

ASSEMBLY BILL

No. 1048

Introduced by Assembly Member Torrico

February 27, 2009

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.

LEGISLATIVE COUNSEL'S DIGEST

AB 1048, 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 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.

The bill would specify that activities required by the bill shall be funded by moneys available from the State Children's Trust Fund and the California Children and Families Trust Fund, and would require the department to apply for that funding to the California Children and Families Commission. The bill would provide that General Fund moneys shall not be used to fund the bill's provisions. 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 bill would, on or before January 1, 2013, and on or before January 1 of each subsequent year, contingent on certain conditions, require the department to report to the Legislature specified information pursuant to the act.

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 either 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 ~~72 hours~~
9 *30 days* old or younger from a parent or individual who has lawful
10 custody of the child and who surrenders the child pursuant to
11 Section 271.5 of the Penal Code. *Before designating a location as*
12 *a safe-surrender site pursuant to this subdivision, the designatory*
13 *entity shall consult with the governing body of a city, if the site is*
14 *within the city limits, and with representatives of a fire department*
15 *and a child welfare agency that may provide services to a child*
16 *who is 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 ~~72 hours~~ *30 days* old or younger
20 from a parent or individual who has lawful custody of the child
21 and who surrenders the child pursuant to Section 271.5 of the Penal
22 Code.

23 (2) For purposes of this section, “parent” means a birth parent
24 of a minor child who is ~~72 hours~~ *30 days* old or younger.

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

4 (4) A hospital and ~~any~~ a safe-surrender site designated by the
5 county board of supervisors *or by a local fire agency, upon the*
6 *approval of the appropriate local governing body of the agency,*
7 shall post a sign utilizing a statewide logo that has been adopted
8 by the State Department of Social Services that notifies the public
9 of the location where a minor child ~~72 hours~~ 30 days old or younger
10 may be safely surrendered pursuant to this section.

11 (b) ~~Any personnel~~ *Personnel* on duty at a safe-surrender site
12 shall accept physical custody of a minor child ~~72 hours~~ 30 days
13 old or younger pursuant to this section if a parent or other
14 individual having lawful custody of the child voluntarily surrenders
15 physical custody of the child to personnel who are on duty at the
16 safe-surrender site. Safe-surrender site personnel shall ensure that
17 a qualified person does all of the following:

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

19 (2) Provides, or makes a good faith effort to provide, to the
20 parent or other individual surrendering the child a copy of a unique,
21 coded, confidential ankle bracelet identification in order to facilitate
22 reclaiming the child pursuant to subdivision (f). However,
23 possession of the ankle bracelet identification, in and of itself, does
24 not establish parentage or a right to custody of the child.

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

36 NOTICE: THE BABY YOU HAVE BROUGHT IN TODAY
37 MAY HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE
38 THAT WE DON'T KNOW ABOUT TODAY. SOME
39 ILLNESSES, INCLUDING CANCER, ARE BEST TREATED
40 WHEN WE KNOW ABOUT FAMILY MEDICAL HISTORIES.

1 IN ADDITION, SOMETIMES RELATIVES ARE NEEDED FOR
2 LIFE-SAVING TREATMENTS. TO MAKE SURE THIS BABY
3 WILL HAVE A HEALTHY FUTURE, YOUR ASSISTANCE
4 IN COMPLETING THIS QUESTIONNAIRE FULLY IS
5 ESSENTIAL. THANK YOU.

6 (c) Personnel of a safe-surrender site that has physical custody
7 of a minor child pursuant to this section shall ensure that a medical
8 screening examination and any necessary medical care is provided
9 to the minor child. Notwithstanding any other provision of law,
10 the consent of the parent or other relative shall not be required to
11 provide that care to the minor child.

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

25 (2) Any personal identifying information that pertains to a parent
26 or individual who surrenders a child that is obtained pursuant to
27 the medical information questionnaire is confidential and shall be
28 exempt from disclosure by the child protective services or county
29 agency under the California Public Records Act (Chapter 3.5
30 commencing with Section 6250) of Division 7 of Title 1 of the
31 Government Code). ~~Any personal~~ *Personal* identifying information
32 that pertains to a parent or individual who surrenders a child shall
33 be redacted from any medical information provided to child
34 protective services or the county agency providing child welfare
35 services.

36 (e) Child protective services or the county agency providing
37 child welfare services pursuant to Section 16501 of the Welfare
38 and Institutions Code shall assume temporary custody of the child
39 pursuant to Section 300 of the Welfare and Institutions Code
40 immediately upon receipt of notice under subdivision (d). Child

1 protective services or the county agency providing child welfare
2 services pursuant to Section 16501 of the Welfare and Institutions
3 Code shall immediately investigate the circumstances of the case
4 and file a petition pursuant to Section 311 of the Welfare and
5 Institutions Code. Child protective services or the county agency
6 providing child welfare services pursuant to Section 16501 of the
7 Welfare and Institutions Code shall immediately notify the State
8 Department of Social Services of each child to whom this
9 subdivision applies upon taking temporary custody of the child
10 pursuant to Section 300 of the Welfare and Institutions Code. As
11 soon as possible, but no later than 24 hours after temporary custody
12 is assumed, child protective services or the county agency
13 providing child welfare services pursuant to Section 16501 of the
14 Welfare and Institutions Code shall report all known identifying
15 information concerning the child, except personal identifying
16 information pertaining to the parent or individual who surrendered
17 the child, to the California Missing Children Clearinghouse and
18 to the National Crime Information Center.

