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“Safe Haven” for Abandoned Infants: Background on the Issue and State Laws

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Summary

The number of infants abandoned by their birth parents in public places appears to have increased in recent years, prompting legislatures in 42 states to enact new legislation since 1999. For the most part, these laws are intended to provide a “safe haven” for birth parents to surrender their unharmed children and provide them protection from liability. Anecdotal reports suggest this issue may be growing in scope, but no comprehensive information is available. The 107th Congress passed the Promoting Safe and Stable Families Amendments of 2001 (P.L. 107-33), which amended the definition of family preservation services to include infant safe haven programs. Legislation has been introduced in the 108th Congress (S. 342 and H.R. 14) to ensure grantees under the Abandoned Infants Assistance Act of 1988 give priority to certain groups of children and to require additional reporting and evaluation elements. An additional bill, H.R. 77, has been introduced and would require the Justice Department to collect and report on data related to abandoned infants. This report summarizes available information on the issue and on state laws that have been enacted. It will be updated to follow any legislative action in Congress.

Scope of the Problem ¹

The only national data currently available suggests that incidents of infant abandonment in public places increased during the last decade. The Department of Health and Human Services (HHS) commissioned a search of major newspapers between November 1991 and November 1992 and also between November 1996 and November 1997, and found published reports of 65 babies abandoned in public places during the

¹ This report was updated April 8, 2003 by Matthew Shuman, Presidential Management Intern on rotation from the Department of Health and Human Services.

1991-1992 period, compared to 105 in 1996-1997. Of these babies, eight were found dead in 1991-1992, compared to 33 who were found dead in 1996-1997.²

It is important to note that the term “abandoned infants” – as the focus of recent state laws and congressional interest – refers to babies who are abandoned in public places, such as public buildings or trash bins. Both HHS and the Abandoned Infants Assistance Resource Center (AIARC)³ use the term “discarded infants,” to distinguish these children from the larger population of abandoned infants who are born in hospitals but not likely to be discharged in the custody of their biological parent, because the parent is either unwilling or unable to care for them. HHS estimates that this latter population was 17,400 children in 1998, increased from 13,400 children in 1991, according to reports from state child welfare agencies and hospitals.⁴ Another 11,900 children in 1998 (compared with 9,700 in 1991) were classified as “boarder” babies, or infants who remain in the hospital after they are medically ready to go home. These children may eventually return to their biological families or be placed in foster care.

States are required to submit data to HHS on the number and characteristics of children in their foster care population, including their reason for placement into foster care, which may include abandonment. According to HHS, abandonment was cited as a reason for entry for 5% of children (of all ages) who entered foster care in 2001, among those children for whom a “reason for entry” was indicated. Abandonment was cited for 5% of such children who entered foster care in 2000 and 6% in 1998 and 1999. These data do not provide detail on the circumstances of the abandonment, such as where it occurred. Moreover, abandonment may not be the only reason for entry into foster care, as states may indicate multiple reasons for placement.

Nature of the Problem

Since little is known about the number of infants abandoned or “discarded” in public places, information also is scarce about the characteristics of these children and their parents, or the circumstances of their abandonment. The Abandoned Infants Assistance Resource Center cites research on mothers who have killed their newborns on the day of

² These numbers exclude international cases, double-counting of the same cases that were reported multiple times in the press, and cases where homicide was certain. HHS characterizes this research methodology as “less-than-perfect” and suggests that the increase between 1992 and 1997 in the number of babies abandoned in public places may also represent changes in the extent of reporting or in the number of newspapers included in the Lexis-Nexis data base, which was the source of the information. *1998 National Estimates of the Number of Boarder Babies, Abandoned Infants and Discarded Infants*, U.S. Department of Health and Human Services, Children’s Bureau, 2001. Also see: [<http://www.acf.dhhs.gov/news/stats/abandon.htm>]

³ *Brief Summary: Information Related to Discarded Infants*, Abandoned Infants Assistance Resource Center, University of California at Berkeley, available at: [<http://socrates.berkeley.edu/~aiarc/discarded/discardfs.htm>]

⁴ *1998 National Estimates of the Number of Boarder Babies, Abandoned Infants and Discarded Infants*. Also see earlier report by James Bell Associates, *National Estimates on the Number of Boarder Babies, the Cost of Their Care, and the Number of Abandoned Infants*, prepared for the U.S. Department of Health and Human Services, Children’s Bureau, 1994.

birth, as the most closely comparable information.⁵ Using that body of research, supplemented by media accounts of public abandonments, AIARC suggests that individuals who kill their newborns or publicly abandon their infants are predominantly very young, single, physically healthy women, who are not addicted to substances, and who are pregnant for the first time. Typically, they live with their parents or other family members, and no particular race, ethnic, or income group seems predominant. These young women remain silent and isolated during their pregnancy, have generally made no plans for the birth or care of their child, and receive no prenatal care. According to AIARC, “massive denial” is characteristic. The women are often insufficiently mature to consider the consequences of their actions. Reasons for killing or abandoning the baby include the father being married to someone else, rape, nonmarital pregnancy, and “perceiving the child as an obstacle to personal achievement,” says AIARC.

