

AMENDED IN SENATE AUGUST 4, 2008

AMENDED IN SENATE JUNE 18, 2008

AMENDED IN SENATE JUNE 9, 2008

AMENDED IN ASSEMBLY MAY 23, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2262

Introduced by Assembly Member Torrico

(Principal coauthor: Assembly Member Spitzer)

*(Coauthors: Assembly Members Caballero, Carter, Coto, Duvall,
Fuentes, Furutani, Krekorian, Mendoza, Ruskin, and Silva)*

(Coauthors: Senators Cedillo, Oropeza, and Romero)

February 21, 2008

An act to amend Section 1255.7 of the Health and Safety Code, *and* to amend Section 271.5 of the Penal Code, ~~and to amend Section 14005.24 of the Welfare and Institutions Code~~, relating to child protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 2262, as amended, 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 7 days old or younger. The bill would permit a local fire agency, upon the approval of the appropriate local governing body of the agency, to designate a safe-surrender site. The bill would specify

certain circumstances in which a safe-surrender site and its personnel have no liability for a surrendered child.

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

~~Existing law requires the State Department of Health Care Services to instruct counties, by means of an all county letter or similar instruction, as to the process that is to be used to ensure that each child, the physical custody of whom has been voluntarily surrendered pursuant to the above provisions, shall be determined eligible for Medi-Cal benefits, as specified.~~

~~This bill would, by July 1, 2009, require the department, in consultation with the stakeholders involved in the development of the above instructions, to issue updated instructions to counties that address certain issues related to safe surrender.~~

~~*This bill would, by July 1, 2009, require the State Department of Social Services to convene a workgroup consisting of stakeholders, to determine the appropriate agencies to disseminate updated instructions to counties, as specified, and to identify the appropriate agencies to adopt rules and regulations the workgroup deems necessary for this purpose.*~~

The bill would require the State Department of Social Services to enforce and administer the safe-surrender provisions, as specified, and to report to the Legislature regarding the effect of these provisions on or before January 1, 2012, and, contingent upon available funding or resources, on or before January 1 of each subsequent year.

The bill would specify that activities required by the bill shall be funded by moneys available from the Children's Trust Fund and the California Children and Families Trust Fund, and that General Fund moneys shall not be used. The bill would authorize the State Department of Social Services to accept and expend other private funds from donations that are received by the department, as specified.

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: majority. Appropriation: no. 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 any of the following:

5 (A) A location designated by the board of supervisors of a
6 county or by a local fire agency, upon the approval of the
7 appropriate local governing body of the agency, to be responsible
8 for accepting physical custody of a minor child who is seven days
9 old or younger from a parent or individual who has lawful custody
10 of the child and who surrenders the child pursuant to Section 271.5
11 of the Penal Code. Before designating a location as a safe-surrender
12 site *pursuant to this subdivision*, the designatory entity shall consult
13 with the governing body of a city, if the site is within the city
14 limits, and with representatives of any fire department, and any
15 child welfare agency that may provide services to a child who is
16 surrendered at the site, if that location is selected.

17 (B) A location within a public or private hospital that is
18 designated by that hospital to be responsible for accepting physical
19 custody of a minor child who is seven days old or younger from
20 a parent or individual who has lawful custody of the child and who
21 surrenders the child pursuant to Section 271.5 of the Penal Code.

22 (2) For purposes of this section, “parent” means a birth parent
23 of a minor child who is seven days old or younger.

24 (3) For purposes of this section, “personnel” means any person
25 who is an officer or employee of a safe-surrender site or who has
26 staff privileges at the site.

27 (4) A hospital and any safe-surrender site designated by the
28 county board of supervisors or by a local fire agency, upon the
29 approval of the appropriate local governing body of the agency,
30 shall post a sign utilizing a statewide logo that has been adopted
31 by the State Department of Social Services that notifies the public
32 of the location where a minor child seven days old or younger may
33 be safely surrendered pursuant to this section.

34 (b) Any personnel on duty at a safe-surrender site shall accept
35 physical custody of a minor child seven days old or younger
36 pursuant to this section if a parent or other individual having lawful
37 custody of the child voluntarily surrenders physical custody of the
38 child to personnel who are on duty at the safe-surrender site.

