

Senate Judiciary Committee

Matthew Schelzi 271-3266

HB 1607, relative to expanded safe haven protections.

Hearing Date: April 30, 2024

Time Opened: 2:30 p.m.

Time Closed: 3:58 p.m.

Members of the Committee Present: Senators Carson, Gannon, Abbas, Whitley and Chandley

Members of the Committee Absent: None

Bill Analysis: This bill allows a parent to surrender their child by placing the child in a safe haven infant safety device up to 61 days after the child's birth and provides protection from legal action to the parent.

Sponsors:

Rep. Cordelli

Rep. Peternel

Rep. Mooney

Rep. M. Pearson

Rep. Cannon

Rep. Gibbons

Rep. Schuett

Rep. Wheeler

Rep. Coker

Rep. J. Nelson

Sen. Bradley

Sen. Carson

Sen. Birdsell

Who supports the bill: In total, **95** individuals signed in, in support of HB 1607. The full sign in sheets are available upon request to the Legislative Aide, Matthew Schelzi.

Who opposes the bill: Bill Bright (NHSP), and Elizabeth Sargent (NH Assoc. of Chiefs of Police)

Who is neutral on the bill: Rep. Seth King.

Summary of testimony presented:

Representative Katy Peternel said this bill originally allowed for the installation of the instant safety devices that are staffed 24/7. Secondly, it would expand the age limit for surrendering an infant from 7 to 61 days old. Thirdly, it would provide an exclusionary rule that would prevent the infant from being used as bait to prosecute the parents. The infant safety device allows for an anonymous surrender. She said there is one known manufacturer in the United States. Wolfeboro and Derry have town safety buildings where they would like to install the devices. Expanding the age limit to 61 days would put New Hampshire out in front of surrounding states. Developmentally there is little difference between a 7-day old and a 61-day old infant.

She said the New Hampshire safe haven law has become a tool to arrest criminal parents. If parents know their identities will be reported, they will not surrender their babies which could lead to worse outcomes. The mere fact that a baby has been surrendered shows that the baby would be better being surrendered than being with the parents. According to the Child Fatality Review Committee, over the last five years there were 34 infants who died where abuse or neglect were not ruled out. The exclusionary amendment will ensure that law enforcement can no longer use the law to catch people giving up their babies. She urged the Committee to adopt the proposed amendment she handed out.

Representative Glenn Cordelli said the proposed amendment was in the original bill. The bill was divided on the House Floor. The majority of the bill was passed on a vote of 372-1. The one section with the exclusionary rule was defeated by three votes because of confusion about the process. He asked that the Committee add this amendment back into the bill. This language will add protection for a parent surrendering a baby from investigation or prosecution due to evidence gathered as part of the surrendering of a baby. He said this language is taken from the current statute for immunity under liability from the Controlled Drug Act. The key phrases amended would be to change “gained as an approximate result” to “obtained as a result of approximate result.” This would ensure that someone who is surrendering a baby cannot be prosecuted or evidence from that surrender could not be admissible in the court. He noted it is extremely important that the language be added back in. He said the Criminal Defense Lawyers are in support of the amendment. The goal is to save babies when a parent is in a crisis from addiction or abuse. He said it is a matter of a safe haven or a dumpster.

Senator Chandley asked if the term Safe Haven Infant Safety Device would be problematic.

Rep. Cordelli said no because they are using the term infant safety device, not baby box. They consulted with stakeholders to use the correct language.

Sen. Chandley asked to what extent these infant safety devices are being used and have there been problems.

Rep. Cordelli said there are several baby boxes around the country, and he had not heard of any problems with the devices.

Senator Abbas asked why the exclusionary rule would apply to civil cases where parents try to regain custody.

Rep. Cordelli said in the case of a parent who tries to regain custody that is a different process which is already in statute now.

Senator Carson asked would the father or grandparents have legal standing if a young woman decides they are going to give away the child.

Rep. Cordelli did not know but said he would get back to her.

Representative Maureen Mooney said she supported HB 1607. She said the Safe Haven Law of 2003 has remained untouched for 21 years in New Hampshire. This bill

is a reasonable expansion to the existing law that provides further anonymous access for those in need. She was in favor of the amendment that would reinsert the exclusionary clause, which would create full anonymity. She said this bill is needed to protect lives. 13 other states have a safe haven expansion law. She urged the Committee to amend the bill, so more lives can be saved.

Sen. Abbas asked if there was a conversation about the exclusionary rule not applying to civil cases but criminal.

Rep. Mooney said if you were to say only criminal or only civil, you are not including full anonymity. She said the exclusionary amendment would have to have both.

Representative Margaret Drye told a personal story of responding to a call of an infant left on a doorstep. She said these changes would bring the law up to date. She said 7 days is too short a time and too difficult to estimate. An infant safety container is safer than a stranger's doorstep. She said the exclusionary rule needs to be reinstated in this bill.

Pastor Andrew Hemmingway said he supported HB 1607 and the amendment. Addicts are trapped in a world that they are thinking only of themselves. This extends to their fear of law enforcement, so the exclusionary law is critical, as they won't be deterred walking up to a police station, fire department or hospital.

