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SAFE INFANT ABANDONMENT

House Bill 5543 as enrolled
Public Act 235 of 2000
Sponsor: Rep. Patricia Birkholz
House Committee: Family and Civil Law
**Senate Committee: Families, Mental
Health and Social Services**

Senate Bill 1052 as enrolled
Public Act 232 of 2000
Sponsor: Sen. Shirley Johnson

Senate Bill 1053 as enrolled
Public Act 233 of 2000
Sponsor: Sen. Joanne G. Emmons

Senate Bill 1187 as enrolled
Public Act 234 of 2000
Sponsor: Sen. Bev Hammerstrom

Senate Committee: Judiciary
House Committee: Family and Civil Law

Second Analysis (7-12-00)

THE APPARENT PROBLEM:

Legislation has been drafted in a number of states addressing the issue of abandoned newborn babies by providing and publicizing procedures for the safe surrender of newborns, by providing legal protection to mothers who follow those procedures, and by focusing attention on ways of helping mothers who are in great distress over having given birth. State lawmakers in Texas, for example, passed a law in 1999 creating an affirmative defense to prosecution for parents who voluntarily surrender a child under 30 days old to a licensed emergency medical services provider. This action was reportedly taken after 13 infants were abandoned in the state over a 10-month period. Similar kinds of programs are said to have been developed at the local level in Memphis and Minneapolis. Press accounts of newborn babies being found in dumpsters and bathrooms are all too familiar. A recent story in U.S. News & World Report cited a federal report that 105 babies were found abandoned in 1998 and that 33 of them were found dead or died soon after. Some

people cite numbers much higher than this, and of course, there is no way to know how many abandoned infants are never found. Here in Michigan, legislation to create a "Safe Delivery of Newborns Law" has been proposed.

THE CONTENT OF THE BILLS:

The package of bills would address the parental surrender of a newborn (a child believed to be no more than 72 hours old) to an emergency service provider. The bills have an effective date of January 1, 2001.

Senate Bill 1052 would create the "Safe Delivery of Newborns Law" as Chapter XII of the Probate Code and amend the Juvenile Code (MCL 712A.19b et al.) to spell out the procedures to be followed when a parent surrendered a newborn to an emergency service provider (i.e., a uniformed employee of a fire department, hospital, or police station).

House Bill 5543 and Senate Bills 1052, 1053 and 1187 (7-12-00)

Senate Bill 1053 would amend the Michigan Penal Code (MCL 750.135) to specify that it would be an affirmative defense to a child abandonment charge that the child was surrendered under the provisions of Senate Bill 1052.

Senate Bill 1187 would amend the Child Protection Law (MCL 722. 6280) to provide that the surrender of a newborn in compliance with the provisions of Senate Bill 1052 would not be reasonable cause to suspect child abuse or neglect and therefore would not be subject to the reporting requirements of the Child Protection Law (unless a physician was required under Senate Bill 1052 to report to the Family Independence Agency). The bill says this provision would not apply to circumstances arising on or after the date the provisions of Senate Bill 1052 were repealed.

House Bill 5543 would amend the Probate Code (MCL 712A.20 et al.) to require the Department of Community Health, in conjunction with the Family Independence Agency, to establish a safe delivery program to include a toll-free, 24-hour telephone line and an informational pamphlet.

Additional information on the bills follows.

Senate Bill 1052 would create the Safe Delivery of Newborns Law in the Probate Code and make complementary amendments to the Juvenile Code regarding the parental surrender of a newborn to an emergency service provider. The term “newborn” would refer to a child whom a physician reasonably believed to be not more than 72 hours old. The term “emergency service provider” would refer to a uniformed or otherwise identified employee or contractor of a fire department, hospital, or police station when that individual was inside the premises and on duty. The bill would not apply to a proceeding that arose before the bill’s effective date.

