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## South Carolina's Safe Haven for Abandoned Infants Act: A Band-Aid Remedy for the Baby-Dumping Epidemic

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# **SOUTH CAROLINA'S SAFE HAVEN FOR ABANDONED INFANTS ACT: A "BAND-AID" REMEDY FOR THE BABY-DUMPING "EPIDEMIC"**

## **I. INTRODUCTION**

On the heels of what some label "an unprecedented spate of abandoned-infant deaths" nationwide,<sup>1</sup> South Carolina, along with thirteen other states,<sup>2</sup> recently enacted a statute designed to prevent the deaths of unwanted newborns.<sup>3</sup> Modeled after a Texas statute,<sup>4</sup> South Carolina's Safe Haven for Abandoned Babies Act offers confidentiality and immunity to parents who leave their unharmed infants at a hospital.<sup>5</sup> The philosophy underpinning this law is that by providing parents<sup>6</sup> a non-punitive means of anonymously "ridding" themselves of their newborns, the

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1. Stacy A. Teicher, *Rescuing Babies from Abandonment*, THE CHRISTIAN SCI. MONITOR, Jan. 24, 2000, at 3.

2. The other states that have adopted these Safe Haven statutes are the following: Alabama, Colorado, Connecticut, Florida, Indiana, Louisiana, Michigan, Minnesota, New Jersey, New York, Texas, and West Virginia. See SCH. OF SOC. WELFARE, UNIV. OF CAL., BERKELEY, ABANDONED INFANTS ASSISTANCE RES. CTR., DISCARDED INFANTS FACT SHEET, at <http://socrates.berkeley.edu/~aiarc> (Aug. 2000) (last visited Oct. 31, 2001); see also ALA. CODE §§ 26-25-1 to -5 (1975); COLO. REV. STAT. § 19-3-304.5 (2000); CONN. GEN. STAT. ANN. §§ 17a-57-17a-61, 53-23(b) (West Supp. 2001); FLA. STAT. ANN. § 383.51 (West Supp. 2001); IND. CODE ANN. § § 31-9-2-0.5, 31-34-2.5-1, 35-46-1-4 (Michie Supp. 2001); LA. REV. STAT. ANN. §§ 1703-1706 (West Supp. 2001); MICH. COMP. LAWS ANN. § 750.135(2) (West Supp. 2001); MINN. STAT. ANN. §§ 145.902, 260C.217, 609.3785 (West Supp. 2001); N.J. STAT. ANN. §§ 30:4C-15.6-30:4C-15.10 (West Supp. 2001); N.Y. SOC. SERV. LAW § 372-g (West Supp. 2001); TEX. PENAL CODE ANN. § 22.041(h) (Vernon Supp. 2000); TEX. FAM. CODE ANN. § 262.301 (Vernon Supp. 2000); W. VA. CODE ANN. §§ 49-6E-1, -4 (Michie Supp. 2001). Please note that while this paper was in publication, twenty-two more states passed Safe Haven statutes. These new states are: Arizona, Arkansas, California, Delaware, Idaho, Illinois, Iowa, Kansas, Mississippi, Montana, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, and Wisconsin. CHILD WELFARE LEAGUE OF AM., LIST OF ENACTED STATE SAFE HAVEN LEGISLATION, at <http://www.cwla.org/programs/prevprev/flocrittsafehaven.htm> (last visited Oct. 31, 2001).

3. Kimathi Lewis, *Law Fails to Protect Children, Some Say*, THE STATE (Columbia, S.C.), Sept. 13, 2000, at A1.

4. *Id.*; TEX. FAM. CODE ANN. § 262.301 (Vernon Supp. 2000); TEX. PENAL CODE ANN. § 22.041(h) (Vernon Supp. 2000).

5. S.C. CODE ANN. § 20-7-85(A) (West Supp. 2000). South Carolina's statute refers to both hospitals and hospital outpatient facilities. *Id.* In this article, "hospital" will refer to both.

6. Although the law applies to either parent who drops off the child, young mothers are generally considered the "beneficiaries" of the law. See, e.g., CHILD WELFARE LEAGUE OF AM., BABY ABANDONMENT IN THE UNITED STATES: FREQUENTLY ASKED QUESTIONS, at <http://www.cwla.org/programs/baby/faq.htm> (last visited Oct. 31, 2001) (explaining that the laws focus on mothers despite the possibility of fathers being directly or indirectly involved with the abandonment because mothers have been the "abandoners" in most reported cases); Michelle Oberman, *Mothers Who Kill: Coming To Terms with Modern American Infanticide*, 34 AM. CRIM. L. REV. 1, 3 n.5 (1996) (explaining that killing an infant within twenty-four hours of birth is a "gendered phenomen[on]" reflecting a mother's response to pregnancy, labor, and delivery).

number of unwanted babies found dead or severely injured will decrease.<sup>7</sup> However, South Carolina's law does not merely address immunizing parents from prosecution for abandoning an infant; the law also sets forth procedures for a hospital and the South Carolina Department of Social Services to follow immediately after the abandonment takes place, including an expedited process to terminate parental rights.<sup>8</sup>

Part II of this Comment discusses the impetus leading states to pass Safe Haven statutes<sup>9</sup> and describes model programs set up in Texas, Alabama, and Minnesota. Part III analyzes South Carolina's act, first by explaining the procedures the statute creates and then by comparing its provisions with those found in the model programs. Part IV critiques the likely effectiveness South Carolina's Safe Haven Act will have in preventing infants from being abandoned in dangerous environments. Finally, Part V suggests alternative solutions that would more effectively reduce the number of discarded newborns.

