

AMENDED IN SENATE JULY 15, 2010

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~~ *require a designating entity to consult with the governing body of a city, if the site is within city limits, and with representatives of the applicable fire department and child welfare agency, as specified.* 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~~ 72
9 hours 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 *designating* entity shall consult with the governing body of a city,
14 if the site is within the city limits, and with representatives of a
15 fire department and a child welfare agency that may provide
16 services to a child who is surrendered at the site, if that location
17 is selected.

18 (B) A location within a public or private hospital that is
19 designated by that hospital to be responsible for accepting physical
20 custody of a minor child who is ~~30 days~~ 72 hours old or younger

1 from a parent or individual who has lawful custody of the child
2 and who surrenders the child pursuant to Section 271.5 of the Penal
3 Code.

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

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

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

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

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

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

30 (3) Provides, or makes a good faith effort to provide, to the
31 parent or other individual surrendering the child a medical
32 information questionnaire, which may be declined, voluntarily
33 filled out and returned at the time the child is surrendered, or later
34 filled out and mailed in the envelope provided for this purpose.
35 This medical information questionnaire shall not require identifying
36 information about the child or the parent or individual surrendering
37 the child, other than the identification code provided in the ankle
38 bracelet placed on the child. Every questionnaire provided pursuant
39 to this section shall begin with the following notice in no less than
40 12-point type:

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

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

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

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

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

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

39 (g) Subsequent to the filing of a petition under subdivision (e),
40 if within 14 days of the voluntary surrender described in this

1 section, the parent or individual who surrendered custody returns
 2 to claim physical custody of the child, the child welfare agency
 3 shall verify the identity of the parent or individual, conduct an
 4 assessment of his or her circumstances and ability to parent, and
 5 request that the juvenile court dismiss the petition for dependency
 6 and order the release of the child, if the child welfare agency
 7 determines that none of the conditions described in subdivisions
 8 (a) to (d), inclusive, of Section 319 of the Welfare and Institutions
 9 Code currently exist.

10 (h) 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 ~~30 days~~ 72
 19 hours or the parent or individual surrendering the child did not
 20 have lawful physical custody of the child. A safe-surrender site,
 21 or the personnel of a safe-surrender site, shall not be subject to
 22 civil, criminal, or administrative liability for a surrendered child
 23 prior to the time that the site or its personnel know, or should know,
 24 that the child has been surrendered. This subdivision does not
 25 confer immunity from liability for personal injury or wrongful
 26 death, including, but not limited to, injury resulting from medical
 27 malpractice.

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

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

1 the safe surrender, or performing any other act in good faith for
2 the purpose of effecting the safe surrender of the minor.

3 (j) For purposes of this section, “lawful custody” means physical
4 custody of a minor ~~30 days~~ *72 hours* old or younger accepted by
5 a person from a parent of the minor, who the person believes in
6 good faith is the parent of the minor, with the specific intent and
7 promise of effecting the safe surrender of the minor.

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

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

18 ~~271.5. (a) No parent or other individual having lawful custody~~
19 ~~of a minor child 30 days old or younger may be prosecuted for a~~
20 ~~violation of Section 270, 270.5, 271, or 271a if he or she voluntarily~~
21 ~~surrenders physical custody of the child to personnel on duty at a~~
22 ~~safe-surrender site.~~

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

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

29 ~~(2) For purposes of this section, “personnel” has the same~~
30 ~~meaning as defined in paragraph (3) of subdivision (a) of Section~~
31 ~~1255.7 of the Health and Safety Code.~~

32 ~~SEC. 3.~~

33 ~~SEC. 2.~~ On or before January 1, 2013, and, contingent upon
34 availability of sufficient funding or resources for this purpose, on
35 or before January 1 of each subsequent year, the State Department
36 of Social Services shall report to the Legislature regarding the
37 effect of this act, including, but not limited to, all of the following
38 information:

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

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

6 (c) The number of medical history questionnaires completed in
7 those cases.

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

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

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

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

18 ~~SEC. 4.~~

19 *SEC. 3.* If the Commission on State Mandates determines that
20 this act contains costs mandated by the state, reimbursement to
21 local agencies and school districts for those costs shall be made
22 pursuant to Part 7 (commencing with Section 17500) of Division
23 4 of Title 2 of the Government Code.