
A BILL FOR AN ACT

RELATING TO CHILD PROTECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that as of November 2002,
2 forty-one states passed "safe surrender" laws to protect newborn
3 infants who might otherwise be abandoned to the environment.
4 The enactment of laws establishing a safe haven for newborn
5 infants in Hawaii is long overdue.

6 Current law allows for the prosecution of parents who
7 abandon their newborn infants. These parents are often young
8 mothers who are unable to deal with the harsh reality of
9 parenthood. Their solution is leaving the newborn in a
10 populated area with the hope that someone will find and care for
11 the child. Although the possibility of prosecution was intended
12 to deter mothers from taking such a careless approach, newborn
13 infants have suffered and died as the result of abandonment in
14 life-threatening situations.

15 Safe surrender laws take a different approach by making the
16 child's needs the immediate concern, rather than focusing on the
17 mother's liability. The goal of these laws is to create a
18 system where parents can leave their newborns in a place of



1 safety without fear of being prosecuted for child abandonment.
2 Anonymity, confidentiality, and freedom from prosecution for
3 parents may encourage them to leave a newborn infant at a
4 suitably safe place and thus save the newborn infant's life.
5 While established adoption procedures may be preferable,
6 safe-surrender laws provide an alternative that saves the lives
7 of newborns.

8 In 2003, the governor vetoed a nearly identical House Bill
9 No. 133, Conference Draft 1, objecting to the individual leaving
10 the baby without also leaving medical or genealogical history.
11 The legislature finds that the governor's objection is weak in
12 the face of current medical privacy laws that honor the
13 physician-patient privilege of nondisclosure to parents and
14 other family members. Nonetheless, to address the governor's
15 objection, this Act provides that the individual is allowed to
16 leave the baby, if the individual also leaves any known family
17 medical history of major illnesses or diseases.

18 The purpose of this Act is to establish a safe haven for
19 newborns and provide for their future health and safety by:

20 (1) Providing immunity from prosecution for leaving an
21 unharmed newborn at a hospital, fire station, or
22 police station;



1 (2) Providing immunity from liability for hospitals, fire
2 stations, police stations, and their personnel who
3 receive the newborn; and

4 (3) Conditioning relinquishment on the requirement that
5 the individual leave information on the family medical
6 history of the child.

7 SECTION 2. The Hawaii Revised Statutes is amended by
8 adding a new chapter to be appropriately designated and to read
9 as follows:

10 **"CHAPTER**

11 **SAFE PLACE FOR NEWBORNS**

12 **§ -1 Definitions.** As used in this chapter:

13 "Department" means the department of human services.

14 "Fire station" means a building for fire equipment and
15 firefighters.

16 "Firefighter" means a member of a fire department whose
17 principal duties are to prevent and fight fires.

18 "Health care provider" means an individual licensed,
19 certified, or otherwise authorized or permitted by law to
20 provide health care in the ordinary course of business or
21 practice of a profession.

1 "Hospital" means a facility licensed as a hospital by the
2 department of health and accredited by the Joint Commission on
3 Accreditation of Health Care Organizations.

4 "Law enforcement officer or police officer":

5 (1) Means any public servant, whether employed by the
6 State or any county, or by the United States, vested
7 by law with a duty to maintain public order, to make
8 arrests for offenses, or to enforce the criminal laws,
9 whether that duty extends to all offenses or is
10 limited to a specific class of offenses; and

11 (2) Includes the attorney general, deputy attorneys
12 general, county prosecuting attorneys, and deputy
13 prosecuting attorneys engaged in the enforcement of
14 criminal law.

15 "Police station" means a facility where police officers
16 daily report for assignments, paperwork, and other police
17 business.

18 "Unharmed condition" means no evidence of injury to a
19 child's physical health or welfare, as evidenced in any case
20 where the child exhibits none of the following:

21 (1) Substantial or multiple skin bruising or any other
22 internal bleeding;



- 1 (2) Injury to skin causing substantial bleeding;
- 2 (3) Malnutrition;
- 3 (4) Failure to thrive;
- 4 (5) Burns;
- 5 (6) Symptoms from poisoning;
- 6 (7) Fracture of any bone;
- 7 (8) Subdural hematoma;
- 8 (9) Soft tissue swelling;
- 9 (10) Extreme pain;
- 10 (11) Extreme mental distress;
- 11 (12) Gross degradation; or
- 12 (13) Death.

13 § -2 **Unharmed newborns left at hospitals, fire stations,**
14 **or police stations; avoidance of prosecution.** A person may
15 leave a newborn child with the personnel of a hospital, fire
16 station, or police station without being subject to prosecution
17 for abandonment of a child pursuant to section 709-902; provided
18 that:

- 19 (1) The newborn child was left at the hospital, fire
20 station, or police station within seventy-two hours of
21 birth, as determined within a reasonable degree of
22 certainty;

1 (2) The newborn child is left in an unharmed condition;
2 and

3 (3) The newborn child is accompanied by written
4 information concerning any known family medical
5 history, including major illnesses and diseases.