## II. SAFE HAVEN BILLS GAIN SUPPORT ACROSS THE NATION

### A. *The "Discarded Infant" Media Attention*

Although the U.S. Department of Health and Human Services (DHHS) keeps tabs on how many children enter foster care because of abandonment,<sup>10</sup> there are no reliable statistics specific to discarded infants.<sup>11</sup> Based solely on a survey of media reports nationwide, DHHS found that 105 babies were discarded in public places in 1998.<sup>12</sup> Of those babies, thirty-three were found dead or died after discovery.<sup>13</sup> As a point of comparison, in 1991 the media covered stories of sixty-five baby abandonments, eight of which resulted in the baby's death.<sup>14</sup> While it is vague to

7. See, e.g., Lewis, *supra* note 3 (explaining that these laws "give babies a chance at life").

8. S.C. CODE ANN. § 20-7-85(B)-(E) (West Supp. 2000).

9. Throughout this paper, "Safe Haven statute" refers to any legislation that sets forth the criteria whereby parents can abandon their newborn infants either without fear of prosecution or with the promise that the "safe abandonment" can be used as an affirmative defense.

10. SCH. OF SOC. WELFARE, *supra* note 2.

11. *Id.* The term "discarded infant" describes a newborn abandoned in a public place other than a hospital. *Id.* In contrast, "abandoned infants" are those infants not ready to be discharged from the hospital but whose biological parents will probably not bring them home, and "boarder babies" are newborns born in a hospital who cannot be placed in their biological parents' custody. *Id.*

12. *Id.*; see also Warren Cohen, *Keeping the Nation's Newborns Safe*, U.S. NEWS AND WORLD REP., Feb. 28, 2000, at 32 (reporting DHHS's findings).

13. SCH. OF SOC. WELFARE, *supra* note 2; see also Cohen, *supra* note 12, at 32 (noting DHHS's study).

14. See SCH. OF SOC. WELFARE, *supra* note 2; Cohen, *supra* note 12, at 32.

describe recent abandonments as hitting a record number,<sup>15</sup> researchers have uncovered much higher numbers of discarded infants in the past.<sup>16</sup>

Even though public abandonment is by no means a modern-day phenomenon,<sup>17</sup> the plight of discarded infants has nonetheless caught the public's attention, thereby provoking concern about the "increase" of public abandonments. However, without more reliable information many child welfare advocates hesitate to support hasty solutions aimed at addressing this purported epidemic.<sup>18</sup> In spite of this wariness and the lack of uniform information currently available, state representatives feel pressure from their constituents to take action.<sup>19</sup> As a result, thirteen states have enacted legislation that decriminalizes "safe abandonments" in an effort to decrease the number of discarded infants found dead.<sup>20</sup>

### B. *Sowing the Seeds of the Safe Haven Trend*

Since 1981, New York state Senator Nancy Larrain Hoffmann has promoted offering women the option to leave their unharmed newborns in a safe place without the fear of prosecution.<sup>21</sup> Hoffmann convinced the Syracuse District Attorney not to prosecute women who abandon their newborns if there is evidence of an intent to safeguard the baby.<sup>22</sup> Another public official, the District Attorney in Mobile, Alabama, made a similar agreement after Jodi Brooks, a television reporter who covered a story about a young, unmarried mother drowning her newborn boy in a toilet, approached him about offering women a safe, non-punitive means of discarding their newborns.<sup>23</sup>

Despite these other states' attempts to address this problem, Texas passed the first statewide Safe Haven Statute.<sup>24</sup>

15. See, e.g., Teicher, *supra* note 1, at 3 (calling the number of infants dying due to abandonment "unprecedented").

16. See, e.g., Lawrence M. Friedman, *Crimes of Mobility*, 43 STAN. L. REV. 637, 655 (1991) (finding that newspapers reported over 900 discarded infants between 1861 and 1871 in the state of New York alone).

17. A number of media reports from the eighteenth and nineteenth centuries indicate that authorities regularly discovered dead babies in ditches, parks, and cesspools in England. See Oberman, *supra* note 6, at 13 n.45.

18. See generally CHILD WELFARE LEAGUE OF AM., *supra* note 6 (explaining that despite its concern about the number of discarded babies, the CWLA plans first to gather uniform data before issuing recommendations).

19. See, e.g., Garry Mitchell, *Safe Abandonment Drive to Save Newborns Reaches 28 States*, ASSOC. PRESS NEWSWIREs, May 24, 2000 (on file with author) (describing the safe abandonment campaign's spread across the country).

20. See sources cited *supra* note 2.

21. John Caher, *Bill Would Decriminalize Child Abandonment in Some Situations*, N.Y.L.J., Mar. 10, 2000, at 1, 7.

22. *Id.*

23. See Mitchell, *supra* note 19.

24. See e.g., Cohen, *supra* note 12, at 32 (explaining that the idea to provide infants with a safe haven came from policy born in Alabama, but that Texas passed the first statewide Safe Haven Statute).

