

DEC 1 2023

BUREAU OF

LEGISLATIVE RESEARCH

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.~~

State of Arkansas

As Engrossed: H1/23/23

94th General Assembly

A Bill

Regular Session, 2023

HOUSE BILL 1098

By: Representatives J. Mayberry, Barker, Bentley, K. Brown, Burkes, Cavanaugh, Crawford, Duke, C.

Fite, Haak, D. Hodges, Lundstrum, McAlindon, Vaught, *Duffield*

By: Senators Irvin, B. Davis, J. English

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DEC 1 2023

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For An Act To Be Entitled

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

Subtitle

TO CLARIFY THAT A VOLUNTEER FIRE
DEPARTMENT MAY OPERATE A NEWBORN SAFETY
DEVICE UNDER CERTAIN CONDITIONS UNDER THE
SAFE HAVEN ACT.

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

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

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



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

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

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

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

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

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

(ii) An improvement districts, district;

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

(iv) A volunteer fire departments department; and

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

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

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

9-34-202. Delivery to a medical provider, law enforcement agency, ~~or~~ 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).

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

94th General Assembly

Regular Session, 2023

A Bill

SENATE BILL 195

By: Senators K. Hammer, *Irvin*

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

For An Act To Be Entitled

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

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Subtitle

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

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

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

The General Assembly finds that:

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

(2) There is a heightened need to encourage safe,
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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