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Remembering the Endangered “Child”: Limiting the Definition of “Safe Haven” and Looking Beyond the Safe Haven Law Framework

Lucinda J. Cornett¹

INTRODUCTION

STORIES of infants abandoned in dumpsters and on doorsteps pull at our heartstrings, draw media attention, and motivate legislators to take action. But newborns are not the only children who can be abandoned and neglected by their parents. For instance, before Nebraska amended its safe haven law in a 2008 special session, some parents took advantage of a law allowing the legal surrender of a child of any age.²

Safe haven laws permit parents to legally abandon their children in certain circumstances.³ Under these laws, a parent may leave a child in specified locations, giving no information about the child’s familial or medical history, and face no criminal repercussions.⁴ Such laws are

¹ Juris Doctor, expected May 2010, University of Kentucky College of Law; B.A., 2006, Political Science, *magna cum laude*, University of Kentucky.

² See Press Release, Neb. Dep’t of Health & Human Servs., 27th Use of Safe Haven Law Occurred (Nov. 22, 2008), <http://www.hhs.state.ne.us/newsroom/newsreleases/2008/Nov/safe-haven12.htm>. The 27th was the last legal use of the any-age Nebraska safe haven law, and it involved a fourteen-year-old child, clearly too old for the current thirty-day age limit of the Nebraska law. *Id.* Though the updated law took effect in November 2008, the first use of the legal abandonment provision under the new law did not take place until more than half a year later, in July 2009. See Press Release, Neb. Dep’t of Health & Human Servs, Nebraska Has First Safe Haven Case Under New Law (July 21, 2009), <http://www.hhs.state.ne.us/newsroom/newsreleases/2009/July/safehaven.htm>.

³ See, e.g., KY. REV. STAT. ANN. § 405.075 (West 2006); MO. ANN. STAT. § 210.950 (West Supp. 2010); NEB. REV. STAT. § 29-121 (Supp. 2008); N.M. STAT. § 24-22-3 (Supp. 2001); N.D. CENT. CODE § 27-20-02 (Supp. 2009); N.D. CENT. CODE § 50-25.1-15 (2007); see also Margaret Graham Tebo, *Texas Idea Takes Off: States Look to Safe Haven Laws as a Protection for Abandoned Infants*, A.B.A. J., Sept. 2001, at 30 (discussing the events leading to the first safe haven law in Texas).

⁴ See, e.g., KY. REV. STAT. ANN. § 405.075 (West 2006); MO. ANN. STAT. § 210.950 (West Supp. 2010); NEB. REV. STAT. § 29-121 (Supp. 2008); N.M. STAT. § 24-22-3 (Supp. 2001); N.D. CENT. CODE § 27-20-02 (Supp. 2009); N.D. CENT. CODE § 50-25.1-15 (2007). These laws can differ on their definitions of “safe haven,” who may legally abandon a child, the duties of those accepting the child, the age of the child, and more. See Law Details & Safe Haven Organizations by State | National Safe Haven Alliance, [http://www.nationalsafehavenalliance.org/states/\[hereinafter State Summary Map\]](http://www.nationalsafehavenalliance.org/states/[hereinafter State Summary Map]) (map summarizing varying safe haven laws); Wendy Koch,

justified as protecting infants and children, while giving distraught parents an alternative to leaving their newborns in life-threatening environments. That being said, in addition to creating great difficulties for other members of the infant's family who seek to establish a connection with the child, safe haven laws may contribute to dangerous abandonments, or at the very least, do very little to prevent harm to abandoned children. With these realities in mind, protection of defenseless children is a laudable legislative goal; however, a more limited definition of "safe haven," coupled with new laws that protect children beyond infancy, would provide a better solution to the problem than some current laws. As of the date of this writing, every state has enacted a safe haven law, and each limits the age at which a child may be abandoned without legal consequences.⁵

As the only state to ever allow parents to abandon children of unrestricted age, Nebraska soon faced a wave of teen abandonments, several from out of state.⁶ The Nebraska teen abandonments highlight the fact that children of all ages, not just infants, are at risk for abuse, neglect, and even death.

Nebraska's 2008 safe haven law, containing no age restriction, was amended in a special session that year to restrict the age at which a child could be abandoned.⁷ The current law is consistent with the rest of the nation's safe haven laws and only allows children thirty days or younger to be abandoned.⁸ Nebraska's law is still more liberal in its availability than many safe haven laws, including Kentucky's, which only allow for the abandonment of children who are three days old or younger.⁹ Other states,

Nebraska 'Safe Haven' Law Has Unintended Results, USA TODAY, Sept. 26, 2008, at 3A.

5 See State Summary Map, *supra* note 4; see also State Statutes Results, http://www.childwelfare.gov/systemwide/laws_policies/state/ (Check "Select All" under the heading "Select State(s)"; check "Infant Safe Haven Laws" under the heading "Child Welfare"; follow "Go!" hyperlink) (last visited Feb. 24, 2010).

6 See Martha Stoddard, *Latest Haven Dropoff Is from Indiana*, OMAHA WORLD-HERALD, Nov. 7, 2008, at B3; Andrew J. Nelson, *Father Drops Off 9 Children under 'Haven' Law*, OMAHA WORLD-HERALD, Sept. 25, 2008, at 1B; Karyn Spencer, *36th Child Dropped Off Just Before Deadline*, OMAHA WORLD-HERALD, Nov. 23, 2008, at 2B; see also NEB. DEP'T OF HEALTH AND HUMAN SERVS., LB 157 - SAFE HAVEN CASES, http://www.hhs.state.ne.us/children_family_services/SafeHaven/cases.pdf (last visited Mar. 1, 2010) (listing cases, including ages and residences of children abandoned under the previous Nebraska Safe Haven Law); Act effective Feb. 13, 2008, 2008 Neb. Laws 23 (Nebraska's first Safe Haven law).

7 See NEB. REV. STAT. § 29-121 (2008), amended by NEB. REV. STAT. § 29-121 (Supp. 2008).

8 NEB. REV. STAT. § 29-121 (Supp. 2008).

9 See ALA. CODE § 26-25-1 (LexisNexis 2009); ARIZ. REV. STAT. ANN. § 13-3623.01 (Supp. 2009); CAL. PENAL CODE § 271.5 (West 2008); COLO. REV. STAT. § 19-3-304.5 (2008); HAW. REV. STAT. § 587D-2 (Supp. 2007); KY. REV. STAT. ANN. § 405.075 (West 2006); MICH. COMP. LAWS ANN. § 712.1 (West 2002); MINN. STAT. ANN. § 145.902 (West 2005); MISS. CODE ANN. § 43-15-201 (West 2008); TENN. CODE ANN. § 68-11-255 (2006); UTAH CODE ANN. § 62A-4A-801 (West 2009); WASH. REV. CODE § 13.34.360 (2008); WISC. STAT. ANN. § 48.195 (West 2008). Though these are all the states that currently limit children eligible for Safe Haven drop-offs to the age of three days, many of these have proposed legislation to expand that age, and some states that had a similar age restriction as late as 2007 have already expanded the age. Compare State

however, will allow parents to leave children at designated safe havens if the child is no older than one year.¹⁰ Considering that all the children abandoned under the first formulation of the Nebraska law would fail to meet the requirements of these more limited safe haven laws, laws that extend protection to older children—who can also be in danger—deserve the attention of legislators. Nebraska has promised to address this issue, modeling new laws after a long-running Florida program that allows the state to offer assistance to at-risk children and their families without making them wards of the state or requiring that children have committed a crime.¹¹ At the time of this writing, the Nebraska legislature has not acted, but the abandonment of older children in Nebraska as well as the Florida initiative are worthy of note by other states.

