



Division of Children & Family Services

P.O. Box 1437, Slot S560, Little Rock, AR 72203-1437

P: 501.682.8770 F: 501.682.6968 TDD: 501.682.1442

December 1, 2023

Blake Gilliam, Legislative Analyst
Senate Interim Children and Youth Committee and the
House Aging, Children and Youth, Legislative and Military Affairs Committee
Arkansas Bureau of Legislative Research
Bureau of Legislative Research
#1 Capitol, 5th Floor
Little Rock, AR 72201

Re: Initial Filing – Regular Promulgation for - Birth Parents Relinquishing Infants for Adoption Under the Safe Haven Act

Dear Mr. Blake Gilliam:

Please arrange for the rule to be reviewed by the Children & Youth Committee. If you have any questions or need additional information, please contact Mac Golden, Office of Rules Promulgation at 501-320-6383 by emailing Mac.E.Golden@dhs.arkansas.gov.

Sincerely,

A handwritten signature in blue ink that reads 'Tiffany Wright'.

Tiffany Wright
Director

TW:tr

Attachments

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT _____
 BOARD/COMMISSION _____
 BOARD/COMMISSION DIRECTOR _____
 CONTACT PERSON _____
 ADDRESS _____
 PHONE NO. _____ EMAIL _____
 NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
 PRESENTER EMAIL(S) _____

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?

2. What is the subject of the proposed rule? _____
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

11. What is the reason for this proposed rule? Why is it necessary?

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

13. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. _____

15. What is the proposed effective date for this rule? _____

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT _____
BOARD/COMMISSION _____
PERSON COMPLETING THIS STATEMENT _____
TELEPHONE NO. _____ **EMAIL** _____

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE _____

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes No

2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?
Yes No

3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency's statutory authority, and if so, how.

4. If the purpose of this rule is to implement a *federal* rule or regulation, please state the following:
 - (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, private entity, or private business subject to the proposed, amended, or repealed rule? Please identify those subject to the rule, and explain how they are affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

6. What is the total estimated cost by fiscal year to a state, county, or municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ _____

Next Fiscal Year

\$ _____

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If yes, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

NOTICE OF RULE MAKING

The Department of Human Services (DHS) announces for a public comment period of thirty (30) calendar days a notice of rulemaking for the following proposed rule under one or more of the following chapters, subchapters, or sections of the Arkansas Code §§ 6-18-233, 9-28-103, 9-28-402, 9-28-405, 20-76-201, and 25-10-129.

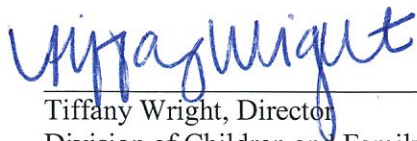
The Director of the Division of Children and Family Services (DCFS) amends Policy VIII-F of the DCFS Policy and Procedure Manual, regarding birth parents relinquishing infants for adoption under the Safe Haven Act to align with Act 68 and Act 348 of the 94th General Assembly, Regular Session, 2023. The rule now reflects that a medical provider under the Safe Haven Act include a medical provider staff member. The rule clarifies that if the identity of a parent or child is released or made known to DHS in violation of § A.C.A. 9-34-202 (b)(2), the case shall proceed as a dependency-neglect action, but with the same protections from criminal and civil liability as if an anonymous Safe Haven surrender was made. DHS shall not subsequently use a resulting termination of parental rights against a parent who surrendered his or her child as allowed under the Voluntary Placement of a Child chapter in Arkansas law. The division made technical revision in preparation for the launch of the *ARfocus* case management system, as well as general formatting updates. The proposed rule has no estimated financial impact. The proposed effective date is March 1, 2024.

The proposed rule is available for review at the Department of Human Services (DHS) Office of Rules Promulgation, 2nd floor Donaghey Plaza South Building, 7th and Main Streets, P. O. Box 1437, Slot S295, Little Rock, Arkansas 72203-1437. You may also access and download the proposed rule at ar.gov/dhs-proposed-rules.

