



# Adoption Trends in 2003: Infant Abandonment and Safe Haven Legislation

Knowledge and Information Services

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## Introduction

Every state has laws "that prohibit leaving a baby unprotected and unsupervised."<sup>1</sup> For example, before new legislation in Texas it was illegal to expose a child to an unreasonable risk of harm by intentionally abandoning a child that one had custody, care, or control of. A violation of this law was considered a third-degree felony if there was no intent to return to the child.<sup>2</sup> However the recent tragic stories of infant abandonment and the groundswell of media attention they generated has created an unprecedented legislative response to baby abandonment.

Texas was the first state to enact legislation that provided a mechanism by which mothers or fathers could legally abandon their infants under specific conditions. The Texas law started the national movement to respond to baby abandonment by enacting laws that provide parents with an anonymous way to safely relinquish their infant without any legal repercussions. These laws are commonly referred to as "safe haven," "baby drop-off," "baby Moses," or "legal abandonment" laws.

Since the passage of Texas's safe haven legislation, virtually every state has passed some form of safe haven law. Across the country, 15 states enacted legislation in 2000 to address the problem of abandoned children. An additional 22 states introduced abandoned infant laws in 2001. Currently, 45 states have some form of safe haven law. The only states that have not passed safe haven laws are Alaska, Hawaii, Massachusetts, and Nebraska, and Vermont.

No two safe haven laws are exactly the same. However, all have similar characteristics. Provided here is a brief summary of the components of the new laws and how they may affect state courts. (For a more detailed outline of the states' laws, see NCSC's [Safe Haven Legislation Chart](#).)

**Location:** All safe haven statutes designate where a baby may be dropped off. Every state statute permits dropping off infants at hospitals, and many states permit infants to be dropped off at numerous other locations. Some states only permit mothers to relinquish their infants at hospitals and with other emergency medical service providers, and some even require that infants be dropped off in specific areas of the hospital, such as with an emergency room nurse. The most common additional locations are police and fire stations, adoption agencies, and other health care provider locations. Some states also permit the infant to be relinquished to a 911 responder.

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**Age of the Child:** Each state limits how old the infant may be when relinquished. Seventeen states place the maximum age of an infant that can be relinquished at 72 hours. Almost as many states, 15, permit a child to be abandoned up to a month after birth. Still other states have extended the time limit to 60 days (South Dakota and Texas) and even 90 days (New Mexico).

**Parental Anonymity:** Safe haven laws permit a relinquisher to leave a newborn at a safe haven without supplying any identifying information. Generally, these anonymity provisions come in three forms: states that do not explicitly provide for anonymity, those that provide for anonymity but place the burden on the parents, and those states that provide anonymity and do not permit safe haven employees to ask for any

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<sup>1</sup> Child Welfare League of America, [FAQs](#).

<sup>2</sup> See Texas Penal Code Section 22.041 and California Penal Code 270

information. Currently, only 20 states provide procedures for safe haven personnel to request medical history information from relinquishers.

**Parental Liability:** The other key component of safe havens is the protection of parents from liability for abandoning an infant. States have several different approaches to the form of liability they offer to relinquishing parents. Sixteen states provide relinquishers with an affirmative defense to prosecution, whereas 22 states make parents immune from prosecution or stipulate that the act of safely relinquishing a child does not constitute abuse or neglect.<sup>3</sup> States that permit immunity effectively prevent the parent from ever being prosecuted for abandonment, while states that provide an affirmative defense provide a mother with a legal defense if she is prosecuted for her actions.

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**Protection of Father's Rights:** Currently, all states with safe haven legislation permit a mother to abandon her infant anonymously, never giving the father's name nor contacting the father, thereby drastically reducing a father's ability to contest custody or adoption of their children. These concerns raise questions about whether a father's constitutional rights are being violated by current safe haven laws. Of the 45 states that have safe haven legislation, only 12 provide procedures to safeguard fathers' rights. The other 33 states do not provide for any search or do not require that any notice be given to the father.

