

AMENDED IN SENATE JULY 16, 2009

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

(Coauthors: Assembly Members Blumenfield, Buchanan, De Leon, DeVore, Fletcher, Fuentes, Harkey, Krekorian, Ma, Nielsen, V. Manuel Perez, Salas, Silva, Skinner, and Audra Strickland)
(Coauthor: Senator Cedillo)

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, 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 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
15 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 30 days old or younger from a
20 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 30 days old or younger.

1 (3) For purposes of this section, “personnel” means 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 a safe-surrender site designated by the county
5 board of supervisors or by a local fire agency, upon the approval
6 of the appropriate local governing body of the agency, shall post
7 a sign ~~utilizing~~ *displaying* 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 30 days old or younger may
10 be safely surrendered pursuant to this section.

11 (b) Personnel on duty at a safe-surrender site shall accept
12 physical custody of a minor child 30 days old or younger pursuant
13 to this section if a parent or other individual having lawful custody
14 of the child voluntarily surrenders physical custody of the child to
15 personnel who are on duty at the safe-surrender site. Safe-surrender
16 site personnel shall ensure that a qualified person does all of the
17 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 identifying
31 information about the child or the parent or individual surrendering
32 the child, other than the identification code provided in the ankle
33 bracelet placed on the child. Every questionnaire provided pursuant
34 to this section shall begin with the following notice in no less than
35 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, 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). Personal identifying information that pertains
32 to a parent or individual who surrenders a child shall be redacted
33 from any medical information provided to child protective services
34 or the county agency providing child welfare services.

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

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

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

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

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

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

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

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

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

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

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

11 271.5. (a) No parent or other individual having lawful custody
12 of a minor child 30 days old or younger may be prosecuted for a
13 violation of Section 270, 270.5, 271, or 271a if he or she voluntarily
14 surrenders physical custody of the child to personnel on duty at a
15 safe-surrender site.

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

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

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

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

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

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

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

38 (d) The number of instances in which a parent or other person
39 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.