Under the bill, if a parent surrendered a newborn, the emergency service provider would have to take the newborn into temporary protective custody and transfer the newborn to a hospital. The provider would have to make a reasonable effort to protect the newborn’s physical health and safety; inform the parent that by surrendering the child, the parent was releasing the newborn to a child placing agency to be placed for adoption; and inform the parent that he or she would have 28 days to petition to regain custody. The emergency service provider would also have to provide the parent with written material approved by or produced by the Family Independence Agency. The written material would have to contain a series of

statements about child surrender and adoption, specify that information provided to an emergency service provider would not be made public, and inform the parent about the 24-hour, toll-free safe delivery line.

The provider would also be required to make a reasonable attempt to encourage the parent to provide any relevant family or medical information; provide the parent with the safe delivery pamphlet; inform the parent that information provided will not be made public; ask the parent to identify himself or herself; inform the parent that in order to place the newborn for adoption, the state is required to make a reasonable attempt to identify the other parent and then ask the surrendering parent to identify the other parent; inform the parent that the child placing agency taking temporary protective custody of the newborn can provide confidential services to the parent; and inform the parent that she or he can sign a release for the newborn to be used at the parental rights termination hearing.

A hospital would have to get the newborn examined by a physician. A physician who suspected child abuse or neglect, or that the child was not a newborn, would have to report to the Family Independence Agency (FIA) as required under the Child Protection Law. If not required to report, the hospital would have to notify a child placing agency that a newborn was in temporary protective custody.

Once notified by a hospital, a child placing agency would be required to assume the care, control, and temporary protective custody of the newborn; immediately meet with the parent, if the parent was known and was willing; place the newborn with a prospective adoptive parent; seek assistance from law enforcement officials as to whether the newborn was a missing child; petition the family court to place the newborn, within 48 hours after a transfer of physical custody to a prospective adoptive parent; and, within 28 days, make reasonable efforts to identify and locate the other parent. If the identity and address of that parent are unknown, the child placing agency would provide notice by publication in a newspaper of general circulation where the newborn was surrendered.

If a biological parent wanted custody of a surrendered newborn, the parent would have to file for custody within 28 days after the surrender. The family court would have to determine custody based on the newborn’s best interest. The court would have to consider, evaluate, and make findings on specific factors identified in the bill with the goal of achieving

permanence for the newborn at the earliest possible date. The factors would include: the love, affection, or other emotional ties existing between the newborn and the parent; the parent's capacity to give the newborn love, affection, and guidance; the parent's capacity and disposition to provide the newborn with food, clothing, medical care, or other remedial care recognized and permitted under the laws of the state in place of medical care, and other material needs; the permanence, as a family unit, of the existing or proposed custodial home; the parent's moral fitness; the parent's mental and physical health; whether the parent had a history of domestic violence; if the parent was not the parent who surrendered the newborn, the opportunity the parent had to provide appropriate care and custody of the newborn before the newborn's birth or surrender; and any other factor considered by the court to be relevant.

The court could issue an order that 1) granted legal or physical custody, or both, of the newborn to the parent, with the court either retaining or relinquishing jurisdiction; or 2) terminated the parent's parental rights and gave a child placing agency custody and care of the newborn.

A parent who surrendered a newborn and did not file an appropriate custody action would be presumed to have knowingly released his or her parental rights to the newborn. If a custody action was not filed, the child placing agency would petition the court for termination of parental rights.

Senate Bill 1053. Under the Probate Code, it is a felony punishable by up to 10 years' imprisonment, for a father or a mother of a child under six years old (or any other person) to expose that child with the intent to injure or wholly abandon the child. Under Senate Bill 1053, except for a situation involving child abuse and neglect, it would be an affirmative defense that the child was not more than 72 hours old and was surrendered to an emergency service provider under the provisions of Senate Bill 1052. Further, a criminal investigation could not be initiated solely on the basis of a newborn being surrendered to a service provider under Senate Bill 1052.

House Bill 5543 would require the Department of Community Health, in conjunction with the Family Independence Agency, to establish a safe delivery program, to include a toll-free, 24-hour telephone line and a pamphlet. The bill's provisions would be repealed three years after the bill's effective date.

