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Reforming the Safe Haven in Ohio: Protecting the Rights of Mothers Through Anonymity

Brittany Neal

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REFORMING THE SAFE HAVEN IN OHIO: PROTECTING THE RIGHTS OF MOTHERS THROUGH ANONYMITY

BRITTANY NEAL*

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I. INTRODUCTION

Gruesome headlines of hours-old infants discarded and left for dead pepper local news channels nationwide on almost a nightly basis. Unfortunately, most people are familiar with the tragic cliché where a prom queen gives birth in the girls’ restroom only to return a few minutes later to the dance floor.¹ Ohio is not immune to such tragedies. In June 2009, authorities found a newborn infant dumped in the bushes outside a Meijer store with its umbilical cord still attached—left, no doubt, by a terrified mother who did not know where to turn.² While the fortunate actions of a Good Samaritan helped to keep this infant alive, many other stories do not end as well.³ In another tragic example, one Ohio mother is currently serving life in prison for putting her infant daughter in a microwave oven, causing her to burn to death.⁴ Despite varying locations, the underlying motivation behind such crimes is almost always the same; the shame and panic can overwhelm a woman unprepared for motherhood.⁵ To protect the lives of infants, all states and the District of Columbia have enacted some version of a safe haven law in the hopes of providing a safe alternative for new parents contemplating the unthinkable.⁶ The laws are geared

¹ Carol Sanger, *Infant Safe Haven Laws: Legislating in the Culture of Life*, 106 COLUM. L. REV. 753, 754 (2006). For example, Melissa Drexler, a New Jersey high school woman, delivered a six-pound six-ounce baby boy in a bathroom while a high school dance was occurring, throwing the newborn boy in the trash and rejoining her classmates and dance festivities. Lynne Marie Kohm, *Prom Mom Killers: The Impact of Blame Shift and Distorted Statistics on Punishment for Neonaticide*, 9 WM. & MARY J. WOMEN & L. 43, 43 (2002). Similarly, a 19-year-old woman from New York put her newborn infant in her own bedroom dresser drawer after wrapping it in plastic. *Id.* at 44. Another woman delivered her baby while at the beach, shoved the infant in a duffel bag, and hid the bag in the garage. *Id.* These stories show that young women are often so in denial that killing the child is seen “as the only way to continue the denial and concealment of their pregnancy.” *Id.* at 48.

² Randy Ludlow & Dana Wilson, *Baby Abandoned Near Meijer Store on Rt. 23*, THE COLUMBUS DISPATCH (June 9, 2009), <http://www.dispatch.com/content/stories/local/2009/06/09/delbaby.html>.

³ *Id.*

⁴ Rita Price, *Is Extending the Window of Ohio’s “Safe-Haven” Law Effective?*, THE COLUMBUS DISPATCH (Jan. 4, 2009), <http://www.dispatch.com/content/stories/local/2009/01/05/haven.html>. Unfortunately, the horrors of infanticide and attempted infanticide continue to cause a national media outcry. A baby boy was found in a South Carolina arena toilet in February 2011. *Baby Clings to Life After Being Abandoned in S.C. Arena Toilet*, CNN.COM, (Feb. 8, 2011), <http://www.cnn.com/2011/US/02/07/south.carolina.baby/index.html?iref=allsearch>. His mother allegedly gave birth in the public restroom during a Ringling Brothers and Barnum & Bailey circus performance. *Id.*

⁵ See John Nagy, *Reporters Query Begets Safe Havens For Abandoned Infants*, STATELINE (June 1, 2001), <http://www.stateline.org/live/ViewPage.action?siteNodeId=136&languageId=1&contentId=14360>.

⁶ *Baby Safe Haven—Abandoned Infant Protection Laws*, NAT’L SAFE HAVEN ALLIANCE, <http://www.nationalsafehavenalliance.org/law.php> (last visited Jan. 31, 2012).

towards giving mothers an “anonymous way to safely relinquish their infant without any legal repercussions” by allowing for the safe abandonment of infants under specific conditions.⁷

The Ohio legislature enacted the “Desertion of Child Under 72 Hours Old” statute in 2001 for much of the same reasons that other similar statutes have been adopted.⁸ Just six years later, however, the Cuyahoga County Court of Common Pleas held that the statute was unconstitutional and of “no further force and effect.”⁹ According to the court, the statute’s guaranteed anonymity provision was in direct conflict with the juvenile court’s procedural requirement of parental notification of an abandoned child.¹⁰ The court’s reading of the statute negates one of the most critical aspects of all safe haven laws by taking away the mother’s right to not withhold her identity.¹¹

This Note discusses the conflict between the statewide safe haven law and the Ohio juvenile rules regarding procedure. It purports that to protect the rights of new mothers and retain the essential element of anonymity, Ohio’s Juvenile Rule 1(C) needs to be amended to maintain the state’s current safe haven law. Therefore, because of the statewide threat Ohio courts place on Ohio’s safe haven law, Juvenile Rule 1(C) needs to explicitly provide for an additional exception in cases of child relinquishment.

Section II of this Note discusses the beginning of state safe haven legislation and what the laws are attempting to prevent. Section III provides fundamental and common characteristics of safe haven laws. Section IV closely examines the current Ohio safe haven provision. Section V analyzes the conflict between the safe haven law and state juvenile procedural provisions. Section VI argues the importance of the anonymity requirement within Ohio’s safe haven law. Section VII expands upon valid criticisms of the safe haven law. Section VIII then proposes an amendment to Juvenile Rule 1(C) to retain the right of anonymity as currently found in Ohio’s safe haven law. Finally, Section IX provides concluding remarks on the future of Ohio’s safe haven statute and its anonymity provision within the larger context of safe haven legislation throughout the country.

II. THE BEGINNING OF STATUTORY PROTECTION

A. *Neoanticide and Infanticide: Preventing Maternal Crimes*

The sensationalized media attention surrounding infants abandoned by their mothers and left for dead seems to stem from most people’s inability to understand

⁷ Ian M. Bolling, *Adoption Trends in 2003: Infant Abandonment and Safe Haven Legislation*, NAT’L CTR. FOR STATE COURTS, www.ncsconline.org/WC/.../KIS_Adopt_Trends03Haven.pdf.

⁸ OHIO JUV. L. § 29:12 (2011).

⁹ *In re Baby Boy Doe*, 880 N.E.2d 989, 991 (Ohio C.P. 2007).

¹⁰ *Id.*

¹¹ Chantal N. Hamlin, *A Safe Haven for Nixmary Brown*, 16 CARDOZO J.L. & GENDER 65, 70 (2009).

such terrible and seemingly senseless violence.¹² When accounts of mothers who kill their own children are spread across newspapers and flashed on television screens, there seems to be an inherent “violat[ion] of our most cherished notions of life, safety, and trust.”¹³ That is, society has a difficult time rejecting the prevalent and comforting “stereotype that universally casts mothers as the altruistic protectors of their children.”¹⁴ While neonaticide and infanticide may be two of the most unfathomable crimes, they occur across the country with surprising regularity.¹⁵ Infanticide is the crime of killing an infant, usually under the age of one.¹⁶ Neonaticide, on the other hand, is typically defined as “the murder of an infant within the first twenty-four hours of life.”¹⁷ Interestingly, infanticide—since its earliest inception—has only applied to women who kill their own children and not fathers who may be guilty of a similar homicide.¹⁸ Additionally, psychiatrists have

¹² Sanger, *supra* note 1, at 754 (discussing tragic examples in which the media seized upon the rarity of a child’s abandonment); *see, e.g.*, Ludlow & Wilson, *supra* note 2; Price, *supra* note 4.

¹³ Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 34 AM. CRIM. L. REV. 1, 4 (1996). However, Oberman also explains that a long-standing paradox exists in which both ancient and modern societies treated infanticide as a less atrocious crime than traditional murder. *Id.* at 5. That is, while traditional notions of maternal security are shaken when we hear about a mother killing her own child, there has been a pervasive and almost systematic ambivalence regarding infanticide and how to punish it. *Id.* at 48-49. Oberman concludes that the United States, like almost all other Western societies, differentiates murder from infanticide, oftentimes regarding the latter with compassion and believing that it to be an uncontrollable impulse. *Id.*

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ *See id.* at 3. While the age of a one-year-old child is generally considered a workable cut-off point to distinguish infanticide from other forms of maternal killings, this age limit is completely arbitrary. *Id.* Oberman argues that there is not really an “established age limit for victims of this crime.” *Id.* Additionally, “maternal filicide” is a term used to define the murder of a child by his or her mother. Susan Hatters Friedman & Phillip J. Resnick, *Child Murder By Mothers: Patterns and Prevention*, WORLD PSYCHIATRY, 137 (2007), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2174580/pdf/wpa060137.pdf>. While parents who commit neoanticide and infanticide tend to be extremely young teenage girls, women who commit filicide—which occurs after the first twenty-four hours of the child’s life—“tend to be older and married, and to have a history of mental illness . . . [they] are frequently psychotic or depressed . . . and may believe that killing of the child is the only way to alleviate the child’s suffering or potential suffering.” Kohm, *supra* note 1, at 49; *see, e.g.*, John Esterbrook, *No Stone Left Unturned*, CBS NEWS (Feb. 11, 2009), <http://www.cbsnews.com/stories/2002/03/03/opinion/main502755.shtml>. This Article details the trial of Andrea Yates, who was found not guilty in the killing of her five children by reason of insanity. *Id.* Dr. Phillip Resnick, the defense expert in the case regarding the Yates’ insanity plea, told jurors “not only did Yates not know right from wrong when she systematically drowned her kids in their own bathtub, she actually thought she was doing the right thing.” *Id.*

¹⁷ Amy D. Wills, *Neonaticide: The Necessity of Syndrome Evidence When Safe Haven Legislation Falls Short*, 77 TEMP. L. REV. 1001, 1001 (2004) (citing Phillip J. Resnick, *Murder of the Newborn: A Psychiatric Review of Neonaticide*, 126 AM. J. PSYCHIATRY 1414, 1414 (1970)).

¹⁸ Oberman, *supra* note 13, at 3 n.5.

recognized that mothers commit nearly all acts of neonaticide.¹⁹ This gender-based specification between normal homicide and infanticide may be a contributing factor to the female-centeredness of many states' safe haven laws.²⁰

Because most states limit safe haven statutes to apply to infants that are three days old, the legislation clearly attempts to prevent neonaticide.²¹ Sometimes, the only real unifying characteristic between these desperate women is a severe psychological illness given the fact that "women who commit neonaticide are of every age, of every race, ethnicity, and socio-economic class."²² Psychiatrists have noted, however, that mothers who commit neonaticide are often young, single, and stuck with an unwanted pregnancy.²³ Additionally, almost none of the women had a stable relationship with a male partner when the neonaticide occurred.²⁴ Most importantly, there seems to be a strong tendency of isolation among these women, in an attempt to hide their pregnancies from those closest to them.²⁵ Given the general culture of secrecy that permeates through women who commit infanticide and neonaticide, safe haven laws are even more necessary. An unfortunate number of these panicked women endure hours of labor alone—suffering from both shock and exhaustion—and ultimately end up frantically discarding their babies in places like the trash or the toilet.²⁶ Success will be achieved if only a handful remember hearing about the protection of their state's safe haven statute.²⁷

¹⁹ Friedman & Resnick, *supra* note 16, at 137.

²⁰ *See* Oberman, *supra* note 13, at 5.

