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BILL ANALYSIS

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Senate Bill 1292 (as enrolled)
Sponsor: Senator Shirley Johnson
Senate Committee: Families and Human Services
House Committee: Judiciary

PUBLIC ACT 488 of 2006

Date Completed: 1-9-07

CONTENT

The bill amended the Safe Delivery of Newborns Law to do the following:

- Allow a child placing agency, upon receiving notice that a hospital has taken a child into temporary custody, to make a temporary placement of the newborn with a licensed foster parent if a petition for custody is filed under the Law.
- Require a child placing agency, after making efforts to identify, locate, and provide notice of the newborn to the nonsurrendering parent, to report its efforts and their results to the family court.
- Allow a person claiming to be the nonsurrendering parent of a surrendered newborn to file a petition with the family court for custody of the newborn within 28 days after notice of surrender of a newborn has been published.
- Require the family court to conduct a hearing to determine the custody of a child within seven days after a petition for custody has been filed.
- Require the family court to order each party claiming maternity to submit to blood or tissue typing or DNA identification profiling unless the birth was witnessed by the emergency service provider and sufficient documentation supports maternity.
- Require a child placing agency, if the surrendering parent or the nonsurrendering parent has not filed a petition for custody within a

specified time period, to petition the family court to determine whether to terminate the rights of that parent.

- Allow the family court to terminate the parental rights of the surrendering and nonsurrendering parents if it finds that the surrendering parent knowingly released his or her rights to the child and that reasonable efforts were made to locate the nonsurrendering parent.
- Provide that a hearing under the Law is closed and a record of the hearing is confidential.
- Establish criminal and civil liability for an individual who discloses confidential information without a court order or authorization.

The bill took effect on January 1, 2007, and is described in detail below.

Emergency Service Providers

The Safe Delivery of Newborns Law requires a hospital or emergency service provider to take into temporary custody a newborn who is surrendered by a parent. "Emergency service provider" means a uniformed or otherwise identified employee or contractor of a fire department, hospital, or police station when the individual is inside the premises and on duty. The bill added that "emergency service provider" includes a paramedic or an emergency medical technician when he or she is responding to a 9-1-1 emergency call.

Duties of Child Placing Agency

Under the Law, upon receiving notice from a hospital that it has taken a surrendered newborn into temporary protective custody, a child placing agency is required to take specific actions, including making a temporary placement of the newborn with a prospective parent who has an approved preplacement assessment. The bill removed a requirement that the prospective parent reside in the State.

In addition, if a biological parent of the newborn files a petition for custody under the Law, the bill permits the child placing agency to make a temporary placement of the newborn with a licensed foster parent.

The Law also requires the child placing agency immediately to request assistance from law enforcement officials to investigate and determine whether the newborn is a missing child. Under the bill, this is not required if the birth was witnessed by the emergency service provider.

In addition, the Law requires the child placing agency to make reasonable efforts, within 28 days, to identify and locate a parent who did not surrender the newborn. The bill also requires the agency to provide notice of the surrender of the newborn to the nonsurrendering parent, and to file a written report with the Family Division of Circuit Court (family court) that issued the order placing the child. The report must state the efforts the agency made to identify and locate the nonsurrendering parent and the results of those efforts.

Petition for Custody

Previously, the Law required a biological parent who wanted custody of a surrendered newborn to file an action with the family court for custody within 28 days after the newborn was surrendered. Under the bill, a surrendering parent who wants custody must file a petition with the court for custody, within the same time frame. The bill permits an individual claiming to be the nonsurrendering parent to file a petition with the court for custody within 28 days after notice of the surrender has been published.

If the court in which the custody petition is filed did not issue the order placing the newborn, the bill requires that court to

locate and contact the court that issued the order and transfer the proceedings to that court.

Determination of Parenthood

Before holding a custody hearing, the family court previously was required to determine whether the individual filing the custody action was the newborn's biological parent. The bill requires the court to conduct a hearing to make the determinations of paternity or maternity before holding a custody hearing and not later than seven days after a custody petition has been filed.

In a custody action under the Law, the family court previously was required to order each party claiming paternity or maternity and the child to submit to blood and tissue typing determinations, including determinations of red cell antigens, red cell iso-enzymes, human leukocyte antigens, serum proteins, or DNA identification profiling to determine whether each party was likely to be, or was not, a biological parent of the child. The bill instead requires the court to order the child and each party claiming paternity to submit to blood or tissue typing determinations or DNA identification profiling as described in Section 16 of the Paternity Act (which contains very similar provisions).

The bill also requires the court to order the child and each party claiming maternity in a custody proceeding under the Law to submit to blood or tissue typing determinations or DNA identification profiling as described in Section 16 of the Paternity Act, unless the birth was witnessed by the emergency service provider and sufficient documentation exists to support maternity.

Under the bill, if the probability of paternity or maternity determined by the blood or tissue typing or DNA identification profiling is 99% or higher and the DNA identification profile and summary report are admissible, paternity or maternity is presumed and the petitioner may move for summary disposition on the issue of paternity or maternity.

Under the Law, if a party refused to submit to the typing or DNA profiling, the family court was permitted to dismiss the custody action in regard to the party who refused, or if a hearing was held, allow the disclosure of

the fact of refusal unless good cause was shown for not disclosing the fact. The bill deleted this provision, as well as a requirement that a blood or tissue typing or DNA identification profiling be conducted by a person accredited for paternity or maternity determinations by a nationally recognized scientific organization.

The Law required the family court to fix the compensation of an expert at a reasonable amount, and direct each party claiming paternity or maternity, except an individual determined to be indigent, to pay for compensation for his or her own testing plus a portion of the compensation for testing the child. The court could order a part or all of the compensation to be paid in advance. The bill removed those provisions.

