North Dakota Law Review

Volume 76 | Number 3 Article 2

2000

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Recommended Citation

Raum, Michael S. and Skaare, Jeffrey L. (2000) "Encouraging Abandonment: The Trend towards Allowing Parents to Drop Off Unwanted Newborns," *North Dakota Law Review*: Vol. 76 : No. 3 , Article 2.
Available at: https://commons.und.edu/ndlr/vol76/iss3/2

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ENCOURAGING ABANDONMENT: THE TREND TOWARDS ALLOWING PARENTS TO DROP OFF UNWANTED NEWBORNS

MICHAEL S. RAUM AND JEFFREY L. SKAARE*

I. INTRODUCTION

Laura Rafferty, then a twenty-year-old student at North Dakota State University, gave birth to a girl on April 22, 1998.[1] Almost two years later, on April 24, 2000, she was charged with negligent homicide in connection with the newborn's death.[2] According to investigators, Rafferty gave birth to the child in the shower at her sorority house and cut its umbilical cord with scissors.[3] Next, she allegedly wrapped the baby in a towel and brought it to her room, where she left it, under her bed and covered with a blanket, while she went to class.[4] When she returned, the baby was dead.[5] Rafferty then allegedly disposed of the body in a dumpster on her way to an afternoon class.[6] The baby's body was never found, despite a police search of the Fargo landfill.[7] On June 28, 2000, Rafferty entered a so-called Alford guilty plea, conceding that prosecutors had sufficient evidence for a conviction but not admitting guilt in the baby's death.[8] The judge accepted the plea and sentenced Rafferty to one year in prison, suspended, and three years on supervised probation, including a psychological and psychiatric evaluation and follow-up treatment.[9]

This is not the only case of its type in North Dakota in recent years. In November 1999, the body of a boy, believed to be two weeks old, was

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1. *See* John MacDonald, *Student Charged in Baby Dumping Case*, GRAND FORKS HERALD (Grand Forks, N.D.), Apr. 25, 2000, at B6.

2. *See* Jack Sullivan, *Woman Accused of Killing Newborn at NDSU Sorority House Pleads Not Guilty*, FORUM (Fargo, N.D.), Apr. 28, 2000, at B1. Rafferty pleaded not guilty on April 28. *See id.*

3. *See id.*

4. *See id.* It is disputed whether the baby was alive when Rafferty left it under her bed. *See id.* She first told police that it never moved nor made noise, but she later conceded that it "did cry and make a few whimpers." *Id.* However, she did not elaborate further, only nodding when asked if an accident made the baby stop crying. *See id.*

5. *See id.*

6. *See id.*

7. *See id.*

8. *See* Ellen Crawford, *Woman Sentenced in Baby's Death*, FORUM (Fargo, N.D.), June 29, 2000, at A1. In an Alford plea, the defendant pleads guilty without expressly admitting guilt. *See* North Carolina v. Alford, 400 U.S. 25, 37-38 (1970).

9. *See id.*

found in a suitcase on the Fort Berthold Indian reservation.[10] The child's parents have not been found.[11]

These tragic stories are not unique to North Dakota. News accounts over recent years have contained many similar incidents. In one high profile case, two teenagers in 1996 wrapped their newborn in a trash bag and tossed it in a dumpster outside the Delaware hotel where they went for the mother to give birth.[12] Similarly, a New York woman recently received a nineteen-year prison sentence for a similar infanticide, committed when she was twenty-one years old.[13] Other such stories abound, typically featuring a young mother who delivers a baby secretly, and then disposes of it.[14] While Rafferty's story varies in its details from other such incidents, the central theme of a young mother killing or recklessly abandoning a newborn is disturbingly familiar.[15]

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10. *See* John MacDonald, *Doctors, MeritCare Push for Newborn Safety Laws*, FORUM (Fargo, N.D.), June 4, 2000, at A16 (reviewing recent abandonments in North Dakota).

11. *See id.*

12. *See* Doug Most, *Grossberg Goes Home; Her Prison Sentence Ends Early*, RECORD (Bergen County, N.J.), May 11, 2000, at A1. The mother, Amy Grossberg, was recently released from prison after serving a total of 22 months of a 30-month sentence; the father, Brian Peterson, had been released in January after serving a shorter sentence given in return for agreeing to testify against Grossberg. *See id.*

13. *See* Carol DeMare, *Mother Gets 19 to Life for Killing Baby*, TIMES UNION (Albany, N.Y.), Apr. 1, 2000, at B1. Melissa Strawbridge delivered a baby girl in her bathroom, placed it in a plastic bag and left it in a dumpster. *See id.*

14. *See, e.g.*, Carl Ingram, *Mother Strives to Save Unwanted Babies*; L.A. TIMES, Apr. 23, 2000, at A28 (reviewing a number of cases and describing a California woman who has established a graveyard for such children, in which she has buried 43 children over four years). In 1998, the United States Department of Health and Human Services reported 105 abandoned babies were found nationwide, 33 of them dead. *See* Theola S. Labbe, *Discovery of Dead Infant Puts Focus on Preventive Programs*, TIMES UNION (Albany, N.Y.), May 3, 2000, at B3 (discussing statistics). However, some suggest the number of dead infants must be much higher, since some bodies are surely never found. *See* Ingram, *supra* (citing supporter's of the Texas legislation, discussed *infra*, which became the first in the nation to allow unwanted newborns to be left at hospitals); *see also* Valerie Richardson, *Colorado Readies Law Intended to Protect Abandoned Babies*, WASH. TIMES, Apr. 30, 2000, at C1 (citing experts suggesting the Department of Health and Human Service statistics are too low).

15. For a comprehensive discussion of the history of infanticide in America, see Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 34 AM. CRIM. L. REV. 1 (1996). The author provides a detailed history of society's and courts' treatment of infanticide, as well as a catalog of infanticide prosecutions, issues outside the scope of this article. The author's main theme, however, resonates strongly with the subject of this article: laws designed to prevent infanticide by allowing parents to abandon their children safely to the state. As she writes:

> These cases [of infanticide] came to evoke a profound ambivalence in me. On the one hand, the killings seemed uniquely horrific, unprovoked, and incomprehensible. Yet the more I thought about them, the less I knew where to direct my anger. Although the babies died at their mothers' hands, many others should be implicated in their deaths—the fathers, grandparents, friends, schools and workplaces, and society as a whole. As puzzling as it was undeniable, I often found myself empathizing with these killers.
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> . . . I discovered that my empathy for these women was shared by the judges and juries who determined the fates of the girls and women charged with killing their offspring. The rhetoric of moral outrage expressed by society at large and by judges and juries in individual cases is accompanied by an equally strong tendency to view these crimes as arising out of external circumstances, and therefore to resist equating these homicides with murder.

These incidents have helped to spark a series of laws aimed at preventing infanticide by allowing parents to leave their children at designated "safe havens," typically hospitals, within a short period after their birth, guaranteeing in return anonymity and immunity from prosecution for abandonment.[16] To date, twenty-six states have considered such legislation.[17] Twelve states have adopted such a law,[18] including Minnesota.[19] Similar legislation has failed to win approval in nine states.[20] In five states, a bill to enact abandonment legislation remains in progress.[21] As will be discussed more fully later, North Dakota may soon be considering adopting such a law.[22]

The first state to adopt this sort of legislation was Texas, which adopted its "Baby Moses"[23] law in June 1999.[24] The Texas legislation was triggered in part by a rash of baby abandonment in the Houston area: Thirteen babies, three of them dead, were found in the first ten months of 1999.[25] Although Texas passed the first statewide legislation, similar programs had been available on a smaller scale before. In Mobile, Alabama, for example, local prosecutors in 1998 agreed not to file criminal charges against anyone who left a newborn with a hospital; after this agreement was made public, several babies were left, although

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Id. at 4-5. While the author's focus is on the societal treatment of infanticide, rather than efforts to prevent it, this notion that infanticide is, in a sense at least, inevitable and externally motivated underlies much of the argument for newborn abandonment laws. Viewed this way, only a belief in the inevitability of such acts could justify a comprehensive scheme to prevent them.

16. *See* Richardson, *supra* note 14 (discussing the trend of laws proposed around the nation).

17. *See infra* notes 38-49, 53-66, and accompanying text.

18. *See infra* notes 38-49 and accompanying text.

19. *See* 2000 Minn. Laws 611-12, ch. 421.

20. *See infra* notes 53-61 and accompanying text.

21. *See infra* notes 62-66 and accompanying text.

22. *See* MacDonald, *supra* note 10 (discussing a move by several doctors to encourage the North Dakota Legislature to adopt a baby abandonment law and the willingness of the attorney general's office to draft such legislation for the 2001 legislative session).

23. The phrase "Baby Moses" has been adopted by many as the shorthand term for legalized abandonment laws. *See, e.g.*, Richardson, *supra* note 14 (referring to Colorado's law as a "Baby Moses" bill). Advocates for legalized abandonment have formed the Baby Moses Project, which provides information about abandonment and laws to combat it. *See Baby Moses Project* (last visited June 11, 2000) <http://www.babymoses.org>. According to the organization's web site, the name "The Baby Moses Project" was chosen

> [b]ecause, in addition to being placed in a basket, Moses was also carefully watched over by an anonymous protector until he was safely placed in the arms of an individual who could provide the love and care necessary for life. Those involved with this project and Texas HB 3423, also want unwanted newborns to be safely handled by parents and others who can provide them with a sheltered, safe environment, and in addition, provide anonymity to a parent or parents who choose a responsible alternative to abandonment.

Id.

24. *See* 1999 Tex. Gen. Laws 1087, § 2 (codified at TEX. FAM. CODE ANN. §§ 262.301-262.303) (Vernon Supp. 2000)). Texas Governor George W. Bush signed the bill into law on June 19, 1999.

25. *See* Ingram, *supra* note 14 (discussing the Texas legislation); *see also Baby Moses Project* (last visited June 11, 2000) <http://www.babymoses.org> (discussing the history and motivation behind the Texas law).

at least one has since been found dead.[26] The Minnesota legislation grew out of a similar program.[27]

While there has been widespread support for such laws, as shown by the number of states considering them, they have not been without critics.[28] In Colorado, for example, which passed its version of a Baby Moses bill this year,[29] House Republicans split their votes 19-21, with some arguing the law constituted government approval of abandonment.[30] One of those opposed criticized the law on the grounds that it would "elevate abandonment into a new fundamental right."[31] Those who favored the bill countered that it merely reflected the harsh reality of an imperfect society, stressing that saving babies is more important than holding to principles.[32]

However, it is not clear that the bills are effective. Some suggest that the targets of the bill—confused, terrified teenage mothers desperate enough to kill their children—are not likely to know the law or to drive

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26. *See* Twila Decker, *A Chance at Life: An Out for Mothers in Crisis*, ST. PETERSBURG TIMES, Mar. 12, 2000, at 1F. In addition to discussing the development of the program, the article recounts the story of "Baby Nick," who was dropped off by a teenage mother at a hospital on Christmas Eve; he was adopted a few months later. *See id.*

27. *See Minnesota Starts Hospital Program to Allow Mothers to Leave Unwanted Newborns*, AGENCE FRANCE-PRESSE, Jan. 7, 2000, *available at* 2000 WL 2708820.

28. These arguments were summarized aptly by the originally proposed version of a Tennessee House Resolution, which as passed merely calls for a study of the issue:

> WHEREAS, the issue of child abandonment is of vital concern to citizens throughout Tennessee and affects the lives of children daily; and
>
> WHEREAS, Tennessee Code Annotated, Section 39-15-401, states that any person who knowingly, other than by accidental means, treats a child under the age of seven in such a manner as to inflict injury, or neglects such child so as to adversely affect the child's health and welfare, commits a Class D felony; and
>
> WHEREAS, supporters of legislation to ease the surrender of abandoned children, and eliminate prosecution associated therewith, argue that mothers who abandon their babies often hide their pregnancy and do not receive prenatal care, resulting in babies being born with serious health problems that demand prompt attention; and
>
> WHEREAS, they further contend that offering alternatives to new parents who are overwhelmed by the immediate responsibilities of caring for a baby would encourage more parents to deliver their newborns to safe havens rather than abandon them to die; at the same time giving them complete anonymity and freedom from prosecution; and
>
> WHEREAS, opponents argue that such freedom of prosecution would do little to remedy the problem of abandoned newborns; would result in inadequate information to notify or involve the biological father, and would result in inadequate information to enable others to care for or adopt such child; and that the law, if enacted, should apply to older children as well, who are often as defenseless as newborn children . . . .

H.R. Res. 204, 101st Gen. Assemb., Reg. Sess. (Tenn. 2000) (adopted June 7, 2000). This resolution illustrates the arguments played out for and against Baby Moses laws over the following paragraphs.

29. Act of June 3, 2000, 2000 Colo. Sess. Laws, ch. 384, at 2903 (codified as amended at COLO. REV. STAT. §§ 18-6-401, 19-3-304.5 (2000)).

30. *See* Richardson, *supra* note 14 (describing the Colorado debate).