²¹ *State Policies in Brief: Infant Abandonment*, GUTTMACHER INST. (May 1, 2012), www.guttmacher.org/statecenter/spibs/spib_IA.pdf.

²² Wills, *supra* note 17, at 1004 (citing Oberman, *supra* note 13, at 23).

²³ Friedman & Resnick, *supra* note 16, at 137. According to one scholar, most girls who commit infanticide and neonaticide are extremely young, averaging only seventeen years of age and still living with their parents or a guardian. Oberman, *supra* note 13, at 23. Resnick also found that mothers who commit infanticide and neonaticide are often depressed and suffer from ongoing psychosis and suicidal thoughts. Friedman & Resnick, *supra* note 16, at 137. Five major motives are also often attributed to mothers guilty of such crimes:

(a) in an altruistic filicide, a mother kills her child out of love; she believes death to be in the child's best interest (for example, a suicidal mother may not wish to leave her motherless child to face an intolerable world; or a psychotic mother may believe that she is saving her child from a fate worse than death); (b) in an acutely psychotic filicide, a psychotic or delirious mother kills her child without any comprehensible motive (for example, a mother may follow command hallucinations to kill); (c) when fatal maltreatment filicide occurs, death is usually not the anticipated outcome; it results from cumulative child abuse, neglect or Munchausen syndrome by proxy; (d) in an unwanted child filicide, a mother things of her child as a hindrance; (e) the most rare, spouse revenge filicide occurs when a mother kills her child specifically to emotionally harm that child's father.

Id.

²⁴ Oberman, *supra* note 13, at 24.

²⁵ *Id.*

²⁶ Oberman, *supra* note 13, at 25.

²⁷ *See id.*

B. Texas' Baby Moses Law

Safe haven laws are a relatively recent development on the legal scene, only coming into existence within the last fifteen years.²⁸ America's first safe haven law was enacted in Texas in 1999, following a twelve-month period in which thirteen newborn babies were found discarded in dumpsters or on doorsteps.²⁹ The legislation's sponsors argued that a safe haven statute would lower the occurrence of such tragic events in the future.³⁰ Texas' safe haven legislation was introduced as House Bill 3423 by Representative Geanie Morrisison and enacted into law on July 15, 1999.³¹ The law provided that an infant up to thirty days old could be left with a designated emergency medical provider by the mother without being prosecuted for abandonment or neglect.³² Additionally, the statute provided mothers with an affirmative defense to prosecution of child abandonment or neglect charges.³³ Finally, while not a provision of the original Texas statute, mothers are currently guaranteed the right to remain anonymous when leaving their children.³⁴ The statute states that a "designated emergency infant care provider has no legal duty to ascertain the parent's identity and the parent may remain anonymous. However, the parent may be given a form for voluntary disclosure of the child's medical facts and history."³⁵

²⁸ See Sanger, *supra* note 1, at 754 (indicating that since 1999, forty-six states have enacted Save Haven Legislation).

²⁹ *Id.* at 775.

³⁰ Cynthia Dailard, *The Drive to Enact "Infant Abandonment" Laws—A Rush to Judgment?*, THE GUTTMACHER REPORT ON PUB. POLICY, 1 (Aug. 2000), <http://www.guttmacher.org/pubs/tgr/03/4/gr030401.pdf>.

³¹ Kimberly M. Carrubba, *Background Paper 01-3: A Study of Infant Abandonment Legislation*, LEGIS. COUNSEL BUREAU, 80 (Dec. 2000), <http://www.leg.state.nv.us/Division/Research/Publications/Bkground/BP01-03.pdf>

³² *Id.* The current Texas statute provides that:

a designated emergency infant care provider shall, without a court order, take possession of a child who appears to be 60 days old or younger if the child is voluntarily delivered to the provider by the child's parent and the parent did not express an intent to return for the child.

TEX. FAM. CODE ANN. § 262.302(a) (2011).

³³ Carrubba, *supra* note 31, at 71.

³⁴ TEX. FAM. CODE ANN. § 262.302(b) (2010).

³⁵ *Id.* In addition to section (a) above, the Texas statute, Accepting Possession of Certain Abandoned Children, reads:

(b) A designated emergency infant care provider who takes possession of a child under this section has no legal duty to detain or pursue the parent and may not do so unless the child appears to have been abused or neglected. The designated emergency infant care provider has no legal duty to ascertain the parent's identity and the parent may remain anonymous. However, the parent may be given a form for voluntary disclosure of the child's medical facts and history.

(c) A designated emergency infant care provider who takes possession of a child under this section shall perform any act necessary to protect the physical health or

Since the passage of Texas' safe haven law, legislatures nationwide continue to recognize the value and necessity of protecting the rights of the mothers who relinquish their children. The popularity and practical appeal of the Texas safe haven law was immediate. Within a year or two of its promulgation, thirty states introduced similar bills and fourteen states already had laws in place.³⁶ As early as September 2001, at least twenty-four states did not require the mother relinquishing her child to disclose any personal information about herself or her child to authorized personnel.³⁷ By February 2011, the number of state statutes that explicitly required anonymity to be provided to the relinquishing mother increased to thirty-four states and the District of Columbia.³⁸

C. *The Disaster of Nebraska's 2008 Safe Haven Legislation*

Nebraska is the most recent state to enact a safe haven law.³⁹ Nebraska's lawmakers struggled for over seven years before finally passing a statute.⁴⁰ When Governor Dave Heineman passed Legislative Bill 157 in February of 2008, it was the most encompassing and complex safe haven act of any state.⁴¹ While Nebraska originally intended its safe haven statute to reflect current trends regarding abandoned infant laws, arguments within the legislature over the age limit caused Legislative Bill 157 to be enacted without a restriction on the age of the relinquished child.⁴²

safety of the child. The designated emergency infant care provider is not liable for damages related to the provider's taking possession of, examining, or treating the child, except for damages related to the provider's negligence.

³⁶ Dailard, *supra* note 30, at 1.

³⁷ Nina Williams-Mbengue, *State Legislative Report: Safe Havens for Abandoned Babies*, NAT'L CONF. OF STATE LEGIS. (Sept. 2001), <http://www.ncsl.org/issues-research/human-services/ncslnet-state-legislative-report-safe-havens-for.aspx> (last visited Feb. 13, 2012). In addition to states providing an express anonymity guarantee, a number of states implicitly provided for anonymity. In these states, medical workers are obligated under the statutory provisions to at least ask the parent to provide information about the infant; however, parents are still allowed to refuse. *Id.*

³⁸ GUTTMACHER INST., *supra* note 21.

³⁹ Erik Eckholm, *Older Children Abandoned Under Law for Babies*, N.Y. TIMES, Oct. 3, 2008, available at <http://www.nytimes.com/2008/10/03/us/03omaha.html>.

⁴⁰ Diane K. Donnelly, *Symposium: How Far Have We Come Since 2000?: Nebraska's Youth Need Help—But Was a Safe Haven Law the Best Way?*, 64 U. MIAMI L. REV. 771, 774 (2010).

⁴¹ Hamlin, *supra* note 11, at 65; Donnelly, *supra* note 40, at 774; *Safe Haven Law*, NEB. DEP'T. HEALTH HUMAN SERV., http://dhhs.ne.gov/children_family_services/Pages/children_family_services_safehaven.aspx (last visited Feb. 2, 2012). Legislative Bill 157, proposing the enactment of a safe haven law in Nebraska reads as follows: "No person shall be prosecuted for any crime based solely upon the act of leaving a child in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child." *Id.*

⁴² Donnelly, *supra* note 40, at 775-76. Nebraska state legislators were apparently concerned with emergency medical workers' ability to discern whether the infant was under the proposed seventy-two hours or thirty-days old. *Id.*

On September 1, 2008, a teenager relinquished her child at a police station, causing almost immediate national outrage with the expansive Nebraska safe haven law.⁴³ The outrage was exacerbated before the end of September, as four more children—between the ages of eleven and fifteen—were abandoned.⁴⁴ The most shocking account, following the passage of Nebraska's safe haven law, came when a widowed father surrendered nine of his ten children, the oldest being seventeen years old, and claimed that he simply could not continue to care for them.⁴⁵ Before the safe haven statute could be amended,⁴⁶ a total of thirty-six older children and teenagers were relinquished under the statute, while no infants were relinquished.⁴⁷ The 2008 Nebraska situation seems to indicate two things. First, it illustrates the need for all safe haven laws to follow some variance of the time-tested structure enacted by states since the birth of Texas' safe haven statute. That is, while a common age limit of seventy-two hours or thirty days may seem arbitrary, it "appropriately captures that specific concern for infants [as] a fundamental component to any safe haven law."⁴⁸ Second, and most importantly, the crisis "cast a spotlight on the hidden extent of family turmoil in the country and what many experts say is a shortage of respite care, counseling, and especially psychiatric services to help parents in dire need."⁴⁹ While safe haven laws may not be able to remedy the deep societal wounds surrounding shameful pregnancies stemming from unsupportive families and communities, they provide a much-needed first step in the fight to protect the lives of infants.

⁴³ Eckholm, *supra* note 39.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Upon recognizing the disastrous consequences of not specifying a maximum age requirement under its safe haven law, Nebraska amended its statute, making it now more consistent with statutory provisions already in affect. Lucinda J. Cornett, *Remembering the Endangered "Child": Limiting the Definition of "Safe Haven" and Looking Beyond the Safe Haven Framework*, 98 KY. L.J. 833, 834 (2010). The current safe haven statute in Nebraska now provides:

[n]o person shall be prosecuted for any crime based solely upon the act of leaving a child thirty days old or younger in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child.

NEB. REV. ST. ANN. § 29-121 (2010).

⁴⁷ Donnelly, *supra* note 40 at 776-77.

⁴⁸ *Id.* at 777.

⁴⁹ Eckholm, *supra* note 39. In addition to bringing attention to the dire economic situation many parents face, the original Nebraska safe haven statute also shed light on the struggles of raising a child with a severe mental illness. Mary Carmichael, *A Not-So-Safe-Haven*, NEWSWEEK (Dec. 10, 2008), <http://www.newsweek.com/2008/12/09/a-not-so-safe-haven.print.html>. According to the Board President of the Nebraska Family Support Network, many of the teens that were abandoned during the no-age restriction window suffered from mental illness and behavioral issues that completely drained their families' wealth and patience. *Id.*

D. The Possibility of National Legislation

With every state recognizing the need for the protection provided by safe haven laws, the federal government should take notice and act accordingly. Politicians across the political spectrum, with an interest in a wide array of issues, are publically supporting safe haven laws.⁵⁰ In 2000 and 2007, Congress took a proactive step in creating a federal law that would offer the same general protections currently provided at the state level.⁵¹ In April of 2000, the House of Representatives unanimously passed a resolution that, according to Connecticut Republican Representative Nancy Johnson, would “focus attention and raise awareness of the problem of newborn babies abandoned in public places.”⁵²

Indicating that the importance of dealing with infant abandonment crosses party lines, Representative Sheila Jackson Lee, a Democrat from Texas, and nine other cosponsors introduced the Baby Abandonment Prevention Act the same year as Representative Johnson’s resolution.⁵³ The Baby Abandonment Prevention Act sought help from the United States Attorney General in creating a task force to collect and compile comprehensive data regarding baby abandonment; including researching what causes mothers to abandon their children in the first place.⁵⁴ Following the Bill’s unsuccessful passage in 2000, Representative Lee sponsored House Bill 259: Baby Abandonment Prevention Act again in 2007.⁵⁵ While the Bill never became law, it reiterated the need “to provide for the establishment of a task force within the Bureau of Justice Statistics to gather information about, study, and report to Congress regarding, incidents of abandonment of infant children.”⁵⁶

⁵⁰ Dailard, *supra* note 30, at 2.

