

# The Nature of Baby Abandonment

## Definition of Baby Abandonment

The complexity of the issues surrounding baby abandonment is deepened by confusion about the precise definition of *abandonment*. The phrase *abandoned babies* has been used in many different ways. It has a specific statutory meaning in the Abandoned Infants Assistance Act (P.L. 100-505, 1988; amended in P.L. 102-236, 1991), which refers to babies who are born in hospitals but do not go home with their parents due to parental drug abuse, HIV/AIDS infection, or other child protection issues. The phrase has a different, broader meaning in common speech, where it typically refers to babies who are not born in hospitals and are left in unsafe places by their parents.<sup>1</sup> There is a separate group of children who are defined as *abandoned* by state law. The many categories of children labelled *abandoned* leads to confusion. Although it may be impossible to change the naming of these groups in common parlance, advocates must be aware of the potential confusion.

Recent attention to the problem of abandoned babies, and subsequent legislative remedies, are responses to the often-publicized stories of babies left in unsafe public places. Despite the lack of a clear definition, this is a clear problem. Therefore, in this monograph, the phrase baby abandonment refers to discarding or leaving alone, for an extended period of time, a child younger than 12 months of age in a public or private setting with the intent to dispose of the child,<sup>2</sup> and *abandoned babies* refers to children who have been treated in this manner. This definition is not necessarily shared by all states and communities. In fact, definitions vary widely across the country.

## Extent of the Problem

Despite the lack of consensus on a definition, this category of children has attracted an incredible amount of attention in the press, state legislatures, and child welfare agencies throughout the country over the past several years, particularly after an “unprecedented rash of baby abandonment” in Houston was reported in *The New York Times* in December 1999 (Yardley, 1999). The article generated national attention, and efforts to respond to the problem gathered momentum. As child welfare agencies, law enforcement professionals, legislators, and others began to examine the issue, however, one of the most enduring obstacles to ending baby abandonment became apparent: there is virtually no information on the scope or nature of the problem.

There is no consistent or reliable method for collecting data across jurisdictions on the number of babies who are abandoned in unsafe places. Currently, the best assessment of the problem nationwide comes from a search of newspaper articles that was commissioned by the U.S. Department of Health and Human Services (1999). This search found 65 published reports of abandoned babies in 1991. Eight of these babies were found dead. In 1998, there were 108 reported abandoned babies, 33 of whom died. These data are limited in their usefulness for several reasons. They may significantly underreport the actual extent of abandonment, because they only reflect abandonments that were reported in the media. Some cases may never be publicly reported, whereas others may never be discovered. Furthermore, the increase in reports from 1991 to 1998 is just that—an increase in newspaper reports. There is no evidence that there was an accompanying increase in actual abandonment.

## Explanations for Baby Abandonment

Not only is there a dearth of information on the number of babies abandoned across the country, but experts also lack information on the characteristics and motivations of parents who abandon their babies. The Abandoned Infants Assistance Resource Center at the University of California, Berkeley, has published a fact sheet on discarding infants, which incorporates research on neonaticide (the killing of a baby on the day of its birth) and media reports of baby abandonment cases. This research found that

*Available literature indicates that individuals who commit acts of neonaticide and public abandonment are predominantly very young, unmarried, physically healthy women who are pregnant for the first time and not addicted to substances. There is no indication that this problem is limited to certain races,*

*ethnicities or incomes. The vast majority live either with their parent(s), guardian(s), or other relatives (Oberman, 1996). An even more fundamental similarity among these cases is the accused woman's seemingly self-imposed silence and isolation during pregnancy (Oberman, 1996). Massive denial is a prominent feature of this situation. Women who kill and/or discard their infants generally have made no plans for the birth or care of their child and get no prenatal care (Pitts & Bale, 1995). In the case of public abandonment, the women are often not mature enough to thoughtfully weigh their options or the consequences of their actions. Reasons for killing and/or discarding infants include extramarital paternity, rape, illegitimacy and perceiving the child as an obstacle to personal achievement. (Brief Summary, 2000)*

Although this provides some insight into possible reasons for baby abandonment, it is by no means conclusive or exhaustive. There is no indication that the comparison between neonaticide and baby abandonment is legitimate, but this information can help researchers form questions and frame issues. Currently, it is almost impossible to define the at-risk population, so it is very difficult to target effective education, support, and services to that population. Furthermore, without information regarding the causes of abandonment, it is challenging to create comprehensive strategies for prevention.

In the absence of specific data, it is important to acknowledge the web of social connections within which baby abandonment occurs. It is an issue that affects and is affected by teenagers, parents, teachers, schools, churches, community organizations, and all of the social services that exist to protect parents and children, including health care, child welfare, mental health care, and welfare. Parents who abandon babies soon after birth have fallen through the cracks of all of the social supports and systems that exist to protect parents and children.

Many systems are currently in place that could potentially help a parent before he or she makes the decision to abandon a baby in an unsafe place. Sexuality education and school- and community-based services exist to help young adults make decisions about reproductive health. Public and private organizations provide assistance and counseling to women experiencing unplanned pregnancies. The public child welfare system and private adoption agencies provide parents with an opportunity to relinquish their children, in many cases confidentially. Families, schools, churches, health care providers, and communities all potentially have opportunities to intervene before a baby is abandoned. The parent who decides to abandon his or her baby has not received adequate support from these sources.

These parents, however, do not receive help for several reasons: There is little knowledge or education about preventing baby abandonment, there is very little funding for prevention efforts in any realm of social service, and the parents considering abandonment presumably have particularly difficult problems. Although baby abandonment becomes a child welfare issue when a child is placed at risk, the public child welfare system generally does not have the capacity to take an active role in preventing abandonment. The absence of sufficient resources and the change in social acceptability of unwed mothers have diminished the service capacity of many community-based organizations to provide counseling, support services, or procedures for voluntary relinquishment to parents who want or need to relinquish their children. These issues will all need to be addressed in the pursuit of comprehensive, long-term solutions to the problem of baby abandonment.