1 Safe-surrender site personnel shall ensure that a qualified person
2 does all of the following:

- 3 (1) Places a coded, confidential ankle bracelet on the child.
- 4 (2) Provides, or makes a good faith effort to provide, to the
5 parent or other individual surrendering the child a copy of a unique,
6 coded, confidential ankle bracelet identification in order to facilitate
7 reclaiming the child pursuant to subdivision (f). However,
8 possession of the ankle bracelet identification, in and of itself, does
9 not establish parentage or a right to custody of the child.

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

21 NOTICE: THE BABY YOU HAVE BROUGHT IN TODAY
22 MAY HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE
23 THAT WE DON'T KNOW ABOUT TODAY. SOME
24 ILLNESSES, INCLUDING CANCER, ARE BEST TREATED
25 WHEN WE KNOW ABOUT FAMILY MEDICAL HISTORIES.
26 IN ADDITION, SOMETIMES RELATIVES ARE NEEDED FOR
27 LIFE-SAVING TREATMENTS. TO MAKE SURE THIS BABY
28 WILL HAVE A HEALTHY FUTURE, YOUR ASSISTANCE
29 IN COMPLETING THIS QUESTIONNAIRE FULLY IS
30 ESSENTIAL. THANK YOU.

31 (c) Personnel of a safe-surrender site that has physical custody
32 of a minor child pursuant to this section shall ensure that a medical
33 screening examination and any necessary medical care is provided
34 to the minor child. Notwithstanding any other provision of law,
35 the consent of the parent or other relative shall not be required to
36 provide that care to the minor child.

37 (d) (1) As soon as possible, but in no event later than 48 hours
38 after the physical custody of a child has been accepted pursuant
39 to this section, personnel of the safe-surrender site that has physical
40 custody of the child shall notify child protective services or a

1 county agency providing child welfare services pursuant to Section
2 16501 of the Welfare and Institutions Code, that the safe-surrender
3 site has physical custody of the child pursuant to this section. In
4 addition, any medical information pertinent to the child's health,
5 including, but not limited to, information obtained pursuant to the
6 medical information questionnaire described in paragraph (3) of
7 subdivision (b) that has been received by or is in the possession
8 of the safe-surrender site shall be provided to that child protective
9 services or county agency.

10 (2) Any personal identifying information that pertains to a parent
11 or individual who surrenders a child that is obtained pursuant to
12 the medical information questionnaire is confidential and shall be
13 exempt from disclosure by the child protective services or county
14 agency under the California Public Records Act (Chapter 3.5
15 (commencing with Section 6250) of Division 7 of Title 1 of the
16 Government Code). Any personal identifying information that
17 pertains to a parent or individual who surrenders a child shall be
18 redacted from any medical information provided to child protective
19 services or the county agency providing child welfare services.

20 (e) Child protective services or the county agency providing
21 child welfare services pursuant to Section 16501 of the Welfare
22 and Institutions Code shall assume temporary custody of the child
23 pursuant to Section 300 of the Welfare and Institutions Code
24 immediately upon receipt of notice under subdivision (d). Child
25 protective services or the county agency providing child welfare
26 services pursuant to Section 16501 of the Welfare and Institutions
27 Code shall immediately investigate the circumstances of the case
28 and file a petition pursuant to Section 311 of the Welfare and
29 Institutions Code. Child protective services or the county agency
30 providing child welfare services pursuant to Section 16501 of the
31 Welfare and Institutions Code shall immediately notify the State
32 Department of Social Services of each child to whom this
33 subdivision applies upon taking temporary custody of the child
34 pursuant to Section 300 of the Welfare and Institutions Code. As
35 soon as possible, but no later than 24 hours after temporary custody
36 is assumed, child protective services or the county agency
37 providing child welfare services pursuant to Section 16501 of the
38 Welfare and Institutions Code shall report all known identifying
39 information concerning the child, except personal identifying
40 information pertaining to the parent or individual who surrendered

1 the child, to the California Missing Children Clearinghouse and
2 to the National Crime Information Center.