Public comments must be submitted in writing at the above address or at the following email address: ORP@dhs.arkansas.gov. All public comments must be received by DHS no later than December 30, 2023. Please note that public comments submitted in response to this notice are considered public documents. A public comment, including the commenter's name and any personal information contained within the public comment, will be made publicly available and may be seen by various people.

If you need this material in a different format, such as large print, contact the Office of Rules Promulgation at (501) 320-6428.

The Arkansas Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act and is operated, managed and delivers services without regard to religion, disability, political affiliation, veteran status, age, race, color or national origin. **4502176296**



Tiffany Wright, Director
Division of Children and Family Services

Toni Roy

From: Legal Ads <legalads@arkansasonline.com>
Sent: Wednesday, November 22, 2023 11:10 AM
To: Toni Roy
Subject: Re: Full Ad Run - Birth Parents Relinquishing Infants for Adoption Under the Safe Haven Act

[EXTERNAL SENDER]

Thanks. Will run Fri 12/1, Sat 12/2, and Sun 12/3.

Gregg Sterne, Legal Advertising
Arkansas Democrat-Gazette
legalads@arkansasonline.com

From: "Toni Roy" <Toni.Roy@dhs.arkansas.gov>
To: "Legal Ads" <legalads@arkansasonline.com>
Cc: "Thomas Herndon" <Thomas.Herndon@dhs.arkansas.gov>, "Mac Golden" <Mac.E.Golden@dhs.arkansas.gov>, "Christin Harper" <Christin.Harper@dhs.arkansas.gov>, "Rebecca Murphy" <Rebecca.A.Murphy@dhs.arkansas.gov>, "Lakeya Gipson" <Lakeya.Gipson@dhs.arkansas.gov>
Sent: Wednesday, November 22, 2023 10:51:57 AM
Subject: Full Ad Run - Birth Parents Relinquishing Infants for Adoption Under the Safe Haven Act

Please run the attached public notice:

Friday, December 1, 2023;
Saturday, December 2, 2023; and
Sunday, December 3, 2023.

I am aware that distribution will be provided to all counties on Sundays and limited distribution on other days. Please let me know if you have any questions or concerns.

Please invoice to: **AR Dept. of Human Services**
DCFS, ATTN: Christin Harper
P.O. Box 1437, Slot S-570
Little Rock, AR 72203
(501) 682.8541

Christin Harper – Christin.Harper@dhs.arkansas.gov

Thank you,



TONI ROY

[Office of Policy and Rules](#)

Program Administrator

Toni Roy

From: Toni Roy
Sent: Friday, December 1, 2023 7:52 AM
To: register@sos.arkansas.gov
Cc: Thomas Herndon; Mac Golden; Christin Harper; Lakeya Gipson; Rebecca Murphy
Subject: DHS/DCFS - Proposed Filing - Birth Parents Relinquishing Infants for Adoption Under the Safe Haven Act
Attachments: SoS - Proposed Rule - Birth Parents Relinquishing Infants for Adoption Under the Safe Haven Act.pdf

This ad will run in the Arkansas Democrat Gazette on the following dates:

Friday, December 1, 2023;
Saturday, December 2, 2023; and
Sunday, December 3, 2023.

The public comment period will end on December 30, 2023.

Please let me know if you have any questions or concerns.

Thank you,



TONI ROY

[Office of Policy and Rules](#)

Program Administrator

P: 501.320.6164
F: 501.404.4619
700 Main Street
P.O. Box 1437, Slot S295
Little Rock, AR 72203-1437
Toni.Roy@dhs.arkansas.gov

humanservices.arkansas.gov



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Statement of Necessity and Rule Summary
Birth Parents Relinquishing Infants for Adoption Under the Safe Haven Act

Statement of Necessity:

This rule revision is necessary to allow the Division of Children and Family Services (DCFS) to update rules regarding birth parents relinquishing infants for adoption under the Safe Haven Act to align with Act 68 and Act 348 of the 94th General Assembly, Regular Session. Also, DCFS made technical revision in preparation for the launch of the ARfocus case management system and for general formatting purposes.