# Responses to Baby Abandonment

## Overview of Responses

The complexity of baby abandonment and the lack of information on its scope and nature make it difficult to find solutions. Before 1999, those who were concerned with the deaths of infants as a result of abandonment responded to the problem with various community-based programs. Some, like Project Cuddle in California (<http://www.projectcuddle.org>), provided 24-hour hotlines for women contemplating abandoning their babies. Others provided burial for infants who died as a result of abandonment, including the AMT Children of Hope Foundation (<http://www.amtchildrenofhope.com>) in New York. In many communities, prosecuting attorneys chose not to prosecute parents who abandoned their babies in safe places, such as hospitals. For example, in Mobile, Alabama, District Attorney John Tyson decided not to prosecute parents who safely abandoned children. Tyson created a safe haven program called A Secret Safe Place for Newborns (<http://www.secretsafeplace.org>). For other organizations involved with baby abandonment, see Table 1.

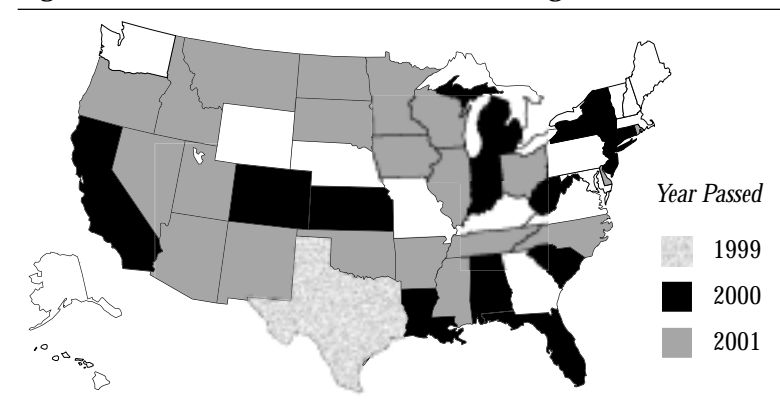
The environment has changed substantially since 1999. In reaction to the tragic stories of abandonment in Houston, Texas, and the groundswell of media attention they generated, there has been an unprecedented legislative response to baby abandonment. As of March 1, 2002, 35 states passed legislation creating safe havens, places where parents can voluntarily and anonymously relinquish their children without prosecution (see Figure 1) (for summaries of the laws, see <http://www.cwla.org/program/prev/flocritt/safehaven.htm>). In addition, the federal government has considered several pieces of legislation regarding research on baby abandonment and funding for state safe haven programs.

**Table 1. Resources for Additional Information**

<i>Organization</i>	<i>Website</i>
A Hand to Hold	<a href="http://www.ahandtohold.org">www.ahandtohold.org</a>
A Secret Safe Place for Newborns in Illinois	<a href="http://www.saveabandonedbabies.org">www.saveabandonedbabies.org</a>
Alan Guttmacher Institute	<a href="http://www.agi-usa.org">www.agi-usa.org</a>
American Adoption Congress	<a href="http://www.americanadoptioncongress.org">www.americanadoptioncongress.org</a>
Baby Moses Project	<a href="http://www.babymoses.org">www.babymoses.org</a>
Bastard Nation	<a href="http://www.bastards.org">www.bastards.org</a>
Garden of Angels, Inc.	<a href="http://www.gardenofangels.org">www.gardenofangels.org</a>
National Abandoned Infants Assistance Resource Center	<a href="http://garnet.berkeley.edu/~aiarc">garnet.berkeley.edu/~aiarc</a>
National Conference of State Legislatures	<a href="http://www.ncsl.org">www.ncsl.org</a>
Newborn Lifeline Network Inc.	<a href="http://www.newbornlifeline.com">www.newbornlifeline.com</a>

Individuals, organizations, and governments who are concerned about baby abandonment are currently considering both short-term and long-term solutions. The short-term goal is to save babies' lives. The long-term goal is to prevent situations from occurring in which babies' lives would be at risk. This may mean preventing pregnancy or providing services and counseling to women experiencing unwanted pregnancies to ensure that women have safe, positive options. Advocates acknowledge that safe haven laws are short-term solutions. These programs intervene when a parent considers abandoning a baby to provide a safe alternative. Despite their short-term scope, advocates hold, as Montana's Senate Bill 132 of 2001 states, that "this legislation is worthwhile if it saves even one infant's life." On the other hand, some experts who participated in the CWLA Baby Abandonment Symposium worry that states have passed safe haven laws without substantial research and with little knowledge of their probability for success. This concern embodies one paradox of safe haven laws: They seek to immediately address a problem, before the problem is truly understood. Long-term solutions will depend on a deeper understanding of baby abandonment.

In the flurry of legislative activity, there has not been a substantial response to the question of identifying and serving young women who are isolated and do not have access to resources or support in a time of crisis. The

**Figure 1. State Safe Haven Laws: Year of Passage**

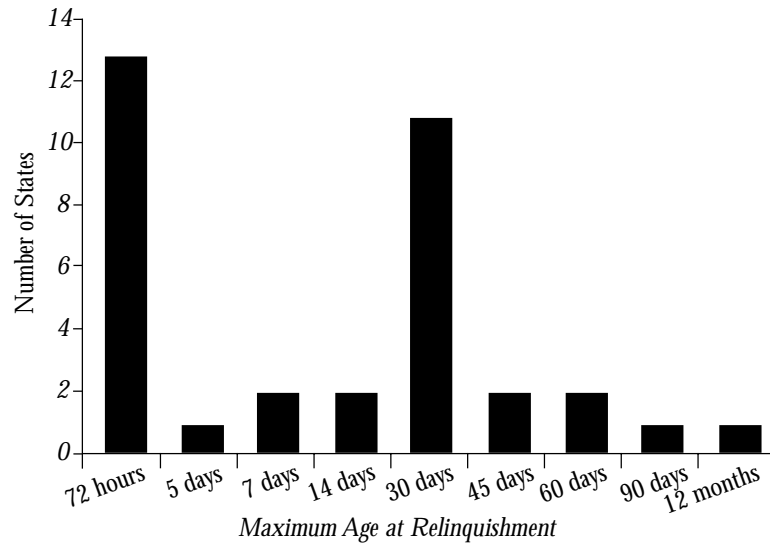
legislative response has generally not considered the even broader issues of pregnancy prevention and increased communication among youth, families, and communities. CWLA believes that these broader issues must be addressed as part of a lasting solution to the problem of baby abandonment; however, state safe haven laws have been the predominant response. Therefore, this monograph outlines the provisions of these laws as well as their limitations, noting that during the one to two years these laws have been in effect, there has been no convincing evidence that they have achieved their intended purpose.

