

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: HEALTH SERVICES AGENCY *lx*

BOARD AGENDA # *B-7

Urgent _____ Routine X

AGENDA DATE March 13, 2001

CEO Concurs with Recommendation YES *dit* NO _____
(Information Attached)

4/5 Vote Required YES _____ NO X

SUBJECT: APPROVAL TO RESTRICT LOCATIONS WHERE AN UNWANTED NEWBORN INFANT MAY BE TAKEN WITHIN STANISLAUS COUNTY TO PUBLIC AND PRIVATE HOSPITAL EMERGENCY DEPARTMENTS, PURSUANT TO THE NEW CHILD ABANDONMENT LAW (AB1764) THAT BECAME EFFECTIVE JANUARY 1, 2001

STAFF
RECOMMEN-
DATIONS:

APPROVAL TO RESTRICT LOCATIONS WHERE AN UNWANTED NEWBORN INFANT MAY BE TAKEN WITHIN STANISLAUS COUNTY TO PUBLIC AND PRIVATE HOSPITAL EMERGENCY DEPARTMENTS, PURSUANT TO THE NEW CHILD ABANDONMENT LAW (AB1764) THAT BECAME EFFECTIVE JANUARY 1, 2001.

FISCAL
IMPACT:

This law proposes no fiscal impact on the General Fund.

BOARD ACTION

No. 2001-173

On motion of Supervisor Mayfield, Seconded by Supervisor Caruso,
and approved by the following vote,

Ayes: Supervisors: Mayfield, Blom, Caruso, and Chair Paul

Noes: Supervisors: None

Excused or Absent: Supervisors: Simon

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

Motion:

Christine Ferraro

File No.

ATTEST: REAGAN M. WILSON, Clerk By: Deputy

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PAGE: 2

DISCUSSION: AB 1764 indicates that the Board of Supervisors will determine where unwanted newborn infants can be taken within the County. Hospital Emergency Departments are the standard; however, other locations, such as fire stations, can be designated.

The Stanislaus County Public Health Officer recommends the limitation to hospital emergency departments for the following reasons:

1. These are high risk newborns who often require immediate medical care. The infant may have been delivered outside of a medical facility. The mother may not have had any prenatal care. The mother may have been an active illegal drug user which may result in perinatal complications.
2. Stanislaus County has Hospital Emergency Departments within reasonable driving distance of any location.
3. It reduces the obvious liability and policy issues incumbent if public safety locations are designated within our County.

The County Fire Chief Association, Stanislaus County Community Services Agency, Emergency Department Directors, County Medical Society, and Modesto Police have offered no objections to this recommendation. A legislative summary is attached.

**POLICY
ISSUES:**

This recommendation supports the Board's priority of providing a safe, healthy community.

**STAFFING
IMPACTS:**

There are no staffing impacts associated with approval of this recommendation.

AB 1764 Assembly Bill - Bill Analysis

SENATE RULES COMMITTEE Office of Senate Floor Analyses 1020 N Street, Suite 524 (916) 445-6614 327-4478	AB 1764
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THIRD READING

Bill No: AB 1764
Author: Maddox (R), et al
Amended: 8/8/00 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE : 9-0, 6/20/00
AYES: Burton, Escutia, Haynes, Morrow, O'Connell, Peace,
Sher, Wright, Schiff

SENATE PUBLIC SAFETY COMMITTEE : 5-0, 6/27/00
AYES: Vasconcellos, Johnston, McPherson, Polanco, Rainey

SENATE APPROPRIATIONS COMMITTEE : 13-0, 8/23/00
AYES: Johnston, Alpert, Bowen, Burton, Escutia, Johnson,
Karnette, Kelley, Leslie, McPherson, Mountjoy, Perata,
Vasconcellos

ASSEMBLY FLOOR : 73-0, 5/25/00 - See last page for vote

SUBJECT : Immunity from prosecution: newborn abandonment

SOURCE : Author

DIGEST : This bill provides that no parent or lawful custodian of a child 72 hours old or younger may be prosecuted for the crime of child abandonment if they voluntarily surrender physical custody of the child to an employee at a hospital emergency room, as specified.