Current safe haven laws do not require abandoning parents to consider the best interests of the child. These laws generally do not require any information from the abandoning parent,¹² and, thus, the non-relinquishing parent may not know of the abandonment, and likely never will, because states have no way of finding the parent. This lack of information may make medical decisions for the welfare of the child more difficult because there will be no way of obtaining a genealogical history. Also, because a variety of locations lacking the ability to provide immediate medical care qualify as “safe havens,” a child may be abandoned where he or she cannot receive immediate medical attention.

Part I of this Note considers the current form of and concerns with safe haven laws. Part II examines the rights of the non-abandoning parent after the relinquishing parent has taken advantage of a state safe haven law. This Note discusses *Lehr v. Robertson*, where arguably, the United States Supreme Court’s ruling places a heavy burden on unwed fathers asserting that their constitutional rights have been harmed after the mother takes advantage of a safe haven law and abandons their child.¹³ Using several state court cases, this Note examines how a non-abandoning father may be protected, if at

Statutes Results, *supra* note 5, with State Summary Map, *supra* note 4.

10 See MO. ANN. STAT. § 210.950 (West Supp. 2010) (foregoing prosecutions for surrendering a child to qualified individuals when the child is “no more than one year old when delivered by the parent”); N.D. CENT. CODE §§ 27–20–02(2) (Supp. 2009) (“Abandoned infant” means a child who has been abandoned before reaching the age of one year.”).

11 See Martha Stoddard, *Bills Aim for Early Help for Children, State Lawmakers Prepare Ways to Deal with Youth Problems Revealed by the Former Safe Haven Law*, OMAHA WORLD-HERALD, Jan. 12, 2009, at 1B; see also FLA. STAT. ANN. § 984.04 (West 2006) (detailing Florida’s safe haven program); *infra* Part III.A.

12 Safe Haven laws generally require the person accepting the child to request information about the infant from the person abandoning the child, but such persons are not required to give the information. *E.g.*, CAL. HEALTH & SAFETY CODE § 1255.7 (West 2008); DEL. CODE ANN. tit. 16, § 907A (Supp. 2003); KY. REV. STAT. ANN. § 405.075 (West 2006).

13 See *Lehr v. Robertson*, 463 U.S. 248, 261 (1983) (discussing the need for a biology-plus link to a child for the parent asserting paternal rights against an adoption).

all, when a mother abandons their child under a safe haven law. Part III argues that consideration of parental rights is crucial if safe haven laws are to truly protect the best interests of the child. The confusion of and continued danger to the child and parental rights posed by current safe haven laws would be ameliorated by narrowing the definition of a “safe haven.” Finally, Part IV concludes that “safe havens” should be defined more narrowly and that the legislative focus should be on strengthening other child welfare protection programs to resemble those found in Florida.

If the child abandonments under Nebraska’s broader law have taught us anything, it is that there is a shortage of aid for children and families faced with difficult situations which are not bound by the age of the child. The current safe haven law framework does not adequately protect children regardless of age. Instead of focusing on defining several “safe havens,” these child-protection laws need to be re-conceptualized, focusing on both the immediate and future welfare of the child. A more restricted definition of “safe haven” will offer better protection for the child and the non-abandoning family members.

I. THE CURRENT SAFE HAVEN LAW FRAMEWORK: KEEPING NEWBORNS OUT OF THE TRASH AT ANY COST

A. *The Rise of Safe Haven Laws*

Child abandonment is not a recent phenomenon; however, public awareness of the problem has grown as a result of increased media attention and new modes of communication. News reports of mothers abandoning their children in garbage dumpsters have made headlines on several occasions.¹⁴ The governmental response has been to make abandonment legal by enacting safe haven laws that “‘de-criminalize[.]’ the otherwise criminal act of abandonment of a child under certain circumstances”¹⁵

The goal of such laws is to encourage desperate parents to abandon their children in environments designated safe by statute. Because safe haven laws are defined by individual states, no two laws are identical. As such, what constitutes a “safe haven” differs from state to state. In Kentucky, a child may be abandoned without fear of prosecution with “an emergency medical services provider, police station, fire station, or

¹⁴ See Debbe Magnusen, *From Dumpster to Delivery Room: Does Legalizing Baby Abandonment Really Solve the Problem?*, 22 J. JUV. L. 1 (2001–2002); see also *Arrest in Baby’s Death*, KY. POST, Dec. 22, 2004, at A10; *Baby Abandoned*, KY. POST, Aug. 10, 2007, at A6; Darla Carter, *Bills Allow Sites for Baby Abandonment*, COURIER-JOURNAL (Louisville), Feb. 6, 2000, at A1; Associated Press, *Life Term Urged for Mother in Son’s Death—Body of Newborn Found in Septic Tank*, LEXINGTON-HERALD LEADER (Ky.), Nov. 1, 2003, at B3 [hereinafter Associated Press, *Life Term Urged*]; Associated Press, *Report Could ID Mother of Abandoned Baby*, KY. POST, Nov. 23, 1990, at A12.

¹⁵ *In re Guardianship of Doe*, 733 N.Y.S.2d 326, 327, (N.Y. Fam. Ct. 2001).

hospital.”¹⁶ Kentucky is among the states that include a variety of locations in the definition of “safe haven,” while others are more restrictive. For instance, Nebraska only allows legal abandonments at hospitals.¹⁷

Prompted by a high rate of infant abandonment in the Houston area,¹⁸ Texas enacted the first safe haven law in 1999 and offered immunity for abandonment with emergency medical personnel or at a hospital for infants thirty days or younger.¹⁹ Other states followed, including Kentucky in 2002.²⁰ Kentucky’s Safe Infants law was heralded by tragic stories of babies abandoned in unsafe situations such as that of Melissa Ann Mauck. Mauck left her newborn son in a box outside a pawn shop in early 2000.²¹ In November 1999, Sarah Carroll, the wife of a youth minister, left her infant—just a few days old—outside the church she and her husband previously attended.²² A newborn was discovered wrapped in plastic at an ATM in June 2000.²³ Also, in 2001, an infant body was discovered in a flea market’s septic tank, and the mother, Kathy Harless, was convicted of murder two years later.²⁴ Despite attempts to protect newborns from such life-threatening abandonments, the effectiveness of these safe haven laws remains questionable.²⁵

B. Purposes of Safe Haven Laws

The most basic purpose of safe haven laws is to protect infants from immediate danger.²⁶ Because these children are not able to protect themselves, safe haven laws seek to encourage parents to abandon children in safer locations.²⁷ An example of the absolution offered to parents who

16 KY. REV. STAT. ANN. § 405.075 (West 2006).

17 NEB. REV. STAT. § 29–121 (Supp. 2008) (amending NEB. REV. STAT. § 29–121 (2008)) (this was true even under the original version of its safe haven law).

18 See Dayna R. Cooper, Note, *Fathers Are Parents Too: Challenging Safe Haven Laws with Procedural Due Process*, 31 HOFSTRA L. REV. 877, 879 (2003).

19 Act effective Sept. 1, 1999, ch. 1087, 1999 Tex. Gen. Laws 3947; see TX. FAM. CODE ANN. §§ 262.301–.309 (Vernon 2008) (codifying the current safe haven law in Texas).

20 See KY. REV. STAT. ANN. §§ 405.075, 211.951, 216B.190, 620.350, 620.355 (West 2006).

21 Camille D. Barbee & Byron Crawford, *Shelbyville Baby Found in Trash Bin*, COURIER-JOURNAL (Louisville), Jan. 11, 2000, at 1A.

22 Chaundra Frierson, *Central City Woman Avoids Jail in Abandonment Case*, OWENSBORO MESSENGER-INQUIRER (Ky.), May 17, 2000, at 5.

23 *Newborn Found near ATM*, KY. POST, June 21, 2000, at 12A.

