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May 2, 2016

Mary Beth Bonaventura
Director
Department of Child Services
Room E306-MS47
302 W Washington Street
Indianapolis, IN 46204-2738

Re: Response to the April 29, 2016 Letter
to Coolspring and Woodburn Fire
Department

Dear Ms. Bonaventura:

Thank you for sharing your concerns regarding the use of the Safe Haven Baby Boxes (“Baby Boxes”). In your letter from April 29, 2016, you expressed concerns (1) of the safety of any child placed in the Baby Box; (2) that the Baby Box does not comply with the requirements of the Safe Haven Law; (3) that since the Baby Box does not comply with the requirements of the Safe Haven Law, that the child would be considered abandoned and DCS could find the parent at fault; and (4) the Indiana Commission on Improving the Status of Children rejected the use of Baby Boxes. We answer each concern in turn.

(1) The Baby Boxes Are Safe for Children.

You stated that you are concerned for the safety of any child placed in a Baby Box. We assure you that the Baby Boxes were designed and tested according to standards to ensure that they are safe and reliable.

Safe Haven has studied other states that have successfully implemented Safe Haven baby incubators. Arizona has developed the Safe Haven drawer (similar to the Baby Box) that allows parents to abandon a children under Arizona’s Safe Haven Law by placing the child in the drawer attached to a hospital. Since these drawers were implemented 8 years ago, parents have safely surrendered 10 babies using them. Safe Haven Baby Boxes have studied the drawers and implemented similar techniques.

Fabcore Industries studied the box for 15 months and changed the design 8 times to develop a successful product. Safe Haven’s electrical engineer changed the electronics 23 times creating safe and durable electronics. Initially, the Baby Box contained a weight sensor to lock the door, but was replaced by a motion detector because it has proven more reliable. The electronics have undergone rigorous testing and have suffered no failures since the system began. The Baby

Warmer is built exclusively for the Baby Box by Smithworks Medical and never fluctuates outside the temperature of 95-101 degrees. The Baby Warmer is itself currently being registered as a medical device. Finally, the alarm company, Priority One, visits the Baby Box locations to test the alarms and certify their working condition. The Baby Box is wired to alert 911 when a baby is placed in the box. Priority One sends test signals to the Baby Box everyday. If the building loses power, the battery backup takes over the alarm system. Priority One receives an alert that a Baby Box is running on battery backup. Each location performs daily tests with the alarm system to maintain its accuracy. The Baby Boxes have passed all daily tests. At the latest test, emergency medical services arrived at the Baby Box location in 2 minutes and 15 seconds.

(2) The Baby Boxes Comply with Safe Haven Laws.

You state that Baby Boxes do not comply with Safe Haven Laws. Based on your reading of IC 31-42-2.5, you conclude that the Indiana Safe Haven Law requires the person to leave an infant with an actual person, face-to-face. However, we do not draw this same conclusion from the statute.

Emergency medical services provider taking custody of a child

(a) An emergency medical services provider shall, without a court order, take custody of a child who is, or who appears to be, not more than thirty (3) days of age if:

- (1) the child is voluntarily left with the provider by the child's parent; and
- (2) the parent does not express an intent to return for the child.

(b) An emergency medical services provider who takes custody of a child under this section shall perform any act necessary to protect the child's physical health or safety.

(c) Any person who in good faith voluntarily leaves a child with an emergency medical services provider is not obligated to disclose the parent's name or the person's name.

IC 31-42-2.5-1.

The statute states that the emergency medical services provider shall "take custody of the child." There is no reason to construe this to say that the parent must leave the child with a person face-to-face. It merely states that the emergency medical services provider shall "take custody of the child." When an emergency medical services provider arrives at the scene of the Baby Box, that person "take[s] custody of the child" and continues with proper protocol of abandoned children. Therefore, the Baby Box complies with the requirements of the Safe Haven Law under IC 31-34-2.5-1.