Again, it is worth noting the differences between the traits that are assumed to characterize mothers who kill or discard their infants, and those who abandon their newborns in the hospital or are not allowed to take them home. According to a research review from AIARC, women who leave their babies in the hospital are older (perhaps an average age of 27), have had other pregnancies (an average of four), and are usually poor and dealing with such issues as homelessness, abusive relationships, HIV infection, mental illness, and/or very often, substance abuse.⁶

State Legislation

The National Conference on State Legislatures (NCSL) has been tracking developments at the state level regarding abandoned infant legislation and reports that Texas was the first state to enact such a law, in 1999.⁷ (However, some localities had adopted safe haven policies earlier.) Texas enacted its law after 13 babies were found abandoned in that state during a 10-month period. NCSL reports that another 24 states considered similar laws in 2000 and 15 enacted them. Twenty states enacted laws during the 2001 legislative session (of which five had also considered such legislation in 2000), and bills had been introduced in another 11 (of which two had considered a bill in 2000). In 2002, seven states enacted abandoned infant legislation.⁸ See **Table 1**, next page.

In general, state laws address the voluntary surrender of unharmed infants by parents or others who express no intent to return for the child. Under these laws, hospitals or emergency medical services providers (and in some states, police and fire stations and child welfare agencies) are required to take custody of the children, without a court order, and immediately notify child protective services or a law enforcement agency. The Child

⁵ *Brief Summary: Information Related to Discarded Infants*, Abandoned Infants Assistance Resource Center (see footnote 2).

⁶ *Abandoned Infants*, Abandoned Infants Assistance Resource Center, University of California at Berkeley, available at: [<http://socrates.berkeley.edu/~aiarc/pubs/abaninf.htm>]

⁷ *Abandoned Infant Legislation 2000-2001 (August 8, 2001)*, Child Welfare Project, National Conference of State Legislatures, available at: [<http://www.ncsl.org/programs/cyf/ABSL2001.htm>]

⁸ *State Policies in Brief: Infant Abandonment (February 9, 2003)*, The Alan Guttmacher Institute, available at: [http://www.agi-usa.org/pubs/spib_IA.pdf]

Welfare League of America (CWLA) reports that 28 states (35 states had enacted laws at the time of the CWLA report) stipulate that the safe haven must do anything necessary to protect the child’s physical health and safety.⁹ In turn, many states provide immunity from civil or criminal liability for workers in these facilities who accept the infants.

Using different legal mechanisms, state laws either eliminate or reduce the threat of prosecution against the parent, if the child is unharmed and voluntarily delivered to the health care provider or other designated “safe haven.” State laws vary on the age of the child who may be surrendered under these provisions. Of states that enacted laws in 1999 through 2002, the maximum age for legal abandonment ranges from 72 hours to one year, with most states requiring the child to be 72 hours or younger (15) or 30 days or younger (13). In general, parents may remain anonymous (guaranteed in 27 states), although some states have exclusions in the case of abuse and one state requires the woman to provide “proof of identity,” if available, along with a name and address.¹⁰ In addition, the Evan B. Donaldson Adoption Institute reports that twenty states do not address parental provision of family medical history; 11 require safe havens to attempt to elicit this information. The remainder state that safe havens may request, or parents may provide, this information. Additionally, approximately two-thirds of state laws address termination of parental rights in some manner; less than a third of states require safe havens to provide information regarding reunification or parental rights to parents abandoning their children. More than half provide a procedure for biological parents to reclaim their children.¹¹

Though few states collect any data to evaluate their safe haven programs, the Evan B. Donaldson Adoption Institute has compiled data from various news accounts of abandonments. In Texas there have been nearly 100 illegal abandonments and five abandonments at safe havens over the past two years. Since Colorado’s law was enacted in June 2000, eight babies have been left illegally and two have been dropped off at safe havens. California’s law was enacted in January 2001, and estimates of illegally abandoned babies range from 38 to 86 and legally abandoned babies from 19 to 20. Lastly, since Florida’s enactment of the law in May 2001, an estimated 11 babies have been left at safe havens and 14 were illegally abandoned.

Table 1. State Enactment of Abandoned Infant Legislation

<p>Enacted legislation in 2000 (15)</p>	<p>Alabama, California, Colorado, Connecticut, Florida, Indiana, Kansas, Louisiana, Michigan, Minnesota, New Jersey, New York, South Carolina, Texas (enacted in 1999), West Virginia</p>
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⁹ *Baby Abandonment: The Role of Child Welfare Systems (2003)*, Child Welfare League of America, available at: [<http://www.cwla.org/programs/baby/>]

¹⁰ *State Policies in Brief: Infant Abandonment (February 9, 2003)*, The Alan Guttmacher Institute, available at: [http://www.agi-usa.org/pubs/spib_IA.pdf]

¹¹ *Unintended Consequences: ‘Safe Haven’ Laws are Causing Problems, Not Solving Them (March 10, 2003)*, Evan B. Donaldson Adoption Institute, available at: [<http://www.adoptioninstitute.org/howe/Last%20report.pdf>]

Enacted legislation in 2001 (20)	Arizona, Arkansas, Delaware, Idaho, Illinois, Iowa, Mississippi, Montana, Nevada, New Mexico, Ohio, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Wisconsin
Enacted Legislation in 2002 (7)	Georgia, Kentucky, Maine, Maryland, Missouri, Pennsylvania, Washington

Source: Compiled by the Congressional Research Service (CRS), based on information provided by the National Conference of State Legislatures (NCSL) and the Alan Guttmacher Institute (AGI).