### 1. *The "Affirmative Defense" in Texas*

Texas enacted its Safe Haven Statute after thirteen incidents of public abandonment occurred within a ten-month period.<sup>25</sup> The Texas statute makes no promise of immunity from prosecution for abandonment; rather, it allows the parent-defendant to use the safe abandonment as an affirmative defense.<sup>26</sup> Only those parents who safely discard their babies at a hospital or fire station within thirty days after the birth can avail themselves of this defense.<sup>27</sup>

The Texas law fails to address the proper procedures for terminating parents' rights to an infant relinquished under the statute. However, according to the Baby Moses Project, a Texas organization established to address the problem of discarded infants, the law is likely to "piggy-back" on established "parental right relinquishment" procedures, thereby allowing the parent ten days to withdraw his or her consent after safely abandoning the baby.<sup>28</sup>

Since the Texas law went into effect, infant abandonments continue. Already authorities have taken custody of seven discarded infants, and none of the infants were abandoned in accordance with the law.<sup>29</sup> Therefore, some might question the efficacy of the Texas approach.

### 2. *Alabama Turns Its "No Prosecution Agreement" into State Law*

Rather than merely relying on an "informal" agreement that the prosecutor not pursue women who abandon their infants in a safe environment, Alabama enacted a Safe Haven Statute in 1975 and established a model program whereby a mother can legally abandon her newborn.<sup>30</sup> Under the law, any parent who anonymously leaves a baby with emergency workers has an affirmative defense (and likely will avoid prosecution altogether) so long as the infant is unharmed and not more than seventy-two hours old.<sup>31</sup>

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25. *Id.*

26. TEX. PENAL CODE ANN. § 22.041(h) (Vernon Supp. 2000); TEX. FAM. CODE ANN. § 262.301 (Vernon Supp. 2000). *But see* Raffat Binte Rashid, *New Baby-Abandonment Law Gets No Takers*, HOUS. CHRON., July 13, 2000, at A27 (quoting state Representative Morrison's statement that "'the District Attorneys Association of Texas . . . do[es] not plan to prosecute any mother who turns over their [sic] infant under this law.'").

27. TEX. PENAL CODE ANN. § 22.041(h) (Vernon Supp. 2000); TEX. FAM. CODE ANN. § 262.301 (Vernon Supp. 2000).

28. Justin Unruh, *Saving Abandoned Newborns: Frequently Asked Questions About the Baby Moses Project*, The Baby Moses Project Website, at <http://www.babymoses.org>. (last visited Oct. 31, 2001); TEX. FAM. CODE ANN. § 161.103 (b)(10), (g) (Vernon Supp. 2000).

29. *See* Lewis, *supra* note 3, at A6.

30. ALA. CODE §§ 26-25-1 to 26-25-5 (1975).

31. *Id.* §§ 26-25-1 & 26-25-3.

Alabama's program has experienced limited success. Two mothers relinquished their newborns at the hospital. One mother later regained custody of her infant;<sup>32</sup> the other infant currently resides with adoptive parents.<sup>33</sup>

### 3. *Minnesota Offers Immunity Plus Services*

Minnesota developed a model program which immunizes the mother from prosecution if she safely abandons her baby at a hospital within seventy-two hours of birth.<sup>34</sup> In Minnesota, when a mother drops off the baby, she is given an identification bracelet.<sup>35</sup> If the mother changes her mind, she can contact the Minnesota Department of Social Services and work with them to regain custody of the child.<sup>36</sup> Although not codified, Minnesota allows the mother six months to reclaim her baby.<sup>37</sup>

To date, no parent has safely abandoned her child pursuant to Minnesota's law.<sup>38</sup>

## III. SOUTH CAROLINA'S CARROT AND STICK APPROACH TO INFANT ABANDONMENT

### A. *South Carolina's Safe Haven Act*

The South Carolina General Assembly enacted the Safe Haven for Abandoned Infants Act ("Act") on June 6, 2000.<sup>39</sup> This Act sets forth the "[p]rocedures and protections for parents relinquishing possession and custody of a newborn at a hospital or hospital outpatient facility."<sup>40</sup> The Act excuses anyone abandoning an infant<sup>41</sup> from having to disclose his or her identity, but requires that the hospital ask the person to name "any parent of the infant other than the person leaving the infant with the hospital . . . ."<sup>42</sup> Furthermore, the Department of Social Services (DSS) must provide the hospital with a form that asks questions concerning the infant's genetic background and medical history.<sup>43</sup> Hospital employees must attempt to

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32. Cohen, *supra* note 12, at 32.

33. *Id.*

34. MINN. STAT. ANN. § 609.3785 (West Supp. 2001).

35. *See* Unruh, *supra* note 28.

36. *Id.*

37. *Id.*

38. Cohen, *supra* note 12, at 32.

39. S.C. CODE ANN. § 20-7-85 (West Supp. 2000).

40. H.B. 4743, 113th Gen. Assem., Reg. Sess. (S.C. 1999).

41. § 20-7-85(J) (defining an infant as "a person not more than thirty days old").

