

AMENDED IN ASSEMBLY MAY 3, 2000
AMENDED IN ASSEMBLY MARCH 23, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1764

**Introduced by Assembly Member Maddox
(Coauthors: Assembly Members Ashburn, Bates, Bock,
Campbell, Cox, Leonard, and Margett)**

January 19, 2000

An act to add Section 271.5 to the Penal Code, *and to amend Sections 300 and 309 of the Welfare and Institutions Code*, relating to abandonment of newborns.

LEGISLATIVE COUNSEL'S DIGEST

AB 1764, as amended, Maddox. Child abandonment: newborns.

Existing law makes it a crime for a parent of a minor child, without lawful excuse, to not furnish necessary clothing, food, shelter, or medical or remedial care for the child, or to refuse, without lawful excuse, to accept the child in his or her home or provide alternate shelter. Existing law also makes it a crime for a parent of a child under the age of 14 to desert the child with intent to abandon, or for any person to knowingly or willfully abandon or, having the ability to refuse to do so, fail to maintain his or her child under the age of 14.

This bill would provide that no parent or other person having lawful custody of a minor child ~~30 days~~ *72 hours* old or younger may be prosecuted for a violation of the above crimes

if he or she voluntarily surrenders physical custody of the child to any employee of a hospital emergency room *or any additional location designated by the board of supervisors*, unless the person clearly expresses an intent to return for the child. The bill would impose a state-mandated local program to the extent it requires new duties of county hospital emergency room employees.

This bill also would require the employee specified above to take physical custody of a minor 72 hours old or younger if the parent or other person having lawful custody of the child voluntarily surrenders physical custody of the child to that employee, and would specify that the person need not provide any personal identification. The bill would require the employee taking physical custody of such a child to perform any act necessary to protect the physical health or safety of the child, and to immediately notify child protective services or a county child welfare agency. The bill would require the entity taking physical custody of such a minor to assign a unique confidential code to the child and to the person surrendering the child and would require that child protective services or the county agency providing child welfare services shall then assume temporary custody of the child, as specified. The bill would authorize the person who surrendered custody of the child, or the other parent or guardian, to reclaim custody from the agency taking custody within 14 days by providing adequate identification. The bill would authorize the filing of a petition to adjudge such a child a dependent child of the court and would provide that such a child qualifies to be adjudged a dependent child of the court on the basis of such a surrender if not reclaimed within 14 days, and would make corresponding changes.

The bill would become operative only if SB 1368 is enacted and becomes operative.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.



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 271.5 is added to the Penal Code,
2 to read:

3 ~~271.5. No parent or other person having lawful~~
4 ~~custody of a minor child 30 days old or younger may be~~
5 ~~prosecuted for a violation of Section 270, 270.5, 271, or~~
6 ~~271a if he or she voluntarily surrenders physical custody~~
7 ~~of the child to any employee of a hospital emergency~~
8 ~~room, unless the person clearly expresses an intent to~~
9 ~~return for the child.~~

10 ~~SEC. 2.~~

11 271.5. (a) *No parent or other person having lawful*
12 *custody of a minor child 72 hours old or younger may be*
13 *prosecuted for a violation of Section 270, 270.5, 271, or*
14 *271a if he or she voluntarily surrenders physical custody*
15 *of the child to any employee of a hospital emergency*
16 *room or to an employee at any additional location*
17 *authorized by the county board of supervisors, unless the*
18 *person clearly expresses an intent to return for the child.*

19 (b) *Any employee of an entity specified in subdivision*
20 *(a) shall take physical custody of a child surrendered*
21 *pursuant to subdivision (a), and the parent or other*
22 *person having lawful custody of the minor child shall not*
23 *be required to provide any identifying information about*
24 *himself or herself, or the child. The entity shall assign a*
25 *unique confidential code to the child and to the person*
26 *surrendering the child, to be used if the person returns to*
27 *reclaim the child as set forth in subdivision (f).*

28 (c) *An employee taking physical custody of a minor*
29 *child pursuant of this section shall perform any act*
30 *necessary to protect the physical health or safety of the*
31 *child.*



1 (d) Immediately after taking physical custody of a
2 child surrendered pursuant to this section, the employee
3 who takes physical custody, or any other employee of the
4 entity, shall notify child protective services or a county
5 agency providing child welfare services pursuant to
6 Section 16501 of the Welfare and Institutions Code, that
7 the entity has taken physical custody of the child pursuant
8 to this section.

