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JOE GONZALES

BEXAR COUNTY CRIMINAL DISTRICT ATTORNEY
PAUL ELIZONDO TOWER
101 W. NUEVA
SAN ANTONIO, TEXAS 78205

December 22, 2022

Honorable Ken Paxton, Attorney General
Attorney General of Texas
Attn: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548
Via Email: opinion.committee@oag.texas.gov

Dear General Paxton,

I write to request an opinion on the permissibility of the installation and use of newborn safety devices at authorized municipally-owned safe haven facilities under the Texas version of the "Baby Moses" law contained in Section 262.301 of the Texas Family Code.

I would respectfully request that the opinion be completed and released as expeditiously as possible.

Thank you for your opinion on this matter,

A handwritten signature in blue ink that reads "Joe D. Gonzales". The signature is written in a cursive style and is positioned above a horizontal line.

Joe D. Gonzales,
Criminal District Attorney
Bexar County, Texas



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RE: Permissibility of the installation and use of newborn safety devices at authorized municipally-owned safe haven facilities.

Dear General Paxton:

This is to request that the Attorney General of Texas issue an Attorney General opinion pursuant to Section 402.042-.043 of the Texas Government Code.

QUESTION PRESENTED

Does the Texas version of a “safe haven” law as contained in Section 262.301 of the Texas Family Code authorize the installation of newborn safety devices at municipally-owned safe haven facilities within the City of San Antonio?

BACKGROUND OF REQUEST

“Safe Haven” or “Baby Moses” laws allow a parent to surrender their newborn infants with no questions asked. Newborns are then protected from potential abuse or neglect, and they can be adopted at an early age into a loving and welcoming family. Surrendering parents are able to move forward knowing that their infants are safe and secure without the need to explain or justify the basis of surrender.

The Texas version of a safe haven law was first passed in 1999, and all 50 states thereafter adopted some form of a “safe haven” law. *See* Tex. Family Code 262.301 *et seq.* To complement its already existing safe haven policy, the City of San Antonio is now considering the installation of

newborn safety devices at select city-owned authorized Baby Moses/Safe Haven sites. These newborn safety devices would follow the safety regulations implemented in other cities or states and would have to meet the following minimum safety requirements:

- Each proposed safety device would be physically located inside an authorized safe haven site, which may include a hospital, law enforcement agency, or fire department facility that is staffed 24 hours a day by a medical services provider.
- Each proposed safety device would be located in an area that is conspicuous and visible to the employees of the authorized safe haven site.
- Each proposed safety device would allow an infant to be placed anonymously from outside the facility.
- Each proposed safety device would lock after an infant is placed inside so no person outside the facility would have access to the child.
- Each proposed safety device would provide a controlled environment for the care and protection of the infant.
- Each proposed safety device would notify a centralized location in the facility within 30 seconds of an infant being placed in the device.
- Each proposed safety device would trigger an emergency 911 call if staff at the authorized safe haven site did not respond within a reasonable amount of time after an infant is placed in the device.

Pursuant to the procedural policy of the City of San Antonio, a Council Consideration Request (CCR) was filed on September 2, 2022, authored by San Antonio City Councilman John Courage and co-signed by four other Councilmembers. The CCR requests official City Council discussion of the proposal to install safe, secure, and climate-controlled newborn safety devices at emergency medical service provider sites with 24-hour staffing that can legally accept newborn infants.

The CCR request for newborn safety devices was based on technology that has advanced to a point where there is no discernable distinction between the safety of a “baby box” or a person-to-person transfer. Several other states¹ have now passed laws that allow for the use of newborn safety devices or “baby boxes” to improve accessibility of the safe haven law.² The “baby boxes” were proposed to allow parents in crisis to safely and securely surrender infants at authorized emergency service locations anonymously by removing barriers that a face-to-face interaction might present.

¹ Safe haven laws in Arizona, Arkansas, Indiana, Kentucky, Louisiana, Maine, Missouri, Ohio, Oklahoma, Pennsylvania, Tennessee, and Virginia and currently authorize the use of “baby box” newborn safety devices.

²Jacob Gershman, *States Install ‘Baby Boxes’ in Effort to Protect Unwanted Infants*, WALL STREET JOURNAL, AUG. 15, 2019, available at <https://www.wsj.com/articles/states-adopt-baby-boxes-in-effort-to-protect-unwanted-infants-11565861402>.