24 Associated Press, *Life Term Urged*, *supra* note 14, at B3.

25 See Magnusen, *supra* note 14, at 17–19. For examples of post-safe haven law illegal abandonments in Kentucky see, *Arrest in Baby’s Death*, KENTUCKY POST, Dec. 22, 2004, at A10; *Baby Abandoned*, KENTUCKY POST, Aug. 10, 2007, at A6.

26 Magnusen, *supra* note 14, at 10–16.

27 Michael S. Raum & Jeffrey L. Skaarc, *Encouraging Abandonment: The Trend Towards Allowing Parents to Drop Off Unwanted Newborns*, 76 N.D. L. REV. 511, 513–14 (2000).

correctly follow the safe haven procedures is found in the Illinois Abandoned Newborn Infant Protection Act:

[Dangerous abandonment] circumstances have caused injury and death to newborn infants and give rise to potential civil or criminal liability to parents who may be under severe emotional distress. This Act is intended to provide a mechanism for a newborn infant to be relinquished to a safe environment and for the parents of the infant to remain anonymous if they choose and to avoid civil or criminal liability for the act of relinquishing the infant.²⁸

The legislative message is clear: we promise not to prosecute you if you promise not to leave your baby where it will likely die.

The legislative history of Kentucky's Safe Infants Act notes that its goal is to protect infants from immediate danger: "Kentucky and the nation have experienced grief from the knowledge that newborn infants are abandoned in life-threatening situations and that some died from their abandonment . . ." ²⁹ Kentucky is not alone in restricting the availability of safe haven laws to infants. Now, every state has a safe haven law, and none allow legal abandonment of a child older than one year.³⁰ While it may be that child abandonment is a true problem that needs legislative attention, the foundational arguments for safe haven laws—providing the safest environment for defenseless youth and encouraging distraught parents to consider the safety of their children—extend beyond the child's first year of life, and certainly beyond the age of three days old.

If the purpose of safe haven laws is to protect children, it seems legislatures have chosen an inadequate form. The 2008 Nebraska teen drop-offs demonstrate that desperate parents may feel compelled to abandon children long after they are a few hours old,³¹ and safe haven laws simply ignore the root problems that lead to child abandonment.³² Additionally, safe haven laws may produce real legal issues involving those unidentified fathers whose parental rights are jeopardized under safe haven laws after the mother abandons the child.³³

²⁸ 325 ILL. COMP. STAT. ANN. 2/5 (West 2008).

²⁹ Act of Apr. 9, 2002, 2002 Ky. Acts 1129.

³⁰ See State Statutes Results, *supra* note 5. Missouri and North Dakota are the only states allowing abandonment of children up to one year old. See MO. ANN. STAT. § 210.950 (West Supp. 2010); N.D. CENT. CODE §§ 27-20-02(2) (Supp. 2009).

³¹ See Martha Stoddard, *Some Use Haven Law While It Exists: More Teenagers Are Dropped Off as Special Session Approaches*, OMAHA WORLD-HERALD, Nov. 5, 2008, at 1B; see NEB. DEP'T OF HEALTH AND HUMAN SERVS., *supra* note 6.

³² See Magnusen, *supra* note 14, at 17-19; Raum & Skaare *supra* note 27, at 514-15.

³³ *Infra* Part II.B.

II. SAFETY IN THE SAFE HAVEN: CURRENT SAFE HAVEN LAWS MAY NOT PROVIDE THE BEST PROTECTION FOR CHILDREN

A. Misunderstandings and Lack of Information in a Varied Safe Haven World

Defining which locations qualify as “safe havens” is a difficult task left to state legislatures.³⁴ A parent seeking prosecutorial immunity for a child abandonment should abandon the child at a hospital, as every state currently includes hospitals in the list of safe havens.³⁵ In Kentucky, a safe haven includes “an emergency medical services provider, police station, fire station, or hospital.”³⁶ Other states define safe haven more broadly than Kentucky and include locations such as adoption agencies³⁷ and pregnancy crisis centers.³⁸ Maine allows abandonment at *any* medical services provider (including a dentist), rather than limiting the haven to *emergency* medical service providers.³⁹

The definition of a safe haven can change just by crossing state lines. Thus, parents can easily and mistakenly abandon at a site not considered a safe haven and find themselves subject to criminal liability, whereas they would have been protected in another state. States that have defined “safe haven” broadly view more options as the solution to dangerous child abandonments. The more places to leave your child safely, the more likely a parent is to do it. This “more-is-better” argument is not without faults. First, state legislatures assume that people know about safe haven laws and particularly about the law in their home states. Until very recently, this was not an accurate assumption.⁴⁰ Second, the laws impute to distraught parents the ability to think rationally about which locations qualify as safe havens while making the hard choice to abandon their child.⁴¹ Third, when safe havens exist beyond hospitals, the chance that a child may not be abandoned in the safest possible place increases, and a child may be left in a location where he or she cannot receive immediate medical

34 See Magnusen, *supra* note 14, at 8–9.

35 For examples of states that limit safe havens to hospitals, see NEB. REV. STAT. ANN. § 29–121 (Supp. 2008); N.M. STAT. § 24–22–3 (Supp. 2001). For examples of states with more expansive definitions of safe havens, see 325 ILL. COMP. STAT. ANN. 2/10 (West 2008); KY. REV. STAT. ANN. § 405.075(2) (West 2006); LA. CHILD. CODE ANN. art. 1150 (2004).

36 KY. REV. STAT. ANN. § 405.075(2) (West 2006).

37 ARIZ. REV. STAT. ANN. § 13–3623.01 (Supp. 2009); MISS. CODE ANN. §43–15–207 (West 2008).

38 LA. CHILD. CODE ANN. art. 1150 (2004).

39 See ME. REV. STAT. ANN. tit. 22, § 4018 (2004).

40 See Raum & Skaare, *supra* note 27, at 514–15; Jeffrey A. Parness, *Lost Paternity in the Culture of Motherhood: A Different View of Safe Haven Laws*, 42 VAL. U. L. REV. 81, 92 (2007).

41 Magnusen, *supra* note 14, at 18–19.

care.⁴² Finally, an abundance of different definitional safe havens makes it easier for one biological parent to terminate the parental rights of the other without that parent's knowledge. These issues, which arise due to a broad definition of "safe haven," support narrowing the definition to protect the child's interests.

Despite the fact that most states have had safe haven laws for years,⁴³ abandonments still occur in situations that are not covered by the respective state's safe haven law. For example, a 2005 Utah case noted that two young parents tried to abandon their newborn without complying with the state's safe haven law.⁴⁴ The mother took her newborn to the park the day after he was born and pretended to find him there when trying to leave him with state authorities.⁴⁵ As the court noted, "Apparently she was not aware of the Safe Haven for Infants Act . . ."⁴⁶ After initially agreeing to adoption, the two parents of the child tried to revoke their consent to adoption and the termination of their parental rights so that the mother's parents could raise the child.⁴⁷ The parents in this case attempted to abandon their newborn so that it would be safe but had no knowledge of a safe haven location under the law that would allow them to do so without legal repercussions.

Also, in 2002, a California teen abandoned her baby in a public bathroom, reportedly in the hopes that it would be found.⁴⁸ Despite her claims of ignorance of the state's safe haven law, the mother was arrested and charged with attempted murder and abandonment.⁴⁹ The baby she had hoped would be found was in a trash bin, suffering from skull fractures and other injuries.⁵⁰ Another California case involved the separate abandonments of three infants in the same neighborhood—each abandoned eleven months apart—who were linked to the same mother through DNA testing.⁵¹ It is difficult to determine if these incidents stem from a lack of knowledge about safe haven laws or some other motivation that current laws do not address.