9 (e) Child protective services or the county agency
10 providing child welfare services pursuant to Section
11 16501 of the Welfare and Institutions Code shall assume
12 temporary custody of the child pursuant to Section 306 of
13 the Welfare and Institutions Code immediately on
14 receipt of notice under subdivision (d). Child protective
15 services or the county agency providing child welfare
16 services pursuant to Section 16501 of the Welfare and
17 Institutions Code shall immediately investigate the
18 circumstances of the case and may file a petition pursuant
19 to Section 311 of the Welfare and Institutions Code.

20 (f) The parent or other person having lawful custody
21 of the child who surrendered custody pursuant to this
22 section, or the other parent or guardian, may reclaim the
23 child within 14 days of surrender by providing adequate
24 identification to child protective services or the county
25 agency providing child welfare services pursuant to
26 Section 16501 of the Welfare and Institutions Code. Child
27 protective services or the county agency providing child
28 welfare services pursuant to Section 16501 of the Welfare
29 and Institutions Code shall offer counseling services to
30 any person seeking to reclaim a child which he or she
31 voluntarily surrendered pursuant to this section.

32 SEC. 2. Section 300 of the Welfare and Institutions
33 Code is amended to read:

34 300. Any child who comes within any of the following
35 descriptions is within the jurisdiction of the juvenile court
36 which may adjudge that person to be a dependent child
37 of the court:

38 (a) The child has suffered, or there is a substantial risk
39 that the child will suffer, serious physical harm inflicted
40 nonaccidentally upon the child by the child's parent or



1 guardian. For the purposes of this subdivision, a court
2 may find there is a substantial risk of serious future injury
3 based on the manner in which a less serious injury was
4 inflicted, a history of repeated inflictions of injuries on the
5 child or the child’s siblings, or a combination of these and
6 other actions by the parent or guardian which indicate
7 the child is at risk of serious physical harm. For purposes
8 of this subdivision, “serious physical harm” does not
9 include reasonable and age-appropriate spanking to the
10 buttocks where there is no evidence of serious physical
11 injury.

12 (b) The child has suffered, or there is a substantial risk
13 that the child will suffer, serious physical harm or illness,
14 as a result of the failure or inability of his or her parent or
15 guardian to adequately supervise or protect the child, or
16 the willful or negligent failure of the child’s parent or
17 guardian to adequately supervise or protect the child
18 from the conduct of the custodian with whom the child
19 has been left, or by the willful or negligent failure of the
20 parent or guardian to provide the child with adequate
21 food, clothing, shelter, or medical treatment, or by the
22 inability of the parent or guardian to provide regular care
23 for the child due to the parent’s or guardian’s mental
24 illness, developmental disability, or substance abuse. No
25 child shall be found to be a person described by this
26 subdivision solely due to the lack of an emergency shelter
27 for the family. Whenever it is alleged that a child comes
28 within the jurisdiction of the court on the basis of the
29 parent’s or guardian’s willful failure to provide adequate
30 medical treatment or specific decision to provide
31 spiritual treatment through prayer, the court shall give
32 deference to the parent’s or guardian’s medical
33 treatment, nontreatment, or spiritual treatment through
34 prayer alone in accordance with the tenets and practices
35 of a recognized church or religious denomination, by an
36 accredited practitioner thereof, and shall not assume
37 jurisdiction unless necessary to protect the child from
38 suffering serious physical harm or illness. In making its
39 determination, the court shall consider (1) the nature of
40 the treatment proposed by the parent or guardian, (2)



1 the risks to the child posed by the course of treatment or
2 nontreatment proposed by the parent or guardian, (3)
3 the risk, if any, of the course of treatment being proposed
4 by the petitioning agency, and (4) the likely success of the
5 courses of treatment or nontreatment proposed by the
6 parent or guardian and agency. The child shall continue
7 to be a dependent child pursuant to this subdivision only
8 so long as is necessary to protect the child from risk of
9 suffering serious physical harm or illness.

