



## 2023 SENATE BILL 369

July 20, 2023 - Introduced by Senators BALLWEG, JAMES, CABRAL-GUEVARA, MARKLEIN, TOMCZYK and QUINN, cosponsored by Representatives SCHUTT, KITCHENS, DITTRICH, BEHNKE, BINSFELD, BODDEN, BRANDTJEN, GOEBEN, GREEN, GUSTAFSON, HURD, MAXEY, MURPHY, MYERS, NOVAK, O'CONNOR, OLDENBURG, ORTIZ-VELEZ, RETTINGER, ROZAR, SCHMIDT, SNYDER, SPIROS, STUBBS, SUMMERFIELD, WITTKE and SCHRAA. Referred to Committee on Mental Health, Substance Abuse Prevention, Children and Families.

1     **AN ACT** *to renumber and amend* 48.195 (1); *to amend* 48.13 (2m), 48.195 (2)  
2             (a), 48.195 (2) (b), 48.195 (2) (c), 48.195 (2) (d) (intro.), 48.195 (3) (a), 48.195 (4)  
3             (a), 48.195 (4) (b), 48.195 (5), 48.195 (6), 48.355 (2d) (b) 5., 48.415 (1m), 48.43  
4             (7) (b) and 48.485 (2); and *to create* 48.195 (1b), 48.195 (1m) (a) 2. and 48.195  
5             (1r) of the statutes; **relating to:** newborn infant safety devices under the safe  
6             haven law.

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### *Analysis by the Legislative Reference Bureau*

This bill authorizes the installation of newborn infant safety devices in hospitals, fire stations, and law enforcement agency buildings and allows a parent to relinquish a child under the age of 72 hours in such a device under the safe haven law.

Under current law, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger (newborn infant) may be taken into custody under circumstances in which a parent of the newborn infant relinquishes custody of the newborn infant to the law enforcement officer, emergency medical technician, or hospital staff member and does not express an intent to return for the newborn infant (commonly referred to as the "safe haven law"). Also under current law, if a parent who wishes to relinquish custody of his or her child is unable to travel to a place where a law enforcement officer, emergency medical technician, or hospital staff member is located, the parent

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may dial “911” or the number for an emergency medical service provider and the person receiving the call must dispatch a law enforcement officer or emergency medical technician to meet the parent and take the child into custody. A law enforcement officer, emergency medical technician, or hospital staff member who takes a newborn infant into custody under the safe haven law must take any action necessary to protect the health and safety of the newborn infant and, within 24 hours after taking the newborn infant into custody, must deliver the newborn infant to the intake worker of the court assigned to exercise jurisdiction under the Children’s Code.

Under current law, a parent who relinquishes custody of a child under the safe haven law and any person who assists the parent in that relinquishment are immune from any civil or criminal liability for any good faith act or omission in connection with the relinquishment. In addition, any law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under the safe haven law is immune from any civil liability to the child’s parents, or any criminal liability for any good faith act or omission occurring solely in connection with the act of receiving custody of the child from the child’s parents, but is not immune from any civil or criminal liability for any act or omission occurring in subsequently providing care for the child.

This bill provides that a newborn infant may also be taken into custody under the safe haven law if a parent leaves the newborn infant in a newborn infant safety device, which is a device that is installed in a supporting wall of a hospital, fire station, or law enforcement agency and that has an exterior point of access allowing an individual to place a newborn infant inside and an interior point of access allowing individuals inside the building to safely retrieve the newborn infant. Under the bill, a hospital, fire station, or law enforcement agency may install a newborn infant safety device if several criteria are met:

1. The hospital or law enforcement agency building is staffed 24 hours per day and the fire station is staffed 24 hours per day with an emergency medical technician.
2. The device is physically part of the hospital, fire station, or law enforcement agency building.
3. The device is temperature controlled and ventilated for the safety of newborns.
4. The device is equipped with a dual alarm system connected to the physical location of the device that automatically triggers an alarm inside the building when a newborn infant is placed in the device.
5. The device is equipped with a surveillance system that allows employees of the hospital, fire station, or law enforcement agency to monitor the inside of the device 24 hours per day.
6. The device is located such that the interior point of access is in an area that is conspicuous and visible to the employees of the hospital, fire station, or law enforcement agency.