In Kentucky, abandonments occurring since the enactment of a safe

42 Several states allow infant abandonment at locations other than hospitals, where immediate medical care would be unavailable. *See* MISS. CODE ANN. § 43-15-207 (West 2008) (adoption agencies); LA. CHILD CODE ANN. art. 1150 (2004) (pregnancy crisis centers); ME. REV. STAT ANN. tit. 22, § 4018 (2004) (dentist offices).

43 Alaska and Nebraska became the final states to enact safe haven legislation in 2008. *See* NEB. REV. STAT. § 29-121 (Supp. 2008); ALASKA STAT. § 11.81.500 (2008).

44 *Vigil v. Fogerson*, 126 P.3d 1186, 1189 (N.M. Ct. App. 2005).

45 *Id.*

46 *Id.*

47 *Id.* at 1191.

48 *Magnusen*, *supra* note 14, at 12-13.

49 *Id.*

50 *Id.* at 12.

51 Garance Burke, *Police Seeking Mother of 3 Abandoned Babies—All Born 11 Months Apart, Found Within a Two-Block Radius*, LEXINGTON HERALD-LEADER (Ky.), Mar. 29, 2007, at A4.

haven law demonstrate a general lack of knowledge of the law and which locations qualify as safe havens. These post-safe haven abandonments could also show a general disregard for the laws. For example, in October 2004, a baby was found dead in an abandoned house in Kentucky.⁵² The 22-year-old mother, Amanda Campbell, was arrested for murder.⁵³ In 2003, someone abandoned a baby in the parking lot of a Kentucky hospital.⁵⁴ The abandonment was not considered “safe” because it was outside the hospital, away from medical attention, and no one was notified of the abandonment.⁵⁵ Another Kentucky example includes a baby abandoned at a church in eastern Kentucky in August of 2007.⁵⁶ Additionally, another baby was found wrapped in plastic bags outside an apartment in that same year.⁵⁷ A baby was abandoned in a church van in early 2008,⁵⁸ and another found on the doorsteps of a home in the summer of 2008.⁵⁹ The oldest of these infants was thought to be two- to three-days old, and thus, abandonment of these children at a safe haven would have qualified their parents for criminal immunity under Kentucky’s Safe Infants Act.⁶⁰ Either these parents were unaware of what actually constituted a legal safe haven or they did not choose to comply with the law before abandoning their newborns. Regardless of their particular choice, a better defined and publicized safe haven law would likely have encouraged safer abandonments in some of these cases.

The variations among, and lack of publicity of, safe haven laws may be one reason parents abandoning their children are still not taking advantage of locations that provide immunity.⁶¹ It is also likely that these parents are not able to think rationally about where to abandon their children. It seems that if these parents thought rationally about abandonment, the hospital would always be the optimal location to abandon an unwanted child. The safety of both mother and child would best be protected by abandoning at hospitals alone. Thus, the added locations seem superfluous, unnecessary,

52 *Arrest in Baby’s Death*, *supra* note 14, at A10.

53 *Id.*

54 *Residents Want Baby*, KY. POST, July 25, 2003, at A15.

55 *Id.*

56 *Baby Abandoned*, *supra* note 14, at A6.

57 Katya Cengel, *Town Rallies around Baby Boy*, COURIER-JOURNAL (Louisville), Apr. 1, 2007, at B1.

58 *Newborn Found Abandoned in Van*, LEXINGTON HERALD-LEADER (Ky.), Feb. 5, 2008, at B3.

59 Jenna Youngs & Shawntaye Hopkins, *Newborn Left on Front Porch—Woman Who Found Infant Boy on Her Lincoln Avenue Doorstep Says ‘He Was in Good Shape,’* LEXINGTON HERALD-LEADER (Ky.), July 3, 2008, at A1.

60 *See* KY. REV. STAT. ANN. § 405.075 (West 2006).

61 *See* *Vigil v. Fogerson*, 126 P.3d 1189 (N.M. Ct. App. 2005); Raum & Skaare, *supra* note 27, at 514–15; Meghan Hoyer, *States Draw Attention to Law on Giving Up Newborns*, COURIER-JOURNAL (Louisville), June 20, 2003, at B1.

and may actually encourage abandonment away from locations where a newborn could receive medical care. Additionally, the more places a parent may leave a newborn, the harder it becomes for the other biological parent (or other family members) to locate or reconnect with the abandoned child.⁶² In order to encourage truly safer abandonment of children, safe haven laws should focus on requiring abandonments only at hospitals, regardless of whether the abandoning parent needs medical attention of their own. Instead of encouraging simply “safe” abandonments, laws should encourage “hospital” abandonments.

B. The Other Parent in Safe Haven Cases and Protecting the Child

For nearly a century, the Supreme Court has recognized the constitutional right of a parent to care for and have control over one's children.⁶³ Yet, the constitutional rights of an unwed father are lessened or removed altogether once the mother is out of the picture (from death or otherwise).⁶⁴ Though a parent challenging the loss of parental rights after the other parent has abandoned a child under a safe haven law has not yet occurred, previous cases in which fathers have asserted parental interests in adoption cases may indicate the potential results of such a challenge.

One argument against the current form of safe haven laws is that it can essentially deprive the non-abandoning parent of parental rights without due process of law.⁶⁵ In *Lehr v. Robertson*, the Supreme Court had no sympathy for a biological father who complained that his due process rights were violated in an adoption preceding that began without his knowledge or consent.⁶⁶ *Lehr* challenged the adoption of his biological child by the mother's new husband.⁶⁷ The Court's holding required an unwed father asserting parental rights to come forward with more than biology as proof of parental rights in order to assert lack of notice for adoption proceedings on due process grounds.⁶⁸ “[T]he unwed father's interest springs not from his biological tie with his illegitimate child, but rather, from the relationship he has established with and the responsibility he has shouldered for his child.”⁶⁹ If one parent abandons a child under a safe haven law, the non-abandoning parent may have difficulties establishing a link to the child beyond biology, and, thus, fail to meet a test similar to that used in *Lehr*.

Lehr illustrates the latitude states have to terminate the parental

62 See Parness, *supra* note 40, at 84–86.

63 See *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923).

64 Cooper, *supra* note 18, at 885–86.

65 U.S. CONST. amend. XIV, § 1.

66 *Lehr v. Robertson*, 463 U.S. 248, 261 (1983).

67 *Id.* at 250.

68 *Id.* at 261.

69 *Id.* at 261 n.17.

interests of an unmarried parent, which may include a parent whose rights are threatened after the other parent abandons their child. The Court noted that Lehr had not registered with the state as a possible father⁷⁰ in order to receive notice of any proceedings to terminate his parental rights.⁷¹ The most important reasons Lehr was not able to defeat the adoption, however, were that the child was already two years old, Lehr had not supported her, and had not established a meaningful relationship with her.⁷² According to the Court, an unwed father can trigger his constitutional interests “by ‘com[ing] forward to participate in the rearing of his child,’” and as a result, “his interest in personal contact with his child acquires substantial protection under the due process clause.”⁷³ This test, requiring more than contributed DNA to establish a constitutional interest in one’s child, has been called the “biology ‘plus’ standard.”⁷⁴ If a father fails to meet it, he must look to state law to protect his interests.

Because some safe haven laws provide a multitude of potential abandonment sites for a mother to quietly dispose of a child after it is born, the mother’s family, the biological father, and the father’s family may be unaware of the pregnancy or the birth.⁷⁵ Thus, the biological father may be denied any opportunity to establish a relationship with the child or behave as if he were expecting a child before its birth.⁷⁶ When the father has no chance to establish a parental relationship early on, whether because of the operation of a safe haven law or otherwise, what happens to his interest in parenthood? The answer has been muddled by varying fact patterns and the interpretations of various state courts.

