

BILL NO. 35-0173

Thirty-Fifth Legislature of the Virgin Islands

October 18, 2023

An Act amending title 5 Virgin Islands Code, chapter 201, by adding a subchapter V enacting the Safe Haven Newborn Protection Act to provide a mechanism for a newborn infant to be relinquished to a safe environment, for the parents of the newborn infant to remain anonymous if they choose and avoid civil or criminal liability for the act of relinquishing the newborn infant

PROPOSED BY: Senator Angel L. Bolques, Jr.

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. This act may be cited as the Safe Haven Newborn Protection Act.

SECTION 2. Title 5 Virgin Islands Code, chapter 201, is amended by adding a subchapter V that reads as follows:

“Subchapter V. Safe Haven Newborn Protection Act

§ 2560. Purpose: public policy

(a) The Virgin Islands recognizes that abandonment can cause injury and death to newborn infants, giving rise to potential civil or criminal liability to parents who may be under emotional distress. This Act is intended to provide a mechanism for a newborn infant to be relinquished, utilizing Virgin Islands Safe Haven Law, to a safe environment and for the parents of the newborn infant to remain anonymous if they choose and to avoid civil or criminal liability

1 for the act of relinquishing the newborn infant. Relinquishing a newborn infant using the
2 procedures in this subchapter can reduce the chance of injury to a newborn infant and provide
3 a safer alternative.

4 (b) The Department of Human Services shall implement a public information campaign
5 on Virgin Islands Safe Haven Law to encourage parents to safely relinquish the child under the
6 procedures in this subchapter, or to choose a traditional adoption plan, instead of abandoning
7 the newborn. This campaign must also include guidance, support, and resources to assist
8 individuals who are unsure about relinquishing a child to be able to gain the ability to parent a
9 child themselves rather than place the newborn infant in harm's way.

10 **§ 2561. Definitions**

11 (a) As used in this subchapter, unless it is otherwise provided or the context requires a
12 different construction, application, or meaning:

13 (1) "Abuse" means any physical or mental injury inflicted on a child, other than
14 by accidental means, by those responsible for the care and maintenance of the child,
15 which injury causes or creates a substantial risk of death, serious or protracted
16 disfigurement, protracted impairment of physical or emotional health or loss or protracted
17 impairment of the function of any bodily organ. "Abuse" includes the sexual abuse of a
18 child, as defined by law, or the sexual exploitation, including the prostituting of a child
19 and the photographing or other depiction of a child for pornographic purposes, or a
20 persistent course of sexual conduct that causes a child's health or welfare to be harmed or
21 threatened.

22 (2) "Department" means the Virgin Islands Department of Human Services.

23 (3) "Emergency medical facility" means a freestanding emergency/urgent care
24 center or trauma center that is staffed and available 24 hours a day/7 days per week.

1 (4) "Emergency medical professional" includes licensed physicians, and any
2 emergency medical technicians, emergency medical technician-intermediate, advanced
3 emergency medical technicians, paramedics, trauma nurse specialists, nurse practitioners,
4 nurses (RN and LPN), and physician assistants.

5 (5) "Father" means, for purpose of this chapter only, a male parent of a child
6 when:

7 (A) he is married to a mother of the child when the child was conceived or
8 when the child was born, unless a court of competent jurisdiction has, through court
9 order, ruled to the contrary; or

10 (B) it has been so determined by a court of competent jurisdiction; or

11 (C) he has been given an order of adoption of the child by a court of
12 competent jurisdiction; or

13 (D) Paternity has otherwise been established pursuant to Title 16, chapter
14 11 of this Code; or

15 (E) he otherwise makes a formal or unequivocal acknowledgment;

16 (F) but does not mean a man whose parental rights have been terminated
17 by a court of competent jurisdiction.

18 (6) "Fire station" means an office or headquarters located within the Virgin
19 Islands Territory that provides fire and emergency medical services to the territory.

20 (7) "Hospital" means a place devoted primarily to the maintenance and operation
21 of facilities for the diagnosis, treatment or care of inpatients by or under the supervision
22 of a physician.

23 (8) "Mother" means a female parent of a child when she is the biological parent
24 of the child; or has been given an order of adoption of the child by a court of competent
25 jurisdiction, or she was the intended parent in the case of a child born by surrogacy; but

1 does not mean a woman whose parental rights have been terminated by a court of
2 competent jurisdiction.

3 (9) "Neglect" means the abandonment of a child by his or her parent, guardian,
4 or legal custodian or the failure to provide adequate food, clothing, shelter, education as
5 required by law, or medical care though financially able to do so, proper parental
6 supervision, care and control, or other action as necessary for a child's physical, mental,
7 moral, or emotional health.