The bill permits the family court to order the petitioner to pay all or part of the cost of the paternity or maternity testing.

Under the bill, if the result of the paternity or maternity testing is admissible and establishes that the petitioner cannot be the newborn's parent, the court must dismiss the custody petition.

(Under the bill, "DNA identification profiling" means that term as defined in the Paternity Act, i.e., a validated scientific method of analyzing components of DNA molecules in a sample of genetic testing material to identify the pattern of the components' chemical structure that is unique to the individual. The bill also defines "DNA identification profile" as that term as defined in the Paternity Act, i.e., the results of the DNA identification profiling of genetic material.)

Court Order; Termination of Parental Rights

Under the Law, based on the family court's finding of the newborn's best interest, the Court may issue one of the following:

- An order that grants legal and/or physical custody of the newborn to the parent and either retains or relinquishes jurisdiction.
- An order that terminates the parent's parental rights and gives a child placing agency custody and care of the newborn.

Under the bill, an order terminating parental rights must include a determination that the best interests of the newborn are not served by granting custody to the petitioner parent.

The bill also permits the court to issue an order dismissing the petition.

Under the Law, a parent who surrenders a newborn as provided and who does not file a petition for custody is presumed to have knowingly released his or her parental rights to the newborn.

Previously, if a custody action was not filed under Section 10 of the Law (which permits a biological parent to petition for custody of the child), a child placing agency that had taken temporary custody of a surrendered newborn had to petition the family court for termination of parental rights under Section 19b of the juvenile code. (That section allows various people to petition the family court for a determination of whether the parental rights to a child should be terminated in certain cases in which the child is in foster care in the temporary custody of the court.) If the agency had made reasonable efforts to identify and locate the nonsurrendering parent in compliance with the requirements under the Law, then that notice was considered to be notice to the newborn's parents as required under the juvenile code.

The bill removed those provisions, instead providing that if the surrendering parent has not filed a petition for custody of the newborn within 28 days of the surrender, the child placing agency with authority to place the newborn immediately must file a petition with the family court to determine whether the release of parental rights will be accepted and whether the court will enter an order terminating the rights of the surrendering parent.

If the nonsurrendering parent has not filed a petition for custody of the newborn within 28 days of notice of surrender of a newborn, the child placing agency with authority to place the newborn immediately must file a petition with the family court to determine whether the court will enter an order terminating the rights of the nonsurrendering parent.

The family court must schedule a hearing on the agency's petition within 14 days of receiving it. At the hearing, the agency must present evidence demonstrating that the surrendering parent released the newborn and demonstrating the efforts made by the agency to identify, locate, and

provide notice to the nonsurrendering parent. If the court finds by a preponderance of the evidence that the surrendering parent has knowingly released his or her rights to the child and that reasonable efforts were made to locate the nonsurrendering parent, the court must enter an order terminating parental rights of the surrendering parent and the nonsurrendering parent.

Confidentiality

The bill provides that a hearing under the Law is closed to the public, and a record of a proceeding under the Law is confidential, except that it is available to any individual who is a party to the proceeding. In addition, all child placing agency records created under the Law are confidential, except as otherwise provided.

An individual who discloses confidential information without a court order or specific authorization under State or Federal law is guilty of a misdemeanor punishable by imprisonment for up to 93 days or a maximum fine of \$100, or both, and also is civilly liable for damages proximately caused by the disclosure.

Repeals

The bill repealed Sections 12 and 13 of the Law.

Section 12 required that the result of blood or tissue typing or a DNA identification profile and the summary report be served on the party who was the subject of the test, and that the summary report be filed with the family court. Objection to the profile or report had to be made within 14 days after receipt. If no objection was filed, the court had to admit the information in custody proceedings under the Law without requiring foundational testimony or other proof of authenticity or accuracy. If an objection was filed, the objecting party had the burden of proving that foundation testimony or other proof of authenticity or accuracy was necessary before admission of the profile or report.

If the probability of paternity or maternity determined by the blood or tissue typing or DNA identification profiling was 99% or higher, and those results were admissible under the provisions described above, then

paternity or maternity was presumed. If the results of tests from two or more people indicated a probability of paternity or maternity greater than 99%, then additional testing was required until all but one of the putative fathers or mothers was eliminated, unless the dispute involved two or more individuals with identical DNA. Upon establishing presumed paternity or maternity, the presumed parent could move for summary disposition on the issue of his paternity or her maternity.

Section 13 dealt with the confidentiality of genetic testing material, and prohibited the unauthorized disclosure of information obtained from genetic testing ordered under the Law.

If a party was found to be the child's biological parent, the contracting laboratory had to retain the genetic testing material of the parent and child for not longer than the period prescribed under the applicable national standards. If a party was found not to be the child's biological parent, the laboratory was required to destroy the genetic testing material after it was used in the court action. The laboratory was required to keep a written record of the destruction, and had to notify the individual, or the individual's parent or legal guardian if he or she was a minor, that the genetic material had been destroyed.

The section required a contracting laboratory or other entity involved with the testing to protect the confidentiality of genetic testing material, except as required for paternity or maternity determination, and prohibited the family court from using or disclosing genetic testing material for unauthorized purposes. The section also prohibited the sale, transfer, or offering of genetic testing material obtained under the Law except as authorized.

A contracting laboratory had to conduct an annual independent audit to verify its compliance with these and other requirements.

A violation of these provisions was a misdemeanor punishable by a fine of up to \$5,000. A second violation was a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$10,000.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill will have an indeterminate impact on State government. The child placing agencies under contract with the Department of Human Services will have additional administrative costs for report preparation and filing on the cases placed under their care.

The bill will have an indeterminate impact on local government. There are no data to indicate how many offenders will be convicted of disclosing confidential information. Local governments will incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue will benefit public libraries.

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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.