1. “*Best Interests*” and the Importance of the Facts of the Case in the Adoption Case Setting.— “[T]here is . . . a distinct public policy interest” in protecting a father’s relationship with his child.⁷⁷ Yet, it may seem that the stringent requirements placed on fathers trying to establish parental relationships with their out-of-wedlock children does not reflect that policy. A mother, after all, is much less likely to face the same rigorous test before having a right to a relationship with her child. In most circumstances, the

70 This is referred to as the state’s putative father registry.

71 *Lehr*, 463 U.S. at 251.

72 *Id.* at 249–50. It should be noted that Lehr argued that he did have contact with his child, and if the Court saw his contact as not sufficient to support parental rights, the blame should be on the mother for her behavior in thwarting Lehr’s attempts to connect with his child. *See id.* at 269 (White, J., dissenting).

73 *Id.* at 261 (quoting *Caban v. Mohammad*, 441 U.S. 380, 392 (1979)).

74 Laura Oren, *Thwarted Fathers or Pop-Up Pops?: How to Determine When Putative Fathers Can Block the Adoption of Their Newborn Children*, 40 *FAM. L.Q.* 153, 154 (2006).

75 *See Magnusen*, *supra* note 14, at 1.

76 *See Oren*, *supra* note 74, at 175–90.

77 *N.T. v. Doe (In re Doe)*, 199 P.3d 368, 371 (Utah Ct. App. 2008) (Davis, J., concurring).

relationship is assumed, and the mother makes an affirmative decision to end it.⁷⁸ The increased burden on the father is necessary in order to speed up adoption proceedings, which further the best interests of a child in need of a stable home and family. A “best interests” test to determine parental rights is fact-based, so the outcome can vary from case to case.⁷⁹ Thus, a non-abandoning parent challenging the loss of parental rights after the other parent’s abandonment cannot accurately predict a court’s decision under an application of a “best interests” test.

Illustrating the uncertainty in the application of the “best interests” test, California produced two cases within two years of each other that involved fathers in similar situations, but which had different outcomes. First, *In re Baby Boy V.* decided that the father who had no knowledge of the pregnancy but desired a parental relationship had a right to prove paternity and contest the termination of his parental rights.⁸⁰ The father had no contact with the mother during her pregnancy and was not aware of the baby until he was nearly eight months old.⁸¹ The court noted that not only did the mother never bother to notify the father, but that she was also uncooperative with the Department of Children and Family Services and failed to comply with a court order to supply the identity of the father.⁸² Despite the mother withholding the baby’s existence from the father and her refusal to help the state notify him of the proceedings to terminate his parental rights, the lower court proceeded to terminate his rights, stressing that the father had no contact with the child and that settling the adoption was in the “best interests” of the child.⁸³ Applying the same rationale to an abandoned child case, the non-abandoning parent may be denied an opportunity to create the “biology-plus” connection required by *Lehr*, and a court could find the best interests of child lie in terminating the parental rights of such a parent.

In contrast to the trial court, the court of appeals found that the “best interests” were not always served by finding a lack of early connection with the child and a need to quickly finalize adoption cases.⁸⁴ Accounting for the fact that the father came forward to establish his parental relationship as soon as possible, the court found that his “interests must also be considered, [and] not just the child’s interests.”⁸⁵ When the father learned of the child,

⁷⁸ See Parness, *supra* note 40, at 86.

⁷⁹ See Mark Strasser, *The Often Illusory Protections of “Biology Plus:” On the Supreme Court’s Parental Rights Jurisprudence*, 13 TEX. J. C.L. & C.R. 31, 58–59 (2007).

⁸⁰ L.A. County Dep’t of Children and Family Servs. v. Jesus H. (*In re Baby Boy V.*), 45 Cal. Rptr. 3d 198, 200 (Cal. Ct. App. 2006).

⁸¹ *Id.*

⁸² *Id.* at 200–01.

⁸³ *Id.* at 201–03.

⁸⁴ *Id.* at 206.

⁸⁵ *Id.*

he went to the Department of Children and Family Services and spoke to a social worker, but he was not permitted to visit the baby nor did the Department notify the court that a father had come forward.⁸⁶ This parent could argue he had tried to establish a connection to the child. The court, however, seemed to focus more on the behavior of the mother as the reason why the biological father would not be penalized for failing to appear in the child’s life for eight months: “[A] mother [may not] unilaterally . . . preclude her child’s biological father from becoming a presumed father[,] thereby allowing the state to terminate his parental rights on nothing more than a showing of the child’s best interest.”⁸⁷ *Baby Boy V.* may support a non-abandoning parent’s argument for recognition of his parental rights if he is able to discover a child left by the other parent.

Baby V.’s father won the right to claim his parental rights and contest the adoption proceedings, but the father in *In re Vincent M.*, who also claimed to be ignorant of the pregnancy, did not.⁸⁸ By comparison, these cases demonstrate that the facts of a case can determine what rights a father has when there has been no opportunity to establish a parental relationship satisfying the *Lehr* test and show how a fact-specific analysis would likely be incorporated in a safe haven law case.⁸⁹

While Baby V.’s father appeared responsible, Vincent M.’s father did not. In *Vincent M.*, the father had a daughter from a previous relationship.⁹⁰ He did not have custody of his daughter, but after she was abused by her mother, legal custody was given to her paternal grandfather.⁹¹ In comparison, Baby V.’s father was seemingly a much more responsible parent. He had held the same job for eight years and already supported and maintained a relationship with another child and that child’s mother.⁹² The fact that Baby V.’s father had already demonstrated an ability and willingness to accept parental responsibility may have weighed on the court’s decision. Presumably, if Vincent M.’s mother had abandoned the child through a safe haven law, the result of the father’s challenge to termination of his parental rights would have been the same: ignorance of the child’s existence and the father’s irresponsibility arguably demonstrate that the best interests of the child support the termination of the father’s parental rights.

Though *In re Vincent M.* includes a mother attempting to hide her

⁸⁶ *Id.* at 201.

⁸⁷ *Id.* at 205 (quoting *Steven A. v. Rickie M.* (*In re Adoption of Kelsey S.*), 823 P.2d 1216, 1236 (Cal. 1992)).

⁸⁸ *Vincent M. v. L.A. County Dep’t of Children and Family Servs.* (*In re Vincent M.*), 74 Cal. Rptr. 3d 755, 759, 769 (Cal. Ct. App. 2008).

⁸⁹ See *Lehr v. Robertson*, 463 U.S. 248, 261 (quoting *Caban v. Mohammad*, 441 U.S. 380, 392 (1979)).

⁹⁰ *In re Vincent M.*, 74 Cal. Rptr. 3d. at 761.

⁹¹ *Id.*

⁹² *In re Baby Boy V.*, 45 Cal. Rptr. 3d at 202.

pregnancy, the court could not ignore the numerous opportunities the father had to become aware of the pregnancy and assert his parental rights.⁹³ While not overruling *Baby Boy V.*, the *Vincent M.* court commented that the language in that earlier case, suggesting a biological father can claim parental rights relying on nothing more than a biological connection simply because he did not know of child's existence, was "arguably dicta," adding that the ruling in *Baby Boy V.* did not help Vincent M.'s father.⁹⁴ Considering the facts of this case versus those in *Baby Boy V.*, *Vincent M.* illustrates the importance of a father's "timely" appearance to assert his parental rights. A father seeking to establish parental rights must come forward in a timely manner or show "changed circumstances or new evidence demonstrating the child's best interest" is served by reunification.⁹⁵ "The rule is the same *whether [] paternity was concealed from him or not.*"⁹⁶ Thus, after unilateral abandonment of a child under a safe haven law, the non-abandoning parent may face a heavy burden in attempting to establish his parental rights.