Dianne Paquette said if it wasn't for adoption, she or her sons would not be here. She said there are 223 live baby boxes and 44 babies have been surrendered nationwide. She said a container would be helpful to young moms as it is no blame, no shame. She said occasionally there will be babies who are drug addicted through birth. She doesn't think it is necessary to go after the parents for a drug addicted baby. She said there are no cameras on these boxes that can be used to save babies. She said this enhancement to the safe haven law will save a lot of babies. She said the average time a baby is in the box is four minutes. She said there are 88 teenagers who are relieved and happy their baby is getting better care than they could give.

Betty Gay said if we are more concerned with prosecuting people who abuse babies than we are willing to risk babies who they would give up. She said the important item for her is the survival of the baby. She said nobody has done a warm handoff in Salem and people need anonymity in the language. She asked the Committee to support the amendment to the bill.

Emily Hodgkins shared her personal story of working with baby savers. This baby saver would provide a safe warm place to put a baby. An alarm sounds to the police department and once the door is closed it automatically is locked to secure the baby. The box has its own power supply, so babies can be retrieved during power outages. Having the baby savers and providing mothers with immunity from prosecution can save lives.

Phyllis Woods said 22 years ago she introduced the bill to the Legislature. She said the impetus was that a UNH student gave birth and left the baby in a garbage can. She said this bill was put in to create an exception in the law against prohibiting child abandonment. She said there was a need that was recognized that it needed to be in

the law so that women could remain anonymous. She hoped the Committee would include the exclusionary exception.

Representative Seth King said this bill enjoyed broad bipartisan support except for the exclusionary rule. Several members were concerned that this would allow individuals to intentionally abuse children. He said as written, the exclusionary rule could not be supported but some type of exclusionary rule may be able to be supported. He would like to see a narrower exclusionary rule where parents who intentionally abused their children could still be held accountable. He urged the Committee to create an amendment that threads the needle in the exclusionary rule.

Sen. Abbas asked if these heinous acts would still be able to be prosecuted with the exclusionary rule. He said police would just have to find another way to gather evidence to prove abuse.

Rep. King said with sexual abuse or violence there may not be any other evidence besides what is on the child in the baby box. He said there is no such thing as complete anonymity.

Sen. Chandley asked if there were any other factors that went into the Interim Study recommendation.

Rep. King said the only other minor concerns were calling it the baby box, which was amended to be a standard name. He said the exclusionary clause was why it was recommended Interim Study.

Sen. Carson asked if he was aware that the growing group of people who are being subjected to sexual abuse are from infants to two years old.

Rep. King said he would believe that.

Shannon McGinley, Cornerstone Action, supported HB 1607. She said it is not an immunity clause, it is an exclusionary rule. She said fathers or grandparents have standing, but that doesn't mean they would win custody and it would be no different than other abandonment cases. She emphasized that no baby who is left by his parents would have been better off with his parents who kept the baby solely out of fear of the police.

Elizabeth Sargent, New Hampshire Association of Chiefs of Police, opposed to the exclusionary amendment but was not opposed to the enabling legislation. She said this section was divided in the House and the House position was ITL on the exclusionary rule. She said they were unaware this amendment would be introduced and noted the chiefs will provide further written testimony. She said this amendment would take another tool away from law enforcement.

Major Bill Bright, New Hampshire State Police, opposed to the exclusionary amendment but not the bills intent. He noted a baby delivered with signs of abuse would not allow the police to start an investigation. He said the investigation would begin at the point of drop off, and they could not investigate abuse that happened before with the exclusionary rule.

Sen. Whitley said the concern is that law enforcement needs to be able to determine whether other children or individuals are at risk.

Major Bright said many factors are going to be in play and when there are signs of sexual abuse, they need to be able to capture all of that.

Sen. Whitley said since the pandemic there has been a dramatic increase of child sex abuse from children ages zero to five. She asked if the exclusionary amendment would hamper the ability to deal with that troubling statistic.

Major Bright said yes.

Sen. Abbas asked are we balancing the interest of prosecuting the crime verses the interest of the child who is in harm's way. He asked if prosecuting these cases will result in less parents wanting to surrender their children.

Major Bright did not know how the Legislature should balance that. He said the patterns of abuse will not stop when one child is dropped off.

Sen. Carson said we do not want to criminalize the act of dropping the child off, but she noted if the child is abandoned and there are signs of abuse that needs to be looked at as well.

John Williams, DHHS, said the amendment would exceed the scope of a typical exclusionary rule. He said this amendment would preclude prosecution of parents of a baby that was delivered to a safe haven in a serious condition. He said there is a provision in the current law that provides confidentiality for individuals dropping off their baby as well as liability. He said RSA 132-A:2, Section 1, states, "The child's parent or parents shall not be required to reveal personally identifiable information." Limiting evidence or providing immunity to harming a child would not be good public policy. In RSA 132-A:4 it states, "No person or entity subject to the provisions of this chapter shall be liable for any claim at law or in equity as a result of action taken pursuant to the requirements of this chapter." He questioned what is trying to be accomplished by this amendment, as there is a liability statute in law.

Sen. Abbas asked if the proposed amendment provides immunity from prosecution.

Mr. Williams said the DOJ saw this encroaching upon immunity and the amendment seems the same as the bill as introduced.

Sen. Abbas asked if the confusion as to what the bill would apply to came up in the House.

Mr. Williams said there are many words that are similar in the amendment and to the bill as introduced.