

AMENDED IN ASSEMBLY MAY 3, 2006

AMENDED IN ASSEMBLY APRIL 18, 2006

AMENDED IN ASSEMBLY MARCH 29, 2006

AMENDED IN ASSEMBLY MARCH 13, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1873

Introduced by Assembly Member Torrico
(Coauthors: Assembly Members Dymally, Montanez, and Spitzer)

January 18, 2006

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, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1873, 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 governing body of the agency to designate a safe-surrender site. The bill would specify that a safe-surrender site and its personnel have no liability for a surrendered child prior to taking actual physical custody of the child. The bill would also appropriate \$5,000,000 to the Department of Social Services to conduct a statewide awareness campaign, to establish and operate a toll-free telephone number for assistance, and

to publicize existing law regarding the voluntary surrender of a child at a safe-surrender site *and voluntary relinquishment, as specified*.

By imposing new duties on local officials, the bill would impose a state-mandated local program.

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: $\frac{2}{3}$. Appropriation: yes. 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 any 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
- 9 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, the designatory entity ~~is encouraged to~~ *shall*
- 13 consult with the governing body of the city, if the site is located
- 14 in a city, and with representatives of any fire department and any
- 15 child 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
- 19 physical custody of a minor child who is 30 days old or younger
- 20 from a parent or individual who has lawful custody of the child
- 21 and who surrenders the child pursuant to Section 271.5 of the
- 22 Penal Code.

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

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

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

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

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

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

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

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
6 HISTORIES. IN ADDITION, SOMETIMES RELATIVES ARE
7 NEEDED FOR LIFESAVING TREATMENTS. TO MAKE
8 SURE THIS BABY WILL HAVE A HEALTHY FUTURE,
9 YOUR ASSISTANCE IN COMPLETING THIS
10 QUESTIONNAIRE FULLY IS ESSENTIAL. THANK YOU.

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

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

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

1 to child protective services or the county agency providing child
2 welfare services.

3 (e) Child protective services or the county agency providing
4 child welfare services pursuant to Section 16501 of the Welfare
5 and Institutions Code shall assume temporary custody of the
6 child pursuant to Section 300 of the Welfare and Institutions
7 Code immediately upon receipt of notice under subdivision (d).
8 Child protective services or the county agency providing child
9 welfare services pursuant to Section 16501 of the Welfare and
10 Institutions Code shall immediately investigate the circumstances
11 of the case and file a petition pursuant to Section 311 of the
12 Welfare and Institutions Code. Child protective services or the
13 county agency providing child welfare services pursuant to
14 Section 16501 of the Welfare and Institutions Code shall
15 immediately notify the State Department of Social Services of
16 each child to whom this subdivision applies upon taking
17 temporary custody of the child pursuant to Section 300 of the
18 Welfare and Institutions Code. As soon as possible, but no later
19 than 24 hours after temporary custody is assumed, child
20 protective services or the county agency providing child welfare
21 services pursuant to Section 16501 of the Welfare and
22 Institutions Code shall report all known identifying information
23 concerning the child, except personal identifying information
24 pertaining to the parent or individual who surrendered the child,
25 to the California Missing Children Clearinghouse and to the
26 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
34 any personnel at the safe-surrender site knows or reasonably
35 suspects that the child has been the victim of child abuse or
36 neglect. The voluntary surrender of a child pursuant to this
37 section is not in and of itself a sufficient basis for reporting child
38 abuse or neglect. The terms “child abuse,” “child protective
39 agency,” “mandated reporter,” “neglect,” and “reasonably
40 suspects” shall be given the same meanings as in Article 2.5

1 (commencing with Section 11164) of Title 1 of Part 4 of the
2 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
10 dependency and order the release of the child, if the child welfare
11 agency determines that none of the conditions described in
12 subdivisions (a) to (d), inclusive, of Section 319 of the Welfare
13 and Institutions 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 (h) A safe-surrender site, or personnel of the safe-surrender
18 site, that accepts custody of a surrendered child *or prior to taking*
19 *actual physical custody of the surrendered child* pursuant to this
20 section shall not be subject to civil, criminal, or administrative
21 liability for accepting the child and caring for the child in the
22 good faith belief that action is required or authorized by this
23 section, including, but not limited to, instances where the child is
24 older than 30 days old or the parent or individual surrendering
25 the child did not have lawful physical custody of the child. This
26 subdivision does not confer immunity from liability for personal
27 injury or wrongful death, including, but not limited to, injury
28 resulting from medical malpractice.

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

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

1 or person with lawful custody at the request of that parent or
2 person to effect the safe surrender, or performing any other act in
3 good faith for the purpose of effecting the safe surrender of the
4 minor.

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

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

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

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

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

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

31 (2) For purposes of this section, “personnel” has the same
32 meaning as defined in paragraph (2) of subdivision (a) of Section
33 1255.7 of the Health and Safety Code.

34 SEC. 3. The sum of five million dollars (\$5,000,000) is
35 hereby appropriated from the General Fund to the State
36 Department of Social Services for the purpose of supporting the
37 safe-surrender site program *and voluntary relinquishment as*
38 *described in Section 8700 of the Family Code* as follows:

1 (a) The department shall conduct a statewide awareness
2 campaign publicizing the existence of the program providing
3 safe-surrender sites *and voluntary relinquishment*.

4 (b) The department shall establish and operate a toll-free
5 telephone number for the purpose of providing education and
6 assistance to the public regarding safe-surrender sites *and*
7 *voluntary relinquishment*.

8 (c) A portion of the money shall be used to publicize current
9 law regarding the voluntary surrender of a child at a
10 safe-surrender site *and voluntary relinquishment of a child*.

11 SEC. 4. If the Commission on State Mandates determines that
12 this act contains costs mandated by the state, reimbursement to
13 local agencies and school districts for those costs shall be made
14 pursuant to Part 7 (commencing with Section 17500) of Division
15 4 of Title 2 of the Government Code.