31. *See* Richardson, *supra* note 14 (quoting Rep. Mark Paschall).

32. *See* Richardson, *supra* note 14 (quoting Rep. Gayle Berry, a Republican sponsor of the bill: "I wish we lived in a perfect society where the events that gave rise to this bill didn't exist. But it is a reality, and as uncomfortable as it is, we need to focus on a safe haven for unwanted babies.").

to a prescribed site to leave their children.[33] Further, no babies have been dropped off at designated sites under the Texas law, while several have been found dead.[34] Additionally, the bills have been criticized on the grounds that children dropped off under them will never be able to find out who their parents were or details of their medical histories.[35] Following this line of argument, several adoptee-rights organizations have released statements condemning the laws.[36]

These arguments will likely be played out in the North Dakota legislature over the upcoming session, as the attorney general's office has said it will follow the wishes of several hospitals in the state and have Baby Moses legislation drafted and introduced.[37] Thus, a review of the legislation proposed around the country, as well as a discussion of the current state of the law in North Dakota likely to be affected by such legislation, is appropriate. This Article endeavors to undertake such a review.

Part II reviews the legislation proposed around the country, including both those bills that have passed as well as those that have failed or are still pending. This discussion will analyze Baby Moses legislation by discussing how different proposals approach a number of issues each such law must address, pointing out variations in approach and discussing the implications of each. Part III will review the family law framework into which any North Dakota legislation would fit. This section will review the various laws likely to be affected by a Baby Moses law and will discuss how each would be affected.

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33. *See* Adam Pertman, *Politicians Push for Legalized Baby Abandonment at 'Safe' Sites—Critics Decry Initiatives' Merits, Effectiveness*, BOSTON GLOBE, Apr. 10, 2000, at B1, *available at* 2000 WL 3321463.

34. *See id.* (quoting critics of Baby Moses bills).

35. *See id.*

36. *See Statement from the American Adoption Congress re: Abandoned Baby Legislation* (last visited June 11, 2000) <http://www.americanadoptioncongress.org/abandoned_baby.htm>; *see also Statement of the Executive Committee of Bastard Nation on Legalized Abandonment Laws* (last visited June 11, 2000) <http://www.bastards.org/activism/legalized-abandonment.html>. The portion of the Bastard Nation statement directly addressing the issue of a lack of information for abandoned newborn subsequently adopted reads:

> These laws represent a radical change in child welfare policy toward promoting rather than discouraging abandonment. These laws also run counter to the spirit, and perhaps the letter, of many statutes and initiatives, such as relinquishment revocation periods and putative birthfather registries, that empower all parties involved in a child's life to make informed choices regarding the child's best interest. The anonymity built into these laws opens up the door to the potential for abuse, fraud, and the worst excesses of the past, when abandonment was the norm.

Id.

37. *See* MacDonald, *supra* note 10 (quoting Attorney General Heitkamp as expressing willingness to draft such legislation).

II. REVIEW OF PROPOSED AND ADOPTED BABY MOSES LEGISLATION

The following section focuses on a review of safe haven legislation proposed and adopted around the country. To date, twenty-six states have considered safe haven bills in one form or another. Twelve states have adopted such legislation: Alabama,[38] California,[39] Colorado,[40] Connecticut,[41] Florida,[42] Indiana,[43] Louisiana,[44] Michigan,[45] Minnesota,[46] South Carolina,[47] Texas,[48] and West Virginia.[49] Additionally, New York has adopted a kind of safe haven bill.[50] While it accomplishes much of what the bills discussed in this article do, it takes a radically different approach. Unlike the others, all of which provide details on where children may be left, etc., the New York law simply allows parents to leave children under five days old "with an appropriate person or in a suitable location and promptly notif[y] an appropriate person of the child's location."[51] It also provides an affirmative defense to those doing so.[52] Thus, while it is similar to the other laws, the New York enactment will not be discussed further, as there really is no more detail than that.

Contrarily, nine states considered but did not enact safe haven legislation, with most of the bills simply dying in committee. These states are: Delaware,[53] Georgia,[54] Kansas,[55] Kentucky,[56] New Jersey,[57]

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38. *See* H.R. 115, 2000 Reg. Sess., 2000 Ala. Acts 760.

39. *See* S. 1368, 1999-2000 Reg. Sess. (Cal. 2000) (enacted Sept. 28, 2000).

40. *See* Act of June 3, 2000, 2000 Colo. Sess. Laws, ch. 384, at 2903 (codified as amended at COLO. REV. STAT. §§ 18-6-401, 19-3-304.5 (2000)) (providing for newborn abandonment).

41. *See* H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207.

42. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(3)).

43. *See* IND. CODE ANN. § 31-34-2.5 (Michie Supp. 2000).

44. *See* 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1702(2)).

45. *See* Safe Delivery of Newborns Law, 2000 Mich. Pub. Acts 232.

46. *See* 2000 Minn. Laws 611-12, ch. 421.

47. *See* Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85).

48. *See* 1999 Tex. Gen. Laws 1087, § 2 (effective Sept. 1, 1999) (codified at TEX. FAM. CODE ANN. § 262.301-262.303 (Vernon Supp. 2000)).

49. *See* Act of March 11, 2000, 2000 W. Va. Acts 50 (codified at W. VA. CODE ANN. § 49-6E-1 (Michie Supp. 2000)).

50. *See* Abandoned Infant Protection Act, 2000 N.Y. Laws 156 (to be codified at N.Y. PENAL LAW §§ 260.03, 260.15; N.Y. SOC. SERV. § 372-g).

51. *Id.* § 3 (to be codified at N.Y. PENAL LAW § 260.03).

52. *See id.*

53. *See* H.R. 555, 140th Gen. Assemb., 1999-2000 Sess. (Del. 2000) (session adjourned June 20, 2000, House passed, but Senate laid on table; it is the authors' understanding that once a bill is tabled and the session adjourns, the bill will not carryover to the next session).

54. *See* Safe Place for Babies Act, H.R. 1292, 145th Gen. Assemb., 1999-2000 Reg. Sess. (Ga. 2000) (session adjourned March 22, 2000 and bill will not carryover to next session).

55. *See* Newborn Infant Protection Act, S. 652, 78th Leg., 2000 Reg. Sess. (Kan. 2000) (passed in Senate, but session adjourned May 24, 2000 and bill will not carryover to next session); H.R. 2927,

North Carolina,[58] Oklahoma,[59] Tennessee,[60] and Wisconsin.[61] For purposes of this analysis, legislation proposed but not passed will be considered, because it reflects the overall trend and presents variations in approach to this problem; such failed bills will be referred to as proposals or bills, rather than statutes or enactments.

Additionally, bills remain in progress in five states. These will not be considered, since their final form is not yet determined. The states still considering legislation are Illinois,[62] Missouri,[63] New York,[64] Ohio,[65] and Pennsylvania.[66]

While no two safe haven bills are exactly the same, all share certain characteristics. This section will walk through a series of issues with which each must deal, explaining the major approaches chosen by different states. Initially, each state must provide some mechanics for an abandonment. These include where a child may be left, who may leave a child, and any conditions on which children can be left, notably age. Additionally, this first section includes a discussion of any procedures to be followed when accepting a child, especially relating to anonymity guarantees, disclosures about the effect of leaving a child, and requests for medical information.

78th Leg., 2000 Reg. Sess. (Kan. 2000) (session adjourned May 24, 2000 and bill will not carryover to next session). Two substantially different bills failed to pass in Kansas; one did not leave the House, and the other left the Senate, but did not leave the House.

56. *See* S. 188, 134th Leg., 2000 Reg. Sess. (Ky. 2000) (passed in Senate, but session adjourned April 14, 2000, and bill will not carryover to next session).

57. *See* Assemb. 2030, 209th Leg., 1999 Reg. Sess. (N.J. 2000) (withdrawn from further consideration on September 21, 2000).

58. *See* Abandoned Infant Protection Act, H.R. 1616, 1999 Gen. Assemb., 2d Sess. (N.C. 2000) (session adjourned July 13, 2000, and bill will not carryover to next session).

59. *See* H.R. 2148, 47th Leg., 2d Sess. (Okla. 2000) (passed in House, but session adjourned May 26, 2000, and bill will not carryover to next session).

60. *See* H.R. 2044, 101st Gen. Assemb., 2000 Reg. Sess. (Tenn. 2000) (session adjourned June 28, 2000, and bill will not carryover to next session). Another bill having certain characteristics of a Baby Moses bill was proposed but withdrawn by its sponsor. *See* H.R 3112, 101st Gen. Assemb., 2000 Reg. Sess. (Tenn. 2000). However, it lacked several key components of standard Baby Moses legislation, most notably the guarantee of anonymity for parents leaving children. *See id.* Rather, it conditioned immunity from prosecution on providing detailed personal and medical information. *See id.*

61. *See* Assemb. 926, 94th Leg., Reg. Sess. (Wis. 2000) (failed to pass pursuant to a resolution that requires further consideration of a bill if it is not passed by a certain date).

62. *See* S. 1668, 91st Gen. Assemb., Reg. Sess. (Ill. 2000) (last action was on February 2, 2000, when the bill was referred to the Senate Rules Committee).

63. *See* Safe Place for Newborns Act of 2000, H.R. 2134, 90th Gen. Assemb., 2d Reg. Sess. (Mo. 2000) (last action on this bill was a public hearing on April 11, 2000).

64. *See* Assemb. 9517, 223d Leg., Reg. Sess. (N.Y. 2000) (last action was on June 12, 2000, when bill was referred to Assembly Rules Committee). As discussed above, New York has also already passed a type of safe haven bill. *See supra* note 50. The proposed bill shares more of the characteristics of typical safe haven laws.

65. *See* H.R. 660, 123d Gen. Assemb., 1999-2000 Reg. Sess. (Ohio 2000) (last action was on September 20, 2000, when bill passed in the House).

66. *See* H.R. 2322, 184th Gen. Assemb., 1999-2000 Reg. Sess. (Pa. 2000) (last action was on March 7, 2000, when bill was referred to the House Judiciary Committee).

Second, each bill provides for a process for dealing with children accepted at safe havens. Typically, this involves transferring custody to the state's child protection agency, which then must follow a series of steps, including petitioning the court to terminate parental rights and seeking a permanent home for the child. These procedures vary widely between states, and they are usually keyed to each state's child protection statutes, a general review of which is beyond the scope of this analysis. Nevertheless, it is possible to discern some wide patterns among approaches to these issues, which this section will discuss briefly.

Third, each proposal or law must provide for what the parents may do after leaving a child, including their ability to recover the child or participate in any future hearings regarding the child's future. States take radically different approaches to this issue, ranging from no real provisions to detailed procedures. These procedures are reviewed briefly.

The final section addresses immunity provisions for various parties. While all the statutes provide for some kind of immunity from criminal and civil liability for parents leaving children, the specifics break down into several different approaches. As this discussion will address, these differences may be merely semantic, but there are several clearly discernible approaches from among which the states choose.

A. THE MECHANICS OF LEGALIZED ABANDONMENT

The following sections will deal with the actual mechanics of dropping off a child at a safe haven. This discussion includes everything up to the point that the safe haven has accepted the child and the parent has left. The first subsection, therefore, will begin by discussing what constitutes a "safe haven." The second subsection focuses on who may drop off a child, while the third discusses what children may be dropped off. The final subsection examines procedures to be followed by safe havens when accepting a child from a parent. Section B, *infra*, will discuss procedures that the safe haven follows once it has accepted the child.

1. *What are Safe Havens?*

The first question any safe haven law must answer is what constitutes a safe haven: Where can parents leave children? As an initial matter, it is worth noting that all the bills make accepting children mandatory, thus requiring any person or institution lawfully designated as a safe haven to allow parents to leave children.[67] As a general matter, all states that have

67. *See* COLO. REV. STAT. § 19-3-304.5(1) (2000) (stating that firefighters at fire stations and hospital staff members at a hospital "shall, without a court order, take temporary physical custody of

passed or considered such legislation include hospitals and other similar facilities in their definitions of a safe haven. Some states include other locations, such as fire, ambulance, and police stations, while others limit havens only to hospitals.

There are eight states whose enactments or proposals limit safe havens to hospitals or similar facilities. The Alabama,[68] Indiana,[69] Minnesota,[70] South Carolina,[71] Texas,[72] and West Virginia[73] legislation, as well as the Oklahoma[74] proposal, provide only for children to be left at a hospital or similar facility, typically any such facility licensed pursuant to state law.[75] In Connecticut, hospitals must designate a place in the emergency room where children are to be left, must designate all members of the emergency room nursing staff as "employees authorized to take custody" of children, and must have one such authorized employee on duty at all times.[76] In these states, presumably, a child could not legally be left anywhere else—the safe haven is a limited one, often by reference to state licensing laws.[77] However, as a practical matter, one wonders whether a frightened new mother, desperate enough to give away her newborn, would be able to distinguish an authorized medical facility from an unauthorized one. Further, it seems unlikely that a prosecutor would be willing to press charges against a mother who attempts to leave a child at an unauthorized hospital by mistake, especially in light of the presumably strong legislative policy favoring legalized abandonment over more drastic alternatives, most obviously killing a child. These limitations, therefore, may be relatively meaningless insofar as they purport to limit a parent's ability to leave a child with only certain hospitals or medical facilities.

