

## Assembly Bill No. 973

### CHAPTER 440

An act to amend, repeal, and add Section 305.6 of the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 29, 2010. Filed with  
Secretary of State September 29, 2010.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 973, Audra Strickland. Minors: temporary custody.

Existing law authorizes a peace officer to take into temporary custody, without a warrant, a minor who is in a hospital if the release of the minor to a prospective adoptive parent poses an immediate danger to the minor's health or safety. However, existing law prohibits a peace officer from taking into custody, without a warrant, a newborn child who is in a hospital, who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs, who is the subject of an adoption petition, and whose release to the prospective adoptive parents does not pose an immediate danger to him or her.

This bill, instead, would prohibit a peace officer from taking into custody, without a warrant, a newborn who is the subject of a proposed adoption. This bill would also allow the Health Facility Minor Release Report to be signed by a licensed adoption agency, and allow the release of the minor to the adoptive parent's authorized representative or a licensed adoptive agency, when it does not pose an immediate danger to the minor.

Existing law also requires the adoptive parent or parents or their representative to provide a copy of the Health Facility Minor Release Report and a copy of the petition for adoption to the local child protective services agency or to the peace officer who is at the hospital to take the minor into custody or allows a copy of an adoption placement agreement signed by the placing birth parent or parents and the prospective adoptive parents to be used in place of the Health Facility Minor Release Report.

This bill would instead require the prospective adoptive parent or parents or their representative or a representative of a licensed adoption agency to provide a fully executed copy of the Health Facility Minor Release Report and a written form signed by the prospective adoptive parent or parents or a representative of a licensed adoption agency that includes a declaration that the signer will immediately notify the county child welfare agency if the adoption plan is terminated, as provided.

This bill would provide that these changes are to remain in effect until January 1, 2013.

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

SECTION 1. Section 305.6 of the Welfare and Institutions Code is amended to read:

305.6. (a) Any peace officer may, without a warrant, take into temporary custody a minor who is in a hospital if the release of the minor to a prospective adoptive parent or a representative of a licensed adoption agency poses an immediate danger to the minor's health or safety.

(b) (1) Notwithstanding subdivision (a) and Section 305, a peace officer may not, without a warrant, take into temporary custody a minor who is in a hospital if all of the following conditions exist:

(A) The minor is a newborn who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs.

(B) The minor is the subject of a proposed adoption and a Health Facility Minor Release Report, prescribed by the department, has been completed by the hospital, including the marking of the boxes applicable to an independent adoption or agency adoption planning, and signed by the placing birth parent or birth parents, as well as either the prospective adoptive parent or parents or an authorized representative of a licensed adoption agency, prior to the discharge of the birth parent or the minor from the hospital. Prior to signing the Health Facility Minor Release Report, the birth parent or parents shall be given a notice written in at least 14-point pica type, containing substantially the following statements:

(i) That the Health Facility Minor Release Report does not constitute consent to adoption of the minor by the prospective adoptive parent or parents, or any other person.

(ii) That the Health Facility Minor Release Report does not constitute a relinquishment of parental rights for the purposes of adoption.

(iii) That the birth parent or parents or any person authorized by the birth parent or parents may reclaim the minor at any time from the prospective adoptive parent or parents or any other person to whom the minor was released by the hospital, as provided in Sections 8814.5, 8815, or 8700 of the Family Code.

This notice shall be signed by the birth parent or parents and attached to the Health Facility Minor Release Report, a copy of which shall be provided to the birth parent or parents by hospital personnel at the time the form is completed.

(C) The release of the minor to a prospective adoptive parent or parents or an authorized representative of a licensed adoption agency does not pose an immediate danger to the minor.

(D) An attorney or an adoption agency has provided documentation stating that he or she, or the agency, is representing the prospective adoptive parent or parents for purposes of the adoption. In the case of an independent adoption, as defined in Section 8524 of the Family Code, the attorney or adoption agency shall provide documentation stating that the prospective adoptive parent or parents have been informed that the child may be eligible for benefits provided pursuant to the Adoption Assistance Program, as set

forth in Chapter 2.1 (commencing with Section 16115) of Part 4 of Division 9, only if, at the time the adoption request is filed, the child has met the requirements to receive federal supplemental security income benefits pursuant to Subchapter XVI (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code, as determined and documented by the federal Social Security Administration.

(E) The prospective adoptive parent or parents or their representative, or an authorized representative of a licensed adoption agency, provides all of the following to the peace officer who is at the hospital to take the minor into temporary custody:

(i) A fully executed copy of the Health Facility Minor Release Report.

(ii) A written form, developed by the department, signed by either the prospective adoptive parent or parents or a representative of the licensed adoption agency, which shall include all of the following:

(I) A statement that the minor is the subject of a proposed adoption.

(II) A declaration that the signer or signers will immediately notify the county child welfare agency pursuant to Section 11165.9 of the Penal Code if the adoption plan is terminated for any reason, and will not release the minor to the birth parent or parents or any designee of the birth parent or parents until the county child welfare agency or local law enforcement agency completes an investigation and determines that release of the minor to the birth parent or parents or a designee of the birth parent or parents will not create an immediate risk to the health or safety of the minor.

(III) An agreement to provide a conformed copy of the adoption request or guardianship petition to the county child welfare agency within five business days after filing.

