

12155

HOUSE

JUDICIARY

Katie Shows

From: Valerie Connor [redherring007@hotmail.com]
Sent: Monday, January 22, 2007 9:39 AM
To: Katie Shows
Subject: HB25

Dear Katie,

I wanted to thank you for the work you have put into HB 25. Your support on this issue is much appreciated.

I would like to go on record as being in favor of this bill. It has the potential to benefit many communities around Alaska. With increasing sprawl, diminishing open spaces and health problems associated with inactivity, this bill is greatly needed. I can't imagine who would be against this bill. It benefits everyone. I believe many landowners would welcome a trail through their lands if they were relieved of the burden of a possible lawsuit. Please add my name to the list of supporters for HB 25.

Many thanks,

Valerie Connor

963 Cape Douglas Way Homer, AK 99603

235-6371

FREE online classifieds from Windows Live Expo buy and sell with people you know

Katie Shows

From: bill.smith@acsalaska.net
Sent: Monday, January 22, 2007 11:36 PM
To: Katie Shows
Subject: HB 25

Hi Katie,

To Representative Paul Seaton,

This letter is to express my strong support for HB 25.

Trail users all over Alaska will benefit from this important protection for continued and improved trail access.

Please inform your fellow lawmakers that this bill will help a broad spectrum of Alaskans.

It would be especially respectful to traditional Alaskan ways if there could be added the ability of immunized landowners to grant the use of trailways to non-motorized transportation purposes as well as recreational users.

Bill Smith
PO Box 150
Homer AK 99603
235-8932

Katie Shows

From: Elaine Martin [lovemushing@yahoo.com]
Sent: Tuesday, January 23, 2007 9:52 PM
To: Katie Shows
Subject: protection of property owners trails

Hello there Ms. Shows,

My friend Kelly Griffen forwarded your email regarding the issue of keeping trails open to recreational uses. I wanted to also weigh in on this issue and have you forward my email to any relevant parties regarding my whole hearted support for this house bill that would protect the owners of private property who allow recreational use of trails that cross it.

As a musher who depends on the trails to train my team of dogs I urge lawmakers to pass this bill so that future use will be ensured. Every year new developments encroach apoun this traditional haven of dog sled drivers in the Knick and surrounding areas. If steps are not taken to protect our access to trails a historic and treasured sport for which Wasilla is well known will become obsolete, and Alaska will loose a valued part of it's heritage.

I cannot be there to testify tomorrow, but would appreciate it if you would make my email available to whoever can best help this bill pass. Thank you.

Sincerely, Elaine Martin
HC 35 Box 5355-M
Wasilla, AK 99654

Looking for earth-friendly autos?
Browse Top Cars by "Green Rating" at Yahoo! Autos' Green Center.

Katie Shows

From: Rep. Paul Seaton
Sent: Thursday, January 25, 2007 9:39 AM
To: Katie Shows
Subject: FW: HB25

-----Original Message-----

From: seaside [mailto:seaside@alaska.net]
Sent: Wednesday, January 24, 2007 3:05 PM
To: Rep. Paul Seaton
Subject: HB25

Dear Mr. Seaton

I am sorry I was unable to attend the hearing for HB 25 here in Homer today. However, please note that I am 100% in favor of this bill and would like to see everything done to have it pass both the House and the Senate. I am owner of Seaside Farm and as Trustee of the 600 acre Kilcher homestead, and feel it would be in the best interest of any one who has property to not have to be liable for people recreationally crossing or using private land.

Thanks

Mossy Kilcher,

Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 536-2323 FAX 463-5515
www.alaskachamber.com



Regional Office:
601 W. 5th Ave., Suite 700
Anchorage, Alaska 99501
(907) 278-2722 FAX 278-6643

March 20, 2006

Representative Paul Seaton
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801

Representative Seaton,

The Alaska State Chamber of Commerce supports House Bill 415. Private landowners often play a pivotal role in accessing Alaska's outdoors through leasing or granting permission to use their own private property. This role helps small businesses blossom while providing recreational access for Alaska's burgeoning tourist and adventure activities. Without legal protections, new tourist and adventure activities may be limited or threatened altogether. We believe HB 415 will increase business in Alaska by protecting private property owners from the potentiality of far-reaching lawsuits.

Jobs and economic opportunity are limited in many parts of Alaska, HB 415 may have additional benefits by creating opportunities in Alaska's remotest locations. The State Chamber encourages your constructive work with regards to HB 415 and we are hopeful that the bill will move through the legislative process.

Best Regards,

A handwritten signature in black ink, appearing to read 'Wayne A. Stevens'. The signature is written in a cursive style and is positioned above the typed name.

Wayne A. Stevens
President/CEO
Alaska State Chamber of Commerce



NATIONAL RIFLE ASSOCIATION OF AMERICA

INCORPORATED 1871

**11250 WAPLES MILL ROAD
FAIRFAX, VA 22030**

5 May 2006

Brad Kruger
AK NRA Field Representative
PO Box 1098
Homer, AK 99603

Dear Rep Seaton,

I am writing you today in support of HB 415.

House Bill 415 encourages recreational use of private lands by protecting landowners who allow free public access to their lands.

HB 415 stipulates that a private landowner does not owe to a person using his or her property for recreational purposes (1) a duty to keep the land safe for use, (2) a duty to warn of unsafe conditions or (3) a duty to curtail the use of their land for recreational purposes. A landowner receives no protection under the bill if they either charge for access or are guilty of intentional, reckless or grossly negligent conduct.

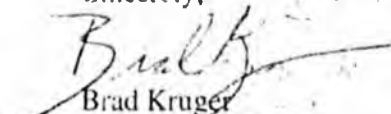
Unfortunately current state law does not directly address recreational use of private lands. Alaska's Recreational Activities statute, AS.09.65.290, passed by the legislature in 2003, mainly addresses commercial operators. Some landowners are protected by Alaska's unimproved land statute, AS.09.65.200, but it is difficult to determine what lands qualify in more developed areas. Lands near any sort of structure, or that have been altered slightly from their natural state, such as a hayfield, may not be covered under that statute.

Parties interested in allowing public access of their lands are unable to assess their risks. The courts likewise have few means of interpreting legislative intent regarding the relationship between landowner and recreational land user. HB 415 eliminates these ambiguities by granting immunity for the recreational use of private lands in the same manner adopted by most other states.

HB 415 promotes recreation throughout Alaska by clarifying the rights and responsibilities of landowners, encouraging them to allow the public free recreational use of their lands.

Thank you for listening.

Sincerely,



Brad Kruger
AK NRA Field Rep

Introduced by:

<http://www.borough.kenai.ak.us/assemblyclerk/Assembly/Resolution>

Introduced by:

Martin

Date:

03/14/06

Action:

Adopted

Vote:

7 Yes, 0 No, 2 Absent

KENAI PENINSULA BOROUGH

RESOLUTION 2006-027

A RESOLUTION SUPPORTING HB 415 RELATING TO LANDOWNERS' IMMUNITY FOR ALLOWING USE OF PRIVATE LAND FOR RECREATIONAL ACTIVITIES

WHEREAS, although Alaska Statute 09.65.200 provides immunity to land owners for certain uses of their unimproved land, Alaska currently does not have a statute that protects landowners from liability for the use of their improved land for private recreational use such as skiing, hiking, snowmachining, and horseback riding; and

WHEREAS, House Bill 415 would enact a statute to delineate the responsibilities of landowners who allow free public access to their lands for recreational uses; and

WHEREAS, the bill states that a private property owner does not owe a person using the land for recreational purposes a duty to keep the land safe for use, a duty to warn of unsafe conditions, a duty to prevent recreational use of the land, and does not assume responsibility for any injury to persons or property; and

WHEREAS, HB 415 also provides that recreational land use allowed by a landowner without charge may not be used to obtain a prescriptive easement or to adversely possess the property; and

WHEREAS, approximately 45 other states have similar statutes; and

WHEREAS, HB 415 will encourage private property owners to allow recreational uses on their lands, possibly leading to the development of more trails and expanding recreational opportunities for all Alaskans;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the Kenai Peninsula Borough Assembly supports and endorses the passage of House Bill 415m as currently written.

SECTION 2. That copies of this resolution shall be forwarded to all members of the Alaska State Legislature and the Honorable Governor Frank Murkowski.

SECTION 3. That this resolution shall become effective immediately upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 14TH DAY OF MARCH, 2006.

**CITY OF HOMER
HOMER, ALASKA**

Mayor/
Parks & Recreation
Commission

RESOLUTION 06-30

A RESOLUTION OF THE CITY COUNCIL OF HOMER ALASKA IN SUPPORT OF HOUSE BILL 415 ENTITLED "AN ACT RELATING TO LANDOWNERS' IMMUNITY FOR ALLOWING USE OF LAND FOR A RECREATIONAL ACTIVITY; AND PROVIDING FOR AN EFFECTIVE DATE".

WHEREAS, Current Alaska law does not address recreational land use directly; and

WHEREAS, Protection is granted only on lands qualifying as "unimproved", however it is difficult to legally define an improvement, which is a great concern to landowners when considering recreational land use; and

WHEREAS, This distinction should not be the benchmark used for protecting landowners when considering recreational land use; and

WHEREAS, HB 415 encourages the recreational use of private lands by protecting land owners that allow free public access to their lands; and

WHEREAS, HB 415 clearly stipulates that a private land owner does not owe a person using their property for recreational purposes,

- A duty to keep the land safe for use
- A duty to warn for unsafe conditions
- A duty to curtail the use of their land for recreational purposes; and

WHEREAS, A landowner receives no protection under HB 415 if they charge for access or are guilty of intentional, reckless or grossly negligent conduct.

NOW, THEREFORE, BE IT RESOLVED That the City Council of Homer Alaska finds that the passage of HB 415 is in the best interest of landowners allowing use of their land for a recreational activity; and

BE IT FURTHER RESOLVED That the Council hereby expresses its strong support for HB 415 and urges that the Legislature and Governor pass it into law.

Coalition for Homer Open Space and Trails
(907) 235-2926

January 18, 2006

Representative Paul Seaton
Capitol Building, Rm. 102
Juneau, AK 99801

Dear Representative Seaton:

This past November the Coalition for Homer Open Space and Trails met with you and your staff to discuss potential changes to the Alaska liability statutes, especially as they affect landowner liability and recreational activities.

We thank you for your time on this effort and would like to express our strong support for continuing the pursuit of alternative language that will help landowners to feel more comfortable with their liability concerns and be more apt to allow access for recreational opportunities across their land.

As it stands, the existing statutes are confusing for landowners to understand their rights and responsibilities and, as such, landowners have become more concerned about their liability. We hope the new legislation will clarify the rights or property owners to allow public use of their land without fear of petty liability actions.

Please contact me at the above listed number if you have any questions or suggestions regarding COHOST and the ideas expressed in this letter. Your support and involvement could make a very positive difference.

Sincerely,

Bruce Heiss
Founding Member



4014 Lake Street, suite 201
Homer, Alaska 99603
907-235-8177 ext. 5
hswcd@xyz.net

Rep. Paul Seaton
Capitol Building, Room 102
Juneau, AK 99801

Dear Representative Seaton:

During our February 9th Board of Supervisors meeting, our board members reviewed House Bill 415, "An Act relating to landowners' immunity for allowing use of land for recreational activity," and expressed strong support for this bill. Our Board unanimously supported your efforts to protect private property owners from frivolous lawsuits that could result from the informal use of trails and property for recreational uses.

Since 2001, the Homer Soil and Water Conservation District has worked with recreational issues on the Kenai Peninsula and have recognized a strong need for greater liability protection for landowners. This bill addresses this need and we are thrilled to see it in the legislature this session.

We would like to highlight that we support this bill in its current state; should any changes be made to the bill's language, we would like to consider any new implications of those changes.

Thanks for your hard work in Juneau, Paul. We appreciate you having your representation and thank you for your work on House Bill 415.

Please let us know if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script, reading "Shirley Schollenberg".

Shirley Schollenberg
District Manager

"To provide education and leadership in the conservation and sustainable use of soil- and water- related resources through cooperative programs that protect, restore and improve our environment."

Ian Laing

From: Dianne Mahaffey [dmahaff@alaska.net]
Sent: Friday, March 10, 2006 9:01 AM
To: Rep. Paul Seaton
Subject: HB415

We want to commend you on your work to introduce and move forward HB415.

As long-time trail users in Alaska, we feel this is a very important piece of legislation.

Thank you for your efforts.