[an eligible child]"); *see also* 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(1)) ("A hospital . . . shall receive a newborn left with a hospital employee . . . .").

68. *See* H.R. 115, 2000 Reg. Sess., 2000 Ala. Acts 760, § 4.

69. *See* IND. CODE ANN. § 31-34-2.5-1 (Michie Supp. 2000) (calling for "emergency medical services providers" to accept children).

70. *See* 2000 Minn. Laws 611-12, ch. 421, § 1 (codified at MINN. STAT. § 145.902(1)) ("A hospital . . . shall receive a newborn left with a hospital employee . . . .").

71. *See* Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 1 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(A)) (authorizing drop-offs at "a hospital or outpatient facility operating in this state").

72. *See* TEX. FAM. CODE ANN. § 262.301(a) (Vernon Supp. 2000) ("An emergency medical services provider . . . shall, without a court order, take possession of a child . . . .").

73. *See* W. VA. CODE ANN. § 49-6E-1 (Michie Supp. 2000) (allowing for children to be left at "a hospital or health care facility").

74. *See* H.R. 2148, 47th Leg., 2d Sess. § 1 (Okla. 2000) (providing that "any medical provider shall receive physical custody of a newborn infant").

75. *See, e.g.*, 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(1)) ("A hospital licensed under sections 144.50 to 144.56 shall receive a newborn left with a hospital employee . . . .").

76. *See* H.R. 5023, 2000 Reg. Sess., 2000 Conn. Acts 207, § 1.

77. *See supra* notes 68-74, 76.

The other thirteen enactments and proposals expand their definitions of a safe haven beyond hospitals, although each does include hospitals and similar facilities. Colorado,[78] Florida,[79] and the Georgia proposal[80] allow children to be left at fire stations. The Delaware proposal allowed for abandonment at fire stations and paramedic stations,[81] while the New Jersey proposal added police stations.[82] The Tennessee proposal called for "safety officers" and "members of the professional medical community" to take children.[83] The Kansas House proposal would have allowed children to be left with ambulance service providers,[84] while the Wisconsin proposal authorized all law enforcement officers and emergency medical technicians to receive children.[85] The Michigan law, as well as the Kentucky proposal, allow parents to leave children at both fire and police stations in addition to emergency medical service providers.[86] The California enactment adds to hospitals "any additional location designated by the county board of supervisors by resolution."[87] The Kansas Senate proposal, in addition to fire stations and hospitals, designated all city and county health departments as safe havens.[88]

Finally, Louisiana's law and North Carolina's proposal contain the broadest definitions of a safe haven. Louisiana's law allows drop-offs at any designated "emergency care facility," defined in the statute to mean "any hospital licensed in the state of Louisiana, any public health unit, any fire station, any police station, or any pregnancy crisis facility."[89] North Carolina's proposal provided for drop-offs with "any other adult of suitable discretion who willingly accepts the infant."[90] This perhaps reflects the notion that, once a state has decided to allow mothers who might be likely to abandon their children to do so legally, the law should make doing so as easy and convenient as possible, so as to

78. *See* COLO. REV. STAT. § 19-3-304.5(1) (2000) (allowing parents to leave children with firefighters at fire stations or a hospital staff member at a hospital).

79. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(3)) (allowing children to be left at "each fire station staffed with full-time firefighters or emergency medical technicians").

80. *See* Safe Place for Babies Act, H.R. 1292, 145th Gen. Assemb., 1999-2000 Reg. Sess. § 1 (Ga. 2000).

81. *See* H.R. 555, 140th Gen. Assemb., 1999-2000 Sess. § 1 (Del. 2000).

82. *See* Assemb. 2030, 209th Leg., 1999 Reg. Sess. § 4(a), (b) (N.J. 2000).

83. *See* H.R. 2044, 101st Gen. Assemb., 2000 Reg. Sess. § 2 (Tenn. 2000).

84. *See* H.R. 2927, 78th Leg., 2000 Reg. Sess. § 2 (Kan. 2000).

85. *See* Assemb. 926, 94th Leg., Reg. Sess. § 2 (Wis. 2000).

86. *See* Safe Delivery of Newborns Law, 2000 Mich. Pub. Acts 232, § 1(2)(e); S. 188, 134th Leg., 2000 Reg. Sess. § 4 (Ky. 2000).

87. *See* S. 1368, 1999-2000 Reg. Sess. § 2 (Cal. 2000) (enacted Sept. 28, 2000).

88. *See* Newborn Infant Protection Act, S. 652, 78th Leg., 2000 Reg. Sess. § 1(b) (Kan. 2000).

89. *See* 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1702(2)).

90. Abandoned Infant Protection Act, H.R. 1616, 1999 Gen. Assemb., 2d Sess. § 6 (N.C. 2000).

maximize the chance that children will be saved. This is especially logical if combined with the probability, discussed above, that prosecutors would be unlikely to pursue those who leave children in the technically wrong place. If this is so, Louisiana seems to have the ideal enactment, allowing children to be left at virtually all public facilities.

2. *Who May Leave Children?*

While it might seem obvious that only parents can leave their newborn children at safe havens, several enactments and proposals seem to contemplate that someone other than a parent might do so. However, the vast majority of states—seven enactments and six proposals—do in fact limit those eligible to leave children to the child's parents. This is the case in the laws enacted by Alabama,[91] Colorado,[92] Florida,[93] Indiana,[94] Michigan,[95] Texas,[96] and West Virginia.[97] Additionally, the proposals in Georgia,[98] the Kansas House,[99] North Carolina,[100] Oklahoma,[101] Tennessee,[102] and Wisconsin[103] contain similar language. Generally, this limitation appears in the basic language authorizing drop-offs and designating safe havens by requiring designated safe havens to take custody of a child delivered by its parent.[104] However, only one act contains any language regarding how one would be determined to be the child's parent, a point discussed further below. That proposal, Oklahoma's, required the person leaving the child to state

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91. *See* H.R. 115, 2000 Reg. Sess., 2000 Ala. Acts 760, § 1(a) (allowing children to be accepted if "delivered to the provider by the child's parent").

92. *See* COLO. REV. STAT. § 19-3-304.5(1) (2000) (allowing parents to leave children with firefighters at fire stations or a hospital staff member at a hospital).

93. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.5(2)).

94. *See* IND. CODE ANN. § 31-34-2.5-1(a)(1) (Michie Supp. 2000).

95. *See* Safe Delivery of Newborns Law, 2000 Mich. Pub. Acts 232, § 3.

96. *See* TEX. FAM. CODE ANN. § 262.301(a) (Vernon Supp. 2000).

97. *See* W. VA. CODE ANN. § 49-6E-1 (Michie Supp. 2000).

98. *See* Safe Place for Babies Act, H.R. 1292, 145th Gen. Assemb., 1999-2000 Reg. Sess. § 1 (Ga. 2000) ("It is the express purpose and intent of the General Assembly in enacting this chapter to prevent injuries to and deaths of newborn children that are caused by a parent who abandons the child immediately after his or her birth.").

99. *See* Newborn Infant Protection Act, S. 652, 78th Leg., 2000 Reg. Sess. § 2(a) (Kan. 2000).

100. *See* Abandoned Infant Protection Act, H.R. 1616, 1999 Gen. Assemb., 2d Sess. § 2 (N.C. 2000).

101. *See* H.R. 2148, 47th Leg., 2d Sess. § 1 (Okla. 2000) (exempting from criminal liability any parent who complies with safe haven procedures).

102. *See* H.R. 2044, 101st Gen. Assemb., 2000 Reg. Sess. § 4 (Tenn. 2000) (requiring members of the medical community and safety officers to take children from "a parent who is presently entitled to possession of the child").

103. *See* Assemb. 926, 94th Leg., Reg. Sess. § 2 (Wis. 2000).

104. *See, e.g.*, COLO. REV. STAT. § 19-3-304.5(1) (2000) ("If a parent voluntarily delivers a child to a [safe haven, a person at the safe haven] shall, without a court order, take temporary physical custody of the child . . . .").

that he or she was the child's parent, although it did not require such parent to provide any other information, including his or her name.[105]

Four laws and three proposals expressly allow someone other than a parent to leave the child. However, all but one assures that anyone besides the parent is acting at the request of the parent. Uniquely, the Delaware proposal simply allowed "a person" to leave a child, without any of the qualifying language discussed below.[106] Connecticut explicitly limits those who can leave a child to "the parent or lawful agent of the parent."[107] The Minnesota statute initially refers to "the mother or the person leaving the newborn."[108] Later, however, it guarantees immunity from criminal liability only to those who have the mother's approval to leave the child.[109] Like the Minnesota enactment, the South Carolina statute initially refers simply to "a person" who leaves a newborn, but it exempts from criminal liability someone leaving a child only if he or she is a parent or acting at the direction of a parent.[110] The New Jersey proposal contained similar provisions.[111] Both the California law and the Kansas Senate proposal similarly referred to "a parent or other person having lawful custody of an infant," presumably meaning someone with permission of a parent.[112]

Grammatically unique among the enactments is Louisiana's, which couches its drop-off authorization language entirely in the passive tense: "Where a newborn infant is left in the care of any individual at a designated emergency care facility with no affirmative expression that someone intends to return for the child, such act shall be designated relinquishment of a newborn."[113] This would seem at first blush to indicate a broad conception of who can leave the child—anyone, presumably, would be acceptable. However, later provisions suggest that this may not be the case. The statute gives any mother who has left her child, and a father who knew of her decision to do so thirty days in which to revoke the decision to do so, and it gives a father who did not have notice

105. *See* H.R. 2148, 47th Leg., 2d Sess. § 1 (Okla. 2000) (providing anonymity for someone leaving a newborn, but requiring him or her to state that he or she is the newborn's parent).

106. *See* H.R. 555, 140th Gen. Assemb., 1999-2000 Sess. § 5 (Del. 2000).

107. H.R. 5023, 2000 Reg. Sess., 2000 Conn. Acts 207, § 2(a).

108. 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(1)(b)).

109. *See* 2000 Minn. Laws 612, ch. 421, § 3 (to be codified at MINN. STAT. § 609.3785(b)).

110. *See* Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(A), (G)(1)) (requiring hospitals to accept newborns voluntarily left with the hospital by "a person who does not express an intent to return for the infant" but limiting immunity to parents and those acting at the direction of a parent).

111. *See* Assemb. 2030, 209th Leg., 1999 Reg. Sess. § 4 (N.J. 2000).

112. *See* S. 1368, 1999-2000 Reg. Sess. § 2 (Cal. 2000) (enacted Sept. 28, 2000); Newborn Infant Protection Act, S. 652, 78th Leg., 2000 Reg. Sess. § 1(b) (Kan. 2000).

113. 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1703(A)).

of the abandonment a year in which to recover the child.[114] By not providing for a mother who did not personally relinquish her child, the statute seems to suggest that this could not happen, presumably because only a mother, or mother and father together, could relinquish the child.[115] Therefore, it is likely the Louisiana statute, like those discussed above, actually authorizes only parents to leave their children.[116]

Each of these provisions requires that the person leaving the child have some type of relationship with that child, either a parent or someone in lawful possession. However, with the exception of Oklahoma,[117] all of the acts guarantee either complete or such expansive anonymity to those leaving children that they need not identify themselves or their relationship with the child, a subject which will be addressed in full below. Thus, at least to the extent that this status is what enables the safe haven to accept the child, it seems counter-intuitive to require that the person dropping off the child be a parent or have authority to do so. After all, how could a hospital receiving a child anonymously know if the parent leaving it was lawfully entitled to possession of the child?

It is likely that the intent of these provisions is simply to exclude anyone not entitled to have the child in the first place from the criminal and civil immunity enjoyed by parents complying with the act.[118] However, for this to take place, one must posit that someone not entitled to do so leaves a child; the real parent subsequently discovers this and attempts to recover the child; and the one who dropped it off illegally is identified. Even if this were to happen, such a person would surely be guilty of crimes beyond abandoning the child, such as kidnapping. However, it would seem illogical to draft a statute which did not at least refer to parents, as that is the group the legislature clearly intends to be benefit. Therefore, these provisions become unavoidable, but unavoidably empty, words: Requiring that a totally anonymous person be identified as anything is, as a practical matter, probably impossible.

3. *What Children May be Abandoned?*

While the preceding section addressed who is eligible to leave a newborn child at a safe haven, this section focuses on what children may be left. Essentially, there are two main limitations imposed: An age limit, which all states have, and a prohibition against accepting abused chil-

114. *See* 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1705).

115. *See id.*

116. *See id.*

117. *See* H.R. 2148, 47th Leg., 2d Sess. § 1 (Okla. 2000) (providing anonymity for someone leaving a newborn, but requiring him or her to state that he or she is the newborn's parent).

