



HOUSE BILL 473: Revise Laws/Safe Surrender/Infants.

2021-2022 General Assembly

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| Committee: | House Health. If favorable, re-refer to Rules, Calendar, and Operations of the House | Date: | May 3, 2021 |
| Introduced by: | Reps. White, Bradford, Riddell | Prepared by: | Theresa Matula |
| Analysis of: | Second Edition | | Committee Staff |

OVERVIEW: House Bill 473 recodifies and expands the current law for the safe surrender of an infant. The bill is based on recommendations included in the Child Fatality Task Force's 2021 Report to address safe surrender by eliminating the "any adult" option in current law, to provide information to a surrendering parent, to strengthen protection of the surrendering parent's identity, and to help ensure the law is applied only when the criteria is met. The bill would become effective October 1, 2021.

BILL ANALYSIS: HB 473 establishes a new Article 5A pertaining to the Safe Surrender of Infants in Chapter 7B Juvenile Code. This bill is more expansive than the current law on safe surrender and covers the elements outlined below.

Definitions – Section 2 provides the following new definitions to the current law located in G.S. 7B-101:

- **Non-surrendering parent** is the parent of a safely surrendered infant other than the parent who physically surrenders the infant.
- **Safely surrendered infant** is an infant reasonably believed to be under seven days of age and without signs of abuse or neglect who is voluntarily delivered to an individual under the Safe Surrender law by the infant's parent who does not express an intent to return for the infant. The act of surrendering does not constitute neglect.
- **Surrendering parent** is a parent who physically surrenders the parent's infant.

Purpose & Limitations (G.S. 7B-520) – The stated purpose is to protect newborn infants by providing a safe alternative for a parent who in crisis or desperation may physically abandon or harm a newborn. The bill outlines the following limitations providing that the safe surrender laws (Article 5A) do not apply if: the infant is not under 7 days old, shows signs of abuse or neglect, the individual surrendering is not the parent, or there is reason to believe the parent intended to return for the infant.

Persons to Whom Infant May Be Surrendered (G.S. 7B-521) – Most of the information in this section is current law contained in G.S. 7B-500(b) and is being relocated to G.S. 7B-521. It does remove language in G.S. 7B-500(d) allowing any adult, without a court order, to take into temporary custody an infant under seven days of age voluntarily delivered by the infant's parents with no expressed intent to return.

The section provides that subject to limitations, the following individuals can take temporary custody of the infant:

- **Health care provider** (defined in G.S. 90-21.11) on duty at a hospital, health department, or nonprofit community health center.
- **First responder** which includes law enforcement officer, certified emergency medical services worker, or firefighter.
- **Social services worker** on duty or at a local department of social services.

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Duties of Person Taking Safely Surrendered Infant (G.S. 7B-522) – Most of the information in this section is current law contained in G.S. 7B-500(c) and is being relocated to G.S. 7B-522. The section provides that an individual who takes an infant into temporary custody must protect the physical health and well-being of the infant and immediately notify the department of social services (DSS) in the county where the infant is surrendered. The individual may inquire about parent identities, date of birth, etc. but the parent is not required to provide the information.

Immunity (G.S. 7B-523) – Most of the information in this section is current law contained in G.S. 7B-500(e) and is being relocated to G.S. 7B-523. The section provides that an individual to whom an infant is surrendered is immune from civil or criminal liability if they acted in good faith.

Confidentiality (G.S. 7B-524) – Unless a parent consents to release, an individual who takes an infant into temporary custody shall keep information regarding the surrendering parent's identity confidential. However, the individual taking the infant must provide any information to the DSS director. Information received by DSS about the surrendering parent's identity can be disclosed to provide notice to local law enforcement, contact with the non-surrendering parent, or by court order. Information received by the DSS pertaining to the infant's safe surrender and condition must be held in confidence except the director may share necessary or relevant information with a health care provider, placement provider, guardian ad litem, or a district or superior court judge presiding over a criminal or delinquency matter. The confidentiality section does not apply if the DSS determines the juvenile is not a safely surrendered infant or is the victim of a crime.