The State of Arizona has a Safe Haven Laws to similar Indiana's law. (attached as Ex. A.) The main difference between the two laws is that the Arizona law allows a person to leave a child with a "Safe haven provider" which includes a staff member or volunteer at a welfare agency, adoption agency or church in addition to emergency medical providers. Ariz. Rev. Stat. § 13-3623.01. Arizona considers leaving a child in a Safe Haven drawer compliant with its Safe Haven Law. (attached as Ex. B, at 2.)

(3) The Child Will Be Considered Abandoned by No Fault under the Safe Haven Law.

You state that since the Baby Boxes do not comply with the requirements of the Safe Haven Law, that the child would be considered abandoned and DCS could find the parent at fault. As stated previously, the Baby Boxes do comply with Safe Haven Laws because the law does not require that a parent relinquish the child to an emergency medical provider face-to-face, but only that the emergency medical provider “take custody of the child.” *Id.* When parents places their child in a Baby Box, they are safely abandoning their child and relinquishing their rights legally under the Safe Haven Law. The Department of Child Services should treat the infants abandoned at Baby Box locations as a proper method of surrender under Safe Haven Law and other applicable statutes.

You stated that there is no way to verify that parents “do[] not express an intent to return for the child.” *Id.* A parent who places their baby into a Safe Haven Baby Box intends to comply with Safe Haven Law and relinquish the custody of the child just as the parent does by leaving the baby with another person face-to face. The parents’ right to return is no more or no less protected in the scenario where the parent leaves the baby in a Baby Box than where the parent leaves the baby with a person face-to-face. Indeed, by using the Baby Box, there should be no question of whether a parent intends to relinquish custody because there would be no other reason to place a baby in a Baby Box. Parents should not be at fault for relinquishing the custody of their child in this safe way.

As previously mentioned, Arizona has Safe Haven drawers and similar Safe Haven Laws. Arizona also has the requirement that a parent only relinquishes custody if “the parent did not express an intent to return for the newborn infant.” Ariz. Rev. Stat. § 13-3623.01(C)(1). When a child is left in a drawer, a parent does not leave it with the safe haven provider face-to-face. It is inferred that when a parent leaves a child in a Safe Haven drawer that the parent intends to not return for the child. Indiana’s Safe Haven law should be interpreted in the same way in regards to a parent placing a child in a Baby Box. When a parent leaves a child in a Baby Box, the parent intends to relinquish custody of the child and to not return.

(4) The Indiana Commission on Improving the Status of Children Improperly Rejected the Use of Baby Boxes.

You suggest that since the Commission on Improving the Status of Children unanimously rejected a proposal to recommend the use of Baby Boxes, and as a result, that Baby Boxes should not be used. However, you fail to mention that the Indiana General Assembly unanimously passed House Enrolled Act 1016 (“HEA 1016”) to further develop “standards and protocols.”

HEA 1016, codified as IC 16-35-9, was passed during the 2015 Session with the intention of implementing newborn safety incubators or Baby Boxes. This Act passed the Indiana General Assembly unanimously and Governor Pence signed HEA 1016 into law on April 27, 2015. During considerations of HEA 1016, the legislature required the Indiana State Department of Health (“ISDH”) to “prepare and submit to the general assembly . . . recommendations

concerning standards and protocols for the installation and operation of newborn safety incubators.” IC 16-35-9-6. In preparing these standards, the ISDH was to consider:

- Sanitation standards for newborn safety incubators;
- Procedures to provide emergency care for a newborn left in a newborn safety incubator;
- Manufacturing and manufacturer standards for newborn safety incubators;
- Design and function requirements;
- The operation policies, supervision, and maintenance of a newborn safety incubator;
- Procedures and forms for the registering of qualified service providers that install newborn safety incubators;
- Costs concerning the registration and regulation of newborn safety incubators and fees for registration to offset the costs;
- Preparation and posting of signs near or on newborn safety incubators; and
- Enforcement Actions and remedies for violations concerning newborn safety incubators.