⁵¹ *Id.* at 1-2; *see* Baby Abandonment Prevention Act of 2007, H.R. 259, 110th Cong. (2007), available at <http://www.govtrack.us/congress/bill.xpd?bill=h110-259>.

⁵² Dailard, *supra* note 30, at 1-2.

⁵³ *Id.* at 2.

⁵⁴ *Id.*

⁵⁵ Baby Abandonment Prevention Act of 2007, *supra* note 51.

⁵⁶ *Id.* House Bill 259, entitled Baby Abandonment Prevention Act of 2007 states in full:

[t]o provide for the establishment of a task force within the Bureau of Justice Statistics to gather information about, study, and report to Congress regarding, incidents of abandonment in infant children.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title

This Act may be cited as the “Baby Abandonment Prevention Act of 2007.”

Sec. 2. Establishment of Task Force.

(a) In General—The Attorney General, acting through the Director of the Bureau of Justice Statistics, shall establish a task force (to be known as the Task Force on Baby Abandonment) to carry out the following:

(1) Collecting information from State and local law enforcement agencies and child welfare agencies regarding incidents of abandonment of an infant child by a parent of that child.

(2) Maintaining that information in a comprehensive database.

(3) Studying that information and making findings, conclusions, and recommendations regarding that information.

A law similar to House Bill 259 would be an invaluable resource to state governments and women across the country. It would be a great first attempt at uncovering and compiling the very information that has eluded lawmakers and scholars since the late 1990s.⁵⁷ According to one scholar, “[v]irtually none of the states studied the infant-abandonment problem prior to passing safe haven laws; they passed these laws without grappling with the circumstances that might lead a young woman to abandon her newborn.”⁵⁸ Congressional resources would give statistical evidence of the need for America’s safe haven laws and provide a better understanding of the horrific circumstances surrounding infanticide.

III. KEY CHARACTERISTICS OF SAFE HAVEN LAWS

A. *The Relinquishment Process*

Safe haven statutes vary from state to state and the intent of each is to ensure a safe future to infants whose mother may abandon them.⁵⁹ The hope is that by allowing women to leave their babies in a safe location, with no questions asked, the lives of newborn infants will be saved.⁶⁰ For such a complex situation, encompassing complicated issues of guilt, fear, and anxiety, the general process in which a mother can give up her child under a safe haven statute is remarkably simple.⁶¹ If a mother gives birth outside of a hospital, as many young girls in denial of their pregnancy do,

(4) Submitting reports in accordance with this section.

(b) Information Included—The information referred to in subsection (a) shall include information with respect to the following:

(1) The prevalence of such incidents.

(2) The demographics of such children and such parents.

(3) The factors that influence the decision of such parents to abandon such children.

(4) The circumstances surrounding such abandonments, including the time, place, and manner of such abandonments.

(5) The outcomes for such children and such parents after such abandonments.

(6) Trends and variations in the matters set forth in paragraphs (1) through (5).

(c) Definition—In this section, the term “infant child” means a child not more than 12 months of age.

(d) Reports—Not later than one year after the date of the enactment of this Act, and annually thereafter, the task force shall submit a report to the Congress detailing its methodology, findings, conclusions, and recommendations.

Baby Abandonment Prevention Act of 2007, H.R. 259, 110th Cong. (2007), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?bname=110_cong_bills&docid=f:h259ih.txt.pdf.

⁵⁷ Michelle Oberman, *Comment: Infant Abandonment in Texas*, CHILD MALTREAT, 94 (Feb. 2008), *available at* <http://cmx.sagepub.com/>.

⁵⁸ *Id.* Congress is also guilty of such research oversight; currently, there are no national statistics regarding the number of babies abandoned each year. Dailard, *supra* note 30, at 1.

⁵⁹ Sanger, *supra* note 1, at 754.

⁶⁰ *Id.* at 762.

⁶¹ Oberman, *supra* note 13, at 71.

they need only take the baby safely into the hands of a designated individual.⁶² In this case, the woman's safest course of action would be to call 9-1-1 to receive emergency medical attention for both herself and her child and then leave the infant in the hands of an EMT, doctor, or nurse upon arriving at the hospital.⁶³ Beyond delivering the child to an enumerated individual, a mother is not required to take any additional steps.⁶⁴ The mother may choose to leave basic health information to aid in any medical attention for the child, but she is most often not required to do so.⁶⁵ To encourage mothers to take advantage of these statutes, some states provide hotline numbers that women may call during their pregnancy to set up an anonymous delivery at a hospital.⁶⁶

B. Statistical Insufficiencies Regarding Reports of Infant Abandonment

Due to insufficient reporting techniques, the exact number of infants that are abandoned each year is unknown.⁶⁷ The available data estimates that 350 to 20,000 of the 4 million babies born each year are abandoned.⁶⁸ One legal scholar, Michaelle Oberman, articulated the difficulty that arises when legislatures or child welfare organizations attempt to numerically determine the "success" of safe haven laws

⁶² *Ohio's Safe Haven for Newborns: An Alternative to Leaving Infants in Unsafe Places*, OHIO DEPT. OF JOB AND FAMILY SERVICES, www.odjfs.state.oh.us/forms/file.asp?id=55210 (last visited May 26, 2012).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* In Ohio, the "birth parent is not required to provide any information, including his or her name. However, it would help the baby if the birth parent chose to provide basic health information. The birth parent will be offered a form to guide them in providing the most important health information." *Id.*

⁶⁶ Patricia Wen, *Abandoned to Happiness*, THE BOSTON GLOBE, Nov. 26, 2009, available at http://www.boston.com/news/local/massachusetts/articles/2009/11/26/for_this_couple_precious_reason_to_be_thankful/. For example, in Massachusetts, women can call a twenty-four-hour hotline (1-866-814-SAFE) to speak with a counselor regarding how to take advantage of their options under the safe haven statute and safely relinquish their child. *Id.* Additionally, the National Safe Haven Alliance provides a toll free crisis hotline (1-888-510-BABY) for mothers to call and ask questions about their pregnancy and to learn about their states' safe haven laws. NAT'L SAFE HAVEN ALLIANCE, *supra* note 6.

⁶⁷ *Id.* For example, as of January 2009, the Ohio Department of Job and Family Services said that sixty-three infants were safely surrendered under the safe haven statute; but the number of other infants abandoned are unable to be tracked by the Department. Price, *supra* note 4. Additionally, the federal government does not provide any enlightening data, as they currently do not keep track of the number of babies abandoned in public places each year. Dailard, *supra* note 30. According to a spokesperson for the Department of Health and Human Services' Administration for Children and Families, however, in 1998 over 31,000 infants were left in the hospital by mothers upon delivery either because they intended to relinquish the child to authorities or they were not fit to be a parent according to child protective services. *Id.*

⁶⁸ Susan L. Pollet, *Safe Haven Laws—Do Legal Havens to Abandon Babies Save Lives?*, 32 WESTCHESTER B. J. 71, 71 (2005). This smaller number is likely too low since it does not take into account discarded infants that were never found or reported to authorities. *Id.*

across the country.⁶⁹ In her *Comment: Infant Abandonment in Texas*, Oberman states:

[a]s anyone familiar with these laws long has recognized, they are almost impossible to evaluate. Designed to redress the problem of neonaticide—a problem that is shrouded in the secrecy that accompanies concealed pregnancies and abandoned newborns—the law’s solution is to maintain the secrets of those who might otherwise endanger their newborns. From their inception, it therefore was unclear how one would measure the relative success of safe haven laws . . . [t]o know whether safe haven laws decrease unsafe infant abandonment, one must know whether the women who place their children with safe havens are those who would otherwise have abandoned them unsafely rather than those who might have placed their children via the traditional adoption system or perhaps have elected to raise them on their own. In short, one must know their secrets.⁷⁰

Since the young mother is often the only one with knowledge of her pregnancy, it is inherently difficult to determine a yearly abandonment figure.⁷¹

Although the available estimated figures cannot tell the full story of the success of safe haven statutes, the figures provide a hopeful conceptualization of the statutes. That is, even though it is impossible to know exactly how many women chose relinquishment instead of reacting violently out of panic, arguably even one case where a safe haven was taken advantage of bodes success. But the figures tend to point to higher rates of success.⁷² It is estimated that over the past decade, safe haven laws saved well over 1,000 infants nationwide.⁷³ In addition to the infants saved as a result of the Texas statute, more than sixty infants were safely relinquished since Ohio enacted its safe haven law in 2001.⁷⁴

C. Increased Awareness of the Protections Afforded by Safe Haven Laws

With an increased effort on the part of state government leaders and medical providers, the awareness amongst troubled women seeking protection for their unwanted child will continue to grow.⁷⁵ Increased awareness in schools, doctors’ offices, and homes about the protections of anonymity and criminal immunity under safe haven laws is the only way to educate young frightened women and loved ones around them so they are aware of the warning signs of a concealed pregnancy.⁷⁶

⁶⁹ Dailard, *supra* note 30, at 1.

⁷⁰ Oberman, *supra* note 57, at 94.

⁷¹ Jill M. Acklin, *Choosing Life: Proposing Immunity for Mothers Who Abandon Their Newborns*, 35 IND. L. REV. 569, 573 (2002).

⁷² See NAT’L SAFE HAVEN ALLIANCE, *supra* note 6.

⁷³ *Id.*

⁷⁴ Ludlow & Wilson, *supra* note 2; see also Price, *supra* note 4 (indicating that as of 2009, 63 babies were surrendered under Ohio’s safe haven statute).

⁷⁵ Michelle Oberman argues that “[safe haven laws] cannot be effective unless they become public knowledge.” Oberman, *supra* note 57, at 95.

⁷⁶ *Id.* Oberman suggests that “[t]he best chance of preventing neoanticide lies in intervention, which occurs when someone in these women’s lives confronts them and offers

California is on the forefront of education of women's sexual health issues. California's Safely Surrender Baby Law was originally enacted in January 2001.⁷⁷ California's safe haven law became permanent when it was signed by Governor Arnold Schwarzenegger in January 2006.⁷⁸ Assembly Bill 2817 requires that:

sex education classes to advise pupils of specified provisions of law relating to parents and others who voluntarily surrender physical custody of a minor child 72 hours old or younger at a hospital emergency room or other designated location without being subject to criminal prosecution for certain crimes.⁷⁹

Although California's safe haven law is similar to other traditional safe haven laws, the statute is remarkable as it requires public schools to advise students about the state's statutory protections.⁸⁰

D. Necessary Elements Comprising All Safe Haven Laws

1. Limited Participation

Despite some slight variances, all safe haven laws contain five key elements that work together to achieve the aforementioned societal goals.⁸¹ First, each states' safe haven law details who can take advantage of the statutory protections and who can surrender a baby to a safe haven; most states allow both mothers and fathers to surrender the baby.⁸² States that recognize the uniquely female crimes of neoanticide and infanticide only allow post-partum mothers to take advantage of safe haven statutes;⁸³ but over fifteen states allow another individual, such as a guardian

them a way forward . . . [i]f widely publicized, safe haven laws could place others on notice of the possibility that someone in their lives might be concealing a pregnancy." *Id.*

⁷⁷ Safely Surrendered Baby Law, CDSS, <http://www.babysafe.ca.gov/> (last visited Feb. 14, 2011). In addition to the measures taken by California to promote its safe haven law, New Jersey funds a public awareness program where the state provides a minimum of \$500,000 a year to encourage the use of its law that permits anonymous infant abandonment. Susan Ayres, *Kairos and Safe Havens: The Timing and Calamity of Unwanted Birth*, 15 WM. & MARY J. WOMEN & L. 227, 257 (2009). Using a variety of methods, such as television and radio, the state has attempted to instill the slogan, "No Shame. No Blame. No Names," into its citizens. *Id.*

⁷⁸ Safely Surrendered Baby Law, CDSS, <http://www.babysafe.ca.gov/> (last visited Feb. 14, 2011).

