

ASSEMBLY BILL

No. 81

**Introduced by Assembly Member Torrico
(Principal coauthor: Assembly Member Garcia)
(Coauthor: Assembly Member Spitzer)**

December 4, 2006

An act to amend Section 1255.7 of the Health and Safety Code, and to amend Section 271.5 of the Penal Code, relating to child protection, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 81, as introduced, Torrico. Child protection: safe surrender.

Existing law designates certain locations as safe-surrender sites for the safe surrender of newborn children who are 72 hours of age or younger.

This bill would expand the scope of those provisions to apply to children who are 30 days old or younger. The bill would permit the governing body of a city to designate a safe-surrender site and would also designate any fire station with a paramedic or emergency medical technician on duty at all times as a safe-surrender site. The bill would specify that a safe-surrender site and its personnel have no liability for a surrendered child prior to taking actual physical custody of the child. The bill would also appropriate \$5,000,000 to the State Department of Social Services to conduct a statewide awareness campaign, to establish and operate a toll-free telephone number for assistance, and to allocate \$1,000,000 in the form of competitive grants to county social service agencies that conduct safe surrender site program outreach.

By imposing new duties on local officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1255.7 of the Health and Safety Code is
 2 amended to read:
 3 1255.7. (a) (1) For purposes of this section, “safe-surrender
 4 site” means ~~either~~ *any* of the following:
 5 (A) A location designated by the board of supervisors of a
 6 county *or the governing body of a city* to be responsible for
 7 accepting physical custody of a minor child who is ~~72 hours~~ *30*
 8 *days* old or younger from a parent or individual who has lawful
 9 custody of the child and who surrenders the child pursuant to
 10 Section 271.5 of the Penal Code.
 11 (B) A location within a public or private hospital that is
 12 designated by that hospital to be responsible for accepting physical
 13 custody of a minor child who is ~~72 hours~~ *30 days* old or younger
 14 from a parent or individual who has lawful custody of the child
 15 and who surrenders the child pursuant to Section 271.5 of the Penal
 16 Code.
 17 (C) *Any fire station with a paramedic or emergency medical*
 18 *technician on duty at all times.*
 19 (2) For purposes of this section, “parent” means a birth parent
 20 of a minor child who is ~~72 hours~~ *30 days* old or younger.
 21 (3) For purposes of this section, “personnel” means any person
 22 who is an officer or employee of a safe-surrender site or who has
 23 staff privileges at the site.
 24 (4) A hospital, *any fire station with a paramedic or emergency*
 25 *medical technician on duty at all times*, and any safe-surrender
 26 site designated by the county board of supervisors *or the governing*
 27 *body of a city* shall post a sign utilizing a statewide logo that has
 28 been adopted by the State Department of Social Services that

1 notifies the public of the location where a minor child ~~72 hours~~ 30
2 days old or younger may be safely surrendered pursuant to this
3 section.

4 (b) Any personnel on duty at a safe-surrender site shall accept
5 physical custody of a minor child ~~72 hours~~ 30 days old or younger
6 pursuant to this section if a parent or other individual having lawful
7 custody of the child voluntarily surrenders physical custody of the
8 child to personnel who are on duty at the safe-surrender site.
9 Safe-surrender site personnel shall ensure that a qualified person
10 does all of the following:

11 (1) Places a coded, confidential ankle bracelet on the child.

12 (2) Provides, or makes a good faith effort to provide, to the
13 parent or other individual surrendering the child a copy of a unique,
14 coded, confidential ankle bracelet identification in order to facilitate
15 reclaiming the child pursuant to subdivision (f). However,
16 possession of the ankle bracelet identification, in and of itself, does
17 not establish parentage or a right to custody of the child.

18 (3) Provides, or makes a good faith effort to provide, to the
19 parent or other individual surrendering the child a medical
20 information questionnaire, which may be declined, voluntarily
21 filled out and returned at the time the child is surrendered, or later
22 filled out and mailed in the envelope provided for this purpose.
23 This medical information questionnaire shall not require any
24 identifying information about the child or the parent or individual
25 surrendering the child, other than the identification code provided
26 in the ankle bracelet placed on the child. Every questionnaire
27 provided pursuant to this section shall begin with the following
28 notice in no less than 12-point type:

29 NOTICE: THE BABY YOU HAVE BROUGHT IN TODAY
30 MAY HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE
31 THAT WE DON'T KNOW ABOUT TODAY. SOME
32 ILLNESSES, INCLUDING CANCER, ARE BEST TREATED
33 WHEN WE KNOW ABOUT FAMILY MEDICAL HISTORIES.
34 IN ADDITION, SOMETIMES RELATIVES ARE NEEDED FOR
35 LIFE-SAVING TREATMENTS. TO MAKE SURE THIS BABY
36 WILL HAVE A HEALTHY FUTURE, YOUR ASSISTANCE
37 IN COMPLETING THIS QUESTIONNAIRE FULLY IS
38 ESSENTIAL. THANK YOU.