## State Safe Haven Laws: Main Components

The most widespread response to baby abandonment has been state legislation. The state laws that have been passed share several elements in common, which (a) allow an individual to safely and anonymously relinquish an unharmed baby at a designated location without fear of violating the law, and (b) empower the safe haven to provide certain basic services to the child. The major characteristics of state safe haven laws described below.

### *Which Babies May Be Relinquished?*

Safe haven laws exist to protect babies who might otherwise be abandoned in unsafe places and experience harm. A presumption exists in the field that decisions to abandon are made spontaneously and in situations of crisis soon after the unexpected or unwanted birth of a baby. Therefore, each state law

**Figure 2. Maximum Age at Relinquishment**

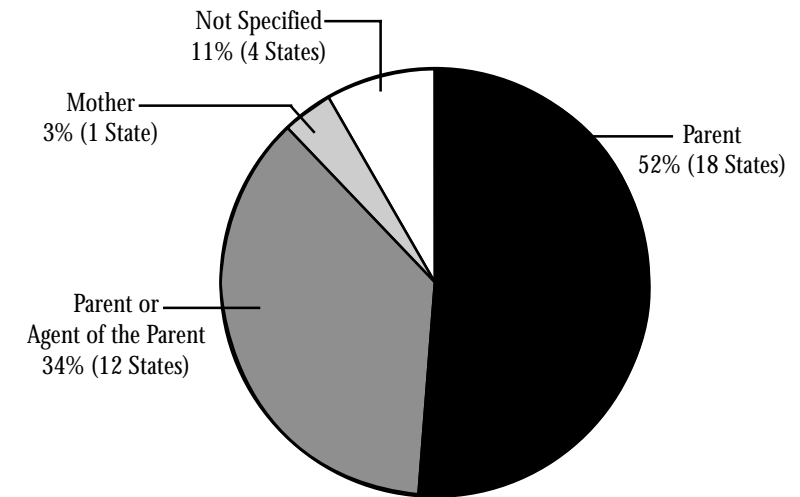
Note: Child Welfare League of America analysis of state safe haven laws.

restricts the age of babies who can be legally relinquished (see Figure 2). Safe havens are not intended to provide alternatives to those who have been parenting for an extended period of time. The most common maximum age for legal relinquishment is 72 hours.<sup>3</sup>

### **Who May Relinquish a Baby?**

Approximately half of safe haven laws specify that only a parent is authorized to relinquish a baby to a safe haven (see Figure 3). An additional 12 laws allow a parent or a person designated by the parent to act as relinquisher. One state stipulates that only a mother may relinquish a baby. Four states do not specify who may legally relinquish a baby, revealing one of the concerns that arises when an individual may turn over a baby without offering identifying information: It is impossible to guarantee that the relinquisher is the parent. Several laws acknowledge this difficulty. The laws in Iowa, Illinois, and Utah create a legal presumption that the relinquisher is the parent or agent of the parent.<sup>4</sup>

To ensure that a relinquisher understands the nature of the relinquishment, 22 states require that the relinquishment be voluntary, and 26 stipulate that the relinquisher must not express an intent to return for the child.

**Figure 3. Legal Relinquisher**

Note: Child Welfare League of America analysis of state safe haven laws.

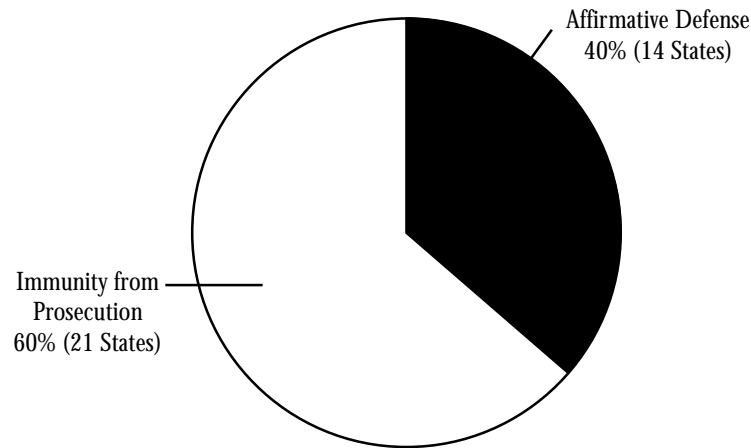
### **What Are the Incentives for a Person to Relinquish a Baby at a Safe Haven?**

#### **Anonymity**

Although opportunities for confidential adoption can be found within existing laws, placing a child for adoption is never a truly anonymous act. Some experts believe that parents abandon babies in part because they are afraid of the consequences if others discover they had a child. Therefore, a key component of state safe haven laws is a guarantee of anonymity. Although 12 state laws specifically provide anonymity for relinquishers, 2 deny anonymity by requiring safe havens to seek the identities of the babies' parents. Most safe havens either implicitly or explicitly provide an anonymous way for parents to relinquish their babies.