42. §20-7-85(B)(2).

43. *Id.*

gather this information from the person leaving the baby or give the person the form along with a postage-paid envelope.<sup>44</sup>

By the end of the business day after the date that the hospital receives possession of the infant, the hospital must contact DSS.<sup>45</sup> Upon such notification, the Act automatically grants DSS legal custody of the infant and requires that it contact law enforcement to determine whether any missing infant reports match the abandoned infant's description.<sup>46</sup> For thirty days thereafter, law enforcement is obligated to contact DSS upon receiving any missing infant reports.<sup>47</sup> As the child's legal custodian, DSS must obtain physical custody within twenty-four hours after learning that the infant can be discharged.<sup>48</sup> Within forty-eight hours of receiving legal custody, the Act requires DSS to file a petition requesting that the court adopt termination of parental rights as the permanent plan for the infant.<sup>49</sup> However, the Act does not require that DSS initiate a child protective investigation or hold a probable-cause hearing, both of which are normally required when DSS takes a child into emergency protective custody.<sup>50</sup>

If the court approves termination of parental rights as the infant's permanent plan, then the subsequent permanency order will require DSS to file a petition within ten days requesting that the court terminate the parents' rights to the newborn.<sup>51</sup> The Act declares that "[t]he act of leaving an infant with a hospital . . . pursuant to this section is conclusive evidence that the infant has been abused or neglected . . . for evidentiary purposes in any judicial proceeding in which abuse or neglect of an infant is an issue."<sup>52</sup> In other words, evidence that the parent abandoned or acted in concert with someone who abandoned his or her child at the hospital pursuant to this law decisively proves grounds for termination of that parent's rights to the child.

In South Carolina, wilfully abandoning a child is a felony, and persons convicted of child abandonment may be both fined and imprisoned.<sup>53</sup> Subsection

44. *Id.* Also note that the statute requires that the hospital request "information concerning the use of a controlled substance by the infant's mother," but precludes admission of this information as evidence in any court proceeding. *Id.* Although beyond the scope of this Comment, the provision may provide mothers who have used illegal drugs during pregnancy with a means of avoiding prosecution for child abuse. *Cf. Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997) (upholding the conviction of the defendant-mother who used drugs during pregnancy). On the other hand, because the Act purports to guarantee immunity only from "harm" to the child inherent in abandonment, an argument can be made that if the mother admits to drug use when she drops off her infant, the statute will not grant her immunity, as the child would be harmed by the drug use and not merely from the abandonment. *See generally* § 20-7-85; *Whitner*, 328 S.C. 1, 492 S.E.2d 777.

45. S.C. CODE ANN. § 20-7-85(C) (West Supp. 2000).

46. *Id.* §§ 20-7-85 (C) & (D).

47. *Id.* § 20-7-85(D).

48. *Id.* § 20-7-85(C).

49. *Id.* § 20-7-85(E)(2).

50. *Id.* § 20-7-610. The Act explains that receiving custody of an infant pursuant to the Act does not constitute emergency protective custody. *See id.* § 20-7-85(C).

51. S.C. CODE ANN. § 20-7-85(E)(2) (West Supp. 2000).

52. *Id.* § 20-7-85(F).

53. S.C. CODE ANN. § 20-7-50 (West Supp. 1999).

(G) of the Act protects a parent<sup>54</sup> from prosecution for any criminal offense pertaining to the abandonment (excluding any infliction of harm caused prior to the abandonment) if the parent “abandons” the infant in the physical custody of a hospital employee.<sup>55</sup> The Act also grants immunity from any liability to the hospital and its employees so long as they comply with the provisions of the statute.<sup>56</sup>

## *B. Comparing South Carolina with the Model States*

### *1. The Carrot: Complete Immunity and a Thirty-Day Limit*

By offering parents a non-punitive option to discard their infants, South Carolina’s Safe Haven Act is extremely forgiving. The Act not only grants parents complete immunity (as opposed to merely an affirmative defense),<sup>57</sup> but it also provides a thirty-day window after the child’s birth for parents to take advantage of the Act (as opposed to a seventy-two-hour window).<sup>58</sup> Since no record of South Carolina legislative history exists, ascertaining the South Carolina General Assembly’s policy considerations regarding these lenient provisions is difficult. Texas’s Safe Haven Statute pre-dates our own, and therefore the thirty-day limitation may simply be a reflection of the age requirement adopted by Texas.<sup>59</sup>

Many states prohibit women from legally consenting to give their newborn up for adoption until seventy-two hours after birth.<sup>60</sup> Since safe haven laws target young mothers who have concealed their pregnancies and need to get rid of their newborns as quickly as possible,<sup>61</sup> the model programs in Alabama and Minnesota limit immunity to infants less than seventy-two hours old.<sup>62</sup> Apparently, a major rationale underpinning this limit is that beyond seventy-two hours the mother can legally consent to giving her infant up for adoption.<sup>63</sup>

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54. The Act also includes anyone who acts under a parent’s authority. S.C. CODE ANN. § 20-7-85(G) (West Supp. 2000).

55. *See id.* (limiting the infant to a person not more than thirty days old or reasonably determined not to be more than thirty days old).

56. *Id.* § 20-7-85(H).

