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Unintended Consequences:

'Safe Haven' Laws are Causing Problems, Not Solving Them



ADOPTION NATION EDUCATION INITIATIVE

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“Safe Haven” Laws Are Causing Problems, Not Solving Themⁱ

Executive Summary

In response to unsafe infant abandonments that place children at risk of harm or death, 42 states in the last three years have enacted so-called “safe haven” laws allowing legal, anonymous abandonment of newborns at designated sites. Because legislators have acted so quickly, usually in response to one or more well-publicized unsafe abandonments in their states, they typically have not studied the causes of abandonment before enacting these laws. Moreover, since few states are collecting any data to evaluate the efficacy of anonymous abandonment – or trying to determine if other alternatives might be effective – there is no evidence demonstrating that these laws solve the problem at which they are aimed.

In fact, available information suggests few babies are left at safe havens in states that provide them. Even when they have this option, girls and women continue to leave newborns in bathrooms, trash bins and parking lots. Furthermore, experts question whether the people using safe havens would otherwise have abandoned their babies unsafely. And there are indications these new laws lead to unintended consequences, including:

- encouraging women to conceal pregnancies, then abandon infants who otherwise would have been placed in adoptions through established legal procedures or would have been raised by biological parents or relatives;
- creating the opportunity for upset family members, disgruntled boyfriends, or others who have no legal rights, to abandon babies without the birth mothers’ consent;
- inducing abandonment by women who otherwise would not have done so because it seems “easier” than receiving parenting counseling or making an adoption plan;
- depriving biological fathers of their legal right to care for their sons or daughters even if they have the desire and personal resources to do so;
- ensuring that the children who are abandoned can never learn their genealogical or medical histories, even when the consequences for their health are dire;
- precluding the possibility of personal contact and/or the exchange of medical information between birth parents and children in the future; and
- sending a signal, especially to young people, that they do not have to assume responsibility for their actions and that deserting one’s children is acceptable.

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Saving babies' lives is a critically important, immediate objective. But if the ultimate goal is to prevent unsafe abandonment, which it should be, then any solution also must address the problem's underlying causes – which current “safe haven” laws do not even pretend to do. It is clear that a lack of anonymity and a fear of prosecution (the two issues these laws focus upon) do not motivate women to leave their infants in dangerous circumstances – denial and desperation do. Moreover, anonymity ultimately undermines the legal interests of the children and their birth parents, while creating a host of unintended, negative consequences such as those noted above. Any policy aimed at solving the problem of unsafe abandonments should therefore incorporate the following elements, which address the current laws' deficiencies and offer at-risk women and children more secure futures:

- conducting additional research on the causes of infant abandonment to better tailor an effective policy response;
- educating students, teachers, parents, doctors, counselors and clergy about how to identify concealed pregnancies, and how to help affected teenagers and women;
- providing confidential counseling to at-risk pregnant teens and women about prenatal care and safe alternatives for their babies, such as care by other biological family members or adoption, when they cannot or do not want to parent; and
- making educational materials and support services available that would help mothers, fathers, and other biological relatives raise infants when they wish to do so.

Additionally, infant abandonment laws are not informed by (and often contradict) the best practices of existing child welfare and adoption laws, which have been shown to benefit everyone concerned – especially children. So, at a minimum, statutes dealing with abandonment should contain provisions that:

- ensure that only people with explicit permission and legal rights are leaving a child;
- offer counseling and post-natal care to women who bring infants to designated sites and provide information to them about their options, including parenting by family members and adoption through established legal procedures;
- require that strong efforts be made to obtain information about the child, including basic medical and genetic family histories, along with contact information for emergency use;
- create mechanisms for notifying birth fathers about abandonments and provide opportunities for them to assert their legal rights; and
- allow birth parents to regain custody of their infants within a specified time period and, if they do not, quickly terminate parental rights so that adoption can be expedited.

The bottom line is that anonymous legal abandonment is contrary to our cultural ethics and well-conceived public policies that promote the safety and welfare of newborns and their mothers. To effectively do so for the long term, states must act well before abandonment to prevent unintended pregnancies, ensure that pregnant women receive prenatal care and give birth in medical settings, and provide confidential permanency-planning counseling.

Background

Reports about babies left in unsafe circumstances, some of them found dead, have prompted policymakers to enact laws intended to prevent such abandonments. Typically, unsafe abandonment refers to mothers leaving their newborns in places where they may not be found immediately, and may suffer harm or death from lack of care. “Safe haven” laws are intended to prevent such occurrences by guaranteeing parents anonymity and immunity from prosecution if they leave their infants at designated sites, primarily hospitals, fire houses, and police stations.¹

Unfortunately, in attempting to address a critical and emotionally powerful issue quickly, public officials have conducted little research before legalizing abandonment. Neither federal nor state governments have systematically tracked the number of infants abandoned in public places to determine the extent of the problem. Similarly, in order to tailor effective

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tive policies to address the problem, they have not adequately considered what causes women to desert their children. Following Texas' lead in 1999, 41 additional states have enacted "safe haven" laws, which permit anonymous legal abandonment.² In other words, in less than three years, 84 percent of the states have enacted such laws, and all but one of the remainder – Vermont – are considering or have considered such laws in their most recent legislative sessions.³

A Lack of Comprehensive, Accurate Information

Though increased coverage by the media has led many policymakers and other Americans to perceive the problem of discarded infants as a recent trend, reports of baby abandonment and neonaticide date back centuries. From 1861-1871 in New York State, newspapers reported that parents abandoned more than 900 infants,⁴ far exceeding current rates in any state. Despite the longstanding nature of the problem, however, comprehensive and accurate data on the number of newborns abandoned in public places does not exist. Because states are not required by the federal government to keep track of such information, few do.⁵ Even among states that have enacted safe haven statutes, few require information collection, research on infant abandonment or program evaluation.