⁷⁹ *Id.*

⁸⁰ A.B. 2817, 2001-2002 Sess. (Cal. 2002), available at http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_2801-2850/ab_2817_bill_20020929_chaptered.pdf.

⁸¹ Sanger, *supra* note 1, at 765.

⁸² *Id.*

⁸³ *Id.* Some states, like Georgia and Tennessee, do not allow fathers to relinquish their children under the safe haven statute, most likely because men rarely kill newborns. *Id.*; see also Donnelly, *supra* note 40, at 785. The Georgia Statute provides that:

[a] mother shall not be prosecuted for the crimes of cruelty to a child . . . contributing to the delinquency, unruliness, or deprivation of a child . . . or abandonment of a dependent child . . . because of the act of leaving her newborn child in the physical

designated by a parent, to relinquish a child under the safe haven statute.⁸⁴ Arizona, Connecticut, Delaware, Hawaii, Iowa, Maine, Maryland, and Minnesota allow someone other than a parent to relinquish an infant under its safe haven statute.⁸⁵ Regardless of the specifics, limiting participation in safe haven statutes is an important aspect that “implicitly supports the underlying goal of anonymity because it ensures that no one else needs to know about the baby before the law can be used.”⁸⁶

2. Age Restriction

Second, all states limit the amount of time that can pass between the birth of a child and its surrender under safe haven laws.⁸⁷ Currently, fourteen states have a seventy-two-hour age restriction, including Ohio, and fourteen other states allow thirty days to pass before the parent must decide whether he or she plans to surrender the child.⁸⁸ The age restrictions in both Missouri and North Dakota, however, allow

custody of an employee, agent, or member of the staff of a medical facility who is on duty, whether there in a paid or volunteer position, provided that the newborn child is no more than one week old and the mother shows proof of her identity, if available, to the person with whom the newborn is left and provides her name and address.

GA. CODE ANN. § 19-10A-4 (2012). In addition, Tennessee’s statute permits only mothers to relinquish their children stating:

[n]otwithstanding any other provision of law to the contrary and without complying with the surrender provisions of this part, any facility, as defined by § 68-11-255, shall receive possession of an infant aged seventy-two (72) hours or younger upon the voluntary delivery of the infant by the infant’s mother, pursuant to § 68-11-255.

Tenn. Code. Ann § 36-1-142 (2012).

⁸⁴ Guttmacher Inst., *supra* note 38.

⁸⁵ *Id.* ARIZ. REV. STAT. ANN. § 13-3623.01 (2012) (providing that either a “parent or agent of a parent” can voluntarily relinquish an unharmed newborn infant); CONN. GEN. STAT. ANN. § 17a-57 (2012) (allowing for both parents of the infant and “lawful agent[s]”); DEL. CODE ANN. tit. 16 § 907A (2012) (“A person may voluntarily surrender a baby directly to an employee or volunteer of the emergency department of a Delaware hospital inside of the emergency department, provided that said baby is surrendered alive, unharmed and in a safe place therein”); HAW. REV. STAT. § 709-902 (2012) (allowing for abandonment for “a parent, guardian, or other person legally charged with the care or custody of a child”); IOWA CODE ANN. § 233.3 (2012) (providing for a “parent or other person” to relinquish custody of the newborn infant); ME. REV. STAT. ANN. tit. 17-A § 553(3) (2012) (“A person is guilty of abandonment of a child if, being a parent, guardian or other person legally charged with the long-term care and custody of a child under 14 years of age, or a person to whom the long-term care and custody of a child under 14 years of age has been expressly delegated”); MD. CODE ANN. § 5-641 (2012) (“If the person leaving a newborn under this subsection is not the mother of the newborn, the person shall have the approval of the mother to do so”); MINN. STAT. ANN. § 145.902 (2012) (allowing for either the mother or “person leaving the newborn” to take advantage of the safe haven law).

⁸⁶ Donnelly, *supra* note 40, at 784-85.

⁸⁷ Hamlin, *supra* note 11, at 70.

⁸⁸ Guttmacher Inst., *supra* note 38.

for a full year to pass before the mother is no longer eligible for relinquishment.⁸⁹ The time limit ensures that the child can transition smoothly into a loving adoptive home.⁹⁰ This rationale is arguably sound when one imagines how difficult it can be for a one-year-old child to be abandoned by his or her mother, who the child has already grown to love, and placed in the hands of the county.⁹¹

3. Designated Locations

Additionally, all safe haven laws require that the infant be left in designated safe haven zones, such as hospitals, fire stations, and police stations.⁹² While every state allows infants to be surrendered to hospitals, some states only allow a hospital to surrender into the arms of an emergency medical service worker, such as an emergency room nurse.⁹³ These locations are commonly used because they are easily identifiable within the community and open during all hours of day.⁹⁴ Some statutes, however, even allow parents to surrender their children to adoption agencies⁹⁵ or places of worship.⁹⁶

⁸⁹ *Id.* Missouri's safe haven statute allows for an affirmative defense (as opposed to outright immunity from prosecution) in situations where the child is one year old. It reads in pertinent part:

[a] parent shall not be prosecuted. . . for actions related to the voluntary relinquishment of a child up to five days old pursuant to this section and it shall be an affirmative defense to prosecution for a violation of . . . that a parent who is a defendant voluntarily relinquished a child no more than one year old pursuant to this section if:

(1) Expressing intent not to return for the child, the parent voluntarily delivered the child safely to the physical custody of any of the following persons.

MO. REV. STAT. § 210.950 (2012). In addition, the North Dakota safe haven statute applies to abandoned infants, which is defined as "a child who has been abandoned before reaching the age of one year." N.D. CENT. CODE ANN. § 27-20-02 (2012).

⁹⁰ Hamlin, *supra* note 11, at 70.

⁹¹ The devastating effect safe haven laws can have on older children is illustrated with the 2008 passage of Nebraska's safe haven law. *Id.* at 65. The sweeping legislation allowed for children up to eighteen years of age to be abandoned in a safe haven, causing at least one family to relinquish nine children from the ages of one to seventeen. *Id.* at 65, 77.

⁹² Bolling, *supra* note 7.

⁹³ *Id.*

⁹⁴ Sanger, *supra* note 1, at 769.

⁹⁵ Bolling, *supra* note 7.

⁹⁶ See VT. STAT. ANN. tit. 13 § 1303 (2010). Vermont's Abandonment or Exposure of Baby Statute provides:

(a) A person who abandons or exposes a child under the age of two years whereby the life or health of such child is endangered shall be imprisoned not more than ten years or fined not more than \$10,000.00, or both.

(b)(1) It is not a violation of this section if a person voluntarily delivers a child not more than 30 days of age to:

(A) An employee, staff member, or volunteer at a health care facility.

4. Anonymity and Immunity for Mothers

The final two elements—anonymity and immunity—are especially important. They provide desperate mothers with an incentive to take advantage of safe haven laws.⁹⁷ These elements are imperative if safe havens are to properly protect the lives of children.⁹⁸ Anonymity is particularly important because most women abandoning their infants under safe haven laws do not wish for others to know of the baby.⁹⁹ As of February 2011, a large majority of states expressly provide women with the right to remain anonymous when relinquishing a child.¹⁰⁰

Finally, immunity from prosecution allows a mother to abandon her child in a safe place without fear of legal repercussions.¹⁰¹ Currently, twenty-two states allow a mother to retain full immunity, meaning she cannot be charged with child abuse or neglect.¹⁰² Sixteen states, while not providing full immunity, allow a parent to raise safe relinquishment of a child as an affirmative defense under the statute in any child abandonment or neglect proceedings.¹⁰³

IV. OHIO'S SAFE HAVEN LAW

Following the lead from a number of other states, Ohio's safe haven law was implemented by the state legislature in 2001.¹⁰⁴ Ohio was one of fifteen states across the country to enact safe haven legislation in 2000, shortly after publicity surrounded the Texas "baby Moses" law that began a national movement.¹⁰⁵ The Ohio General Assembly passed House Bill 660 regarding "non-criminal child desertion" on December 12, 2000, which went into effect in January, 2001.¹⁰⁶ The bill was sponsored by Representative Cheryl J. Winkler, a Republican from Hamilton

(B) An employee, staff member, or volunteer at a fire station, police station, place of worship, or an entity that is licensed or authorized in this state to place minors for adoption.

(C) A 911 emergency responder at a location where the responder and the person have agreed to transfer the child.

(2) A person voluntarily delivering a child under this subsection shall not be required to reveal any personally identifiable information, but may be offered the opportunity to provide information concerning the child's or family's medical history.

Id.

⁹⁷ Sanger, *supra* note 1, at 769.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Guttmacher Inst., *supra* note 38.

¹⁰¹ Bolling, *supra* note 7.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ OHIO JUV. L. § 29:12 (2011).

¹⁰⁵ Bolling, *supra* note 7.

¹⁰⁶ H.B. 660, 123rd Gen. Assemb. (Ohio 2000).

County.¹⁰⁷ Like most other safe haven laws, Ohio Revised Code Section 2151.3516 only permits a *parent* to voluntarily leave a child in the custody of a hospital employee, police officer, or medical worker at a fire station.¹⁰⁸ In terms of a standard time limit, the statute was amended in 2008 to allow a child up to thirty-days old to be surrendered.¹⁰⁹ When the statute was originally enacted, only a child seventy-two hours or younger could be relinquished to a safe haven.¹¹⁰ The statute also indicates that the mother who surrenders her child in accordance with the statute has an absolute right to anonymity.¹¹¹ This means a mother may refuse to provide any identifying information and may refuse to complete any and all medical forms.¹¹²

¹⁰⁷ *Fiscal Note & Local Impact Statement*, 123D GENERAL ASSEMBLY OF OHIO, <http://www.lsc.state.oh.us/fiscal/fiscalnotes/123ga/hb0660hr.htm> (last visited Feb. 12, 2011); *Honoring the Women Who Have Served in the Ohio Legislature*, OHIO LADIES' GALLERY, <http://ohioladiesgallery.org/PublicOfficial.aspx?personId=108234> (last visited Feb. 12, 2011). During her decade in office, Representative Winkler served as chair woman of the Family Services House Committee and sat on the Housing and Urban Affairs Committee, the Children and Youth Committee, and the Education, Colleges, and Universities Subcommittee. *Id.*

¹⁰⁸ OHIO REV. CODE. ANN. § 2151.3516 (2010). This statute, entitled “Persons authorized to take possession of a deserted child,” provides the specific requirements that must be met for the relinquishment to qualify under the statute. The statute reads in full as follows:

[t]he following persons, while acting in an official capacity, shall take possession of a child who is thirty days old or younger if that child’s parent has voluntarily delivered the child to that person without the parent expressing an intent to return for the child.