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

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

29 (h) (1) *On or before July 1, 2009, the State Department of*
30 *Social Services shall convene a workgroup consisting of*
31 *stakeholders, including the State Department of Public Health,*
32 *the State Department of Education, and any others deemed*
33 *appropriate by the State Department of Social Services. The*
34 *workgroup shall determine the appropriate agencies to disseminate*
35 *updated instructions to counties that address the following issues:*

36 (A) *Clarification of rules with respect to a mother who gives*
37 *birth in a hospital and chooses to give up her baby.*

38 (B) *Clarification of the definition of a safely surrendered baby,*
39 *including whether the baby was safely surrendered in accordance*
40 *with this section.*

1 (C) Clarification of parental information provided to counties
2 and the use of that information received by the counties.

3 (2) The workgroup shall identify the appropriate agencies that
4 shall adopt all rules and regulations the workgroup deems
5 necessary for this purpose. The responsibilities of the workgroup
6 pursuant to this subdivision shall include, but not be limited to,
7 identifying agencies that are responsible for ongoing research and
8 monitoring effects.

9 ~~(h)~~

10 (i) A safe-surrender site, or the personnel of a safe-surrender
11 site, shall not have liability of any kind for a surrendered child
12 prior to taking actual physical custody of the child. A
13 safe-surrender site, or personnel of the safe-surrender site, that
14 accepts custody of a surrendered child pursuant to this section shall
15 not be subject to civil, criminal, or administrative liability for
16 accepting the child and caring for the child in the good faith belief
17 that action is required or authorized by this section, including, but
18 not limited to, instances where the child is older than seven days
19 or the parent or individual surrendering the child did not have
20 lawful physical custody of the child. A safe-surrender site, or the
21 personnel of a safe-surrender site, shall not be subject to civil,
22 criminal, or administrative liability for a surrendered child prior
23 to the time that the site or its personnel know, or should know, that
24 the child has been surrendered. This subdivision does not confer
25 immunity from liability for personal injury or wrongful death,
26 including, but not limited to, injury resulting from medical
27 malpractice.

28 ~~(i)~~

29 (j) (1) In order to encourage assistance to persons who
30 voluntarily surrender physical custody of a child pursuant to this
31 section or Section 271.5 of the Penal Code, no person who, without
32 compensation and in good faith, provides assistance for the purpose
33 of effecting the safe surrender of a minor seven days old or younger
34 shall be civilly liable for injury to or death of the minor child as a
35 result of any of his or her acts or omissions. This immunity does
36 not apply to any act or omission constituting gross negligence,
37 recklessness, or willful misconduct.

38 (2) For purposes of this section, “assistance” means transporting
39 the minor child to the safe-surrender site as a person with lawful
40 custody, or transporting or accompanying the parent or person

1 with lawful custody at the request of that parent or person to effect
 2 the safe surrender, or performing any other act in good faith for
 3 the purpose of effecting the safe surrender of the minor.

4 ~~(j)~~

5 (k) For purposes of this section, “lawful custody” means physical
 6 custody of a minor seven days old or younger accepted by a person
 7 from a parent of the minor, who the person believes in good faith
 8 is the parent of the minor, with the specific intent and promise of
 9 effecting the safe surrender of the minor.

10 ~~(k)~~

11 (l) Any identifying information that pertains to a parent or
 12 individual who surrenders a child pursuant to this section, that is
 13 obtained as a result of the questionnaire described in paragraph
 14 (3) of subdivision (b) or in any other manner, is confidential, shall
 15 be exempt from disclosure under the California Public Records
 16 Act (Chapter 3.5 (commencing with Section 6250) of Division 7
 17 of Title 1 of the Government Code), and shall not be disclosed by
 18 any personnel of a safe-surrender site that accepts custody of a
 19 child pursuant to this section.