8 (10) "Newborn Infant" means a child who a licensed physician reasonably believes
9 is 30 days old or less at the time the child is initially relinquished to a hospital, police
10 station, fire station, or emergency medical facility, who is not an abused or neglected
11 child.

12 (11) "Non-Relinquishing Parent" means the parent of a relinquished newborn
13 infant who did not bring the infant or cause the newborn infant to be brought to the Safe
14 Haven Provider.

15 (12) "Parent" means the father or mother of a child and includes any adoptive
16 parent. It does not include a person whose parental rights with respect to the child have
17 been terminated by a court of competent jurisdiction.

18 (13) "Police station" means an office or headquarters of the Virgin Islands Police
19 Department located within the Virgin Islands Territory.

20 (14) "Putative Father" means a man whose legal relationship to a child has not
21 been established but claims to be the father or who is alleged to be the father of a child
22 who is born to a woman to whom he is not married at the time of the child's birth.

23 (15) "Relinquish" means to bring, or direct another party to bring, a newborn
24 infant, as defined in this subchapter, to a staff member of a Safe Haven Provider and to
25 leave the newborn infant with personnel of the facility. This includes calling 9-1-1 and

1 contacting emergency medical services to respond to the location of the parent requesting
2 to relinquish the newborn infant and relinquishing the newborn infant to emergency
3 medical personnel. The newborn infant is relinquished in accordance with this subchapter
4 if the person giving the newborn infant to the Safe Haven Provider does not express an
5 intent to return for the newborn infant or states that he or she will not return for the
6 newborn infant. In the case of a mother who gives birth to a newborn infant in a hospital,
7 the mother's act of leaving that newborn infant at the hospital (i) without expressing an
8 intent to return for the newborn infant or (ii) stating that she will not return for the
9 newborn infant is a "relinquishment" under this Act.

10 (16) "Relinquishing Parent" means the parent who brings, or otherwise causes the
11 newborn infant to be brought, to the Safe Haven Provider or calls 9-1-1 and relinquishes
12 the infant.

13 (17) "Safe Haven Law" has the same meaning as Baby Moses law, Daniels Law,
14 Safe Surrender Law and is a statute that decriminalizes the relinquishment of unharmed
15 newborn infants with statutorily designated entities so that the child becomes a ward of
16 the state.

17 (18) "Safe Haven Provider" means a hospital, fire station, emergency medical
18 facility, or police station.

19 (19) "Temporary physical custody" means the temporary placement of a newborn
20 infant with a Safe Haven Provider, hospital, or other medical facility out of the custody
21 of the newborn infant's parent.

22 (b) The terms "infant", and "newborn" are used interchangeably throughout this
23 chapter and carry the same definition as "newborn infant", indicated above.

24 **§ 2562. Presumptions**

1 (a) There is a presumption that a person relinquishing a newborn infant, or otherwise
2 causing the newborn infant to be relinquished, in accordance with this subchapter, is the
3 newborn infant's biological parent and either without expressing an intent to return for the
4 newborn infant or expressing an intent not to return for the newborn infant, did intend to
5 relinquish the newborn infant to a Safe Haven Provider, to treat, care for, and provide for the
6 newborn infant in accordance with this subchapter.

7 (b) There is a presumption that by relinquishing a newborn infant in accordance with
8 this subchapter, the newborn infant's relinquishing parent consents to the termination of his or
9 her parental rights with respect to the newborn infant.

10 (c) Both the relinquishing and non-relinquishing parent of a relinquished newborn
11 infant may rebut the presumption set forth in subsection (a) or (b) at any time before the
12 termination of the parent's parental rights.

13 **§ 2563. Safe Haven Provider requirements**

14 (a) Every fire station/EMS, and emergency medical facility shall accept and provide
15 all necessary emergency services and care to a relinquished newborn infant or shall obtain
16 emergency medical services by calling for EMS in accordance with this subchapter. After the
17 relinquishment of a newborn infant to a fire station/EMS, the fire station shall arrange for the
18 transportation of the newborn infant to the nearest hospital as soon as transportation can be
19 arranged.

20 (b) Every police station shall accept a relinquished newborn infant, in accordance with
21 this subchapter. After the relinquishment of a newborn infant to a police station, the police
22 station shall arrange for the transportation of the newborn infant to the nearest hospital as soon
23 as transportation can be arranged.

24 (c) Every hospital shall accept and provide all necessary emergency services and care
25 to a relinquished newborn infant, in accordance with this subchapter. The hospital shall

1 examine a relinquished newborn infant and perform tests that, based on reasonable medical
2 judgment, are appropriate for evaluating whether the relinquished newborn infant was abused
3 or neglected.