Lacking official state statistics, the Department of Health and Human Services conducted a database search of news stories about unsafe abandonment, finding 65 cases of what it refers to as "discarded babies" in 1992 (8 of whom were deceased) and 105 in 1997 (33 of whom were deceased).⁶ The Department noted that these numbers might not have reflected an actual increase, but only greater media attention to the subject.⁷ The Department of Justice, which compiles homicide statistics, found that 265 children under the age of one were murdered in 2000 (it does not provide a more detailed age breakdown by days and months of those infants),⁸ and the Centers for Disease Control estimates that of all known probable infant homicides, 8 percent occur on the day of birth.⁹ Another measure of unsafe abandonment is neonaticide, the murder of newborns on their first day of life, which includes abandonments that result in death. Between 1983 and 1991, 139 neonaticides were recorded.¹⁰

To put the prevalence of public abandonments in context, thousands of infants are "abandoned" (or are unlikely to leave the hospital in the custody of their parents) safely with identifying information every year in hospitals.¹¹ The number has increased by more than 40 percent in 7 years, from 21,600 in 1991 to 30,800 in 1998, without the "incentives" – anonymity and prosecutorial immunity – that safe haven laws offer. Moreover, for the estimated 105 unsafely deserted infants in 1997, there were nearly 4 million births.¹² Over 1.2 million of those births were to single women, and nearly 1.4 million to 16-24 year olds, the categories most likely to abandon newborns.¹³

1997 BIRTHS AND ABANDONMENTS	
Total Births	3,880,894
Births to Unmarried Women	1,257,444
Births to 16-24 Year Olds	1,398,928
Infants Safely Abandoned in Hospitals	30,800
Infanticide of Children Less than 1 Year Old	278
Infants Unsafely Abandoned in Public Places	105

Trying to Fix a Problem without Understanding its Causes

Just as federal and state policymakers have not recorded the number of infants left in public places, most have not examined the causes of unsafe abandonment in order to tailor an effective response.¹⁴ The premise of safe haven laws is that the women who unsafely desert their newborns will not do so if they are promised anonymity and no criminal punishment.

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There is no research to confirm this hypothesis; indeed, research shows that the affected population – especially teens experiencing unplanned pregnancy – are so distraught or in denial that they act in panic rather than with the thoughtfulness required to take a newborn to a designated site. Furthermore, prosecutors rarely, if ever, bring criminal charges against parents who leave their infants in any type of safe place regardless of whether a safe haven law exists. In fact, babies have been abandoned for decades in hospitals – along with medical, genealogical and identifying information – with few, if any, prosecutions of the mothers.¹⁵

While there is little social science research specifically about mothers who abandon their newborn infants unsafely, relevant anecdotal and empirical information is available. The accounts of family members, mental-health professionals, and news stories provide a starting point – typically describing unmarried teenagers who deny or conceal their pregnancies, then give birth alone and in non-hospital settings.

The most relevant social science research related to abandoning mothers is of women who commit neonaticide, including deaths resulting from abandonment. A few recent studies analyze the patterns and causes of neonaticide related to ignored pregnancies and find some common characteristics among the affected women.¹⁶ The researchers found that mothers who commit neonaticide, many by abandonment, are likely to be young adults.¹⁷ Other commonalities include single status, lack of financial resources, failure to seek medical care during pregnancy, and experiencing birth alone and often at home.¹⁸ Additionally, the infant is usually the mother's first child and the father usually does not know of the pregnancy or is not involved if he does. There are, of course, some cases of women who abandon their newborns who do not fit this demographic profile, including women in their 20s and 30s.

Neonaticide experts find that mothers who abandon their infants generally do not acknowledge or disclose their pregnancy to others.¹⁹ They often are “overwhelmed by the possibility of being pregnant, let alone dealing with the prospect of choosing a course for resolving the pregnancy” and are “paralyzed and unable to craft a meaningful response to their pregnancies.”²⁰ Though they often live with their families, typically the pregnancy is not addressed and no one intervenes. Family dynamics are characterized by emotional neglect, strained/estranged parental relationships, boundary violations, and social isolation.²¹ They fear families' and partners' reactions, and may experience other social and economic stresses, including lack of insurance or illegal immigrant status.²² The failure of the adults in their lives to address the situation reinforces the denial.²³

Fear, shame and guilt typically motivate these women to conceal or deny their pregnancies, leading to a “complete absence of any healthy psychological and physical bonds between the mother and child.”²⁴ Neonaticide is rarely premeditated, but is triggered by the same emotions that caused denial of the pregnancies. The women are driven by confusion and panic, but not anger and not a conscious desire to hurt the child. One of the few abandoning mothers interviewed in the press explained, “When I delivered I was scared, I was afraid, I was panicked, I was frantic – I didn't know what I was going to do. I was not in a rational state of mind to say, ‘Oh, I'm going to take the baby to the hospital.’”²⁵ Additionally, these women experience minimal or no physical pregnancy changes, depersonalization, dissociative hallucinations, and intermittent amnesia.²⁶ Some women who commit neonaticide “later described having experienced a dissociative episode during childbirth” and were “horrified to later discover what had become of their infants.”²⁷

Neonaticide expert Michelle Oberman concludes that there are individual, familial and societal factors that lead women to kill their babies. The young women lack self-esteem, are insecure, are afraid of parents' reactions, and do not have relationships with caring adults. Social stigma, coupled with policies that fail to provide adequate support for single, low-income, and young mothers exacerbate their vulnerability.²⁸ In developing policies to prevent neonaticide, Oberman recommends examining the lack of family communication and societal treatment of at-risk young women. She proposes that “[t]hose who would prevent neonaticide must begin by identifying and remedying girls' vulnerability long before they become pregnant.”²⁹

The anonymity provisions of legal abandonment statutes, along with the associated lack of research, data collection and evaluation, preclude the accumulation of knowledge about the characteristics of women who leave their newborns at safe havens. This lack of information, coupled with the fact that dangerous abandonments continue at a steady rate, undercuts the assumption that women who would otherwise unsafely desert their newborns – the targets of the laws – are the ones actually using safe havens. Simply put, no one knows what women (and sometimes men) who leave newborns at safe

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havens would have done in the absence of the law. Would they have left the infants in safe places or unsafe places, raised them themselves, allowed relatives to parent them, or made adoption plans?

