



Senate Fiscal Agency  
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BILL ANALYSIS

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Senate Bills 727 and 1118 (as reported without amendment) *(as passed by the Senate)*  
 Senate Bill 1119 (Substitute S-1 as reported) *(as passed by the Senate)*  
 Senate Bill 1120 (as reported without amendment) *(as passed by the Senate)*  
 Sponsor: Senator Patricia Birkholz (S.B. 727)  
           Senator Jud Gilbert, II (S.B. 1118)  
           Senator Gilda Z. Jacobs (S.B. 1119)  
           Senator Tupac A. Hunter (S.B. 1120)  
 Committee: Families and Human Services

Date Completed: 3-2-10

### **RATIONALE**

The Safe Delivery of Newborns Law was enacted in 2000 to allow the parents of newborns to give up their babies without the risk of being charged with abandonment. Under the law, within 72 hours after a child is born, the parent may surrender the baby to an emergency service provider, such as a hospital employee or police officer, who must take the newborn into temporary custody. Then, either parent has 28 days to file a custody petition with the family court. If a petition is filed, the court must determine custody based on the newborn's best interests, and may grant custody to the parent, terminate the petitioner's parental rights, or dismiss the petition. The Law also provides for the termination of parental rights if the parent surrendering a child does not file for custody. Once parental rights are terminated, the newborn is available for adoption.

In 2005, a workgroup was formed by a cross section of professionals involved in implementing the Law. Recommendations of the workgroup resulted in amendments enacted by Public Act 488 of 2006, but several issues were not addressed. One of the features of the Law is the confidentiality afforded to surrendering parents. Although emergency service providers are supposed to ask parents to identify themselves, and encourage parents to provide relevant family or medical information, parents also are given assurances of confidentiality. Under the Adoption Code, however, an adult

adoptee may obtain identifying information about his or her former parent from the Department of Human Services unless the parent has filed a statement denying release of the information. There are concerns that disclosure under the Adoption Code would violate assurances of confidentiality made to parents under the Safe Delivery of Newborns Law, and would discourage parents from taking advantage of the Law.

In another area of concern, both the Safe Delivery of Newborns Law and the juvenile code provide for the termination of parental rights to a surrendered newborn, but the standards under the two statutes are not the same. In addition, the juvenile code specifies the family court's jurisdiction in proceedings involving minors and authorizes the court to take various steps besides termination of parental rights. It has been suggested that these statutes be reconciled, and that the court be authorized to order termination under the Law only if a custody petition has not been filed.

### **CONTENT**

**Senate Bill 727 would amend the Adoption Code to prohibit the release of identifying information about an adult adoptee's former parent who had surrendered the person as a baby under the Safe Delivery of Newborns Law, unless the former parent had consented to the release of the information.**

**Senate Bills 1118 and 1119 (S-1) would amend the Safe Delivery of Newborns Law to modify provisions under which the family court may terminate parental rights to a surrendered newborn. Senate Bill 1120 would delete similar provisions in the juvenile code.**

The bills are described below.

**Senate Bill 727**

Generally, the Adoption Code requires a child placing agency, a court, or the Department of Human Services to release to an adult adoptee certain identifying information about the adoptee's former parents and any additional information on file with the central adoption registry, unless a parent has filed a statement with the registry denying consent to have the information released.

Under the bill, that requirement would not apply to adoptions in which the former parents' rights were terminated under the Safe Delivery of Newborns Law, unless the former parent had filed a statement with the central adoption registry consenting to the release of identifying information.

The Code permits a former parent to file a statement with the central adoption registry consenting to or denying the release of identifying information about the parent. The statement may be filed, updated, or revoked at any time.

Under the bill, that provision would include a former parent whose parental rights were terminated under the Safe Delivery of Newborns Law.

**Senate Bills 1118 and 1119 (S-1)**

Under the Safe Delivery of Newborns Law, if a surrendering parent does not file a petition for custody with the family court within 28 days after surrendering the newborn, he or she is presumed to have knowingly released his or her parental rights to the newborn, and a child placing agency immediately must file a petition with the court to determine whether the court will enter an order terminating the rights of the surrendering parent.

If the court finds that the surrendering parent has knowingly released his or her

parental rights and that reasonable efforts were made to locate the nonsurrendering parent, the court must enter an order terminating the parental rights of the surrendering parent and the nonsurrendering parent.

Under Senate Bill 1118, this requirement would apply *if* a custody action had not been filed.