- (A) A peace officer on behalf of the law enforcement agency that employs the officer;
- (B) A hospital employee on behalf of the hospital that has granted the person privilege to practice at the hospital or that employs the person;
- (C) An emergency medical service worker on behalf of the emergency medical service organization that employs the worker or for which the worker provides services.

Id.

¹⁰⁹ *Id.*

¹¹⁰ Ludlow & Wilson, *supra* note 2. According to Senator Gary Cates, whose sponsorship of the amendment helped it to be signed into law by former Governor Ted Strickland, the change was necessary for Ohio to “reflect the national trend.” Price, *supra* note 4. Senators hoped that the larger window of time would help save an even larger number of infants. *Id.*

¹¹¹ OHIO REV. CODE. ANN. § 2151.3524 (2010).

¹¹² OHIO REV. CODE. ANN. § 2151.3517 (2010). Section 2151.3517 specifies the duties and responsibilities of individuals authorized to take possession of a relinquished infant. It also details what the individuals are not authorized to make the mothers do at the time of relinquishment:

- (A) On taking possession of a child pursuant to section 2151.3516 of the Revised Code, a law enforcement agency, hospital, or emergency medical service organization shall do all the following:
 - (1) Perform any act necessary to protect the child’s health or safety;

Finally, the Ohio statute allows for a mother to remain immune from criminal prosecution, so long as the child does not appear to have suffered from any abuse or neglect at the time he or she is surrendered.¹¹³

If a mother complied with all of the statutory requirements mentioned above, the newly abandoned baby will be placed in the care of an individual authorized under the statute to provide any necessary medical care.¹¹⁴ Additionally, this individual will attempt to gather any medical history relevant to the child from the parent.¹¹⁵ The emergency medical worker must then notify children services that a baby was safely relinquished.¹¹⁶ Upon such notification, children services consider the infant to be in their custody and an investigation is opened.¹¹⁷ Pursuant to Ohio Revised Code

(2) Notify the public children services agency of the county in which the agency, hospital, or organization is located that the child has been taken into possession;

(3) If possible, make available to the parent who delivered the child forms developed under section 2151.3529 of the Revised Code that are designed to gather medical information concerning the child and the child's parents;

(4) If possible, make available to the parent who delivered the child written materials developed under section 2151.3529 of the Revised Code that describe services available to assist parents and newborns;

(5) If the child has suffered a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, attempt to identify and pursue the person who delivered the child.

(B) An emergency medical services worker who takes possession of a child shall, in addition to any act performed under division (A)(1) of this section, perform any medical service the worker is authorized to perform that is necessary to protect the physical health or safety of the child.

Id. Additionally, Section 2151.3525 details the procedure of completing medical information forms by parents. It states specifically that:

A parent who voluntarily delivers a child under section 2151.3525 of the Revised Code may complete all or any part of the medical information forms the parent receives under division (A)(3) of section 2151.3517 of the Revised Code. The parent may deliver the fully or partially completed forms at the same time as delivering the child or at a later time. The parent is not required to complete all or any part of the forms.

¹¹³ OHIO REV. CODE. ANN. § 2151.3523 (2010).

¹¹⁴ *Ohio's Safe Havens for Newborns: An Alternative to Leaving Infants in Unsafe Places*, OHIO DEP'T OF JOB AND FAMILY SERVS., <http://www.odjfs.state.oh.us/forms/file.asp?id=1736&type=application/pdf> (last visited Feb. 13, 2012); see OHIO REV. CODE. ANN. § 2151.3517 (2010) (requiring the person taking possession of the child to "perform any act necessary to protect the child's health or safety"); OHIO REV. CODE. ANN. § 2151.3518 (2010) (providing that an authorized individual shall "provide temporary emergency care for the child . . ." and "provide any care for the child that the public children services agency considers the best interest of the child . . .").

¹¹⁵ OHIO REV. CODE. ANN. § 2151.3517 (2010).

¹¹⁶ *Id.*

¹¹⁷ OHIO REV. CODE. ANN. § 2151.3518 (2010) (providing that among other duties, the public children services agencies are required to "make an investigation concerning the child" and "prepare and keep written records of the investigation of the child, of the care and treatment afforded the child, and any other records required by the department of job and family services").

Section 2151.3518, a motion is then filed with the juvenile court in the county where the child is relinquished.¹¹⁸ Upon filing the motion, the statute requires a hearing to be held as soon as possible,¹¹⁹ and the county court must provide the child's parents with notice of the hearing.¹²⁰ The statute further states, however, that the court need only provide notice to the parents if they have knowledge of their names.¹²¹ In addition to this implicit anonymity provision, the Ohio Revised Code also explicitly grants the right to anonymity under section 2151.3524.¹²² But any parent who relinquishes a child pursuant to the statutory requirements forfeits anonymity if that child appears to have suffered from any physical abuse or neglect.¹²³

In conjunction with the anonymity provision provided by section 2151.3524, the Ohio Revised Code also ensures that the mother relinquishing her child will not face any criminal sanctions for simply dropping off her baby in a designated safe haven zone—an action that, without the statutory safeguards, would be considered child abandonment.¹²⁴ Much like the forfeiture of the anonymity requirement, a mother

¹¹⁸ *Id.* (requiring the public child services agency to “[f]ile a motion with the juvenile court of the county in which the agency is located requesting that the court grant temporary custody of the child to the agency or to a private child placing agency”).

¹¹⁹ OHIO REV. CODE ANN. § 2151.3519 (2010) (stating that “when a public children services agency files a motion pursuant to division (E) of section 2151.3518 of the Revised Code, the juvenile court shall hold an emergency hearing as soon as possible to determine whether the child is a deserted child”).

¹²⁰ *Id.* The court is required to give notice to the parents of the child only if the court has knowledge of the names of the parents. *Id.* If the court determines at the initial hearing or at any other hearing that a child is a deserted child, the court shall adjudicate the child a deserted child and enter its findings in the record of the case. *Id.*

¹²¹ *See id.* (“The court is required to give notice to the parents of the child only if the court knows the names of the parents.”).

¹²² OHIO REV. CODE ANN. § 2151.3524 (2010). This statute, dealing with the parental right to anonymity specifically states that “[a] parent who voluntarily delivers their child under section 2151.3516 of the Revised Code has the absolute right to remain anonymous . . . [a] parent who voluntarily delivers a child may leave the place at which the parent delivers the child at any time after the delivery of the child.”

¹²³ *Id.* (“[A] parent who delivers or attempts to deliver a child who has suffered any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child does not have the right to remain anonymous . . .”).

¹²⁴ OHIO REV. CODE ANN. § 2151.3523 (2010). This statute provides for immunity from criminal liability when a child is relinquished per the statutory requirements, stating:

(A) A parent does not commit a criminal offense under the laws of this state and shall not be subject to criminal prosecution in this state for the act of voluntarily delivering a child under section 2151.3516 of the Revised Code

(B) A person who delivers or attempts to deliver a child who has suffered any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child is not immune from civil or criminal liability for abuse or neglect.

Id.

loses her right to immunity if emergency medical workers receive a child showing signs of abuse or neglect.¹²⁵

If all the statute's elements are met, the court must determine whether the child is a "deserted child" under the statute.¹²⁶ The standard for "deserted child" is easily met if the child was voluntarily delivered to an authorized individual with no intent to return for the child at a later time.¹²⁷ If the court finds that the child meets this standard, the court places the child into the temporary custody of child and family services.¹²⁸ The hope is that a family will adopt the child, achieving what the statute set out to accomplish.¹²⁹

V. THE CONFLICT FOUND IN *IN RE BABY BOY DOE*

A. Statute of "No Further Force and Effect"

Despite the role of Ohio's safe haven statutes in protecting the safety of infants and ensuring the anonymity of mothers too frightened to reveal their identity to authorities, the Cuyahoga County Juvenile Court ruled the provisions unconstitutional on November 8, 2007.¹³⁰ In *In re Baby Boy Doe*, the court held the safe haven law in Ohio, known as the Child Desertion Act, to be of "no further force and effect."¹³¹ In this case, a child was properly surrendered in accordance with the safe haven statute and at the time of the surrender, the infant's mother, acted within her rights by refusing to provide the emergency medical worker with identifying information.¹³² Although the court acknowledged the legislature's intent to allow mothers who surrender their children under this statute to remain anonymous, it held that this intent conflicts with two Juvenile Procedural Rules: 15(A) and 2(Y).¹³³ Juvenile Procedural Rule 15(A) requires that once a complaint is filed in juvenile court, the clerk must issue a summons to the parties to attend a hearing.¹³⁴

¹²⁵ *Id.*

¹²⁶ OHIO REV. CODE ANN. § 2151.3515(A) (2010).

¹²⁷ OHIO REV. CODE ANN. § 2151.3515 (2010) (defining a deserted child as "a child whose parent has voluntarily delivered the child to an emergency medical service worker, peace officer, or hospital employee without expressing an intent to return for the child").

¹²⁸ 12 OHIO JUV. § 29 (2011).

¹²⁹ OHIO DEPT. OF JOB AND FAMILY SERVICES, *supra* note 62.

¹³⁰ *In re Baby Boy Doe*, 880 N.E.2d 989, 991 (Ohio C.P. 2007).

¹³¹ *Id.*

¹³² *Id.* at 990.

¹³³ *Id.* at 991.

¹³⁴ *Id.* Juvenile Rule 15(A) details the process in which a summons must be issued:

(A) After the complaint has been filed, the court shall cause the issuance of a summons directed to the child, the parents, guardian, custodian, and any other persons who appear to the court to be proper or necessary parties. The summons shall require the parties to appear before the court at the time fixed to answer the allegations of the complaint. A child alleged to be abused, neglected, or dependent shall not be summoned unless the court so directs.

OHIO JUV. R. 15(A) (2010).

Furthermore, Juvenile Rule 2(Y), setting forth the definition of who must be notified of the hearing, requires notification of the parents of any child involved in a juvenile court proceeding.¹³⁵

B. Ohio Constitutional Rules of Construction Under Article IV

The *In re Baby Boy Doe* court further articulated that under Article IV of the Ohio Constitution, when a statute conflicts with a procedural rule, the procedural rule controls.¹³⁶ The court held that “[t]he issuance of notice for court proceedings is procedural as it pertains to the method of enforcing rights or obtaining redress rather than creating, defining or regulating the rights of parties.”¹³⁷ Therefore, while the court admitted that that underlying purpose of Ohio’s safe haven statute is to provide for the anonymity of the mother, it found that requiring the parent surrendering the child to comply with Juvenile Rules 15(A) and 2(Y) would “undermine the very purpose of the statute.”¹³⁸ The court seemed to recognize the importance of the anonymity requirement and in no way intended to strike down the safe haven law for moral or substantive reasons: the statute was struck down only because it conflicted with the rules.¹³⁹

C. Ramifications of In re Baby Boy Doe

This 2007 Cuyahoga Common Pleas Court decision was never appealed. Similarly, no other controlling court, including the Ohio Supreme Court, ever decided the conflict between Juvenile Rules 15(A) and 2(Y) and Ohio’s safe haven statute.¹⁴⁰ Since 2003, however, eight cases were filed under the Deserted Child Act

¹³⁵ *Baby Boy Doe*, 880 N.E.2d at 991. Juvenile Rule 2(Y) provides the definition of “party” to be used throughout the Ohio Rules of Juvenile Procedure:

(Y) “Party” means a child who is the subject of a juvenile court proceeding, the child’s spouse, if any, the child’s parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child’s custodian, guardian, or guardian ad litem, the state and any other person specifically designated by the court.