ANALYSIS : Existing criminal law makes it a crime for a parent of a minor child, without lawful excuse, to fail to provide necessary clothing, food, shelter, or medical care for the child, or to refuse to accept the child into his or her home or provide alternate shelter. (Penal Code 270,

AB 1764 Assembly Bill - Bill Analysis

270.5)

Existing law makes it a crime for a parent of a child under the age of 14 to desert the child with intent to abandon or to willfully abandon the child. (Penal Code 271, 271a)

This bill provides immunity from criminal prosecution to a parent or person having lawful custody of a child 72 hours old or younger, who delivers the child to a designated employee of a public or private hospital emergency room, or to another location designated by a county.

This bill requires the person taking physical custody of the child to provide a medical screening exam and any necessary medical care to the child, and to turn the child over to the county child protective services or child welfare agency as soon as possible.

This bill provides that a person who voluntarily surrenders physical custody of a child to a designated person shall be presumed to have lawful physical custody of the child, and that this presumption shall be one affecting the burden of producing evidence.

This bill requires that at the time of surrender the child be issued a special identification bracelet and the surrendering person be given a matching code number for identification purposes.

This bill requires that at the time of surrender, the person surrendering the infant be given a form to report on the child's and parents' medical history. The form could be filled out, using only the child's identification code, at the hospital or mailed in later. The questionnaire would be required to include a statutorily-specified notice.

This bill provides that the parent or other person having lawful custody of the child who surrenders the child may reclaim custody of the child within 14 days of the surrender date by providing the identifying code number, as specified.

This bill requires child protective services or the child welfare agency or the county to assume temporary custody of the child and to report this action to the California Department of Social Services. If custody of the child is not reclaimed within 14 days of surrender, the county agency must file a petition in dependency court and follow the procedures for abused or neglected children outlined in Welfare and Institutions Code Section 300, et seq.

The bill specifies that no person or entity that accepts a surrendered child shall be subject to civil, criminal, or administrative liability for accepting the child and caring for the child in the good faith belief that action is

AB 1764 Assembly Bill - Bill Analysis

required or authorized by the bill, including, but not limited to, instances where the child is older than 72 hours or the person surrendering the child did not have lawful physical custody of the child. However, the bill specifies that it does not confer immunity from liability for personal injury resulting from medical malpractice.

This bill additionally requires the State Department of Social Services to report to the Legislature on the effect of this bill, as specified.

This bill has specified five-year sunset dates.

Background

In recent years, reports of babies being abandoned in trash bins, restrooms and parking lots have filled the news pages and the airwaves. In New Jersey, a high school student attending her senior prom delivered a baby in a restroom, hid it in a trashcan, and returned to the dance. In Delaware, a college couple wrapped their newborn in plastic and put it in a motel dumpster.

California has had its share of such incidents. This spring, a baby girl was found dead, floating in a San Joaquin County ditch. The coroner determined that the baby was alive when it was abandoned, but later drowned. In a recent Sacramento Bee article, the Los Angeles County Coroner's lead investigator states his office handles 15 to 20 dead, abandoned children every year.

In Calimesa, Riverside County, Debi Faris established the "Garden of Angels" as a final resting place for dead abandoned infants in Southern California. The nationwide media attention afforded Faris and her foundling cemetery has highlighted the problem of infant abandonment and prompted lawmakers to draft proposals to help save some of these children. Now a nonprofit organization, Garden of Angels, is the sponsor of SB 1368, to which this bill conforms.

Other Jurisdictions

Responding to news reports of abandoned babies, some two dozen states initiated laws to encourage mothers to surrender their infants at safe locations, such as hospitals, police stations, and firehouses. In 1999, Texas adopted the first and only such law now in effect. Other states with pending legislation include New York, Florida, and Pennsylvania. Programs to protect abandoned babies have been organized in several other states, including Minnesota, and cities such as Mobile, Alabama.