Summary:

- Policy VIII-F: Birth Parents Relinquishing Infants for Adoption Under the Safe Haven Act
 - To clarify, per Act 68, that a medical provider under the Safe Haven Act includes when a parent leaves a newborn with a medical provider staff member after delivery of the newborn child.
 - To include, per Act 348, that:
 - If the identity of a parent or child is released or made known to the Department of Human Services in violation of § A.C.A. 9-34-202 (b)(2), the case shall proceed as a dependency-neglect action, but with the same protections from criminal and civil liability as if an anonymous Safe Haven surrender was made.
 - The Department shall not subsequently use a resulting termination of parental rights against a parent who surrendered his or her child as allowed under the Voluntary Placement of a Child chapter in Arkansas law.
 - To make formatting, organizational, and other technical changes in preparation for the Division's launch of the *ARfocus* case management system by striking instructional language specific to the Division's current CHRIS case management system and deleting other internal procedure guidance from the rule.

POLICY VIII-F: BIRTH PARENTS RELINQUISHING INFANTS FOR ADOPTION UNDER THE SAFE HAVEN ACT

013/20241

Any medical provider, law enforcement agency, or fire department will take possession of a child who is thirty (30) days old or younger, without a court order, if the parents of the child, without expressing an intent to return for the child, leaves the child:

- A. ~~w~~With or voluntarily delivers the child to a medical provider (including when a parent leaves a newborn child with a medical provider staff member after delivery of the newborn child), law enforcement agency, fire department; or
- B. ~~i~~n a newborn safety device as described in Arkansas Code § 9-34-202.

A medical provider, law enforcement agency, or fire department that takes possession of a child under the Safe Haven Act will perform any act necessary to protect the physical health and safety of the child.

A medical provider, law enforcement agency, or fire department will keep the identity of a parent who relinquishes a child under Safe Haven provisions confidential and will not release or otherwise make the identity of the parent available, except to a:

- A. ~~l~~aw enforcement agency investigating abuse or neglect of the child that was committed before the child was relinquished; or
- B. ~~p~~rosecuting attorney pursuing charges against a parent for abuse or neglect of the child that was committed before the child was relinquished.

If the identity of a parent or child is released or made known to the Department of Human Services in violation of § A.C.A. 9-34-202 (b)(2), the case shall proceed as a dependency-neglect action, but with the same protections from liability as if an anonymous Safe Haven surrender was made. As such, the parent shall not be held criminally liable for the relinquishment or have a true finding of maltreatment or abandonment entered against the parent if that parent's identity is known and the Department of Human Services proceeds under § A.C.A. 9-27-341. Rather, a "true but exempt" selection will be made, as applicable, in the Division's approved information management system.

Further, the Department shall not subsequently use a resulting termination of parental rights against a parent who surrendered his or her child as allowed under the Voluntary Placement of a Child chapter in Arkansas law.

Upon delivery of the child (to a medical provider, law enforcement agency, or fire department), an appropriate employee (of the medical provider, law enforcement agency, or fire department) will take the child into protective custody for seventy-two (72) hours under the Child Maltreatment Act.

The person taking the child into protective custody will immediately notify DCFS.

DCFS will contact the Office of Chief Counsel (OCC) to request a petition be filed with the court for an order of emergency custody. DCFS will also utilize the Arkansas Attorney General's Missing Children Services Program along with any other national and state resources to determine whether the child is a missing child before placing the infant in an appropriate legal risk adoptive placement.

~~PROCEDURE VIII-F1: Voluntary Delivery of an Infant under the Provisions of the Safe Haven Act~~

~~01/2021~~

~~The Family Service Worker will:~~

- ~~A. Notify OCC immediately upon taking possession of such a child in order to initiate a dependency petition;~~
- ~~B. Utilize the Arkansas Attorney General's Missing Children Services Program and any other national and state resources to determine whether the child is a missing child;~~
- ~~C. Notify Adoption Supervisor immediately upon taking possession of the child in order to obtain immediate assistance in identifying appropriate pre-adoptive placement for the infant; and~~
- ~~D. Assign the case as secondary to the Adoption Specialist Supervisor's inbox so that the Adoption Specialist Supervisor may assign it to an Adoption Specialist within twenty four (24) hours.~~