118. *See infra* Part II.D.

dren, present in a minority of state bills. Additionally, a number of bills and enactments require that the parent express an intent not to return, and South Carolina requires additionally that "the circumstances give rise to a reasonable belief that the person does not intend to return for the infant."[119] However, these provisions do not truly add any conditions to leaving a newborn; they merely require that one abandoning a newborn plan to abandon it. Therefore, they will not be considered in this section.

First, all states establish a maximum age limit for accepting newborn children. With the exception of the Delaware, Kansas Senate, and North Carolina proposals, this age limit is either thirty days or three days, sometimes expressed as seventy-two hours.[120] The majority of states establish an age of thirty days. This is true for the laws in Connecticut,[121] Indiana,[122] Louisiana,[123] South Carolina,[124] Texas,[125] and West Virginia,[126] as well as the Kansas House,[127] New Jersey,[128] Tennessee,[129] and Wisconsin[130] proposals. Contrarily, six states' laws—Alabama,[131] California,[132] Colorado,[133] Florida,[134] Michigan,[135]

119. Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(A)). Ten other states' bills or enactments contain such a provision: Colorado, Connecticut, Indiana, Kansas, Kentucky, North Carolina, Oklahoma, Texas, West Virginia, and Wisconsin. *See* COLO. REV. STAT. § 19-3-304.5(1)(b) (2000); H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 2; IND. CODE ANN. § 31-34-2.5-1(a)(2) (Michie Supp. 2000); H.R. 2927, 78th Leg., 2000 Reg. Sess. (Kan. 2000); S. 188, 134th Leg., 2000 Reg. Sess. (Ky. 2000); Abandoned Infant Protection Act, H.R. 1616, 1999 Gen. Assemb., 2d Sess. § 2 (N.C. 2000); H.R. 2148, 47th Leg., Reg. Sess. (Okla. 2000); TEX. FAM. CODE ANN. § 262.301(a) (Vernon Supp. 2000); WEST VA. CODE ANN. § 49-6E-1 (Michie Supp. 2000); Assemb. 926, 94th Leg., Reg. Sess. (Wis. 2000).

120. The Delaware proposal allowed children up to 14 days old to be left. *See* H.R. 555, 140th Gen. Assemb., 1999-2000 Sess. § 1 (Del. 2000). The Kansas Senate proposal provided for an age of 45 days. *See* Newborn Infant Protection Act, S. 652, 78th Leg., 2000 Reg. Sess. § 1(a) (Kan. 2000). The North Carolina proposal required that the infant be less than 15 days of age. *See* Abandoned Infant Protection Act, H.R. 1616, 1999 Gen. Assemb., 2d Sess. § 2 (N.C. 2000).

121. *See* H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 2.

122. *See* IND. CODE ANN. 31-34-2.5-1(a) (Michie Supp. 2000).

123. *See* 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1702(3)).

124. *See* Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(J)).

125. *See* TEX. FAM. CODE ANN. § 262.301(a) (Vernon Supp. 2000).

126. *See* W. VA. CODE ANN. § 49-6E-1 (Michie Supp. 2000).

127. *See* H.R. 2927, 78th Leg., 2000 Reg. Sess. § 2 (Kan. 2000).

128. *See* Assemb. 2030, 209th Leg., 1999 Reg. Sess. § 4(a), (b) (N.J. 2000).

129. *See* H.R. 2044, 101st Gen. Assemb., 2000 Reg. Sess. § 3 (Tenn. 2000).

130. *See* Assemb. 926, 94th Leg., Reg. Sess. § 2 (Wis. 2000).

131. *See* H.R. 115, 2000 Reg. Sess., 2000 Ala. Acts 760, § 1(a).

132. *See* S. 1368, 1999-2000 Reg. Sess. § 1 (Cal. 2000) (enacted Sept. 28, 2000).

133. *See* COLO. REV. STAT. § 19-3-304.5(1)(a) (2000).

134. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(1)).

135. *See* Safe Delivery of Newborns Law, 2000 Mich. Pub. Acts 232, § 1(2)(j).

and Minnesota[136]—and the Georgia,[137] Kentucky,[138] and Oklahoma[139] proposals, establish an eligible age of three days, sometimes expressed as seventy-two hours.

Thus, one who left a child outside the age limit, whether it is three days or thirty days, presumably could be prosecuted for abandonment, since he or she would be outside the scope of the statute. As a practical matter, however, these limits may amount merely to approximations, since the statutes' anonymity guarantees mean parents need not tell precisely when the child was born and a four-day-old or thirty-one-day-old child is likely indistinguishable from one three or thirty days old. Several states do attempt to clear up this ambiguity. For example, Florida requires that a physician reasonably believes the child to be three days old or younger,[140] and both Minnesota and Michigan similarly require that the newborn be reasonably determined by a doctor to be seventy-two hours old.[141] The Kentucky proposal also defined "newborn" as "an infant who is medically determined to be less than seventy-two (72) hours old,"[142] and the Indiana law requires that the child be, "or appear to be, not more than thirty (30) days old."[143] Even these modifications may be meaningless, however. Florida, for example, requires that a physician reasonably believe the child is three days or younger, but authorizes children to be left anonymously at fire stations, meaning that by the time a physician determines it to be older than three days, the parents will be gone.[144] Thus, the age limits are perhaps better viewed as rough approximations, even when a law or bill specifies a method for making that approximation.

Assuming the practicality of enforcing the age limit, however, it is important to ask why some states choose thirty days, while others opt for the much-reduced time frame of three days. To the extent that the laws target the frightened teenage girl who has given birth and, in fear and desperation, might immediately kill or abandon her baby, three days seems more logical.[145] This is precisely the situation in several of the

136. *See* 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(1)(a)).

137. *See* Safe Place for Babies Act, H.R. 1292, 145th Gen. Assemb., 1999-2000 Reg. Sess. § 1 (Ga. 2000).

138. *See* S. 188, 134th Leg., 2000 Reg. Sess. § 1 (Ky. 2000).

139. *See* H.R. 2148, 47th Leg., 2d Sess. § 1 (Okla. 2000).

140. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(1)).

141. *See* 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(1)(a)(1)); Safe Delivery of Newborns Law, 2000 Mich. Pub. Acts 232, § 1(2)(j).

142. S. 188, 134th Leg., 2000 Reg. Sess. § 1 (Ky. 2000).

143. *See* IND. CODE ANN. § 31-34-2.5-1(a) (Michie Supp. 2000).

144. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(1), (3)).

145. *See* Richardson, *supra* note 14 (discussing background of Baby Moses legislation in

high profile cases discussed *supra*, including the case which occurred recently in North Dakota, and which are frequently cited as the inspiration for Baby Moses legislation.[146] Contrarily, a thirty-day time frame seems to assume that one might give birth and try to raise the child for a short time, but ultimately decide that this is impossible and seek to abandon it. Intuitively, this seems, while clearly not impossible, less likely than the first scenario.

The thirty-day time frame might, however, be justified merely as a safety net, an effort to provide for the rare case of a child left after the mother or both parents tried and failed to handle raising it. However, such a long time limit may also open the door to abuse by those not within the statute's target: Parents who want to avoid the responsibility of raising a disabled child, for example, could presumably abandon their child to the state and walk away from it.[147] This would presumably be outside the intent of the newborn abandonment statutes, which are a reaction to newborns abandoned and killed by frightened new parents.

The other main eligibility condition some states impose is a requirement that the newborn not be abused or show any signs of abuse or neglect. This provision is present in two enactments—Florida,[148] and Minnesota[149]—and three proposals—Delaware,[150] Georgia,[151] and the Kansas Senate[152] proposal. All of the provisions take the same basic form, providing that a child will be accepted by a safe haven only if he or she is unharmed or does not show signs of abuse.[153] Additionally, they condition the guarantees of anonymity and immunity from prosecution on the child's health; if he or she has been harmed, the parents

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Colorado and other states).

146. *See* MacDonald, *supra* note 10 (discussing doctors' and hospitals' call for safe haven legislation in North Dakota based on cases of immediate abandonment).

147. Recently, a wealthy couple left their severely handicapped 10-year-old at a Delaware hospital with a note explaining that they could no longer handle the emotional and physical toll of his care. *See CEO, Wife Offer No Explanation as Son Left Behind*, SEATTLE TIMES, Dec. 29, 1999, at A4. The couple is being prosecuted under Delaware law. While this child was much older than 20 days, this incident still makes a point about child abandonment laws: Under the 30-day proposals someone could have left the child without consequences if he or she did not want to care for an unhealthy child. *See, e.g.*, H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 2. This would be true, theoretically, even if the person was not a frightened teenage girl, but merely someone who did not want the inconvenience of an unhealthy child. *See id.*

148. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(5)).

149. *See* 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(1)(a)-(2)).

150. *See* H.R. 555, 140th Gen. Assemb., 1999-2000 Sess. § 1 (Del. 2000).

151. *See* Safe Place for Babies Act, H.R. 1292, 145th Gen. Assemb., 1999-2000 Reg. Sess. § 1 (Ga. 2000).

152. *See* Newborn Infant Protection Act, S. 652, 78th Leg., 2000 Reg. Sess. § 1(b) (Kan. 2000).

153. *See, e.g.*, 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(1)-(a)(2)) ("A hospital . . . shall receive a newborn left with a hospital employee on the hospital premises, provided that: . . . the newborn is left in an unharmed condition.").

are subject to subsequent prosecution.[154] Thus, by negative implication, parents in states without abuse provisions would be immune from any prosecution for abuse if they otherwise complied with the requirements of leaving a child at a safe haven.

4. *Anonymity Guarantees and Procedures for Accepting Newborns*

A key component of Baby Moses legislation is the anonymity it guarantees: One may leave a newborn at a safe haven without identifying oneself by name, let alone leaving any other details about oneself.[155] In fact, some of the laws go so far as to state explicitly that a parent may leave the safe haven at any time and may not be followed or pursued.[156] Proponents of such legislation usually list these features as one of the key points in its favor, arguing that parents inclined to give information about themselves can go the usual adoption route, but that this provides an alternative to those desperate enough to kill their newborns.[157] Contrarily, some critics, notably adoption advocacy groups, argue that this feature is among such legislation's least attractive features, since it ensures that children left pursuant to it will never be able to obtain information about their health backgrounds or that of their biological parents.[158] In response to this concern, some laws provide that those accepting children should either seek information from or make information available to those leaving children.[159] This section will examine those provisions, as well as the general anonymity features of safe haven legislation.

Virtually every Baby Moses law and proposal either expressly guarantees or otherwise provides for anonymity for the parents or the person leaving the child. Generally, these anonymity provisions come in

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154. *See, e.g.*, 2000 Minn. Laws 612, ch. 421, § 3 (to be codified at MINN. STAT. § 609.3785).

155. *See, e.g.*, 2000 Minn. Laws 611-12, ch. 421, § 1 (codified at MINN. STAT. § 145.902(1)(b)).

156. *See, e.g.*, Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(5)).

157. *See, e.g.*, Act of June 2, 2000, 2000 Fla. Laws ch. 188, preamble ("Whereas, anonymity, confidentiality, and freedom from prosecution for parents may encourage them to leave a newborn safely and thus save the infants life.").

158. *See Statement from the American Adoption Congress re: Abandoned Baby Legislation* (last visited June 11, 2000) <http://www.americanadoptioncongress.org/abandoned_baby.htm>; *see also Statement of the Executive Committee of Bastard Nation on Legalized Abandonment Laws* (last visited June 11, 2000) <http://www.bastards.org/activism/legalized-abandonment.html>. A Bastard Nation statement reads: "The anonymity built into these laws opens up the door to the potential for abuse, fraud, and the worst excesses of the past, when abandonment was the norm." *Statement of the Executive Committee of Bastard Nation on Legalized Abandonment Laws* (last visited June 11, 2000) <http://www.bastards.org/activism/legalized-abandonment.html>.

159. *See, e.g.*, Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(B)(2)).

three basic forms. In the first group, anonymity is essentially guaranteed by the lack of any provision regarding identification of a parent and provisions for termination of parental rights and adoption of the child without any notice to the parents. For example, the Colorado law is silent as to identification, providing only that a parent may leave a child without being prosecuted for abandonment.[160] The Alabama,[161] California,[162] Indiana,[163] Louisiana,[164] and Texas[165] legislation are similarly silent on the subject of anonymity, simply allowing parents to leave children and then not mentioning those parents again. This is also the case in the Kansas Senate[166] and House,[167] and Tennessee[168] proposals. Thus, while these laws do not expressly provide for anonymity, neither do they provide for identification of parents, and by not mentioning parents again after allowing them to leave children clearly contemplate that the parents need not be identified and thus will remain anonymous.

The second set of three laws and five proposals expressly provide for anonymity, but essentially place the burden of remaining anonymous on the parent. Thus, the Connecticut law provides that while the hospital may ask questions of the parent or the one leaving the child, "the parent or agent is not required to provide [his or her] name or [any other] information."[169] The South Carolina law similarly provides that "the person leaving the infant is not required to disclose his or her identity."[170] West Virginia's enactment follows the same basic form, stating that a hospital "may not require the person to identify themselves, but shall otherwise respect the person's desire to remain anonymous."[171] The Delaware,[172] Georgia,[173] New Jersey,[174] North

160. *See* COLO. REV. STAT. § 19-3-304.5(1)(b) (2000).