James R. & Dianne D. Mahaffey
9601 Midden Way
Anchorage, AK 99507

Ian Laing

From: Kelley G [kelleyg@gci.net]
Sent: Wednesday, March 22, 2006 5:26 PM
To: Rep. Paul Seaton; Rep. Harry Crawford; Rep. Mary Kapsner
Subject: HB 415A

To Whom it May Concern,

I am a member of the MatSu Sled Dog Council, Inc. a non-profit dedicated to education and preservation of dog mushing in Alaska, as well as a Yukon Quest and Iditarod musher. Trails are a critical part of the equation in the sport of dog mushing, which is the official state sport. Due to the massive amount of development, especially in the MatSu, we are losing trails everyday. Even trails along public right of ways are in danger because of road development. And in light of today's litigious society, many landowners are reluctant to allow historic or new passage across their properties, which further restricts and in many cases, cuts trails into unusable pieces. Please give trail developers a powerful tool to maintain access and create new trails! Landowners should not be held liable for mishaps on a trail on their property! I am a property owner with a self-made trail that makes me nervous about allowing anybody else to use, and as firmly as I believe in trails, I have to consider whether the allowing access is worth the possibility of losing everything I own.

Please pass HB0415A!!

Sincerely,

Kelley Griffin
HC 35 Box 5355 Z
Wasilla, AK 99654
907-373-1126
Voter ID# 07408940
Voter Precinct - Knik/ Goose Bay

From: WEClark [W3CLARK@gci.net]
Sent: Tuesday, March 21, 2006 9:44 AM
To: Emily Stancliff
Subject: Voice support for HB 415

My name is Wayne G. Clark. I live at P.O. Box 164; Gustavus, Alaska 99826 (Spring,summer,fall), and the winters in Douglas, Alaska 99824. Due to the fact I will be on a boat in transit to Gustavus on Weds. March 22, I will not be able to phone in my support for the HB 415 hearing.

As a retired teacher who taught outdoor classes, a wilderness guide, hunter, and hiker, I feel the bill addresses the needed description of liability to landowners enabling them to allow free access to their lands. This I feel, will help to encourage future growth of the state's recreational trails. Many trails around the state are used by scores individuals to see the beauty of our State, and to appreciate its resources. Any steps to enhance their use should be strongly supported. It is the free access to our waters, and great trail systems that bring many back to enjoy our wonderful outdoors here, and seems to be the things many remember when they return from their visits.

Therefore, I ask your support for HB 415.

Sincerely,

wayne g. clark

(907)-364-3226/ (907) 697-2335/ (907) 209-1441(c)

Ian Laing

From: Afish-n-See/Kennedy's [afishnsee@alaska.com]
Sent: Tuesday, March 07, 2006 8:49 AM
To: Rep. Paul Seaton
Cc: cohosts@gmail.com; Molly Brann
Subject: in favor of HB 415

Representative Seaton

I am a cross country skier and land owner who would benefit from the passing of HB 415. The protection to private land owners that this bill would provide would definitely encourage me to participate. I currently go to great measure to prevent trespassing on my land. Also as a skier who travels to Homer occasionally to ski I am aware that is a big issue there. Many fine trails could be expanded without huge cost if this bill passes.

Thank you for your help to pass HB 415,

Kathryn Kennedy
P.O. Box 39011
Ninilchik, Alaska 99639
907-567-331
afishnsee@alaska.com

Ian Laing

From: Carol at Northern Enterprises [kshores@ptialaska.net]

Sent: Thursday, January 26, 2006 8:01 AM

To: Ian Laing

Subject: Land usage-liability

Good Afternoon Mr. Seaton,

I have actively been a member of the Snomad Snowmachine Club here in Homer for 4 years. This organization has been very helpful and offered many benefits to the entire community.

I enjoy both atv and snowma line activity and understandably accept full responsibility for that.

Over the last couple of years I have noted more and more that the issue of liability of public access across private property is a major concern. As a land owner, I do not feel that I should have to bear the responsibility for someone wishing to use my property in order to have fun, I feel that this should be a state issue. I feel that with the states assistance in this matter our trails would be able to stay open to be enjoyed by all.

Thank you,

Carol Grace

Ian Laing

From: Dave and Molly Brann [brann@alaska.net]
Sent: Thursday, January 19, 2006 10:08 AM
To: Rep. Paul Seaton
Cc: Ian Laing
Subject: Re: RE:

Rep. Paul Seaton,

Hi Paul, Just a short note to assure you the Kachemak Nordic Ski Club, 200+ members, are in full support of creating a clear recreational use statute. The existing statute(s) while somewhat beneficial are confusing to the private landowner and don't cover all the situations we would like to see included. A new statute would make it much easier for the private landowner and trails groups to work together to provide recreational opportunities for residents and visitors alike. For over twenty years the biggest problem related to developing and maintaining ski trails in the Homer area has been the landowners fear of being sued. A new statute would be of benefit to the whole state.

I also am sure our local Raven Ridge Homeowners Assoc. would also be very supportive of a new comprehensive statute.

Sincerely,
Dave Brann

Alaska State Legislature

State Capitol, Room 103
Juneau, AK 99802
Phone: 465-2689
Fax: 465-3472
Toll Free (800) 665-2689




345 W. Sterling Highway
Suite 102B
Homer, AK 99603
Phone: 235-2921
Fax: 235-4008

[Representative Paul Seaton@legis.state.ak.us](mailto:Representative_Paul_Seaton@legis.state.ak.us)

REPRESENTATIVE Paul Seaton

District 35

MEMORANDUM

TO: House Judiciary Committee
FROM: Representative Paul Seaton 
DATE: February 1, 2007
RE: Landowner rights and trespassing: HB25

As a preliminary matter, I would like to emphasize that this is not intended to be an official legal opinion or interpretation of how statute would be applied. This memo is an attempt to summarize existing statute and knowledge pertaining to land owner rights when a user trespasses on their land.

The question of trespassing relating to HB 25 was raised in House Judiciary on 1/31/07.

HB 25 does not cover trespassing as it is outside the scope of the bill "Tort immunity for landowners' allowing recreational activity; adverse possession."

There is no statute that directly covers the recreational use of land when the land owner explicitly disallows use. Under Sec. 11.46.350 the requirements for prohibiting trespass on land are quite onerous.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

- (1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or
- (2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances.
- (c) A notice against trespass is given if the notice
 - (1) is printed legibly in English;
 - (2) is at least 144 square inches in size;
 - (3) contains the name and address of the person under whose authority the property is posted and the name and address of the person who is authorized to grant permission to enter the property;
 - (4) is placed at each roadway and at each way of access onto the property that is known to the landowner;
 - (5) in the case of an island, is placed along the perimeter at each cardinal point of the island; and
 - (6) states any specific prohibition that the posting is directed against, such as "no trespassing," "no hunting," "no fishing," "no digging," or similar prohibitions.

If the trespassed land is unimproved, the rights of the landowner are covered existing statute **09.65.200**

Sec. 09.65.200. Tort immunity for personal injuries or death occurring on unimproved land.

- (a) An owner of unimproved land is not liable in tort, except for an act or omission that constitutes gross negligence or reckless or intentional misconduct, for damages for the injury to or death of a person who enters onto or remains on the unimproved portion of land if
 - (1) the injury or death resulted from a natural condition of the unimproved portion of the land or the person entered onto the land for recreation; and
 - (2) the person had no responsibility to compensate the owner for the person's use or occupancy of the land.
- (b) This section does not enhance or diminish rights granted under former 43 U.S.C. 932 (R.S. 2477).
- (c) In this section, "unimproved land" includes land that contains
 - (1) a trail;
 - (2) an abandoned aircraft landing area; or
 - (3) a road built to provide access for natural resource extraction, but which is no longer maintained or used.

Further definition of the legislatures meaning of unimproved (Legislative History – (Sec. 1 ch 138 SLA 1980; am Sec. 2, 3 ch 168 SLA 1988)

“Unimproved land.” – The legislature meant the term “unimproved land” to include the type of “improvements” which would normally be found in the bush and where either unknown to the landowner or were not in active use (i.e., abandoned roads, gravel pits, etc.), and for the immunity provided in this section

to apply to all unimproved land in the state, except primarily improved property which has a portion on unimproved property.”

Although the statute refers to “land”, the legislature intended the term to be read broadly to include natural bodies of water (i.e. lakes and rivers). *University of Alaska v. Shanti*, 835 P.2d 1225 (Alaska 1992).

To determine whether a particular tract of land is entitled to immunity under this section, on a motion for summary judgment, the judge should consider: (1) the proximity of improvements to the accident site; (2) the extent of property maintenance undertaken by the landowner; and (3) whether the character of the property as a whole justifies the conclusion that the landowner is responsible for reasonable risk management of the area.

When the land is improved, the rights of the landowner in existing statute is much less clear. This was the impotence for HB 25, to clarify the rights for both improved and unimproved land for a land owner who allows free recreational use on their property.

The rights of the landowner remain unclear in a trespass situation. Their rights would be interpreted through three different sources, case law, statute, and common law (historical precedence). We did not find specific reference to trespass for recreational use and landowner liability. However, in a memo to Rep. Seaton dated January 3, 2006 discussing the initial drafting request for the legislation, legislative attorney Dennis Baily states, “I did not do extensive research in this area, but in my view, trespassers have few, if any, rights against an owner.”

After discussing the issue with legislative legal, we have come to the conclusion that including trespassing provisions in HB 25 would be very difficult to do and significantly complicate the bill. Furthermore, it would be outside the scope of the bill. I have requested a memo explaining in detail the reasons why including trespassing in HB 25 would be complicated that I will distribute to members as soon as it becomes available.

Alaska State Legislature

State Capitol, Room 103
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[Representative Paul Seaton@legis.state.ak.us](mailto:Representative.Paul.Seaton@legis.state.ak.us)

REPRESENTATIVE Paul Seaton

District 35

MEMORANDUM

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(1) the injury or death resulted from a natural condition of the unimproved portion of the land or the person entered onto the land for recreation; and

(2) the person had no responsibility to compensate the owner for the person's use or occupancy of the land.

(b) This section does not enhance or diminish rights granted under former 43 U.S.C. 932 (R.S. 2477).

(c) In this section, "unimproved land" includes land that contains

(1) a trail;

(2) an abandoned aircraft landing area; or

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[Representative Paul Seaton@legis.state.ak.us](mailto:Representative_Paul_Seaton@legis.state.ak.us)

REPRESENTATIVE Paul Seaton

District 35

MEMORANDUM

TO: House Judiciary Committee
FROM: Representative Paul Seaton
DATE: February 2, 2007
RE: The use of "directly or indirectly" in Alaska Statute

In House Judiciary on February 1, 2007 the concern was raised that the terms "directly or indirectly" are not commonly found in Alaska Statute. In a Folio word search of "Alaska Statutes – Text Only", I came up with 192 hits for the term "directly or indirectly." The following titles are all the places where the statement "directly or indirectly" is found in Alaska Statute. Please note that out of 47 statutes, only 12 do not include the term "directly or indirectly." The alternate terms "explicitly or implicitly" occur only once throughout the statutes.

I have also included a number of samples of Alaska Statute where "directly or indirectly" can be found for your reference. To make locating the terms easier, directly is in all caps [DIRECTLY or inDIRECTLY]

Alaska Statutes where "directly or indirectly" is found:

TITLE 2. AERONAUTICS

TITLE 5. AMUSEMENTS AND SPORTS

TITLE 6. BANKS AND FINANCIAL INSTITUTIONS

TITLE 8. BUSINESS AND PROFESSIONS

- TITLE 9. CODE OF CIVIL PROCEDURE
- TITLE 10. CORPORATIONS AND ASSOCIATIONS
- TITLE 11. CRIMINAL LAW
- TITLE 12. CODE OF CRIMINAL PROCEDURE
- TITLE 13. DECENDENTS', ESTATES, GAURDIANSHIPS, TRANSFERS AND TRUSTS
- TITLE 14. EDUCATION, LIBRARIES AND MUSEUMS
- TITLE 15. ELECTIONS
- TITLE 16. FISH AND GAME
- TITLE 17. FOOD AND DRUGS
- TITLE 18. HEALTH, SAFTEY AND HOUSING
- TITLE 19. HIGHWAYS AND FERRIES
- TITLE 21. INSURANCE
- TITLE 23. LABOR AND WORKERS' COMPENSATION
- TITLE 24. LEGISLATURE
- TITLE 25. MARITAL AND DOMESTIC RELATIONS
- TITLE 27. MINING
- TITLE 28. NAVAGATIONL, HARBORS AND SHIPPING
- TITLE 31. OIL AND GAS
- TITLE 32. PARTNERSHIP
- TITLE 34. PROPERTY
- TITLE 35. PUBLIC BUILDING, WORKS AND IMPROVMENTS
- TITLE 37. PUBLIC FINANCE
- TITLE 38. PUBLIC LAND

TITLE 39. PUBLIC OFFICERS AND EMPLOYEES

TITLE 42. PUBLIC UTILITIES AND CARRIERS

TITLE 43. REVENUE AND TAXATION

TITLE 44. STATE GOVERNMENT

TITLE 45. TRADE AND COMERCE

TITLE 46. WATER, AIR, ENERGY AND ENVIRONMENTAL CONSERVATION

TITLE 47. WELFARE, SOCIAL SERVICES AND INSTITUTIONS

Examples of the use of "directly or indirectly" in Alaska Statute:

Sec. 02.15.260. Definitions.