2. Applying the Adoption Case Setting Analysis to the Safe Haven Abandonment Setting.—None of the cases discussed so far has addressed an attempt to establish parental rights after an illegal abandonment or a safe haven abandonment. These cases do, however, provide an analytical structure to use in abandonment cases. The standard for deciding whether to recognize a non-abandoning parent's parental rights should be the best interests of the child, taking into account the non-abandoning family members' situations.⁹⁷

In *In re Adoption of Baby A.*, a Florida court recognized the parental rights of a father claiming paternity despite the fact that he had not taken advantage of state law procedures for establishing those rights, including registering as a possible father.⁹⁸ In this case, the court held that state law only partially protects the interests of a father who entered a claim for a paternity test before the adoption proceedings were concluded.⁹⁹ The mother had failed to tell the father she was pregnant and declined to tell the adoption agency the father's identity, though she admitted to knowing

⁹³ See *In re Vincent M.*, 74 Cal. Rptr. 3d at 761.

⁹⁴ *Id.* at 768.

⁹⁵ *Id.* at 758.

⁹⁶ *Id.* (emphasis added).

⁹⁷ Admittedly, this standard does not provide much predictability for safe haven abandonments or any other abandonments. A different standard, however, would be unfair to either the child or the non-abandoning parent. To lessen the likelihood a non-abandoning parent will lose parental rights in a child despite real attempts to assert those rights, the focus should be on improving the structure of safe haven abandonments. See *infra* Part III.B.

⁹⁸ *A.S. v. Gift of Life Adoptions, Inc. (In re Baby A.)*, 944 So. 2d 380 (Fla. Dist. Ct. App. 2006).

⁹⁹ *Id.* at 392.

who he was and that she knew he lived with his parents.¹⁰⁰ The termination of her parental rights went forward noting only an “unknown” father.¹⁰¹

In re Adoption of Baby A. highlights the danger inherent in safe haven laws, especially as they become more available and as their existence becomes more well-known. Parents who are never given a chance to establish their claims to parenthood can be silently robbed of any opportunity to exert their parental rights. As noted in *Adoption of Baby A.*, the reality of terminating the parental rights of an “unknown” father means that some fathers will never even know of their child’s existence.¹⁰² Maintaining safe haven laws of any kind cannot eliminate this potential threat to the parental rights of the non-abandoning parent. Yet, laws with more limited definitions of safe havens can encourage the safest possible abandonment, and make it somewhat easier for the other parent to find his child and establish an early parental connection.

The burden remains high on fathers to take an active role in discovering pregnancies and possible abandonments.¹⁰³ It is not certain whether a father who is unaware he has a child a year or more into the child’s life would be able to nullify an adoption or gain any right to be a part of his child’s life, even if the child was unilaterally abandoned by the mother under a safe haven law. Misbehavior on the part of the mother and failures by state agencies to take necessary steps to find the father might help a biological father’s argument for recognition of his parental rights, but courts still often require fathers to put forth evidence to satisfy the *Lehr* test.¹⁰⁴

Many safe haven laws include provisions that require safe havens receiving children to request information from the abandoning parent and allow a specific number of days for a parent to assert parental rights before the state pursues termination of those rights.¹⁰⁵ Even for those safe haven laws that do offer some time for the other parent to discover they have a child who has been abandoned, the cards are already stacked against them. No safe haven law *requires* the abandoning parent to give any information about the other biological parent or any information at all. Without anonymity, the laws would lose any appeal they have to desperate parents seeking to abandon their children.¹⁰⁶ Yet, this anonymity reduces

¹⁰⁰ *Id.* at 382.

¹⁰¹ *Id.* at 383.

¹⁰² *Id.* at 385.

¹⁰³ See *supra* Part II.B.; see also *Lehr v. Robertson*, 463 U.S. 248, 261 (1983); Vincent M. v. L.A. County Dep’t of Children and Family Servs. (*In re Vincent M.*), 74 Cal. Rptr. 3d 755, 769 (Cal. Ct. App. 2008).

¹⁰⁴ See *In re Vincent M.*, 74 Cal. Rptr. 3d at 758; Oren, *supra* note 74, at 175–81.

¹⁰⁵ E.g., IDAHO CODE ANN. §§ 39–8203, 39–8206 (Supp. 2009); KY. REV. STAT. ANN. § 620.350 (West 2006) (“As soon as practicable following the thirty (30) day placement period, the cabinet shall file a petition in Circuit Court seeking the involuntary termination of parental rights of the unknown parents . . .”); MICH. COMP. LAWS ANN. § 712.3 (West 2002).

¹⁰⁶ See Raum & Skaare, *supra* note 27, at 527.

the chances that a non-abandoning father, unaware he has a child, will be able to satisfy the *Lehr* test and establish that it is best for the child that he maintain his parental rights after a safe haven abandonment. The best means to reduce the risk of unwarranted termination of parental rights, while still protecting abandoned children, is to increase the time allowed for a non-abandoning parent to assert paternity and limit the locations where parents can abandon their children.

III. BEYOND THE CURRENT SAFE HAVEN LAW FRAMEWORK

A. *The At-Risk "Child"*

Nebraska's original safe haven law, containing no age restriction for abandonment, first garnered national attention when a desperate father abandoned nine of his children—the oldest was seventeen—at a Nebraska hospital.¹⁰⁷ The youngest child, age one, would not qualify for safe haven protection under the current Nebraska law.¹⁰⁸ Following that abandonment on September 24, 2008, twenty-two more children were abandoned, none younger than five and most age twelve or older, along with several out-of-state abandonments, until the law changed in November 2008.¹⁰⁹ As Nebraska scrambled to deal with the unintended consequences of its first safe haven law, one thing became clear: children older than infants may be at risk. Some parents were so desperate to abandon their children that they drove across several state borders to take advantage of the broad protections afforded by the original Nebraska safe haven law.¹¹⁰ Despite changing the safe haven law to be more restrictive, Nebraska legislators have said they want to find ways to bolster protections for older children.¹¹¹

Three bills were introduced in the January 2009 Regular Session of the Nebraska legislature that sought to aid older children. LB 356, introduced by Senator Annette Dubas, would allow parents with troubled children to seek state assistance for child care costs that the family can not afford.¹¹² Another proposal, LB 275, would create a state-wide crisis and referral system to guide those in need.¹¹³ Finally, Senator Brad Ashford's proposal,

¹⁰⁷ Nelson, *supra* note 6, at 1B.

¹⁰⁸ NEB. REV. STAT. § 29-121 (Supp. 2008) (amending NEB. REV. STAT. § 29-121 (2008)).

¹⁰⁹ See NEB. DEP'T OF HEALTH AND HUMAN SERVS., *supra* note 6.

¹¹⁰ See *id.* Seven of the thirty-six abandonments under the first Nebraska safe haven law were of children from other states and as far away as California. *Id.*

¹¹¹ See Martha Stoddard, 2 *Proposals Strive to Help Families in Urgent Need: The Bills Address Problems Brought to Light Under the Old Safe Haven Law*, OMAHA WORLD-HERALD, Jan. 15, 2009, at 1B.

¹¹² See Martha Stoddard, *Bill Would Offer Help for Parents*, OMAHA WORLD-HERALD, Jan. 19, 2009, at 2B.

¹¹³ *Id.*

LB 253, would involve the juvenile justice system in assisting youths in need—without the need for criminal charges against the child—and without making the children wards of the state.¹¹⁴ This last proposal is inspired by a similar Florida program.¹¹⁵

Florida has established a Families and Children in Need of Services program which allows children to be found “in need of services” for reasons other than criminal behavior or abusive pasts.¹¹⁶ The program also provides aid to “families in need of services” whose children satisfy the state’s requirements.¹¹⁷ The program offers shelter, counseling, training, and other aid to those in need without making the children wards of the state.¹¹⁸ Thus, the program encourages the retention of parental rights and helps families and children who find themselves in situations where they may otherwise feel that taking advantage of a safe haven law is the only alternative.