Federal Legislation

In January 2002, P.L. 107-133, the Promoting Safe and Stable Families (PSSF) Amendments of 2001, was signed into law. In part, this legislation amended the definition of family preservation services to include infant safe haven programs that “provide a way for a parent to safely relinquish a newborn infant at a safe haven designated pursuant to State law.” States are therefore allowed to use PSSF funds to support infant safe haven programs. The Annual Progress and Services Reports (ASPRs) submitted by states to HHS on June 30, 2003 will be the first set of reports indicating how the states may have spent PSSF funds on safe haven programs.

In the 108th Congress, the Senate and House have passed similar bills (S. 342 and H.R. 14) to reauthorize several programs and identical provisions regarding the Abandoned Infants Assistance Act (AIAA). As of April 7, 2003, the Senate had requested a conference on S. 342, the “Keeping Children and Families Safe Act of 2003.” This bill would prevent HHS from making grants under the Abandoned Infants Assistance Act unless, according to the report language, the grantee “agrees to give priority to abandoned infants and young children who are infected with, or are perinatally exposed to, the human immunodeficiency virus (HIV), have a life-threatening illness or other special medical need, or have been perinatally exposed to a dangerous drug.” S. 342 would also require HHS to 1) provide evaluations of projects carried out under AIAA, 2) conduct a study providing further information on abandoned infants or young children and their parents, and 3) evaluate and report on intervention methods before abandonments and effective methods for responding to the needs of abandoned infants and young children. Additionally, H.R. 77, a bill requiring the Justice Department to create a task force to collect and report on infant abandonment, was introduced and, as of April 8, 2003, was referred to the House Judiciary Committee and the House Education and the Workforce Committee. Identical bills to H.R. 77 had been introduced in the 106th and 107th Congresses.

H.R. 2018 was introduced, yet not passed, in the 107th Congress and would have allowed states to use block grant funds under the Temporary Assistance for Needy Families (TANF) program to support safe havens for infants and would also have required HHS to provide further information on abandonments. H.R. 2018 was referred to subcommittees in both the House Ways and Means Committee and the House Education and the Workforce Committee, but no action was taken.

Issues

The federal government plays an indirect role in child welfare issues, which are primarily a function of state governments. As described above, considerable activity has occurred and is continuing in state legislatures across the country, where the debate over “safe haven” laws is primarily taking place. Advocates of these laws believe they will reduce the number of infant abandonments in dangerous settings, preventing risk to the babies and possibly death, if desperate birth parents have a safe alternative. Eliminating the fear of prosecution enables and encourages these parents to act responsibly and consider the safety of their children, even when they feel they cannot care for the children themselves. Others argue that these laws encourage irresponsible behavior, may result in more abandonments, and may induce abandonment by women who otherwise would have sought additional support and services. Moreover, by allowing birth parents’ anonymity, important medical or other genetic information may never be obtained, and some of these children may be difficult to place for adoption, particularly if the process of terminating parental rights is difficult or prolonged. These laws also might interfere with the parental rights of fathers, if they are unaware of the baby’s birth and subsequent – and legal – abandonment. Finally, pregnancy prevention and family preservation are not generally addressed in these laws, nor do they provide for counseling or medical services to birth parents who may need them.

Practical considerations include awareness of the safe haven laws and the extent to which pregnant women and their partners know about them. Likewise, the effectiveness of these laws assumes that anyone working in a facility required to accept abandoned babies is familiar with the law’s provisions and the anonymity and protection from prosecution that it provides to participating parents. Advocates note the importance of public awareness campaigns and the need for adequate funding for such campaigns and for the training of hospital and other workers who might be affected by these laws. In addition, some state safe haven programs may be in conflict with existing laws, such as those dealing with termination of parental rights (TPR). For instance most state child welfare laws require the state to search for the parents prior to the termination of parental rights. However, these types of searches may be hindered by the anonymity provisions in safe haven laws.

As stated above, the federal role in these issues is indirect, since child abandonment – as either a criminal or civil issue – is governed by state and not federal laws. However, states are now permitted to use portions of their PSSF funds on infant safe haven programs, and legislation is currently pending that would require further data collection and the dissemination of reports and evaluations regarding infant abandonment. There is general agreement that little information is available on which to base policy decisions and that more information is needed about the number of children who are abandoned and the causes of these abandonments. At the same time, there is concern that quality data collection in general is needed in the child welfare area and that a focus on the relatively small number of children who are abandoned or discarded in public places should not detract from ongoing efforts by state child welfare agencies to collect and analyze information on the larger numbers of children who are abandoned, abused, or neglected, including those who subsequently enter foster care.