Safe haven legislation can be split into four categories. Laws in the first category provide for notice by publication or through the media. The second category requires a search of the putative father registry<sup>4</sup> and provides that notice should be sent to any potential father who has registered. The third and most common category of safe haven laws is silent about providing notice to fathers. The fourth category specifically states that a search for parents and notice are unnecessary if the identities of the parents are unknown.

**Awareness Campaigns:** Often, mothers who abandon their babies and are caught say they are unaware of their state's safe haven laws.<sup>5</sup> The majority of states that have enacted safe haven legislation do not provide any mechanism to promote the law to at-risk mothers. A February 2003 report from the National Conference of State Legislatures found that a large number of illegal abandonments were occurring in a number of states. But it also pointed out that the laws' limited effect was not present in states that had initiated public awareness campaigns. Those states actually saw a drop in the number of abandonments.

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## The Impact on State Courts

**Caseloads Involving Infant Abandonment:** It is not clear how many infants are abandoned each year. In 1998 mothers abandoned as many as 31,000 children at hospitals in the United States.<sup>6</sup> Although states are "required to submit data to the United States Department of Health and Human Services on the number of children who enter foster care as a result of abandonment in general," national statistics on the number of infants discarded in places other than hospitals have not traditionally been collected.<sup>7</sup> However, in 1999, Texas alone reported over 800 abandoned babies, of which nearly 50 were placed in trash dumpsters.<sup>8</sup>

It is not clear how safe haven legislation affects these numbers. What is apparent is that state courts will be dealing with infant abandonment in a new light. Many states only have safe haven legislation as an affirmative defense, implying that parents can still be brought to trial. While it is unclear how many such cases would be brought to trial by prosecutors, states whose laws offer only an affirmative defense could,

<sup>3</sup> Relinquishing an infant at a safe haven location is not considered by itself to be in violation of a criminal code in the remaining states, including Kentucky, Massachusetts, Maryland, and Pennsylvania.

<sup>4</sup> States that require a search of the putative father registry are Illinois, Iowa, Missouri, Montana, and Utah.

<sup>5</sup> See Carol A. Docan, "She Could Have Safely and Anonymously Surrendered Her Newborn Infant Under California Law- Did She Know That?" *Journal of Legal Advocacy and Practice* 4 (2002?): 19.

<sup>6</sup> 45 C.F.R. 1355, 40 (1993). The United States Department of Health and Human Services reported that, in 1998, 30,800 babies were abandoned in United States hospitals. Department of Health and Human Services, ACF News, available at <http://www.acf.dhhs.gov/news/stats/abandon.htm>.

<sup>7</sup> H.R. 465, 106th Cong. (2000).

<sup>8</sup> Senate Judiciary Committee, Bill Analysis of AB 1764, at 2 (June 21, 2000).

in theory, experience an increase in prosecutions because the law could lead to more infants being abandoned and mothers subsequently being prosecuted for doing so. On the other hand, in states that do offer immunity, there should be a decrease in prosecutions for abandonment because such action would be deemed legal.

State courts should expect to see an increase in cases in which mothers will have tried, or at least will claim to have tried, to comply with safe haven statutes but have failed to meet one of the requirements, such as leaving the baby at an appropriate location or relinquishing the infant within the permitted time period. This is particularly likely given the states' failures to adequately advertise information regarding the new laws. The failure to properly inform women of the new laws may lead to women thinking that they can abandon infants in locations not authorized by the law, which may jeopardize the infant's health.

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**Constitutional Challenges:** States should also expect fathers to challenge the constitutionality of the safe haven laws and may find more fathers and perhaps mothers petitioning for adoptions after their rights have been terminated. The constitutional validity of the safe haven laws turns on fathers' rights to notice of proceedings terminating parental rights. For example, the Supreme Court has not fully answered the question of what rights a father has when his newborn child, with whom he is unable to establish a relationship owing to a mother's deceitfulness or a short time frame, is put up for adoption without his knowledge or consent. These issues are raised in the context of safe haven legislation because fathers often do not have a chance to establish a relationship with a child that is anonymously abandoned by the mother shortly after birth.