~~The Adoption Specialist Supervisor will:~~

- ~~A. Assign an Adoption Specialist to the case within twenty four (24) hours; and~~
- ~~B. Ensure that an appropriate adoptive home is sought to meet the needs of the infant.~~

~~The Adoption Specialist will:~~

- ~~A. Assist with locating appropriate placement for the relinquished infant.~~

POLICY VIII-F: BIRTH PARENTS RELINQUISHING INFANTS FOR ADOPTION UNDER THE SAFE HAVEN ACT

03/2024

Any medical provider, law enforcement agency, or fire department will take possession of a child who is thirty (30) days old or younger, without a court order, if the parents of the child, without expressing an intent to return for the child, leave the child:

- A. with or voluntarily deliver the child to a medical provider (including when a parent leaves a newborn child with a medical provider staff member after delivery of the newborn child), law enforcement agency, fire department; or
- B. in a newborn safety device as described in Arkansas Code § 9-34-202.

A medical provider, law enforcement agency, or fire department that takes possession of a child under the Safe Haven Act will perform any act necessary to protect the physical health and safety of the child.

A medical provider, law enforcement agency, or fire department will keep the identity of a parent who relinquishes a child under Safe Haven provisions confidential and will not release or otherwise make the identity of the parent available, except to a:

- A. law enforcement agency investigating abuse or neglect of the child that was committed before the child was relinquished; or
- B. prosecuting attorney pursuing charges against a parent for abuse or neglect of the child that was committed before the child was relinquished.

If the identity of a parent or child is released or made known to the Department of Human Services in violation of § A.C.A. 9-34-202 (b)(2), the case shall proceed as a dependency-neglect action, but with the same protections from liability as if an anonymous Safe Haven surrender was made. As such, the parent shall not be held criminally liable for the relinquishment or have a true finding of maltreatment or abandonment entered against the parent if that parent's identity is known and the Department of Human Services proceeds under § A.C.A. 9-27-341. Rather, a "true but exempt" selection will be made, as applicable, in the Division's approved information management system.

Further, the Department shall not subsequently use a resulting termination of parental rights against a parent who surrendered his or her child as allowed under the Voluntary Placement of a Child chapter in Arkansas law.

Upon delivery of the child (to a medical provider, law enforcement agency, or fire department), an appropriate employee (of the medical provider, law enforcement agency, or fire department) will take the child into protective custody for seventy-two (72) hours under the Child Maltreatment Act. The person taking the child into protective custody will immediately notify DCFS.

DCFS will contact the Office of Chief Counsel (OCC) to request a petition be filed with the court for an order of emergency custody. DCFS will also utilize the Arkansas Attorney General's Missing Children Services Program along with any other national and state resources to determine whether the child is a missing child before placing the infant in an appropriate legal risk adoptive placement.

Proposed

Stricken language would be deleted from and underlined language would be added to present law.
Act 68 of the Regular Session

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: H1/23/23

A Bill

HOUSE BILL 1098

5 By: Representatives J. Mayberry, Barker, Bentley, K. Brown, Burkes, Cavanaugh, Crawford, Duke, C.
6 Fite, Haak, D. Hodges, Lundstrum, McAlindon, Vaught, *Duffield*
7 By: Senators Irvin, B. Davis, J. English
8

For An Act To Be Entitled

10 AN ACT TO AMEND THE SAFE HAVEN ACT; TO CLARIFY THAT A
11 PARENT MAY LEAVE A NEWBORN CHILD WITH MEDICAL
12 PROVIDER STAFF FOLLOWING DELIVERY OF THE CHILD UNDER
13 THE SAFE HAVEN ACT; TO CLARIFY THAT A VOLUNTEER FIRE
14 DEPARTMENT MAY OPERATE A NEWBORN SAFETY DEVICE UNDER
15 CERTAIN CONDITIONS UNDER THE SAFE HAVEN ACT; AND FOR
16 OTHER PURPOSES.

