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Senate Bills 1118 and 1119 (as enacted)
Sponsor: Senator Jud Gilbert, II (S.B. 1118)
Senator Gilda Z. Jacobs (S.B. 1119)
Senate Committee: Families and Human Services
House Committee: Families and Children's Services

PUBLIC ACTS 348 & 349 of 2010

Date Completed: 1-4-11

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. The Law provides for the termination of parental rights if neither parent files for custody. Originally, the Law also authorized the court to terminate parental rights if a parent petitioned for custody and the court determined that granting the parent custody would not be in the child's best interest.

Concerns were raised about potential conflicts between the standards under the Safe Delivery of Newborns Law and under the juvenile code in regard to the termination of parental rights to a surrendered newborn. In addition, it was pointed out that 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 was suggested that these statutes be reconciled, and that the court be authorized to order termination under the Safe Delivery of Newborns Law only if a custody petition has not been filed.

CONTENT

The bills amended the Safe Delivery of Newborns Law to modify provisions concerning the termination of parental rights to a surrendered newborn.

The bills took effect on December 22, 2010.

Under the 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 it will enter an order terminating the rights of the surrendering parent. The agency also must file such a petition if the nonsurrendering parent does not file a petition for custody.

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 applies *if* a custody action has 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.
- Dismisses the petition.

Previously, if the court determined that the best interests of the newborn were not served by granting custody to the petitioner, the court order also would terminate his or her parental rights and give a child placing agency custody and care of the newborn. Under Senate Bill 1119, instead, the court will order a child placing agency to petition the court for jurisdiction under Section 2(b) of the juvenile code. (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.)

MCL 712.17 (S.B. 1118)
712.15 (S.B. 1119)

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 bills bring clarity and consistency to the statutes in regard to the termination of parental rights to a surrendered newborn. Senate Bill 1118 addresses the requirement that a court terminate parental rights when a surrendering parent is presumed to have knowingly released his or her parental rights. The bill makes it clear that a court must terminate parental rights only if a custody action has not been filed.

Senate Bill 1119 addresses situations in which a parent has petitioned for custody. The bill discontinues the court's authority to terminate parental rights after a custody hearing, and instead authorizes 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 will give the court greater flexibility and various options besides termination of parental rights. The court, for example, may 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 can work with the parent to correct deficiencies before the court makes a final custody decision. The court still will have the authority to terminate parental rights if grounds for termination under the juvenile code exist.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills will 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.