57. *Id.* § 20-7-85(G). *Compare* TEX. PENAL CODE ANN. § 22.041(h) (Vernon Supp. 2000) (entitling a parent who safely abandons an infant to an affirmative defense, but not immunity).

58. *See, e.g.,* ALA. CODE § 26-25-1 (1975) (allowing only a three-day window for parents to “safely” abandon their child).

59. *See* TEX. FAM. CODE ANN. § 262.301(a) (Vernon Supp. 2000) (limiting the affirmative defense of safe abandonment to parents who abandon their infants within thirty days of birth).

60. Cohen, *supra* note 12, at 32.

61. *Id.*

62. ALA. CODE § 26-25-1 (1975); MINN. STAT. ANN. § 609.3785 (West Supp. 2001).

63. Another reason behind the seventy-two hour time frame is to protect the infant during the most vulnerable time of the child’s life. *See* SAFE PLACE FOR NEWBORNS, INC., ABOUT THE SAFE PLACE PROGRAM: KEY TENETS, at <http://www.safeplace.org> (last modified Mar. 17, 2000). Furthermore, if the baby is being “hidden,” the fear is that the newborn lacks life-sustaining provisions such as food and warmth. *Id.*



In South Carolina, the adoption laws allow a mother to consent to adoption immediately after birth.<sup>64</sup> Therefore, the “ability-to-consent” rationale behind the seventy-two hour age limit in Minnesota and Alabama statutes makes little sense in South Carolina.<sup>65</sup>

Although South Carolina allows immediate post-birth consent to adoption, safely discarding a baby under the terms of the South Carolina Safe Haven Act guarantees the parent anonymity.<sup>66</sup> Therefore, this route of relinquishing parental rights attracts those parents attempting to keep the pregnancy and birth a secret. However, if the Act intends to benefit those mothers attempting to conceal their childbirth, allowing a thirty day window<sup>67</sup> to take advantage of the law seems unreasonably long.<sup>68</sup>

## 2. *The Stick: Expedited Termination of Parental Rights*

Despite the generous thirty-day window South Carolina’s Safe Haven Act provides for a parent to take advantage of the law, once a parent abandons the baby, the Act offers little sympathy if the parent subsequently wishes to regain custody. The harshness of South Carolina’s termination procedures appears to be a novel approach, as neither Texas nor Minnesota’s statutes have similar provisions.

The Texas Statute fails to address the procedures that occur once an infant has been taken into custody, but its silence suggests that the timetables already set up regarding parents’ ability to withdraw their consent to adoption would apply.<sup>69</sup> Accordingly, parents in Texas could likely revoke their consent to the adoption anytime before an order for adoption was rendered.<sup>70</sup>

In Minnesota, the mother is given an identification bracelet when she safely abandons her infant, which indicates that the state is willing to work with her if she chooses to return for the infant<sup>71</sup>. Such provisions are in stark contrast to the

64. South Carolina law only prohibits a mother from consenting to adoption before the child’s birth. *See generally* Doe v. Clark, 318 S.C. 274, 276, 457 S.E.2d 336, 337 (1995) (interpreting the adoption statutes to require the birth mother’s consent to be given after the child’s birth); S.C. CODE ANN. § 20-7-1700(A)(3) (West Supp. 1999) (requiring adoption consent form to include the date of the child’s birth).

65. Interestingly, if the *only* rationale behind Safe Haven Statutes is to provide the mother with a means of discarding her newborn during a period in which she would otherwise be prohibited from consenting to adoption, then South Carolina would not *need* its Act since South Carolina adoption laws currently allow mothers to consent to an adoption immediately after the child’s birth.

66. S.C. CODE ANN. § 20-7-85(A) (West Supp. 2000) (stating that a person leaving an infant pursuant to this section need not reveal his or her identity).

67. *Id.* § 20-7-85(G)(3).

68. *See* SAFE PLACE FOR NEWBORNS, INC., *supra* note 63 (mentioning the potential harm inherent in hiding a baby).

69. Unruh, *supra* note 28; *see also* TEX. FAM. CODE ANN. § 162.011 (Vernon 1996) (allowing a parent to revoke consent at any time before there is an order granting the adoption).

70. TEX. FAM. CODE ANN. § 162.011 (Vernon 1996).

71. Unruh, *supra* note 28.

accelerated termination of parental rights provided for in South Carolina's Safe Haven Act.<sup>72</sup>

The effect of South Carolina's Act is that once a parent leaves the child, no statutory right exists ensuring the parent an opportunity to "withdraw" the relinquishment of custody.<sup>73</sup> Most likely the Act provides for such speedy termination in order to free the newborn for adoption as soon as possible. However, the problem with this finality is that after giving birth, some women experience postpartum depression.<sup>74</sup> This depression leads to unhappiness, irritability, and exhaustion.<sup>75</sup> It generally begins from the third to the tenth day after birth and lasts for several days.<sup>76</sup> In this condition, the birth mother may experience muddled thinking or may lack the mental capacity necessary to competently decide to relinquish her rights. The statute offers no "exception" to the immediate initiation of terminating a parent's rights, even if a mother, whose relinquishment occurred during this fragile post-birth time period, returns for the child shortly thereafter.

