

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

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 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 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.

~~This bill would require the State Department of Social Services, by July 1, 2010, to convene a workgroup with specified membership, 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 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 30 days old
9 or younger from a parent or individual who has lawful custody of
10 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 a fire department and a child

1 welfare agency that may provide services to a child who is
2 surrendered at the site, if that location is selected.

3 (B) A location within a public or private hospital that is
4 designated by that hospital to be responsible for accepting physical
5 custody of a minor child who is 30 days old or younger from a
6 parent or individual who has lawful custody of the child and who
7 surrenders the child pursuant to Section 271.5 of the Penal Code.

8 (2) For purposes of this section, “parent” means a birth parent
9 of a minor child who is 30 days old or younger.

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

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

20 (b) Personnel on duty at a safe-surrender site shall accept
21 physical custody of a minor child 30 days old or younger pursuant
22 to this section if a parent or other individual having lawful custody
23 of the child voluntarily surrenders physical custody of the child to
24 personnel who are on duty at the safe-surrender site. Safe-surrender
25 site personnel shall ensure that a qualified person does all of the
26 following:

27 (1) Places a coded, confidential ankle bracelet on the child.
28 (2) Provides, or makes a good faith effort to provide, to the
29 parent or other individual surrendering the child a copy of a unique,
30 coded, confidential ankle bracelet identification in order to facilitate
31 reclaiming the child pursuant to subdivision (f). However,
32 possession of the ankle bracelet identification, in and of itself, does
33 not establish parentage or a right to custody of the child.

34 (3) Provides, or makes a good faith effort to provide, to the
35 parent or other individual surrendering the child a medical
36 information questionnaire, which may be declined, voluntarily
37 filled out and returned at the time the child is surrendered, or later
38 filled out and mailed in the envelope provided for this purpose.
39 This medical information questionnaire shall not require identifying
40 information about the child or the parent or individual surrendering

1 the child, other than the identification code provided in the ankle
2 bracelet placed on the child. Every questionnaire provided pursuant
3 to this section shall begin with the following notice in no less than
4 12-point type:

5 NOTICE: THE BABY YOU HAVE BROUGHT IN TODAY
6 MAY HAVE SERIOUS MEDICAL NEEDS IN THE FUTURE
7 THAT WE DON'T KNOW ABOUT TODAY. SOME
8 ILLNESSES, INCLUDING CANCER, ARE BEST TREATED
9 WHEN WE KNOW ABOUT FAMILY MEDICAL HISTORIES.
10 IN ADDITION, SOMETIMES RELATIVES ARE NEEDED FOR
11 LIFE-SAVING TREATMENTS. TO MAKE SURE THIS BABY
12 WILL HAVE A HEALTHY FUTURE, YOUR ASSISTANCE
13 IN COMPLETING THIS QUESTIONNAIRE FULLY IS
14 ESSENTIAL. THANK YOU.

15 (c) Personnel of a safe-surrender site that has physical custody
16 of a minor child pursuant to this section shall ensure that a medical
17 screening examination and any necessary medical care is provided
18 to the minor child. Notwithstanding any other provision of law,
19 the consent of the parent or other relative shall not be required to
20 provide that care to the minor child.

21 (d) (1) As soon as possible, but in no event later than 48 hours
22 after the physical custody of a child has been accepted pursuant
23 to this section, personnel of the safe-surrender site that has physical
24 custody of the child shall notify child protective services or a
25 county agency providing child welfare services pursuant to Section
26 16501 of the Welfare and Institutions Code, that the safe-surrender
27 site has physical custody of the child pursuant to this section. In
28 addition, medical information pertinent to the child's health,
29 including, but not limited to, information obtained pursuant to the
30 medical information questionnaire described in paragraph (3) of
31 subdivision (b) that has been received by or is in the possession
32 of the safe-surrender site shall be provided to that child protective
33 services or county agency.

34 (2) Any personal identifying information that pertains to a parent
35 or individual who surrenders a child that is obtained pursuant to
36 the medical information questionnaire is confidential and shall be
37 exempt from disclosure by the child protective services or county
38 agency under the California Public Records Act (Chapter 3.5
39 (commencing with Section 6250) of Division 7 of Title 1 of the
40 Government Code). Personal identifying information that pertains

1 to a parent or individual who surrenders a child shall be redacted
2 from any medical information provided to child protective services
3 or the county agency providing child welfare services.