OHIO JUV. R. 2(Y) (2010).

¹³⁶ *Baby Boy Doe*, 880 N.E.2d at 991. Article IV, Section 5(B) details the powers of the Ohio Supreme Court. It provides that “[t]he Supreme Court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right . . . [A]ll laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.” Ohio Const. art. IV, § 5(B).

¹³⁷ *Baby Boy Doe*, 880 N.E.2d at 991; *see also* *Krause v. State*, 285 N.E.2d 736, 744 (Ohio 1972) (explaining that substantive law, on the other hand, “creates, defines and regulates the rights of the parties”); *Alexander v. Buckeye Pipeline Co.*, 359 N.E.2d 702, 703 (Ohio 1977) (discussing another procedural rule, Civ. R. 54(B)).

¹³⁸ *Baby Boy Doe*, 880 N.E.2d at 991.

¹³⁹ *Id.*

¹⁴⁰ While no Ohio court has specifically dealt with the issues at hand, the Ohio Court of Appeals heard another constitutional challenge to the state safe haven statute. *Ohio v. Smith*, No. 04AP-1321, 2005 WL 1394779, at *1 (Ohio Ct. App. June 14, 2005). But the court found that the public citizen who brought the challenge against the Ohio Department of Job and Family Services did not have the requisite standing because he did not have a personal “stake in the outcome of the controversy.” *Id.* at *1, *3. The appellant claimed that while he was not

in Cuyahoga County alone.¹⁴¹ Therefore, it seems as though the safe haven statute, at least in Cuyahoga County, operated unconstitutionally for the past three years. According to Magistrate Patricia Yeomans Salvador, any case filed with the Honorable Judge Peter M. Sikora of the Juvenile Division of the Cuyahoga County Common Pleas Court—who ruled the anonymity provision of the Ohio safe haven statute unconstitutional—must be amended and filed as a neglected or abused baby under section 2151.353 of the Ohio Revised Code.¹⁴² Magistrate Salvador further articulated that the practical effect of filing under section 2151.35, as opposed to the safe haven statute, is very similar to cases where the court cannot ascertain the mother’s identity; but in instances where the mother gave birth in a hospital and left a record of her name, she would be served with a notice of the hearing regarding her deserted child.¹⁴³

The majority of baby abandonment cases in Cuyahoga County Juvenile Court involve mothers delivering their baby at a hospital with no intention of taking the baby home.¹⁴⁴ This may mean that a majority of women in Cuyahoga County who are legally in compliance with the statute will potentially be barred from seeking the protection of one of its most important provisions—anonymity—and will ultimately have their identities processed through Ohio’s judicial system. While *In re Baby Boy Doe* does not immediately impact the status of the safe haven law statewide, it does represent a future danger to the statute’s long-term viability. This same reasoning could easily be employed by the Ohio Supreme Court to hold that Ohio’s safe haven statute is unconstitutional statewide.

personally injured by the legislation at issue, the Deserted Child Act “has harmed, and will continue to harm, non-relinquishing parents and children by denying them their constitutional rights to notice in proceedings affecting their parental rights.” *Id.* at *2. He argued that he was therefore permitted to bring his claim not because of a personal stake in the outcome, but based on the “public action” or “public right” doctrine. *Id.*

¹⁴¹ E-mail from James Farrell, Sys. Analyst, Cuyahoga Cnty. C.P. Ct., Juv. Div., to Mag. Patricia Yeomans Salvador and forwarded to author (Feb. 7, 2011) (on file with author). Two cases were filed under Ohio Revised Code section 2151.3516 in 2003; one was filed in 2004, there were no filings in 2005, and another case was filed in 2006. *Id.* In 2007, two more cases were filed, and one was filed each year in both 2008 and 2009. *Id.*

¹⁴² Interview with Patricia Yeomans Salvador, Magistrate and Referee in the Cuyahoga Cnty. C.P. Ct., Juv. Div. and Professor of Law, Cleveland-Marshall College of Law (Feb. 3, 2011).

¹⁴³ *Id.* Where the safe haven statute was ruled unconstitutional, the case is treated as that of an abused or neglected child under the language of section 2151.353 of the Ohio Revised Code. It reads in pertinent part:

- (A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:
- (1) Place the child in protective supervision;
 - (2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court . . .

OHIO REV. CODE ANN. § 2151.353 (2010).

¹⁴⁴ Interview with Patricia Yeomans Salvador, *supra* note 142.

VI. IMPORTANCE OF THE ANONYMITY REQUIREMENT

While the importance of anonymity has been recognized since the inception of safe haven laws throughout the country, states continue to value the vital role that anonymity plays in protecting the lives of infants. Allowing women to remain anonymous creates an incentive great enough for guilty and panicked women to choose safely relinquishing their babies over continuing to hide the pregnancy and birth.¹⁴⁵ Without the guarantee of anonymity, many new mothers may feel too frightened to bring their baby to a safe haven, thereby increasing the number of infant deaths each year.¹⁴⁶ These women are more likely to choose a safe option if they no longer face social stigmatization within in their families and communities.¹⁴⁷

A. *The Myth of the Maternal Instinct*

While infant death at the hands of mothers is a shocking societal phenomenon, it is most certainly not new. For example, during a time of war and poverty in the 1930s, nearly thirty-eight percent of infants born in a three-year period in one Bolivian village were killed by their mothers.¹⁴⁸ The fact that safe haven laws generally continue to be directed at young mothers may be limited to the fact that when women commit murder, the victim is most likely to be their own infant child.¹⁴⁹ According to one researcher, the traditional concept of the “maternal instinct” that instantly makes any woman bond with her baby, regardless of her thoughts on her pregnancy, does not exist.¹⁵⁰ This means that the desire to nurture her infant does not come naturally; rather, it comes from preparation and the ambition to be a caring and nurturing mother.¹⁵¹ That is, “perhaps it comforts us to believe that anyone who violates the sacred mother-child bond is simply crazy; it would be unimaginable if these mothers were making rational criminal choices.”¹⁵² Illness does not seem to provide the full answer, however, as women seem to

¹⁴⁵ See Sanger, *supra* note 1.

¹⁴⁶ See *id.*

¹⁴⁷ *Id.* at 771.

¹⁴⁸ Susan Caba, *She Loves Me, She Loves Me Not*, SALON, Dec. 9, 1999, <http://www.salon.com/mwt/feature/1999/12/09/maternal>. While the Bolivian village provides a modern example of almost systematic infanticide and neonaticide, this is by no means the only example. As Michelle Oberman points out:

There is every reason to believe that infanticide is as old as human society itself and that no culture has been immune to it. Infanticide was legal throughout the ancient civilizations of Mesopotamia, Greece, and Rome, and was justified by reasons ranging from population control to eugenics to illegitimacy. Although Constantine declared infanticide a crime in 318 A.D., all indications are that throughout much of the history of Western civilization, infanticide remained commonplace.

Oberman, *supra* note 13, at 6.

¹⁴⁹ Caba, *supra* note 148.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Dahlia Lithwick, *When Parents Kill*, SLATE, Mar. 12, 2002, <http://www.slate.com/form/atdynamics/CleanPrintProxy.aspx?129677>.

disproportionately react violently toward their own children.¹⁵³ While it may be hard to accept that a mother's love is not always unconditional, society can no longer continue to rely on a mythical force or bond of love that a mother is supposed to have for her child to prevent infant deaths. By providing the opportunity for women to anonymously leave their child in a designated safe haven, mothers are able to be relieved of any guilt they may feel for not conforming to societal norms and conventions of motherhood.

B. Retaining the Protections Afforded Under Roe v. Wade

Allowing women to remain anonymous also supports the significant right that women have regarding their fertility. By establishing a framework for a constitutionally protected right to privacy both within the home and within oneself, the United States Supreme Court provided women with the right to reproductive privacy.¹⁵⁴ In the landmark decision of *Roe v. Wade*, the Supreme Court held that the Fourteenth Amendment guaranteed a "zone of privacy" which included the right for a woman to choose to terminate her own pregnancy.¹⁵⁵ The Court reasoned that while the state has a compelling interest in protecting the life of the unborn fetus, which increases as birth approaches, there is also "an important and legitimate interest in preserving and protecting the health of the pregnant woman."¹⁵⁶ Therefore, the Court determined for the first time that a woman's right to assert control over her body, including choosing an abortion, was protected under the Constitution.¹⁵⁷ Much like *Roe* protects the right to have an abortion, a woman's right to safely surrender her baby to medical experts, without another individual interfering with her decision, is crucial in a woman maintaining her due process right to privacy.

1. A Recent Trend Toward Restriction

There is no doubt that *Roe* began a new era of choice, but it also represented a shift toward greater gender equality and respect for women dealing with unintentional pregnancies.¹⁵⁸ According to Sarah Weddington, the lawyer who

¹⁵³ *Id.* Additionally, the popularly held view that women who commit infanticide and neoinfanticide because they are crazy and delusional does not explain why we view men who do the same thing as simply criminal. *Id.* Lithwick argues that this anomaly may be due to the fact that "[w]e still view children as the mother's property. Since destroying one's own property is considered crazy while destroying someone else's property is criminal, women who murder their own children are sent to hospitals, whereas their husbands are criminals, who go to jail or the electric chair." *Id.*

¹⁵⁴ Gina K. Robeen, *Laws Like White Elephants: Sterilization of the Right to Privacy*, 46 SMU L. REV. 57, 65 (1992).

¹⁵⁵ *Roe v. Wade*, 410 U.S. 113, 153 (1973).

¹⁵⁶ *Id.* at 162.

¹⁵⁷ Robeen, *supra* note 154, at 65. In addition to *Roe v. Wade*, a "women's right to life, to control over their own bodies, and to freedom and privacy in matters relating to sex and procreation" is protected. *Id.* (citing *Doe v. Scott*, 321 F.Supp. 1385 (N.D. Ill. 1971)).

¹⁵⁸ Jenny Hontz, *25 Years Later: The Impact of Roe v. Wade*, HUM. RTS. 8 (1998) ("[Roe has] allowed women to have healthier children, and it's given women the practical

presented the *Roe* oral argument before the Supreme Court, “[n]othing determines the course of women’s lives more than the spacing and timing of her children.”¹⁵⁹ Much like the decision to terminate a pregnancy, the decision not to raise a child is highly personal and private.¹⁶⁰ Retaining the right to anonymity for mothers taking advantage of safe haven statutes is just as essential as protecting the right to choose abortion that women were granted under the Court’s expansive “zone of privacy.”¹⁶¹ Additionally, the importance of maintaining options¹⁶² for women facing the hardships of an unwanted or unexpected pregnancy only seems greater given the slow, yet steady measures the Court has taken since *Roe* to whittle away at the broad right granted to women.¹⁶³ Unfortunately, extreme measures taken by pro-life activists seem to be on the rise, especially given the political scene after the November 2010 elections established a Republican majority in the House of Representatives.¹⁶⁴ According to House Minority Leader Nancy Pelosi, the situation for women regarding access to abortions is not only very real, but very dangerous as well.¹⁶⁵ While there is reason to be hopeful that some of the more extreme¹⁶⁶

wherewithal to pursue their dreams and aspirations without fear of pregnancy shattering those dreams. By its very philosophy, *Roe* underscores the equality of women.”)

