

## The Drive to Enact 'Infant Abandonment' Laws— A Rush to Judgment?

By Cynthia Dailard

Within the past year, 14 states have enacted laws aimed at combating those apparently rare but highly publicized instances in which newborn infants are abandoned by their mothers and sometimes left to die. Given the tragic nature of such events, the appeal of such proposals—which promise to save babies by offering women a safe, confidential and lawful means to relinquish unwanted newborns—is understandable. That appeal is reflected in the unusual political alliances forming in favor of these bills, between conservative and liberal lawmakers, law enforcement officials and social service providers, and even, in some states, antiabortion and prochoice advocates.

Yet, this legislative trend has gathered steam in the absence of any systematic research or understanding of the issue, and questions about these laws abound. While, at a minimum, they may represent a societal recognition of the utter desperation that some women experience when confronted with the birth of a child they feel unable to care for, many experts believe that such proposals offer an unduly simplistic solution to exceedingly complex problems. Such problems, they say, call for a balanced and multifaceted response that emphasizes both the prevention of unintended pregnancies and births and the improvement of societal supports for women and families.

### Scope of the Problem

While individual cases involving newborn babies abandoned in public places receive a tremendous amount of press attention, no one knows

how frequently such events occur. The federal government does not count the number of babies abandoned in public places each year. However, the Department of Health and Human Services conducted an informal search of newspaper articles on the subject and found that in 1998, there were reports of 105 infants abandoned in public places; 33 of those infants were found dead. This compares to 65 reported cases of abandoned infants in 1991 and eight deaths.

Michael Kharfen, a spokesperson for the agency's Administration for Children and Families, is quick to point out that since figures were not gathered for the years between 1991 and 1998, this "increase" cannot be interpreted as a trend and may simply reflect heightened press interest in the issue. To put these figures into context, Kharfen notes that in 1998, there were 31,000 "boarder babies"—babies left in a hospital following delivery or deemed ineligible by child protective services to be released to a parent.

### State Activity

In July 1999, Texas responded to a spate of reported infant abandonments in the state by passing a law that, according to its sponsors, would reduce the likelihood that such events would occur in the future. Specifically, the Texas law—the first of its kind in the nation—allows a parent to place an infant younger than 30 days of age in the custody of designated emergency medical personnel. Any parent who relinquishes an unharmed infant under the terms of the law is guaran-

teed an affirmative defense to a charge of infant abandonment.

The idea spread like wildfire across the nation. Within a year, legislators in almost 30 states had introduced approximately 60 bills modeled on the Texas law; bills in 18 states had passed at least one committee. By August 2000, 14 states had laws in place (see map, page 3). These laws by and large follow the Texas model, differing only slightly from state to state. Variations include the class of individuals authorized to accept an infant and the limit on the infant's age, which ranges from three days (Alabama, Colorado, Florida, Michigan and Minnesota) to 45 days (Kansas). Florida, Minnesota, New Jersey, South Carolina and West Virginia explicitly guarantee parental anonymity. The laws in Connecticut, Kansas, Louisiana and Minnesota guarantee immunity from prosecu-

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tion (rather than an affirmative defense, if charged with abandonment). A few states (Connecticut, Michigan, Minnesota and South Carolina) seek, but do not require, a medical history of the infant, and Connecticut takes the unusual step of providing the infant and parent with corresponding identification bracelets to aid in possible reunification at a later date.

While Congress has not passed similar legislation, it also has not remained silent. In April, the House of Representatives unanimously passed a resolution offered by Rep. Nancy Johnson (R-CT) designed to "focus attention and raise awareness of the problem of newborn babies

abandoned in public places.” Citing the “unknown number of newborn babies...abandoned in dumpsters, trash bins, alleys, warehouses, and bathrooms,” the resolution urges local, state and federal governments to collect statistics on the number of babies abandoned in public places. Additionally, Rep. Sheila Jackson Lee (D-TX) and nine cosponsors have introduced the Baby Abandonment Prevention Act, which would direct the attorney general to create a task force to collect information on incidents of baby abandonment, study the factors that cause parents to abandon their children and the outcomes of such events for both children and parents, and make recommendations to Congress to guide public policy formulation.