20 ~~(t) The State Department of Social Services shall administer~~
 21 ~~and enforce this section, including adopting all rules and~~
 22 ~~regulations the department deems necessary for this purpose. The~~
 23 ~~responsibilities of the department pursuant to this subdivision shall~~
 24 ~~include, but not be limited to, ongoing outreach and monitoring~~
 25 ~~efforts.~~

26 (m) *The activities required by this section shall be funded by*
 27 *available moneys from the Children’s Trust Fund, established*
 28 *pursuant to Section 18969 of the Welfare and Institutions Code,*
 29 *and from the California Children and Families Trust Fund,*
 30 *established pursuant to Section 130105. General Fund moneys*
 31 *shall not be used to fund this section. The State Department of*
 32 *Social Services may also accept and expend private donations that*
 33 *are received by the department for the purposes of this section.*

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

35 271.5. (a) No parent or other individual having lawful custody
 36 of a minor child seven days old or younger may be prosecuted for
 37 a violation of Section 270, 270.5, 271, or 271a if he or she
 38 voluntarily surrenders physical custody of the child to personnel
 39 on duty at a safe-surrender site.

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

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

7 (2) For purposes of this section, “personnel” has the same
8 meaning as defined in paragraph (3) of subdivision (a) of Section
9 1255.7 of the Health and Safety Code.

10 ~~SEC. 3. Section 14005.24 of the Welfare and Institutions Code~~
11 ~~is amended to read:~~

12 ~~14005.24. (a) The department shall instruct counties, by means~~
13 ~~of an all county letter or similar instruction, as to the process that~~
14 ~~is to be used to ensure that each child, physical custody of whom~~
15 ~~has been voluntarily surrendered pursuant to Section 1255.7 of the~~
16 ~~Health and Safety Code, shall be determined eligible for benefits~~
17 ~~under this chapter for, at a minimum, a period of time commencing~~
18 ~~on the date physical custody is surrendered and ending on the~~
19 ~~earliest of the following dates:~~

20 ~~(1) The last day of the month following the month in which the~~
21 ~~child was voluntarily surrendered under Section 1255.7 of the~~
22 ~~Health and Safety Code.~~

23 ~~(2) The date the child is reclaimed under Section 1255.7 of the~~
24 ~~Health and Safety Code.~~

25 ~~(3) The date the child ceases to reside in California.~~

26 ~~(b) On or before July 1, 2009, the department, in consultation~~
27 ~~with the stakeholders involved in the development of the~~
28 ~~instructions issued pursuant to subdivision (a), shall issue updated~~
29 ~~instructions to counties that address the following issues:~~

30 ~~(1) Clarification of rules with respect to a mother who gives~~
31 ~~birth in a hospital and chooses to relinquish custody.~~

32 ~~(2) Clarification of the definition of a safely surrendered baby,~~
33 ~~including whether the baby was safely surrendered in accordance~~
34 ~~with Section 1255.7 of the Health and Safety Code.~~

35 ~~(3) Clarification of parental information provided to counties~~
36 ~~and the use of that information received by the counties.~~

37 ~~SEC. 4.~~

38 ~~SEC. 3. On or before January 1, 2012, and, contingent upon~~
39 ~~availability of sufficient funding or resources for this purpose, on~~
40 ~~or before January 1 of each subsequent year, the State Department~~

1 of Social Services shall report to the Legislature regarding the
2 effect of this act, including, but not limited to, all of the following
3 information:

4 (a) The number of children one year of age or younger who are
5 found abandoned, dead or alive, in the state for each year in which
6 reporting is required under this act.

7 (b) The number of infants surrendered pursuant to this act, with
8 their approximate age.

9 (c) The number of medical history questionnaires completed in
10 those cases.

11 (d) The number of instances in which a parent or other person
12 having lawful custody seeks to reclaim custody of a surrendered
13 child, both during and after the initial period following surrender,
14 and the outcome of those cases.

15 (e) Whether a person seeking to reclaim custody is the individual
16 who surrendered the child.

17 (f) The number of children surrendered pursuant to this act who
18 show signs of neglect or abuse and the disposition of those cases.

19 (g) The number of parents or legal guardians eventually located
20 and contacted by social workers.

21 ~~SEC. 5.~~

22 *SEC. 4.* If the Commission on State Mandates determines that
23 this act contains costs mandated by the state, reimbursement to
24 local agencies and school districts for those costs shall be made
25 pursuant to Part 7 (commencing with Section 17500) of Division
26 4 of Title 2 of the Government Code.