The wave of abandonments of older and out-of-state children in Nebraska under its original safe haven law was a warning to other states. If only a few states liberalize the availability of safe havens to older children, they will likely have to address caring for out-of-state children and the costs of returning them to their home states. While these older abandonments signal the need for additional assistance for children beyond infancy, laws that permit abandonment of older children and offer a multitude of safe havens may only exasperate problems faced by non-abandoning family members who seek to assert their interests in the children. By looking at Florida’s program and the proposals being considered by Nebraska, other states can learn methods to protect defenseless youth beyond infancy as well as the rights of their parents.

As in other states, Kentucky has experienced the cost of ignoring the need for more widely available protection for older children. One example is the 2007 death of ten-year-old Michaela Watkins that led to murder charges for her parents, Joy and Patrick Watkins.¹¹⁹ According to police, the child was beaten, burned in scalding water, suffered broken ribs, and was left dead for almost five hours before her parents sought help.¹²⁰ In 2008, both parents were convicted of murder and sentenced to life in prison.¹²¹

114 *Id.*

115 *Id.*; see FLA. STAT. ANN. § 984.11 (West 2006).

116 *Id.* § 984.04.

117 *Id.*

118 See *Id.* § 984.11.

119 Associated Press, *Parents Indicted in Death—Girl Was Found in Apartment*, KY. POST, May 11, 2007, at A3.

120 Cassandra Kirby, *Michaela’s Injuries Detailed*, LEXINGTON HERALD-LEADER (Ky.), Mar. 28, 2007, at A1.

121 Ashlee Clark, *Watkinses Each Get Life Sentence—Judge Agrees with Jury on Punishment for Girl’s Death*, LEXINGTON HERALD-LEADER (Ky.), Oct. 10, 2008, at B1.

Michaela Watkins is not an isolated example. In 2007, alone, a Kentucky mother and her boyfriend were convicted in the death of two-year-old Callie Robinson from abuse;¹²² two-month-old Brianna Brown's father was charged in her death;¹²³ and one-month-old Caleb Eli Bishop died from head trauma.¹²⁴ In other states, at least one of these children could legally have been abandoned at a safe haven.¹²⁵ This does not mean that any of the children necessarily would have been saved by safe haven laws; such laws require the parent to take advantage of them. Nevertheless, abandonment at a safe haven location could have saved the life of the child. That being said, more is needed than simple safe haven laws in order to protect children from dangerous situations created by their parents.¹²⁶ That is why programs like that in Florida provide important guidance for other states, along with efforts to strengthen current child protective initiatives such as abuse investigations.

B. How Remembering the At-Risk "Child" Can Protect Parental Rights

If laws aimed at protecting young children from their desperate mothers focused on need rather than age, protecting children might not pose as many risks to parental rights. While age limits in safe haven laws seek to protect newborns whose parents feel unprepared or overwhelmed immediately or shortly after birth, these laws are inadequate for protecting many children at risk.¹²⁷ Such laws can create problems, for example, for a non-abandoning parent seeking to establish paternity, as cases in the adoption proceeding

122 Ashlee Clark, *Pair Convicted in 2-Year-Old's Death Found Guilty of Murder, Criminal Abuse*, LEXINGTON HERALD-LEADER (Ky.), June 7, 2008, at D1.

123 Steve Lannen & Delano R. Massey, *Another Child Killed, Another Parent Charged—Short Lives, Violent Deaths: 2-Month-Old Dies From Injuries*, LEXINGTON HERALD-LEADER (Ky.), Mar. 28, 2007, at A1.

124 Shawntaye Hopkins, *Mother Indicted in Son's Death—Teacher's Month-Old Child Died of Head Injuries*, LEXINGTON HERALD-LEADER (Ky.), July 12, 2007, at D3.

125 See NEB. DEP'T OF HEALTH AND HUMAN SERVS., "SAFE HAVEN" AGES IN THE UNITED STATES (2009), http://www.hhs.state.ne.us/Children_Family_Services/SafeHaven/SHMap2.pdf (providing a helpful map of the acceptable ages of abandonments under safe haven laws); see also MONT. CODE ANN. § 40-6-402 (West 2009); MO. ANN. STAT. § 210.950 (West Supp. 2010); N.M. STAT. § 24-22-3 (Supp. 2001).

126 See Beth Musgrave & Valarie Honeycutt Spears, *Deaths Are a Growing Trend—This Isn't Just a Blip on the Radar, Official Says*, LEXINGTON HERALD-LEADER (Ky.), Mar. 28, 2007, at A1. Kentucky should have particular interest in finding ways to afford children greater welfare protections. See Valarie Honeycutt Spears, *Ky. Ranks 1st in Fatal Child Abuse—Advocates Urge Transparent Reporting*, LEXINGTON HERALD-LEADER (Ky.), Oct. 21, 2009, at A1.

127 For examples of abandonments failing to meet the standards of safe haven laws, see Cengel, *supra*, note 57; *Newborn Found Abandoned in Van*, *supra*, note 58; Youngs & Hopkins, *supra*, note 59, at A1. For examples of older children harmed and not protected by safe haven laws, see Clark, *supra*, note 122; Hopkins, *supra*, note 124; Cassondra Kirby, *Michaela's Injuries Detailed*, LEXINGTON HERALD-LEADER (Ky.), Mar. 28, 2007, at A1.

setting demonstrate.¹²⁸ Additionally, as already discussed, older children, who are at risk, are left unprotected by safe haven laws. Thus, states should go beyond current safe haven laws in order to adequately protect children. Many states already have programs that aim to prevent abuse or abandonment. These programs include teaching youth about safe–sex practices and forms of aid for expectant mothers in need.¹²⁹ A hindrance for the success of these programs, as with safe haven laws, is that many of them are under–utilized by those they are intended to assist.¹³⁰

Counseling, shelter, job training, and other means of targeting and assisting mothers who may be at risk to abandon their child can protect both the safety of the infant and the parental rights of the other parent. Newborn Lifeline Network is a national organization that helps expecting parents connect with local programs that can help them prepare for a child or get the newborn to safety following birth.¹³¹ The program was established because of an inadequate dispersal of information about what assistance was available—including the details of a state’s safe haven law.¹³² Unfortunately, it is likely that the Lifeline itself is not widely understood or known about.¹³³ More effective use of such initiatives can improve the protection of young children, whether they are covered by safe haven laws or not. These programs also can reduce the risks to the parental rights of a non–abandoning parent.

Despite the best intentions of legislatures in enacting safe haven laws, there are signs that the laws are not as effective as lawmakers may have hoped. The dangerous abandonment of infants and exposure of older children to serious and tragic harm continues. Furthermore, these laws may endanger the parental rights of fathers who have had no opportunity to assert parental rights under the *Lehr* test.¹³⁴ If a father knows nothing about the pregnancy or the birth, he will not be able to establish his parental

128 See *Lehr v. Robertson*, 463 U.S. 248, 248–49 (1983); *Vincent M. v. L.A. County Dep’t of Children and Family Servs. (In re Vincent M.)*, 74 Cal. Rptr. 3d 755, 761–62 (Cal. Ct. App. 2008).

129 See PANEL ON RESEARCH ON CHILD ABUSE & NEGLECT, NAT’L RESEARCH COUNCIL., UNDERSTANDING CHILD ABUSE & NEGLECT 162 (1993), available at http://www.nap.edu/catalog.php?record_id=2117#toc; NINA WILLIAMS–MBENGUE, NAT’L CONF. OF STATE LEGISLATURES, NCSLNET STATE LEGISLATIVE REPORT: SAFE HAVENS FOR ABANDONED INFANTS (2001), <http://www.ncsl.org/IssuesResearch/HumanServices/NCSLnetStateLegislativeReportSafeHavensfor/tabid/16422/Default.aspx> (discussing safe haven laws and implicated policies in child welfare services); see also Patti Smith, *Faith in Action/Newborn Lifeline Network: Effort Works Against Abandonment*, COURIER–JOURNAL (Louisville), June 23, 2007, at 2B.