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

27 (f) If, prior to the filing of a petition under subdivision (e), a
28 parent or individual who has voluntarily surrendered a child
29 pursuant to this section requests that the safe-surrender site that
30 has physical custody of the child pursuant to this section return
31 the child and the safe-surrender site still has custody of the child,
32 personnel of the safe-surrender site shall either return the child to
33 the parent or individual or contact a child protective agency if any
34 personnel at the safe-surrender site knows or reasonably suspects
35 that the child has been the victim of child abuse or neglect. The
36 voluntary surrender of a child pursuant to this section is not in and
37 of itself a sufficient basis for reporting child abuse or neglect. The
38 terms “child abuse,” “child protective agency,” “mandated
39 reporter,” “neglect,” and “reasonably suspects” shall be given the

1 same meanings as in Article 2.5 (commencing with Section 11164)
2 of Title 1 of Part 4 of the Penal Code.

3 (g) Subsequent to the filing of a petition under subdivision (e),
4 if within 14 days of the voluntary surrender described in this
5 section, the parent or individual who surrendered custody returns
6 to claim physical custody of the child, the child welfare agency
7 shall verify the identity of the parent or individual, conduct an
8 assessment of his or her circumstances and ability to parent, and
9 request that the juvenile court dismiss the petition for dependency
10 and order the release of the child, if the child welfare agency
11 determines that none of the conditions described in subdivisions
12 (a) to (d), inclusive, of Section 319 of the Welfare and Institutions
13 Code currently exist.

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

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

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

7 (j) For purposes of this section, “lawful custody” means physical
8 custody of a minor 30 days old or younger accepted by a person
9 from a parent of the minor, who the person believes in good faith
10 is the parent of the minor, with the specific intent and promise of
11 effecting the safe surrender of the minor.

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

21 ~~(l) (1) On or before July 1, 2010, the State Department of Social
22 Services shall convene a workgroup consisting of stakeholders,
23 including representatives from the State Department of Social
24 Services, the State Department of Education, and any other
25 members deemed appropriate by the State Department of Social
26 Services, to disseminate updated instructions to counties that
27 address the following issues:~~

28 ~~(A) Clarification of rules with respect to a mother who gives
29 birth in a hospital and chooses to give up her baby.~~

30 ~~(B) Clarification of the definition of a safely surrendered baby,
31 including whether the baby was lawfully surrendered in accordance
32 with this section.~~

33 ~~(C) Clarification of parental information provided to counties,
34 and the use of information received by the counties.~~

35 ~~(2) The workgroup shall identify the appropriate agencies that
36 shall adopt the rules and regulations the workgroup deems
37 necessary for the purposes described in paragraph (1). The
38 responsibilities of the workgroup pursuant to this subdivision shall
39 include, but not be limited to, identifying agencies that are
40 responsible for ongoing research and monitoring efforts.~~

1 (m) The activities required by this section shall be funded by
2 available moneys from the State Children's Trust Fund, established
3 pursuant to Section 18969 of the Welfare and Institutions Code,
4 and from the California Children and Families Trust Fund,
5 established pursuant to Section 130105. The State Department of
6 Social Services shall apply to the California Children and Families
7 Commission for funding. General Fund moneys shall not be used
8 to fund this section. The department may also accept and expend
9 private donations that are received by the department for the
10 purposes of this section.

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

12 271.5. (a) No parent or other individual having lawful custody
13 of a minor child 30 days old or younger may be prosecuted for a
14 violation of Section 270, 270.5, 271, or 271a if he or she voluntarily
15 surrenders physical custody of the child to personnel on duty at a
16 safe-surrender site.

17 (b) For purposes of this section, "safe-surrender site" has the
18 same meaning as defined in paragraph (1) of subdivision (a) of
19 Section 1255.7 of the Health and Safety Code.

20 (c) (1) For purposes of this section, "lawful custody" has the same
21 meaning as defined in subdivision (j) of Section 1255.7 of
22 the Health and Safety Code.

23 (2) For purposes of this section, "personnel" has the same
24 meaning as defined in paragraph (3) of subdivision (a) of Section
25 1255.7 of the Health and Safety Code.

26 SEC. 3. On or before January 1, 2013, and, contingent upon
27 availability of sufficient funding or resources for this purpose, on
28 or before January 1 of each subsequent year, the State Department
29 of Social Services shall report to the Legislature regarding the
30 effect of this act, including, but not limited to, all of the following
31 information:

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

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

37 (c) The number of medical history questionnaires completed in
38 those cases.

39 (d) The number of instances in which a parent or other person
40 having lawful custody seeks to reclaim custody of a surrendered

1 child, both during and after the initial period following surrender,
2 and the outcome of those cases.

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

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

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

9 SEC. 4. If the Commission on State Mandates determines that
10 this act contains costs mandated by the state, reimbursement to
11 local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.

O