IC 16-35-9-6(1)-(10).

These standards were due to be reported to the Governor’s Office and the General Assembly before January 1, 2016. The two-page report prepared by the “Commission on Improving the Status of Children in Indiana” failed to provide any standards, but expressed opposition to Baby Boxes altogether. By responding to an administrative requirement to provide “standards and protocols” with a policy direction to do nothing, the ISDH supplanted the policymaking function of the General Assembly. Since there is no statute or law that exists prohibiting emergency service providers from implementing the Baby Boxes, Safe Haven Baby Boxes has moved forward with its plan and implemented rigorous safety procedures and protocols.

I appreciate your concern over the safety of the Baby Boxes. However, the Baby Boxes have demonstrated to be safe and reliable and they fit comfortably within the Safe Have Law statutes.

cc: Monica Kelsey
Chief Randall Duhamell
Trustee Vicki Thompson
Chief Mick Pawlik
Trustee Jackline Atwater

Sincerely,

THE BOPP LAW FIRM, PC



James Bopp, Jr.
Corrine L. Purvis

Exhibit A

13-3623.01. **Safe haven for newborn infants; definitions**

A. A person is not guilty of abuse of a child pursuant to section 13-3623, subsection B solely for leaving an unharmed newborn infant with a safe haven provider.

B. A fire station and a health care institution that is classified by the department of health services pursuant to section 36-405 as a general hospital or a rural general hospital shall post a notice that it accepts a newborn infant pursuant to this section. The notice shall be placed on the exterior of the building in a location that is noticeable to the public. The words "baby safe haven" shall be printed in bold-faced capital letters that are not less than two inches in height. The notice may include an identifying logo. A fire station or hospital that does not post a notice as prescribed by this subsection is not subject to civil liability. A notice that is valid before September 30, 2009 remains valid after September 30, 2009.

C. If a parent or agent of a parent voluntarily delivers the parent's newborn infant to a safe haven provider, the safe haven provider shall take custody of the newborn infant if both of the following are true:

1. The parent did not express an intent to return for the newborn infant.
2. The safe haven provider reasonably believes that the child is a newborn infant.

D. The safe haven provider shall comply with the requirements of section 8-528 and report the receipt of a newborn infant to the department of child safety as soon as practicable after taking custody of the newborn infant. The department shall report the number of newborn infants delivered to safe haven providers pursuant to section 8-526.

E. A parent or agent of a parent who leaves a newborn infant with a safe haven provider may remain anonymous, and the safe haven provider shall not require the parent or agent to answer any questions. A safe haven provider shall offer written information about information and referral organizations.

F. A safe haven provider who receives a newborn infant pursuant to this section is not liable for any civil or other damages for any act or omission by the safe haven provider in maintaining custody of the newborn infant if the safe haven provider acts in good faith without gross negligence.

G. This section does not preclude the prosecution of the person for any offense based on any act not covered by this section.

H. For the purposes of this section:

1. "Newborn infant" means an infant who is seventy-two hours old or younger.
2. "Safe haven provider" means any of the following:
 - (a) A firefighter who is on duty.
 - (b) An emergency medical technician who is on duty.
 - (c) A health care institution that is classified by the department of health services pursuant to section 36-405 as a general hospital or a rural general hospital. The parent or agent must deliver the newborn infant to a medical staff member at the health care institution.
 - (d) A staff member or volunteer at any of the following that posts a public notice that it is willing to accept a newborn infant pursuant to this section:
 - (i) A private child welfare agency licensed pursuant to title 8, chapter 4, article 4.
 - (ii) An adoption agency licensed pursuant to section 8-126.
 - (iii) A church. For the purposes of this item, "church" means a building that is erected or converted for use as a church, where services are regularly convened, that is used primarily for religious worship and schooling and that a reasonable person would conclude is a church by reason of design, signs or architectural or other features.

