

# **The Safely Surrendered Baby Program**

## **Saving the Children**

### **Summary**

The Sacramento County Grand Jury received a complaint about the process of adopting an infant under the Safely Surrendered Baby program. A full investigation was not initiated because the case had already been decided in court. However, in reviewing the complaint, as well as pertinent laws and state guidelines, several areas of uncertainty emerged as to how the program is supposed to operate. This report identifies those areas requiring clarification by appropriate authorities.

### **Foreword**

The complainant expressed great concern over the time, cost and emotional stress experienced over a period of 15 months. The grand jury, however, is not empowered to reprocess individual cases or to review judicial proceedings. It can identify and consider, as in this case, systemic issues which might recur in other cases and therefore deserve attention.

### **Issues**

1. Are the statutory provisions and administrative guidelines for this program clear and complete?
2. Is there provision for oversight and evaluation of the program?

### **Method of Investigation**

The grand jury reviewed the complaint and attachments thereto, pertinent sections of state law, and administrative guidelines from the California Department of Social Services (CDSS). The grand jury reviewed the websites of organizations that under state law may provide "safely surrendered baby" sites and also interviewed representatives from several county departments.

### **Background and Facts**

The Safely Surrendered Baby law, passed by the legislature and signed by the governor in 2000, was to expire on January 1, 2006, but was made permanent by timely legislative action. It addresses the problem of newborn infants being abandoned by their birthmothers. The law allows anyone with legal custody to surrender an infant anonymously within 72 hours of birth at designated sites with no punitive consequences.

A safe surrender site is defined in the law as "a public or private hospital emergency room or any additional location designated by the county board of supervisors by resolution." (Penal Code sec. 271.5). The law also permits a local fire agency, subject to the approval of its governing board, to designate sites. (Health and Safety Code sec.

1255.7). Furthermore, each site "shall designate the classes of employees required to take custody of these children." The statute emphasizes physical custody as the key ingredient in a safe surrender. A designated employee at a safe surrender site "shall take physical custody" of an infant if a person with lawful custody of the child "voluntarily surrenders physical custody of the child to that person." Thus the clearest description of who actually effects a safe surrender is a designated employee on duty at a safe surrender site.

The legislature did provide an escape clause in case of a change of mind. Within 14 days of the birth, the safe surrender may be withdrawn and physical custody of the child returned to the surrendering individual.

The person accepting physical custody after a safe surrender is required to place a coded, confidential ankle bracelet on the child. The person must also offer a duplicate bracelet to the surrendering person, as well as a medical questionnaire to be mailed back to the site. The surrendering person has the right to refuse both. At this point the coded bracelet is the only means of identifying the child. To preserve confidentiality, a special certificate for an abandoned and surrendered baby is prepared, rather than a birth certificate.

Within 48 hours, the person taking custody must notify Child Protective Services (CPS) which takes temporary custody of the infant. CPS must then "immediately investigate the circumstances of the case and file a petition" of dependency with the juvenile court. The scope and purpose of the CPS investigation is not described in the law.

Considering the length of time since the law first passed, state guidelines for the program have been slow in coming. On November 2, 2010, the CDSS issued All County Information Notice 1-88-10, the title of which is *Safely Surrendered Baby Definition, Intake and Data Entry*. This notice gives considerable attention to whether the surrendering person must be familiar with the program and use the right words to effect a safe surrender. It points out that the statute simply requires that an infant be surrendered to the appropriate person at a safe surrender site and "does not indicate that this voluntary surrender must be stated verbally." In another passage related to hospital births (probably not the norm in safely surrendered baby cases), receiving staff are cautioned to be sure that "the birth mother, by word or action, indicates that she doesn't want to keep her baby."

Elsewhere, however, CDSS makes a distinction between "voluntary relinquishment" and "safe surrender" in the following passage: "If the birth mother chooses to voluntarily relinquish her baby and begins the adoption process, then subsequently chooses safe surrender within 72 hours of birth, the baby would be considered surrendered." This distinction seems to indicate that words do make a difference.

One other passage in Information Notice 1-88-10 deserves attention. It speculates that a safe surrender adoption "may be much quicker than standard adoption since the termination of parental rights is not an issue." This implies that the birth parents' rights are abrogated at the end of the 14 day grace period. A County Counsel's representative, however, believes the court would have to act to terminate those rights.

The event which led to the complaint occurred in June 2009, when a woman gave birth to a baby in a local hospital (a safe surrender site) and surrendered the infant to a hospital

staff member for adoption. The complainant believed the child was declared a safely surrendered baby. CPS was notified and assumed temporary custody. The required petition was submitted to and accepted by the juvenile court and, according to the complainant, the case proceeded as a Safely Surrendered Baby adoption for some months.