#### **Protection from Liability**

Although laws vary from state to state, abandonment of a child is illegal. It can be grounds for civil or criminal prosecution. To encourage parents who would abandon children to do so safely, every state safe haven law protects

**Figure 4. Protection from Liability**

Note: Child Welfare League of America analysis of state safe haven laws.

relinquishers from legal liability (see Figure 4). Fourteen states provide relinquishers with an affirmative defense to prosecution, whereas 21 make them immune from prosecution or stipulate that the act of safely relinquishing a child does not constitute abuse or neglect. Legally, these are two very different protections.

In one, relinquishment can lead to prosecution for abuse or neglect, but the relinquisher has a defense to that prosecution. In the other, a relinquisher will not be prosecuted for the act of relinquishment. In reality, it is unclear how much of a difference this distinction will make. After all, the identity of the vast majority of relinquishers will not be known. If a baby has been safely relinquished at a safe haven, prosecutors in states with an affirmative defense may choose not to try to find the relinquisher to prosecute him or her.

Although each state law differs in the specific protection it grants to relinquishers, each provides a legal alternative for parents considering abandonment. Each state stipulates that babies must be unharmed to be legally relinquished. If the safe haven staff suspects that a child is the victim of abuse or neglect, apart from the act of relinquishment, the case is typically treated as abandonment rather than relinquishment, and relinquishers can be prosecuted for their actions.

### ***Who Can Accept a Relinquished Baby?***

Each state designates people or entities that can act as safe havens and accept relinquished babies. The most common safe haven is a hospital, but designated safe havens include child welfare agencies, fire stations, and even a call to 911. Most states specify that the baby must be left in the possession of a person, although Nevada allows a parent to leave a baby in a safe place at a safe haven and immediately notify a staff member at the safe haven. New York allows a relinquisher to leave a baby with an appropriate person or in a suitable location, as long as the relinquisher promptly notifies an appropriate person.

### ***What Are the Responsibilities of a Safe Haven?***

Twenty-eight state laws stipulate that the safe haven must perform any act necessary to protect the health and safety of a relinquished baby. Only nine states, however, provide for reimbursement of costs to the safe haven, and only six states specify that relinquished babies are eligible for Medicaid or health assistance.

The safe haven must also promptly notify the mandated child protection agency. This entity will take possession of the child from the safe haven.

### ***Is the Safe Haven Protected from Liability for Its Actions?***

Twenty-nine state laws specify that safe havens and their employees are immune from civil or criminal liability for any acts or omissions made in good faith, pursuant to the safe haven law.

## **State Safe Haven Laws: Additional Provisions**

Beyond these basic provisions, state safe haven laws vary extensively in the additional provisions they make. Most of these provisions address a series of concerns that have been raised regarding the creation of safe havens: concerns with the rights of relinquishing parents, children's rights, the care of the child and placement for adoption, fathers' rights, the efficacy of safe havens, and the search for long-term solutions to baby abandonment.

### ***Rights of the Relinquishing Parent***

Many advocates are concerned that the procedures established in safe haven laws do not protect the rights of relinquishing parents. Will relinquishers truly understand the permanence of their decision? Will they have an option to reclaim their children if they reconsider their choice? Should they be provided with counseling before they make this life-changing decision? Some state laws include provisions to address these concerns.

### **Provide Information to Relinquisher**

Approximately half of the state laws require safe haven personnel to offer information to the relinquisher. The content varies by state, but includes information about the safe haven program, the legal repercussions of relinquishment, contact information for adoption agencies and social service providers, and information about parental rights and how to seek reunification with a child. Seven states specify that information about counseling should be provided to the parent, and H.R. 3839 goes so far as to state that “every effort should be made, without risking the safe placement of the baby, to...provide counseling information to those parent(s).”

### **Procedure to Reclaim Custody**

Sixteen states identify procedures for parents to reclaim custody of their children. These procedures vary in their level of detail. The option to reclaim parental rights often has a time limit, with several state laws specifying that claims will not be accepted after parental rights have been terminated. Most procedures require the parent to prove maternity or paternity with a blood or tissue test, and in no case is the parent automatically given custody of the child. The court or child welfare agency must make a custody decision based on the child’s best interests.

### ***Children’s Rights***

Many child welfare and adoption experts have expressed concern about the anonymity guaranteed to relinquishing parents. This anonymity deprives children of any information regarding their biological identities. Under existing adoption laws, adopted children are provided with some information about their background and identity, as well as information about their birthparents. Many adoption advocates argue that this personal information is important to the healthy development of adopted children. Safe haven laws that protect the anonymity of parents deprive children of any information about their biological and ethnic identities or family medical histories. In an attempt to provide relinquished children with information about themselves, some states try to collect confidential information from relinquishers.

### **Medical Information**

Twenty state laws provide procedures for safe haven personnel to request medical history information from relinquishers. Some states even require safe haven personnel to give relinquishers medical history forms with addressed, stamped envelopes so parents can provide the information at a later date.

### **Identifying Information**

In 10 states, safe haven staff may ask relinquishers for identifying information, and in 3 states, they must seek this information. On the other hand, five states prohibit safe haven staff from asking for identifying information. Only one state, Montana, requires that safe haven personnel ask the relinquisher if the child has any Native American tribal affiliation.

In no state is the relinquisher required to provide this information. In fact, even in some of the states that seek information, the relinquisher must be informed that providing the information is voluntary. It is unclear, therefore, how much information will actually be collected, and it is quite likely that relinquished children will have no knowledge of their ethnic heritage, medical history, or family identity.

### ***Care for the Child/Placement for Adoption***

Many experts have expressed concerns about the ultimate care of a child who has been relinquished. Each state has its own policies and procedures for caring for an abandoned child. These procedures specify who shall take care, control, and custody of the child, how parental rights shall be terminated, and how the child shall be placed for adoption. It is important to ensure that similar procedures are in place to care for relinquished babies.