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

34 (g) Subsequent to the filing of a petition under subdivision (e),
35 if within 14 days of the voluntary surrender described in this
36 section, the parent or individual who surrendered custody returns
37 to claim physical custody of the child, the child welfare agency
38 shall verify the identity of the parent or individual, conduct an
39 assessment of his or her circumstances and ability to parent, and
40 request that the juvenile court dismiss the petition for dependency

1 and order the release of the child, if the child welfare agency
 2 determines that none of the conditions described in subdivisions
 3 (a) to (d), inclusive, of Section 319 of the Welfare and Institutions
 4 Code currently exist.

5 (h) A safe-surrender site, ~~or personnel of the safe-surrender site,~~
 6 *the personnel of a safe-surrender site, shall not have liability of*
 7 *any kind for a surrendered child prior to taking actual physical*
 8 *custody of the child. A safe-surrender site, or personnel of the*
 9 *safe-surrender site, that accepts custody of a surrendered child*
 10 *pursuant to this section shall not be subject to civil, criminal, or*
 11 *administrative liability for accepting the child and caring for the*
 12 *child in the good faith belief that action is required or authorized*
 13 *by this section, including, but not limited to, instances where the*
 14 *child is older than ~~72 hours~~ 30 days or the parent or individual*
 15 *surrendering the child did not have lawful physical custody of the*
 16 *child. A safe-surrender site, or the personnel of a safe-surrender*
 17 *site, shall not be subject to civil, criminal, or administrative*
 18 *liability for a surrendered child prior to the time that the site or*
 19 *its personnel know, or should know, that the child has been*
 20 *surrendered. This subdivision does not confer immunity from*
 21 *liability for personal injury or wrongful death, including, but not*
 22 *limited to, injury resulting from medical malpractice.*

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

32 (2) For purposes of this section, “assistance” means transporting
 33 the minor child to the safe-surrender site as a person with lawful
 34 custody, or transporting or accompanying the parent or person
 35 with lawful custody at the request of that parent or person to effect
 36 the safe surrender, or performing any other act in good faith for
 37 the purpose of effecting the safe surrender of the minor.

38 (j) For purposes of this section, “lawful custody” means physical
 39 custody of a minor ~~72 hours~~ 30 days old or younger accepted by
 40 a person from a parent of the minor, who the person believes in

1 good faith is the parent of the minor, with the specific intent and
2 promise of effecting the safe surrender of the minor.

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

12 (l) *The activities required by this section shall be funded by*
13 *available moneys from the State Children’s Trust Fund, established*
14 *pursuant to Section 18969 of the Welfare and Institutions Code,*
15 *and from the California Children and Families Trust Fund,*
16 *established pursuant to Section 130105. The State Department of*
17 *Social Services shall apply to the California Children and Families*
18 *Commission for funding. General Fund moneys shall not be used*
19 *to fund this section. The department may also accept and expend*
20 *private donations that are received by the department for the*
21 *purposes of this section.*

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

23 271.5. (a) No parent or other individual having lawful custody
24 of a minor child ~~72 hours~~ 30 days old or younger may be
25 prosecuted for a violation of Section 270, 270.5, 271, or 271a if
26 he or she voluntarily surrenders physical custody of the child to
27 personnel on duty at a safe-surrender site.

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

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

34 (2) For purposes of this section, “personnel” has the same
35 meaning as defined in paragraph (3) of subdivision (a) of Section
36 1255.7 of the Health and Safety Code.

37 SEC. 3. On or before January 1, 2013, and, contingent upon
38 availability of sufficient funding or resources for this purpose, on
39 or before January 1 of each subsequent year, the State Department
40 of Social Services shall report to the Legislature regarding the

- 1 effect of this act, including, but not limited to, all of the following
2 information:
- 3 (a) The number of children one year of age or younger who are
4 found abandoned, dead or alive, in the state for each year in which
5 reporting is required under this act.
 - 6 (b) The number of infants surrendered pursuant to this act, with
7 their approximate age.
 - 8 (c) The number of medical history questionnaires completed in
9 those cases.
 - 10 (d) The number of instances in which a parent or other person
11 having lawful custody seeks to reclaim custody of a surrendered
12 child, both during and after the initial period following surrender,
13 and the outcome of those cases.
 - 14 (e) Whether a person seeking to reclaim custody is the individual
15 who surrendered the child.
 - 16 (f) The number of children surrendered pursuant to this act who
17 show signs of neglect or abuse and the disposition of those cases.
 - 18 (g) The number of parents or legal guardians eventually located
19 and contacted by social workers.
- 20 SEC. 4. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.