161. *See* H.R. 115, 2000 Reg. Sess., 2000 Ala. Acts 760, § 4.

162. *See* S. 1368, 1999-2000 Reg. Sess. § 1 (Cal. 2000) (enacted Sept. 28, 2000).

163. *See* IND. CODE ANN. § 31-34-2.5 (Michie Supp. 2000).

164. *See* 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1702(2)).

165. *See* TEX. FAM. CODE ANN. § 262.301(a) (Vernon Supp. 2000) ("An emergency medical services provider . . . shall, without a court order, take possession of a child . . .").

166. *See* Newborn Infant Protection Act, S. 652, 78th Leg., 2000 Reg. Sess. § 1 (Kan. 2000).

167. *See* H.R. 2927, 78th Leg., 2000 Reg. Sess. (Kan. 2000).

168. *See* H.R. 2044, 101st Gen. Assemb., 2000 Reg. Sess. (Tenn. 2000).

169. H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 2(b).

170. Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(A)).

171. *See* W. VA. CODE ANN. § 49-6E-1 (Michie Supp. 2000).

172. *See* H.R. 555, 140th Gen. Assemb., 1999-2000 Sess. § 5 (Del. 2000).

173. *See* Safe Place for Babies Act, H.R. 1292, 145th Gen. Assemb., 1999-2000 Reg. Sess. § 2 (Ga. 2000).

174. *See* Assemb. 2030, 209th Leg., 1999 Reg. Sess. § 4(g) (N.J. 2000).

Carolina,[175] and Oklahoma[176] proposals contain similar language. In these states, anonymity is guaranteed, but it is phrased in permissive language, allowing parents to remain anonymous but not placing any express limitations on the one accepting the child.[177]

The final group goes a step further, moving beyond a mere guarantee of anonymity by affirmatively preventing the one accepting the child from doing certain things or asking certain questions. At least to a certain extent, this places the burden of ensuring anonymity on the one accepting the child by placing more express prohibitions on him or her. For example, as mentioned above, Florida provides that anyone leaving a child "has the absolute right to remain anonymous and to leave at any time and may not be pursued or followed . . . ."[178] The Kentucky proposal contained nearly identical language,[179] and the Wisconsin proposal also prohibited "coercing" anyone leaving a child into revealing his or her name or following or pursuing such a person.[180] Similarly, Minnesota provides that "the hospital must not inquire as to the identity of the mother or the person leaving the newborn . . . ."[181] This is to be contrasted with, for example, the Connecticut law, which allows questioning but does not require the parent to answer.[182]

Thus, this third group seems to heighten the guarantee of anonymity by affirmatively preventing the safe haven from asking questions. In practical effect, these may be mere semantic differences, since a parent need not say a word under any of the three approaches. However, the differences may also reflect a conviction that, to get parents to leave rather than kill children, it must be clear to them that they will be anonymous, or, in the case of the final group, not even asked who they are. Even this, however, may well be more form than substance: Under any of the three approaches, however, a parent can walk in, leave a child, and walk out without saying a word.[183]

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175. *See* Abandoned Infant Protection Act, H.R. 1616, 1999 Gen. Assemb., 2d Sess. § 2 (N.C. 2000).

176. *See* H.R. 2148, 47th Leg., 2d Sess. § 1 (Okla. 2000) (providing anonymity for someone leaving a newborn, but requiring him or her to state that he or she is the newborn's parent).

177. Michigan also likely fits into this group, although its statute is unclear. It requires those accepting children to seek certain information, but it does not require that parents give it, allowing an inference that deciding not to answer—and thus staying anonymous—is permissible. *See* Safe Delivery of Newborns Law, 2000 Mich. Pub. Acts 232, § 3(2).

178. Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(5)).

179. *See* S. 188, 134th Leg., 2000 Reg. Sess. § 3 (Ky. 2000).

180. *See* Assemb. 926, 94th Leg., Reg. Sess. § 2 (Wis. 2000).

181. 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(1)(b)).

182. *Compare* H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 2(b) (allowing questioning of those leaving children) *with* 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(1)(b)) (forbidding questioning).

183. This statement excludes the Oklahoma proposal, which purported to require individuals to

While no safe haven law requires that parents furnish any information, seven contain provisions by which parents are given an opportunity to provide such information. Under the South Carolina statute and the Kentucky proposal, parents are to be provided with forms allowing them to provide information about the child's health or the health of the parents.[184] The South Carolina provisions call for the state Department of Social Services to design such a form, which it will then provide to hospitals.[185] If the parents do not wish to complete the form at the hospital, they must be given a prepaid and addressed envelope in which they can return the form by mail later.[186] California has a similar provision.[187] The Michigan law requires one accepting a child to attempt to discover certain information, including both parent's identity and medical histories.[188] The Kentucky proposal similarly called for "materials to gather health and medical information concerning the infant and the parents" to be available at hospitals and also called for the materials to indicate clearly that filling them out was voluntary and could be done anonymously.[189] Finally, the Delaware proposal called on hospitals to seek similar information.[190]

In contrast, the Minnesota and Connecticut enactments and the North Carolina proposal make seeking such information discretionary, rather than mandatory, on those receiving a child. The Connecticut law provides solely that one receiving a child "may request the parent or agent to provide the name of the parent or agent and information on the medical history of the infant and parents."[191] Using almost identical language, those receiving children in Minnesota "may ask the mother or the person leaving the newborn about the medical history of the mother or newborn . . . ."[192] Finally, the North Carolina proposal stated that those taking infants into custody "may inquire as to . . . any relevant medical history."[193] These bills thus seek to address one of the concerns of those who oppose safe haven legislation: the lack of any

identify whether the child was theirs. *See* H.R. 2148, 47th Leg., 2d Sess. § 1 (Okla. 2000).

184. *See* Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(B)(2)); S. 188, 134th Leg., 2000 Reg. Sess. § 3 (Ky. 2000).

185. *See* Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(B)(2)).

186. *See id.* The statute expressly requires that the form include questions about the mother's use of controlled substances, but it also provides that answers to this question are not admissible in any prosecution for the use of unlawful substances. *See id.*

187. *See* S. 1368, 1999-2000 Reg. Sess. § 1 (Cal. 2000) (enacted Sept. 28, 2000).

188. *See* Safe Delivery of Newborns Law, 2000 Mich. Pub. Acts 232, § 3(2).

189. *See* S. 188, 134th Leg., 2000 Reg. Sess. § 3 (Ky. 2000).

190. *See* H.R. 555, 140th Gen. Assemb., 1999-2000 Sess. § 5 (Del. 2000).

191. H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 2(b).

192. 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(2)(b)).

193. Abandoned Infant Protection Act, H.R. 1616, 1999 Gen. Assemb., 2d Sess. § 2 (N.C. 2000).

medical information for the children abandoned.[194] However, they clearly do not fully answer the criticism, since parents may choose not to leave information.

Finally, eight states have provisions that do the opposite: They require the safe haven to provide certain information to anyone leaving a newborn. The California,[195] Connecticut,[196] Michigan,[197] Minnesota,[198] and South Carolina statutes,[199] as well as the Delaware,[200] Georgia,[201] and Wisconsin[202] proposals, contain such provisions. The Connecticut law simply provides that a pamphlet describing the statutory process be provided to the parent.[203] Minnesota allows a hospital merely to provide information about contacting "relevant social service agencies."[204] The South Carolina statute and the Georgia and Wisconsin proposals essentially require that the person receiving the child disclose the effect of doing so, including the impact of parental rights, and inform the parent of the process that will be followed by the state with respect to the child.[205] Presumably, these provisions are intended to ensure that the parents have full information and to allow them to change their minds at the last minute if they hear something they did not realize initially.

The foregoing sections essentially sketched out the beginning of the process. To generalize, an eligible person can leave an eligible newborn at a designated site and, under some laws, must either be asked to give or must be given certain information. Assuming this happens, and the parent leaves, the next question is what the safe haven is to do with the child, both immediately and in the future. These issues are addressed in the following section.

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194. *See, e.g., Statement from the American Adoption Congress re: Abandoned Baby Legislation* (last visited June 11, 2000) <http://www.americanadoptioncongress.org/abandoned_baby.htm>.

195. *See* S. 1368, 1999-2000 Reg. Sess. § 1 (Cal. 2000) (enacted Sept. 28, 2000).

196. *See* H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 2(b).

197. *See* Safe Delivery of Newborns Law, 2000 Mich. Pub. Acts 232, § 3(1)(d).

198. *See* 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(2)(b)).

199. *See* Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(B)(1)).

200. *See* H.R. 555, 140th Gen. Assemb., 1999-2000 Sess. § 3 (Del. 2000).

201. *See* Safe Place for Babies Act, H.R. 1292, 145th Gen. Assemb., 1999-2000 Reg. Sess. § 1 (Ga. 2000).

202. *See* Assemb. 926, 94th Leg., Reg. Sess. § 2 (Wis. 2000).

203. *See* H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 2(b) ("The designated employee shall provide the parent or agent with a pamphlet describing the process established under this act.").

204. 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(2)(b)) ("The hospital may provide the mother or the person leaving the newborn with information about how to contact relevant social service agencies.").

205. *See, e.g.*, Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(B)(1)) ("The hospital or hospital outpatient facility must offer the person leaving the infant information concerning the legal effect of leaving the infant with the hospital or hospital outpatient facility.").

B. POST-ABANDONMENT STATE PROCEDURES

To a greater degree than the other topics addressed in this review of safe haven legislation, the questions of what a safe haven is to do with a child it has taken into custody is highly dependent on state law. This is because the statutorily proscribed duties are often couched in terms of other, preexisting child protection statutes. Thus, it is less easy, and less useful, to compare approaches among the bills; to do so comprehensively, one would ultimately end up reviewing all of a state's child protection law. Therefore, this section focuses on constructing a brief, thumbnail sketch of what safe havens do with children, merely noting points at which states tail off into the their general family and juvenile law.

Initially, most safe haven legislation contains two similar requirements. First, the safe haven or individual who accepts actual custody from a parent is generally to "perform any act necessary, in accordance with generally accepted standards of professional practice, to protect, preserve, or aid the physical health or safety of the child during the temporary physical custody."[206] Sometimes this is also phrased as giving implied consent for any treatment.[207] There are similar provisions in California,[208] Florida,[209] Indiana,[210] Louisiana,[211] South Carolina,[212] Texas,[213] and West Virginia,[214] as well as the proposals in the Kansas House[215] and Senate,[216] Kentucky,[217] New Jersey,[218] North Carolina,[219] Tennessee,[220] and Wisconsin.[221] The Connecticut and Minnesota laws, and the Georgia and Oklahoma bills, do not contain such express provisions, although it is likely that the legislature intended that hospitals would ensure the child's health and not ignore obvious physical problems.

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206. COLO. REV. STAT. § 19-3-304.5(2)(a) (2000).

207. *See* S. 188, 134th Leg., 2000 Reg. Sess. § 4 (Ky. 2000).

208. *See* S. 1368, 1999-2000 Reg. Sess. § 1 (Cal. 2000) (enacted Sept. 28, 2000).

209. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(3)(a), (4)).

210. *See* IND. CODE ANN. § 31-34-2.5-1(b) (Michie Supp. 2000).

211. *See* 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1704(A)).

212. *See* Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(A)).

213. *See* TEX. FAM. CODE ANN. § 262.301(b) (Vernon Supp. 2000).

214. *See* W. VA. CODE ANN. § 49-6E-1 (Michie Supp. 2000).

215. *See* H.R. 2927, 78th Leg., 2000 Reg. Sess. § 2 (Kan. 2000).

216. *See* Newborn Infant Protection Act, S. 652, 78th Leg., 2000 Reg. Sess. § 1(c) (Kan. 2000).

217. *See* S. 188, 134th Leg., 2000 Reg. Sess. § 2 (Ky. 2000).

218. *See* Assemb. 2030, 209th Leg., 1999 Reg. Sess. § 4(b)(2) (N.J. 2000).

219. *See* Abandoned Infant Protection Act, H.R. 1616, 1999 Gen. Assemb., 2d Sess. § 2 (N.C. 2000).

220. *See* H.R. 2044, 101st Gen. Assemb., 2000 Reg. Sess. § 5 (Tenn. 2000).

221. *See* Assemb. 926, 94th Leg., Reg. Sess. § 2 (Wis. 2000).

The second requirement, present in all states, is that the safe haven contacts the relevant state or county child welfare agency that it has received a child within a certain time after receipt.[222] While the time periods vary, they are generally quite short: Minnesota's, for example, is twenty-four hours.[223] The specific agency, of course, varies from state to state. That agency then takes physical custody of the child and takes over his or her care. Often, it is commanded to treat the child as one taken into custody under a specific state statute or other provision.[224] In other instances, the agency is simply commanded to take control of the child, which will then be considered to be in the custody of the agency.[225] However the statute is phrased, the effect is the same: The safe haven transfers actual physical custody of the child to the state agency, which takes over the rest of the process.