In considering a proposal to install “baby boxes,” a question was raised as to whether Texas law as currently enacted would allow an infant to be surrendered by way of a “baby box” rather than to an individual through a person-to-person transfer. State agencies have apparently taken the position that a parent may only surrender an infant to an *employee* of a “designated emergency infant care provider”³ though the statutory text makes no such distinction.

ARGUMENT AND AUTHORITIES

A court’s primary objective when construing a statute is to determine the legislature’s intent, which it discerns from the plain meaning of the words chosen, if possible. *See Maxim Crane Works, L.P. v. Zurich Am. Ins. Co.*, 642 S.W.3d 551, 557 (Tex. 2022). Generally, the “truest manifestation of what legislators intended is what lawmakers enacted, the literal text they voted on.” *Id.* at 557. When a statute is clear and unambiguous, a court will apply its words according to their common meaning without resort to rules of construction or extrinsic aids. *Id.*

In construing the legislature’s words and phrases, courts should do so within the context and framework of the statute as a whole, not in isolation. *See In re Tex. Educ. Agency*, 619 S.W.3d 679, 687 (Tex. 2021) (orig. proceeding) (stating courts “construe the Legislature’s chosen words and phrases within the context and framework of the statute as a whole, not in isolation”); *see also*, TEX. GOV’T CODE § 311.021(2). Silence should not be interpreted in a way that undermines a statute’s purpose. *AC Ints., L.P. v. Tex. Comm’n on Envtl. Quality*, 543 S.W.3d 703, 709 (Tex. 2018). There can be no greater end than in arriving at an interpretation of a statute which reaches a fair and just result, so much so that the Texas legislature has presumed as much. *See* Tex. Gov’t Code § 311.021(3) (“In enacting a statute, it is presumed that... a just and reasonable result is intended...”).

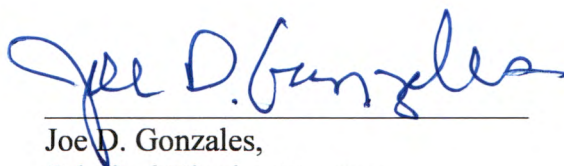
Applicable Texas law remains silent and does not specifically require that a surrendering parent do so to another individual. In fact, the disjunctive statute addresses both facilities and individuals meeting the definition of a “designated emergency infant care provider” for purposes of surrender. In relevant part, the definition of a “designated emergency infant care provider” contained in Section 262.301 of the Texas Family Code includes an emergency medical services “*provider*,” a “*hospital*,” a qualified “*emergency medical care facility*,” or a qualified “*child-placing agency*.” *See* Tex. Family Code § 262.301 (a)-(d); *see also*, Tex. Penal Code 22.041(h) (“It is an exception to the application of this section that the actor voluntarily delivered the child to a *designated emergency infant care provider* under Section 262.302...”). Accordingly, Section 262.301 reasonably construed could extend to authorize the installation of newborn safety devices at lawfully authorized “designated emergency infant care provider” facilities.

³ In explaining the law, the Texas Department of Family and Protective Services indicates that: “The law gives parents who are unable to care for their child a safe and legal choice to leave their infant **with an employee** at a designated safe place—a hospital, fire station, free-standing emergency centers or emergency medical services (EMS) station. Once delivered, the newborn will receive medical care and be placed with an emergency provider.” https://www.dfps.state.tx.us/Child_Protection/Child_Safety/Resources/baby_moses (emphasis added, last visited on 12/19/2022).

CONCLUSION

Texas law clearly intends to give parents who are unable to care for their child a legal choice to leave their infant at a safe location — be it a hospital, fire station, a free-standing emergency center or certain qualified child-placing agencies. However, a reasonable construction of the statute would not preclude the use of an advanced technological solution or “baby box” which could be installed at authorized locations and function in the same manner as a person-to-person transfer without risk of harm or delay to the surrendered infant.⁴

Thank you for your opinion on this critical matter.



Joe D. Gonzales,
Criminal District Attorney
Bexar County, Texas

⁴ Each “baby box” would automatically notify a centralized location in the facility within 30 seconds of a child being placed in the device and trigger a 911 call if staff at the facility do not respond within a reasonable amount of time.