State courts have attempted to answer these questions, and many have embraced the view that the Constitution protects not only existing parent-child relationships, but also a parent's "opportunity interest" in establishing such a relationship.<sup>9</sup> Many state courts have found that the father would be entitled to notice of the adoption of the child because it was the mother's bad deeds, not the father's inaction, that deprived the father of the opportunity to develop a parent-child relationship.<sup>10</sup>

It can be implied from these state court decisions that safe haven laws must contain provisions for giving notice to fathers and an opportunity to be heard if they are to be in compliance with minimum procedural due process standards.<sup>11</sup> This standard obliges the state to make diligent efforts to locate the father of an abandoned infant before terminating his parental rights. However, as noted above, only 12 states provide any safeguards to protect the rights of putative fathers.

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<sup>9</sup> Ardis L. Campbell, Annotation, *Rights of Unwed Father to Obstruct Adoption of His Child by Withholding Consent*, 61 A.L.R. 151, 179 (5th ed. 2001). *In re Adoption of Lathrop*, 575 P.2d 894 (Kan. Ct. App. 1978), ruled that an unwed father who has been prevented from providing parental care for his child from the time of birth by outside agencies, such as adoptive parents, cannot be faulted, nor can his parental rights be lessened, by his failure to perform his parental responsibilities. In the cases of *Baby Richardson In re Kirchner*, 649 N.E.2d 324, 326 (Ill. 1995) and *Baby Jessica In re B.G.C.*, 496 N.W.2d 239 (Iowa 1993), the state supreme courts of Illinois and Iowa, respectively, regarded fathers as blameless victims and held that the Constitution would not permit these men to suffer the loss of fatherhood when they had done nothing to warrant such a penalty. See Dayna R. Cooper's "Fathers Are Parents Too: Challenging Safe Haven Laws with Procedural Due Process," *Hofstra Law Review* 31(YEAR?): 877. See also *R.A.K. v. M.E.Z.*, 514 N.W.2d 670, 672 (N.D. 1994) stating that due process protection extends to the interest of the biological father in developing a relationship with his child. 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" (citing *Abernathy v. Baby Boy*, 437 S.E.2d 25, 28 [S.C. 1993]). Thus, while a father has a protected interest, it can be overcome in certain circumstances.

<sup>10</sup> See *In re Kirchner*, 649 N.E. 2d 324, 333 (Ill. 1995) (awarding writ of habeas corpus and noting that unwed fathers who "through deceit, are kept from assuming responsibility for and developing a relationship with their children, are entitled to the same due process rights as fathers who actually are given an opportunity and do develop this relationship").

<sup>11</sup> Karen C. Wehner, Comment, "Daddy Wants Rights Too: A Perspective on Adoption Statutes," *Houston Law Review* 31 (1994): 704 (indicating that "the Supreme Court has determined that, at a minimum, unwed fathers are entitled to the procedural protection of notice and an opportunity to be heard").

## The Impact on Adoptions

Challenges to the law are likely to interfere with adoption proceedings, as well. If a state enacts inadequate statutes that fail to protect an absent parent, it can hinder the policy goal of limiting the delay in adoption proceedings<sup>12</sup> by allowing the absent parent to impede the adoption process in the course of fighting for custody rights.<sup>13</sup> On the other hand, if a state provides adequate safeguards for fathers (i.e., reasonable searches and notice), it will minimize the amount of interference that a father could make with adoption proceedings. The father will be given an early opportunity to assert his rights, and if he fails to assert his rights, his ability to interfere with adoption proceedings will be diminished. Therefore, the child's best interests will be served if states provide adequate statutory protection to absentee parents. States that do not provide adequate safeguards for parents should expect to have challenges to adoptions and greater interference in the proceedings.

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<sup>12</sup> In 1997, the federal government enacted the Adoption and Safe Families Act (ASFA) whose goal is to reduce the length of time required to find permanent homes for children who have been removed from the custody of birth parents by accelerating procedures at the trial court level.

<sup>13</sup> *In re Kirchner*, 649 N.E. 2d 324.