After a parent voluntarily relinquishes his or her parental rights, consent can be withdrawn up until the time the child is adopted if "the court finds that the withdrawal is in the best interests of the child and that the consent or relinquishment was not given voluntarily or was obtained under duress or through coercion."<sup>77</sup> However, the Act opts not to treat a parent's safe abandonment as a relinquishment, but rather implements the procedure to terminate that parent's rights to the child.<sup>78</sup> Therefore, unlike the limited "grace period" before adoption when a parent retains at least the partial ability to withdraw his or her consent, once a parent's rights are terminated pursuant to the Act, the termination cannot be undone.<sup>79</sup>

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72. S.C. CODE ANN. § 20-7-85(E) (West Supp. 2000).

73. In fact, the statute refers to the abandonment as conclusive evidence of grounds to terminate parental rights. § 20-7-85(F). Although this provision may fall short of merely giving the judge a rubber stamp to sign a termination of parental rights ("TPR") order, it does reduce the burden of proof for DSS. With a ground for termination conclusively established, DSS need only convince the judge that TPR is in the child's best interest. *See* S.C. CODE ANN. § 20-7-1572 (Law. Co-op. 1976).

74. Oberman, *supra* note 6, at 33 ("Out of every one thousand women who give birth, one or two will suffer from postpartum psychosis.").

75. *See id* at n.142 (discussing postpartum depression but pointing out that some say such depression is indistinguishable from other types of "transient depression" such as the "going to work blues" employees experience on Sunday nights).

76. *Id.*

77. S.C. CODE ANN. § 20-7-1720 (West Supp. 2000).

78. *Id.* § 20-7-85(E)(2).

79. *Id.* § 20-7-1574.

## III. EFFECTIVENESS OF SAFE HAVEN STATUTES

Since South Carolina's Safe Haven Act was enacted, two mothers have abandoned their infants in South Carolina; one buried her infant alive, and the other left her baby at a hospital.<sup>80</sup>

Two months after the statute's enactment, a twenty-one-year-old woman from Fairfax, South Carolina buried her newborn baby boy headfirst approximately thirty minutes after his birth.<sup>81</sup> Proponents of the Act pointed to the lack of publicity it received as a likely reason the mother did not take advantage of it.<sup>82</sup>

Three months later, in November 2000, a birth mother *did* take advantage of the immunity offered by the Safe Haven Statute,<sup>83</sup> although the circumstances surrounding the safe abandonment were perhaps not what the legislature envisioned. The mother, who was unaware of the new law, gave birth at a hospital and considered relinquishing her rights to the child.<sup>84</sup> After being told about the safe abandonment option, the mother decided to anonymously abandon the infant rather than fill out the paperwork necessary for relinquishment.<sup>85</sup>

The burden of advertising this new law rests on the shoulders of DSS.<sup>86</sup> However, based on information collected in studies of neonaticide,<sup>87</sup> the likelihood that the targeted young mothers will take advantage of this safe abandonment option, no matter how well advertised, is slim.

80. Blair Stokes Blanks & Kimathi Lewis, *Mother Charged in Burial of Live Infant*, THE STATE (Columbia, S.C.), Sept. 12, 2000, at A1; see also S.C. DEP'T OF SOC. SERVS., NOTICE OF ABANDONMENT (Nov. 22, 2000), at <http://www.state.sc.us/dss/news/pn/20001122.htm> (last visited Oct. 31, 2001) (on file with author).

81. See Blanks & Lewis, *supra* note 80, at A1. The media dubbed the infant, found alive hours after his mother buried him headfirst, Daniel, after the biblical character who survived despite being trapped in a den full of lions. *Id.* Although this incident happened months after the South Carolina Legislature passed its Safe Haven Act, many people now refer to the law as "Daniel's Law." Interview with Susan Fittipaldi, Assistant General Counsel, S.C. Dept. of Soc. Servs., in Columbia, S.C. (Sept. 20, 2000).

82. See, e.g., Lewis, *supra* note 3, at A1 (reporting that Rep. Doug Smith, R-Spartanburg, the bill's author, believes that until mothers know about the safe abandonment option the new law offers, they will continue to discard their newborns); see also *Hope for Hopeless*, THE FT. WORTH STAR-TELEGRAM, Mar. 23, 2000, at 10 (blaming the ineffectiveness of the Texas Safe Haven Statute on the public's ignorance of its existence).

83. See S.C. DEP'T OF SOC. SERVS., *supra* note 80.

84. Interview with Susan Fittipaldi, Assistant General Counsel, S.C. Dept. of Soc. Servs., in Columbia, S.C. (Dec. 13, 2000).