An obvious and unfortunate consequence of safe haven laws is that pregnant women who may have made adoption plans in the past are now opting for the less-involved process of legal abandonment, without receiving counseling or considering the implications for the child (or themselves) in the future. Among a growing number of such cases, for instance, a South Carolina woman who gave birth in a hospital and considered voluntarily relinquishing her parental rights – so the child could be adopted with medical history and other information – chose abandonment when offered the option.³⁰ Other pressures also factor in; for example, pregnant women in Florida today may be induced to abandon their babies rather than opt for adoption because of a law requiring them to publish intimate details about their lives.³¹

Many child welfare policy experts are skeptical whether the women who would unsafely abandon their newborns are the ones leaving infants at designated safe havens, and thus doubt the laws' efficacy:

- The National Abandoned Infants Resource Center doubts “[w]hether the people who actually use safe havens are the group it’s targeted at,”³² while noting the laws have “a lot of pitfalls” and do not “even try to address the root causes of the problem.”³³
- The National Conference of State Legislatures questions “whether the mother would have tried to go through an adoption agency to legally relinquish the baby, or if this is a person who would have left the baby by the road side.”³⁴
- Howard Davidson, Director of the American Bar Association Center on Children and the Law, advises that “If we’re to effectively face the newborn abandonment problem, rushing to pass ‘Baby Moses’ laws, or creating new ‘baskets for babies’ drop-off locations, do not provide the answer.”³⁵
- The Child Welfare League of America also has reservations about whether the at-risk population uses safe havens or whether they are utilized, instead, by expectant mothers who may have made an adoption plan or raised their children themselves.³⁶
- The Family Research Council states that safe haven laws’ “chances for efficacy are doubtful.”³⁷
- Neonaticide experts say that because women who kill their infants are typically confused and panicked, “it seems somewhat unlikely” that safe havens “will be a viable alternative for many young women.”³⁸

Laws Operate Outside the Existing Child Welfare Framework

Despite the lack of evidence that legalizing the desertion of newborns will save the lives of those at risk of being left in unsafe circumstances, states have nevertheless enacted laws that permit anonymous legal abandonment.³⁹ Though the laws address the same three major areas: 1) the process for legal abandonment, 2) parental rights and 3) parental anonymity and immunity or legal defense,⁴⁰ they vary greatly in how and to what extent they deal with each issue. But they all create a separate child welfare framework, one apart from, and frequently in conflict with, existing federal and state abuse-and-neglect and adoption policy. Consequently, many of these new statutes inadequately address birth parent and children’s rights – or do not address them at all. These include termination of parental rights, facilitating the adoption of abandoned infants, and collecting medical and social histories that enable future access to critical information about health, genealogy and origins.

The legal abandonment procedural provisions outline who may abandon newborns, where they may be abandoned and the age at which they can be abandoned. They may also address whether safe havens must request infant and family medical information and/or disclose the implications of abandonment on parental rights. Most states only allow parents to abandon infants; though 13 allow parents’ “agents” and 4 permit any person to drop off newborns.⁴¹ States usually designate public health or safety entities such as hospitals, police, fire and paramedic stations as safe havens, but some include facilities operated by organizations such as adoption or child placing agencies, which may have an interest in the placement of the child.⁴² Some states do not designate places that are acceptable “safe havens” but permit people to abandon infants with any “responsible adult,” “an appropriate person or in a suitable location,” or “any adult” without further definition.⁴³ All of the states limit the age of babies who can be legally abandoned, generally from 3 to 30 days old, though South Dakota and Texas allow the abandonment of infants up to two months old, New Mexico up to three months old, and North Dakota up to

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a year old.

Forty percent of the states do not address parental provision of infant and family medical history.⁴⁴ Of the remainder, 11 states ⁴⁵ require safe havens to make an effort to elicit this information, while the rest state that either the safe havens may request or parents may provide medical background.⁴⁶ More than half the states do not offer any information to those abandoning children about counseling, support services, adoption, or parental rights.⁴⁷

Safe haven statutes typically address termination of parental rights in some manner, but more than one-third do not.⁴⁸ Of the laws that do, some follow existing child welfare statutes providing that abandonment constitutes a waiver of parental rights, or specifying when the child welfare agency should file termination of parental rights' petitions. Others create entirely new frameworks for legal abandonment, separate from abuse, neglect and abandonment statutes already on the books. Only about 10 states provide for notice to parents of abandonment proceedings and/or search for nonrelinquishing parents.⁴⁹ Many states provide a procedure enabling biological parents to reclaim the child or assert their parental rights, but almost half do not.⁵⁰ And less than a third of the states require safe havens to provide information to people abandoning children specifically concerning reunification or parental rights.⁵¹

Most abandonment laws give parents or their agents the option of remaining anonymous if they use a safe haven, with some automatically guaranteeing their right to anonymity. On the other hand, eleven states establish safe haven sites, but do not address the issue of anonymity at all.⁵² A few states require safe havens to ask abandoning parents for identifying information and Georgia requires the mother to show identification and provide her name and address.

All of the states' abandonment laws offer an incentive for parents to leave their infants at safe havens, as opposed to unsafe places, by absolving parents from criminal liability for abandonment, providing immunity from prosecution, or an affirmative defense in the event of prosecution. The implications of these protections are very different, however. Not being liable for a crime and being immune from prosecution mean parents or their agents will not be charged with a crime for leaving their infant at a designated site. But granting an affirmative defense does not preclude prosecutors from filing criminal charges against people who abandon infants at safe havens, but only provides the opportunity to present the defense that they safely abandoned the newborn, if they are charged and brought to trial.