Under the bill, a hospital, fire station, or law enforcement agency that uses a newborn infant safety device to accept surrendered newborn infants must use the surveillance system to monitor the inside of the device 24 hours per day, physically

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check the device at least twice daily, and test the device at least weekly to ensure that the alarm system is in working order.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 48.13 (2m) of the statutes is amended to read:

2           48.13 **(2m)** The child's parent has relinquished custody of the child under s.  
3 48.195 (1) (1m).

4           **SECTION 2.** 48.195 (1) of the statutes is renumbered 48.195 (1m) (a) (intro.) and  
5 amended to read:

6           48.195 **(1m)** (a) (intro.) In addition to being taken into custody under s. 48.19,  
7 a child whom a law enforcement officer, emergency medical services practitioner, as  
8 defined in s. 256.01 (5), or hospital staff member reasonably believes to be 72 hours  
9 old or younger may be taken into custody under circumstances in which a parent of  
10 the child relinquishes custody of the child to by any of the following methods and does  
11 not express an intent to return for the child:

12           1. By delivering the child to the law enforcement officer, emergency medical  
13 services practitioner, or hospital staff member ~~and does not express an intent to~~  
14 ~~return for the child.~~

15           (b) If a parent who wishes to relinquish custody of his or her child under this  
16 subsection is unable to travel to a sheriff's office, police station, fire station, hospital,  
17 or other place where a law enforcement officer, emergency medical services  
18 practitioner, or hospital staff member is located, the parent may dial the telephone  
19 number "911" or, in an area in which the telephone number "911" is not available, the  
20 number for an emergency medical service provider, and the person receiving the call

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1 shall dispatch a law enforcement officer or emergency medical services practitioner  
2 to meet the parent and take the child into custody.

3 (c) A law enforcement officer, emergency medical services practitioner, or  
4 hospital staff member who takes a child into custody under this subsection shall take  
5 any action necessary to protect the health and safety of the child, shall, within 24  
6 hours after taking the child into custody, deliver the child to the intake worker under  
7 s. 48.20, and shall, within 5 days after taking the child into custody, file a birth record  
8 for the child under s. 69.14 (3).

9 **SECTION 3.** 48.195 (1b) of the statutes is created to read:

10 48.195 (1b) DEFINITIONS. In this section:

11 (a) “Emergency medical services practitioner” has the meaning given in s.  
12 256.01 (5).

13 (b) “Newborn infant safety device” means a device that is installed in a  
14 supporting wall of a hospital, fire station, or law enforcement agency and that has  
15 an exterior point of access allowing an individual to place a newborn infant inside  
16 and an interior point of access allowing individuals inside the building to safely  
17 retrieve the newborn infant.

18 **SECTION 4.** 48.195 (1m) (a) 2. of the statutes is created to read:

19 48.195 (1m) (a) 2. By leaving the child in a newborn infant safety device  
20 installed as provided under sub. (1r).

21 **SECTION 5.** 48.195 (1r) of the statutes is created to read:

22 48.195 (1r) NEWBORN INFANT SAFETY DEVICE. (a) A hospital, fire station, or law  
23 enforcement agency may install a newborn infant safety device if all of the following  
24 criteria are met:

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1           1. The hospital or law enforcement agency building is staffed 24 hours per day  
2 and the fire station is staffed 24 hours per day with an emergency medical services  
3 practitioner.

4           2. The device is physically part of the hospital, fire station, or law enforcement  
5 agency building.

6           3. The device is temperature controlled and ventilated for the safety of  
7 newborns.