130 See Musgrave & Spears, *supra* note 126.

131 See Smith, *supra* note 129; see also Home—Newborn Lifeline, <http://www.yournewbornlifeline.com> (last visited Mar. 1, 2010).

132 Smith, *supra* note 129.

133 See *id.* Between 1999 and 2007, Lifeline fielded approximately 3500 calls. *Id.* Thus, Lifeline, a national organization, fielded less than 440 calls per year on average.

134 See *supra* Part III.B; see also *Lehr v. Robertson*, 463 U.S. 248, 248–49 (1983).

rights under the *Lehr* test, and may be unable to win in court based on the child's "best interests." An abandoning mother may thus effectively be able to single-handedly extinguish the parental rights of the father. This result does not further the best interests of either the child—who will find it difficult if not impossible to discover his or her birth parents, genealogical heritage, or even family medical history—or the father, who will lose the opportunity to care for and connect with his child.¹³⁵

If laws focused on the at-risk "child" beyond infancy, more energy could be directed toward developing, strengthening, and maintaining programs that offer assistance to children of all ages. By informing overwhelmed and expectant parents about available assistance in addition to abandonment laws, the rights of a non-abandoning parent and the at-risk child, in some cases, could be protected. Additionally, increased legislative focus on the best interests of the child beyond infancy may bring attention to possible problems that arise from allowing abandonment of infants without any information regarding the rest of the child's family or an interested, non-abandoning parent. A connection to a biological parent, if for no other reason than medical history, is important for a child's well-being.¹³⁶

IV. CONCLUSION

Though the media's focus on Nebraska's teen abandonments emphasized the availability of safe haven laws, as of yet, there is no indication that their use and effectiveness will increase as a result.¹³⁷ If abandonment increases, through lawful safe haven procedures or otherwise, the potential effect on a non-abandoning parent is serious: he may lose his parental rights because of the unilateral action of the other parent.¹³⁸ Additionally, because of the variances in the availability of safe haven laws and the breadth with which "safe haven" is often defined, the effectiveness of these child protection laws in encouraging safe and legal abandonments is compromised.¹³⁹ With so many differences among the states' safe haven laws, the possibility that a desperate parent will not know the correct procedure by which to legally abandon a newborn increases. Also, because not all defined safe havens are capable of providing medical care if needed, legal abandonments are currently not as safe as possible.¹⁴⁰

135 See Magnusen, *supra* note 14, at 17; Parness, *supra* note 40, at 86.

136 See Parness, *supra* note 40, at 84.

137 See Raum & Skaare, *supra* note 27, at 514-15.

138 See *supra* Part III.B.

139 For examples of varying state safe haven laws, see KY. REV. STAT. ANN. § 405.075 (West 2006); NEB. REV. STAT. § 29-121(Supp. 2008); MO. ANN. STAT. § 210.950 (West Supp. 2010); N.D. CENT. CODE § 27-20-02 (Supp. 2009); N.D. CENT. CODE § 50-25.1-15 (2007); N.M. STAT. § 24-22-3 (Supp. 2001); ME. REV. STAT. ANN. tit. 22, § 4018 (2001).

140 Maine is an example of a safe haven law with a broad definition of a "safe haven."

While the legal hurdles faced by a non-abandoning parent wishing to establish parental rights after a safe haven abandonment are unclear, adoption cases may provide some guidance. In these cases, the biological father who wishes to contest an adoption, and the termination of his parental rights, must prove a connection to the child beyond biology. In these cases, the court will consider the particular facts of the case in order to determine the “best interests” of the child.¹⁴¹ Additionally, some safe haven laws include a period of time during which the abandoning parent, as well as the non-abandoning parent, can assert his or her parental rights before they are terminated.¹⁴² Yet, considering that a non-abandoning parent may be unaware of a pregnancy, much less the actual abandonment, this grace period, and right to participate in custody proceedings, may do little to provide additional protection for parental rights.

Though the availability of safe haven laws may threaten a non-abandoning parent’s parental rights, there is no apparent alternative for protecting newborns in immediate danger. Providing an opportunity to avoid criminal liability when abandoning an infant is the easiest way to encourage distraught parents to abandon their infants in the safest location possible rather than to hide and endanger the infant. Yet, broad variances and availability of safe haven laws do little to combat the dangers facing newborns. Barring a uniform national standard for abandonment under safe haven laws, states should strive to formulate a more narrow definition of “safe haven.” This would decrease confusion over proper legal abandonments and increase the chances that a non-abandoning parent can discover the child.

Safe haven laws strive to provide the safest abandonment environment possible for a child. In furtherance of that goal, safe havens should be confined to hospitals, where any necessary medical care can be administered. Though providing a variety of safe havens protects an abandoning parent from criminal liability, it does little to ensure the safety of a child. Also, because of such diversity from state-to-state in these laws, many abandoning parents would not be in a position to decide what constitutes a safe haven. Additionally, a limited definition of safe haven would make it easier for the safe haven provider to locate non-abandoning family, if state law so requires, and for a non-abandoning parent to search for an abandoned child. Thus, not only are children afforded the most protection

In Maine an infant may be abandoned at locations such as with a dentist, chiropractor, and optometrist. *See* ME. REV. STAT. ANN. tit. 22, § 4018 (2001).

¹⁴¹ *See* *Lehr v. Robertson*, 463 U.S. 248, 261 (1983); *Vincent M. v. L.A. County Dep’t of Children and Family Servs.* (*In re Vincent M.*), 74 Cal. Rptr. 3d 755, 759, 769 (Cal. Ct. App. 2008); *L.A. County Dep’t of Children and Family Servs. v. Jesus H.* (*In re Baby Boy V.*), 45 Cal. Rptr. 3d 198, 200 (Cal. Ct. App. 2006).

¹⁴² *See* CONN. GEN. STAT. ANN. § 17a-60 (West 2006); FLA. STAT. ANN. § 383.50 (West 2006); KY. REV. STAT. ANN. § 620.350 (West 2006).

possible under the law, but so are the rights of their non-abandoning parents. Protecting the rights of a non-abandoning parent is likely in the best interest of a child.

Finally, safe haven laws address only one aspect of the larger problem of child abuse and neglect. This problem is not limited to infants, as older children also are endangered. Both the abandonment of teenagers in Nebraska under its original, liberal safe haven law and the death of children due to abuse in Kentucky demonstrate the need for increased protections for children beyond infancy.¹⁴³ Nebraska has proposed legislation to address concerns for the welfare of older children, modeled after a Florida program, and other states should follow this example.¹⁴⁴

There is a need to think beyond the current safe haven law framework in order to more effectively protect both infants and older children. State assistance for older children—whether already established or in need of development—is necessary to protect children who are not protected under current safe haven laws.¹⁴⁵ Safe haven laws and other child welfare programs share the common goal of protecting children when they cannot protect themselves. But effective protection requires more than the varied—and confusing—absolution from criminal liability that safe haven laws currently provide to abandoning parents. The best solution for bolstering child welfare in Kentucky and other states is to restrict the definition of “safe haven” to hospitals and focus on increasing protections and assistance to older children and their parents.

143 See Musgrave & Spears, *supra* note 126; Andrew J. Nelson, *Father Drops Off 9 Children Under ‘Haven’ Law*, OMAHA WORLD-HERALD, Sept. 25, 2008, at 1B; Spencer, *supra* note 6; Stoddard, *supra* note 6.

144 See FLA. STAT. § 984.11 (West 2006); Stoddard, *supra* note 11.

145 Though briefly discussed in this Note, a discussion of the details and breadth of the programs best suited to protect at-risk children of all ages is beyond the scope of this Note. See *supra* Part III.A.