6 § -3 **Safe place for newborns.** (a) The personnel of a
7 hospital, fire station, or police station may receive a newborn
8 child; provided that:

9 (1) The newborn child was left at the hospital, fire
10 station, or police station, within seventy-two hours
11 of birth, as determined within a reasonable degree of
12 certainty;

13 (2) The newborn child is left in an unharmed condition;
14 and

15 (3) The newborn child is accompanied by written
16 information concerning any known family medical
17 history, including major illnesses and diseases.

18 (b) The personnel of the hospital, fire station, or police
19 station shall ask the person leaving the newborn child for
20 information about the infant's parents, and shall inform the
21 person that the information shall be kept confidential; provided
22 that the newborn child is unharmed when presented to the

1 hospital, fire station, or police station; and provided further
2 that a person's refusal to disclose this information shall not
3 prevent personnel from accepting a newborn. The personnel of
4 the hospital, fire station, or police station shall notify
5 appropriate law enforcement agencies that a newborn child was
6 received, for purposes of matching the child with missing
7 children reports. The personnel of the hospital, fire station,
8 or police station shall ask the person leaving the newborn child
9 about the medical history of the mother or newborn child. The
10 personnel of the hospital, fire station, or police station may
11 provide the person leaving the newborn child with information
12 about how to contact relevant social service agencies.

13 (c) If a hospital, fire station, or police station
14 receives a newborn child pursuant to subsection (a), any health
15 care provider, firefighter, or police officer receiving the
16 child shall perform any act necessary, in accordance with
17 generally accepted standards of their professional practice, to
18 protect, preserve, or aid the physical health or safety of the
19 newborn child during the temporary physical custody.

20 § -4 **Reporting.** Within twenty-four hours of receiving a
21 newborn under section -3, the personnel of the hospital, fire
22 station, or police station shall inform the department that a



1 newborn has been left at the premises; provided however, that
2 the department shall not be informed before the person leaving
3 the newborn leaves the premises.

4 § -5 **Immunity.** (a) A hospital with responsibility for
5 performing duties under this chapter and any health care
6 provider working at the hospital, a fire station and any
7 firefighter or fire personnel, and a police station and any
8 police officer or police personnel shall be immune from any
9 criminal liability that otherwise might result from their
10 actions, if they are acting in good faith in receiving a newborn
11 child, and shall be immune from any civil liability that
12 otherwise might result from merely receiving a newborn child.

13 (b) A hospital performing duties under this chapter and
14 any health care provider working at the hospital, a fire station
15 and any firefighter or fire personnel, and a police station and
16 any police officer or police personnel who are mandated
17 reporters under section 350-1.1 shall be immune from any
18 criminal or civil liability that otherwise might result from the
19 failure to make a report under section 350-1.1 if the person is
20 acting in good faith in complying with this chapter.

21 § -6 **Authority to reunite; placement.** (a) Upon
22 receiving custody of a newborn child that has been discharged



1 from a hospital that received the newborn child pursuant to
2 section -3, the department may reunite the newborn with the
3 newborn's parents.

4 (b) The department may:

5 (1) Search for relatives of the newborn as a placement or
6 permanency option; or

7 (2) Implement other placement requirements that give a
8 preference to relatives;

9 provided that the department has information as to the identity
10 of the newborn child, the newborn's mother, or the newborn's
11 father.

12 § -7 **Status of child.** Except as otherwise provided in
13 section 709-902, for purposes of proceedings under this chapter
14 and adoption proceedings, a newborn child left at a hospital,
15 fire station, or police station under section -2 shall be
16 considered an abandoned child."

17 SECTION 3. Section 709-902, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§709-902 **Abandonment of a child.** (1) A person commits
20 the offense of abandonment of a child if, being a parent,
21 guardian, or other person legally charged with the care or



1 custody of a child less than fourteen years old, the person
2 deserts the child in any place with intent to abandon it.

3 (2) Leaving a newborn child at a hospital, fire station,
4 or police station pursuant to section -2 shall not constitute
5 a violation of this section.

6 [~~2~~] (3) Abandonment of a child is a [~~misdemeanor~~] class
7 C felony."

8 SECTION 4. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 5. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect on July 1, 2022.



S.B. No. 3200

S.O. 2, H.O. 1

Report Title:

Abandoned Children; Immunity from Prosecution

Description:

Provides immunity from prosecution for leaving an unharmed newborn at a hospital, fire station, or police station within seventy-two hours of its birth. Provides immunity for personnel receiving a newborn. Requires medical history from a person relinquishing a newborn. (SB3200 HD1)