It is at this point that the earlier notation about variations in state law becomes most relevant. In most cases, the statutes do not contain provisions governing how children taken into custody under safe haven laws are to be treated independent from other, preexisting procedures, with perhaps minor alternations. Thus, they generally provide some mechanism for terminating parental rights and seeking a permanent home for the child.[226] Sometimes these provisions are accomplished entirely by reference to other statutes;[227] others require one step, such as a special termination of parental rights, after which the child fits into a preexisting statutory category.[228] Others make slight changes to the existing procedure; Minnesota, for example, provides that children left at safe havens are to be treated as abandoned children under existing law, except that the social service agency with control of the child is not to attempt to

222. *See, e.g.*, 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(2)).

223. *See* 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(2)).

224. *See, e.g.*, 2000 Minn. Laws 612, ch. 421, § 2 (to be codified at MINN. STAT. § 260C.217(2)) ("[A] newborn left at a hospital under section 145.902 [the safe haven provisions] is considered an abandoned child."); *see also* TEX. FAM. CODE ANN. § 262.303 (Vernon Supp. 2000) (providing that the state agency is to treat a child left at a safe haven "as a child taken into possession without a court order").

225. *See, e.g.*, H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 3; Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(7)).

226. *See, e.g.*, H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 3 (requiring the Commissioner of Families and Children to "take any action authorized under state law to achieve safety and permanency for the child").

227. *See* TEX. FAM. CODE ANN. § 262.303 (Vernon Supp. 2000) (providing that the state agency is to treat a child left at a safe haven "as a child taken into possession without a court order" and requiring it to "take action as required by Section 262.105 with regard to the child"); *see also* TEX. FAM. CODE ANN. § 161.001(1)(S) (allowing termination of parental rights when a parent has left a child at a safe haven).

228. *See* 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1704(C)) ("The department shall file and pursue to judgment in the trial court a petition to terminate the parental rights of the parents of the relinquished newborn. Upon judgment terminating the parental rights, the newborn shall be treated as a child whose parents' rights were terminated involuntarily.").

reunify the child with his or her parents or seek for other relatives.[229] Because of the wide variations among state law and practice on these issues, these provisions will not be discussed in further detail.[230]

C. PARENTAL REUNIFICATION PROVISIONS

The above discussion described what happens to abandoned children so far as the state is concerned. In most states, that is the whole story. In a minority of states, however, parents who abandon a newborn have the ability or opportunity to recover the child within a certain amount of time after abandoning it by following statutorily proscribed procedures. All of the other states simply make no mention of reunification; presumably, this means that parents who abandon children according to a safe haven law are treated the same as parents who abandon children in other, illegal fashions, with the one key difference that they will not be pursued or prosecuted.[231] The following section discusses the minority of bills that do address reunification.

As mentioned, it is a minority that does so—only seven of the states that have passed or considered such legislation included such provisions. These are the California,[232] Connecticut,[233] Florida,[234] Louisiana,[235] and Michigan[236] laws, as well as the Georgia[237] and Wisconsin[238] proposals. As there are so few of them, and because they vary so greatly, each will be addressed briefly in turn. Perhaps the easiest to discuss are the Georgia and Wisconsin proposals. The Georgia proposal provided that a hospital had to inform a parent leaving a child that he or she could request return of the child for four weeks, and that failure to do so would result in severance of the parent's rights to the child.[239] The proposal

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229. *See, e.g.*, 2000 Minn. Laws 612, ch. 421, § 2 (to be codified at MINN. STAT. § 260C.217(1)).

230. There are a few exceptions to the general rule: Florida, South Carolina, and Kentucky provide a more detailed procedure for dealing with safe haven abandonments. *See* 2000 Fla. Laws ch. 188, § 5 (to be codified at FLA. STAT. ch. 63.0423); Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(E)); S. 188, 134th Leg., 2000 Reg. Sess. § 5 (Ky. 2000). Even these statutes, however, essentially contain the kinds of provisions discussed above, and thus will not be discussed in further detail.

231. The states whose enactments make no provisions for reunification are Alabama, Colorado, Indiana, Minnesota, South Carolina, Texas, and West Virginia. This is also true for the proposals considered by Delaware, the Kansas House and Senate, Kentucky, Oklahoma, and Tennessee.

232. *See* S. 1368, 1999-2000 Reg. Sess. § 1 (Cal. 2000) (enacted Sept. 28, 2000).

233. *See* H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 4.

234. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(6), § 5 (to be codified at FLA. STAT. ch. 63.0423(4)-(10)).

235. *See* 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1705).

236. *See* Safe Delivery of Newborns Law, 2000 Mich. Pub. Acts 232, § 10.

237. *See* Safe Place for Babies Act, H.R. 1292, 145th Gen. Assemb., 1999-2000 Reg. Sess. § 1 (Ga. 2000).

238. *See* Assemb. 926, 94th Leg., Reg. Sess. § 2 (Wis. 2000).

239. *See* Safe Place for Babies Act, H.R. 1292, 145th Gen. Assemb., 1999-2000 Reg. Sess. § 1 (Ga. 2000).

made no other mention of reunification; thus, it is not clear whether the child's return to the parent would have been mandatory or discretionary, or who would make such a decision.[240] The Wisconsin proposal provided that a parent could reclaim the child until his or her parental rights were terminated, and then directed a state agency to devise rules by which this could be accomplished.[241] Once the rules were promulgated, those accepting children would have been required to provide a copy of the rules and any forms they required to parents leaving children.[242] Since the proposal did not become law, however, this never happened.

The Connecticut and Louisiana proposals take opposite approaches. In Connecticut, a parent leaving a child is provided a bracelet linking him or her to the child.[243] This bracelet conveys to the person holding it standing to participate in custody hearings for the infant, but it does not provide a presumption of paternity, maternity, or custody.[244] Additionally, one leaving a child may make a request for reunification with the Commissioner of Children and Families.[245] Notably, the statute does not provide a time frame within which this must occur.[246] After receiving such a request, the Commissioner is to "identify, contact and investigate such person or agent to determine if such reunification is appropriate or if the parental rights of the parent should be terminated."[247] Thus, reunification is not mandatory: A request simply gives the parent an opportunity to recover his or her child, but it does not guarantee that it will happen.[248] California is similar; the child is returned unless a health prosecutor "knows or reasonably suspects that the child has been the victim of child abuse or neglect."[249]

The situation is opposite in Louisiana. There, a mother who has relinquished her child or a father with notice of the relinquishment has thirty days to revoke the decision.[250] A father without notice has one year to file a petition for reunification.[251] The statute provides that the father's paternity must be established at the state's expense, and if it is established, he shall be awarded custody of the child.[252] Thus, reunifica-

240. *See id.*
241. *See* Assemb. 926, 94th Leg., Reg. Sess. § 2 (Wis. 2000).
242. *See id.*
243. *See* H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, § 2.
244. *See id.* § 4.
245. *See id.*
246. *See id.*
247. *Id.*
248. *See id.*
249. S. 1368, 1999-2000 Reg. Sess. § 1 (Cal. 2000) (enacted Sept. 28, 2000).
250. *See* 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1705).
251. *See id.* (to be codified at LA. CIV. CODE ANN. art. 1705(B)).
252. *See id.*

tion is clearly mandatory—the court must order reunification if it is requested within the proscribed time limits.[253] The statute does not contain similar language for the mother, but the language—she "may . . . revoke her intentions to relinquish the newborn"—especially when read in conjunction with the mandatory language for the father, indicates that the effect is the same.[254] Thus, in Louisiana, a parent has the right to recover his or her child within the time period, not merely the right to request to do so.[255]

The Florida and Michigan statutes provide detailed procedures by which a parent may reclaim his or her child, which will not be outlined at length. Essentially, Florida allows a child to be reclaimed "up until the court enters a judgment terminating his or her parental rights."[256] The statute provides how such a request is to be made, and the procedures for the court to follow if it is made.[257] Notably, the court is not required to grant such a request; rather, it may appoint a guardian ad litem to evaluate the parents and determine the newborn's best interests.[258] Additionally, the court may not deny reunification solely because the child was abandoned pursuant to the statute.[259] In Michigan, a parent must file a request for reunification within twenty-eight days of abandoning the child.[260] The court must then determine via DNA or other testing if the petitioner is the child's parent; if he or she is, the court will hold a hearing to determine whether the child should be returned to the parent, using a best interests standard.[261]

D. PARENTAL AND SAFE HAVEN IMMUNITY

Virtually all safe haven laws provide some form of immunity from prosecution for abandonment to parents who comply with the statute.[262] Without these provisions, the laws would be essentially worthless, because there would be no incentive to follow the abandonment procedures

253. *See id.*

254. *Id.* (to be codified at LA. CIV. CODE ANN. art. 1705(A)).

255. *See id.* (to be codified at LA. CIV. CODE ANN. art. 1705). Presumably, the court would still have the ability to deny a request in the cases of clear physical abuse, although the statute does not expressly provide for this.

256. Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(6)).

257. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 5 (to be codified at FLA. STAT. ch. 63.0423(4)-(10)).

258. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 5 (to be codified at FLA. STAT. ch. 63.0423(7)).

259. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 5 (to be codified at FLA. STAT. ch. 63.0423(7)(c)).

260. *See* Safe Delivery of Newborns Law, 2000 Mich. Pub. Acts 232, § 10.

261. *See id.* §§ 10-14.

262. The one exception is Michigan, whose statute is silent as to liability. *See id.*

instead of more traditionally abandoning the child if they led to the same legal consequences. Additionally, many provide some level of criminal and civil immunity to anyone accepting a child pursuant to safe haven authority. These provisions are the subject of this section.

First, the immunity from prosecution provisions come in three basic forms. All have essentially the same content: They move abandonment pursuant to the statute outside the realm of criminal liability, thus allowing abandonment to occur. However, there are two main ways of phrasing this protection, the first of which actually comprises two different methods of describing the immunity. The first main way effectively prevents charges ever from being brought against a parent for abandoning a child according to the statute. This is accomplished two ways. First, two laws and four proposals provide that abandonment according to the statutory procedures simply will not constitute a violation of the relevant state laws. This is true in the Connecticut[263] and Florida[264] laws, as well as the Kansas House,[265] Kentucky,[266] Oklahoma,[267] and Tennessee[268] proposals. Second, the California,[269] Minnesota[270] and South Carolina[271] laws and the Georgia,[272] Kansas Senate,[273] and Wisconsin[274] proposals provide that a parent may not be prosecuted for the relevant state crime if he or she complies with the law. In either case, the prosecution would be theoretically unable to initiate proceedings if it knew, or continue them if it learned, that a defendant had complied with the statute.

The second major method provides an affirmative defense to those charged with the relevant state crime. The Alabama,[275] Colorado,[276] Indiana,[277] Louisiana,[278] Texas,[279] and West Virginia[280] legislation

263. *See* H.R. 5023, 2000 Gen. Assemb., Reg. Sess., 2000 Conn. Acts 207, §§ 6, 7.

264. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 8 (to be codified at FLA. STAT. ch. 827.035).

265. *See* H.R. 2927, 78th Leg., 2000 Reg. Sess. § 2 (Kan. 2000).

266. *See* S. 188, 134th Leg., 2000 Reg. Sess. § 4 (Ky. 2000).

267. *See* H.R. 2148, 47th Leg., 2d Sess. § 1 (Okla. 2000).

268. *See* H.R. 2044, 101st Gen. Assemb., 2000 Reg. Sess. §§ 6, 7 (Tenn. 2000).

269. *See* S. 1368, 1999-2000 Reg. Sess. § 2 (Cal. 2000) (enacted Sept. 28, 2000).

270. *See* 2000 Minn. Laws 612, ch. 421, § 3 (to be codified at MINN. STAT. § 609.3785).

271. *See* Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(G)).

272. *See* Safe Place for Babies Act, H.R. 1292, 145th Gen. Assemb., 1999-2000 Reg. Sess. § 1 (Ga. 2000).

273. *See* Newborn Infant Protection Act, S. 652, 78th Leg., 2000 Reg. Sess. § 2(b) (Kan. 2000).

274. *See* Assemb. 926, 94th Leg., Reg. Sess. § 2 (Wis. 2000).

275. *See* H.R. 115, 2000 Reg. Sess., 2000 Ala. Acts 760, § 3.

276. *See* COLO. REV. STAT. § 18-6-401(9) (2000).

277. *See* IND. CODE ANN. § 35-46-1-4(c)(1) (Michie Supp. 2000).

278. *See* 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1703(B)).

279. *See* TEX. PENAL CODE ANN. § 22.041(h) (Vernon Supp. 2000).