### Complex Issues at Stake

State infant abandonment laws—which are sometimes also referred to as “safe haven” or “safe surrender” laws—are premised on the belief that fewer infants would be abandoned and left to die if distraught young women who feel unprepared for motherhood had a safe place to anonymously leave their newborns without facing the risk of prosecution. Proponents promise that such laws will save the lives of newborns, prevent crimes from occurring and even make infants available for adoption.

Others, however, suggest that while these laws may be well-intentioned, they are unlikely to be effective, because few women will take advantage of them. The National Abandoned Infants Assistance Resource Center (NAIARC) is an organization created in 1988 to provide assistance to professionals working with infants and young children affected by drugs or HIV and their parents. According to a literature review prepared by NAIARC earlier this year, “women who kill and/or discard their infants generally have made no plans for the birth or

care of their child....In the case of public abandonment, the women are often not mature enough to thoughtfully weigh their options or the consequences of their actions”; they are often frightened teenagers in a state of “massive denial” about their pregnancy. This implies that a law offering anonymity or immunity from prosecution is unlikely to have any

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effect on a new mother so traumatized that she would harm or abandon her infant. In fact, since the Texas law took effect, 12 infants have been illegally abandoned—and not one was turned in under the terms of the law.

Many adoption advocates also have concerns about these laws. Noting the trend in adoption practice toward giving adoptees more information about their birth families, Courteney Holden, executive director of Voice for Adoption, a national umbrella advocacy organization representing 70 groups working on adoption and child welfare issues, argues that adopted children fare better mentally if they have a sense of personal history. By protecting the anonymity of the birth parents, she says, infant abandonment laws represent a significant setback for adoption policy that disadvantages children by permanently denying them any sense of personal identity or even a way to trace their medical history.

Moreover, adoption and child welfare experts suggest that these laws are simply unnecessary. Joan Hollinger, a professor specializing in adoption law at the Boalt Hall School of Law, University of California at Berkeley, points out that laws in every state already allow women to voluntarily relinquish custody of infants in a safe, nonthreatening manner that

protects the mother’s privacy and makes infants available for adoption. She emphasizes that it is extremely rare for a state to prosecute a woman who leaves a healthy or unharmed infant in the hospital following a delivery and expresses no intent to return. In such cases, Hollinger says, the state’s goal is not to be punitive but to take the steps necessary to place the children in permanent adoptive homes as quickly as possible.

Hollinger also believes that infant abandonment laws sidestep the issue and interests of fathers. She points out that fathers have a constitutional right to due process that obliges the state to make diligent efforts to locate the father of an abandoned infant before moving to terminate parental rights. By encouraging women to anonymously abandon their infants, the new laws, Hollinger worries, may create less of an incentive for the state child welfare advocates to search for fathers. “It is inappropriate,” she says, “to fuel the stereotype that fathers—particularly unmarried fathers—are going to be absent and want nothing to do with their baby.” Hollinger adds that even when a father may be unprepared for parenthood because of youth or other circumstance, he may have an extended family that could help or assume responsibility for the child.

### Prevention Needed

Despite these various concerns, legislators and advocates representing a wide array of interests are publicly lining up in favor of infant abandonment laws. For many, it seems, a flawed approach is better than no approach, if the alternative is to appear “soft” on the issue.

Still, some within the advocacy world are struggling to define their position, and this may be particularly true within the reproductive rights community. According to Susan Yolen, director of public affairs and communication at

Planned Parenthood of Connecticut, “people [in the reproductive rights community] don’t know what to do—whether to jump on the bandwagon or to criticize these proposals.” Her organization decided against taking a position on Connecticut’s baby abandonment bill when it came up for consideration early in 2000, in part because she and her colleagues believed it stemmed from an antichoice animus. Yolen says, “Whenever a baby is abandoned, we hear that the ‘abortion culture’ is promoting women to abandon their babies either before or after birth. The Connecticut bill was introduced by an antichoice sponsor. We felt that the bill would be ineffective, and we just didn’t want to get into the fray.”