Subtitle

18
19
20 TO CLARIFY THAT A VOLUNTEER FIRE
21 DEPARTMENT MAY OPERATE A NEWBORN SAFETY
22 DEVICE UNDER CERTAIN CONDITIONS UNDER THE
23 SAFE HAVEN ACT.
24
25

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
27

28 SECTION 1. Arkansas Code § 5-27-205(c), concerning the affirmative
29 defense to the offense of endangering the welfare of a minor in the first
30 degree, is amended to read as follows:

31 (c)(1) It is an affirmative defense to a prosecution under this
32 section that a parent voluntarily delivered a child to and left the child
33 with or in, or voluntarily arranged for another person to deliver a child to
34 and leave the child with or in, a medical provider, law enforcement agency,
35 ~~or~~ fire department, or a newborn safety device as provided in § 9-34-201 et
36 seq.



1 (2)(A) Subdivision (c)(1) of this section does not create a
 2 defense to any prosecution arising from any conduct other than the act of
 3 delivering a child as described in subdivision (c)(1) of this section.

4 (B) Subdivision (c)(1) of this section specifically does
 5 not constitute a defense to any prosecution arising from an act of abuse or
 6 neglect committed before the delivery of a child to a medical provider, law
 7 enforcement agency, ~~or~~ fire department, or a newborn safety device as
 8 provided in § 9-34-201 et seq.

9
 10 SECTION 2. Arkansas Code § 9-34-201(1), concerning the definition of
 11 "fire department" as it relates to the voluntary delivery of a child to a
 12 medical provider, law enforcement agency, or fire department, is amended to
 13 read as follows:

14 (1) "Fire department" means any organization that ~~is~~ staffed
 15 ~~twenty-four (24) hours a day and established~~

16 (A) Is established for the prevention or extinguishment of
 17 fires, including, ~~but not limited to,~~ without limitation:

18 (i) A fire departments department organized under a
 19 municipal or county ~~ordinances,~~ ordinance;

20 (ii) An improvement districts, district;

21 (iii) A membership fee-based private fire
 22 ~~departments,~~ department; and

23 (iv) A volunteer fire departments department; and

24 (B)(i) Except as provided in subdivision (1)(B)(ii) of
 25 this section, is staffed twenty-four (24) hours per day by a medical services
 26 provider.

27 (ii) "Fire department" includes an organization
 28 under subdivision (1)(A) of this section that has a dual alarm system that
 29 will dispatch the nearest first responder affiliated with the fire department
 30 to retrieve a child voluntarily delivered to the fire department under this
 31 chapter in the event that all first responders affiliated with the fire
 32 department are dispatched for a separate emergency;

33
 34 SECTION 3. Arkansas Code § 9-34-202 is amended to read as follows:

35 9-34-202. Delivery to ~~a~~ medical provider, law enforcement agency, ~~or~~
 36 fire department, or in newborn safety device.

1 (a) Any medical provider, law enforcement agency, or fire department
2 shall take possession of a child who is thirty (30) days old or younger
3 without a court order if the parent of the child, without expressing an
4 intent to return for the child, leaves the child:

5 (1) With or voluntarily delivers the child to the medical
6 provider, law enforcement agency, or fire department, including without
7 limitation when:

8 (A) A parent leaves a newborn child with a medical
9 provider staff member after delivery of the newborn child; or

10 (2) In a newborn safety device that is:

11 (A) Voluntarily installed by the medical provider, law
12 enforcement agency, or fire department;

13 (B) Physically located on a structured wall of or inside a
14 hospital, law enforcement agency, or fire department ~~that is staffed twenty-~~
15 ~~four (24) hours a day by a medical services provider;~~ and

16 (C) Located in an area that is conspicuous and visible to
17 the employees of the hospital, law enforcement agency, or fire department.

18 (b)(1) A medical provider, law enforcement agency, or fire department
19 that takes possession of a child under subsection (a) of this section shall
20 perform any act necessary to protect the physical health and safety of the
21 child.

22 (2) A medical provider, law enforcement agency, or fire
23 department shall:

24 (A) Keep the identity of a parent who relinquishes a child
25 under this section confidential; and

26 (B) Not release or otherwise make the identity of the
27 parent available except to a:

28 (i) Law enforcement agency investigating abuse or
29 neglect of the child that was committed before the child was delivered to the
30 medical provider or law enforcement agency; or

31 (ii) Prosecuting attorney pursuing charges against a
32 parent for abuse or neglect of the child that was committed before the child
33 was delivered to the medical provider, law enforcement agency, or fire
34 department.