Exhibit B

1-866-707-2229



Arizona Safe Baby Haven Foundation

Our Confidential Hotline is Always Available 1-866-707-BABY

Select Language

HOME

SAFE HAVEN INFO

NEW MOTHER INFO

EVENTS

NEWS

DONATE

SPONSORS

CONTACT

Information

Are you afraid, alone, and have no one
to turn to?

Do you feel unable to parent your
newborn?

There is help, there are options and our crisis team is here to support you.

You have options. Arizona has the **Safe Haven Law** that identifies places where mothers can safely and anonymously give up their babies without fear of prosecution. We have a Safe Haven crisis response team available to assist you with questions, options and resources, 24/7. Call 1-866-707-2229 .

If your baby is unharmed, is under 72 hours old and you don't intend to reclaim your baby, you have options! Simply bring your baby to the Safe Haven locations:

- **Any Hospital**
- **Any Ambulance**
- **Any Designated Adoption Agency**
- **On-duty Fire Stations**
- **Any Designated Church**
 - **New: Open Door Fellowship Church is now a Safe Haven provider.**

You must hand your baby to a person at above locations or may place baby in Safe Haven drawer at designated hospitals. Tell them this is a safe haven baby and you may leave. Your baby will be cared for and a good home will be found for the baby.

The following locations have Safe Baby Haven Drop Off Drawers:

- Banner Thunderbird Medical Center
- Banner Cardon Children's Medical Center
- Banner Gateway Medical Center
- Banner Estrella Medical Center
- HonorHealth Deer Valley Medical Center (**Formerly John C. Lincoln-Deer Valley**)

-HonorHealth Scottsdale Osborn Medical Center

Safe Baby Haven laws have enabled some hospital locations to install anonymous drop off drawers for newborn babies to be left in safety.

The Safe Haven Law protects babies and mothers, providing a future for both.

The Law

Passed in 2001, Arizona's Safe Haven Law states that a person will not face criminal charges for leaving an unharmed newborn baby with a Safe Haven provider, including hospitals, fire stations, on-duty firefighters or emergency medical technicians, and designated private welfare agencies, adoption agencies and churches. A copy of the law is available by clicking [here](#).

Statistics

According to the Maricopa Medical Examiner, during 2000-2006, the morgue received 767 deceased babies, under 9 months old. Of these babies, at least 23 were known to have been born alive & abandoned.

While the statistics of the numbers of babies abandoned and left to die by new mothers are not complete, newborn abandonment has been a continuing problem in our society. The Safe Haven Law was adopted to give new mothers an option that can save their baby's life and give them a solid future.

The Coalition

The Arizona Safe Baby Haven Coalition was formed by a volunteer team of health care workers, social workers, and other concerned citizens. The team's mission: to increase awareness about Arizona's Safe Haven Law, in hopes of saving these precious lives.

The Foundation

In 2010, the Coalition was re-organized as the Arizona Safe Baby Haven Foundation. We are now recognized as an Arizona non-profit corporation and have been awarded IRS 501 (c)(3) tax exempt status as a public charity. We continue to grow with the original mission of preventing abandoned baby deaths.

If you need help, call our hotline anytime. For general inquiries please Contact Us:

1-866-707-2229

Help available 24 hours a day, 7 days a week.

FAQ – AMT Children of Hope Foundation

Post-partum Health Issues – Post-partum delivery care for mothers.

NSHA Links

[About.com – Safe Haven Laws](#)

[Wikipedia.org – Safe Haven Law](#)

[Senate.gov](#) – Look up your senator to thank them for supporting Safe Haven laws

[Congress.gov](#) – Look up your congressman to thank them for supporting Safe Haven laws

[Send a message to President Obama about the importance of Safe Haven laws](#)

[USA.gov](#) – Look up your governor to thank them for supporting Safe Haven laws

NSHA Partner Organizations

[Click here to learn more about the National Safe Haven Alliance's partnership with the National Exchange Club](#)

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