

35th LEGISLATURE OF THE U.S. VIRGIN ISLANDS

COMMITTEE ON HEALTH, HOSPITALS AND HUMAN SERVICES

CHAIRPERSON – HONORABLE RAY FONSECA

Wednesday, December 6, 2023



VIRGIN ISLANDS DEPARTMENT OF HUMAN SERVICES

TESTIMONY ON:

Bill No. 35-0173 - 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.



1 Good day, Honorable Ray Fonseca Chair of the Committee on Health, Hospitals and Human
2 Services, committee members, other Senators present, and the listening and viewing audiences.

3 I am Averil E. George, Commissioner Nominee for the Virgin Islands Department of Human
4 Services (VIDHS). I apologize as I am unable to participate in this hearing, and Assistant
5 Commissioner Carla Benjamin, who works most closely with children’s programming and child
6 protective services is en route back to the territory as this proceeding takes place. We
7 respectfully request to have the Department’s position read into the record.

8 I am grateful for my team of hardworking and dedicated employees at VIDHS, who allow me to
9 represent them and their outstanding public service in venues such as this every day. Thank
10 you for the opportunity to provide feedback on Bill No. 35-0173 – “An Act amending title 5 Virgin
11 Islands Code, chapter 201, by adding a subchapter V enacting the Safe Haven Newborn
12 Protection Act to provide a mechanism for a newborn infant to be relinquished to a safe
13 environment, for the parents of the newborn infant to remain anonymous if they choose and
14 avoid civil or criminal liability for the act of relinquishing the newborn infant.”

15 This proposed legislation allows parents that have determined that they cannot safely parent a
16 newborn infant to relinquish the newborn infant to safe environments, where the infant’s physical
17 and medical needs can immediately be assessed and addressed. Parents that decide to
18 relinquish newborn infants to safe haven providers are free to remain anonymous and to walk
19 away from the relinquishment without facing criminal investigations or criminal charges. The
20 Department emphasizes that in every instance, properly planning for the care of children,
21 including children that will not remain with their biological parents or family of origin, is preferred



22 and expected. Parents are already free to inform authorities that they do not wish to retain
23 custody of a newborn and they are able to do so within the parameters of the law, thereby
24 avoiding investigation by multiple government agencies and possible prosecution for violations
25 of law. Parents are free to make this declaration at the time of the child's birth as well as in
26 advance of the child's birth and to plan with private and public agencies accordingly.
27 Unfortunately, there are times when children are born into situations that render parents unable
28 to care for newborn infants for a wide range of reasons. Newborn infants are at times
29 constrained to remain in abusive, neglectful and unsafe environments because the parents or
30 caregivers wish to avoid being charged with child maltreatment, including abandonment. We
31 believe that Safe Haven legislation helps to reduce instances where children are kept in unsafe
32 situations by parents who wish to avoid civil or criminal penalties. Though there have not been
33 many reported instances of newborn infants being abandoned in this jurisdiction, we fully support
34 this effort at bringing our jurisdiction into alignment with the child protective services systems
35 across all 50 states, the District of Columbia, the Commonwealth of Puerto Rico and Guam.
36 With recent federal changes to the rights of women and the recognition that that historical trends
37 are not always the best predictor of future events; we value taking a proactive approach
38 whenever possible.
39 We support this proposed legislation with the amendments addressing references to "newborn
40 infant" vs. "child." The proposed legislation, in §2561(a)(10), defines "newborn infant" as"... a
41 child who a licensed physician reasonably believes is 30 days old or less at the time the child is
42 initially relinquished to a hospital, police station, fire station, or emergency medical facility, who

43 is not an abused or neglected child.” The proposed legislation further states in §2561 (b) “The
44 terms “infant”, and “newborn” are used interchangeably throughout this chapter and carry the
45 same definition as “newborn infant”, indicated above.” There is no such allowance made for the
46 term “child” utilized on its own merit.

47 Insert “or any medical professional engaged in providing emergency medical services.” after the
48 word “assistants” on line 4 of page 3. As written, the list of professions provided is exhaustive.
49 The addition of the recommended language allows for any other medical professional with a title
50 not explicitly cited in the statute to be included in the provisions and protections of the
51 subchapter.

52 We recommend consistency in the definitions throughout the Title. The definition of “Neglect”
53 that is proposed in § 2561 (9) differs from and introduces potential conflicts with the definition of
54 neglect currently in 5 V.I.C. §2502 (20). Until such time as the existing definition of neglect is
55 updated or replaced, we recommend that the proposed legislation utilizes the existing definition.
56 This is consistent with the utilization of the existing definition of “abuse” in 5 V.I.C. §2502(2) for
57 the purposes of this proposed legislation.

58 Delete “application form” and replace with “contact information” on line 21 of page 10. The
59 Department will provide contact information to connect relinquishing parents with any adoption
60 registry and medical information exchange maintained within the territory. Any “application
61 forms” associated with specific content areas of either repository would be accessible after the
62 relinquishing parent is able to connect with the entity.



53 We recommend consistency between §2570 (a) and §2570 (d)(4). The proposed §2570 (a)
54 requires that the Department “file a report” with the court within 48 hours of taking a newborn
55 infant into custody. The proposed §2570 (d)(4) requires that the Department “file a petition” with
56 the court within 48 hours of assuming physical custody of a newborn infant. Adoption of the
57 language in the latter would create consistency and align with the Department’s required actions
58 in matters of emergency custody of children.

59 The Department opposes the proposed §2571 Public Information and toll-free hotline in part.
70 Specifically, the Department is not in agreement with the proposed § 2571 (b) which requires that
71 the Department establish a toll-free 24-hour hotline to provide information on the Safe Haven
72 Newborn Protection legislation. The Department does not believe that the historical scope of
73 this issue nor the territory’s population supports the need for a toll-free 24-hour hotline. The
74 Department will make the information available via all public information platforms including the
75 VIDHS website, social media applications, podcasts as well as radio and print media. While
76 we embrace the hotline as an option, we oppose it as a requirement.

77 The Department is committed to ensuring that the community is informed of the seriousness of
78 this legislation and that only utilization of identified safe haven spaces and following the
79 provisions of this proposed subchapter will provide the desired immunity from violations of the
80 laws that would otherwise result from such actions. Leaving newborn infants at locations other
81 than hospitals, fire stations and police stations will amount to abandonment. The locations were
82 chosen due to the training of the personnel, the required HIPAA and confidentiality-related
83 compliances, the separation of the safe haven providers from any ongoing services to the



34 newborn infant or the family. Any attempts to include entities that currently care for children as
35 safe haven providers would create possible conflicts of interest and unnecessary legal dilemmas
36 as these providers could become a placement option after the newborn has been deemed to be
37 unharmed and of legally clear custody.

38 Delete “child-placing agencies” and replace with “the Department” as the Department is the only
39 statutorily authorized child-placing entity within the territory and the only duly authorized entity
90 currently engaging in placement of children.

91 Notwithstanding the recommendations for several modifications to the language, the department
92 supports the spirit of the legislation and would support an amended version of the proposed
93 legislation that addresses our areas of concern.

94 As I conclude this testimony, I am very appreciative of my Executive Branch colleagues,
95 members of this legislative body, Governor Albert Bryan, Jr., and Lieutenant Governor Tregenza
96 Roach. We at VIDHS will continue to live out our commitment to **“Working Together to Make
97 a Difference”** for the people of the Virgin Islands. Thank you.