85. *Id.*

86. S.C. CODE ANN. § 20-7-85(I) (West Supp. 2000).

87. Neonaticide is defined as an infant homicide occurring on the day of the infant's birth. See SCH. OF SOC. WELFARE, *supra* note 2. Since public abandonment often occurs on the first day of an infant's life and often results in death, public abandonment and neonaticide mirror each other in many respects. *Id.*

### A. *Mothers Who Discard Their Newborns*

In the past, many women concealed their illegitimate pregnancies in an attempt to avoid the stigma society attached to sexual “deviants.”<sup>88</sup> Despite the more accepting attitude toward single mothers in today’s society, many of the mothers known to have discarded their infants come from families that oppose premarital sex, contraception, and abortion.<sup>89</sup> In essence, these women fear the same humiliation from their families as women in the past feared from the attitude of society at large. As a result, rather than confronting their families, the young women deny their pregnancies altogether.<sup>90</sup>

Women who have been caught discarding or killing their newborns are of all races and come from a variety of socioeconomic backgrounds.<sup>91</sup> Perhaps the strongest similarity among these mothers is that virtually all of them conceal their pregnancies.<sup>92</sup> Furthermore, they are generally passive girls who make no preparation for their baby at all; in other words, they neither plan on killing, abandoning, or caring for the baby after giving birth.<sup>93</sup> Instead, the women deny the fact they are pregnant up until birth, and attempt to “get rid” of the newborn as soon as possible after birth so that no one ever knows of the pregnancy.

Of the forty-four cases researched in Professor Michelle Oberman’s study of neonaticide, nine of the infants drowned in the toilet in which the mother gave birth, two babies were drowned in a bathtub, five were left unattended to die (i.e. on the bathroom floor), four were thrown out of the bathroom window, sixteen were suffocated, two died from stab wounds (resulting from the mother’s botched attempt to cut the umbilical cord), and three were killed violently (i.e. by being bludgeoned to death).<sup>94</sup> Obviously, the majority of these babies died either during the delivery due to their mothers’ lack of skill or shortly thereafter in her desperation to conceal the birth as soon as possible. The probability that these mothers would have the mind-set to safely abandon their newborns at a hospital is highly unlikely.<sup>95</sup>

### B. *Criticisms of Safe Haven Laws’ Effectiveness*

One problem with Safe Haven Statutes is that legislatures enacted them after admittedly relying on little or no information about the type of women who discard

88. See Oberman, *supra* note 6, at 9 n.19.

89. *Id.* at 62 n.291.

90. See *id.* at 71.

91. See SCH. OF SOC. WELFARE, *supra* note 2.

92. See Oberman, *supra* note 6, at 24 n.95 (reporting that of the thirty-two mothers studied who had committed neonaticide, only three of them had not concealed their pregnancies at all); see also Lewis, *supra* note 3, at A1 (reporting that neither the baby’s mother nor grandmother knew of the pregnancy).

93. See Oberman, *supra* note 6, at 59 n.281 (contrasting the “immature” girl who commits neonaticide with the “activist” woman who aborts her unwanted pregnancy).

94. *Id.* at 25 nn.98-101.

95. See Unruh, *supra* note 28.

their newborns or the reasons for the abandonment.<sup>96</sup> Any time solutions are developed without first recognizing the underlying, perhaps even systemic, causes for the problem, there is a danger that the rule will be counterproductive.<sup>97</sup>

For instance, if the legislature's premise that the fear of prosecution compels women to recklessly discard their infants rather than to safely abandon them at a hospital is incorrect, then offering this non-punitive means of abandonment may exacerbate the problem rather than provide a remedy. After all, the number of women actually prosecuted for abandonment is small.<sup>98</sup> Moreover, few people even know that abandoning an infant is illegal,<sup>99</sup> so the fear of prosecution may have little effect on a mother's decision to abandon her infant. Therefore, adopting and advertising a safe haven law may actually serve to *increase* the number of newborns relinquished to the state as many women (especially young girls) who thought that they inevitably would have to tell someone of their pregnancies become aware of this new "option" to anonymously abandon their newborns. In essence, the law may provoke scared girls who otherwise would have eventually sought the help of their parents to conceal their pregnancies since now there exists a means for them to keep the baby a secret forever.

The statutes' biggest flaw is that they address the problem from the wrong end—offering women help only once they have come to the desperate point of delivering their babies on their own. In order to more effectively prevent these abandonments and deaths from occurring, these women must be encouraged to act responsibly *before* the child's birth, and ideally, before the child's conception.<sup>100</sup> Therefore, representatives trying to satisfy their constituents should focus on supporting social programs that reach these girls before they ever become pregnant, and then they should consider providing the mothers with a safety net of "options" if those programs fail and the girl finds herself with an unwanted pregnancy.

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96. See *id.* Legislatures who passed these laws never mention gathering any information about women who commit neonaticide. Instead, most programs the states have established to promote this law discuss only the lack of information currently available regarding public abandonment. See also CHILD WELFARE LEAGUE OF AM., *supra* note 6 ("No research has been conducted that identifies the population of parents who abandon their babies.").

97. See generally JOHN MCKNIGHT, *THE CARELESS SOCIETY: COMMUNITY AND ITS COUNTERFEITS* 44 (1995) (arguing that the social services system is often counterproductive). For example, the underlying reason many children are removed from a household is because of economic poverty, but in order for parents to remedy the problem, they must avail themselves of "caring" professional services that consume their resources even more. *Id.*

98. Unruh, *supra* note 28. For example, of the thirteen abandonments in Houston, Texas, the authorities only identified four mothers. The prosecutor charged only one of those four with a crime, murder.

99. See *Residents Ask for Decriminalization of Infant Abandonment*, ASSOC. PRESS NEWSWIRE, Apr. 24, 2000 (on file with author) (reporting that residents of a county where a woman was accused of discarding her newborn in a trash bin were unaware of the illegality of leaving a baby in a safe environment).

