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SENATE BILL 168

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

David M. Gallegos and Leo Jaramillo

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 LIMITED IMMUNITY FOR OPERATORS OF THOSE DEVICES; REQUIRING THE PUBLIC EDUCATION DEPARTMENT TO PROMULGATE RULES; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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 Infants Act is to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant

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1 ~~[ninety days of age or less, at]~~ with the staff of a safe haven
2 site ~~[this]~~ or inside a surrender safety device pursuant to the
3 requirements of that act. The Safe Haven for Infants Act is
4 not intended to abridge the rights or obligations created by
5 the federal Indian Child Welfare Act of 1978 or the rights of
6 parents."

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

10 "24-22-2. DEFINITIONS.--As used in the Safe Haven for
11 Infants Act:

12 A. "fire station" means a fire station that is
13 certified by the state fire marshal's office;

14 B. "hospital" means an acute care general hospital
15 or health care clinic licensed by the state;

16 C. "Indian child" means an Indian child as defined
17 by the federal Indian Child Welfare Act of 1978;

18 D. "infant" means a child no more than ninety days
19 old, as determined within a reasonable degree of medical
20 certainty;

21 E. "law enforcement agency" means a law enforcement
22 agency of the state or a political subdivision of the state;

23 F. "safe haven site" means a:

24 (1) hospital, law enforcement agency or fire
25 station that ~~[has staff on site at the time an infant is left~~

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1 ~~at such a site; and]~~ is staffed twenty-four hours a day and
2 seven days a week; or

3 (2) daycare facility during the facility's
4 operating hours;

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

8 H. "surrender safety device" means an
9 electronically monitored device that is:

10 (1) designed to keep an infant in a secure and
11 safe environment and at a comfortable temperature for a period
12 of no longer than thirty minutes;

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

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

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

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

25 "24-22-3. LEAVING AN INFANT WITH THE STAFF OF A SAFE

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1 HAVEN SITE.--

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

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

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

21 SECTION 4. 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.--A person may leave an infant inside a surrender safety
25 device without being subject to criminal prosecution for

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1 abandonment or abuse of a child if:

2 A. the surrender safety device is:

3 (1) located on the property of and attached as
4 a fixture to a safe haven site other than a daycare facility;

5 (2) conspicuously marked as a safe surrender
6 location pursuant to rules issued by the department with
7 directions for use; 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 procedures~~
24 ~~for appropriate staff to accept and provide necessary medical~~
25 ~~services to an infant left at the safe haven site and to the~~

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1 ~~person leaving the infant at the safe haven site, if necessary.~~

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

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

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

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

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

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

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1 ~~youth and families department with all available information~~
2 ~~regarding the child and the parents, including the identity of~~
3 ~~the child and the parents, the location of the parents and the~~
4 ~~child's medical records.]"~~

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

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

13 SECTION 7. Section 24-22-5 NMSA 1978 (being Laws 2001,
14 Chapter 31, Section 5 and Laws 2001, Chapter 132, Section 5, as
15 amended) is amended to read:

16 "24-22-5. RESPONSIBILITIES OF THE CHILDREN, YOUTH AND
17 FAMILIES DEPARTMENT.--

18 A. The children, youth and families department
19 shall be deemed to have emergency custody of an infant who has
20 been left at a safe haven site according to the provisions of
21 the Safe Haven for Infants Act.

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

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1 provisions of the Abuse and Neglect Act.

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

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

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

13 D. The [~~children, youth and families~~] public
14 education department shall perform public outreach functions
15 necessary to educate the public about the Safe Haven for
16 Infants Act, including developing literature about that act and
17 the locations of surrender safety devices and distributing it
18 to 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. An operator of a safe haven site, other than a
3 daycare facility, 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 two times
21 during a day to ensure that the surrender safety device is
22 functioning;

23 (4) keep instructions posted on or near the
24 surrender safety device for use of the surrender safety device;
25 and

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1 (5) keep a warning posted conspicuously on or
2 near the surrender safety device that indicates that a child
3 over the age of ninety days shall not be placed in the
4 surrender safety device.

5 C. A safe haven site may equip a surrender safety
6 device with a video surveillance system to monitor the
7 surrender safety device in addition to the requirements
8 provided pursuant to Subsection B of this section."

9 SECTION 9. Section 24-22-8 NMSA 1978 (being Laws 2001,
10 Chapter 31, Section 8 and Laws 2001, Chapter 132, Section 8, as
11 amended) is amended to read:

12 "24-22-8. IMMUNITY.--A safe haven site and its staff are
13 immune from criminal liability and civil liability for
14 accepting an infant or installing, operating or maintaining a
15 surrender safety device in compliance with the provisions of
16 the Safe Haven for Infants Act but not for subsequent negligent
17 medical care or treatment of the infant."

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

20 "[NEW MATERIAL] RULEMAKING.--The public education
21 department shall promulgate rules for the dissemination of
22 information to students regarding the Safe Haven for Infants
23 Act, including the location of safe haven sites and surrender
24 safety devices."

25 SECTION 11. APPROPRIATIONS.--

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