(16) "utility" includes a corporation, company, individual, or association of individuals, or a lessee, trustee, or court-appointed receiver, that owns, operates, manages, or controls a line, plant, pipeline, or system for furnishing, producing, generating, transmitting, or distributing power, electricity, communications, telecommunications, water, gas, oil, petroleum products, coal or other mineral slurry, steam, heat, light, chemicals, air, sewage, drainage not connected with airport drainage, irrigation, or similar products including publicly owned fire and police signal systems and street lighting systems that DIRECTLY or inDIRECTLY serve the public or a segment of the public; "utility" also includes a corporation, company, individual, or association of individuals, or a lessee, trustee, or court-appointed receiver that owns, operates, manages, or controls a system for furnishing transportation of goods or persons by means of a railway, tramway, cableway, conveyor, flume, canal, tunnel, pipeline, or a similar means;

.....

Sec. 05.10.130. Participation in purse or conducting sham contest.

A person or a member of any group of persons or corporation promoting wrestling or boxing exhibitions or contests who participates DIRECTLY or inDIRECTLY in the purse or fee of a manager of a boxer or wrestler or a boxer or a wrestler, and a licensee who conducts or participates in any sham or fake boxing contest or sparring match or exhibition, forfeits the license granted under this chapter and the commission shall declare the license cancelled and void and the licensee may not thereafter receive another license.

.....

Sec. 08.98.250. Definitions.

In this chapter,

(1) "accredited veterinary school" means a veterinary college or division of a university or college that offers the degree of Doctor of Veterinary Medicine, or its equivalent as determined by the board, and conforms to the standards required for accreditation by the American Veterinary Medical Association;

(2) "animal" means any animal other than a human being including mammals, birds, fish, and reptiles, wild or domestic, living or dead;

(3) "board" means the Board of Veterinary Examiners;

(4) "department" means the Department of Commerce, Community, and Economic Development;

(5) "practice of veterinary medicine"

(A) means for compensation to

(i) diagnose, treat, correct, change, relieve, or prevent animal disease, deformity, defect, injury, or other physical or mental condition, including the prescription or administration of a drug, biologic apparatus, anesthetic, or other therapeutic or diagnostic substance;

(ii) use a manual or mechanical procedure for testing for pregnancy or correcting sterility or infertility; or

(iii) render advice or recommendation with regard to any matter listed in (i) or (ii) of this subparagraph;

(B) means to represent, DIRECTLY or INDIRECTLY, publicly or privately, an ability or willingness to do any act in (A) of this paragraph for compensation;

(C) means to use a description, title, abbreviation, or letters in a manner or under circumstances tending to induce the belief that the person using it or them is qualified or licensed to do any act in (A) of this paragraph whether or not for compensation;

(D) does not include, whether or not for compensation,

(i) practices related to artificial insemination and the use of a title, abbreviation, or letters in a manner which induces the belief that the person using them is qualified to perform artificial insemination;

(ii) the practices of a farrier done in the performance of the farrier's profession;

(iii) standard practices commonly performed on farm or domestic animals in the course of routine farming or animal husbandry, when performed by an owner or the owner's employee unless ownership of the animal is transferred for the purpose of avoiding application of this chapter or the primary purpose of hiring the employee is to avoid application of this chapter;

(6) "veterinary technician" means a person who performs functions delegated by a veterinarian licensed under this chapter.

.....
CORPORATIONS AND ASSOCIATIONS

Sec. 10.06.990. Definitions.

In this chapter, unless the context otherwise requires,

(1) "acknowledged" means that a document is accompanied by a certificate of its acknowledgment as provided in AS 09.63.010 - 09.63.130;

(2) "affiliate" means a person that DIRECTLY or inDIRECTLY through one or more intermediaries controls, or is controlled by, or is under common control with, a corporation subject to this chapter;

.13.990. Definitions.

In this chapter,

Sec. 11.56.590. Jury tampering.

(a) A person commits the crime of jury tampering if the person DIRECTLY or inDIRECTLY communicates with a juror other than as permitted by the rules governing the official proceeding with intent to

(1) influence the juror's vote, opinion, decision, or other action as a juror; or

(2) otherwise affect the outcome of the official proceeding.

(b) Jury tampering is a class C felony.

.....
(c) An individual, or one acting DIRECTLY or inDIRECTLY on behalf of that individual, may not solicit or accept a contribution

(1) before the date for which contributions may be made as determined under AS 15.13.074(c); or

(2) later than the day after which contributions may not be made as determined under AS 15.13.074(c).

Please contact me if you have any questions.

Staff contact, Katie Shows x2028

LEGAL SERVICES**DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA****COPY**(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329**MEMORANDUM**

March 31, 2006

SUBJECT: Effect of measure on doctrine of attractive nuisance and lack of effect on rights of user (HB 415) (Work Order No. 24-LS1446U)

TO: Representative Paul Seaton
Attn: Ian Liang

FROM: Dennis C. Bailey
Legislative Counsel

This memo transmits the amendment you requested, addresses the effect of HB 415 on the attractive nuisance doctrine, and expresses an opinion concerning the lack of effect on the rights of users. Please review the amendments closely, particularly the definition of "allow" which was particularly troublesome. You may wish to add language more particular to the bill.

This memo also responds to the request to Legislative Research asking for cases that could be affected by HB 415 and a comparison of current case law with the provisions of the bill. The request was forwarded to me for response. I discussed the same question with Ian Liang from your office yesterday. As we discussed the question of trying to define how HB 415 might affect existing case law is extremely broad. We attempted to refine the questions yesterday, during a conversation that precipitated this memo. Hopefully the discussion in the cases cited in this memo will address the concerns related to the bill.

The Alaska Supreme Court Case, *Schumacher v. City of Yakutat*, 946 P.2d 1255 (Alaska 1997) is helpful both to summarize landowner liability generally and to summarize the law of attractive nuisance.¹

Under current law, landowners have a duty to use due care to guard against unreasonable risks created by dangerous conditions existing on their property. *Schumacher* at 1258, citing *State v. Abbott*, 498 P.2d 712, 723 (Alaska 1972) (holding that ice which state

¹ The holding in *Schumacher* was distinguished in *Guerrero v. Alaska Housing Fin. Corp.*, 6 P.. 1 250, 254-255 (Alaska 2000) noting a possibly different result outcome on the difference between behavior that is permitted, i.e., crossing a street, and behavior that is improper, i.e., sledding on city streets as in *Schumacher*.

Representative Paul Seaton
March 31, 2006
Page 3

in HB 415. On the other hand, it is also plausible that a court would recognize the legislative intent apparent in HB 415 to protect landowners and disregard the doctrine entirely. I expect that the course chosen by a court would be fact specific depending on the age of the child, the child's ability to perceive the risk, and the nature of the risk.

I was also asked to briefly address whether the measure increases the rights of a user. In other words, does a recreational user gain additional rights by the terms of HB 415. In my view, the answer is no. The bill does the opposite. It reduces the rights of the user. As discussed above, it is plausible that the bill may reduce or eliminate liability under the doctrine of attractive nuisance. The bill grants substantial protections to landowners who allow recreational use on their land. It disclaims granting a right of adverse possession or prescriptive easement by stating that recreational use cannot be used as a basis of a claim. Nor does the bill increase or decrease the liability of a user for the user's own conduct. The bill grants immunity protecting landowners; it reduces, not increases the rights of a user.

If I may be of further assistance, please advise.

DCB:ljw
06-171.ljw

Enclosures

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

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State of Alaska

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MEMORANDUM

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The Alaska Supreme Court Case, *Schumacher v. City of Yakutat*, 946 P.2d 1255 (Alaska 1997) is helpful both to summarize landowner liability generally and to summarize the law of attractive nuisance.¹

Under current law, landowners have a duty to use due care to guard against unreasonable risks created by dangerous conditions existing on their property. *Schumacher* at 1258, citing *State v. Abbott*, 498 P.2d 712, 723 (Alaska 1972) (holding that ice which state

¹ The holding in *Schumacher* was distinguished in *Guerrero v. Alaska Housing Fin. Corp.*, 6 P.2d 250, 254-255 (Alaska 2000) noting a possibly different result outcome on the difference between behavior that is permitted, i.e., crossing a street, and behavior that is improper, i.e., sledding on city streets as in *Schumacher*.

Representative Paul Seaton
March 31, 2006
Page 2

failed to remove from highway was a dangerous condition), *also citing Webb v. City and Borough of Sitka, 561 P.2d 731, 733* (a landowner must act as a reasonable person in maintaining his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury and the burden on the respective parties of avoiding the risk). This is a statement of the duty that forms the basis for liability for ordinary negligence. Landowner liability is limited by AS 09.65.200. I have discussed the overlap in my January 3, 2006 memo. Broadly speaking, HB 415 changes the duties of a landowner who allows recreational land use by eliminating certain duties and by raising the standard from ordinary negligence to that of intentional, reckless or gross negligence.

The legal doctrine of attractive nuisance permits a child to recover for injuries caused by a land condition if the child, because of the child's youth, does not discover the condition or realize the risk involved. *Schumacher, at 1258, n.8, citing Taylor v. Alaska Rivers Navigation Co., 391 P.2d 15, 17 (Alaska 1964)*. The *Taylor* decision established the elements for that must be proven to apply the doctrine of attractive nuisance.

A possessor of land or a chattel is subject to liability for physical harm to children trespassing thereon, caused by a condition of the land or chattel, if

(a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and

(b) the condition is one of which the possessor knows or has reason to know, and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and

(c) the children because of their youth do not discover the conditions or realize the risk involved in intermeddling in it or in coming within the area made dangerous by it, and

(d) the utility of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and

(e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

Taylor v. Alaska Rivers Navigation Co., 391 P.2d 15, 17 (Alaska 1964). The *Taylor* court rejected the element that the dangerous conditions entice or allure a child trespasser. Further, if the risk that a condition presents is obvious even to children the doctrine does not apply. *Schumacher, at 1258, n.8*.

It is not clear how the doctrine of attractive nuisance would be affected by HB 415. The doctrine is somewhat unique because it protects a trespasser, based upon the concept of protecting children who are unable to protect themselves. A court could possibly impose the doctrine of attractive nuisance to protect children using the elements outlined in the *Taylor* case regardless of a landowner's duty and the change in standard for landowners

Representative Paul Seaton

March 31, 2006

Page 3

in HB 415. On the other hand, it is also plausible that a court would recognize the legislative intent apparent in HB 415 to protect landowners and disregard the doctrine entirely. I expect that the course chosen by a court would be fact specific depending on the age of the child, the child's ability to perceive the risk, and the nature of the risk.

I was also asked to briefly address whether the measure increases the rights of a user. In other words, does a recreational user gain additional rights by the terms of HB 415. In my view, the answer is no. The bill does the opposite. It reduces the rights of the user. As discussed above, it is plausible that the bill may reduce or eliminate liability under the doctrine of attractive nuisance. The bill grants substantial protections to landowners who allow recreational use on their land. It disclaims granting a right of adverse possession or prescriptive easement by stating that recreational use cannot be used as a basis of a claim. Nor does the bill increase or decrease the liability of a user for the user's own conduct. The bill grants immunity protecting landowners; it reduces, not increases the rights of a user.

If I may be of further assistance, please advise.

DCB:ljw
06-171.ljw

Enclosures

AMENDMENT # 1 W/D

BY GRUENBERG

HB 25

Page 1, line 9

Delete "indirectly" and insert "implicitly."

Explanation: This change would clarify how a landowner allows recreational activity on a landowner's land. The current language - "indirectly allows" could be interpreted to indicate some positive action though not directly to the person using the land; while "implicitly allows" would not necessitate any positive action on the part of the landowner.

HB

29



HOUSE JUDICIARY COMMITTEE

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Room 110
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Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: Tuesday, March 13, 2007

To: Representative Kevin Meyer
Co-Chairman House Finance Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Judiciary Referral File
CSHB29(JUD)

Attached please find the following documents:

- CSHB29(JUD) 25-LS0192\L
- Sponsor Statement
- Sectional
- Fiscal Notes
 - 1) LAW – 0 fiscal note
 - 2) HSS – fiscal note
- Fax to Leg. legal with two amendments
- House Judiciary Committee Report
- CSHB29(HES) 25-LS0192\K
- HB29 25-LS0192\C
- Leg. legal memo re: amendments
- Backup documentation
- Letters of support/opposition

ALASKA STATE LEGISLATURE



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Kodiak, AK 99615
(907) 486-8872
Fax (907) 486-5264

Representative Gabrielle LeDoux

Sponsor Statement for House Bill No. 29 Safe Haven for Infants Act

This is a bill that will allow parents to safely surrender infants shortly after birth without fear of being criminally prosecuted. The parent may, without expressing an intent to return for the infant, leave the infant in the physical custody of a person who the parent reasonably believes to be a peace officer, a physician or hospital employee in a hospital or hospital emergency room, or a volunteer with or employee of a fire station or emergency medical service who is performing activities within the scope of the volunteer's or employee's fire services or emergency medical services duties.

