

## **SAFE HAVENS FOR ABANDONED BABIES** **by Patrick Affholter, Legislative Analyst**

---

Shortly after dawn on May 30, 2000, a maintenance worker at a Lansing car wash found a two-day old baby who had been wrapped in towels, placed in a cardboard box, and abandoned in one of the car wash bays. The baby's mother was later identified as an 18-year-old honor student and scholastic athlete who was approaching her high school graduation. The young woman delivered the baby, alone, at her family's home, and secretly cared for the child for two days. Three weeks after leaving the baby at the car wash, the woman was charged with child abandonment, a felony punishable by up to 10 years' imprisonment, but was allowed to plead guilty to the misdemeanor of fourth-degree child abuse.

Similar stories of babies abandoned in such places as dumpsters, parking lots, ditches, or public restrooms are reported from time to time in newspapers across the country. Indeed, according to the National Conference of State Legislatures (NCSL), 65 babies were abandoned in public places in 1991 and about 22,000 were left in hospitals; in 1998, those figures had risen to 105 public abandonments and 31,000 babies left in hospitals. Often, these incidents involve young women or girls who do not know they are pregnant, are in a state of self-denial about their pregnancy, or simply are afraid to tell anyone that they are pregnant. Their psychological state may lead them to act irrationally in deciding what to do for themselves and for their babies.

This infant abandonment phenomenon, which evidently is increasing, has triggered the recent trend of "safe haven" baby abandonment laws that are being considered and approved by state legislatures. With the passage of Public Acts 232 through 235 of 2000 (Senate Bills 1052, 1053, and 1187 and House Bill 5543), this State will join the growing number of jurisdictions that provide for the delivery of newborns to emergency service providers and offer some legal protections to parents who choose to surrender their babies to these safe havens rather than abandon them outright.

### **Texas Pioneers**

While reliable data were not available because official records of baby abandonments are not collected, a review of newspaper reports by a Texas legislator revealed that 13 infants were abandoned in the first 10 months of 1999 in the Houston area. Five of those abandonments reportedly occurred in a two-week period, and three of those five babies died before they were found. This rash of baby abandonments led to the enactment of the nation's first safe haven for abandoned babies law, in Texas in 1999.

That law provides that an emergency medical services (EMS) provider may take possession of a child who is 30 days old or younger, if the child is voluntarily delivered to the provider by the child's parent and the parent does not express an intent to return for the child. The Texas law also specifies that a court may terminate a parent-child relationship if the parent voluntarily surrenders a child to an EMS provider.

An EMS provider to whom a baby is surrendered must "perform any act necessary to protect the physical health or safety of the child". Before the close of the first business day after taking possession of a child, an EMS provider must notify the Texas state department responsible for child protective services. The Texas law also states that it is an affirmative defense to a criminal prosecution that the parent delivered the child to an EMS provider as allowed under that law.

By early 2000, it was apparent that the 1999 Texas abandoned babies law would serve as a model for 25 states that have considered or are considering similar legislation. According to the NCSL, as of June 21, 2000, at least six of those states—Alabama, Colorado, Florida, Louisiana, Minnesota, and West Virginia—in addition to Michigan, had passed baby abandonment legislation.

## **Michigan Legislation: Safe Delivery of Newborns Law**

---

In June 2000, Michigan enacted legislation adding Chapter XII to the Probate Code, which establishes the "Safe Delivery of Newborns Law". In addition, the legislation amended Michigan Penal Code to specify that, except for a situation involving actual or suspected child abuse or neglect, it is an affirmative defense to a child abandonment charge that the child was not more than 72 hours old and was surrendered to an emergency service provider. The legislation also amends the Child Protection Law (CPL) to specify that the surrender of a newborn in compliance with the Safe Delivery law is not reasonable cause to suspect child abuse or neglect and, therefore, is not subject to the CPL's reporting requirements. The Michigan legislation will take effect on January 1, 2001.

**Surrender to an Emergency Service Provider.** The Safe Delivery law governs parental surrender of a "newborn" to an "emergency service provider". ("Newborn" means a child whom a physician reasonably believes to be not more than 72 hours old. "Emergency service provider" means a uniformed or otherwise identified employee or contractor of a fire department, hospital, or police station when that person is inside the premises and on duty.)