Social Services Response (G.S. 7B-525) – A DSS director, by virtue of the surrender, has the surrendering parent's rights to legal and physical custody of the infant without obtaining a court order. The DSS may apply ex parte to the district court for an order finding the infant has been safely surrendered and confirming the DSS has the surrendering parent's right to legal custody to obtain the child's birth certificate, social security number, or federal and State benefits. Additional responsibilities of the DSS director are also specified in the bill. The director must place custody of the safely surrendered infant with the non-surrendering parent when the non-surrendering parent's identity is known and contact has been made and the individual is determined to be the non-surrendering parent, the non-surrendering parent asserts parental rights, and the director does not suspect the infant is an abused, neglected, or dependent juvenile.

Notice by Publication of Safely Surrendered Infant (G.S. 7B-526) – Within 14 days from the date of the safe surrender, the director must place a notice in a newspaper that an infant has been surrendered and taken into custody by DSS. The notice must be published in the county in which the surrender was made, and any other county the director has reason to believe either parent may be residing. The notice must be published once a week for three successive weeks and must provide the following information: the date of surrender; profession of the person to whom the infant was surrendered and the location of the facility; physical characteristics of the infant; current custody; right to request the infant's return; efforts to identify, locate, and contact the non-surrendering parent; parental right to contact DSS; proposed termination of parental rights in 60 days; and contact information for DSS.

Rights of Surrendering Parent (G.S. 7B-527) – Prior to filing a termination of parental rights, a surrendering parent has the right to regain custody of the infant. The safe surrender does not preclude the parent from executing a relinquishment of their parental rights for adoption with the local DSS. A parent surrendering an infant is immune from civil liability or criminal prosecution if they acted in good faith.

Information to Surrendering Parent (G.S. 7B-528) – The Department of Health and Human Services, Division of Social Services is required to create printable and downloadable information on infant safe surrender which must be translated into commonly spoken and read languages in this State, written in a

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user-friendly manner, posted on the Division website, and available for distribution. This section lists six elements that must be contained in the information.

Preliminary hearing to terminate parental rights for a safely surrendered infant (G.S. 7B-11105.1) - Section 6 of the bill amends Article 11 of Chapter 7B pertaining to termination of parental rights by adding a new statutory section regarding the preliminary hearing for a safely surrendered infant. The section requires that within 10 days from the date of filing a petition to terminate parental rights of a surrendering or non-surrendering parent of a safely surrendered infant, or the next term of court if there is no court in the county in that 10-day period, the court must conduct a preliminary hearing to address the infant's safe surrender. The purpose of the hearing is to ascertain the identity and location of either parent and to establish notice regarding termination of parental rights. The statute lists information that the court may ask of the DSS director. The court is required to determine whether any diligent efforts are required to identify or locate the surrendering parent while considering the need to protect confidentiality and must determine whether the surrendering parent should be served. If the identity of the non-surrendering parent is known the court must order service, if the identity is not known the service must be by publication. The contents of the service by publication are outlined in this new statute and upon completion, an affidavit of the publisher must be filed with the court. No summons is required for a parent who is served by publication. The court must issue the order required by the section within 30 days from the date of the preliminary hearing unless the court determines more time is needed.

Other changes - Section 4 deletes current law that was relocated to Article 5A. Sections 3, 5, 7, 8, 9, 10, 11, 12, and 13 replace references to current law with the new statutes created by this bill and otherwise reflect the changes made by this bill.

EFFECTIVE DATE: This bill would become effective October 1, 2021.

CURRENT LAW/ BACKGROUND:

The [Child Fatality Task Force Annual Report to the Governor and General Assembly, dated February 2021](#). The recommended changes were to: 1) remove "any adult" from those designated to accept a surrendered infant, 2) to provide information to a surrendering parent, 3) strengthening protection of a surrendering parent's identity, 4) incorporate steps to help ensure law is only applied when criteria are met.

S.L. 2001-291 provided a safe surrender law in North Carolina. DHHS provides [online](#) information on the safe surrender of an infant.

Safe surrender laws are different from safe haven laws. The goal of both is to prevent newborn abandonment and homicide. Safe surrender generally requires the infant be left with a person, while safe haven laws provide a little more anonymity.