39 (c) Personnel of a safe-surrender site that has physical custody
40 of a minor child pursuant to this section shall ensure that a medical

1 screening examination and any necessary medical care is provided
2 to the minor child. Notwithstanding any other provision of law,
3 the consent of the parent or other relative shall not be required to
4 provide that care to the minor child.

5 (d) (1) As soon as possible, but in no event later than 48 hours
6 after the physical custody of a child has been accepted pursuant
7 to this section, personnel of the safe-surrender site that has physical
8 custody of the child shall notify child protective services or a
9 county agency providing child welfare services pursuant to Section
10 16501 of the Welfare and Institutions Code, that the safe-surrender
11 site has physical custody of the child pursuant to this section. In
12 addition, any medical information pertinent to the child's health,
13 including, but not limited to, information obtained pursuant to the
14 medical information questionnaire described in paragraph (3) of
15 subdivision (b) that has been received by or is in the possession
16 of the safe-surrender site shall be provided to that child protective
17 services or county agency.

18 (2) Any personal identifying information that pertains to a parent
19 or individual who surrenders a child that is obtained pursuant to
20 the medical information questionnaire is confidential and shall be
21 exempt from disclosure by the child protective services or county
22 agency under the California Public Records Act (Chapter 3.5
23 (commencing with Section 6250) of Division 7 of Title 1 of the
24 Government Code). Any personal identifying information that
25 pertains to a parent or individual who surrenders a child shall be
26 redacted from any medical information provided to child protective
27 services or the county agency providing child welfare services.

28 (e) Child protective services or the county agency providing
29 child welfare services pursuant to Section 16501 of the Welfare
30 and Institutions Code shall assume temporary custody of the child
31 pursuant to Section 300 of the Welfare and Institutions Code
32 immediately upon receipt of notice under subdivision (d). Child
33 protective services or the county agency providing child welfare
34 services pursuant to Section 16501 of the Welfare and Institutions
35 Code shall immediately investigate the circumstances of the case
36 and file a petition pursuant to Section 311 of the Welfare and
37 Institutions Code. Child protective services or the county agency
38 providing child welfare services pursuant to Section 16501 of the
39 Welfare and Institutions Code shall immediately notify the State
40 Department of Social Services of each child to whom this

1 subdivision applies upon taking temporary custody of the child
2 pursuant to Section 300 of the Welfare and Institutions Code. As
3 soon as possible, but no later than 24 hours after temporary custody
4 is assumed, child protective services or the county agency
5 providing child welfare services pursuant to Section 16501 of the
6 Welfare and Institutions Code shall report all known identifying
7 information concerning the child, except personal identifying
8 information pertaining to the parent or individual who surrendered
9 the child, to the California Missing Children Clearinghouse and
10 to the National Crime Information Center.

11 (f) If, prior to the filing of a petition under subdivision (e), a
12 parent or individual who has voluntarily surrendered a child
13 pursuant to this section requests that the safe-surrender site that
14 has physical custody of the child pursuant to this section return
15 the child and the safe-surrender site still has custody of the child,
16 personnel of the safe-surrender site shall either return the child to
17 the parent or individual or contact a child protective agency if any
18 personnel at the safe-surrender site knows or reasonably suspects
19 that the child has been the victim of child abuse or neglect. The
20 voluntary surrender of a child pursuant to this section is not in and
21 of itself a sufficient basis for reporting child abuse or neglect. The
22 terms “child abuse,” “child protective agency,” “mandated
23 reporter,” “neglect,” and “reasonably suspects” shall be given the
24 same meanings as in Article 2.5 (commencing with Section 11164)
25 of Title 1 of Part 4 of the Penal Code.

26 (g) Subsequent to the filing of a petition under subdivision (e),
27 if within 14 days of the voluntary surrender described in this
28 section, the parent or individual who surrendered custody returns
29 to claim physical custody of the child, the child welfare agency
30 shall verify the identity of the parent or individual, conduct an
31 assessment of his or her circumstances and ability to parent, and
32 request that the juvenile court dismiss the petition for dependency
33 and order the release of the child, if the child welfare agency
34 determines that none of the conditions described in subdivisions
35 (a) to (d), inclusive, of Section 319 of the Welfare and Institutions
36 Code currently exist.