10 (c) The child is suffering serious emotional damage, or
11 is at substantial risk of suffering serious emotional
12 damage, evidenced by severe anxiety, depression,
13 withdrawal, or untoward aggressive behavior toward self
14 or others, as a result of the conduct of the parent or
15 guardian or who has no parent or guardian capable of
16 providing appropriate care. No child shall be found to be
17 a person described by this subdivision if the willful failure
18 of the parent or guardian to provide adequate mental
19 health treatment is based on a sincerely held religious
20 belief and if a less intrusive judicial intervention is
21 available.

22 (d) The child has been sexually abused, or there is a
23 substantial risk that the child will be sexually abused, as
24 defined in Section 11165.1 of the Penal Code, by his or her
25 parent or guardian or a member of his or her household,
26 or the parent or guardian has failed to adequately protect
27 the child from sexual abuse when the parent or guardian
28 knew or reasonably should have known that the child was
29 in danger of sexual abuse.

30 (e) The child is under the age of five and has suffered
31 severe physical abuse by a parent, or by any person
32 known by the parent, if the parent knew or reasonably
33 should have known that the person was physically
34 abusing the child. For the purposes of this subdivision,
35 “severe physical abuse” means any of the following: any
36 single act of abuse which causes physical trauma of
37 sufficient severity that, if left untreated, would cause
38 permanent physical disfigurement, permanent physical
39 disability, or death; any single act of sexual abuse which
40 causes significant bleeding, deep bruising, or significant



1 external or internal swelling; or more than one act of
2 physical abuse, each of which causes bleeding, deep
3 bruising, significant external or internal swelling, bone
4 fracture, or unconsciousness; or the willful, prolonged
5 failure to provide adequate food. A child may not be
6 removed from the physical custody of his or her parent or
7 guardian on the basis of a finding of severe physical abuse
8 unless the social worker has made an allegation of severe
9 physical abuse pursuant to Section 332.

10 (f) The child's parent or guardian caused the death of
11 another child through abuse or neglect.

12 (g) The child has been left without any provision for
13 support; *physical custody of the child has been*
14 *surrendered pursuant to Section 271.5 of the Penal Code*
15 *and the child has not been reclaimed within the time*
16 *allotted pursuant to that section;* the child's parent has
17 been incarcerated or institutionalized and cannot
18 arrange for the care of the child; or a relative or other
19 adult custodian with whom the child resides or has been
20 left is unwilling or unable to provide care or support for
21 the child, the whereabouts of the parent are unknown,
22 and reasonable efforts to locate the parent have been
23 unsuccessful.

24 (h) The child has been freed for adoption by one or
25 both parents for 12 months by either relinquishment or
26 termination of parental rights or an adoption petition has
27 not been granted.

28 (i) The child has been subjected to an act or acts of
29 cruelty by the parent or guardian or a member of his or
30 her household, or the parent or guardian has failed to
31 adequately protect the child from an act or acts of cruelty
32 when the parent or guardian knew or reasonably should
33 have known that the child was in danger of being
34 subjected to an act or acts of cruelty.

35 (j) The child's sibling has been abused or neglected, as
36 defined in subdivision (a), (b), (d), (e), or (i), and there
37 is a substantial risk that the child will be abused or
38 neglected, as defined in those subdivisions. The court
39 shall consider the circumstances surrounding the abuse
40 or neglect of the sibling, the age and gender of each child,



1 the nature of the abuse or neglect of the sibling, the
2 mental condition of the parent or guardian, and any other
3 factors the court considers probative in determining
4 whether there is a substantial risk to the child.

