

AMENDED IN ASSEMBLY JUNE 21, 2016

AMENDED IN ASSEMBLY JUNE 8, 2016

AMENDED IN SENATE APRIL 26, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1040

Introduced by Senator Hill

(Coauthor: Assembly Member Mullin)

February 12, 2016

An act to add Chapter 9 (commencing with Section 9221) to Part 2 of Division 13 of the Family Code, and to add Section 272.5 to the Penal Code, relating to children.

LEGISLATIVE COUNSEL'S DIGEST

SB 1040, as amended, Hill. Adoptions: ~~rehoming~~; *unlawful transfer of custody*.

(1) Existing law regulates adoption services by the State Department of Social Services, county adoption agencies, licensed adoption agencies, and other adoption service providers and requires the department to adopt regulations pertaining to those services.

This bill would require the State Department of Social Services, in consultation with specified individuals and entities, to establish a working group to review the challenges facing families with adopted and special needs children, to identify resources within the community that will assist families with these challenges, and to make recommendations to the Legislature as to the services that may be helpful to these families. The bill would require the working group to meet no later than ~~June~~ April 1, 2017, and would require the working

group’s recommendations to be submitted in a report to the appropriate policy committees of the Legislature on or before ~~June~~ April 1, 2018.

(2) Existing law makes it a misdemeanor for a parent of a minor to willfully omit, without lawful excuse, to furnish necessary clothing, food, shelter, or medical attendance, or other remedial care for his or her child. *Existing law makes it a crime for a parent of a child under 14 years of age, and a person to whom the child has been confided for nurture or education, to desert the child in any place with intent to abandon the child, as specified. Existing law makes it a misdemeanor for a parent or organization, without holding a valid and unrevoked license to place children for adoption, to advertise in a public medium, as specified, that he, she, or it will place children for adoption, or accept, supply, provide, or obtain children for adoption, or to cause an advertisement to be published in or by a public medium soliciting, requesting, or asking for a child or children for adoption.*

This bill would make it a crime to solicit to ~~rehome, as defined, a minor~~ take custody of a minor under 14 years of age and to subsequently ~~rehome the minor~~ take custody of the minor without initiating a lawful guardianship proceeding or adoption proceeding within 90 days of taking physical custody of the minor. By creating a new crime, this bill would impose a state-mandated local program.

(3) 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 no reimbursement is required by this act for a specified reason.

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. Chapter 9 (commencing with Section 9221) is
2 added to Part 2 of Division 13 of the Family Code, to read:

3
4 CHAPTER 9. ~~REHOMING~~ UNLAWFUL TRANSFER OF CUSTODY
5

6 9221. (a) The Legislature acknowledges that adoptive families
7 often face special challenges. This is particularly true in the case
8 of international adoptions, adoptions of special needs children,
9 and adoptions of dependent children who ~~often~~ have experienced

1 abuse, neglect, ~~and~~ *and, often*, multiple placements. The Legislature
2 finds and declares that it is the public policy of the State of
3 California to assist adoptive families and adopted children, and
4 intends this section to ensure that these families receive the support
5 needed to maintain the family unit, and when necessary, find new,
6 permanent homes for youth.

7 (b) (1) In order to address and prevent the circumstances in
8 which an adoptive ~~parent, individual, or entity having custody of~~
9 ~~an adopted minor seeks to rehome the minor, parent seeks to~~
10 ~~engage in the unlawful transfer of the custody of a child~~, the State
11 Department of Social Services shall, in consultation with child
12 advocacy organizations, attorneys specializing in adoption and
13 guardianships, *counsel representing minors in dependency*
14 *proceedings*, the Judicial Council, foster caregiver organizations,
15 *county welfare officials*, and individuals with expertise in the area
16 of positive youth development, establish a working group to review
17 the challenges facing families with adopted ~~and special needs~~
18 children, to identify resources within the community that will assist
19 families with these challenges, and to make recommendations to
20 the Legislature as to the services that may be helpful to these
21 families.

22 (2) In developing the recommendations, the working group shall
23 consider all of the following:

24 (A) *Education and resources that would benefit prospective*
25 *adoptive families prior to an adoption, and whether certain services*
26 *and education should be required before an adoption can be*
27 *completed.*

28 ~~(A)~~

29 (B) The specific challenges facing the following families:
30 families with special needs children, families with children adopted
31 through the foster care system, and families with internationally
32 adopted children.

33 ~~(B)~~

34 (C) The distinct resources that are available to the different
35 types of families specified in subparagraph ~~(A)~~, (B), and whether
36 any of the resources available to one type of family would also be
37 beneficial to another type.

38 ~~(C)~~

39 (D) The training and education that is necessary to equip mental
40 health professionals with the tools necessary to provide the families

1 specified in subparagraph ~~(A)~~ (B) with services tailored to their
2 unique needs.

3 ~~(D)~~

4 (E) How to effectively recruit more prospective adoptive
5 families that are able to provide new, permanent, and loving homes
6 to children coming out of disrupted adoptions.

7 ~~(E)~~

8 (F) The feasibility of creating a clearinghouse of persons and
9 entities that are knowledgeable in addressing the needs of, and
10 finding subsequent placements for, children at risk of ~~being~~
11 ~~rehomed~~, *having their custody unlawfully transferred*, including
12 adoption agencies, social workers, attorneys, mental health
13 professionals, and prospective adoptive parents.

14 (c) (1) The working group shall meet no later than ~~June April~~
15 1, 2017. The recommendations developed pursuant to this section
16 shall be submitted in a report to the appropriate policy committees
17 of the Legislature on or before ~~June April~~ 1, 2018.

18 (2) A report to be submitted pursuant to this subdivision shall
19 be submitted in compliance with Section 9795 of the Government
20 Code.

21 (3) The requirement for submitting a report pursuant to this
22 subdivision is inoperative on June 1, 2022, pursuant to Section
23 10231.5 of the Government Code.

24 SEC. 2. Section 272.5 is added to the Penal Code, to read:

25 272.5. (a) It is unlawful for a person to solicit by any means,
26 including, but not limited to, electronic communication via the
27 Internet, to ~~rehome a minor~~ *take custody of a minor* under 14 years
28 of age and to subsequently ~~rehome the minor~~ *take custody of the*
29 *minor* without initiating a lawful guardianship proceeding or
30 adoption proceeding within 90 days of taking physical custody of
31 the minor consistent with the requirements of Division 4
32 (commencing with Section 1400) of the Probate Code or Division
33 13 (commencing with Section 8500) of the Family Code. A
34 violation of this section is punishable by imprisonment pursuant
35 to subdivision (h) of Section 1170, in a county jail not exceeding
36 one year, by a fine not exceeding one thousand dollars (\$1,000),
37 or by both that fine and imprisonment.

38 ~~(b) For purposes of this section, “rehome” means an action taken~~
39 ~~to provide a new, permanent home for a minor with a person or~~

1 ~~persons other than the minors' parents, except as provided in~~
2 ~~subdivision (e):~~

3 ~~(e)~~

4 ~~(b) This section does not apply to either of the following:~~

5 ~~(1) A minor placed with a relative, as defined by paragraph (2)~~
6 ~~of subdivision (c) of Section 361.3 of the Welfare and Institutions~~
7 ~~Code.~~

8 ~~(2) Temporary placement of a minor by a parent, individual, or~~
9 ~~entity for a designated short-term period with a specified intent~~
10 ~~and time period for return of the minor, if the temporary placement~~
11 ~~is due to a vacation or a school-sponsored function or activity or~~
12 ~~the incarceration, military service, medical treatment, or incapacity~~
13 ~~of a parent or guardian.~~

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.