The Evidence of Effectiveness is Inconclusive at Best

Because states have not and still do not collect relevant data on baby abandonment in public places, it is difficult to evaluate statistically whether these statutes have achieved their intended outcome. At the very least, to make an informed assessment of the laws' efficacy, states need to collect information on the number of newborns abandoned prior to enactment of safe haven laws, and the number of newborns abandoned illegally and at safe havens after enactment. These kinds of comprehensive and comparable data have not been gathered.⁵³ Moreover, even if states tracked the numbers, the laws' anonymity provisions would preclude anyone from learning whether parents leaving infants at safe havens would otherwise have made an adoption plan or would indeed have left their infants in an unsafe place.

The National Conference of State Legislatures has conducted the most comprehensive survey of infant abandonment to date. In 12 states that enacted safe haven laws prior to 2001 and made some effort to record abandonment numbers, there were an estimated 36 legal abandonments and 47 illegal ones as of September 2001.⁵⁴ Even these numbers, however, generally are not the result of states' systematic documentation of abandonments. Moreover, news accounts indicate the pace of unsafe abandonments has not changed with the availability of safe havens:

- There have been almost 100 illegal abandonments during the last two years in Texas, and only 5 at safe havens.⁵⁵ The rate of illegal abandonment in this first state to enact a safe haven law shows no sign of abating despite the fact that Texas has devoted resources to informing the public about it, including an extensive advertising campaign.⁵⁶
- Since Colorado enacted its law in June 2000, 8 babies have been left illegally, while 2 have been dropped off at safe havens.⁵⁷ The first parents to legally abandon their baby, in November 2001, were not even aware of the

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law; they took the child to a hospital that happened to be a designated site.⁵⁸

- Since the California law went into effect in January 2001, estimates of legally abandoned babies range from 19 to 20; of illegally abandoned babies, 38 to 86; and of babies found dead, 17 to 20.⁵⁹
- New York State, which does not systematically track abandonments, reported 10 illegal ones in New York City in the 18 months after its law was enacted. The city's first reported "safe haven baby" in 2001 (one of two) was born in a hospital.⁶⁰
- Since the law's enactment in Florida in 2001, an estimated 11 babies have been legally abandoned and 14 babies have been illegally abandoned, 5 of whom were found dead.⁶¹

While these reports include some legal abandonments, which safe havens proponents point to as proof of the laws' success, there is no evidence to support that any of the infants were left by women who otherwise would have deserted them unsafely. In fact, it is just as reasonable to conclude that legalized abandonment induced these birthmothers – who might otherwise have placed their children for adoption – to leave their infants at "safe havens" instead.

Though some proponents suggest a lack of public education may be responsible for the apparent ineffectiveness of legal abandonment laws, anecdotal evidence suggests this is not the primary explanation. Even states that are not required by law to inform the public about the availability of legalized abandonment, including Idaho and Texas, have established websites, sponsored by government or private organizations, publicizing the option of safe havens and promoting their use.⁶² And while California does not mandate outreach, it recently allocated \$1 million for public education.⁶³ Available information indicates that these efforts are not convincing at-risk women to use safe havens. In Texas, there have been more than 700 calls to the safe haven hotline, but none from mothers considering abandonment.⁶⁴ Of the 130-plus calls to the Los Angeles County safe haven hotline over two months, only eight were from women who called about their unwanted pregnancies.⁶⁵ One baby was abandoned in New Jersey next to a billboard advertising the state's safe haven law, and a Nevada woman who was aware of that state's law nonetheless left her baby in a trash bin.⁶⁶ Because there is so little information about the women who abandon their newborns, safely or unsafely, we simply do not know the circumstances of other reported abandonments.

Creating New Problems While Trying to Solve an Existing One

In addition to the questionable efficacy of safe haven statutes, the evidence suggests that the way they are written and implemented creates new problems for the infants and the biological parents they are intended to help. These laws ignore time-tested child welfare policy and practice principles that are the basis for adoption statutes and undermine, not complement, that framework. For example, they are frequently incompatible with state adoption statutes regarding termination of parental rights, as well as consent to and revocation of an adoption. And the anonymity provisions and vague definitions of abandonment effectively preclude voluntary termination of parental rights and consent to adoption by either or both parents since, by definition, the parents' identities are unknown.

Under state adoption laws, mothers placing their children for adoption cannot voluntarily relinquish their parental rights until a mandated waiting period after birth; mental-health professionals and practitioners agree this is a critically important period for these women. The consensus among practitioners, supported by available research, is that at least half of the women who consider adoption during their pregnancies eventually decide to parent their babies – and often make that decision days or even weeks after giving birth. But under safe haven laws, mothers can leave their children immediately after delivery,⁶⁷ with potentially serious repercussions for the women long after the crisis that led them to the abandonment has passed. And states are allowing the legal abandonment of infants one month to one year old despite the fact that most reported cases of baby abandonment are of infants a day or a few days old. Moreover, unlike the adoption process, safe haven laws often do not contain provisions allowing parents to change their minds about leaving their children. In the first legal abandonment under Colorado's law, the mother sought to regain custody of her child, but actually had less time to do so than parents who illegally desert their babies.⁶⁸

Because they are typically drafted and enacted so quickly and with little research, safe haven laws also often result in delayed adoptive placements and more time in foster care. Unlike permanency planning that occurs during pregnancy and

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allows newborns to be placed with biological relatives or adoptive parents after birth, infants abandoned at safe havens typically are placed in foster care for months until legal requirements (which vary from state to state) are fulfilled. Many of the laws also ignore the due-process rights of fathers to notification of termination of parental rights' proceedings and adoption. Only half of the 12 children legally abandoned in Michigan have been placed in adoptive homes because of due-process concerns that fathers did not receive sufficient notice,⁶⁹ while the remaining infants are in foster care. In New Mexico's first legal abandonment, the infant is not eligible for adoption because the law's anonymity provision prevents child welfare authorities from determining whether the parents are Native American and therefore whether the federal Indian Child Welfare Act applies.⁷⁰