### **Provision for the Care, Control, and Custody of the Child**

Thirty-two states make some statement about the care, control, and custody of relinquished children. Of them, seven simply provide that the safe haven may take physical custody of the child after relinquishment. The remaining 25 offer varying levels of detail in their provisions for the custody of the child, but most stipulate that the appropriate department or agency may assume care, control, and custody of the child when notified of the relinquishment by the safe haven.

### **Provision for Court Proceedings**

Twenty-seven states make specific provision for court proceedings. Some states set timelines for shelter care hearings and termination of parental rights (TPR) proceedings. Some provide for TPR by stipulating that a relinquished child will be considered abandoned for legal purposes, whereas others state that relinquishment shall be grounds for TPR. Thirteen states stipulate that a search of missing child registries must be conducted prior to TPR to ensure that the relinquished child has not been reported missing. Most of these laws set time frames for the various court proceedings. Several require the child to be placed with a potential adoptive parent as soon as possible.

### Potential Conflicts with Existing Laws

Unfortunately, many experts fear that the anonymity guaranteed explicitly or implicitly by safe haven laws will complicate, if not conflict with, existing law on TPR. Although adoption law differs from state to state, most states require that a diligent search for the parents be performed prior to the termination of parental rights. The federal Child Abuse Prevention and Treatment Act and the Adoption and Safe Families Act require such searches. These searches clearly contradict the promise of anonymity in most state safe haven laws. Finally, the Indian Child Welfare Act gives jurisdiction to American Indian tribes in cases of American Indian child custody proceedings. Anonymity of relinquishers could violate tribal sovereignty if the national identity of a relinquished baby is not known.

Some states have attempted to respond to these contradictions with various provisions.

- Three state laws hold that it is not necessary to search for the relinquishing parent.
- Five state laws stipulate that it is not necessary to notify parents of the TPR proceedings.
- Eight state laws remove any requirement to attempt to reunify the child and parents.
- Four state laws say that states are not required to search for or give precedence to family members in permanency planning.
- One state law orders that a reasonable effort must be made to determine whether a child is of Native American heritage.

Whether these provisions would stand up to appeal if challenged under existing adoption law is unclear. Furthermore, these provisions raise the question of fathers' rights.

### *Fathers' Rights*

Due process requires that a diligent search be made for the child's birthfather before a child is placed for adoption. Many experts have expressed concern that the relinquisher's anonymity endangers or eliminates the rights of fathers who may not even know they have children. Therefore, some states have included procedures to safeguard fathers' rights in safe haven laws.

- **Search Putative Father Registries:** Six states require a search of a putative father registry prior to initiation of TPR proceedings. If any men in the registry could be the relinquished child's father, they must be notified of the proceedings.

- **Publish Notice:** Nine state laws require the appropriate department to publish notice of relinquishments in local newspapers. These notices contain identifying information about the relinquished baby and information about how to assert a claim of parental rights.
- **Conduct a Reasonable Search:** Three states, all of which require published notice, also require a reasonable search for the nonrelinquishing parent.

### *Efficacy of Safe Havens—Public Information Campaigns*

For safe havens to be effective, people must know that they exist. To increase public awareness of safe havens, 15 states order the creation and promulgation of public information campaigns. The states differ in the level of detail they give regarding these campaigns, but most stipulate the creation of toll-free hotlines, written educational materials, and/or public service announcements. Only three states, however, provide funding for these campaigns. New Jersey allocated \$500,000 to the Department of Human Services for its public information campaign in its original law, whereas California allocated \$500,000 in February 2002, nearly 17 months after the safe haven law was originally enacted. Oregon did not allocate funds, but empowered the Department of Human Services to accept gifts, grants, or contributions from any source to carry out its campaign.

### *Long-Term Solutions*

As stated above, many observers believe safe havens are short-term solutions. They may provide an alternative to unsafe abandonment, but they do nothing to prevent abandonment from occurring in the first place.

### **Repeal Dates**

Four state laws explicitly address the short-term nature of safe havens by specifying dates on which the laws will be repealed.

### **Collect Data on Relinquishment**

Eight states have begun collecting information. These programs differ in their level of detail. Several only collect data on the number of babies relinquished. One state, however, requires the collection of data on the number of babies relinquished, their approximate age, the number of medical questionnaires completed, the number of parents reclaiming children, the outcome of placement proceedings, information on whether those who reclaim children are also relinquishers, and the number of relinquished babies who show signs of abuse or neglect. Any attempt to better understand relinquishment will aid in

the development of prevention strategies and long-term solutions to the problem of baby abandonment.

## Federal Legislation

Although the predominant response to baby abandonment has been at the state level, several federal bills have been introduced, with a focus on research and funding. In April 2000, H.R. 465, introduced by Representative Nancy Johnson (R-CT), was passed. This nonbinding resolution proposed that local, state, and federal governments should disseminate statistics on the number of babies abandoned in public places. House resolutions, however, express facts, principles, and opinions only, and when passed, as in the case of H.R. 465, are not laws. As a result, Representative Sheila Jackson-Lee (D-TX) introduced H.R. 4222, the Baby Abandonment Prevention Act of 2000. The bill, which did not pass, would have created a task force in the Bureau of Justice Statistics to gather information about, study, and report to Congress regarding incidents of baby abandonment. Jackson-Lee reintroduced the bill as H.R. 71 in the 107th Congress. In March 2002, an amendment was added to the reauthorization of the Abandoned Infants Assistance Act, part of Keeping Children and Families Safe, to create an evaluation project to collect information on baby abandonment. The project would give the U.S. Department of Health and Human Services a mandate to estimate the annual number of infants and young children relinquished, abandoned, or found dead in the United States and the characteristics of parents who have abandoned an infant within one year of the infant's birth. This bill is still pending.

Several bills have also been introduced to provide funding to state safe haven programs. H.R. 2018, introduced by Representative Melissa Hart (R-PA), would authorize states to use Temporary Aid for Needy Families funds to support promotion of state safe haven programs. Further, in January 2002, the Promoting Safe and Stable Families Act was signed into law, with an amendment by Representative Phil English (R-PA) that adds infant safe haven programs to the list of allowable funding under the family preservation program.