However, Planned Parenthood of Orange and Durham Counties in

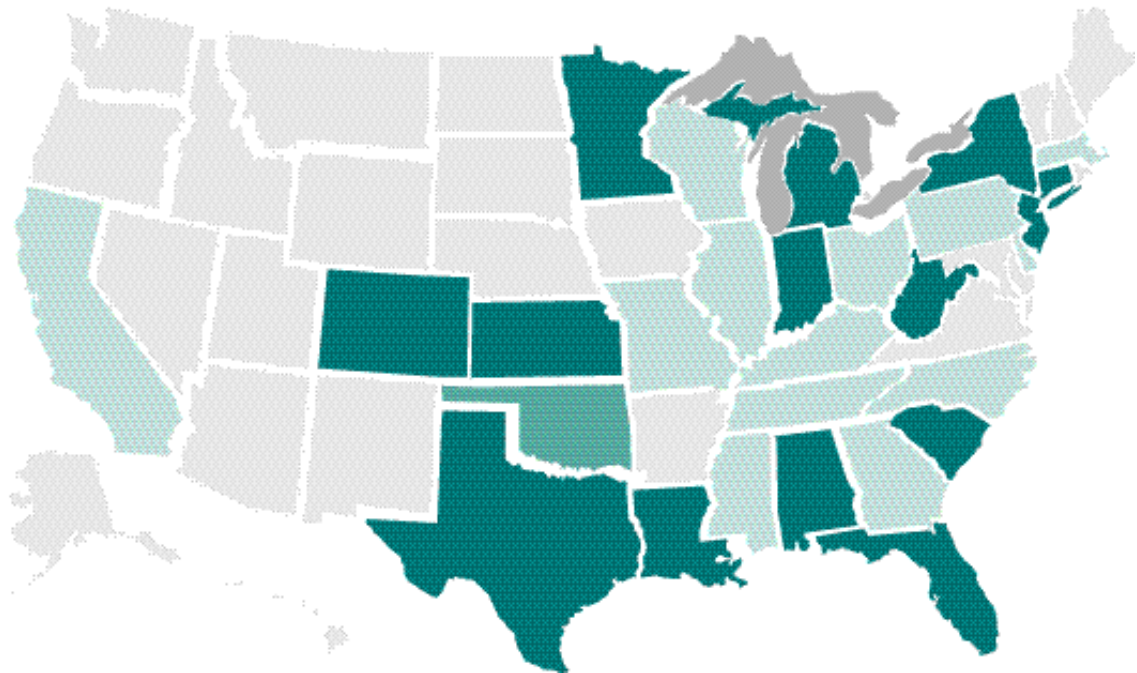
North Carolina took a different position when an infant abandonment bill came up for consideration there. Kay Michaels, director of public affairs for the organization, said that while working to ensure that the bill (which, in her case, was sponsored by a prochoice member) offered the greatest protection to women, she also hoped to achieve two other goals. First, she hoped to build bridges and get to know some legislators with whom she had not worked in the past. Second, she hoped to convey that baby abandonment bills are a “band-aid” approach that do not get at the underlying problem of unintended pregnancy. Says Michaels, “How can we say that we are against saving babies? But we have to remind people that it is not just about babies but about women too.” Although the bill died at the end of the legislative session,

Michaels believes that her work paid off by giving her an opportunity to talk to members about the importance of family planning.

Indeed, a key point of agreement within the reproductive rights community is the need to focus society’s attention on preventing such events from occurring in the first place. Katherine Kneer, chief executive officer of Planned Parenthood Affiliates of California, says this involves “investing in comprehensive sexuality education and family planning programs, as well as providing access to abortion services, so that sexually active teenagers—and all women—are better able to protect themselves against unintended pregnancy.” Kneer says it also means working within communities to encourage parents to communicate with their

*(Continued on page 11)*

## STATE INFANT ABANDONMENT LEGISLATION



■ ENACTED	(14)
■ VETOED	(1)
■ INTRODUCED	(13)

*NOTE:* THE TEXAS LAW WAS ENACTED IN 1999.

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***Infant Abandonment...***  
***Continued from page 3***

children, so that pregnant teenagers do not feel so socially isolated that they hide their pregnancies from their families.

Many children's advocates join reproductive health proponents in their call for prevention. While the Children's Defense Fund (CDF) has not taken a formal position on infant abandonment laws, Mary Lee Allen, director of CDF's child welfare and mental health division, says she is hopeful that all the activity around these proposals in the states "will generate attention to the fact that

women are not getting the supports they need to raise their children, because that is the true tragedy. These laws help women to drop their babies off but do nothing to provide supports to women and children before this happens. We need to use the interest and new alliances that have formed around these laws to build those supports." Allen continues, "It is very encouraging to see district attorneys and social service groups coming together around these laws. The sad thing would be if their interest ended there. Hopefully, it will be a catalyst to help build supports for pregnant women and women with young children." ☎