The anonymity provisions, coupled with the failure of almost all safe haven laws to require that vital family information be obtained, run counter to current child welfare research and practice about the importance of collecting medical and genetic histories. Individuals who do not have access to such information will likely have higher morbidity and mortality rates than those who do. Family medical and genetic data have the potential to aid in the prevention, early detection, pre-symptomatic diagnosis and treatment of thousands of inherited diseases. As genetics experts recently noted, "[f]or many common illnesses . . . the strongest predictor of risk is family history."⁷¹ Over 6,000 genetic and rare diseases afflict more than 25 million Americans,⁷² and 1 in 10 adults has a genetic condition such as heart disease, diabetes and arthritis.⁷³ With domestic adoptions, at a minimum, there is a court record that contains the birth parents' identities, preserving the possibility of access to genetic information and allowing contact and sharing of medical information in health- and life-threatening situations. Safe haven adoptees, on the other hand, are precluded from accessing such information because it does not exist.

Safe haven laws also ignore the psychosocial importance to adopted people, as children and later in life, of information about their origins, ethnicity and social backgrounds. The overwhelming majority of adoption practitioners and mental-health professionals today – including ones who do not necessarily embrace the rapidly growing practice of "open adoption" – agree about the benefits of having personal, as well as medical, information; moreover, they maintain that the lack of such information can undermine adoptive families, especially the children in them. In fact, organizations of adults who were adopted (including some who were abandoned as infants) oppose legalized abandonment on this basis, as well as others.⁷⁴ Some states, in response to professional consensus and increased demand by members of the adoption community, have ended outmoded practices that fostered secrecy and are providing adopted people access to their biological families' information.⁷⁵ In other words, the unambiguous trend in adoption is opposite the one promoted by anonymous abandonment.

Equally important, from a mental health perspective, individuals who are raised by non-genetic parents typically have a psychological need or desire to learn about their identities, an option that is unavailable to children abandoned anonymously. Unanswered questions about identity and the psychological impact of abandonment for children can have life-long impact. So, while it is essential that babies' lives are saved, it is also vital that the lawmakers understand the subsequent needs of the affected individuals as they grow up. A 25-year-old Pennsylvania man who was abandoned as a newborn is looking for answers about the circumstances of his abandonment and whether he has any genetic health predispositions.⁷⁶ A woman who was abandoned in a trashcan as an infant thinks safe haven laws "devalue human life" and "condemn the child to a lifetime of not knowing about herself."⁷⁷ One 40-year-old who was abandoned as a baby lives near the ditch where she was left and says, "I suffered all these years with no identity, I'm an offspring of nobody."⁷⁸

But the adults who were abandoned as infants are rarely, if ever, called to testify before a safe haven law is enacted, to determine what processes or safeguards would serve their long-term interests. Nor do lawmakers hear from birth mothers who abandoned their children, to find out what caused them to do so and what practices might make others less likely to follow suit. Nor do policymakers ask the adoptive parents of children who were abandoned what information they would have wanted to improve their adoption experience and that of their sons or daughters. Nor do the advocates of legalized abandonment call on high-school guidance counselors or mental-health professionals to ask their opinions of what measures might minimize the possibility of a teenager dumping her baby in a bathroom – or whether a 17-year-old girl, so distraught or in denial that she would consider leaving her child to die, could instead be persuaded by a billboard to find a ride to the local firehouse so she could desert her baby there.

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Safe haven laws represent a relatively easy and quick, but superficial, answer to the questions surrounding unintended, concealed pregnancies and the welfare of the resulting newborns. Not only is it unclear that these policies work, but they also address the problem at the last possible opportunity, after birth. Public policy should prevent unintended pregnancies, protect infants at risk of abandonment, and assist mothers in making informed decisions that serve both their children's interests and their own. In order for that to happen, new and existing resources must be directed toward the target population: women who deny and conceal their pregnancies.

Other time-tested interventions developed to address similar problems have proved successful. The objective of the federal Abandoned Infants Assistance Act, created in response to the growing number of children abandoned in hospitals by drug-addicted and HIV-infected mothers, is "to prevent the abandonment of infants and young children, including the provision of services to members of the natural family for any condition that increases the probability of abandonment."⁷⁹ The program, which offers comprehensive, coordinated services to at-risk families, says nearly 75 percent of the children live with biological relatives.⁸⁰ Similarly, hospitals in Alabama and Minnesota instituted programs allowing babies to remain in the care of medical staff until their mothers decide whether to parent them or to relinquish them for adoption.⁸¹

A child welfare best practice termed permanency planning – a "process through which planned and systematic efforts are made to assure that children are in safe and nurturing family relationships expected to last a lifetime"⁸² – is another effective prevention program. Such planning during pregnancy promotes informed decision-making for mothers before they give birth alone and unattended in a non-clinical setting. Adoption and other permanency planning alternatives, including support services enabling mothers to parent their children, provide stable and secure environments for infants from birth, thereby preventing abandonments, safe or unsafe. Indeed, child welfare intervention after legal abandonment resulted in the mother deciding to parent her child in the case of Texas' first "safe haven" baby (in Austin), and the father assuming custody in the case of Houston's first "safe haven" infant.⁸³ Safe haven laws' anonymity provisions undermine the possibilities for biological mothers to change their minds about parenting or making an adoption plan, for family members to care for the children, or for birth fathers to assert custody. Permanency planning, on the other hand, allows for these options.