# Issues and Concerns

Although some new state laws have assuaged concerns about safe haven laws, many concerns persist. At their foundation, many of these are concerns about the lack of a comprehensive solution to a complex problem and about the interface between safe havens and current child welfare and child protection services.

## Overarching Concerns

In the flurry of activity surrounding baby abandonment, little has been done to address two major concerns that were raised at the CWLA Baby Abandonment Symposium by experts and advocates.

### *Lack of a Clear Definition of Baby Abandonment*

The confusion surrounding the distinction between various categories of abandoned babies persists. Some of the recent state laws have designated relinquished babies as abandoned, whereas others have created new legal categories for them. Regardless of this legal definition, however, the word *abandoned* continues to be used in common parlance. Furthermore, each state law defines the ages of babies eligible for relinquishment differently. Each state also has a unique definition for *child abandonment*, including age of the child, length of time left alone, and amount of disinterest shown by the parent. These definitions do not necessarily correspond with definitions for relinquishment.

### *Lack of Information*

Researchers are no closer to understanding the scope or nature of baby abandonment today than they were two years ago. There are still no mechanisms for collecting data consistently nationwide, and only eight state laws require the collection of data regarding relinquishment.

## Concerns with the Legislative Response

The predominant response to baby abandonment has been legislative, and the new state laws have raised a whole new set of concerns. These concerns relate to the content of the legislation as well as the use of legislation to address the problem.

### *Legislation as the Sole Response to the Problem*

Many advocates fear that state safe haven laws will be the only response to the problem of baby abandonment, rather than one component of a much larger reform effort. Safe havens are a short-term solution. Long-term solutions would address the core causes of abandonment. They would promote education, awareness, and prevention. To solve the problem of baby abandonment in the long term, it is necessary to prevent unwanted pregnancies. Society must provide supportive services and counseling to women experiencing unwanted pregnancies to empower decisionmaking that will provide the best resolution for the parents and child. It is important to view existing safe havens as a temporary stopgap to prevent harm to children while a deeper understanding is gained and more comprehensive responses are developed.

### *Creation of a Parallel System*

State safe haven laws create a new program with a new set of rules that in many cases parallels the existing child welfare and child protection systems. States have taken various measures to integrate safe haven programs into the existing systems, but many child welfare experts are alarmed by the parallel, separate system that some safe haven laws have created. This is a system that provides an exception to widely accepted adoption laws. It creates a new category for relinquished children, and changes the rules for TPR because of its promise of anonymity. Although the child welfare system has been moving away from anonymous relinquishment for the past several decades, these new programs circumvent adoption law to care for a special category of children.

The advocates of safe haven laws would likely respond that the complexity created by safe havens is worthwhile if it saves even one child's life. For example, Delaware's House Bill 120 (2001) states that

*The purpose of this Act is not to circumvent the responsible action of parent(s) who adhere to the current process of placing the baby for adoption, but to prevent the unnecessary risk of harm to or death of that baby by desperate parent(s) who would otherwise abandon or cause the death of that baby.*

Illinois' Public Act 92-0408 (2001) echoes this sentiment by acknowledging that "establishing an adoption plan is preferable to relinquishing a child using the procedures outlined in this Act, but to reduce the chance of injury to a newborn infant, this Act provides a safer alternative." It is interesting to note that the Delaware and Illinois laws were the 33rd and 35th laws to be passed. It is likely that as time has elapsed, advocates of safe havens have begun to grapple with some of the more complex issues raised by earlier laws.

Not only do the separate programs created by state safe haven laws increase complexity, many are also concerned that states will fail to identify and correct gaps in the current systems. Parents who abandon their babies in unsafe places have fallen through the cracks in a web of social service systems. Rather than creating another system to try to catch them, it would be useful in the long-term to identify those cracks and enhance the ability of current systems to care for these families.

### *Rights of Children and Parents*

As discussed above, few state laws provide completely for the rights of the child, the relinquishing parent, and the nonrelinquishing parent. Safe haven laws create a group of children who have no information on their biological identities, fathers who may not be consulted prior to TPR, and parents who may permanently relinquish a child without counseling, legal information, or even the requirement to sign a paper. The potential for harm to each of these participants makes safe haven laws vulnerable to appeal.

### *Conflicts with Other Laws*

Experts have expressed alarm at the potential conflicts between state safe haven laws that promise anonymity and adoption laws that require the notification of parents prior to TPR. Although several state safe haven laws stipulate exceptions to these rules, the majority of laws do not. This could lead to conflicting demands on state child welfare agencies and potential legal battles, which could delay permanent placement of children in caring homes.

### *Effectiveness*

It is unclear whether state safe haven laws will be effective at preventing harm to babies. Because safe havens have only been in existence for two years, it is unrealistic to expect complete evaluations at this point. Only one-quarter of state laws, however, require studies of their effectiveness. We will never know if the laws have the desired effect without collecting information.

Safe havens could prove ineffective in several ways. First, they could simply not be used. Second, they could be used for the wrong reasons. A mother who wants to place her child for adoption without notifying the father could relinquish her baby at a safe haven. Safe havens would therefore be receiving relinquished children, but would not be serving the target population of parents who would otherwise harm their babies. Neither of these potential outcomes would address the problem of baby abandonment. Furthermore, babies could be relinquished but face legal hurdles to adoption as a result of potential conflicts with existing adoption laws. Therefore, evaluation is necessary.

Some anecdotal evidence suggests that safe havens have had mixed results. The National Conference of State Legislatures conducted an informal survey of the first 16 states to pass laws. Of these, only six reported having babies relinquished at safe havens (Bernstein, 2001). Unfortunately, babies continued to be unsafely abandoned in these states. In Louisiana, for example, four babies were illegally abandoned; three died. In Florida, officials counted 11 illegal abandonments and four deaths. In California, although three infants were illegally abandoned, one was left at a safe haven. Connecticut had one baby relinquished at a safe haven and one illegal abandonment. New Jersey, the only state that had money allocated to publicize its program at the time, had six babies left at safe havens, and found only two illegally abandoned (Bernstein, 2001).