The telephone line would provide at least the following information: information on prenatal care and the delivery of a newborn; the names of health agencies that could assist in obtaining services and supports that provide for the pregnancy-related health of the mother and the health of the baby; information on adoption options and the name and telephone number of a child placing agency that could assist a parent or expecting parent in obtaining adoption services; information that the best place for delivery of a child, in order to safely provide for the health of a mother and her newborn, is in a hospital, hospital-based birthing center, or birthing center accredited by the Commission for the Accreditation of Birthing Centers; an explanation that, to the extent of the law, prenatal care and delivery services are routinely confidential within the health care system, if requested by the mother; information that a hospital will take into protective custody a newborn that was surrendered (under the provisions of Senate Bill 1052) and, if needed, provide emergency medical assistance to the mother, the newborn, or both; information regarding the legal consequences for endangering a child, including child protective service investigations and potential criminal penalties; information that surrendering a newborn (under the provisions of Senate Bill 1052) is an affirmative defense to charges of abandonment; and information about resources for counseling and assistance with crisis management.

The pamphlet would have to provide information about the safe delivery program and prominently display the toll-free telephone number. The two departments would jointly publish and distribute the pamphlet.

BACKGROUND INFORMATION:

Information on the various state initiatives on infant abandonment can be found at the website of the National Conference of State Legislatures at www.ncsl.org/programs. Other information on responsible alternative to child abandonment is available at www.babymoses.org.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the costs of House Bill 5543 are indeterminate, but says the cost of the telephone line could be between \$75,000 and \$125,000, depending on the potential demand. (The HFA notes that a new toll-free hotline added to an existing crisis line services provider contract for the FIA cost \$100,000.) The agency says the cost of

printing from 70,000 to 250,000 basic pamphlets could range from \$2,500 to \$4,000, and notes there could be additional costs for pamphlet development and distribution. (HFA fiscal note dated 5-24-00)

The Senate Fiscal Agency reports that Senate Bill 1052 would have an indeterminate fiscal impact on the Family Independence Agency, if additional hearings and case administration resulted, and would have minimal fiscal impact on state and local law enforcement authorities. Senate Bill 1053 could reduce costs if child abandonment cases were not prosecuted as a result. There were two convictions in 1997, resulting in one probation and one jail sentence. (SFA floor analysis dated 5-23-00)

The Senate Fiscal Agency says Senate Bill 1187 would appear to have no fiscal impact on the Family Independence Agency or on the Department of State Policy. (Floor analysis dated 5-19-00)

ARGUMENTS:

For:

The aim of the package of bills is to prevent the abandonment of newborns in unsafe, unseen places and instead provide a means and an incentive for a mother (or father) who does not want a newborn to surrender it to a person on duty at a hospital, a police station, or fire station. The goal is to save the lives of newborns. A parent who follows the procedures outlined in the package will be able to use such conduct as an affirmative defense against prosecution for child abandonment or exposure. A hotline would be established to provide to an expecting or new parent basic information that could prevent infant abandonment and help the parent find the kind of help she needs or, failing that, could at least encourage a desperate parent to protect the welfare of the child by surrendering it in a safe manner. Pamphlets would be developed and distributed to publicize the safe abandonment concept. The proposal attempts to deal with standard criticisms of this approach with a number of safeguards, including attempting to identify the other parent involved and attempting to get family medical histories. Further, a parent would be given 28 days to petition to attempt to regain custody of the infant.

Response:

Some people would prefer immunity from prosecution for following safe abandonment practices rather than an “affirmative defense” against prosecution and would prefer that safe abandonments be restricted to hospitals.

Against:

Is it really a good idea to put into law a legal protection for a parent who abandons or surrenders an infant? Should the law be used to “encourage” or “forgive” a certain kind of abandonment? And, is it likely in any case that a young woman in desperate circumstances, probably in panic and despair, or in denial, will have the wherewithal to follow the proper procedures and make a face-to-face surrender of a baby? Moreover, are the rights of the non-surrendering parent sufficiently protected?

Response:

The proposal is worth a try. The worse that can happen is that it doesn’t work and that newborns are not surrendered in the manner anticipated. If only one infant is protected in this way, however, that would make the law a success in many minds.

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.