Safe haven laws also ignore the health care needs of mother and child alike by allowing, and even encouraging, potentially unsafe births without the assistance of trained personnel. Women and girls should be encouraged to give birth in hospitals, not be told implicitly that they can have babies anywhere as long as they bring them to a safe place afterward. In January 2002, a 19-year-old Wisconsin college student died while giving birth in a dormitory bathroom; her baby later died, too.⁸⁴ What she planned for herself and the child became moot; she needed help before, not after, the fact. The health situation for pregnant teenagers is already dire: one-third do not get adequate prenatal care and their children's infant mortality rate is 50 percent higher than for babies born to women over 20.⁸⁵ Public policy should be focused on educating pregnant young women about the importance of prenatal care, not sanctioning unsafe births.

The laudatory goal of safe haven laws – saving infant lives – is essential in addressing the baby abandonment problem. But other important child welfare principles, such as pregnancy prevention and permanency planning, should be incorporated into comprehensive state and national policies.⁸⁶ These options offer a host of attendant physical and mental-health benefits that safe haven laws ignore, while avoiding the many problems these laws perpetuate. States must educate teenagers and women about preventive and permanency planning services, and make those services accessible. They should also better research gaps in these services for at-risk women and develop services to reach those who do not use existing programs.⁸⁷ Only 13 percent of pregnant teenagers know how to pursue an adoption and just 3 percent make an adoption plan for their children, even though minor mothers are legally allowed to place a child for adoption without their parents' involvement in almost every state.⁸⁸

Parents and extended families, physicians and clinics, schools and religious institutions, having largely ignored the problem of concealed pregnancies, need to be educated about how to identify at-risk girls and women, and be trained to provide counseling or referrals. One expert suggests "a method of systematic evaluation based on contemporary diagnostic criteria" to screen at-risk women for treatment and prevention that would "mobilize support systems and facilitate family intervention, prenatal care, family planning, adoption alternatives, and parenting classes."⁸⁹ With permanency planning, at-risk expectant mothers can confidentially access medical care, counseling and support services; have medical and genetic information pre-

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served for their children; maintain the potential for future contact, and explore the possibility of other biological relatives parenting their newborns.

Experts conclude that “[a] strong sense of connection with others, in addition to the belief that one can make life-impacting decisions appropriately, are factors [that] could help alter national rates of neonaticide,”⁹⁰ so it follows that counseling would likely prove to be an effective prevention strategy. Indeed, in one of the few reported interviews with a teenage mother who abandoned her newborn, she stated that having someone to talk to during the pregnancy, not a safe haven law, might have prevented the abandonment.⁹¹ This young woman subsequently co-founded Second Chance at Life, which provides parenting classes, prenatal care and public education.⁹² A similar program, Project Cuddle, “work[s] with frightened girls or women and help[s] them find safe, legal options” to public abandonment.⁹³

States have promulgated safe haven laws without assessing whether the goal of saving infant lives is being accomplished in the most effective and beneficial way possible, and whether other approaches would obviate the unintended harmful consequences. At a minimum, states should study unsafe abandonment more rigorously through improved data collection and research of the at-risk population.

Conclusion

Despite the wide and rapid proliferation of safe haven statutes, girls and women are still endangering their newborns by abandoning them. The vast majority of those who do use safe havens, in the absence of these laws, would likely be willing to make adoption plans. Others undoubtedly would leave their babies in hospitals after delivery, especially if they received confidentiality and easy access to those medical facilities. By providing a “no hassle” route for ending parental responsibility, safe haven laws encourage mothers to conceal their pregnancies, give birth unsafely and leave their children anonymously, undermining established and effective child welfare and adoption policy as well as the long-term interests of birth parents and their infants.

¹ Efforts to address baby abandonment began as early as 1981 when a Syracuse City Councilmember (now a New York State Senator) espoused prosecutorial immunity for women who abandon newborns safely, and a Syracuse District Attorney agreed not to pursue prosecution in those cases. John Caher, Bill Would Decriminalize Child Abandonment in Some Situations, N.Y.L.J., Mar. 10, 2000.

² Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, and Wisconsin. Virginia’s legislature also passed two bills legalizing infant abandonment in February 2003, but as of March 4, the Governor has not yet signed them.

³ Alaska, Hawaii, Massachusetts, Nebraska, New Hampshire, Virginia, and Wyoming had all introduced legislation in the most recent legislative session.

⁴ Tanya Amber Gee, South Carolina’s Safe Haven for Abandoned Infants Act: A “Band-Aid” Remedy for the Baby-Dumping “Epidemic,” 53 S.C. L. Rev. 151, 153 (Fall, 2001) (citing Lawrence Friedman, Crimes of Mobility, 43 Stan. L. Rev. 637, 655 (1991)).

⁵ While the federal government does not currently require data collection, the House of Representatives has not ignored the importance of further inquiry. Most recently, the bill to reauthorize the Child Abuse Prevention and Treatment Act requires a study to determine the number of abandoned infants. H.R. 14. The House passed a resolution in 2000 recommending that local, state and federal authorities collect information about the number of babies abandoned in public places. H. Res. 465, Apr. 11, 2001. In the 106th and 107th Congresses, Representative Jackson-Lee (D-TX) has introduced the Baby Abandonment Prevention Act, which would create a Task Force to collect data and study the issue. (H.R. 71, introduced in January 2001 died in a House subcommittee, as did H.R. 4222, introduced in April 2000.)

⁶ Children’s Bureau, U.S. Department of Health and Human Services, 1998 National Estimates of the Number of Boarder Babies, Abandoned Infants and Discarded Infants, 14.

⁷ *Id.* at 15.

⁸ United States Department of Justice, Bureau of Justice Statistics, Homicide Trends in the U.S., <http://www.ojp.usdoj.gov/bjs/homicide/children.htm>.