Some of the most troubling evidence regarding the implementation of a safe haven law comes from Michigan, where the law appears to be having its intended effect on abandonment—12 babies have been relinquished at Michigan hospitals since the law took effect January 1, 2001 (Brasier, 2002). Half of those babies, however, have not been placed in adoptive homes due to constitutional concerns. Oakland County Circuit Judge Patrick Brennan has refused to terminate the parental rights of the fathers in the three cases of relinquished babies that have come before him. Although Michigan's law requires publication of notice regarding relinquishment and the upcoming TPR in local newspapers, Judge Brennan said, "A parent's right to parent their child is one of the most sacred rights we have. I don't think there is due process of law here. I have some concerns about whether fathers have sufficient notice" (as cited in Brasier, 2002). The case of Michigan reminds advocates that state safe haven laws will not be truly effective unless they can provide safe, nurturing, and permanent options for babies.

## Recommendations

Baby abandonment is a serious issue when considered on a case-by-case basis, but it must also be considered in the context of unwanted pregnancy, resource allocation and availability, and sexuality education. CWLA believes that any community facing the issue of baby abandonment should seek comprehensive, holistic, and integrated responses. Although this monograph has analyzed safe haven laws, the core issue is not safe havens, it is baby abandonment, which fits within this broader context.

The following recommendations identify the main issues that must be addressed in a comprehensive response to baby abandonment—research, prevention, existing resources, and legislation—but they do not constitute a specific plan of action for communities, states, or the nation. Needs, resources, and capabilities vary on the local, state, and national levels. Each community must examine its own capacity to decide how best to address the problem of baby abandonment and determine which entities can best accomplish its goals.

### Research and Data

It will never be easy to collect information on baby abandonment, but we need to try. CWLA recommends that data be collected on local, state, and national levels and that solid analyses be performed. A national entity (such as the U.S. Department of Health and Human Services) should be designated to collect and aggregate data, as well as to provide guidance as communities and states gather information.

CWLA recommends that states collect quantitative data on topics including the number and characteristics of babies who are unsafely abandoned on a local and state level, and the number and characteristics of relinquished babies. Furthermore, CWLA recommends that states collect the following qualitative data, insofar as state laws and individual circumstances will allow.

*Unsafely Abandoned Babies*

- The situation or circumstances within which abandonments occur,
- Demographic information on the individuals who unsafely abandon babies, and
- Information on parents who contemplate abandonment.

*Relinquished Babies*

- Information on the individuals who relinquish babies at safe havens,
- Amount of identifying and medical information collected at safe havens, and
- Treatment and care of relinquished babies in the short term and long term (including TPR and adoption).

For these data to be useful, it will be necessary to conduct research and evaluations on the state and national levels. This research must address the core issue of identifying an at-risk population as well as evaluate the efficacy of state safe haven laws. CWLA recommends that states and/or independent organizations conduct research on the collected data.

It will not be possible to gather all of this information, but communities, states, and the nation are encouraged to strategically determine what information can be collected and to implement processes to collect valid information.

**Prevention**

Long-term solutions to the problem of baby abandonment require efforts at prevention. Steps must be taken to prevent unwanted pregnancies, provide assistance to parents in crisis, and increase communication within families and communities.

***Sexuality Education***

Baby abandonment presumably results from unwanted pregnancy. To prevent abandonment, it is therefore ultimately necessary to educate individuals about sexuality. CWLA (1998) supports age-appropriate comprehensive sexuality education, and recommends that schools and communities provide comprehensive sexuality education to all youth and families. As U.S. Surgeon General David Satcher (2001) observed, it is important to “provide access to education about sexual health and responsible sexual behav-

ior that is thorough, wide-ranging, begins early, and continues throughout the lifespan.” CWLA supports legislative efforts to fund comprehensive sexuality education and provide accurate, research-based information about effective programming.

***Responding to Unwanted Pregnancy***

Individuals experiencing unwanted pregnancies must receive support and services. Communities should examine their capacity to provide the range of supports and services needed by individuals experiencing unwanted pregnancies. These services must also be publicized; people cannot use services that they do not know about. Finally, education efforts should strive to increase communication among youth, families, and communities. Increased communication may minimize the shame and secrecy associated with an unwanted pregnancy and make young people more likely to take advantage of supports and services in their families and communities.

**Existing Resources**

A multitude of social services, programs, and resources are available to educate youth, serve parents in crisis, and protect children from harm. Many of these resources could be used to prevent and respond to baby abandonment. In some cases, they simply need to be publicized. In other cases, programs may need to be enhanced or altered to respond to baby abandonment. In any case, it is appropriate to study current resources and consider the possibility of enhancing those resources to target baby abandonment. Howard Davidson (2000), Director of the American Bar Association Center on Children and the Law, advocates this:

*What is needed is the much more difficult work of bringing together teen pregnancy, youth services, child welfare, medical and mental health experts, and young parents themselves, to explore gaps in accessible public and private services to the most isolated, confused, and vulnerable of potential mothers and fathers—and then funding those services adequately.*

CWLA recommends that any entity concerned with baby abandonment study its current resources, systems, and services to determine whether it has the authority and ability to address the problem under the existing laws, regulations, policies, and funding levels. This will include analyzing the successes of current systems, gaps in the systems, and potential duplication of services among systems.