35 (c) A medical provider, law enforcement agency, or fire department
36 shall:

1 (1) Not be held criminally or civilly liable for any good faith
2 acts or omissions performed under this section; and

3 (2) Have an affirmative defense against any civil or criminal
4 claim arising out of any act or omission performed under this section.

5 (d)(1) A medical provider, law enforcement agency, or fire department
6 other than a volunteer fire department that voluntarily installs a newborn
7 safety device shall:

8 ~~(1)~~(A) Be responsible for the cost of the installation; and

9 ~~(2)~~(B) Install an adequate dual alarm system connected to the
10 physical location of the newborn safety device that is:

11 ~~(A)~~(i) Tested at least one (1) time per week to ensure the
12 alarm system is in working order; and

13 ~~(B)~~(ii) Visually checked at least two (2) times per day to
14 ensure the alarm system is in working order.

15 (2) A volunteer fire department may install a newborn safety
16 device if:

17 (A) The volunteer fire department complies with
18 subdivision (d)(1) of this section;

19 (B) The first responders at the volunteer fire department
20 are able to respond to the placement of an infant in the newborn safety
21 device within the shorter of the following:

22 (i) The response time established by the county in
23 which the volunteer fire department is located; or

24 (ii) A time frame not to exceed four (4) minutes;
25 and

26 (C) The newborn safety device is:

27 (i) Located within one (1) mile of a medical
28 provider or law enforcement agency; and

29 (ii) Equipped with:

30 (a) An alert system that, when the newborn
31 safety device is opened, automatically connects to the 911 system and
32 transmits a request for immediate dispatch of an emergency medical services
33 provider to the location of the newborn safety device; and

34 (b) A video surveillance system that allows
35 members of the volunteer fire department to monitor the inside of the newborn
36 safety device twenty-four (24) hours per day and that:

1 (1) Has at least two (2) firefighters
2 who are responsible for monitoring the inside of the newborn safety device
3 twenty-four (24) hours per day; and

4 (2) Is a surveillance system independent
5 from the alert system described in subdivision (d)(2)(C)(ii)(a).

6
7 */s/J. Mayberry*
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10 **APPROVED: 2/13/23**
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1 State of Arkansas *As Engrossed: S2/22/23 S3/7/23*

2 94th General Assembly

A Bill

3 Regular Session, 2023

SENATE BILL 195

4

5 By: Senators K. Hammer, *Irvin*

6 By: Representatives C. Fite, *J. Mayberry*

7

8

For An Act To Be Entitled

9 AN ACT TO AMEND AND UPDATE LAWS REGARDING *NEWBORN*
10 *SURRENDERS*; TO CLARIFY WHEN PARENTS' RIGHTS NO LONGER
11 ATTACH REGARDING SAFE HAVEN INFANTS; TO *AMEND AND*
12 *EXPAND* DEFINITIONS UNDER THE LAWS REGARDING SAFE
13 HAVEN; AND FOR OTHER PURPOSES.

14

15

16

Subtitle

17 TO CLARIFY WHEN PARENTS' RIGHTS NO LONGER
18 ATTACH REGARDING SAFE HAVEN INFANTS AND
19 TO AMEND DEFINITIONS UNDER THE LAWS
20 REGARDING SAFE HAVEN.

21

22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

24

25 *SECTION 1. DO NOT CODIFY. Legislative findings and intent.*

26 *The General Assembly finds that:*

27 *(1) Acts 2001, No. 236, § 9-34-201 et seq., otherwise*
28 *known as the "Safe Haven Act", allows a medical provider, such as an*
29 *emergency department of a hospital, a law enforcement agency, or a fire*
30 *department to take possession of a newborn child thirty (30) days old or*
31 *younger without adverse legal consequences to the parent if the parent*
32 *voluntarily leaves the child with the medical provider, law enforcement*
33 *agency, or fire department;*