4 (1) The act of relinquishing a newborn infant serves as implied consent for the
5 hospital and its medical personnel and physicians on staff to treat and provide care for
6 the newborn infant.

7 (2) For any day that a hospital has custody of a newborn infant relinquished in
8 accordance with this subchapter, the Department shall pay the hospital the current
9 Medicaid general acute care daily inpatient rate.

10 (3) The hospital is deemed to have temporary physical custody of a relinquished
11 newborn infant until the newborn is discharged to the custody of the Virgin Islands
12 Department of Human Services.

13 (d) If either the relinquishing or non-relinquishing parent of a newborn infant returns
14 to reclaim the child after relinquishing the infant to a Safe Haven Provider, staff shall inform
15 the parent to contact the Virgin Islands Department of Human Services. A Safe Haven Provider
16 may not in any circumstance give the infant back to the relinquishing or non-relinquishing
17 parent.

18 **§ 2564. Signs**

19 Every Safe Haven Provider that is required to accept a relinquished newborn infant under
20 this chapter must post a sign in a conspicuous place on the exterior of the building, informing
21 persons that a newborn infant may be relinquished at the facility in accordance with this
22 subchapter. The Department shall prescribe specifications for the signs and for their placement
23 that will ensure territory-wide uniformity.

24 **§ 2565. Procedures for temporary physical custody of relinquished newborn infants**

1 (a) The Safe Haven Provider shall take temporary physical custody of a child, without a
2 court order, if the child is personally delivered to a Safe Haven Provider, if:

3 (1) the child is no more than 30 days of age; and

4 (2) the parent delivers, or causes the infant to be delivered to the safe haven
5 provider; and

6 (3) the parent does not express an intent to return for the child; and

7 (4) there is no evidence of injury or abuse of the newborn infant.

8 (b) If a Safe Haven Provider takes temporary physical custody of a child pursuant to
9 subsection (a) of this section, the Safe Haven Provider:

10 (1) shall perform any act necessary, in accordance with generally accepted
11 standards of professional practice, to protect, preserve, or aid the physical health and
12 safety of the child during the temporary physical custody including, but not limited to,
13 delivering the child to a hospital for care or treatment; and

14 (2) may not inquire as to the identity of the parent. If the identity of a parent is
15 known to the Safe Haven Provider, the Safe Haven Provider shall keep all information
16 confidential, in accordance with the Health Insurance Portability and Accountability Act
17 (HIPAA), and the confidentiality requirements under title 19 of the Virgin Islands Code.
18 The parent leaving the child shall not be required to provide any information to the Safe
19 Haven Provider, but may voluntarily provide information including, but not limited to,
20 medical history of the parents or the child.

21 (c) A Safe Haven Provider with responsibility for performing duties under this
22 section, and any employee, doctor, or other personnel working with the Safe Haven Provider,
23 are immune from any civil or criminal liability that otherwise might result from their actions,
24 if they are acting in good faith and within their professional scope in receiving a child and
25 performing duties under this section.

1 (d) A parent may leave a newborn infant with a Safe Haven Provider in this territory
2 without being subjected to prosecution for abandonment or neglect pursuant to the provisions
3 of title 14, Virgin Islands Code, section 504, if the newborn infant is no more than 30 days of
4 age when the newborn infant is left with the Safe Haven Provider, as determined within a
5 reasonable degree of medical certainty, and there is no evidence of injury or abuse of the
6 newborn infant.

7 **§ 2566. Immunity for relinquishing parent**

8 (a) The act of relinquishing a newborn infant to staff at a Safe Haven Provider, in
9 accordance with this Act does not, by itself, constitute a basis for a finding of abuse, neglect,
10 or abandonment of the newborn pursuant to the laws of this Territory.

11 (b) If there is suspected child abuse or neglect that is not based solely on the newborn
12 infant's relinquishment at a Safe Haven Provider, staff who are mandated reporters shall report
13 the abuse or neglect.

14 (c) Neither a child protective investigation nor a criminal investigation may be initiated
15 solely because a newborn infant is relinquished pursuant to this subchapter.

16 (d) A Safe Haven Provider, and any personnel of a Safe Haven Provider, are immune
17 from criminal or civil liability for acting in good faith in accordance with this subchapter.
18 Nothing in this subchapter limits liability for negligence for care and medical treatment.

