Ask a Lawyer

Abandoned-Baby Laws

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Abstract

In this column, the author examines the current status of abandoned-baby laws in the United States and how it can impact the work of childbirth educators.

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Question: What is an abandoned-baby law, and what does it mean to a childbirth educator?

Answer: This question came to me from a staff member at the *Journal of Perinatal Education* after she read the research article by Dr. Cesario that appears in this issue on pages 31–40. The issue of abandoned children relates to larger topics of interest to childbirth education, such as bonding, parenting, postpartum depression, family abuse, family planning, and adolescent education, as well as to the role and responsibility of the childbirth educator and other health care professionals in an actual abandoned-baby case. Dr. Cesario correctly states that most abandoning parents are not graduates of our childbirth classes. However, all have been in the school system, and many have been in the health care system. That creates many opportunities for childbirth educators, both directly and as advocates for system changes.

Abandoned-baby laws address the situation in which a desperate parent will abandon a baby. These laws encourage that parent to assure that the baby will not be harmed. The goal is to save infants' lives. These are state laws; therefore, they must be passed by each state legislature, and they are different in each state. Aban-

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doned-baby laws have several parts: The laws identify a safe location where a parent can leave a baby, who is under a certain age, without risking the prosecution of the parent, while assuring the parent's anonymity and confidentiality. They also facilitate the termination of parental rights for infant adoption.

Some of these laws further provide for the following: educating the public, educating or supporting the impacted "safe-haven" locations, notifying the parent of his/her legal rights, asking the parent about medical information for the baby's future, or screening domestic violence. Florida's abandoned-baby law is unique in requiring that attempts be made to locate the infant's biological parents. This is uncommon because it is generally conceded to defeat the purpose of the legislation. The most common variations are in the safe-haven location that the state chooses, which is often a hospital or emergency personnel, and in the age of the infant, which ranges from 3–45 days old.

You might think that an infant in a trashcan is a rare and unnecessary event in our society. It certainly is unnecessary and tragic for all concerned, but we do not know how rare it is. The Administration for Children and Families of the U.S. Department of Health and Human Services estimates that 30,905 babies were abandoned nationwide in 1998. Most of these infants were drug-exposed babies in hospitals. It also estimates that, in 1998, 520,000 children were in foster care, and 903,395 children were abused and neglected. (More of the administration's statistics are available on its Web page, www.acf.dhhs.gov.) Abandoned-baby laws are part of our response to a very big problem. They represent a last-minute effort to save babies, not a

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prevention or solution to the problem of unwanted or neglected children. However, states that do not have an abandoned-baby law have no formal structure to protect the baby in this dire situation. Without this law, parents who abandon a baby can be charged with child endangerment, abuse, manslaughter, or murder. Under no circumstances are they likely to find social approval for this act. Without an abandoned-baby law, this scenerio leaves parents (some of whom have not even admitted to themselves or others that they were pregnant) to seek anonymity by secretly abandoning the baby, without regard for its harm, in any public location, including a trashcan or outdoor steps.

Clearly, the law cannot have its intended impact if no one knows that it exists. Childbirth educators should be aware of abandoned-baby laws and should advocate for the welfare of these babies. This might mean working for an abandoned-baby law in your state. The Texas law was the first to pass. It was the result of public outrage after 13 highly publicized abandoned-baby cases occurred in 1999 in that state. In a nutshell, the Texas law provides that the parent will not risk prosecution if the infant, age 30 days or younger, is surrendered to an emergency medical service provider. The Texas law did not provide for public education, which obviously limited its potential effectiveness. Since the Texas law was initiated, more than half of all states have passed an abandoned-baby law. The state legislator for your local district will be able to provide you with a copy of your state's abandoned-baby law. If one has been introduced but not passed, your legislator will be able to provide you with a copy of the proposed bill. You should read it, looking for the parts of the law that are listed above. Call or write your legislator to comment about the proposed law. Be sure to identify yourself as a Lamaze Certified Childbirth Educator. This establishes your credibility as a citizen who is both uniquely informed and caring, with real "standing" to advocate for babies. If you have not registered to vote, do so now! In this age of computers, legislators can easily identify the registered voters—the *real* decision-makers.

If your state has an abandoned-baby law, sharing it with colleagues and with the public is one way to advocate for our most defenseless citizens. More important, sharing this concern reminds us to raise awareness of other issues very close to childbirth preparation, such as the promotion of birth practices that facilitate bonding

and good parenting, detection and prevention of postpartum depression, recognition of family abuse, and other informed choices such as adoption. Childbirth educators have been the primary advocates in these areas, and we still have a distance between best practices and actual practices. If your state does not have an abandoned-baby law, it is critical that you become familiar with existing resources, such as the Children of Hope Foundation, the Child Welfare League of America, and the National Abandoned Infants Assistance Resource Center.

Imagine a worst-case abandoned-baby nightmare. What if a stranger hands *you* a baby and then leaves, or you find a baby on the doorstep? Then, to make matters worse, you go totally blank on abandoned-baby laws and can't remember where the safe haven is, or who the legal custodian of abandoned babies is in your state. Will you panic? Will you be stuck with that child for life? Will you be sued in court? It really is not that difficult. You will recognize that the baby is in good hands with you. First, you will provide for the baby's

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immediate safety and comfort. Then, you will contact your supervisor if in an institution, or local law officials if elsewhere, to deliver that baby to its custodian for care. Regardless of any multitude of laws and regulations, your priority is the health and safety of the infant.

Note

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