If a parent surrenders a newborn to an emergency service provider, the provider immediately must accept the newborn into temporary protective custody. The provider must make a reasonable effort to protect the newborn's physical health and safety; inform the parent that, by surrendering the baby, he or she is releasing the newborn to a child placing agency to be placed for adoption; and inform the parent that he or she has 28 days to petition the family court to regain custody.

The emergency service provider also is required to make a reasonable effort to provide the surrendering parent with written material approved or produced by the Family Independence Agency regarding the child's custody and the parent's rights. Finally, the provider must make a reasonable attempt to secure relevant family or medical information; provide the parent with an informational pamphlet concerning the Safe Delivery law and the affirmative defense; ask the parent to identify himself or herself and the other parent; inform the parent about services provided by child placing agencies; and inform the parent that he or she may sign a release to be used at a parental rights termination hearing.

**Medical Exam & Child Placing Agency Responsibilities.** An emergency service provider that is not a hospital must transfer a surrendered newborn to a hospital. A hospital must accept a surrendered newborn, take him or her into temporary protective custody, and have the baby examined by a physician. The hospital also must notify a child placing agency.

Upon receiving notice from a hospital, a child placing agency must assume the care, control, and temporary protective custody of the baby. If the parent is known and willing, the agency must meet with the parent. The agency also is required to make temporary placement of the baby with a prospective adoptive parent; request law enforcement assistance to determine whether the newborn is a missing child; petition the family court to place the child for adoption; and make a reasonable effort, within 28 days, to identify and locate the parent who did not surrender the baby.

**Custody Action.** If a biological parent of a surrendered newborn wants custody of that child, he or she must file for custody within 28 days after the baby is surrendered. Before holding a custody hearing, the family court is required to determine whether the person filing the custody action is the newborn's biological parent.

In the custody action, the family court must determine custody of the surrendered newborn based on the baby's best interest. The court is to consider, evaluate, and make findings on each of eight specific factors, and any other factor considered relevant by the court to determine the newborn's best interest, with the goal of achieving permanence for the child at the earliest possible date. The factors involve the emotional ties between the child and parent and the parent's capacity to give the baby love, affection, and guidance; the parent's capacity and disposition to provide for the child's basic and material needs; the permanence of the family unit and custodial home; the parent's moral fitness, as well as mental and physical health; whether the parent has a history of domestic violence; and, if the parent is not the one who surrendered the newborn, the opportunity the parent had to provide appropriate care for and custody of the baby before its birth or surrender.

A parent who surrenders a newborn and fails to file a custody action within 28 days is presumed to have knowingly released his or her parental rights. If a custody action is not filed within that period, the child placing agency must petition the family court for termination of parental rights. Voluntary surrender of a newborn and failure to petition for custody within 28 days constitute desertion of a child for purposes of court authority to terminate parental rights.

**Other Provisions.** The Safe Delivery law provides the family court with jurisdiction over a newborn surrendered to an emergency service provider, and permits the family court to appoint a lawyer-guardian ad litem to represent the newborn in legal proceedings.

A hospital and child placing agency, as well as their agents and employees, are immune in a civil action for damages for an act or omission in accepting or transferring a newborn, except for instances of gross negligence or willful or wanton misconduct. Also, to the extent not protected under the governmental immunity law, an employee or contractor of a fire department or police station has the same immunity that is granted to a hospital or child placing agency agent or employee.

### **Future Impact**

The laws that have been enacted and the legislative proposals that are being considered vary in their approach. For example, the locations for surrendering a child generally include emergency service providers, but some laws include only EMS providers, while others, like Michigan's, include police stations and hospitals. In addition, the allowable age of the child ranges from 72 hours to 24 months, and there are variations among provisions dealing with parental anonymity and prosecution, immunity for emergency service providers who receive a child, custody procedures, and children's protective service investigations.

The laws' and proposals' aims, though, are similar. It is hoped that these procedures and protections might significantly reduce the risk of death of abandoned babies, protect parents who may not be prepared to care for a child but want to deliver their newborns to a safe shelter anonymously, and encourage a more thorough examination of the services that are available to women at risk. Questions about safe haven laws' effectiveness have arisen, however. Some cite the lack of a system for gathering medical or other records about surrendered babies and their parents; age limits that appear to be arbitrarily set; the small amount of attention paid to father's rights; and the absence of research into the larger question of why parents abandon babies.

Most of the states' safe haven laws have taken effect very recently or, like Michigan's legislation, have not yet taken effect. The Texas law took effect on September 1, 1999. Since the laws are very new, it is too early to assess their impact on the problem of abandoned babies.