19 **§ 2567. Anonymity**

20 If there is no evidence of abuse or neglect of a relinquished newborn infant, the
21 relinquishing parent has the right to remain anonymous and to leave the Safe Haven Provider
22 at any time and not be pursued or followed. Before the relinquishing person leaves the Safe
23 Haven Provider, the Safe Haven Provider personnel shall verbally inform the relinquishing
24 person that by relinquishing the child anonymously the relinquishing person will have to
25 petition the court if preventing the termination of parental rights and regaining custody of the

1 child is desired. The Safe Haven Provider shall offer the relinquishing parent an information
2 packet.

3 **§ 2568. Information for relinquishing parent; public disclosure prohibited**

4 (a) A Safe Haven Provider that receives a newborn infant relinquished in accordance
5 with this subchapter shall offer an information packet to the relinquishing person and, if
6 possible, shall clearly inform the relinquishing person that acceptance of the information is
7 completely voluntary. The information packet must include the following:

8 (1) Written notice of the following:

9 (A) No sooner than 60 days following the date of the initial relinquishment
10 of the newborn infant to a Safe Haven Provider, the Department will commence
11 proceedings for the termination of parental rights and placement of the newborn
12 infant for adoption; and

13 (B) Failure of a parent of the newborn infant to contact the Department and
14 petition for the return of custody of the newborn infant before termination of
15 parental rights bars any future action asserting legal rights with respect to the
16 newborn infant;

17 (2) A resource list of providers of counseling services including grief counseling,
18 pregnancy counseling, and counseling regarding adoption and other available options for
19 placement of the newborn infant;

20 (3) Upon request of the relinquishing parent, the Department shall provide the
21 application forms for any adoption registry and medical information exchange
22 maintained within the territory;

23 (4) A brochure with a self-mailer attached that describes the Safe Haven
24 Newborn Protect Act and the rights of birth parents, including an optional section for the
25 parent to complete and mail to the Department, that shall ask for basic anonymous

1 background information about the relinquished child. This brochure must be maintained
2 by the Department on its website; and

3 (5) A brochure describing postpartum health information for the mother.

4 (b) Emergency medical professionals, employees, or other persons engaged in the
5 administration or operation of a Safe Haven Provider, or the Department where a newborn
6 infant has been relinquished or transferred under this subchapter are prohibited from publicly
7 disclosing any information concerning the relinquishment of the newborn infant and the
8 individuals involved, except as otherwise provided by law.

9 **§ 2569. Hospital reporting requirements**

10 (a) Not later than 12 hours after accepting an infant from a relinquishing person or
11 from staff at a fire station, emergency medical facility, or police station, in accordance with this
12 subchapter, a hospital shall report the relinquishment to the Department for the purpose of
13 transferring physical custody of the infant from the hospital to the Department.

14 (b) If a relinquished child is not a newborn infant as defined in section 2561(a)(10), the
15 hospital shall proceed as if the child is an abused or neglected child.

16 **§ 2570. Department's duties and procedures**

17 (a) Once a hospital has made a report to the Department under section 2569(a) of this
18 subchapter, the Department shall arrange to accept physical custody of the relinquished
19 newborn infant and, not later than 48 hours of taking a child into custody, excluding weekends
20 and holidays, shall seek a court order for emergency temporary custody of the infant upon its
21 acceptance of the infant and file a report with the court stating the specific circumstances
22 justifying the taking of temporary custody and the specific measures implemented to safeguard
23 the physical and emotional well-being of the newborn infant.

24 (b) Not later than 24 hours after receiving a report under section 2569(a), the
25 Department shall request assistance from law enforcement officials to investigate the matter

1 using the National Center for Missing and Exploited Children to ensure that the relinquished
2 newborn infant is not a missing child. The extent of this investigation involves only a
3 determination that the infant is not a missing child and may not extend to an investigation of
4 the relinquishing or non-relinquishing parent.

5 (c) The Department shall initiate proceedings to terminate the parental rights of the
6 relinquished newborn infant's known or unknown parents no sooner than 60 days following the
7 date of the initial relinquishment of the newborn infant to the Safe Haven Provider.

8 (d) Before filing a petition for termination of parental rights, the Department shall do
9 the following:

10 (1) Search its Putative Father Registry for the purpose of determining the identity
11 and location of the putative father of the relinquished newborn infant who is, or is
12 expected to be, the subject of an adoption proceeding, in order to provide notice of the
13 proceeding to the putative father. At least one search of the Registry must be conducted
14 at least 30 days after the relinquished newborn infant's estimated date of birth. Notice to
15 any potential putative father discovered in a search of the Registry according to the
16 estimated age of the relinquished newborn infant must be in accordance with title 16
17 Virgin Islands Code chapter 5, section 143.