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- ⁹ Mary Overpeck, *Epidemiology of Infanticide* 23, in *Infanticide: Psychosocial and Legal Perspectives on Mothers Who Kill*, ed. Margaret Spinelli, American Psychiatric Publishing, Inc. (2003)
- ¹⁰ Mary Overpeck, et al., *Risk Factors for Infant Homicide in the United States*, *The New England Journal of Medicine*, Vol. 339:1211-1216, Oct. 22, 1998. The authors acknowledge the number may be higher since some births may have been hidden.
- ¹¹ These hospital abandonments are of infants under 12 months who remain in the hospital beyond medical discharge or have not been medically discharged but are unlikely to leave the hospital in the custody of their parents.
- ¹² National Vital Statistics System, Department of Health and Human Services, *National Vital Statistics Report*, Vol. 47, No. 18, at 3 (Apr. 29, 1999), available at http://www.cdc.gov/nchs/data/nvsr/nvsr47/nvs47_18.pdf.
- ¹³ *National Vital Statistics Report*, Vol. 47, No. 18, Apr. 29, 1999, at 7 and Table 2 at 23.
- ¹⁴ Howard Davidson, *Legal Reform in Response to Unwanted Newborns, the Need for a Comprehensive — Rather than “Quick Fix” — Approach*, *Unified Response: The Child Fatality Review Team Newsletter*, Winter 2000. The Child Abuse Prevention and Treatment Act reauthorization bill requires a study of the characteristics and demographics of parents who abandon infants within a year of birth. H.R. 14, Title III, Section 303. See also footnote 5.
- ¹⁵ See Children’s Bureau, U.S. Department of Health and Human Services, 1998 *National Estimates of the Number of Boarder Babies, Abandoned Infants and Discarded Infants*.
- ¹⁶ The following discussion is based on Cheryl Meyer and Michelle Oberman, *Mothers Who Kill Their Children* 39-67, New York University Press (2001) which studied 37 neonaticide cases between 1990-1999 in the United States reported in the media (hereinafter Meyer/Oberman); Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 34 *American Criminal Law Review* 1 (Fall 1996) which studied 47 neonaticide cases reported in the media between 1988-1995 (hereinafter Oberman); and Margaret Spinelli, *Neonaticide: A Systematic Investigation of 17 Cases*, in *Infanticide: Psychosocial and Legal Perspectives on Mothers Who Kill*, ed. Margaret Spinelli, American Psychiatric Publishing, Inc. (2003) (hereinafter Spinelli) which studied 17 cases of neonaticide.
- ¹⁷ The average age in one study was 19.3. Meyer/Oberman 47. In the second study, the mean age was 21, the median age 20. Oberman at 23, fn 90. In the third, the mean age was 23 years. Spinelli at 106.
- ¹⁸ Ninety-five percent of neonaticides were of infants not born in a hospital. Seventy-one percent of neonaticides from 1989-1991 were infants who were born at a residence. The authors posit that these statistics reflect attempts to hide the pregnancy and birth. Mary Overpeck, et al., *Risk Factors for Infant Homicide in the United States*, *The New England Journal of Medicine*, Vol. 339:1211-1216, Oct. 22, 1998.
- ¹⁹ See generally Meyer/Oberman 39-67; Oberman 23-25.
- ²⁰ Meyer/Oberman at 43.
- ²¹ Spinelli at 107, 111.
- ²² See also Wendy Grossman, *Rock-A-Baby Bye-Bye*, Houston Press, Apr. 25, 2002.
- ²³ Oberman at 60.
- ²⁴ Id. at 54.
- ²⁵ Wendy Grossman, *Rock-A-Baby Bye-Bye*, Houston Press, Apr. 25, 2002.
- ²⁶ Spinelli at 107-111.
- ²⁷ Oberman at 53.
- ²⁸ Oberman at 71-73.
- ²⁹ Oberman at 73.
- ³⁰ Tanya Amber Gee, *South Carolina’s Safe Haven for Abandoned Infants Act: A “Band-Aid” Remedy for the Baby-Dumping “Epidemic,”* 53 S.C. L. Rev. 151, 160 (Fall, 2001).
- ³¹ Candice Critchfield, *Adoption Law Encourages Abandonment*, *Orlando Sentinel*, September 20, 2002.
- ³² Nina Bernstein, *Few Choose Legal Havens to Abandon Babies*, *New York Times*, Aug. 31, 2001, at A1.
- ³³ Adam Pertman, *Politicians Push for Legalized Baby Abandonment at “Safe” Sites, Critics Decry Initiatives’ Merits, Effectiveness*, *The Boston Globe*, Apr. 10, 2000.
- ³⁴ Id.
- ³⁵ Howard Davidson, *Legal Reform in Response to Unwanted Newborns, the Need for a Comprehensive — Rather than “Quick Fix” — Approach*, *Unified Response: The Child Fatality Review Team Newsletter*, Winter 2000.
- ³⁶ Wendy Grossman, *Rock-A-Baby Bye-Bye*, Houston Press, Apr. 25, 2002.
- ³⁷ Valerie Richardson, *Colorado Readies Law Intended to Protect Abandoned Babies*, *The Washington Times*, Apr. 30, 2000, at C1.
- ³⁸ Meyer/Oberman 66.
- ³⁹ The following analysis is based on a review of the state statutes.
- ⁴⁰ See generally Michael Raum, Jeffrey Skaare, 76 N. Dak. L. Rev. 511 (2000).