8           4. The device is equipped with a dual alarm system connected to the physical  
9 location of the device that automatically triggers an alarm inside the building when  
10 a newborn infant is placed in the device.

11           5. The device is equipped with a surveillance system that allows employees of  
12 the hospital, fire station, or law enforcement agency to monitor the inside of the  
13 device 24 hours per day.

14           6. The device is located such that the interior point of access is in an area that  
15 is conspicuous and visible to the employees of the hospital, fire station, or law  
16 enforcement agency.

17           (b) A hospital, fire station, or law enforcement agency that uses a newborn  
18 infant safety device to accept surrendered newborn infants shall use the surveillance  
19 system under par. (a) 5. to monitor the inside of the device 24 hours per day,  
20 physically check the device at least twice daily, and test the device at least weekly  
21 to ensure that the alarm system is in working order.

22           **SECTION 6.** 48.195 (2) (a) of the statutes is amended to read:

23           48.195 (2) (a) Except as provided in this paragraph, a parent who relinquishes  
24 custody of a child under sub. (1) (1m) and any person who assists the parent in that  
25 relinquishment have the right to remain anonymous. The exercise of that right shall

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1 not affect the manner in which a law enforcement officer, emergency medical services  
2 practitioner, as defined in s. 256.01 (5), or hospital staff member performs his or her  
3 duties under this section. No person may induce or coerce or attempt to induce or  
4 coerce a parent or person assisting a parent who wishes to remain anonymous into  
5 revealing his or her identity, unless the person has reasonable cause to suspect that  
6 the child has been the victim of abuse or neglect or that the person assisting the  
7 parent is coercing the parent into relinquishing custody of the child.

8 **SECTION 7.** 48.195 (2) (b) of the statutes is amended to read:

9 48.195 (2) (b) A parent who relinquishes custody of a child under sub. ~~(1)~~ (1m)  
10 (a) 1. and any person who assists the parent in that relinquishment may leave the  
11 presence of the law enforcement officer, emergency medical services practitioner, as  
12 defined in s. 256.01 (5), or hospital staff member who took custody of the child at any  
13 time, and no. A parent who relinquishes custody of a child under sub. (1m) (a) 2. and  
14 any person who assists the parent in that relinquishment may leave the premises  
15 of the hospital, fire station, or law enforcement agency at any time. No person may  
16 follow or pursue the parent or person assisting the parent, unless the person has  
17 reasonable cause to suspect that the child has been the victim of abuse or neglect or  
18 that the person assisting the parent has coerced the parent into relinquishing  
19 custody of the child.

20 **SECTION 8.** 48.195 (2) (c) of the statutes is amended to read:

21 48.195 (2) (c) No officer, employee, or agent of this state or of a political  
22 subdivision of this state may attempt to locate or ascertain the identity of a parent  
23 who relinquishes custody of a child under sub. ~~(1)~~ (1m) or any person who assists the  
24 parent in that relinquishment, unless the officer, employee, or agent has reasonable  
25 cause to suspect that the child has been the victim of abuse or neglect or that the

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1 person assisting the parent has coerced the parent into relinquishing custody of the  
2 child.

3 **SECTION 9.** 48.195 (2) (d) (intro.) of the statutes is amended to read:

4 48.195 (2) (d) (intro.) Any person who obtains any information relating to the  
5 relinquishment of a child under sub. (1) (1m) shall keep that information confidential  
6 and may not disclose that information, except to the following persons:

7 **SECTION 10.** 48.195 (3) (a) of the statutes is amended to read:

8 48.195 (3) (a) Subject to par. (b), a law enforcement officer, emergency medical  
9 services practitioner, ~~as defined in s. 256.01 (5)~~, or hospital staff member who takes  
10 a child into custody under sub. (1) (1m) (a) 1. shall make available to the parent who  
11 relinquishes custody of the child the maternal and child health toll-free telephone  
12 number maintained by the department under 42 USC 705 (a) (5) (E).