18 (2) Verify with law enforcement officials, using the National Center for Missing
19 and Exploited Children that the relinquished newborn infant is not a missing child.

20 (3) No later than 10 days after the newborn infant is relinquished, the Department
21 shall attempt to identify, locate, and notify the non-relinquishing parent by performing a
22 missing-child search and publishing notice of the relinquishment of the newborn to
23 include:

24 (A) The place, date and time of the relinquishment; and

1 (B) The sex, race, approximate age, any identifying marks of the newborn
2 infant, and any other identifying information the Department considers necessary;
3 and

4 (C) A statement that the non- relinquishing parent's failure to notify the
5 Department of an intent to exercise his or her parental rights and responsibilities
6 within 20 days after publication of the notice shall be deemed to be the non-
7 relinquishing parent's irrevocable consent to the termination of all parental rights
8 and his or her irrevocable waiver of any right to notice of, or opportunity to
9 participate in, any termination of parental rights proceeding involving the
10 surrendered newborn.

11 (4) Not later than 48 hours, excluding weekends and holidays, after
12 assuming physical custody of the newborn infant, the Department shall file a
13 petition in the Family Division of the Superior Court. The petition must allege that
14 the newborn infant has been relinquished in accordance with this subchapter and
15 state that the child continues to be in need of the Department's protection.

16 **§ 2571. Public information and toll-free hotline**

17 (a) The Department shall implement a public information program to promote safe
18 placement alternatives for newborn infants. The public information program may include the
19 following elements:

20 (1) Educational and informational materials in print, audio, video, electronic or
21 other media.

22 (2) Establishment of a dedicated page on the Department's web site.

23 (3) Public service announcements and advertisements.

24 (b) The Department shall establish a toll-free, 24-hour hotline to make information
25 about the Territory's Safe Haven laws, Safe Haven Provider locations, and support and

1 resources available for parents and available to the public. The Department shall make
2 information about the hotline, including the toll-free number that may be used to contact the
3 hotline, available on its website.

4 **§ 2572. Petition for return of custody**

5 (a) A relinquishing or non-relinquishing parent of a newborn infant relinquished in
6 accordance with this subchapter may petition for the return of custody of the newborn infant
7 before the termination of parental rights by filing a petition for return of custody in the court in
8 which the proceeding for the termination of parental rights is pending.

9 (b) If a petition for the termination of parental rights has not been filed by the
10 Department, the parent of the relinquished newborn infant shall contact the Department, which
11 shall notify the parent of the appropriate court in which the petition for return of custody must
12 be filed.

13 (c) The court may hold the proceeding for the termination of parental rights in
14 abeyance for a period not to exceed 60 days from the date that the petition for return of custody
15 was filed without a showing of good cause. During that period:

16 (1) The court shall order genetic testing to establish maternity or paternity, or
17 both.

18 (2) The Department shall conduct a home study to develop recommendations to
19 the court.

20 (3) When indicated, as a result of the Department's investigation and home study,
21 further proceedings may be conducted. However, relinquishment of a newborn infant in
22 accordance with this subchapter does not render the newborn infant abused, neglected, or
23 abandoned solely because the newborn infant was relinquished to a Safe Haven Provider
24 in accordance with this subchapter.

1 (d) Failure to file a petition for the return of custody of a relinquished newborn infant
2 before the termination of parental rights bars any future action asserting legal rights with respect
3 to the newborn infant unless the relinquishing parent's act of relinquishment that led to the
4 termination of parental rights involved fraud perpetrated against and not stemming from or
5 involving the non-relinquishing parent.

6 (e) No action to void or revoke the termination of parental rights of a parent of a
7 newborn infant relinquished in accordance with this subchapter may be commenced after 12
8 months after the date that the newborn infant was initially relinquished to a Safe Haven
9 Provider, unless the act of relinquishment that led to the termination of parental rights involved
10 fraud.

11 **§ 2573. Evaluation**

12 (a) The Department shall collect and analyze information regarding the relinquishment
13 of infants and placement of children under this subchapter. The hospital, fire station,
14 emergency medical facility, police station, and medical professionals accepting and providing
15 services to an infant under this subchapter shall report to the Department data necessary for the
16 Department to evaluate and determine the effect of this subchapter in the prevention of injury
17 or death of infants.

18 (b) The information collected must include:

19 (1) the number of infants relinquished;

20 (2) the services provided to relinquished infants;

21 (3) the outcome of care for the relinquished infants;

22 (4) the number and disposition of cases of relinquished infants subject to
23 placement;

24 (5) the number of children accepted and served by child-placing agencies;
25 illegal abandonments; and

1 **BR23-0212/September 26, 2023/HLF**