There are similar laws in 47 other states. This is a way of encouraging people to avoid abandoning infants in a way that could lead to injury or death. A record regarding the surrender of an infant is confidential and is not subject to public inspection.

ALASKA STATE LEGISLATURE



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Representative Gabrielle LeDoux

MEMO

TO: REPRESENTATIVE GABRIELLE LEDOUX
FROM: CHRISTINE R. MARASIGAN, LEGISLATIVE AIDE *CRM*
SUBJECT: HB 29, SAFE HAVEN BILL SECTIONAL SUMMARY
DATE: 2/20/2007

The following information is based on the sectional summary from SCHB 322. This should not be considered an authoritative interpretation of the bill.

- Section 1.** Provides short title.
- Section 2.** Adds a new section in title 11 prohibiting the criminal prosecution for surrendering an infant under AS 47.10.013(c), as added by sec. 3 of the Act.
- Section 3.** Provides requirements and procedures for safely surrendering an infant less than 21 days of age, including reporting requirements and immunity provisions.
- Section 4.** Makes a conforming amendment necessitated by sec. 5 of the Act.
- Section 5.** Provides an exception for providing family support services when an infant has been safely abandoned as described in the Act.
- Section 6.** Provides a definition of infant as a child who is less than 21 days of age.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB029-LAW-HSCP-2-6-0
 Bill Version: HB 29
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title An Act relating to safe haven for infants. RDU Civil
 Component Human Services Child Protection
 Sponsor Representative LeDoux
 Requester House Health, Education & Social Services Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill prohibits prosecution of a parent who safely surrenders an otherwise uninjured infant in the physical custody of a person who the parent reasonably believes is a peace officer, a physician or hospital employee in a hospital or hospital emergency room, or a volunteer with or employee of a fire station or emergency medical service who is performing activities within the scope of the volunteer's or employee's fire services or emergency medical services duties. The department does not anticipate any significant fiscal impact.

Prepared by: Robert Meiners, Acting Director
 Division: Administrative Services Division
 Approved by: Robert Meiners for Talis Colberg, Attorney General
 Agency: Department of Law

Phone 465-5427
 Date/Time 2/6/07 7:20 AM
 Date 2/6/2007

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB029-DHSS-OCS-01-23-07
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 RDU Children's Services
 Component Family Preservation

Revision Date/Time (Note if corrector.): _____
 Title SAFE SURRENDER OF INFANTS

Sponsor LEDOUX
 Requester HOUSE (HES)

Component No. 1628

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual	100.0	100.0	100.0	100.0	100.0	100.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	100.0	100.0	100.0	100.0	100.0	100.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (0)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	100.0	100.0	100.0	100.0	100.0	100.0
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

Estimate of any current year (FY2007) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill provides for the safe surrender of infants whereby the parent may not be criminally prosecuted for surrendering an infant in the manner described.

Drawing on other states' experience with similar laws, the OCS believes that adequate public education is key to success. If the desired effect of this bill is to stop abandonment of babies, the public needs to be made aware of their options. This fiscal note would cover estimated costs for a campaign that provides for media advertising, brochures, posters, etc., to be distributed in hospitals, clinics, doctors' offices, public assistance offices, and other public areas. Estimated costs are based on similar campaigns and promotions managed within the department.

Prepared by: Tammy Sandoval
 Division: Office of Children's Services
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone 465-3191
 Date/Time 01/22/2007
 Date 01/23/2007

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

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Committee Members:
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Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Leg Legal

Fax #: 2029

Number of pages including cover: 4

From: Jane Pierson

Date: March 12, 2007

Re: House Judiciary Final for HB29(HES) - 25-LS0192\K

Please draft a final for HB29(JUD) to reflect the attached two amendments.
Thank you

AMENDMENT

OFFERED IN THE HOUSE JUDICIARY COMMITTEE

BY Rep. Ramras

TO: CSHB 29(HES)

Page 2, line 13, following "is":

Delete "abandoned safely within the meaning of"

Insert "surrendered in the manner described in"

Page 2, line 17:

Following "identity,":

Insert "and"

Following "history":

Delete ", or"

Insert "of the infant and"

Page 2, line 23:

Following "(4)":

Insert "immediately"

Following "the":

Insert "nearest office of the"

Page 2, line 23 - 24, following "department":

Delete "for initiation of custody, placement, and adoption proceedings as appropriate"

Insert "that the infant has been surrendered in the manner described in (c) of this section"

AMENDMENT

OFFERED IN THE HOUSE
TO: CSHB 29(HES)

BY REPRESENTATIVE DAHLSTROM

- 1 Page 2, line 7, following "peace officer,"
- 2 Insert "member of the clergy."



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clergy

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Dictionary.com Unabridged (v 1.1) - Cite This Source

cler·gy [klur-jee] Pronunciation Key - Show IPA Pronunciation

noun, plural -gies.

the group or body of ordained persons in a religion, as distinguished from the laity.

[Origin: 1175-1225; ME *clerge*, *clergie* < OF *clergē* (< LL *clericātus* office of a priest; see CLERIC, -ATE³), *clergie*, equiv. to *clerc* CLERIC + *-ie* -Y³, with *-g-* after *clerge*]

—Related forms

cler·gy·like, *adjective*

Usage note See COLLECTIVE NOUN.

Dictionary.com Unabridged (v 1.1)

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American Heritage Dictionary - Cite This Source

cler·gy (klūr'jē) Pronunciation Key

n. *pl.* **cler·gies**

The body of people ordained for religious service. See Usage Note at collective noun.

[Middle English *clergie*, from Old French (from Vulgar Latin **clercia*, from Late Latin *clericus*; see **clerk**) and from Old French *clergie*, *body of clerks* (from Vulgar Latin **clercatus*, from Late Latin *clericatus*, from *clericus*, *clerk*, *cleric*).]

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Representative Gabrielle LeDoux

MEMO

TO: REPRESENTATIVE GABRIELLE LEDOUX
FROM: CHRISTINE R. MARASIGAN, LEGISLATIVE AIDE *CR*
SUBJECT: HB 29, SAFE HAVEN BILL, CHANGES FROM 25-LS0192C TO 25-LS0192M
DATE: 2/20/2007

After consulting with several agencies and sponsors, a sponsor substitute was requested. The information below outlines the changes from the "C" version to the "M" version.

Page 1, Sec. 1, Line 5 Safe Haven for Infants Act replaced [Safe Surrender of Infants Act]

Page 2, Sec. 3, Line 7 community health aide was added.

Page 2, Sec. 3, Line 17 medical history was added.

Page 2, Sec. 3, Line 23 (4) notify the department for initiation of custody, placement, and adoption proceedings as appropriate. was added.

Rationale: There are several additions in CSHB 29. The short title change makes the bill consistent with similar laws in 47 other states. Community health aides were added to the list of persons to whom an infant can be surrendered to because Alaska has many communities where a community health aide might be the only medical provider. Medical history was added to the types of information a surrendering parent can choose to disclose for the abandoned infant. Lastly, (4) in Sec. 3 directs anyone receiving a surrendered infant contact the department. Previously there was no explicit requirement to report an infant. This section further directs the department to initiate custody, placement and adoption proceedings.

	A	B	C	D	E	F
1	STATE	Limits Prosecution/ Statute states not a violation of law	Relinquishing parent is provided immunity from prosecution	In any prosecution- *If child is 6 days old or older, but less than 30 days	Relinquishing parent may reclaim child (I did not see where age was determined) prior to terminating rights	Few states who have returned child after relinquishment of parental rights
2	Alabama	Yes		Yes		
3	Arizona					
4	Arkansas			Yes		
5	California		Yes		Yes	
6	Colorado			Yes		
7	Connecticut	Yes			Yes	
8	Delaware			Yes	Yes	
9	Florida		Yes		Yes	
10	Georgia		Yes			
11	Idaho		Yes		Yes	
12	Illinois	Yes			Yes	
13	Indiana			Yes		
14	Iowa		Yes		Yes	
15	Kansas		Yes			
16	Kentucky		Yes		Yes	
17	Louisiana	Yes				Yes
18	Maine			Yes		
19	Massachusetts					
20	Maryland		Yes			
21	Michigan			Yes	Yes	
22	Minnesota		Yes			
23	Mississippi		Yes	Yes		
24	Missouri			Yes	Yes	
25	Montana		Yes		Yes	
26	Nevada	Yes				
27	New Hampshire					
28	New Jersey			*Yes		
29	New Mexico		Yes		Yes	
30	New York			*Yes		

	A	B	C	D	E	F
1	STATE	Limits Prosecution/ Statute states not a violation of law	Relinquishing parent is provided immunity from prosecution	In any prosecution- *If child is 6 days old or older, but less than 30 days	Relinquishing parent may reclaim child (I did not see where age was determined) prior to terminating rights	Few states who have returned child after relinquishment of parental rights
31	North Carolina		Yes			
32	North Dakota		Yes			
33	Ohio		Yes			
34	Oklahoma		Yes			
35	Oregon			*Yes		
36	Pennsylvania	Yes				
37	Rhode Island		Yes		Yes	
38	South Carolina		Yes			
39	South Dakota	Yes				Yes
40	Tennessee		Yes		Yes	Yes
41	Texas			*Yes		
42	Utah			*Yes		Yes
43	Virginia			*Yes		
44	Wisconsin		Yes			
45	Washington		Yes			
46	West Virginia			*Yes		
47	Wyoming			*Yes	Yes	

STATE	Days to surrender	Who can surrender	Focus of Law	Anonymity for parent or agent of parent may be expressly gaurenteed in statute	Statute states that the safe haven cannot compel parent or agent of parent to provide indendifying info
Alabama	3 days		Protecting newborns		
Arizona	3 days	a parent or a parents agent	Protecting newborns	Yes	Yes
Arkansas	30 days	a parent or a parents agent			
California	3 days	a parent or a parents agent or another person having custody of the child	Protecting newborns		Yes
Colorado	3 days		Protecting newborns		
Connecticut	30 days	a parent or a parents agent			Yes
Deleware	14 days	not specified		Yes	Yes
Florida	3 days		Protecting newborns	Yes	
Georgia	Less than 1 week	Mother only			
Idaho	30 days	Custodial parent			Yes
Illinois	3 days		Protecting newborns	Yes	
Indiana	45 days				Yes
Iowa	14 days	a parent or a parents agent			Yes

STATE	Days to surrender	Who can surrender a parent or a parents agent or another person having custody of the child	Focus of Law	Anonymity for parent or agent of parent may be expressly gaurenteed in statute	Statute states that the safe haven cannot compel parent or agent of parent to provide indendifying info
Kansas	45 days				
Kentucky	14 days		Protecting newborns	yes	
Louisiana	30 days				Yes
Maine	31 days	not specified			Yes
Massachusetts	Less than 1 week				Yes
		Mother only/or another person approved by the mother to deliver infant on her behalf	Protecting newborns		
Maryland	Less than 3 days				
Michigan	3 days		Protecting newborns		Yes
		Mother only/or another person approved by the mother to deliver infant on her behalf	Protecting newborns		
Minnesota	3 days		Protecting newborns		Yes
Mississippi			Protecting newborns		
Missouri	Less than 30 day	a parent or a parents agent			

STATE	Days to surrender	Who can surrender	Focus of Law	Anonymity for parent or agent of parent may be expressly gaurenteed in statute	Statute states that the safe haven cannot compel parent or agent of parent to provide indendifying info
Montana	30 days				Yes
Nevada	30 days				Yes
New Hampshire					Yes
New Jersey	30 days	not specified			Yes
New Mexico	90 days	not specified			Yes
New York	5 days	not specified			
North Carolina	7 days				Yes
North Dakota	1 year	a parent or a parents agen			Yes
Ohio	3 days		Protecting newborns	Yes	
Oklahoma	7 days			Yes	Yes
Oregon	30 days				Yes
Pennsylvania					
Rhode Island	30 days	a parent or a parents agent			
South Carolina	30 days	a parent or a parents agent			Yes
South Dakota	60 days				Yes
Tennessee	3 days	Mother only	Protecting newborns		Yes
Texas	60 days			Yes	
Utah	3 days	a parent or a parents agent	Protecting newborns	Yes	
Washington	3 days		Protecting newborns	Yes	

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STATE	Days to surrender	Who can surrender	Focus of Law	Anonymity for parent or agent of parent may be expressly guaranteed in statute	Statute states that the safe haven cannot compel parent or agent of parent to provide identifying info
West Virginia	30 days			Yes	Yes
Wisconsin	3 days		Protecting newborns	Yes	
Wyoming		a parent or a parents agent		Yes	Yes



NCSL STATE LEGISLATIVE REPORT

ANALYSIS OF STATE ACTIONS ON IMPORTANT ISSUES

SEPTEMBER 2001

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Safe Havens for Abandoned Infants

By Nina Williams-Mbengue, *Policy Specialist*

After 13 infants were abandoned in the Houston, Texas, area within a 10-month period in 1999, state lawmakers acted to encourage desperate parents to leave their children in a safe location rather than simply abandoning them. Since the Texas law was adopted, 34 more states have enacted so-called "safe haven" laws. All the statutes generally promise that women who relinquish unharmed infants in designated safe places will not be prosecuted or provide that abandonment in compliance with the law constitutes an affirmative defense to prosecution.