13 **SECTION 11.** 48.195 (4) (a) of the statutes is amended to read:

14 48.195 (4) (a) Any parent who relinquishes custody of his or her child under  
15 sub. (1) (1m) and any person who assists the parent in that relinquishment are  
16 immune from any civil or criminal liability for any good faith act or omission in  
17 connection with that relinquishment. The immunity granted under this paragraph  
18 includes immunity for exercising the right to remain anonymous under sub. (2) (a),  
19 the right to leave at any time under sub. (2) (b), and the right not to accept any  
20 information under sub. (3) (b) and immunity from prosecution under s. 948.20 for  
21 abandonment of a child or under s. 948.21 for neglecting a child.

22 **SECTION 12.** 48.195 (4) (b) of the statutes is amended to read:

23 48.195 (4) (b) Any law enforcement officer, emergency medical services  
24 practitioner, ~~as defined in s. 256.01 (5)~~, or hospital staff member who takes a child  
25 into custody under sub. (1) (1m) is immune from any civil liability to the child's

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1 parents, or any criminal liability for any good faith act or omission occurring solely  
2 in connection with the act of receiving custody of the child from the child's parents  
3 or from a newborn infant safety device, but is not immune from any civil or criminal  
4 liability for any act or omission occurring in subsequently providing care for the  
5 child.

6 **SECTION 13.** 48.195 (5) of the statutes is amended to read:

7 48.195 (5) **MEDICAL ASSISTANCE ELIGIBILITY.** A child who is taken into custody  
8 under sub. (1) (1m) is presumed to be eligible for medical assistance under s. 49.46  
9 or 49.47.

10 **SECTION 14.** 48.195 (6) of the statutes is amended to read:

11 48.195 (6) **RULES.** The department shall promulgate rules to implement this  
12 section. In promulgating those rules, the department shall consider the different  
13 circumstances under which a parent might relinquish custody of a child under sub.  
14 (1) (1m). The rules shall include rules prescribing a means by which a parent who  
15 relinquishes custody of his or her child under sub. (1) (1m) may, until the granting  
16 of an order terminating parental rights, choose to be identified as the child's parent.

17 **SECTION 15.** 48.355 (2d) (b) 5. of the statutes is amended to read:

18 48.355 (2d) (b) 5. That the parent has been found under s. 48.13 (2m) to have  
19 relinquished custody of the child under s. 48.195 (1) (1m) when the child was 72 hours  
20 old or younger, as evidenced by a final order of a court of competent jurisdiction  
21 making that finding.

22 **SECTION 16.** 48.415 (1m) of the statutes is amended to read:

23 48.415 (1m) **RELINQUISHMENT.** Relinquishment, which shall be established by  
24 proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the



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1 parent has relinquished custody of the child under s. 48.195 ~~(1)~~ (1m) when the child  
2 was 72 hours old or younger.

3 **SECTION 17.** 48.43 (7) (b) of the statutes is amended to read:

4 48.43 **(7)** (b) If a permanent adoptive or subsidized guardianship placement is  
5 not in progress 2 years after entry of the order, the department may petition the court  
6 to transfer legal custody of the child to a county department, except that the  
7 department may not petition the court to transfer to a county department legal  
8 custody of a child who was initially taken into custody under s. 48.195 ~~(1)~~ (1m). The  
9 court shall transfer the child's legal custody to the county department specified in the  
10 petition. The department shall remain the child's guardian.

11 **SECTION 18.** 48.485 (2) of the statutes is amended to read:

12 48.485 **(2)** If a permanent adoptive or subsidized guardianship placement is  
13 not in progress within 2 years after entry of the termination of parental rights order  
14 by the tribal court, the department may petition the tribal court to transfer legal  
15 custody or guardianship of the Indian child back to the Indian tribe, except that the  
16 department may not petition the tribal court to transfer back to an Indian tribe legal  
17 custody or guardianship of an Indian child who was initially taken into custody  
18 under s. 48.195 ~~(1)~~ (1m).

19

(END)