CWLA recommends that communities and states consider the possibility of increasing the capacity of existing resources and systems to respond to baby abandonment. Enhancements could include:

- Creating public awareness of existing resources;
- Sharing information across systems so agency staff know about resources;
- Educating agency staff, parents, and communities about baby abandonment and how they can prevent and/or respond to it;
- Examining possible consolidation (i.e., if multiple crisis hotlines provide similar services, they could be consolidated into one hotline and aggressively marketed);
- Considering the expansion of programs such as sexuality education, youth development, home visitation, respite care, and parent education programs to serve those potentially at risk for abandonment;
- Closing the gaps between or within services; and
- Dedicating more resources to prevention efforts.

## Legislation: State Laws

CWLA recommends that if safe haven laws are implemented, they must serve as one piece of a comprehensive response to baby abandonment that also integrates research and prevention. CWLA recommends that any state contemplating passage of a safe haven law as part of its strategy to respond to baby abandonment carefully consider the limitations of the law as well as how it fits with the current resources, laws, and regulations in the state.

If a state does choose to pass safe haven legislation, CWLA recommends that it create an integrated statutory framework rather than a parallel system that is separate from current child welfare and adoption systems. Furthermore, it should protect the rights of all involved parties.

### *Guiding Principles for Safe Haven Laws*

- Before drafting or passing safe haven legislation, states should assess existing resources. States should consider whether current systems have the authority and capacity within existing statutory frameworks to address the issue without the passage of new legislation that might create a duplicate, parallel system. States are strongly encouraged to examine the

possibility of enhancing or publicizing existing services rather than creating new systems.

- States should consider potential conflicts with existing federal and state laws such as the Child Abuse Prevention and Treatment Act, the Adoption and Safe Families Act, and the Indian Child Welfare Act.
- States should remember the rights of all involved parties, including children, relinquishing parents, and nonrelinquishing parents.
- Safe haven laws should be used as stepping stones to long-term solutions.

### *Characteristics of Legislation*

Although it may be difficult to integrate all of the aspects of safe haven laws that have been discussed here, if states choose to draft or pass safe haven legislation, they should consider the following provisions:

- Relinquishments should be revocable with a set time limit of at least five days, not to exceed the maximum time necessary to protect the permanency rights of the child. These time limits should be consistent with the state's existing child protection statutes.
- State laws should include procedures to respond to abuse or neglect of a relinquished child (apart from the act of relinquishment).
- State laws should allow relinquishers to voluntarily complete a nonidentifying statement of family medical and genetic history. The relinquisher should be advised that completion of this nonidentifying statement is in the best interest of the child, and that the parents may add information to the child's medical/genetic history in the future.
- The Putative Fathers Registry should be reviewed and/or notice of relinquishment should be publicized prior to TPR. A safe haven relinquishment by one parent should not terminate the rights of another legal or birthparent.
- States should ensure that guidelines are in place to provide for the care and custody of relinquished children, including appointment of a provisional custodian, TPR, and finalization of adoption placement in a timely manner.
- If the custodian is not the Department of Social Services, medical benefits should be extended to the child.

- Data regarding the effect of the law should be collected.
- Safe haven laws should allocate funding for implementation.
- A public information program, including a 24-hour toll-free hotline and written pamphlets, should be available with information on prenatal care, adoption, safe havens, and the consequences of child endangerment.
- Sunset clauses should be included in safe haven legislation to ensure that laws are evaluated.

## Conclusion

Baby abandonment incorporates medical, psychological, economic, and legal components. It requires comprehensive, interdisciplinary, integrated responses. Recent media coverage of the issue has raised awareness and created an environment that is conducive to action. Governments, child welfare agencies, and concerned individuals can take advantage of this atmosphere to work toward lasting solutions, but they should also make the most of the opportunity to consider the broader range of issues facing young people, including sexuality education, unwanted pregnancy, and access to social supports and services.

Safe haven laws may be part of short-term strategies to respond to the problem of baby abandonment, but there are important limiting factors that states must carefully consider in deciding whether and how to create safe haven programs. Existing resources must be assessed to determine whether the creation of safe havens is an appropriate response to baby abandonment. In drafting safe haven laws, states should strive for integrated statutory frameworks that protect the rights of both parents and children.

Long-term solutions will require the identification of root causes and the at-risk population to facilitate the development of preventive measures and crisis services. Gaps in current systems must be recognized and corrected to use existing resources well. Research and services to prevent the unsafe abandonment of babies will require adequate funding. Long-term solutions will require governments, social service agencies, and concerned individuals to be committed to prevention and education. Protecting children from harm as a result of abandonment is an important and necessary goal, but it is not a sufficient response to the problem. Ultimately, unwanted pregnancies must be prevented, and parents must be provided with the supports and services to make safe and beneficial decisions for themselves and their children.

# For More Information

For more information about baby abandonment, the survey questions and results from CWLA's Infant Abandonment Survey, and an updated list of enacted state safe haven laws, please visit CWLA's website on baby abandonment at <http://www.cwla.org/programs/baby/>, e-mail [babyabandonment@cwla.org](mailto:babyabandonment@cwla.org) or contact:

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# Endnotes

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1. The U.S. Department of Health and Human Services (1998, 1999) defines three categories of infants, younger than 12 months old, who are not in the custody of their parents: (1) boarder babies: infants who remain in the hospital beyond the date of medical discharge; (2) abandoned babies: infants who have not been medically discharged but who are unlikely to leave the hospital in the custody of their birthparents (the child welfare agency and/or the birthparent may make this decision); and (3) discarded babies: living infants found in a public or other inappropriate place without care or supervision. If infant was found deceased, the cause of death was related to the act of abandonment.
2. Definition agreed on by participants in the Baby Abandonment Symposium hosted by the Child Welfare League of America in October 2000.
3. Two states have amended their original laws and increased the maximum age of legal relinquishment: Indiana increased the maximum from 30 days to 45 days, and Texas increased the maximum from 30 days to 60 days.
4. This presumption allows legal proceedings to commence, terminating parental rights and protecting the safe haven from liability, even if there is no concrete proof that the relinquisher was the parent. The presumption is rebuttable, meaning that a parent can challenge it in court if a person who was not authorized by the parent relinquished the child.

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