So far, the effects of the new laws appear to be limited. Although some newborns have been left at hospitals or police and fire stations, others continue to be found in unsafe places. Serious concerns remain regarding the general lack of research on abandoned babies and their mothers, the implications of these laws on states' adoption and child welfare practices, the rights of the infant's father and the relatively small number of infants involved. Some child welfare experts have expressed concern that the laws do not include an examination of existing statewide child abuse prevention strategies and services for women at risk.

This report examines what is known about infant abandonment, provides an overview of key aspects of the legislation, describes state experience with the new laws and discusses some policy implications for lawmakers.

The Scope of the Problem

What do we know about the incidence of infant abandonment? Unfortunately, national and state data on the number of abandoned infants are practically nonexistent. Most states do not keep track of these infants and, so far, the federal government does not require states to do so. A recent media survey

Discarded Infants and Boarder Babies

The infants referred to are those abandoned in public places—other than hospitals—such as parks, roadsides and dumpsters. They also are known as "discarded infants" and should be distinguished from "boarder babies," who are abandoned in hospitals due to pre- or perinatal drug or HIV exposure as described in the Abandoned Infants Assistance Act (P.L. 104-23). In the law, Congress defined abandoned infants as "...infants and young children who are medically cleared for discharge from acute care hospital settings but who remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives."

conducted by the U.S. Department of Health and Human Services (HHS) reported 65 babies abandoned in public places in 1991. This number increased to 105 in 1998, with 33 of the babies found dead. HHS officials state these numbers could simply reflect heightened media interest in the issue and do not necessarily indicate an actual increase in baby abandonment.

Abandonment of infants in public places appears to be part of a much larger problem. Due to parental drug addiction, 31,000 infants were abandoned in hospitals in 1998. The number of children who suffer abuse and neglect from parents or caretakers each year is even greater. According to HHS, 836,000 children were confirmed as abused in 1999. Of those children, 1,100 died.

What Do We Know about Mothers Who Abandon Their Infants?

Little is known about women who discard their newborns. Most of the women are never found. Anecdotal evidence indicates that most of the women are very young; their race and income vary. Most are very much in denial of their pregnancies and appear to be unaware of or afraid to use the resources available to help them before and during their pregnancies. Questions also exist about the fathers' role, the mothers' family situation and how often the pregnancy is the result of rape or sexual abuse.

Most women who discard their newborns are very much in denial of their pregnancies and appear to be unaware of or afraid to use the resources available to help them before and during their pregnancies.

Some experts suggest that women who are likely to abandon their infants also are the most likely to commit infanticide. In 1996, researcher Michelle Oberman studied women who commit infanticide. Her conclusions may shed light on women who abandon their babies. Oberman noted that the most fundamental shared characteristic of these women is their "seemingly self-imposed silence and isolation during pregnancy." Often, not even the woman's family and close friends are aware of her pregnancy. Oberman also asserted that women who commit infanticide are in "massive denial." The combination of denial and isolation means that these women do not seek prenatal care and do not make any plans for the birth or care of the baby.

The women Oberman studied represent every race, ethnicity and socioeconomic background. Most are young, single and live with parents, guardians or other relatives. If forced to live on their own, they would be poor and, presumably, financially unable to care

for an infant. The women may have suffered rape or abuse and the pregnancy is most likely their first. Surprisingly, women who commit infanticide are unlikely to have a history of substance abuse.

In response to the limited information on infant abandonment, federal House Resolution 465, introduced and passed in April 2000, recommended that local, state and federal statistics be kept on the number of infants abandoned in public places. Federal House Resolution 422, also introduced in 2000, sought to establish a Baby Abandonment Task Force to collect information and maintain a database (through the Bureau of Justice Statistics) on incidents of child abandonment, including information on demographics, circumstances, outcomes and trends. The legislation was reintroduced in January 2001 as H.R. 7, the "Baby Abandonment Prevention Act of 2001." Additionally, the "Safe Havens Support Act of 2001," H.R. 2018, proposes using TANF funds to support infant safe haven programs and requires HHS to conduct a study to determine the number of infants relinquished, abandoned or found dead and the characteristics and demographics of parents who have abandoned an infant.

Thirty-five states (including 19 that passed laws in the 2001 session) now have some type of safe haven legislation.

Review of State Laws

Most states have child abandonment laws that allow authorities to prosecute parents or caretakers who willingly and permanently abandon their children. The goal of the new safe haven laws is to allow a parent to safely leave a baby without fear of prosecution for child abandonment and without resorting to the dangerous practice of leaving an infant in a trash bin, in a wooded area or beside a highway.

Thirty-five states (including 19 that passed laws in the 2001 session) now have some type of safe haven legislation. Most of the laws designate hospitals, emergency medical services, fire stations and police stations as safe locations. One exception is New York, which stipulates that the baby may be left with a suitable person or may be left in a suitable location so long as an appropriate person is promptly notified. Immunity is granted generally to employees who are required to accept and care for relinquished infants. About half of the states will not prosecute parents who relinquish unharmed infants. The remainder allow an affirmative defense to prosecution. State laws vary on the age of infants who may be relinquished. The ages range from 72 hours old or younger up to 5 days old or younger. The most common ages found in the statutes are 72 hours and 30 days.

Some of the issues addressed in statute include anonymity, parental rights public awareness and court procedure. (See sidebar for additional provisions.)

Anonymity

A number of states with safe haven legislation do not specifically mention anonymity. Twenty-four states do allow for anonymity, in which the person leaving the child is not required to disclose any information or may remain anonymous. The laws state that the receiving entity may request relevant medical history information about the infant and the infant's parents, but the parents are not required to provide that or any other information. Most of the laws also require that the receivers offer the parent written or verbal information about the safe haven law, what will happen to the baby, adoption alternatives and how to contact social services. They also may offer medical history forms that the parent may voluntarily and anonymously mail in later.

Anonymity provisions, while meant to encourage parents to safely drop off their newborns, create difficulties for the child welfare and legal systems.

The goal of the anonymity provisions is to encourage women to safely surrender their infants without fear of identifying themselves. South Carolina requires the person accepting the infant to offer information about the legal repercussions of relinquishment. The person receiving the infant also must attempt to obtain information about the infant, but the parent is not required to share anything. In addition, the parent must receive a self-addressed, stamped envelope to mail to the Department of Human Services with information about the child. Minnesota receivers must not inquire about identity, but may ask about medical history and may tell the parent how to contact social services. California, Connecticut, New Mexico and North Dakota issue the parent a numbered identification bracelet. If the parent changes his or her mind, possession of the bracelet in Connecticut, New Mexico and North Dakota creates a presumption that the parent has standing to participate in a custody hearing. In California, a parent can reclaim custody within 14 days of surrendering the child if he or she has a matching bracelet. Tennessee requires the facility receiving the infant to seek identifying and medical history information whenever possible and to inform the parent that such information will facilitate the infant's adoption. The parent is not required to provide the information.

Termination of Parental Rights

The anonymity provisions, while meant to encourage parents to safely drop off their newborns, create difficulties for the child welfare and legal systems. In order to free abandoned infants for adoption, states must hold termination of parental rights proceedings in court

to remove a parent's legal rights and obligations to his or her child. To abide by constitutional requirements for due process for parents, the state must attempt to locate and notify the parents of the termination proceeding and give them an opportunity to respond and appear in court.

Twenty-one states (see sidebar) address the termination of parental rights proceeding notification requirement in several different ways. Generally, they either state that the act of voluntarily surrendering the infant to a safe haven terminates parental rights or they provide for some type of notice to parents or require the department to conduct a reasonable search to locate the biological parents. South Carolina requires the Department of Social Services to publish notice of an abandoned newborn and to send a news release to broadcast and print media in the area with information about the infant, including the permanency hearing date and location. Iowa's law outlines the termination of parental rights process and the timelines for filing petitions. The legislation also requires notice to be provided to any known parent and to possible putative fathers registered with the state registrar of vital statistics. Florida's law creates a presumption that the parent leaving the newborn consents to the termination of his or her parental rights; however, the parent may claim the child up until the court enters a judgment terminating parental rights. The law also requires the department or a child-placing agency that has custody of the infant to initiate a diligent search to notify and obtain consent from the parent whose identity and location are unknown, other than the surrendering parent. Several states give parents a specified amount of time in which to claim maternity or paternity of the infant. If they do not petition for custody within that time period, they waive right to notice of, or participation in, any judicial proceeding for the adoption of the infant.

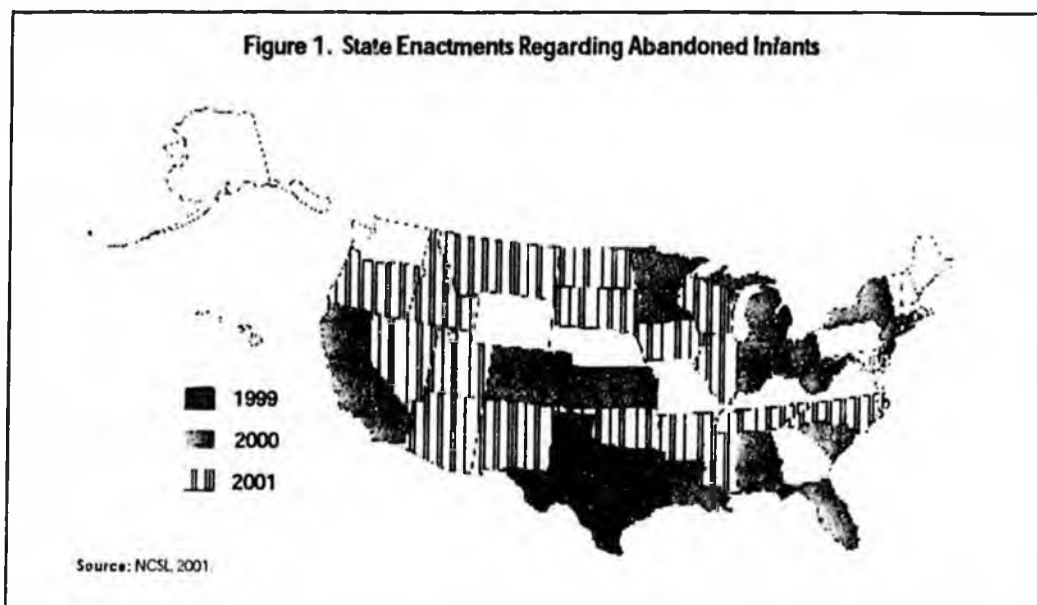
South Carolina requires the Department of Social Services to publish notice of an abandoned newborn.

Public Awareness

Thirteen states require media and public awareness campaigns to alert parents who are at risk of abandoning their infants to the new legal alternative. New Jersey's legislation requires the establishment of a public information program to promote safe placement alternatives for newborns, including a 24-hour, toll-free hotline. The law also appropriated \$500,000 for the program.

In addition to the 19 states that enacted legislation so far in 2001 (see figure 1), 11 considered bills. As was the case in 2000, the proposals seek to grant immunity to parents who

surrender unharmed infants in designated locations. Most of the provisions are similar to those already discussed.



State Experience: How Effective Are the New Laws?

So far, the laws appear to have had a limited effect. Several states have begun to report on infants abandoned after the passage of the safe haven legislation. Approximately 33 babies have been legally relinquished including five each in Texas, Michigan and Alabama, six in

Major Provisions of Safe Haven Legislation

Parent will not be prosecuted: Ariz., Calif., Conn., Fla., Idaho, Iowa, Ill., Kan., Minn., Mont., Nev., N.M., N.D., Ohio, Okla., R.I., S.C., S.D. Tenn. and Wis.

Affirmative defense: Ala., Ark., Colo., Del., Ind., La., Mich., Miss., N.J., N.Y., N.C., Ore., Texas, Utah and W. Va.

Termination of parental rights: Calif., Conn., Del., Fla., Idaho, Ill., Iowa, La., Mont., Nev., N.J., N.C., Ohio, Ore., R.I., S.C., S.D., Tenn., Utah, W. Va., and Wis.

Missing child registry search: Ark., Fla., La., N.J., Okla. and S.C.

Public awareness: Conn., Fla., Iowa, Ill., Mont., N.J., N.Y., N.C., Okla., Ore., S.C. and Tenn.

Funds available for infant: N.M. and Wis.

Genetic testing to determine maternity/paternity: Del., Fla., Idaho, Ill. And Ohio

Putative father registry search: Ill., Tenn., and Utah

Additional study of infant abandonment: Colo., Idaho, Ill., La. and N.J.

New Jersey, four in California, two in Connecticut, Minnesota and Ohio and one each in Kansas and South Carolina. The numbers are approximate because officials in several states reported that they are not officially tracking the numbers of infants or that they had unofficial media counts of infants. Officials in New York, West Virginia and Florida reported that they were not sure that any infants had been relinquished because their laws do not require reporting or tracking that information.