100. See Oberman, *supra* note 6, at 73.

## IV. MORE PRACTICAL MEANS OF PREVENTING "PUBLIC ABANDONMENT"

*A. Promote Contraception*

As noted earlier, women who conceal their pregnancies and ultimately abandon or kill their newborns behave immaturely and, in many cases, feel extremely insecure as well, which "paralyzes" them from taking action once they become pregnant.<sup>101</sup> This vulnerability is likely in part to blame for their unwanted pregnancy in the first place. If these young women can be reached, they must be taught early how to use birth control, what their options are if they do become pregnant, and where they can turn for help if they decide to keep their baby, rather than how to conceal a pregnancy.

Currently, the South Carolina Department of Education requires that schools put a strong emphasis on abstinence and insists that schools teach students about contraception in reproductive health education only as it relates to avoiding the transmission of sexually transmitted diseases (STDs).<sup>102</sup> Ironically, proponents of the Safe Haven statutes have insisted that the only way the law will be effective is for young women to be aware of the safe abandonment option. To promote awareness of the law, these proponents suggest advertising on billboards, making public announcements, and giving speeches to schools.<sup>103</sup> In essence, there is a giant gap in the reproductive health curriculum between encouraging the purists to remain chaste and coaching the promiscuous to conceal pregnancies. A more sound policy would take advantage of these resources to encourage teenagers to use contraception as a means of birth control, not merely STD prevention, thereby preventing girls from becoming pregnant in the first place.<sup>104</sup>

*B. Advertise the Adoption Option*

If the safety of the infant is society's utmost concern, rather than advertising a method that involves concealment of the pregnancy, un-aided birth, and *then* a responsible choice of safe abandonment, we should encourage pregnant women to

101. *Id.* at 72-73.

102. S.C. CODE ANN. § 59-32-10(2) (Law. Co-op. 1976). Schools can also offer "pregnancy prevention education" which does explain methods of contraception, but "[c]ontraceptive information must be given in the context of future family planning," and "[a]bortion must not be included as a method of birth control." *Id.* § 59-32-10(4).

103. *See Hope for Hopeless*, *supra* note 82, at 10; *see also* Rashid, *supra* note 26, at A27 (noting the use of televised public service announcements).

104. Despite the benefits of a more comprehensive sexual education class, such a class carries with it some additional cost. For instance, use of the birth control pill alone, while effective in preventing pregnancies, offers no protection against sexually transmitted diseases. Furthermore, no method of birth control is 100% effective, and therefore, unwanted pregnancies will continue to occur.

Another potential cost of such a program is social in nature. Having teachers explain methods of contraception might unintentionally give students the message that the community condones "teenage sex." However, a carefully tailored educational program might prevent students from making this inference.

seek medical attention immediately so that infants receive prenatal care.<sup>105</sup> Furthermore, these women need assurance that this medical attention will remain confidential, and that if they choose to conceal their pregnancies, they have the option to put their babies up for adoption. According to one study of pregnant teens, only thirteen percent of the girls surveyed knew how to go about putting their babies up for adoption.<sup>106</sup> A much lower percentage of pregnant teens, less than three percent, actually choose to give their children up for adoption as a way of resolving the pregnancy.<sup>107</sup>

As with contraception, resources would be better spent informing the public of adoption procedures rather than using funds to encourage the safe abandonment of newborns.

### *C. Making It Possible for the Woman to Be a Single Parent*

Reducing the number of abandoned infants could be achieved if pregnant young women were more confident in their ability to be a single parent. Many of the women who discard their infants feel overwhelmed by concerns about insurance, housing, and work.<sup>108</sup> Most live with their parents, and they fear they will be kicked out of the home once their parents know of the pregnancy.<sup>109</sup> Rather than spending money on a "safe abandonment campaign," states should establish and publicize programs that offer resources to scared, pregnant teens so that these young women have somewhere to turn when they fear the repercussions of turning to their parents.

## V. CONCLUSION

While the Safe Haven statutes' goal of protecting infants' lives is commendable, these laws boast minimal success at best, and at worst they may increase the number of newborn abandonments. With the potential drawbacks of this law outweighing its merits, the legislature will surely have to tinker with the Safe Haven Statute if it is to reduce the number of infants abandoned in South Carolina.

To better prevent infants from being discarded, the roots of the problem—the proliferation of unwanted pregnancies, the ignorance young women have about their options once pregnant, and the lack of resources available to young, single mothers—need to be attacked first. Not only is it tragic when a baby is left to die, but also when a young mother, often a child herself, is in so desperate a situation that she resorts to self-delivery and abandonment. Rather than focusing on

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105. See generally Unruh, *supra* note 28 (explaining that a majority of mothers discarding their infants received no prenatal care).

106. See Oberman, *supra* note 6, at 62.

107. *Id.* at 61.

108. *Id.* at 72.

109. *Id.* at 59.

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establishing programs where these babies can be abandoned more safely, the legislature must develop programs to empower these young women to make responsible decisions regarding their pregnancies, thereby safeguarding the health of both babies and mothers.

*Tanya Amber Gee*



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