

PROPOSED

THE SENATE
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

S.B. NO. 3200
S.D. 2

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

21 (1) The child exhibits no:

PROPOSED

- 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) Burns;
- 7 (F) Symptoms from 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 **Unharmred newborns left at hospitals, fire stations,**
 16 **or police stations; avoidance of prosecution.** A person may
 17 leave a newborn child with the personnel of a hospital, fire
 18 station, or police station without being subject to prosecution
 19 for abandonment of a child pursuant to section 709-902; provided
 20 that:

- 21 (1) The newborn child was left at the hospital, fire
- 22 station, or police station within seventy-two hours of

1 birth, as determined within a reasonable degree of
2 certainty;

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

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

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

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

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

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

20 (b) The personnel of the hospital, fire station, or police
21 station shall ask the person leaving the newborn child for
22 information about the infant's parents, and shall inform the

PROPOSED**S.B. NO. 3200
S.D. 2**

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

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

1 § **-4 Reporting.** Within twenty-four hours of receiving a
 2 newborn under section -3, the personnel of the hospital, fire
 3 station, or police station shall inform the department that a
 4 newborn has been left at the premises; provided however, that
 5 the department shall not be informed before the person leaving
 6 the newborn leaves the premises.

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

16 (b) A hospital performing duties under this chapter and
 17 any health care provider working at the hospital, a fire station
 18 and any firefighter or fire personnel, and a police station and
 19 any police officer or police personnel who are mandated
 20 reporters under section 350-1.1 shall be immune from any
 21 criminal or civil liability that otherwise might result from the

1 failure to make a report under section 350-1.1 if the person is
2 acting in good faith in complying with this chapter.

3 § -6 Authority to reunite; placement. (a) Upon
4 receiving custody of a newborn child that has been discharged
5 from a hospital that received the newborn child pursuant to
6 section -3, the department may reunite the newborn with the
7 newborn's parents.

8 (b) The department may:

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

11 (2) Implement other placement requirements that give a
12 preference to relatives;
13 provided that the department has information as to the identity
14 of the newborn child, the newborn's mother, or the newborn's
15 father.

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

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

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

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

9 ~~[(2)]~~ (3) Abandonment of a child is a misdemeanor."

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

13 SECTION 5. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

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



PROPOSED

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. (SD2)