¹⁵⁹ *Id.*

¹⁶⁰ This can be inferred from various U.S. Supreme Court holdings: *Roe*, 410 U.S. at 153 (“This right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (concluding that a law prohibiting the use of contraceptives was unconstitutional and violated the right to marital privacy).

¹⁶¹ *Roe*, 410 U.S. at 152.

¹⁶² See generally Ayres, *supra* note 77, at 234-35. According to legal scholar Susan Ayres, safe haven laws offer an important option to women faced with an unwanted pregnancy. *Id.* Ayres argues that many other legal scholars only analyzed the effectiveness of safe havens in relation to a “culture of life,” forcing critics to say they the laws are really just a tool of the pro-life movement. *Id.* But Ayres focuses on the concept of “*kairos*,” which she describes as “right-timing” when it comes to safe haven laws. *Id.* According to Ayres, “responses to unwanted pregnancy are *kairic*, in the sense that safe havens should not be viewed as the *only* solution to the problem of concealed pregnancies and dumpster babies, but as one possible solution.” *Id.*

¹⁶³ Hontz, *supra* note 158, at 10. For example, since *Planned Parenthood of Southern Pennsylvania v. Casey*, 112 S.Ct. 2791 (1992), the Court has upheld additional restrictions on abortions such as mandatory waiting periods and parental consent for minors. *Id.*

¹⁶⁴ Amanda Terkel, *Nancy Pelosi: Women’s Rights Face Greatest Threat “In Our Lifetime”*, HUFFINGTON POST (Feb. 10, 2011), http://www.huffingtonpost.com/2011/02/10/nancy-pelosi-womens-rights-threatened_n_821536.html.

¹⁶⁵ *Id.* Representative Pelosi is quoted as saying that some of the legislation currently being proposed by anti-choice lawmakers is “[d]angerous to women’s health, disrespects the judgment of American women . . . and its the most comprehensive and radical assault on women’s health in our lifetime. It’s that bad.” *Id.*

¹⁶⁶ *Id.* For example, House Bill 3, entitled “No Taxpayer Funding For Abortion Act,” has been introduced by Republican Representative Chris Smith. *Id.* The bill seeks to “deny any

legislation will not be passed, safe haven laws (and their anonymity provisions) may assume an even more vital role in women's health care. If access continues to be limited, more women who do not want to face public scrutiny or familial shame that accompanies traditional birth and adoption may be forced to relinquish their child under the safe haven law. Thus, anonymity remains demonstrably necessary as a means of safeguarding what could become the last remaining legal protection for frightened pregnant women.

C. Situational Circumstances

A woman may choose to surrender her child for a number of different reasons, many of which she has no control over, including a breakdown of her own family structure or the absence of her unborn child's father.¹⁶⁷ Infant abandonment is a much larger social problem that goes beyond the scope of a mother leaving her child in a safe location to be put up for adoption. Therefore, women should not be burdened with the entirety of the blame for choosing to take advantage of a law crafted to protect the child and be forced to identify themselves to safe haven authorities. For example, legal scholar Michelle Oberman argues that a:

profound commonality linking contemporary cases emerges when one focuses on the perpetrator's life circumstances at the time of her act. At the most basic level, maternal filicide is a crime committed by mothers,

tax credits and benefits to employers who offer health insurance to their staff if that coverage includes abortion access"—a measure that seems unnecessary given the fact that federal money is already barred from being used to pay for abortions. *Id.* H.R. 3, which was introduced on January 20, 2011, reads in pertinent part:

Sec. 301. Prohibition on Funding for Abortions

No funds authorized or appropriated by Federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by Federal law, shall be expended for any abortion.

Sec. 302. Prohibition on Funding for Health Benefit Plans that Cover Abortion.

None of the funds authorized or appropriated by Federal law, and none of the funds in any trust fund to which funds are authorized or appropriated by Federal law, shall be expended for health benefits coverage that includes coverage of abortion.

Sec. 303. Prohibition on Tax Benefits Relating to Abortion

For taxable years beginning after the date of the enactment of this section—

(1) no credit shall be allowed under the internal revenue laws with respect to amounts paid or incurred for an abortion or with respect to amounts paid or incurred for a health benefits plan (including premium assistance) that includes coverage of abortion,

(2) for purposes of determining any deduction for expenses paid for medical care of the taxpayer or the taxpayer's spouse or dependents, amounts paid or incurred for an abortion or for a health benefits plan that includes coverage of abortion shall not be taken into account, and

(3) in the case of any tax-preferred trust or account the purpose of which is to pay medical expenses of the account beneficiary, any amount paid or distributed from such an account for an abortion shall be included in the gross income of such beneficiary.

No Taxpayer Funding For Abortion Act, H.R. 3, 112th Cong. (1st Sess. 2011), available at <http://www.govtrack.us/congress/billtext.xpd?bill=h112-3>.

¹⁶⁷ Sanger, *supra* note 1, at 797.

against their own children, and therefore is, by definition, a reflection on the individual mother's experience of the conditions under which she was expected to raise her child.¹⁶⁸

Therefore, it is the responsibility of state and local legislatures to step in and help create a solution for women who may be struggling "under the circumstances dictated by their particular position in place and time."¹⁶⁹

D. Legislative Intent for Anonymity

Finally, the legislative intent behind Ohio's safe haven law is clear: provide mothers anonymity in exchange for the safe hand-over of infants that they are not able to or willing to raise and support.¹⁷⁰ Not only does the court in *In re Baby Doe* clearly identify this intent, but the original analysis of House Bill 660—which eventually led to the 2001 statute—outlines the same intention.¹⁷¹ The General Assembly clearly stated that the statute "provides that the parent has the absolute right to remain anonymous."¹⁷² This indicates that the legislature recognized that this was the best solution to solving the societal issue of infant abandonment throughout the state. But the state legislature was also well aware of the expansive privilege that this absolute right granted. Therefore, it indicated that a mother forfeits this right if a child is brought to the safe haven showing signs of abuse or neglect.¹⁷³ This seems to illustrate that, had the general assembly not truly desired for a general and absolute anonymity provision, they would not have included this exception. Other states, like California, have recognized that while anonymity is provided for each mother with certainty, there is also a valid reason to make a good faith effort to obtain the mother's medical history.¹⁷⁴ Therefore, while California still allows for mothers to

¹⁶⁸ Michelle Oberman, *Mothers Who Kill: Cross-Cultural Patterns in and Perspectives on Contemporary Maternal Filicide*, 26 INT'L J.L. & PSYCHIATRY 493, 493 (2003).

¹⁶⁹ *Id.* at 494, 499-500.

¹⁷⁰ OHIO REV. CODE ANN. § 2151.3524 (2010).

¹⁷¹ *Baby Boy Doe*, 880 N.E.2d at 991 ("the underlying purpose of the deserted-child statute . . . is to protect the anonymity of the parents who desert a child and to give them immunity from criminal prosecution."); *Fiscal Note & Local Impact Statement*, 123rd General Assembly of Ohio, <http://www.lsc.state.oh.us/fiscal/fiscalnotes/123ga/hb0660hr.htm> (last visited Feb. 12, 2011) ("The bill allows for mothers to give up their newborn babies 72 hours or younger to police, paramedics, or emergency room employees in an anonymous manner . . . Any parent who drops off a newborn at a designated location does not commit a criminal offense and may not be subject to criminal prosecution for the act.").

¹⁷² *Id.*; see also OHIO REV. CODE ANN. § 2151.3524 (2010).

¹⁷³ OHIO REV. CODE ANN. § 2151.3524 (2010).

¹⁷⁴ The California safe haven statute details the good faith effort to be made by individuals receiving infants under the safe haven law:

(2) Provides, or makes a good faith effort to provide, to the parent or other individual surrendering the child a copy of a unique, coded, confidential ankle bracelet identification in order to facilitate reclaiming the child pursuant to subdivision (f). However, possession of the ankle bracelet identification, in and of itself, does not establish parentage or a right to custody of the child.

choose absolute anonymity in exchange for the safe hand-over of infants, the legislature indicated that exceptions can be made for information regarding the mother and the baby's health.¹⁷⁵ Additionally, states that already provide for anonymous abandonments under safe haven laws do not treat the situation lightly.¹⁷⁶ That is, it is not seen as simply a form of temporary foster care for mothers who do not "feel like" raising their child for the time being; rather, it requires the mother to relinquish all parental rights and responsibilities permanently.¹⁷⁷

VII. CRITICISM SURROUNDING SAFE HAVEN LAWS

A. Paternal Rights

While the benefits of safe haven laws, especially the anonymity requirement, seem clear, there are a number of valid criticisms presented by legal scholars and advocates of child welfare. For example, there is a widely held criticism attacking safe haven laws from the vantage point of paternal rights, arguing that allowing a woman to abandon her child without the father's consent violates his due process and his claim to parental rights.¹⁷⁸ Constitutional arguments regarding the rights of fathers are closely akin to the anonymity provisions found in most state's safe haven laws.¹⁷⁹ That is, by affording women the opportunity to take advantage of a safe haven statute without anyone's knowledge, fathers do not have the opportunity to contest the relinquishment or offer to provide custody in place of the mother.¹⁸⁰ One

(3) Provides, or makes a good faith effort to provide, to the parent or other individual surrendering the child a medical information questionnaire, which may be declined, voluntarily filled out and returned at the time the child is surrendered, or later filled out and mailed in the envelope provided for this purpose. This medical information questionnaire shall not require identifying information about the child or the parent or individual surrendering the child, other than the identification code provided in the ankle bracelet placed on the child. Every questionnaire provided pursuant to this section shall begin with the following notice in no less than 12-point type:

Notice: The baby you have brought in today may have serious medical needs in the future that we don't know about today. Some illnesses, including cancer are best treated when we know about family medical histories. In addition, sometimes relatives are needed for life-saving treatments. To make sure this baby will have a healthy future, your assistance in completing this questionnaire fully is essential. Thank you.

CAL. HEALTH & SAFETY CODE § 1255.7 (2010) (emphasis omitted).

¹⁷⁵ According to the State of California's report to the legislature regarding the Safely Surrendered Baby Law, of the fifty-two infants that were surrendered during the statutes first four years, only three medical questionnaires were filled out by relinquishing parents. *Safely Surrendered Baby Laws (SSB): Report to the Legislature*, 2004-2005 Sess. (Cal. 2005), available at <http://www.babysafe.ca.gov/res/pdf/FinalSSBReporttoLeg4.pdf>.

¹⁷⁶ Sanger, *supra* note 1, at 766.

¹⁷⁷ *Id.*

¹⁷⁸ Jeffrey A. Parness, *Lost Paternity in the Culture of Motherhood: A Different View of Safe Haven*, 42 VAL. U. L. REV. 81, 84-85 (2007).

¹⁷⁹ Dayna R. Cooper, *Fathers Are Parents Too: Challenging Safe Haven Laws With Procedural Due Process*, 31 HOFSTRA L. REV. 877, 882-83, 885 (2003).