37 (h) A safe-surrender site, or *the personnel of a safe-surrender*
38 *site, shall not have liability of any kind for a surrendered child*
39 *prior to taking actual physical custody of the child. A*
40 *safe-surrender site, or personnel of the safe-surrender site, that*

1 accepts custody of a surrendered child pursuant to this section shall
2 not be subject to civil, criminal, or administrative liability for
3 accepting the child and caring for the child in the good faith belief
4 that action is required or authorized by this section, including, but
5 not limited to, instances where the child is older than ~~72 hours~~ *30*
6 *days old* or the parent or individual surrendering the child did not
7 have lawful physical custody of the child. This subdivision does
8 not confer immunity from liability for personal injury or wrongful
9 death, including, but not limited to, injury resulting from medical
10 malpractice.

11 (i) (1) In order to encourage assistance to persons who
12 voluntarily surrender physical custody of a child pursuant to this
13 section or Section 271.5 of the Penal Code, no person who, without
14 compensation and in good faith, provides assistance for the purpose
15 of effecting the safe surrender of a minor ~~72 hours~~ *30 days* old or
16 younger shall be civilly liable for injury to, or *the* death of, the
17 minor child as a result of any of his or her acts or omissions. This
18 immunity does not apply to any act or omission constituting gross
19 negligence, recklessness, or willful misconduct.

20 (2) For purposes of this section, “assistance” means transporting
21 the minor child to the safe-surrender site as a person with lawful
22 custody, or transporting or accompanying the parent or person
23 with lawful custody at the request of that parent or person to effect
24 the safe surrender, or performing any other act in good faith for
25 the purpose of effecting the safe surrender of the minor.

26 (j) For purposes of this section, “lawful custody” means physical
27 custody of a minor ~~72 hours~~ *30 days* old or younger accepted by
28 a person from a parent of the minor, who the person believes in
29 good faith is the parent of the minor, with the specific intent and
30 promise of effecting the safe surrender of the minor.

31 (k) Any identifying information that pertains to a parent or
32 individual who surrenders a child pursuant to this section, that is
33 obtained as a result of the questionnaire described in paragraph
34 (3) of subdivision (b) or in any other manner, is confidential, shall
35 be exempt from disclosure under the California Public Records
36 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
37 of Title 1 of the Government Code), and shall not be disclosed by
38 any personnel of a safe-surrender site that accepts custody of a
39 child pursuant to this section.

40 SEC. 2. Section 271.5 of the Penal Code is amended to read:

1 271.5. (a) No parent or other individual having lawful custody
2 of a minor child ~~72 hours~~ *30 days* old or younger may be
3 prosecuted for a violation of Section 270, 270.5, 271, or 271a if
4 he or she voluntarily surrenders physical custody of the child to
5 personnel on duty at a safe-surrender site.

6 (b) For purposes of this section, “safe-surrender site” has the
7 same meaning as defined in paragraph (1) of subdivision (a) of
8 Section 1255.7 of the Health and Safety Code.

9 (c) (1) For purposes of this section, “lawful custody” has the
10 same meaning as defined in subdivision (j) of Section 1255.7 of
11 the Health and Safety Code.

12 (2) For purposes of this section, “personnel” has the same
13 meaning as defined in paragraph ~~(2)~~ (3) of subdivision (a) of
14 Section 1255.7 of the Health and Safety Code.

15 SEC. 3. The sum of five million dollars (\$5,000,000) is hereby
16 appropriated from the General Fund to the State Department of
17 Social Services for the purpose of supporting the Safe-Surrender
18 Site Program as follows:

19 (a) The department shall conduct a statewide awareness
20 campaign publicizing the existence of safe-surrender sites.

21 (b) The department shall establish and operate a toll-free
22 telephone number for the purpose of providing education and
23 assistance to the public regarding safe-surrender sites.

24 (c) The department shall allocate the sum of one million dollars
25 (\$1,000,000) in the form of competitive grants to county social
26 service agencies that conduct safe surrender site program outreach.

27 SEC. 4. If the Commission on State Mandates determines that
28 this act contains costs mandated by the state, reimbursement to
29 local agencies and school districts for those costs shall be made
30 pursuant to Part 7 (commencing with Section 17500) of Division
31 4 of Title 2 of the Government Code.