Unfortunately, safe haven legislation has not prevented all cases of unlawful abandonment. Texas reported at

least 12 infants have been abandoned illegally since the passage of its law, but the abandonments occurred before the start of a public awareness campaign. None have been abandoned outside safe havens since this publicity. Louisiana reported that five infants have been abandoned illegally since passage of its law. Three babies died, and the parents are being prosecuted. At least five babies were illegally abandoned in California; two more of them were found dead. In Connecticut, one baby was discarded near a highway. Three babies have been abandoned illegally in Colorado. In one case, the mother is attempting to regain custody. Michigan reported nine attempts including one in which a judge ruled that the case was not a safe haven surrender because the parents had not been given enough information on their legal rights.

Updated links to abandoned infant enactments and bills can be found at NCSL's Child Welfare Web Site at <http://www.ncsl.org/programs/cw/cw.htm>.

Several states also reported on their public awareness campaigns, which they believe will be key to the effective implementation of the new laws. Texas did not include provisions for public awareness and continued to find abandoned babies until a private foundation donated money for a campaign. New Jersey used its \$500,000 appropriation to produce public service announcements, posters, pocket cards and brochures and has advertised the program in local and college newspapers, on billboards and on buses. Michigan included a \$200,000 appropriation to establish a toll-free information line and distribute press releases, a brochure and a poster targeting youth. Connecticut developed a brochure for distribution in high schools, middle schools, homeless shelters and drug treatment centers. The effects of these campaigns remain to be seen.

States reported on their efforts to provide training for personnel responsible for receiving and caring for infants as an essential component. The New Jersey Hospital Association provides ongoing training for hospital staff, and the state's attorney general works with prosecutors to ensure that parents who legally relinquish infants are not prosecuted. Michigan developed protocols and training material to be sent to entities that are designated to receive the infants. California sent material to hospitals and conducted a training for hospital supervisors on procedures for accepting infants. Connecticut will work with the state hospital association to train hospital workers and will develop training material for law enforcement officers.

Finally, many officials see voluntary data collection about the mothers as a critical element in developing better policy to address the needs of women who abandon their babies. The

Many officials see voluntary data collection about the mothers as a critical element in developing better policy to address the needs of women who abandon their babies.

information could include the mother's medical history, race, length and condition of the pregnancy, any history of sexual or substance abuse, family situation, economic background, presence of domestic violence and information about the father. There is also a need to collect as much information as possible about the infant, including medical history, date of birth, preferred name for the child, sex, location of the birth and any problems encountered at birth.

Areas of Concern for Policymakers

Proponents of safe haven legislation believe that these laws will significantly reduce the risk that a newborn will be abandoned in a manner that may result in death. They also feel that the laws will protect parents who believe they have no option other than abandonment, but who want to deliver their newborn to a safe shelter. Others hope that the laws may offer young women an immediate alternative to abandoning their infants, while giving policymakers and the public time to examine the issue and create system-wide reform to include teen pregnancy prevention programs, prenatal counseling, health services, adoption promotion and other support programs.

Critics of safe haven laws continue to voice concern in a number of areas that could have major implications for state lawmakers.

Need for Examination of Statewide Services for Women at Risk

Many child welfare experts state that, although safe haven legislation may be a good idea, it needs to be part of a larger effort to enhance services for women who are at risk of abandoning their infants. Experts from the fields of child welfare, mental health, youth services, the medical establishment and teen pregnancy will want to work with young parents to examine the existing system of services. Such an examination might provide some answers about why this population of parents is unable -or unwilling- to use these services.

Lack of a Comprehensive Strategy for the Prevention of Infant Abandonment

Critics are concerned that states are not viewing safe haven programs as an integral part of child abuse prevention. Has infant abandonment been considered in the state's child abuse prevention efforts? Does the strategy target young women at risk of abandonment? These are just a few questions policymakers may want to ask as they work with public

Many child welfare experts state that safe haven legislation needs to be part of a larger effort to enhance services for women who are at risk of abandoning their infants.

health, child protection, child abuse prevention, mental health, families and others to develop a comprehensive strategy to prevent infant abandonment.

Anonymity and Termination of Parental Rights

Child welfare experts are apprehensive that the anonymity provided to parents in the safe haven laws conflicts with biological parents' due process rights in termination of parental rights proceedings. As previously mentioned, states have attempted to address this critical issue by providing some type of notice or search for the biological parents of the abandoned infant in an effort to include them in judicial proceedings related to the adoption of the infant. States will want to carefully examine their termination of parental rights statutes to avoid conflicts with safe haven laws.

Relationship to Existing Child Welfare Statutes

Likewise, states may want to examine all their existing statutes related to adoption, paternity, custody and all judicial proceedings associated with child abandonment. It also is important that states clarify their definitions of infant abandonment. For example, several states with new laws exempt safe haven abandonment from the statutory definition of abandonment, child abuse or child neglect. Other states add safe haven abandonment to their existing definition of abandonment.

Father's Rights

A few states require a check of the putative father registry and include provisions to contact the putative father, but most do not contain provisions to address notification of fathers who may not be aware of the child's birth. Critics contend that denying notification unfairly presumes that these fathers do not want to care for their children. Utah's legislation addresses this concern by requiring a search of the confidential registry for unmarried biological parents and requiring that notice be sent to each potential father identified in the registry. The termination of parental rights hearing must be scheduled as soon as possible if no one has identified himself as the father (or if the mother has not identified herself) within two weeks after notice is complete. If a non-relinquishing parent is not identified, the surrender of the newborn shall be considered grounds for termination of parental rights of both parents.

Child welfare experts are apprehensive that the anonymity provided to parents in the safe haven laws conflicts with biological parents' due process rights in termination of parental rights proceedings.

Adoption advocates are particularly concerned about the lack of medical and family history.

Adoption

Adoption advocates are particularly concerned about the lack of medical and family history. They note that a lack of information about their backgrounds is often troublesome for adopted children and worry about the stability of the child and his or her adopted family later in life. They fear that the lack could be a setback to the trend in adoption policy to provide the adoptee with information about the birth family. Adoption and other child welfare experts also point out that the legislation may not be necessary because most states will not prosecute women who give birth and relinquish their newborns in the hospital. Additionally, every state allows women to voluntarily relinquish their infants for adoption.

Parental Inresponsibility

Many policymakers are concerned that these laws may only encourage parental irresponsibility. Since so little is known about the women who abandon their babies, there is no proof that the legislation will discourage mothers from leaving their infants in unsafe places. For women who might otherwise seek help from family, friends and social service agencies, the enactment of safe haven laws might encourage them to anonymously abandon their newborns rather than take advantage of their traditional network of support.

Conclusion

State safe haven laws are in various stages of implementation. The effectiveness of these new laws has yet to be measured. It is important that states begin to collect data about abandoned infants and their mothers. Such data could be researched to develop a profile of mothers who engage in this behavior to better target prevention and intervention efforts. Policymakers who are considering such legislation will want to carefully examine their states' existing statutory framework in the areas of juvenile court procedure, termination of parental rights and adoption practice to determine the future ramifications of abandoned infant laws.

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"Breast and Cervical Cancer Treatment" (Vol. 26, No. 7) (ISBN 1-58024-171-9)	July 2001
"Safe Havens for Abandoned Infants" (Vol. 26, No. 8) (ISBN 1-58024-179-4)	September 2001

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Paper: Anchorage Daily News (AK)
Title: INFANT FOUND AT UAA
Author: TRACY BARBOUR Daily News reporterStaff
✓ Date: June 13, 1995
Section: Metro
Page: B1

A newborn boy abandoned on the sidewalk in front of a University of Alaska Anchorage building Monday morning was in serious condition by the end of the day. A campus employee found 'Baby Doe' about 7

a.m. at the University Lake Building, which houses support services, said Nancy Killoran, a university spokeswoman.

Baby Doe, who appears to be white and a couple days old, was left wrapped in a blanket and with a shoestring tied around his umbilical chord, she said.

The university employee called campus security, who alerted the Anchorage Police Department.

Police found the newborn suffering from hypothermia. Otherwise, he appeared to be fine, Anchorage police Sgt. Gary Apperson said.

But by 7 p.m. Monday, Baby Doe was listed in serious condition at Providence hospital, a spital spokeswoman said. She refused to say what the child was suffering from.

Police said they have no idea who deserted the baby and that there was no note or other clues to the identity of the boy's parents.

Whoever abandoned the child faces charges of child abandonment and neglect, police said.

Author: TRACY BARBOUR Daily News reporterStaff
Section: Metro
Page: B1

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From: infoweb@newsbank.com
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Paper: Anchorage Daily News (AK)
Title: NEWBORN GIRL FOUND IN BATHROOM STALL AT HOSPITAL
Author: PETER S. GOODMAN Daily News reporter Staff
Date: December 1, 1994
Section: Nation
Page: A1

A newborn girl was found wrapped in a blanket in a bathroom stall at Alaska Regional Hospital on Wednesday morning. A hospital employee found the infant when she went into the first-floor women's restroom to get a cup of water about 7:30 a.m., police said. A note of explanation was found nearby, but investigators would not reveal what it said. Several people later told investigators they had heard the baby crying as they passed by the bathroom. Hospital staff rushed the newborn to the emergency room, said Mary Hofbauer, a nursing supervisor. Doctors pronounced her in satisfactory shape.

State child welfare authorities took formal custody of the child, who remained at the hospital late Wednesday.

Police spent much of the day trying to locate the baby's mother. Detective Terry Games said witnesses spotted a white woman with long brown hair near where the baby was found. She was described as being in her mid-to-late teens, 5-feet-6 to 5-feet-7-inches tall and wearing a long brown coat. Police "strongly believe" she is the baby's mother, Games said.

Hofbauer said the infant is a "pretty little baby" who appeared to be about 12 hours old at the time she was found. She had apparently been born full term. Police said she weighed early 7 pounds and measured about 19 inches long.

The state will likely place the baby in a foster home after doctors clear her to be released from the hospital, said Faye Moore, regional administrator at the Division of Youth and Family Services in Anchorage. What happens after that is uncertain.

Moore wouldn't discuss the particulars of the case, but she predicted there is less than an even chance the mother will be found. If the mother never enters the picture, the state would likely try to get court approval to put the baby up for adoption, she said.

Bob Newell, an intake officer with the youth services agency, said it would be several months before the baby can be adopted because the state is obligated to give the mother a chance to come forward and claim her child.

If the mother does turn up and shows an interest in taking the baby, the state would assess whether she's fit to be a parent, Moore said. She "would have the burden of demonstrating to us (she) can take care of the child."

According to Newell, the state typically does whatever it takes to help mothers become suitable parents. They may undergo drug or alcohol counseling, welfare assistance or job placement, Newell said.

According to Joyce Johnson at the Child Welfare League of America in Washington, D.C., women who abandon babies tend to be young, poor and isolated. They don't know how to cope with being pregnant and they lack the sophistication to get help, she said.

"Maybe they haven't located the father or they haven't told their family that they're pregnant," Johnson said. "It's a trauma. They're not thinking coherently. And there's fear. How are they going to take care of the child? Maybe they don't have any money."

Johnson said there are places for such women to go: social service organizations that counsel women on their options, provide shelter and find them medical care.

Elaine Stoneburner, the adoption coordinator at Catholic Social Services in Anchorage, has a list of two dozen couples waiting to adopt babies. They are likely to wait anywhere from 10 months to three and a half years for a child, she said. For those would-be parents, news of a newborn being left in a bathroom stings, she said.

Johnson said that abandoned children are usually left in public places where the mothers hope they'll be found and cared for. But not always. On New Year's Eve, police found a newborn girl outside a used-clothing store in Peters Creek. She was rushed to Providence Hospital and treated for hypothermia. She was eventually adopted.

If the mother of the hospital baby is found, she could face criminal charges for abandoning her child, police said. Assistant District Attorney Steve Branchflower said the mother's intentions would be weighed in any decision to prosecute.

"Is the baby in a Dumpster or in a hospital?" Branchflower asked. "That says something about a person's intent."

Joan Teel, a private adoption consultant and former state social worker, said that's an important detail.

"There should be no judgment passed," she said. "Let's applaud (the mother) for putting the baby somewhere safe and warm."

Author: PETER S. GOODMAN Daily News reporter Staff

Section: Nation

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From: infoweb@newsbank.com
Sent: Wednesday, October 19, 2005 2:00 PM

Subject: Requested NewsBank Article

Paper: Anchorage Daily News (AK)
Title: ABANDONED BABY GETS A NEW YEAR'S EVE CHANCE DAY-OLD GIRL LEFT OUTSIDE
Author: S.J. KOMARNITSKYDaily News reporterStaff
Date: January 1, 1994
Section: Nation
Page: A1

It was a shocking discovery: a baby girl wrapped only in a blanket outside a used clothing store in Peters Creek in the freezing cold, her umbilical cord still attached and tied off with a piece of twine. The pudgy newborn would have faced a night outdoors in freezing temperatures if not for a woman's anonymous call to police and a quick search by two nurses from a nearby senior center. Instead, she was rushed to Providence Hospital, where she was listed in serious condition with hypothermia late New Year's Eve. A police investigator estimated she was about a day old.