¹⁸⁰ *Id.*

scholar argues that the entire validity of the scheme of safe haven laws turns on the “father’s rights regarding notice of termination of parental rights proceedings . . . [t]he Fourteenth Amendment encompasses a parent’s liberty interest in the custody, care, and control of their children.”¹⁸¹

Currently, only twelve states explicitly provide a procedure in the safe haven statute to protect a father’s right.¹⁸² On the other hand, thirty-three states do not offer any guidance on paternal notification or do not require that the father be notified.¹⁸³ Most commonly, however, statutes are simply silent on the matter.¹⁸⁴ Of states that offer provisions to notify fathers, there are two different types of procedures.¹⁸⁵ First, some states require notice through publication or media; that is, the abandoned baby must be reported in a local newspaper or on the local television station.¹⁸⁶ Second, some legislatures may require a search of the putative father registry when a baby is abandoned under a safe haven statute.¹⁸⁷ There is also the fear that even when paternal rights are established within the statutory framework, state welfare agencies may have little incentive to do so, given that women are encouraged to anonymously relinquish their children.¹⁸⁸ Despite the concerns regarding a father’s paternity right, the consequences of safe haven statutes that do not seek to limit participation to mothers could be even more disastrous.¹⁸⁹ Therefore, it seems appropriate to argue that while fathers may have a stake in cases of infant abandonment, the incentive to provide anonymity far outweighs this if it can help prevent the cases of infanticide and neonaticide each year.

B. Hindrance to an Open Adoption Process

Many proponents of safe haven laws recognize that these laws not only save infant lives, but they also make more infants available for adoption; but not all proponents agree.¹⁹⁰ Given the right of women in a majority of states to remain anonymous and not provide any identifying information about herself or her infant, some adoption advocates argue that it encouraged “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.”¹⁹¹ As more adoption

¹⁸¹ *Id.* at 885.

¹⁸² Bolling, *supra* note 7.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* Putative father registries allow heterosexual men who are at risk for fathering a child to register with the state to safeguard their paternity rights. Parness, *supra* note 178, at 92. But the system to ensure paternal rights seems flawed in that women are never required to notify the birth father and men who do come forward asserting their rights have no recourse should the mother lie to them regarding the paternity of their child. *Id.*

¹⁸⁸ Dailard, *supra* note 30, at 2.

¹⁸⁹ Donnelly, *supra* note 40, at 785.

¹⁹⁰ Dailard, *supra* note 30, at 2.

¹⁹¹ *Id.*

agencies are encouraging both adoptive parents and children to share birth information, safe haven laws are seen as a setback to the open process currently advocated.¹⁹² Not only does anonymity complicate the practicalities of open adoptions, according to the executive director of Voice for Adoption, a national adoption advocacy organization, it has a harmful emotional and mental affect on adopted children.¹⁹³

VIII. PROPOSED AMENDMENT TO JUVENILE RULE 1(C)

Potential conflicts arising from the safe haven statutes undoubtedly differ depending on each state's specific procedural and constitutional requirements. This has prompted many child welfare experts to note that states' safe haven laws are often passed without conducting a thorough analysis of the existing legal protections afforded to women and children, inevitably leading to challenges through the courts.¹⁹⁴ The anonymity requirement in particular has traditionally created difficulties, as there is the potential that the due process rights of the mothers could be violated.¹⁹⁵ Therefore, for the abandoned child to legally be put up for adoption, courts are often required to hold hearings explicitly terminating these rights in which the mother and or father are named parties.¹⁹⁶ Due to the unique nature of safe haven statutes and juvenile rules in general, however, reform has, and should continue to be, tailored to meet the individual needs of each state.¹⁹⁷

After the ruling in *In re Baby Boy Doe*, for Ohio's safe haven statute to retain maternal anonymity, Juvenile Rule 1(C) needs to be amended. This rule, working in conjunction with Rules 15(A) and 2(Y), provides for various juvenile procedural rule exceptions.¹⁹⁸ The rule, in full, states:

1(C) Exceptions: These rules shall not apply to procedure (1) Upon appeal to review any judgment, order, or ruling; (2) Upon the trial of criminal actions; (3) Upon the trial of actions for divorce, annulment, legal separation, and related proceedings; (4) In proceedings to determine parent-child relationships, provided, however that appointment of counsel shall be in accordance with Rule 4(A) of the Rules of Juvenile Procedure; (5) In the commitment of the mentally ill and mentally retarded; (6) In proceedings under section 2151.85 of the Revised Code to the extent that there is a conflict between these rules and section 2151.85 of the Revised Code.¹⁹⁹

¹⁹² *Id.*

¹⁹³ *Id.* (arguing that children who are able to obtain information about their birth mother through an open adoption process "fair better mentally if they have a sense of personal history").

¹⁹⁴ Williams-Mbengue, *supra* note 37.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *See id.*

¹⁹⁸ OHIO JUV. R. 1(C) (2010).

¹⁹⁹ OHIO JUV. R. 1(C) (2010).

This Note calls on the Ohio State Supreme Court²⁰⁰ to amend Rule 1(C) by adding an additional provision to the already listed exceptions. It calls for an insertion of the phrase “(5) In proceedings in accordance with sections 2151.3515 through 2551.3530, where it has been determined that the right to notification has been waived by the parent.” This amendment would allow the safe haven statute to be uniformly applied throughout the state by ensuring its constitutionality in Cuyahoga County. It would also protect the statute from future litigation that may arise regarding the constitutionality of the safe haven’s anonymity provision; an amendment would firmly establish an exception to the notice requirement when filing under the safe haven statute. The original section 6, which is now section 7, already provides for an exception when there is a conflict between a juvenile rule and another state statute requiring the summoning of a child’s parents.²⁰¹ Therefore, this proposed amendment would not disrupt the rule’s original meaning and intent, as it simply allows for the conflict between the procedural requirement and the anonymity requirement to be explicitly resolved through an exception.

²⁰⁰ Under Article IV, Section 5(B) of the Ohio State Constitution, the Supreme Court has the power to propose amendments the governing rules of the state. It provides that:

(B) The Supreme Court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the General Assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the General Assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the Supreme Court. The Supreme Court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

Ohio Const. art. IV, § 5(B), *available at* <http://www.legislature.state.oh.us/constitution.cfm?Part=4&ExpandSections=Yes>. The Supreme Court then files the final language of the proposed amendment to the Ohio General Assembly for passage. *See, e.g., Supreme Court Submits “Open Discovery,” Other Amendment Rules of Practice and Procedure*, SUPREME COURT OF OHIO & OHIO JUDICIAL SYSTEM (Apr. 28, 2010), http://www.supremecourt.ohio.gov/PIO/news/2010/ruleAmend_042810.asp.

²⁰¹ OHIO JUV. R 1(C) (2010). According to the Editor’s Comment to Rule 1(C), it is considered:

both a rule of exclusion and inclusion. The rule states the general exclusions from applicability but also by stating “When any statute provides for procedure by general or specific reference to the statutes governing procedure in juvenile court actions such procedure shall be in accordance with these rules” it becomes a rule of inclusion. The Juvenile Rules apply not only because of this provision but also because Ohio Constitutional Article IV, § 5(B) states “all laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Id.

While amending the state's juvenile rules to allow for anonymity to remain a part of Ohio's safe haven statute may seem like a drastic measure, many states already provided for specific exceptions similar to the statute's proposal.²⁰² Twenty states already addressed the problem that arises between anonymity requirements and parental notification.²⁰³ State statutes generally provide for one of two different methods to avoid this conflict.²⁰⁴ For one, the state can consider the act of voluntarily relinquishing the infant to be all the "notice" that is required for a termination of rights.²⁰⁵ That is, in states like Florida, it is presumed that when mothers leave their infant at a designated safe haven they are consenting to terminating all parental rights to the child.²⁰⁶ On the other hand, some states retain the anonymity element by allowing for a very broad interpretation of the notice requirement under its procedural rules.²⁰⁷ For example, in South Carolina, Social Services are permitted to merely publish notification of an abandoned infant in local newspapers and broadcast on local television stations.²⁰⁸ Under the proposed amendment to Rule 1(C), Ohio's system would be more reflective of Florida's current law, as it would presume an intention to relinquish the parental rights and do away with the notice requirement so long as the child was relinquished pursuant to any statutory requirements.

IX. CONCLUSION

In conclusion, it seems clear that Ohio needs to act with urgency to protect the viability of its safe haven statute. As societal pressures on women continue to evolve, and constitutional protections regarding a woman's freedom of choice hang precariously in the balance, safe havens may come to have an even more crucial role

²⁰² Carrubba, *supra* note 31, at 71.

²⁰³ Williams-Mbengue, *supra* note 37.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.* The Florida Statute § 383.50, Treatment of Surrendered Newborn Infants, states that "[t]here is a presumption that the parent who leaves the newborn infant in accordance with this section intended to leave the newborn infant and consented to termination of parental rights." FLA. STAT. ANN § 383.50 (2010).

²⁰⁷ *See, e.g., id.*

²⁰⁸ *Id.* The South Carolina Statute provides that:

Within forty-eight hours after taking legal custody of the infant, the department shall publish notice, in a newspaper of general circulation in the area where the safe haven that initially took the infant is located, and send a news release to broadcast and print media in the area. The notice and the news release must state the circumstances under which the infant was left at the safe haven, a description of the infant, and the date, time, and place of the permanency planning hearing provided for in subsection (E)(2). The notice and the news release must also state that any person wishing to assert parental rights in regard to the infant must do so at the hearing. If the person leaving the infant identified anyone as being a parent of the infant, the notice must be sent by certified mail to the last known address of the person identified as a parent at least two weeks prior to the hearing.

S.C. CODE ANN. § 63-7-40 (2010).

in protecting the lives of newborn infants. Additionally, once society recognizes the unfortunate reality that women can, and often times do, pose a threat to their own offspring, more directed measures, like safe haven legislation, can be used in an attempt to solve the problem.²⁰⁹ State leaders must continue to educate young girls and their families on the dangers of a concealed birth, informing them that safe havens are available to help. Without the protections of guaranteed anonymity and immunity, many young girls may fear the possible shame and ridicule too much to deal with their unfortunate reality and the consequences of this denial.²¹⁰

The success stemming from safe havens since the late 1990s requires a continued dedication to the proven elements of anonymity and immunity that make up the laws today and the security they provide to frightened mothers.²¹¹ As safe haven statutes continue to gain prevalence throughout the country, state courts nationwide will likely see an increase in challenges against these statutes and an increase in mothers prosecuted for trying to protect their child.²¹² The hope is that the increased statutory protection of anonymity that the amended Rule 1(C) provides women, will allow Ohio to continually provide for the safe and lawful abandonment of children; even one additional life saved makes the entire regulatory scheme worthwhile.²¹³

²⁰⁹ See, e.g., Oberman, *supra* note 13.

²¹⁰ See, e.g., *id.*

²¹¹ Sanger, *supra* note 1, at 755 (noting that “the central idea behind the legislation is that young women will be discouraged from killing their newborns if only they are offered the right incentives . . . [t]he two incentives thought most likely to succeed are anonymity and immunity from prosecution”).

²¹² Bolling, *supra* note 7. It can be argued that:

State courts should expect to see an increase in cases in which mothers will have tried, or at least will have claimed 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’ failure to adequately advertise information regarding the new laws. The failure to properly inform women of the new laws may lead women thinking that they can abandon infants in locations not authorized by the law, which may jeopardize the infant’s health.

Id.

²¹³ Debbe Magnusen, *From Dumpster to Delivery Room: Does Legalizing Baby Abandonment Really Solve the Problem?*, 22 J. OF JUV. L. 1, 28 (2001-2002).