280. *See* W. VA. CODE ANN. § 49-6E-4 (Michie Supp. 2000).

employ this method, as do the Delaware,[281] and New Jersey[282] proposals. The difference between this approach and the first may not mean much in practice. In theory, however, it places the burden on defendants, who generally must raise and prove affirmative defenses. Under the first approach, however, it is not clear on whom the burden of proving compliance would be placed; if it were on the parents, it might effectively function as an affirmative defense.

Additionally, eight states condition immunity on the child's not being harmed. This is true in the Florida,[283] Minnesota,[284] and South Carolina[285] laws as well as the proposals in Delaware,[286] Kansas Senate,[287] and Kentucky.[288] The South Carolina statute does not expressly condition eligibility for abandonment on a child's health, but it provides that the immunity provisions do "not apply to prosecution for the infliction of harm upon infant other than the harm inherent in abandonment."[289] The North Carolina proposal contained a similar provision.[290]

The second type of immunity, offered by all but five states, is for those accepting children.[291] These provisions are expressed in many different forms. The precise differences among the various phrasings, as well as differences between the states who use the same language, at least insofar as they concern the substantive law of torts, are beyond the scope of this article, which intends merely to denote how different states have approached safe haven legislation. Thus, the following discussion focuses on the general form of the various statutory texts.

Perhaps the broadest expressions of immunity are found in the Alabama statute and the Delaware and Kansas Senate proposals. The

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281. *See* H.R. 555, 140th Gen. Assemb., 1999-2000 Sess. § 1 (Del. 2000).

282. *See* Assemb. 2030, 209th Leg., 1999 Reg. Sess. § 4(e) (N.J. 2000).

283. *See* Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 8 (to be codified at FLA. STAT. ch. 827.035).

284. *See* 2000 Minn. Laws 612, ch. 421, § 3 (to be codified at MINN. STAT. § 609.3785).

285. *See* Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(G)).

286. *See* H.R. 555, 140th Gen. Assemb., 1999-2000 Sess. § 1 (Del. 2000).

287. *See* Newborn Infant Protection Act, S. 652, 78th Leg., 2000 Reg. Sess. § 2(b) (Kan. 2000).

288. *See* S. 188, 134th Leg., 2000 Reg. Sess. § 4 (Ky. 2000).

289. Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(G)).

290. *See* Abandoned Infant Protection Act, H.R. 1616, 1999 Gen. Assemb., 2d Sess. § 5 (N.C. 2000). The North Carolina proposal would have allowed abandoment to be a mitigating factor in sentencing for a child abuse conviction. *See id.*

291. Those states that do not have any sort of immunity provision are the Connecticut, Indiana, Texas, and West Virginia enactments, and the Kansas House proposal. The Georgia proposal contained a very limited immunity, providing that safe havens could not be liable for civil damages for failing to discharge their duty to make certain disclosures to, and provide information for, parents leaving children. *See* Safe Place for Babies Act, H.R. 1292, 145th Gen. Assemb., 1999-2000 Reg. Sess. § 1 (Ga. 2000).

Alabama statute states that "[n]o person or other entity subject to the provisions of this act shall be liable to any person for any claim for damages as a result of any action taken pursuant to the requirements of this act . . . ."[292] Equally broad was the Delaware proposal, which stated that those acting under the statute were "absolutely immune" from civil and criminal liability.[293] The Kansas Senate proposal similarly provided that safe havens had to do whatever was necessary to protect the physical health of the child and would "be immune from liability for any injury to the infant that may result therefrom."[294] More limited, but still broad, is South Carolina's statute, which provides immunity for any act authorized by the statute so long as the safe haven complies with all provisions of the statute.[295]

Nine states provide an arguably more limited immunity, keying protection to good faith or a similar standard. Colorado, for example, holds that "[a] firefighter or hospital staff member shall incur no civil or criminal liability for any good faith acts or omissions . . . ."[296] California has a similar provision.[297] Louisiana similarly provides that no cause of action may be brought "for good faith actions relative to the relinquishment of a . . . newborn,"[298] while Minnesota safe havens are immune "from any criminal liability that otherwise might result from their actions, if they are acting in good faith in receiving a newborn, and are immune from any civil liability that otherwise might result from merely receiving a newborn."[299] The Michigan law provides immunity from everything except "gross negligence or willful or wanton misconduct."[300] Similar provisions were contained in the New Jersey,[301] North Carolina,[302] Oklahoma[303] and Wisconsin[304] proposals.

Finally, two states have provisions arguably identical, but semantically different, from these. First, Florida provides any firefighter or emergency medical technician with immunity, and a hospital or any of its licensed health care professionals are "immune from criminal or civil

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292. H.R. 115, 2000 Reg. Sess., 2000 Ala. Acts 760, § 5.

293. *See* H.R. 555, 140th Gen. Assemb., 1999-2000 Sess. § 7 (Del. 2000).

294. Newborn Infant Protection Act, S. 652, 78th Leg., 2000 Reg. Sess. § 1(c) (Kan. 2000).

295. *See* Safe Haven for Abandoned Babies Act, H.R. 4743, 113th Gen. Assemb., Reg. Sess. § 2 (S.C. 2000) (to be codified at S.C. CODE ANN. § 20-7-85(H)).

296. COLO. REV. STAT. § 19-3-304.5(3) (2000).

297. *See* S. 1368, 1999-2000 Reg. Sess. § 1 (Cal. 2000) (enacted Sept. 28, 2000).

298. 2000 La. Acts 109, § 1 (to be codified at LA. CIV. CODE ANN. art. 1704(A)).

299. 2000 Minn. Laws 611-12, ch. 421, § 1 (to be codified at MINN. STAT. § 145.902(1)).

300. Safe Delivery of Newborns Law, 2000 Mich. Pub. Acts 232, § 2(4).

301. *See* Assemb. 2030, 209th Leg., 1999 Reg. Sess. § 4(f) (N.J. 2000).

302. *See* Abandoned Infant Protection Act, H.R. 1616, 1999 Gen. Assemb., 2d Sess. § 2 (N.C. 2000).

303. *See* H.R. 2148, 47th Leg., 2d Sess. § 1 (Okla. 2000).

304. *See* Assemb. 926, 94th Leg., Reg. Sess. § 2 (Wis. 2000).

liability for acting in good faith in accordance with this section," but it goes on to provide that "[n]othing in this subsection limits liability for negligence."[305] Second, the Kentucky proposal provided that "[a]ny person performing medical care, diagnostic testing, or medical treatment shall be immune from criminal or civil liability for having performed the act."[306] Like Florida, however, it also continues by stating that "[n]othing in this subsection shall limit liability for negligence."[307]

The foregoing section has provided an overview of how safe haven laws are constructed. It attempted, as it were, to paint with broad strokes, noting, explaining, and distinguishing among major approaches to similar issues. However, each piece of safe haven legislation has to fit into a preexisting family and juvenile law structure. The following section explores the North Dakota framework into which any safe haven law would have to fit.

III. LOSS OF PARENTAL RIGHTS UNDER NORTH DAKOTA LAW

The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property without due process of law."[308] The United States Supreme Court has stated that the Fourteenth Amendment's Due Process Clause, "like its Fifth Amendment counterpart, 'guarantees more than fair process.'"[309] Rather, "[t]he Clause also includes a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests.'"[310]

One such liberty interest is that of "parents in the care, custody, and control of their children[; this] is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme] Court."[311] The scope and definition of a parent's fundamental right to the custody, care and control of his or her child has substantially developed over the last seventy-five years of Supreme Court jurisprudence.[312] At this stage of that development, it is clear that a parent's right to make decisions

305. Act of June 2, 2000, 2000 Fla. Laws ch. 188, § 1 (to be codified at FLA. STAT. ch. 383.50(3)(b), (4)).

306. S. 188, 134th Leg., 2000 Reg. Sess. § 3 (Ky. 2000).

307. *Id.*

308. U.S. CONST. amend. XIV, § 1.

309. Troxel v. Granville, 120 S. Ct. 2054, 2059 (2000) (quoting Washington v. Glucksberg, 521 U.S. 702, 719 (1997)).

310. *Id.* at 2060 (quoting *Glucksberg*, 521 U.S. at 720).

311. *Id.*

312. *See id.* (covering the case law development of a parent's fundamental right to the custody, care, and control of his or her child).

concerning the custody, care and control of his or her children is duly protected by the Fourteenth Amendment's Due Process Clause.[313]

However, the implications of this right on a safe haven law have not been addressed by any court. Thus, the relationship between the fundamental right to parenting and statutes enabling parents to leave children at safe havens with the intention of relinquishing parental rights is unclear. Further, it is not clear how safe haven laws will constitutionally account for the fundamental rights of one parent when the other drops off the child.[314] The goal of this analysis is to determine how North Dakota should address the typical scenario in which the mother of a newborn wishes to leave her newborn at a medical facility. An important part of such an analysis includes addressing the father's due process rights, and addressing a mother's right to terminate the parent-child relationship.[315]

This section addresses these issues by considering the various ways that one can lose parental rights under current North Dakota law. First is a true abandonment: What would happen in North Dakota if a child has been abandoned and the police or another governmental body is unable to locate the parents. Second, this section addresses what types of action by a parent allow the state to terminate parental rights involuntarily. Finally, this section summarizes the current procedure allowing a parent voluntarily to terminate his or her parental rights through the mechanism of adoption.

A. ABANDONED CHILDREN UNDER EXISTING NORTH DAKOTA LAW

Currently, if a newborn baby was found abandoned and alive in North Dakota, the police officer responding to the scene would first be required to make a reasonable investigation regarding the whereabouts of the parents of the child. If the officer was unable to determine the parent or parents of the child, the officer would take the child into protective custody.[316] If further investigation revealed the identity of the parents, either or both parents may be guilty of a class C felony for a failure to provide adequate shelter and care.[317] If further investigation did not reveal the identity of the parents, the child would be placed

313. *See id.*

314. As discussed above, some safe haven laws and proposals provide a mechanism by which a parent may recover a child. *See supra* Part II.C. However, the constitutional adequacy of these provisions has yet to be determined.

315. It should be noted that the gender roles could easily be reversed; however, this choice of gender roles reflects what seems to be a more common scenario.

316. *See* N.D. CENT. CODE § 25-03.1-25 (1995) (detailing procedures for taking an individual into protective custody in emergency situations).

317. *See id.* § 14-07-15 (1997) (stating penalities for the abandonment of a child).

under the temporary custody of the county social services department, which may in turn petition the court to terminate the parental rights under the Uniform Juvenile Court Act, found at North Dakota Century Code section 27-20-44.[318]

Thus, if a parent actually abandoned a child, that act would be grounds for loss of parental rights. However, parents may also have their rights terminated even if they do not actually or physically abandon their child. This is the subject of the next section.

B. INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

In certain circumstances, a court may by judicial decree terminate a person's parental rights in his or her children. If a parent's act or failure to act deprives a child, and the deprivation is currently causing or will in the future cause serious physical, mental or moral harm, the county social service department may petition the court to terminate the parental rights of such parent.[319] The type of behavior that may cause the court to consider terminating parental rights includes prolonged alcohol or other substance abuse, or a failure to discontinue abusing alcohol or other substances after receiving treatment.[320] Other behavior that may justify terminating parental rights includes both verbal and physical abuse directed towards the child or the parent being repeatedly incarcerated.[321] Essentially, if a parent's actions are causing or are likely to cause serious harm to a child, the court will consider terminating that parent's parental rights. After all, as the North Dakota Supreme Court has stated, "the primary purpose of [North Dakota Century Code chapter 27-20] is to protect the welfare of the children."[322]

The North Dakota Supreme Court has routinely applied a three-part statutorily based test to determine whether a lower court made the proper determination to terminate a parent's rights.[323] Since the termination of a parent's rights also involves a child, the lower court terminating a parent's rights is most often a juvenile court. While the North Dakota Supreme Court is not bound by the decision of a juvenile court, it does give the lower court decision "appreciable weight."[324]

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318. *See id.* § 27-20-44 (Supp. 1999) (outlining procedure for terminating parental rights).

319. *See id.*

320. *See In re* A.M., 1999 ND 195, ¶ 8, 601 N.W.2d 253, 256 (suggesting that a parent's continued abuse of alcohol may cause a child to be deprived).

321. *See In re* A.R., 2000 ND 130, ¶¶ 4, 6, 612 N.W.2d 569, 570 (affirming the trial court's decision to terminate parental rights when the parent physically abused her child in the past, had a history of substance abuse, and was repeatedly incarcerated).

322. *In re A.M.*, ¶ 6, 601 N.W.2d at 255.

323. *See id.* ¶ 7 (suggesting that the three-part test is derived from section 27-20-44(1)(b) of the North Dakota Century Code).

