

8. Safely Surrendered Newborns

The Safe Haven for Newborns law established with the passage of Senate Bill 1368 on September 28, 2000 has the overarching goal of saving the lives of newborn children at risk of being discarded by their parent. The intent of the law is to provide the option to the parent of safely, and by implication anonymously, surrendering the newborn to any employee on duty at a public or private hospital emergency room or any additional location designated through a resolution by the Board of Supervisors. The principal inducement to the parent is the decriminalization of the act of abandonment if performed in the prescribed manner. The legislation directly impacted sections of the Penal Code (PC), Health and Safety Code (H&S) and Welfare and Institutions Code (WIC).

Penal Code

The legislation added Section 271.5 to the Penal Code stating that the following would **not** constitute a violation of any of the criminal statutes referencing child abandonment or failure to provide support for a child:

- A parent or other person having lawful custody of a child 72 hours old or younger;
- Voluntarily surrenders physical custody of the child;
- To any employee on duty at a public or private hospital emergency room or any additional location designated by the county board of supervisors by resolution.

Currently, Los Angeles County has approved 157 County Fire Stations as Safe Surrender locations. A number of municipal fire departments have also been sanctioned as Safe Surrender locations, including the City of Los Angeles Fire Department. A Safe Haven logo has been adopted for use at all approved Safe Surrender sites.

Health and Safety Code

The legislation added Section 1255.7 to the Health and Safety Code. This section does the following:

1255.7(a)(1) H&S: The section is cross-referenced to 271.5 PC which states that each hospital or other designated entity identified to take custody of safely surrendered infants is responsible for designating the classes of employees required to take custody of these children. It further requires the employee receiving the infant to place a coded, confidential ankle bracelet on the child and make a good faith effort to provide the parent or other person surrendering the child a copy of the confidential ankle bracelet identification in order to facilitate reclaiming the child (should the surrendering party seek to reclaim custody of the surrendered infant at a later date).

1255.7(a)(2) H&S: The person designated to receive the infant shall make a good faith effort to provide the surrendering party a medical information questionnaire. The questionnaire may be declined, accepted and filled out at the time of surrender or accepted with an envelope and mailed in later. The questionnaire shall not require any identifying information about the child or the parent or the surrendering party; identification is established only through the confidential code on the ankle bracelet. The purpose of the questionnaire is to establish a family medical history. A notice is required to be included in the questionnaire stating the importance of family medical history in providing treatment for some illnesses. The notice also states that "sometimes relatives are needed for life-saving treatments".

1255.7(b) H&S: The person accepting physical custody of the child is mandated to provide a medical screening examination and any necessary medical care to the child; consent of the parent or other relative is not required.

1255.7(c) H&S: The person accepting physical custody of the child is required to notify child protective services that a child has been safely surrendered to them under this section as soon as possible, but in no event later than 48 hours after taking custody of the child.

1255.7(d) H&S: The child protective services agency is directed to assume temporary custody of the child pursuant to Section 300(c) of the Welfare and Institutions Code. The child protective agency is then directed to immediately investigate the circumstances of the case pursuant to 311 WIC and immediately notify the State Department of Social Services of each surrendered child upon taking temporary custody.

- Section 311 WIC requires that prior to a minor child being retained in custody, a petition pursuant to 332 WIC be filed with the clerk of the juvenile court setting a detention hearing for the child. *Due diligence must be employed to locate the parent or guardian of the child for purposes of providing notice of the time and place of the detention hearing.*
- Section 332WIC mandates the contents of a petition to commence dependency proceedings in juvenile court.

1255.7(e) H&S: If the person who voluntarily surrendered the infant to the hospital staff returns while the child is still in the physical custody of the hospital and prior to the filing of a 300WIC petition, the hospital staff are mandated to either return the child to the surrendering person or contact a child protective agency "if a health practitioner knows or reasonably suspects that the child has been the victim of child abuse or neglect." The voluntary surrendering of the infant is not alone a sufficient basis for reporting child abuse or neglect.

1255.7(f) H&S: If a petition is filed under (d) of this section and the surrendering party seeks to reclaim the infant within 14 days of the voluntary surrender of the child, the child welfare agency is mandated to:

- Verify the identity of the person seeking to reclaim the child;
- Conduct an assessment of the person's circumstances and ability to parent;
- The assessment must enable the child welfare agency to conclude that continued detention is not necessary for the protection of the child {319(a)-(d)WIC};
- If none of the conditions requiring continued detention exist, then the child welfare agency is mandated to request that the juvenile court dismiss the petition for dependency and order the release of the child to the surrendering party.

1255.7(g) H&S: The person or entity taking physical custody of the child voluntarily surrendered pursuant to this section is protected from civil, criminal or administrative liability for accepting and caring for the child in the good faith belief that they were acting under the auspices of this section. This immunity applies in instances where aspects of the section were not complied with including, but not limited to, instances where the child is older than 72 hours or when the person surrendering the child did not have lawful physical custody of the infant. Immunity is not extended to liability resulting from personal injury or wrongful death, including, but not limited to, injury resulting from medical malpractice.

Welfare and Institutions Code

Several sections of the Welfare and Institutions Code have been amended as a result of this legislation.

300(g) WIC: Section 300WIC generally establishes circumstances under which a child comes under the jurisdiction of the juvenile court for purposes of determining whether or not the child is a dependent child of the court. Jurisdiction is now established under the amendment to (g) when physical custody of a child has been voluntarily surrendered under Section 1255.7H&S and the child has not been reclaimed within 14 days.

309(a)(5) WIC: In a case in which a child has been taken into temporary custody, a social worker is directed to immediately investigate the circumstances surrounding the child's being taken into custody. The section directs that attempts to maintain the child with the child's family through the provision of services are preferred. In fact, the social worker is directed to immediately release the child to the custody of the child's parent, guardian or responsible relative unless certain conditions specified within the section exist. The amendment adds (a)(5) to the list of conditions creating the presumption of continued detention in situations where physical custody of the child was voluntarily surrendered pursuant to 1255.7H&S and not reclaimed during the 14-day waiting period.

361.5(b)(g) WIC: The section generally concerns mandated reunification services that the juvenile court orders for the families of children declared dependents of the court. Under (b), reunification services need not be provided if the court finds by clear and convincing evidence the one of the enumerated circumstances exist. The legislation amended (b)(9) to include voluntarily surrendered infants pursuant to 1255.7H&S.

14005.24WIC: The section establishes a process to ensure that each child voluntarily surrendered under the statute shall be determined eligible for benefits.

SEC. 6.5: The State Department of Social Services is mandated to report to the legislature on a yearly basis beginning on or before January 1, 2003 on the effect of the Safe Haven legislation. Information requested by the legislature includes the number of parents or legal guardians voluntarily surrendering children under the terms of this act whom are eventually located and contacted by social workers (g).

LA COUNTYSAFE SURRENDER HOTLINE:

(877) 725-5111 for assistance when surrendering a baby
(877) 222-9723 or (877) BABYSAFE for general information and training on the law