

JAN 25 2006

S.B. NO. 3200

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
16 the child's needs the immediate concern, rather than focusing on
17 the 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, safe-
6 surrender laws provide an alternative that saves the lives of
7 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 written information on the family
6 medical 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 "Firefighter" means a member of a fire department whose
15 principal duties are to prevent and fight fires.

16 "Fire station" means a building for fire equipment and
17 firefighters.

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 "Unharmful condition" means no evidence of injury to a
19 child's physical or psychological health or welfare, as
20 evidenced in any case where:

21 (1) The child exhibits no:



- 1 (A) Substantial or multiple skin bruising or any
- 2 other internal bleeding;
- 3 (B) Injury to skin causing substantial bleeding;
- 4 (C) Malnutrition;
- 5 (D) Failure to thrive;
- 6 (E) Burn or burns;
- 7 (F) Poisoning;
- 8 (G) Fracture of any bone;
- 9 (H) Subdural hematoma;
- 10 (I) Soft tissue swelling;
- 11 (J) Extreme pain;
- 12 (K) Extreme mental distress;
- 13 (L) Gross degradation; or
- 14 (M) Death;
- 15 (2) The child has not been the victim of:
- 16 (A) Sexual contact or conduct, including but not
- 17 limited to rape, sodomy, molestation, sexual
- 18 fondling, or incest;
- 19 (B) Obscene or pornographic photographing, filming,
- 20 or depiction; or
- 21 (C) Other similar forms of sexual exploitation;



1 (3) Injury does not exist to the psychological capacity of
2 a child as evidenced by a substantial impairment in
3 the child's ability to function;

4 (4) The child has been provided in a timely manner with
5 adequate food, clothing, shelter, psychological care,
6 physical care, medical care, or supervision; and

7 (5) The child has not been provided with dangerous,
8 harmful, or detrimental drugs, as defined by section
9 712-1240; except in cases where a child's family
10 provides the drugs to the child pursuant to the
11 direction or prescription of a practitioner, as
12 defined in section 712-1240.

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, a fire
16 station, or a police station without being subject to
17 prosecution for abandonment of a child pursuant to section
18 709-902; provided that:

19 (1) The newborn child was born within seventy-two hours of
20 being left at the hospital, fire station, or police
21 station, as determined within a reasonable degree of
22 medical 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 born within seventy-two hours of
10 being left at the hospital, fire station, or police
11 station, as determined within a reasonable degree of
12 medical 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 family medical history,
17 including major illnesses and diseases.

18 (b) The personnel of the hospital, fire station, or police
19 station shall not inquire into the identity of the person
20 leaving the newborn child; however, they may inform the person
21 that the information may be voluntarily put forth and that it
22 shall be kept confidential, provided the newborn child is



1 unharmed when presented to the hospital, fire station, or police
2 station. The personnel of the hospital, fire station, or police
3 station shall notify appropriate law enforcement agencies that a
4 newborn child was received, for purposes of matching the child
5 with missing children reports. The personnel of the hospital,
6 fire station, or police station shall ask the person leaving the
7 newborn child about the medical history of the mother or newborn
8 child. The personnel of the hospital, fire station, or police
9 station may provide the person leaving the newborn child with
10 information about how to contact relevant social service
11 agencies.

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

19 § -4 **Reporting.** Within twenty-four hours of receiving a
20 newborn under section -3, the personnel of the hospital, fire
21 station, or police station shall inform the department that a
22 newborn has been left at the premises; provided however, that



1 the department shall not be informed before the person leaving
2 the newborn leaves the premises.

3 § -5 **Immunity.** (a) A hospital with responsibility for
4 performing duties under this chapter and any health care
5 provider working at the hospital, a fire station and any
6 firefighter or fire personnel, and a police station and any
7 police officer or police personnel shall be immune from any
8 criminal liability that otherwise might result from their
9 actions, if they are acting in good faith in receiving a newborn
10 child, and shall be immune from any civil liability that
11 otherwise might result from merely receiving a newborn child.

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

20 § -6 **Authority to reunify; placement.** (a) Upon
21 receiving custody of a newborn child that has been discharged
22 from a hospital that received the newborn child pursuant to



1 section -3, the department may reunify the newborn with the
2 newborn's parents.

3 (b) The department may:

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

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

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

11 § -7 **Status of child.** Except as otherwise provided in
12 section 709-902, for purposes of proceedings under this chapter
13 and adoption proceedings, a newborn child left at a hospital,
14 fire station, or police station under section -2 shall be
15 considered an abandoned child."

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

18 "§709-902 **Abandonment of a child.** (1) A person commits
19 the offense of abandonment of a child if, being a parent,
20 guardian, or other person legally charged with the care or
21 custody of a child less than fourteen years old, the person
22 deserts the child in any place with intent to abandon it.



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

4 [~~2~~] (3) Abandonment of a child is a misdemeanor."

5 SECTION 4. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect upon its approval.

11

INTRODUCED BY: *Starrne Chun Oakland*



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 72 hours of birth. Provides immunity from liability for hospitals, fire stations, and police stations for receiving a newborn. Requires medical history from person relinquishing newborn.