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- ⁴¹ Arizona, Arkansas, California, Connecticut, Delaware, Iowa, Kansas, Kentucky, Maryland, Minnesota Missouri, New Jersey, New Mexico, North Dakota, Rhode Island, South Carolina, and Utah.
- ⁴² Arizona, Mississippi, South Dakota, and Texas. Moreover, some states like Florida and Michigan provide that hospitals transfer custody of abandoned infants to child placing agencies, as opposed to state child welfare agencies.
- ⁴³ Maryland, New York and North Carolina respectively.
- ⁴⁴ Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Louisiana, Maine, Maryland, Mississippi, Missouri, New York, Oregon, West Virginia and Wisconsin do not tackle the issue of parental provision of biological family medical information.
- ⁴⁵ California, Delaware, Illinois, Kentucky, Michigan, Montana, North Dakota, Ohio, South Carolina, Tennessee, and Washington.
- ⁴⁶ Connecticut, Idaho, Iowa, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, and Utah.
- ⁴⁷ Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Maine, Maryland, Mississippi, Missouri, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Dakota, Texas, Utah, and West Virginia do not.
- ⁴⁸ Alabama, Arizona, Arkansas, California, Georgia, Indiana, Maryland, Minnesota, Mississippi, New Mexico, New York, Oklahoma, Oregon, Pennsylvania and Washington do not specifically address termination of parental rights (even by referencing existing law) in their safe haven statutes.
- ⁴⁹ Delaware, Florida, Illinois, Iowa, Missouri, Montana, Nevada, South Carolina, Tennessee, and Utah provide for some type of search and/or notice.
- ⁵⁰ Alabama, Arizona, Arkansas, Colorado, Georgia, Indiana, Kansas, Maine, Maryland, Mississippi, Missouri, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Texas, and Washington do not.
- ⁵¹ Illinois, Iowa, Kentucky, Michigan, Montana, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, and Washington laws do provide that information be given to abandoning people about reunification and parental rights.
- ⁵² Alabama, Arkansas, California, Colorado, Indiana, Kansas, Louisiana, Maryland, Mississippi, Missouri, and New York.
- ⁵³ The bill to reauthorize the Child Abuse Prevention and Treatment Act requires an evaluation of programs to prevent infant abandonment. H.R.14.
- ⁵⁴ NCSL did not survey states that passed legislation in 2001 because states were just beginning to implement the law. Many states provided unofficial data or did not track the number of safe haven and/or illegal abandonments.
- ⁵⁵ Wendy Grossman, *Rock-A-Baby Bye-Bye*, Houston Press, Apr. 25, 2002.
- ⁵⁶ *Ibid.*
- ⁵⁷ Sarah Huntley, *Death Puts Focus on Abandoned-Baby Law*, Rocky Mountain News, Sept. 13, 2002, http://www.rockymountainnews.com/drmn/local/article/0,1299,DRMN_15_1414124,00.html.
- ⁵⁸ Cindy Brovsky, *Sheba Wheeler, Safe Haven for Abandoned Baby*, Denver Post, Nov. 30, 2001.
- ⁵⁹ Lundstrom, Margie, "Margie Lundstrom: New Law Sets Scene for Couple to Adopt Baby of their Dreams." *The Sacramento Bee*, February 15, 2003, <http://www.sacbee.com/content/news/columns/lundstrom/story/6120183p-7075918c.html>; Montano, Ralph. "Fire Stations Will accept Newborns: Moms Can Surrender their babies at County Facilities Without Facing Charges." *Sacramento Bee*, January 29, 2003, <http://www.adoption.com/includes/frame.wga?url=http://www.sacbee.com/content/news/story/6017943p-6973955c.html>.
- ⁶⁰ C.J. Chivers, *Abandoned Newborn is Found in Central Park*, New York Times, Sept. 10, 2001, at B3; Nina Bernstein, *Few Choose Legal Havens to Abandon Babies*, New York Times, Aug. 31, 2001, at A1.
- ⁶¹ Maloney, Jennifer, "After Controversy, Safe Baby Act has made 'Difference,'" *The Miami Herald*, Jan. 27, 2003.
- ⁶² Connecticut, Delaware, Illinois, Iowa, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, and Washington require some kind of public education about safe havens. Kentucky provides that outreach is subject to available funding.
- ⁶³ *Children & Youth Funding Report*, at 10 (July 3, 2002).
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- ⁶⁵ Michelle Rester, *Safe Havens for Babies Get Identification Logo*, Pasadena Star News, Aug. 28, 2002.
- ⁶⁶ Angie Wagner, *Nevada Reaches Out to Assist Mothers Who Abandon Hope*, Los Angeles Times, Aug. 26, 2001, at B1.
- ⁶⁷ Joanna Grossman, *The Adoptability of Abandoned Babies: A Recent New York Case Interprets the State's "Baby Moses" Law*, *FindLaw's Legal Commentary*, Oct. 9, 2001.
- ⁶⁸ John Sanko, *Sue Lindsay, Changes in Abandoned Baby Law Eyed*, Rocky Mountain News, Dec. 5, 2001.
- ⁶⁹ L.L. Brasier, *Despite Law, Abandoned Babies in Legal Limbo*, Detroit Free Press, Jan. 30, 2002, at A1.
- ⁷⁰ Guillermo Contreras, *First Safe-Haven Infant Caught in Legal Tangle*, Albuquerque Journal, Feb. 28, 2002, at A1.

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- ⁷³ Genetics Counselors: Delivering the Promise of Futuristic Genetic Discovery Today, National Society of Genetic Counselors (Nov. 2001) available at http://www.nsgc.org/nr_delivering_promise.asp.
- ⁷⁴ Statement of the Executive Committee of Bastard Nation on Legalized Abandonment Laws, Jan. 28, 2000, <http://www.bastards.org/activism/legalized-abandonment.html>; Statement from the American Adoption Congress Re: Abandoned Baby Legislation, Nov. 18, 2001, <http://www.americanadoptioncongress.org/position-statements-abandoned.htm>.
- ⁷⁵ See Chapter 13 and Appendices 13A, B, and C in J.H. Hollinger, *Adoption Law & Practice* (1980-2002).
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- ⁸⁹ Spinelli at 116.
- ⁹⁰ Meyer/Oberman 45.
- ⁹¹ Wendy Grossman, *Rock-A-Baby Bye-Bye*, Houston Press, Apr. 25, 2002; Barbara Whitaker, Death of Unwanted Babies Brings Plea to Help Parents, *New York Times*, Mar. 6, 2000.
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