Under the Law, if a custody action is filed, the court must determine custody of the newborn based on his or her best interest, considering each factor listed in the statute. Based on these findings, the court may issue an order that does one of the following:

- Grants legal and/or physical custody of the newborn to the parent, and retains or relinquishes jurisdiction.
- Determines that the best interests of the newborn are not served by granting custody to the petitioner parent, and terminates his or her parental rights and gives a child placing agency custody and care of the newborn.
- Dismisses the petition.

Under Senate Bill 1119 (S-1), instead of terminating the petitioner's parental rights and giving a child placing agency care and custody, the court could order a child placing agency to petition the court for jurisdiction under Section 2(b) of the juvenile code, if the court found that granting custody to the parent would not serve the newborn's best interests. (Section 2(b) gives the family court jurisdiction in cases involving children who are abandoned or without proper custody or guardianship, and juveniles in other situations.)

**Senate Bill 1120**

The juvenile code authorizes the family court to terminate the parental rights to a child who remains in foster care or in the custody of a guardian or limited guardian, if the court makes certain findings by clear and convincing evidence. These include a finding that the child has been deserted under one of the circumstances listed in the code (including surrender under Safe Delivery of Newborns Law).

Specifically, the juvenile code allows the court to terminate parental rights to a child if his or her parent voluntarily surrendered

the child to an emergency service provider under the Safe Delivery of Newborns Law and did not petition the court to regain custody within 28 days. The bill would delete this provision.

MCL 710.27a & 710.68 (S.B. 727)  
712.17 (S.B. 1118)  
712.15 (S.B. 1119)  
712A.19b (S.B. 1120)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The Safe Delivery of Newborns Law was enacted after newspapers across the country published stories about newborn babies who were abandoned in such places as dumpsters, parking lots, ditches, and public restrooms. A story in Lansing, for example, involved a two-day-old baby who was left in a cardboard box at a carwash. These incidents triggered the enactment of "safe haven" laws, including the Michigan statute. In addition to establishing procedures for the surrender of newborns, the Law promotes the placement of the babies in adoptive homes where they will thrive.

The Law's confidentiality provisions and the ability of parents to surrender newborns anonymously are considered vital to the success of the Law. Although emergency service providers request family and medical information, they also tell parents that the information will be kept in strict confidence. Under the Adoption Code, however, it is possible that identifying information about a parent ultimately will be released, since disclosure is the "default" position under the Code if a biological parent does not file a statement denying consent to disclosure. This possibility could discourage parents from surrendering newborns, and lead them to abandon unwanted babies in hazardous places.

To avoid this outcome, Senate Bill 727 would reverse the Adoption Code's default position, in the case of surrendered newborns. The bill would prevent the release of a parent's identifying information *unless* that person filed a statement consenting to disclosure.

### **Supporting Argument**

Senate Bills 1118, 1119 (S-1), and 1120 would address the termination of parental rights to a surrendered newborn, bringing clarity to the statutes and providing for consistency within the Safe Delivery of Newborns Law and between that Law and the juvenile code. The Safe Delivery of Newborns Law both requires a court to terminate parental rights if a surrendering parent is presumed to have knowingly released his or her parental rights, and authorizes the court to terminate parental rights if a parent has petitioned for custody. Senate Bill 1118 would address the first situation, making it clear that a court would have to terminate parental rights *if* a custody action had not been filed.

Senate Bill 1119 (S-1) would address the second situation, discontinuing the court's authority to terminate parental rights after a custody hearing, and instead authorizing the court to order a child placing agency to petition the court for jurisdiction under the juvenile code. In some situations, after a custody hearing, the court might want to delay granting custody or terminating parental rights in case the nonsurrendering parent comes forward. In other situations, the nonsurrendering parent might be petitioning for custody, and an additional hearing might be necessary for the court to learn more about that individual. The Safe Delivery of Newborns Law does not easily accommodate these circumstances.

Proceeding under the juvenile code would give the court greater flexibility and various options besides termination of parental rights. The court, for example, could place the child in foster care, make the child a ward of the court, appoint a guardian, or place the child in the parent's home subject to conditions and oversight. In addition, the Department of Human Services could work with the parent to correct deficiencies before the court made a final custody decision. The court still would have the authority to terminate parental rights if grounds for termination under the juvenile code existed. Under Senate Bill 1120, however, those grounds would no longer include surrender of the child under the Safe Delivery of Newborns Law.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Bill Bowerman  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.