Officers first heard about the baby just before 3 p.m. when a woman called from a pay phone at the Peters Creek Trading Post with an anonymous tip. The woman said there was a cold baby in a container at The Garret, a used-clothing store about a mile from the convenience store. The woman didn't make herself clear and hung up before dispatchers could get her name or ask her any questions.

But they made out enough to know there might be a baby somewhere around the clothing store. Dispatchers were still deciphering the message when they called the Chugiak Senior Center, where Sharon Cloud, 44, and Charlene Beckwith, 50, work as nurse's assistants. The center is just downhill from the store.

Beckwith said they were told a child had been dropped off in a container and were asked to take a look around.

So, she and Cloud started working their way up the hill toward the store, looking in Dumpsters along the way. Nothing. Then they started searching around the store, which was closed. Still nothing.

In the meantime, Officer Robert Dutton headed to The Garret to check things out. Dispatchers still weren't sure exactly what the woman had told them and sent Dutton without lights or sirens, he said. But another officer, hearing there might be a baby involved, told Dutton to speed up.

It was just after Dutton arrived that Cloud found the girl.

Beckwith said she and Cloud had already made one search around the building when Dutton showed up. They were about to go back, thinking it was a prank call. That's when Cloud started looking through a pile of donated clothes in plastic bags left on a walkway not in a container in front of the store and found the girl under a lampshade.

"I had just been going through the clothes and I had just seen a doll," Cloud said. "I thought it was another doll. But then she moved."

Dutton told the two women to get the baby into his car, where it was warm. He later said the temperature outside was about 21 degrees.

Beckwith said the girl never cried and it was hard to tell if she was suffering from hypothermia.

"She had that newborn baby look, kind of bluish-purple," she said.

But, once the two women got in the patrol car, Beckwith could see that the girl's toes and

fingers were "really blue." The baby acted like one of her feet was numb, Beckwith said.

Dutton drove Beckwith back to the senior center and headed for Providence Hospital with Cloud cradling the child in her arms in the back seat.

Arriving at Providence just before 4 p.m., the girl was rushed to an intensive care unit and immediately put under heat lamps.

Beckwith said she's glad they found the baby in time. The clothing store was closed for the day.

"She probably would not have made it through the night," she said.

Temperatures in Anchorage were forecast to be about 20 degrees Friday night.

So far, there are few clues to the mother's identity.

Dianne Hagerty, who works at the Trading Post, said nobody noticed a woman making a call from the store's pay phone around 3 p.m. The phone is around the corner, and the store gets a lot of traffic, she said.

"Usually you don't pay attention to who is on the phone anyway," she said.

Beckwith said a woman was dropping off clothes at The Garret when she and Cloud first came up the hill. But the woman looked to be in her 50s and she said she had just arrived, Beckwith said.

The woman was putting her donation right next to where the baby was. She said she never heard a peep, Beckwith said.

Police investigators are asking for the public's help in locating a woman who was in late pregnancy and now isn't, and who doesn't have a baby to show for it.

Lt. Bill Gaither said the woman could face a number of charges for abandoning the girl, including child abuse, child neglect, reckless endangerment and endangering the welfare of a minor.

That is if the child survives, he said. If she dies, the mother could face murder charges, he said.

Beckwith said that there's already a waiting list of staffers at the center and even one elderly resident who say they'd be happy to adopt the baby.

"She's a very cute little female, kind of pudgy infant," Beckwith said.

Beckwith said the image that stayed in her mind was what Cloud told her later, that, on the ride to the hospital, the girl clung to her finger the whole time.

"We couldn't believe anyone would do such an atrocity," Beckwith said. "It was just such a pathetic thing to see. The fact that she was so naked and outside was kind of devastating."

Author: S.J. KOMARNITSKY Daily News reporter Staff

Section: Nation

Page: A1

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From: infoweb@newsbank.com
Sent: Wednesday, October 19, 2005 1:27 PM
Subject: Requested NewsBank Article

Paper: Anchorage Daily News (AK)
Title: INFANT FOUND IN BIN
Author: DON HUNTER Daily News reporterStaff
✓ Date: September 6, 1986
Section: Metro
Page: 1

A newborn baby boy abandoned in a box in a Muldoon alley Thursday night was in good condition Friday at Humana Hospital. The infant was wrapped in a towel and hidden in a cardboard box left on the ground beside a Salvation Army collection bin. He was found by two teen-age boys who heard him crying as they rode by on their bicycles.

"It was crying, real loud," 15-year-old Christian Chain said. Chain was interviewed Friday while walking his dog, Duke, in the neighborhood.

"The box was closed," he said. "There was no lid, but the sides were folded up on top of the baby. We opened it up and, you know, there was a baby . . .

"It was wrapped in a towel, a tan towel," he said.

"It was real young, not that old at all."

Only minutes before Chain and Lamont Williams, 14, found the baby, an anonymous caller told an Anchorage Police dispatcher a baby had been left at the bin.

the time officers arrived, the boys had picked up the box, climbed back on their bikes, and taken the baby to the Chain home, where they called police.

The boys discovered the baby shortly after 9 p.m., according to police. Officers took him to Humana Hospital about 9:30 p.m. Police Spokesman Joe Young said the infant was "a few hours old, at most."

Salvation Army dispatcher Alice Phillips said donations left at the bin are picked up about 11 a.m. every day. The bin is directly behind a Salvation Army thrift shop at 101 Muldoon Road.

Lynn Whitley, a hospital spokeswoman, said the baby weighed seven pounds, one ounce and was in satisfactory condition in the Humana nursery late Friday afternoon. He was stable, with vital signs within normal limits, she said.

The infant is now in the custody of the state division of family and youth services. Dolly Coke, a social worker supervisor, said in cases where the state assumes custody of children, they are placed in a foster home until a permanent placement is arranged.

Authorities have named the baby John Doe.

Storekeepers and residents of a trailer park across the street from the thrift shop said they had seen no unusual activity Thursday night. But a delivery man for a sandwich shop directly across Muldoon Road said he saw a young couple acting a little strangely.

"I was fixing to go out and make some deliveries, and I was sitting in my car adjusting packages and something caught my eye just across the street at the Goodwill box," said Chuck Argo.

ere was a couple in a late model, foreign pickup, sort of rummaging around in the boxes there. I thought it was unusual to see people with a truck like that looking in the bin .

"Then they had a bundle, looked like a bundle of clothes, and just kind of laid it over there in the boxes and took off. I didn't think anything of it until I got back (from making deliveries) and my supervisor said" police had been there.

"It didn't dawn on me it could have been a child," he said.

Young, the police spokesman, said another person called police late Thursday night after seeing reports of the abandonment on television. The caller said he had seen "a very pregnant woman in the area of the bin an hour or two before," Young said.

"That's not very much to go on," he said.

Coke, the social worker, said state law prevents her from discussing Baby Doe's specific case. She did describe procedures used in similar cases, however.

"It's very rare" for a newborn infant to be abandoned, she said. "I've been here five years, and I don't know of another infant I can remember who was abandoned . . .

"Whenever a child is abandoned you can usually assume the mother was under a great deal of stress, and may have assumed she could not provide for the child," she said.

"In these cases, it's my experience the parent will eventually surface," Coke said. "Sometimes, someone who has been pregnant suddenly isn't, and there's no baby, and someone who knows her will call. Or sometimes they have a second thought and the parent will come forth."

If the parent or parents do appear, social workers will counsel them and try to decide the best solution for the child, Coke said.

Author: DON HUNTER Daily News reporter Staff
Section: Metro
Page: 1

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Alaska Conference of Catholic Bishops

415 Sixth Street, Suite 300

Juneau, Alaska 99801

Ph (907) 586-2404 / Fax (907) 586-2405

E-mail citw@alaska.net

The Honorable Gabrielle LeDoux
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

February 5, 2007

Re: HB 29: Safe Haven Bill

Dear Representative LeDoux:

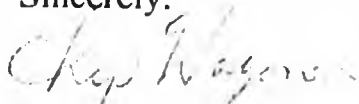
Thank-you for sponsoring House Bill 29, an Act relating to infants who are safely surrendered by a parent shortly after birth. The Alaska Conference of Catholic Bishops (ACCB) supports passage of this legislation.

The intent of the bill is not to circumvent the statutory adoption process a responsible parent would utilize in relinquishing a child. Rather, the intent of the bill is to provide an alternative to a parent who might otherwise abandon his or her child in an unsafe place. We support the bill because it might save the life of a child.

We find it truly sad that our society needs a "safe haven" bill at all. Unfortunately, the weak and vulnerable in society from conception to natural death are often treated as objects or things to be used, abused or discarded instead of being treated with dignity as very human life deserves. We also find it sad that a person with a newborn child feels so isolated and alone that abandoning his or her child in an unsafe place seems to be the only alternative available. The bill does not address these larger issues and is not a long term solution but even if only one life is saved, the legislation is worthy of passage.

We, therefore, urge support for HB 29. We further support the Office of Children's Services developing a public information campaign about the legislation should it pass to increase the bill's effectiveness.

Sincerely:

A handwritten signature in cursive script that reads "Chip Wagoner".

Chip Wagoner
Executive Director
Alaska Conference of Catholic Bishops

ALASKA WOMEN'S LOBBY

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Freymler

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Jana Varrati

Rose Wysocki

Position Paper

HB 322, SAFE SURRENDER OF BABIES

April 2006

The Alaska Women's Lobby supports HB 322. The bill is an important safety measure to increase the likelihood that troubled parents will turn over their newborns to medical or other emergency personnel instead of leaving them in potentially dangerous situations.

Beginning in Texas in 1999, "Baby Moses laws" or infant safe haven legislation has been enacted as an incentive for mothers in crisis to safely relinquish their babies to a safe haven where the baby will be protected and provided with medical care until a permanent home can be found. Safe haven laws generally allow the parent, or an agent of the parent, to remain anonymous and to be shielded from prosecution for abandonment or neglect in exchange for safely surrendering the baby to a safe haven. According to a report of the Alan Gattmacher Institute, as of June 2005, these laws exist in 45 states. It is time for Alaska to join these other states.

Variations by state include limits on the infant's age at time of relinquishment (72 hours to 1 year) and the people and places authorized to accept the infants (e.g., Emergency Medical Services, hospitals, fire stations, and police stations). Most state policies adopt a "no questions asked" approach, but some states require that a person accepting the infant ask for a medical history. We support the one year time length this bill suggests.

One important issue to consider as the bill moves through the committee process is public education about the bill when it becomes law. In 2003, 15 states had mandated public information campaigns to increase public awareness of safe haven legislation. Several common elements of such campaigns include toll-free hotlines, pamphlets and written material, and public service messages. Funding should be provided so that once the service is available, those who are eligible to receive the infants can be trained and the public can be made aware of the service throughout the state.

Thank you for hearing this piece of legislation. Creating avenues for parents to relinquish newborns in a way that protects both the parents and the newborns should lessen the odds of finding babies abandoned in dumpsters or empty parking lots.



**Testimony
House Bill 322**

Planned Parenthood of Alaska applauds Representatives LeDoux and Representative Gruenberg for introducing the "Safe Surrender" bill. House Bill 322 allows a parent to surrender a newborn at a designated safe place where someone can attend to the infant's needs. Any parent who relinquishes an unharmed infant under this bill will have total anonymity. Sixteen states have already passed similar laws. President Bush signed the first Safe Surrender bill into law while he was governor of Texas.

The decriminalization of infant abandonment is an important step to help young women deal with an unwanted pregnancy. Alaska's open adoption law, while securing adoptee rights, may deter women from adoption and push them toward abortion. Many of these women do not want their families to know about their pregnancy. There is no guarantee of privacy in open adoption; furthermore, adoption is a complicated and intrusive process. It requires permission from the father, questioning, paper work, etc. Safe Surrender is an offer of assistance to women who might otherwise abandon a newborn. Under existing law the police track down a woman who abandons an infant. Illegal abandonment can lead to a baby's death and the mother's prosecution.

This is a first step. Safe Surrender does not address the societal ills that lead to unintended pregnancy and the drastic acts of infanticide and abandonment. Teens need to know if they make a mistake their family and society will treat them compassionately. Young people need to have honest and medically accurate sex education. We need enhanced out-reach and support for at-risk parents. Greater access to birth control, including insurance coverage of all FDA approved contraception, should be made available.

Therefore, Planned Parenthood of Alaska supports this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'CS', with a long horizontal line extending to the right.