Internationally, Germany has adopted the use of "baby slots" in which unwanted newborns may be deposited anonymously. A similar practice, called the "revolving

AB 1764 Assembly Bill - Bill Analysis

crib," is now in place in Johannesburg, South Africa. Hungary also maintains anonymous drop-off locations.

In all jurisdictions, the anonymity of the surrendering person is preserved. Approaches to protection from prosecution vary. In some U.S. states, the surrendering parent is immune from prosecution; in others, the fact that the baby was left in a safe location can be used as an affirmative defense.

Related Legislation

This bill is nearly identical to SB 1368 (Brulte) which passed the Senate, 5/31/00, 40-0, and is currently in the Assembly Appropriations Committee.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes

Local: Yes

SUPPORT : (Verified 8/24/00)

Orange County District Attorney
American Civil Liberties Union
California Professional Firefighters
California Catholic Conference
National Right to life Committee, Inc.
California ProLife Council
American College of Obstetricians and Gynecologists
Planned Parenthood Affiliates of California
Orange County Public Policy Committee, CAEYC
California Peace Officers' Association
California Police Chiefs Association
Prevent Child Abuse - California
City of El Monte Chief of Police
City and County of San Francisco
California Medical Association
One individual

OPPOSITION : (Verified 8/24/00)

Capitol Resource Institute
Bast Nation

ARGUMENTS IN SUPPORT : The author states: "Too many newborn babies are being abandoned in trashcans, restrooms and under bushes. Nobody knows the magnitude of this problem because neither federal nor state government keeps statistics on baby abandonment. However, a Department of Health Services informal media survey shows that in 1991 there were 65 documented abandoned babies. Just 7 years later that number had jumped to 105?

"AB 1764 was introduced in response to these tragedies."

According to supporters fo decriminalizing child abandonment, this bill is primarily intended to provide an alternative to panicked teenagers who have concealed their pregnancies from friends and family and are frightened by the ramifications of having a baby.

Proponents assert that a benefit of this bill and SB 1368

is that they will allow a birth mother to surrender her child anonymously, without fear of revealing her identity or having any friends or family discover the fact of the pregnancy and birth. The hope is that the process of immediate and anonymous surrender will encourage mothers who might otherwise abandon their child to go to a hospital emergency room.

ARGUMENTS IN OPPOSITION : Some critics of measures such as AB 1764 say that providing a lawful means of abandoning children will actually increase abandonment and provide reluctant mothers with an alternative route to the more time-consuming adoption process.

A group called the Center for Family Connections argues: "Anything that encourages abandonment rather than a thoughtful plan ? is not in the best interest of children." Instead, the group's founder wrote, we "should move forward and educate and advertise about the steps toward healthy and conscious adoption placement, rather than toward abandonment."

Similarly, a group called Bast Nation wrote in opposition to AB 1764, "These laws represent a radical change in child welfare policy toward promoting rather than discouraging abandonment," the group wrote. "The anonymity built into these laws opens up the door to the potential for abuse, fraud, and the worst excesses of Victorian-era social welfare practice when abandonment was the norm and preventative social services were nonexistent."

ASSEMBLY FLOOR

AYES: Aanestad, Ackerman, Alquist, Aroner, Ashburn, Baldwin, Bates, Battin, Baugh, Bock, Brewer, Briggs, Calderon, Campbell, Cardenas, Cardoza, Cedillo, Corbett, Correa, Cox, Cunneen, Davis, Dickerson, Ducheny, Dutra, Firebaugh, Florez, Floyd, Gallegos, Granlund, Havice, Honda, House, Jackson, Kaloogian, Keeley, Knox, Kuehl, Leach, Lempert, Leonard, Longville, Lowenthal, Machado, Maddox, Maldonado, Margett, Mazzone, McClintock, Migden, Nakano, Olberg, Oller, Robert Pacheco, Pescetti, Reyes, Romero, Runner, Scott, Shelley, Steinberg, Strickland, Strom-Martin, Thomson, Torlakson, Vincent, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Hertzberg

RJG:kb 8/27/00 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****