34

35 *(2) There is a heightened need to encourage safe,*
36 *voluntary surrenders of newborns whose parents determine they cannot care for*
them, even when the letter of the law is not followed;



1 (3) The more places that newborns can be safely
2 relinquished for adoption without the fear of adverse legal outcomes to the
3 birth parents, the better;

4 (4) There is a need to clarify that if a parent or child's
5 identity is inadvertently released to the Department of Human Services, the
6 same protections from liability shall be afforded to the parents when a
7 surrender is made under this section;

8 (5) Currently, the Safe Haven Act does not address
9 parental rights and recently, several recent cases have revealed issues
10 resulting from ambiguous statutory language and no clear procedure existing
11 to ensure due process protections; and

12 (6) There is a need to clarify when and how parental
13 rights are terminated when a surrender is made under this section in an
14 effort to expedite permanency for surrendered newborns while also ensuring
15 the parents' constitutional rights are protected.

16
17 SECTION 2. Arkansas Code § 9-34-201(3), concerning the definition of
18 "medical provider", is amended to read as follows:

19 (3) "Medical provider" means any ~~emergency~~ medically staffed
20 department of a hospital licensed under § 20-9-214.

21
22 SECTION 3. Arkansas Code § 9-34-202(b), concerning the protocol
23 followed when a medical provider, law enforcement agency, or fire department
24 that takes possession of a child in accordance with the Safe Haven Act, is
25 amended to add an additional subdivision to read as follows:

26 (3)(A) If the identity of a parent or child is released or made
27 known to the Department of Human Services in violation of subsection (b)(2)
28 of this section, the case shall proceed as a dependency-neglect action as
29 defined under § 9-27-303, but with the same protections from liability as if
30 an anonymous surrender was made under this section.

31 (B)(i) If the child is relinquished at a location defined
32 in § 9-34-201, the parent shall not be held criminally liable for the
33 relinquishment or have a true finding of maltreatment or abandonment entered
34 against the parent if the parent's identity is known and the Department of
35 Human Services proceeds under § 9-27-341.

36 (ii) The department shall not subsequently use a

1 resulting termination of parental rights against a parent who surrendered his
2 or her child under this section.

3
4 SECTION 4. Arkansas Code § 9-34-203 is amended to read as follows:

5 9-34-203. Care of the child and permanency plan.

6 (a) Upon delivery of the child to a medical provider, law enforcement
7 agency, or fire department, the law enforcement officer, an appropriate
8 employee of the fire department, or an appropriate employee of the hospital
9 shall take the child into protective custody for seventy-two (72) hours under
10 the Child Maltreatment Act, § 12-18-101 et seq.

11 (b)(1) The law enforcement officer, employee of the fire department,
12 or employee of the hospital shall immediately notify the Division of Children
13 and Family Services, which shall initiate a dependency-neglect petition under
14 the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., and shall proceed
15 under § 9-27-341.

16 (2)(A) Within fourteen (14) days of filing a dependency-neglect
17 petition, the Department of Human Services shall publish a notification by
18 warning order in a newspaper having general circulation in the county where
19 the proceeding was filed one (1) time a week for four (4) weeks.

20 (B) The notification shall contain:

21 (i) The caption of the pleadings in the dependency-
22 neglect case;

23 (ii) The location where the child was delivered;

24 (iii) The date the child was delivered;

25 (iv) Notice that a dependency-neglect proceeding has
26 been filed, and that any parent claiming rights to the child must file a
27 responsive pleading or motion and appear before the court hearing the case to
28 defend the parent's claim within thirty (30) days from the date of last
29 publication; and

30 (C) If the identity of a parent or child is released
31 or made known to the Department of Human Services in violation of § 9-34-
32 202(b)(2), the case shall proceed as a dependency-neglect action as defined
33 under § 9-27-303, but with the same protections from liability as if an
34 anonymous surrender was made under this section.

35 (D) If no responsive pleadings are filed by the parent
36 within thirty (30) days from the date of last publication and there are

1 prospective adoptive parents seeking to adopt the child, the Department of
2 Human Services may proceed with the filing of an adoption petition without
3 further notice.

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5 /s/K. Hammer
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8 **APPROVED: 3/21/23**
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