requires CYFD to file a petition for legal custody by 5:00 p.m. of the next business day and to terminate parental rights upon the consent of a father, when necessary. If CYFD determines evidence of abuse or neglect, it shall investigate and attempt to contact any relatives.

Section 8 creates a new section permitting a safe haven site to install “an infant safety device inside the safe haven site,” with certain parameters for its location, site staffing, and monitoring and maintenance of the alert system.

Section 9 amends Section 24-22-8 to expand immunity for the staff at a safe haven site for the installation, operation or maintenance of the device in addition to the examining or treatment of an infant received in such a device. The amendment releases staff from any legal duty to detain and/or identify the parents of the relinquished infant, unless evidence of abuse or neglect are present.

Section 10 creates a new section which requires CYFD to promulgate rules for the determination of the safety, operation, or monitoring of infant safety devices.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

The bill fails to identify a party to enforce any violation of the confidentiality provision protecting the infant.

The bill requires staff at a safe haven site to detain and/or identify parents if signs of abuse or neglect are present. It is possible that signs of abuse are not immediately visible during the relinquishment transaction, which – even within a few minutes of the departure of the relinquishing party – may be recognizable. This will likely create a small window of time for the staff to determine evidence of neglect and abuse. Additionally, depending on the location of relinquishment, the staff may not be trained in legally defensible detention or identification protocols. Moreover, safe haven staffers may not be peace officers, so any detentions based upon suspected child abuse would have to be analyzed as a citizen's arrest. *See State v. Johnson*, 1996-NMSC-075, ¶ 7, 122 N.M. 696 (stating that a citizen has the “common-law right to arrest for a breach of the peace committed in his presence, as well as for a felony.”).

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.