5 It is the intent of the Legislature that nothing in this
6 section disrupt the family unnecessarily or intrude
7 inappropriately into family life, prohibit the use of
8 reasonable methods of parental discipline, or prescribe a
9 particular method of parenting. Further, nothing in this
10 section is intended to limit the offering of voluntary
11 services to those families in need of assistance but who do
12 not come within the descriptions of this section. To the
13 extent that savings accrue to the state from child welfare
14 services funding obtained as a result of the enactment of
15 the act that enacted this section, those savings shall be
16 used to promote services which support family
17 maintenance and family reunification plans, such as
18 client transportation, out-of-home respite care, parenting
19 training, and the provision of temporary or emergency
20 in-home caretakers and persons teaching and
21 demonstrating homemaking skills. The Legislature
22 further declares that a physical disability, such as
23 blindness or deafness, is no bar to the raising of happy and
24 well-adjusted children and that a court's determination
25 pursuant to this section shall center upon whether a
26 parent's disability prevents him or her from exercising
27 care and control.

28 As used in this section "guardian" means the legal
29 guardian of the child.

30 *SEC. 3. Section 309 of the Welfare and Institutions*
31 *Code is amended to read:*

32 309. (a) Upon delivery to the social worker of a child
33 who has been taken into temporary custody under this
34 article, the social worker shall immediately investigate
35 the circumstances of the child and the facts surrounding
36 the child's being taken into custody and attempt to
37 maintain the child with the child's family through the
38 provision of services. The social worker shall immediately
39 release the child to the custody of the child's parent,



1 guardian, or responsible relative unless one or more of the
2 following conditions exist:

3 (1) The child has no parent, guardian, or responsible
4 relative; or the child's parent, guardian, or responsible
5 relative is not willing to provide care for the child.

6 (2) Continued detention of the child is a matter of
7 immediate and urgent necessity for the protection of the
8 child and there are no reasonable means by which the
9 child can be protected in his or her home or the home of
10 a responsible relative.

11 (3) There is substantial evidence that a parent,
12 guardian, or custodian of the child is likely to flee the
13 jurisdiction of the court.

14 (4) The child has left a placement in which he or she
15 was placed by the juvenile court.

16 (b) In any case in which there is reasonable cause for
17 believing that a child who is under the care of a physician
18 or surgeon or a hospital, clinic, or other medical facility
19 and cannot be immediately moved is a person described
20 in Section 300, the child shall be deemed to have been
21 taken into temporary custody and delivered to the social
22 worker for the purposes of this chapter while the child is
23 at the office of the physician or surgeon or the medical
24 facility.

25 (5) *The parent or other person having lawful custody*
26 *of the child voluntarily surrendered physical custody of*
27 *the child pursuant to Section 271.5 of the Penal Code and*
28 *did not reclaim the child within the 14-day period*
29 *specified in that section. This paragraph shall not be*
30 *construed to prohibit the social worker from releasing the*
31 *child to the custody of a parent, guardian, or responsible*
32 *relative who was not the person who voluntarily*
33 *surrendered the child pursuant to Section 271.5 of the*
34 *Penal Code.*

35 (c) If the child is not released to his or her parent or
36 guardian, the child shall be deemed detained for purposes
37 of this chapter.

38 (d) If an able and willing relative, as defined in Section
39 319, is available and requests temporary placement of the
40 child pending the detention hearing, the social worker



1 shall initiate an emergency assessment of the relative's
2 suitability, which shall include an in-home visit to assess
3 the safety of the home and the ability of the relative to
4 care for the child on a temporary basis, and a
5 consideration of the results of a criminal records check
6 and allegations of prior child abuse or neglect concerning
7 the relative and other adults in the home. The results of
8 the assessment shall be provided to the court in the social
9 worker's report as required by Section 319.

10 *SEC. 4. This act shall become operative only if Senate*
11 *Bill 1368 of the 1999-2000 Regular Session of the*
12 *Legislature is enacted and becomes operative.*

13 *SEC. 5.* Notwithstanding Section 17610 of the
14 Government Code, if the Commission on State Mandates
15 determines that this act contains costs mandated by the
16 state, reimbursement to local agencies and school
17 districts for those costs shall be made pursuant to Part 7
18 (commencing with Section 17500) of Division 4 of Title
19 2 of the Government Code. If the statewide cost of the
20 claim for reimbursement does not exceed one million
21 dollars (\$1,000,000), reimbursement shall be made from
22 the State Mandates Claims Fund.