(IV) The names, identifying information, and contact information for the minor, for each prospective adoptive parent, and for each birth parent, to the extent that information is known. In the case of an agency adoption where no prospective adoptive parent or parents are identified at the time of the minor's release from the hospital, the licensed adoption agency may provide the information as it pertains to the licensed or certified foster home into which the agency intends to place the minor.

(c) (1) In every independent adoption proceeding under this section, the prospective adoptive parent or parents shall file with the court either an adoption request within 10 working days after execution of an adoption placement agreement, or a guardianship petition within 30 calendar days after the child's discharge from the hospital, whichever is earlier.

(2) If the adoption plan for a minor who was released from the hospital pursuant to subdivision (b) is terminated for any reason, the prospective adoptive parent or parents or licensed adoption agency shall immediately notify the county child welfare agency. The prospective adoptive parent or parents or licensed adoption agency may not release the minor into the physical custody of the birth parent or parents, or any designee of the birth parent or parents, until the county child welfare agency or local law enforcement agency completes an investigation and determines that release of the minor to the birth parent or parents or a designee of the birth parent

or parents will not create an immediate risk to the health or safety of the minor.

(d) Nothing in this section is intended to create a duty that requires law enforcement to investigate the prospective adoptive parent or parents.

(e) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 2. Section 305.6 is added to the Welfare and Institutions Code, to read:

305.6. (a) Any peace officer may, without a warrant, take into temporary custody a minor who is in a hospital if the release of the minor to a prospective adoptive parent poses an immediate danger to the minor's health or safety.

(b) (1) Notwithstanding subdivision (a) and Section 305, a peace officer may not, without a warrant, take into temporary custody a minor who is in a hospital if all of the following conditions exist:

(A) The minor is a newborn who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs.

(B) The minor is the subject of a petition for adoption and a Health Facility Minor Release Report, prescribed by the department, has been completed by the hospital, including the marking of the boxes applicable to an independent adoption or agency adoption planning, and signed by the placing birth parent or birth parents and the prospective adoptive parent or parents, prior to the discharge of the birth parent or the minor from the hospital. Prior to signing the Health Facility Minor Release Report, the birth parent or birth parents shall be given a notice written in at least 14-point pica type, containing substantially the following statements:

(i) That the Health Facility Minor Release Report does not constitute consent to adoption of the minor by the prospective adoptive parent or parents, or any other prospective adoptive parent or parents.

(ii) That the Health Facility Minor Release Report does not constitute a relinquishment of parental rights for the purposes of adoption.

(iii) That the birth parent or birth parents or any person authorized by the birth parent or birth parents may reclaim the minor at any time from the prospective adoptive parent or parents or any other person to whom the minor was released by the hospital, until an adoption placement agreement or a relinquishment is signed by the birth parent or birth parents.

This notice shall be signed by the birth parent or birth parents and attached to the Health Facility Minor Release Report.

(C) The release of the minor to a prospective adoptive parent or parents does not pose an immediate danger to the minor.

(D) An attorney or an adoption agency has provided documentation stating that he or she, or the agency, is representing the prospective adoptive parent or parents for purposes of the adoption. In the case of an independent adoption, as defined in Section 8524 of the Family Code, the attorney or adoption agency shall provide documentation stating that the prospective adoptive parent or parents have been informed that the child may be eligible

for benefits provided pursuant to the Adoption Assistance Program, as set forth in Chapter 2.1 (commencing with Section 16115) of Part 4 of Division 9, only if, at the time the petition is filed, the child has met the requirements to receive federal supplemental security income benefits pursuant to Subchapter XVI (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code, as determined and documented by the federal Social Security Administration.

(E) The prospective adoptive parent or parents or their representative provides a copy of the Health Facility Minor Release Report with the signed notice to the birth parent or birth parents as described in subparagraph (B) and a copy of the petition for adoption to the local child protective services agency or to the peace officer who is at the hospital to take the minor into temporary custody.

(2) Notwithstanding Section 305 or subdivision (a) of this section, a peace officer may not, without a warrant, take into temporary custody a minor who is in a hospital if all of the following conditions exist:

(A) The minor is a newborn who tested positive for illegal drugs or whose birth mother tested positive for illegal drugs.

(B) The minor is the subject of a petition for adoption and a prospective adoptive parent or prospective adoptive parents have been licensed to act as a foster parent or foster parents of the minor pending finalization of the petition for adoption.

(C) The release of the minor to the prospective adoptive parent or prospective adoptive parents does not pose an immediate danger to the minor.

(D) The prospective adoptive parent or parents or their representative provides a copy of the petition for adoption and documents evidencing licensure as a foster parent or foster parents to the local child protective services agency or to the peace officer who is at the hospital to take the minor into temporary custody.

(3) If at the time the minor is released to the custody of a prospective adoptive parent or parents or their representative pursuant to paragraph (1) or (2), the petition for adoption of the minor has not been filed with the court, the petition for adoption shall be filed within 15 calendar days of the date the birth parent was released from the hospital.

(4) A copy of an adoption placement agreement signed by the placing birth parent or birth parents and the prospective adoptive parent or parents may be used in place of the Health Facility Minor Release Report and notice to the birth parent or birth parents as described in subparagraph (B) of paragraph (1).

(c) Nothing in this section is intended to create a duty that requires law enforcement to investigate the prospective adoptive parent or parents.

(d) This section shall become operative on January 1, 2013.