324. *See id.*

The three-part test first requires a determination of whether the child is "deprived."[325] Second, the court determines whether the conditions and the causes of the deprivation are likely to continue.[326] Third, the court determines whether the child is suffering or will in the future suffer "serious physical, mental, moral, or emotional harm."[327] The burden of proof for a parental rights termination proceeding is on the state, which must prove all three elements by clear and convincing evidence.[328]

The North Dakota Supreme Court recently applied this three-step analysis in *In re A.R.*[329] *In re A.R.* involved an appeal from a juvenile court's determination that K.G., the mother of A.R., should have her parental rights terminated.[330] Employing the three-part framework, the juvenile court had determined that A.R. was a deprived child, that the conditions causing A.R.'s deprivation were likely to continue, and that A.R. would likely suffer serious physical, mental, moral or emotional harm in the future.[331] Some facts leading the juvenile court to such a conclusion included: Evidence that K.G. had physically and verbally abused A.R.; K.G. had a history of substance abuse; K.G. had been incarcerated on numerous occasions; and K.G.'s role in A.R.'s upbringing was very limited.[332] The juvenile court further determined that A.R.'s behavior suggested that she was a deprived child.[333] A.R. had stolen a car in an attempt to run away from home, and A.R. had developed some substance abuse problems of her own.[334] Therefore, the juvenile court determined that K.G.'s parental rights should be terminated.[335]

After reviewing this evidence, the North Dakota Supreme Court upheld the termination of K.G.'s parental rights.[336] Thus, A.R. came into the protective custody of the state, probably into a foster home or similar care. While it is not known from the case, A.R. may possibly be awaiting adoption. Adoption, the final broad method of losing parental rights, is the topic of the next section.

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325. *See id.*
326. *See id.*
327. *Id.*
328. *See id.*
329. 2000 ND 130, 612 N.W.2d 569.
330. *In re* A.R., 2000 ND 130, ¶ 1, 612 N.W.2d 569, 570.
331. *See id.* ¶ 3.
332. *See id.* ¶ 4.
333. *See id.*
334. *See id.*
335. *See id.* On appeal, K.G. was unable to meet her burden of calling to the court's attention evidence because she did not provide a transcript of the evidentiary hearing. *See id.* ¶ 5.
336. *See id.* ¶ 6.

C. THE ADOPTION PROCEDURES

North Dakota has adopted the Uniform Parentage Act[337] as well as the Revised Uniform Adoption Act.[338] As such, there is an existing statutory framework with respect to terminating parental rights in the adoption context.[339] While not specifically included in the statutes concerning adoption, there is a general requirement that someone is able to adopt a child before one loses all parental rights through adoption.[340] Otherwise, parents would be absolved of parental responsibility by simply placing a child up for adoption. An interesting area outside the scope of this analysis is the partial or "weak" adoption in which the natural parent is allowed some general visitation of his/her child at the behest of the adoptive parents.[341]

The following discussion outlines the basic procedure for adoption in North Dakota. This discussion is not intended as a comprehensive review of all issues concerning adoption; rather, it seeks to frame the main issues in order to contrast them to the safe haven procedures reviewed above. As discussed below, the first step is to determine the status of the father, as that determines whether he is entitled to notice and must consent to any future adoption.[342]

1. *When is the Father Entitled to Notice?*

North Dakota Century Code section 14-17-24 controls the procedure that North Dakota currently uses for the termination of the parent-child relationship by adoption.[343] When a mother wishes to place her child in an adoptive family, the father of the child shall be given notice of the proceeding to terminate parental rights.[344] North Dakota Century Code section 14-17-24 explains that the court shall first proceed

337. *See* N.D. CENT. CODE ch. 14-17 (1997 & Supp. 1999).

338. *See id.* ch. 14-15 (1997 & Supp. 1999).

339. *See id.* § 14-17-24 (1997) (providing for termination of parental rights).

340. This assumes, of course, that the parent has not already lost his or her rights as discussed above.

341. *See generally* Candace M. Zierdt, *Make New Parents But Keep the Old*, 69 N.D. L. REV. 497 (1993).

342. According to the North Dakota Supreme Court, "Due Process protection extends to the interest of the biological father in developing a relationship with his child." R.A.K. v. M.E.Z., 514 N.W.2d 670, 672 (N.D. 1994) (citing Lehr v. Robertson, 463 U.S. 248, 260 (1983)). The court continued: "However, this interest 'is of limited duration as a constitutionally significant interest because of the child's need for early permanence and stability in parental relationships.'" *Id.* (citing Abernathy v. Baby Boy, 437 S.E.2d 25, 28 (S.C. 1993)). Thus, while a father has an protected interest, it can be overcome in certain circumstances, as discussed below.

343. *See* N.D. CENT. CODE § 14-17-24 (1997) (outlining the procedure to terminate parental rights).

344. *See id.* § 14-17-24(5).

to determine the father of the child.[345] The court is statutorily entitled to presume paternity of the child under certain situations.[346] One such situation is where a man and the child's natural mother are married and the child is born during the marriage, or when the child is born within three hundred days after the termination of the marriage.[347] Further, a man may also be presumed to be the father of a child born out of wedlock if, after the child's birth, that man marries the child's natural mother and acknowledges his paternity in writing, and either consents to being named the child's father on the birth certificate or is obligated to support the child either by promise or court order.[348] Finally, a man may be presumed to be the father of a child if, after genetic testing, he is not eliminated as a possible father and is within a ninety-five percent statistical probability of being the child's father.[349]

If the father of the child cannot be presumed, the court must inquire into the paternity of the child subject to adoption.[350] Such an inquiry must include whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared that man's possible paternity of the child.[351] If, after such an inquiry is performed, the court is still unable to determine the father of the child, the court shall enter an order terminating the father's parental rights with respect to such child.[352] Such an order will be uncontestable by any person on any ground including fraud, misrepresentation, failure to give notice, or lack of jurisdiction.[353] Assuming, however, the opposite is true and the court is able to determine the father of the child or at least identify possible fathers of the child, each possible father must be given notice of the proceeding to terminate his parental right.[354]

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345. *See id.* § 14-17-24(2).

346. *See id.* § 14-17-04 (1997) (stating situations where paternity will be presumed).

347. *See id.* § 14-17-04(1)(a). Interestingly, the marriage itself need not be a valid marriage; rather, the parties need only attempt to marry for the presumption to carry. *See id.* § 14-17-04 (1)(b). In other words, even if the court could later declare the marriage invalid, a court is entitled to still presume paternity of a child born in such an attempted marriage. *See* § 14-17-04(1)(b)(1).

348. *See id.* § 14-17-04(1)(a).

349. *See id.* § 14-17-04(1)(f).

350. *See id.* § 14-17-24(4).

351. *See id.* § 14-17-24(2).

352. *See id.* § 14-17-24(4).

353. *See id.*

354. *See id.* § 14-17-24(5).

2. *When is the Father Not Entitled to Notice?*

Once the father of a child is determined, he is entitled to notice of any court proceeding terminating his parental rights, and must consent in writing to the adoption of his child.[355] However, under certain circumstances, a father, even if known, need not consent to the adoption. Additionally, if the father's consent is not required, he is not entitled to notice of the adoption proceedings.

Generally, a father's consent to an adoption proceeding is not required if he has deserted his child without affording a means of identification or has abandoned his child completely.[356] Further, consent to adopt is not required of a parent who has failed significantly without justifiable cause for a period of at least one year to communicate with his child or provide support for his child.[357] The legislature did not define the term "abandonment" in the revised uniform adoption act; however, the North Dakota Supreme Court has explained that whether a parent has abandoned his or her child is a question of fact to be established with clear and convincing evidence.[358] Generally, in determining whether a parent has abandoned a child, courts will look at factors including the parent's contact and communication with the child, the parent's love, care, and affection towards the child, and finally the intent of the parent.[359] Other relevant factors include the parent's acceptance of obligations such as caring for, protecting, supporting, educating, giving moral guidance to and providing a home for the child.[360]

These guidelines suggest ways of determining the abandonment of a child after the child's birth; however, it is not clear whether one could abandon a child prior to the birth of that child in a manner sufficient to excuse the court from requiring that parent's consent to the adoption proceeding. For example, someone may not have a stable relationship with the mother of the child or may provide little support during the pregnancy; however, it is possible that the father could develop a relationship with a child after the child's birth. Therefore, it may not be fair to treat the father as though he has abandoned his child before the birth. However, a court could find that abandonment has occurred if the father provided no moral or financial support or had no contact with the

355. *See id.* § 14-15-05 (stating whose consent is required for an adoption).
356. *See id.* § 14-15-06.
357. *See id.* § 14-05-06(1)(b).
358. *See In re* A.M.B., 514 N.W.2d 670, 672 (N.D. 1994). *But see* N.D. CENT. CODE § 27-20-02 (Supp. 1999) (defining abandonment within the juvenile context).
359. *See In re A.M.B.*, 514 N.W.2d at 672.
360. *See id.*

mother from the time the child was conceived until the child was dropped off at a safe haven.

Assuming that the father has either consented or that his consent is not required, the final issue is how a mother relinquishes her parental rights. This is addressed in the following section.

3. *When May a Mother Terminate Her Parental Rights?*

When a mother, or either parent for that matter, wants to end the parent-child relationship in North Dakota, he or she may do so according to the statutorily created procedure of adoption.[361] In short, she does so by relinquishing her rights in writing in the presence of a judge or a representative of an agency taking custody of the child.[362]

The parent who wishes to give a child up for adoption may also be required to give the adoption agency certain information designated as "nonidentifying."[363] This information may include the parent's age, heritage, education, physical appearance, health history, religious background, as well as the reasons for placing the child in an adoptive family.[364] Further, if the parent has abandoned his or her child, the court has statutory authority to terminate the parental rights of the abandoning parent.[365] The North Dakota legislature has not defined "abandonment" within the Revised Uniform Adoption Act. However they have defined abandonment within the Uniform Juvenile Court Act.[366] This definition may be helpful as a guide for aiding the courts in

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361. *See* N.D. CENT. CODE § 14-15-19 (1997) (defining the procedure for the relinquishment and termination of parent and child relationship).

362. *See id.* § 14-15-19(2)(a).

363. *See id.* § 14-15-01.

364. *See id.*

365. *See id.* § 14-15-19.

366. *See id.* § 27-20-02 (Supp. 1999):

1. "Abandon" means:
   a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:
      (1) To communicate with the child; or
      (2) To provide for the care and support of the child as required by law; or
   b. As to a parent of a child in that parent's custody:
      (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
      (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
      (3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.
2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.

determining whether a parent has abandoned his or her child, thereby allowing the court to terminate the parental rights.

As the foregoing discussion shows, there are currently three general ways in which one can lose parental rights in North Dakota. First, one could physically abandon a child, which would form the basis for termination of parental rights. The second method involves less drastic parental failures, which can allow a court to order an involuntary termination of parental rights. Finally, a parent may voluntarily give up his or her child for adoption. Clearly, these categories are not entirely exclusive: Physical abandonment is really nothing more than the ultimate ground for terminating parental rights, and children taken from parents via that method may end up in the adoption system. Broadly speaking, however, these are the three current methods by which parents permanently lose rights to their children. If the legislature chooses to add another method in the form of a safe haven law, it will exist alongside, and surely will overlap with, these currently existing procedures.

IV. CONCLUSION

As discussed above, a number of North Dakota doctors and hospitals are urging the North Dakota Legislature to adopt safe haven legislation at its 2001 session.[367] In response to this urging, the attorney general has indicated that she will draft such legislation.[368] Thus, legislators may soon be debating what kind of safe haven law North Dakota should adopt, if it decides to adopt one at all.

As the above discussion shows, many states have either adopted or considered some form of safe haven law—and more may have joined their ranks by the time of publication—meaning North Dakota will be able to model its legislation on any number of examples.[369] In so doing, it will have to make choices from among the major approaches, such as whether to adopt a broad or narrow definition of where children may be left; whether children may be left until they are three or thirty days old; and whether to provide reunification procedures.[370] In addition, it will need to fit the law into the preexisting statutory framework for abandonment, termination of parental rights, and adoption, deciding whether and how to integrate the new procedures into these existing structures.[371]

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367. *See* MacDonald, *supra* note 10.

368. *See* MacDonald, *supra* note 10.

369. *See generally supra* notes 38-49 and accompanying text for those states which have adopted some form of safe haven law; *supra* notes 53-66 and accompanying text for those states which have considered or are condidering adoption of some form of safe haven law.

370. *See generally supra* Part II.

371. *See generally supra* Part III.

More fundamental, though, is the question whether North Dakota should have a safe haven law at all. As discussed above, such statutes have not been without detractors: Adoptee-rights groups, those who see these laws as condoning abdication of parental responsibility, and others have joined to oppose them.[372] While many of the unpassed bills surely failed because of time pressure or legislative indifference, it is logical to assume that at least some legislators actively opposed their adoption. Arrayed against them, of course, are the legislators who have made safe haven laws one of the hottest items of the 1999-2000 session; a little over a year ago, only Texas had a safe haven law, and now over half the states have at least considered adopting one.

The more profound question of whether to adopt a safe haven law is generally beyond the scope of this discussion. Rather, this Article has attempted merely to provide a kind of catalog of options from among which the legislature could choose when making these decisions, as well as to mark the places at which any new law will collide with existing procedures. Whether the state should choose from among them at all is, to understate the issue, a far more difficult question.

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372. *See generally supra* notes 36, 158 194, and accompanying text.

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