Clover Simon, MSW
Planned Parenthood of Alaska
4001 Lake Otis Pkwy
Anchorage, AK 99503
907.770.9705

FRANK H. MURKOWSKI, GOVERNOR

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

OFFICE OF CHILDREN'S SERVICES

P.O. BOX 110652
JUNEAU, ALASKA 99801-0652
PHONE 907-461-3176

April 24, 2016

Honorable Representative Gabrielle LeDoux
Alaska State Legislature
State Capitol, Room 412
Juneau, AK 99801-1182

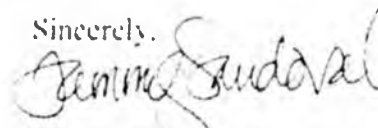
Dear Representative LeDoux:

Thank you for your work this legislative session on House Bill 322. Passage of this bill may prevent harm to some infants as it allows a parent to safely surrender their child without fear of criminal prosecution.

The Office of Children's Services supports HB 322 and is interested in collaborating with you on new state law that would provide an infant who may otherwise be abused or neglected with the opportunity for a stable and loving home.

Thank you for your commitment to Alaska's children and their families.

Sincerely,



Tammy Sandoval
Deputy Commissioner



Alaska Chapter-ACNM
P.O. Box 243091, Anchorage, Alaska 99524-3091
907-566-3775, Fax 907-561-1429
www.alaskamidwives.org

February 12, 2007

RE: In support of HB 29 "Safe Surrender of Infants Act"

I am writing on behalf of the Alaska Chapter of the American College of Nurse-Midwives (AK-ACNM) to express our support for HB 29.

We believe that providing parents who are overwhelmed, or otherwise incapable of caring for their infant, an avenue for safe surrender will save lives and protect these fragile, vulnerable children from harm.

We respectfully request that funding for training those eligible to receive infants and a public awareness/education campaign be addressed during the hearing process.

Thank you very much for taking our opinion into consideration during your deliberation on this important matter.

Sincerely,

Laura L. Sarcone, ANP, CNM
Legislative Liaison
AK-ACNM

ALASKA'S WOMEN'S LOBBY

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Rebecca Madison

Lauree Morton

Mary Elizabeth Rider

Nancy Sheetz-Freymler

Libby Silberling

Jana Varrati

Rose Wysocki

Support for HB 29, Safe Havens February 2007

The Alaska Women's Lobby supports HB 29. The bill is an important safety measure to increase the likelihood that troubled parents will turn over their newborns to medical or other emergency personnel instead of leaving them in potentially dangerous situations.

Beginning in Texas in 1999, "Baby Moses laws" or infant safe haven legislation has been enacted as an incentive for mothers in crisis to safely relinquish their babies to a safe haven where the baby will be protected and provided with medical care until a permanent home can be found. Safe haven laws generally allow the parent, or an agent of the parent, to remain anonymous and to be shielded from prosecution for abandonment or neglect in exchange for safely surrendering the baby to a safe haven. According to the latest statistics these laws exist in 47 states. It is time for Alaska to join these other states. *We appreciate the sponsor's 21 day limit on the infant's age but would encourage committee discussion on what would be the best limit for Alaska.*

One important issue to consider as the bill moves through the committee process is public education about the bill when it becomes law. In 2003, 15 states had mandated public information campaigns to increase public awareness of safe haven legislation. Several common elements of such campaigns include toll-free hotlines, pamphlets and written material, and public service messages. Funding should be provided so that once the service is available, those who are eligible to receive the infants can be trained and the public can be made aware of the service throughout the state.

Thank you for hearing this piece of legislation. Creating avenues for parents to relinquish newborns in a way that protects both the parents and the newborns should lessen the odds of finding babies abandoned in dumpsters or empty parking lots.

OPPOSITION TESTIMONY: HB 29

Bastard Nation: The Adoptee Rights Organization--the largest adoptee rights organization in North America--opposes HB 29, which if enacted would permit parents to abandon infants 21 days old or less.

Because infants surrendered under HB 29 are expected to be placed for adoption, Bastard Nation's objections to HB 29 focus on how the law will erode the civil rights of adoptees.

(1) HB 29 erodes adoptee civil rights by making anonymous children available for adoption through unethical and unprofessional practices.

HB 29 establishes parallel child welfare systems, where one system opposes the long-standing principles of the other. Those long-standing principles are informed consent and a full record of identifying information and social and medical histories. HB 29 eliminates the right of identity to those "surrendered" through Safe Haven programs by denying them access to original birth and heritage records--a right Alaska's adoptees have enjoyed for decades. Safe Haven laws were enacted within a year of Oregon and Alabama restoring adopted adults' right to their original birth records. That was no coincidence. The National Council for Adoption (NCFA), a trade organization of conservative adoption agencies dedicated to sealed and secret adoptions, and opposed to adoptee identity rights, has admitted publicly that Safe Haven laws are the response to the increasingly successful movement in the US to restore the civil right of identity to adoptees.¹ NCFA's own research showed that Alaska, with its long record of adoption openness, has one of the highest rates of child placement in the US.² But by arguing in favor of Safe Havens, NCFA essentially states that only through anonymous abandonment can courts maintain "parental privacy." Adoption proceedings, however, are already closed and confidential in Alaska.

HB 29 denies parents, particularly non-surrendering parents (usually fathers), their due process right by rendering them unable to locate the dependency proceeding to which they are a party. By letting parents abandon solely for convenience or out of ignorance, HB 29 replaces professional best practice standards with unprofessional and unethical "non-bureaucratic placement." The law preys on parents who believe they are surrendering their child for adoption, instead of providing evidence to be used in an adversarial proceeding in which they have a right and duty to appear. The law literally encourages parents to default at their hearings. The supporters call that "proper" and "courageous."

¹ "Opponents of option of privacy in adoption attack Safe Haven laws." Press Release, National Council for Adoption, March 15 2003.

² Marshner, Connaught, ed, Adoption Factbook III. Washington, DC: National Council for Adoption, 1999, 28.

(2) HB 29 disenfranchises natural parents, encourages unethical behavior, and hides crime.

No evidence shows that Safe Haven laws have decreased unsafe abandonment or neonaticide. A 2005 survey of county coroners in California found that the number of newborns dying from abandonment and neglect since 2001 remained at 13-15 per year. (See attachment A).

Safe Havens are promoted as an easy solution for mothers so desperate they will kill their children unless permitted to abandon their newborns anonymously. State-written reports and news accounts tell a different story.

The "Safely Surrendered and Abandoned Infants in Los Angeles County" ICAN report published in 2002 and updated in 2005, identified Safe Haven-protected parents as poor, overwhelmed, and ignorant of child welfare practice. Some parents were undocumented workers, leery of professional assistance. News accounts regularly speak of clean, immaculately dressed newborns, with stuffed animals, baby blankets, and notes to doctors, left at ER's in no danger of neglect or death.³ Newspapers have reported about hospital officials encouraging confined mothers to leave their newborns at the hospital upon discharge, with no ethical parenting or child placement counseling to guide the parent. That occurs even though hospital policy discourages "boarder baby abandonment."

Safe Haven laws are open to further abuses as shown by the Twyana Davis case in Ohio. Davis, an adult, conceived a child with her 12-year old cousin. Davis recklessly abandoned the newborn. After years of supporting Safe Haven laws, Davis admitted the father's identity and age. In fall of 2006, she was sentenced to 10-25 years in prison for raping the father.⁴ In April 2006, in Rochester, New York, Lamar Brown, 31, tried to drop off a newborn he claimed he found in a nearby park. Brown later confessed that he had had sexual relations with the 13-year old mother and had helped deliver the baby. He was charged with 2nd degree rape and endangering the welfare of a child.⁵ Safe Haven proponents would have Davis and Brown legally abandon those babies anonymously and then call them heroes. The government is essentially offering parents who have committed, or are contemplating, crimes a cover up.

Abuses are not the exception. In several cases, the parent has communicated to the Safe Haven recipient that they were surrendering the child anonymously out of love or because they lacked resources. Those parents did not feel homicidal, but wanted a quick

³ Safe Haven for Abandoned Babies Task Force, "Data About Abandoned Newborns, 1999-2001." Los Angeles, 2002; Inter-Agency Council on Child Abuse and Neglect, "Safely Surrendered and Abandoned Infants in Los Angeles County, 200-2005." Los Angeles, 2006.

⁴ Columbus Dispatch, April 26, 2006.

⁵ Rochester Democrat and Chronicle, April 5, 2006.

or secret adoption. Due to the legal constraints placed on Safe Haven personnel, the parents, often ignorant of accepted child welfare practice, were kept from knowing about traditional ethical options and procedures. Temporary and permanent surrender options have existed for decades, and are used by thousands of new parents every year. We have welfare and other programs through children's services to help new parents.

Unfortunately, Safe Haven proponents have convinced parents they have only two options: The Dumpster or legalized abandonment. The responsible alternatives are not mentioned: counseling, public assistance, temporary surrender, permanent surrender for adoption, and family communication. Those omissions keep new and expectant parents ignorant of real solutions.

(3) HB 29 subverts sections of the federal Indian Child Welfare Act (ICWA), compromising the welfare and rights of the Alaska's approximate 98,000 American Indian and Alaska Natives.

The Indian Child Welfare Act of 1978 24 U.S.C. §§ 1912(a) states:

In any involuntary proceeding in a State court, where the court...has reason to know that an Indian child is involved, the party seeking the...termination of parental rights...shall notify the parent and...the Indian child's tribe...of the pending proceedings and of their right of intervention. If the identity or location of the parent and the...tribe cannot be determined, such notice shall be given to the Secretary...who shall have fifteen days...to provide the requisite notice to the parent and the...tribe.

ICWA authorizes tribes to intervene in child protection and adoption cases involving Indian children. HB 29 conflicts irreparably with ICWA by giving birthparents an absolute right to withhold information required to make American Indian Tribal jurisdiction determinations, and by directly prohibiting enforcement of 25 U.S.C. 1912(1) and 1913(a-c) (see attachment B: text of these sections of ICWA).

The National Council for Adoption has long opposed ICWA. Since at least 1996 NCFA has used its influence in Washington to dismantle ICWA by calling Tribal jurisdiction racist and obstructive of the right of Indian children to permanency.

David Simmons, author of the 1996 ICWA *Legislative Summary for the National Indian Child Welfare Association* documented several stand-alone bills and amendments submitted to Congress to limit ICWA. Simmons specifically wrote that NCFA sought an "all out repeal of ICWA."⁶

In 1997, NCFA continued to undermine tribes by blaming ICWA for a supposed

⁶ Simmons, David, *ICWA Legislative Summary - 1996*, Portland, Oregon: National Child Welfare Association, 1996.

<http://www.thepeoplespaths.net/govlaw/icwastry.htm>

increased abortion rate among native women. The Indian Child Welfare Association testified before the Senate Committee in Indian Affairs and House Resources regarding proposed amendments to ICWA. The association reported that the National Right to Life committee "based on suggestions by the National Council for Adoption that applications of ICWA may have the effect of encouraging abortion in Indian women." The ICWA witness unequivocally refuted that claim, showing documentation that abortion rates for Indian women had stayed constant or declined since 1978.⁷

The *NCFA Factbook III* (1999) cites ICWA as a "barrier to adoption." The Factbook is a 600 page adoption handbook, funded by the rightwing Scaife Family Foundation and the Lynde and Harry Bradley Foundation, and distributed free by NCFA to members of Congress and policymakers. The book's executive editor and founding NCFA president, the late Dr William Pierce, argued that ICWA was racist "stand[ing] in the way of civil rights in adoption as surely as Governor George Wallace blocked Black students from entering the University of Alabama." After complaining about "the obscene profits from [Indian] gambling operations, Pierce concluded that ICWA... "often facilitates racist tribal agendas that impose native American Cultural bias on non-Indian families by preventing children from being voluntarily placed for adoption by their parents with the families of their choice. Recommendation: it is past time to repeal the Indian Child Welfare Act because it is an unconstitutional, discriminatorily law."⁸ (NCFA otherwise opposes the placement of children in which the identities of birthparents and adoptive parents are known to are other.)

NCFA still opposes ICWA. In the Fall 2004 edition of its newsletter, *National Adoption Report*, NCFA complained that ICWA "impedes the adoption of Native American children." Proposed amendments to strengthen ICWA, NCFA claims, would be "harmful to adoption and the best interests of children," because they would "vest jurisdiction over adoption proceedings in the tribe, exclusively, in some cases, concurrently with the state in others; require notice to the child's tribe, extend the authority of tribal court judgments to other courts, and grant rights of intervention in state court proceedings, including the right of the child's extended family to intervene."⁹

Since NCFA has not successfully dismantled ICWA, we believe its promotion of Safe Havens seeks to undermine tribes by chipping away the law one child at a time. What better way to do that than to encourage undocumented birth and anonymous newborn abandonment that strips Indian children of their native identity, families, and tradition and place them in non-Indian homes?

⁷ "Testimony of the National Indian Child Welfare Association regarding proposed amendments to the Indian Child Welfare Act: S 569 and HR 1082, June 19, 1997.

https://www.nicwa.org/policy/legislation/HR2750/nicwa_testimony.pdf.

⁸ *Factbook III*, 566-567.

⁹ "Notes from the Hill: Congressional Update, National Adoption Report, Fall 2005, National Council for Adoption, 8.