The complainant was the prospective adoptive mother of this infant who was given physical custody of the child 3 weeks after birth in June 2009 (after the 14 day grace period had expired). She cared for the child until it was taken from her in September 2010 and given to the birth father. The father had come forward to assert his rights during the adoption process. After his appearance, the process became confrontational and the complainant chose to obtain legal counsel.

About a year after the adoption process began, the complainant maintains that CPS recanted on the Safely Surrendered Baby determination in court, which converted the case to a standard adoption. That recantation could be partly explained by the allegation that the hospital to which the infant had been surrendered gave CPS the birth mother's name and address when referring the child to them, thus violating the confidentiality provisions of the law. It is unclear why it took so long for the recantation, if it occurred.

The complainant expressed deep distress at the outcome of the adoption process, dismay at the apparent termination of the Safely Surrendered Baby designation so late into the process, and the sizeable legal costs incurred.

Hoping to clarify some aspects of the Safely Surrendered Baby program, members of the grand jury met with representatives of CPS, the County Counsel and the Court Services Program. That hope was not realized, partly because of pending legal action. For that reason county officials would not talk about this specific case. However, it seemed to the grand jury that the county does not believe this was ever a Safely Surrendered Baby event. This position is difficult to reconcile with the details presented in the complaint to the grand jury.

There was general agreement among county representatives that there is considerable confusion about the program throughout the state. Several shortcomings in the program did emerge. First, the process for effecting a safe surrender is not clear. This is especially troubling since county representatives agreed that once a safe surrender has been declared it cannot be changed. Second, the rights of the birth parents are not fully addressed in the law, especially those of the birth father which are not mentioned. Third, the guidelines for safe surrender sites are ambiguous and provisions for program oversight are not evident.

There is not a large number of safely surrendered babies, at least locally. Sacramento County has had only 28 since 2003, when record-keeping began. To the principals in a safe surrender, however, each case is laden with emotional stress and potential tragedy.

Counties and fire departments may provide safely surrendered baby services subject to approval of their governing boards. A review of the websites of these agencies in Sacramento revealed scant information regarding the safely surrendered baby program. The grand jury believes that the lack of public information hinders the success of this program.

## **Conclusions**

The grand jury's review of the Safely Surrendered Baby program was constrained by pending litigation and conflicting information that could not be reconciled. These circumstances prevented the development of specific recommendations. However, a review of statutory provisions and administrative guidelines and discussion with county representatives led to the grand jury's conclusion that the program is currently operating in an atmosphere of uncertainty and confusion.

It would be tragic if Sacramento County did not act aggressively to seek increased clarity and completeness in statutory provisions and state guidelines. Such changes at the state level are an essential precursor to needed improvements at the local level, including more staff training, program oversight, and public information.

Pending these changes, the Sacramento County Department of Health and Human Services should insure that correct and consistent procedures are being followed at safe surrender sites within the county and that more complete public information about the program is available on all relevant websites.

Absent improvements, the program will continue to be compromised. Our children deserve better.

## **Findings and Recommendations**

**Finding 1.0** The California Department of Social Services issued an "All County Information Notice" to clarify definition and procedures in the safely surrendered baby program on November 2, 2010.

**Recommendation 1.1** Sacramento County Health and Human Services should review procedures of agencies that provide "Safely Surrender Baby "sites to check that their procedures conform to state law, and to ensure the integrity of the process, so that the rights of the child and surrendering parent are preserved.

**Finding 2.0** None of the agencies in Sacramento County that are designated as safe surrender sites provide that information on their websites.

**Recommendation 2.1** Sacramento County, Sacramento area fire departments and hospitals should prominently display information about the locations of their "safe surrender sites" on their websites, or provide referral information on their websites if they are not "safe surrender" program participants.

## **Response Requirements**

**Penal Code sections 933 and 933.05 require that specific responses to indicated findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento County Superior Court by September 30, 2011, from:**

- **The Sacramento County Health and Human Services Director**
- **Sacramento County Chief Probation Officer**
- **The Sacramento County Board of Supervisors**
- **Chief of Sacramento Fire Department**
- **Chief of Sacramento Metro Fire Department**
- **Chief of Cosumnes Services District Fire Department**

**Mail or hand-deliver a hard copy of the response to:**

**Hon. Steve White, Presiding Judge  
Sacramento County Superior Court  
720 9th Street, Dept. 47  
Sacramento, CA 95814**

**In addition, email the response to Becky Castaneda, Grand Jury Coordinator, at [castanb@saccourt.com](mailto:castanb@saccourt.com)**