



Legislative Briefs

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“SAFE HARBORS” FOR NEWBORNS

2001 Wisconsin Act 2, passed by the legislature and signed by Governor Scott McCallum on April 3, 2001, allows a parent to anonymously relinquish custody of a newborn child to proper authorities. The act, which took effect April 18, 2001, was enacted in response to newspaper stories that depicted newborn infants abandoned to die in dumpsters, toilets, and other places. It is based, in part, on “Safe Harbor” laws passed in several other states and the recommendations by the Speaker’s Task Force on Abandoned Babies.

RELINQUISHING CUSTODY

Act 2 permits a law enforcement officer, an emergency medical technician, or a hospital staff member to take a newborn child into custody when the parent relinquishes the child to one of these persons and does not express an intent to return. (The act uses the word “parent” without specifying “mother” or “father”.) A parent who is unable to travel in order to deliver a child into custody may call “911” or an emergency medical service provider, and a law enforcement officer or emergency medical technician will be dispatched to take custody of the child. In all cases, the person taking custody must reasonably believe that the child is 72 hours old or younger. The individual taking custody must offer the Wisconsin Maternal and Child Health Hotline number, but the parent has a right to reject the information. The infant must be delivered to a juvenile court intake worker within 24 hours after it is taken into custody. A child taken into custody is eligible for medical assistance.

IMMUNITY

Any parent who relinquishes a child under this act is immune from any civil or criminal liability for any good faith act or omission in connection with that relinquishment. The same immunity is granted to any person who assists the parent. Law enforcement officers, emergency medical technicians, or hospital staff members are immune from any civil liability to the child’s parents or criminal liability for any good faith act or omission occurring solely in the act of taking custody, but their immunity does not extend to the type of care they provide for the child.

JUVENILE COURT ACTION

The act permits a juvenile court to exercise jurisdiction over a newborn child who has been relinquished and is alleged to be in need of protection and services and to grant an involuntary termination of parental rights on the grounds that the child has been relinquished.

ANONYMITY

A parent who relinquishes a newborn child has the right to remain anonymous unless there is a reasonable cause to suspect that the child is a victim of abuse or neglect. Anonymity includes the following provisions: 1) no person may induce or coerce the parent into revealing his or her identity; 2) the parent may leave the presence of the individual taking custody without being followed or pursued; and 3) no officer, employee, or agent of this state or of any of its political subdivisions may attempt to locate or learn the identity of the parent. Any person who assists the parent in relinquishing the child also has the same right to remain anonymous, except when there is cause to believe the child is a victim of abuse or neglect or that the person assisting the parent has coerced the parent into relinquishing custody.

CONFIDENTIALITY

Any person who obtains information on the relinquishment of a child may not disclose that information except to the following:

- a birth parent who has waived anonymity or the child's adoptive parent;
- the staff of the Department of Health and Family Services or any county human or social services department or licensed child welfare agency that provides services to the child;
- persons performing juvenile court intake or dispositional services;
- the attending physician;
- the child's foster parent or any other person who has physical custody of the child;
- a juvenile court or an American Indian tribal court that conducts proceedings relating to the child;
- the attorney representing the interests of the public or the tribe in those proceedings; or
- the attorney representing the interests of the child.

ADDITIONAL INFORMATION

A copy of 2001 Wisconsin Act 2 is available at <http://www.legis.state.wi.us/2001/data/acts> or by calling the Legislative Reference Bureau at (608) 266-0342. For further information on protecting abandoned babies, contact Mark Mitchell, Department of Health and Family Services at (608) 266-2860.