Nebraska's Youth Need Help—But Was A Safe Haven Law The Best Way?

DIANE K. DONNELLY†

INTRODUCTION . . . 771 R
I. OVERVIEW OF NEBRASKA SAFE HAVEN LAW . . . 774 R
A. *An Earlier Effort to Enact a Safe Haven Law* . . . 774 R
B. *L.B. 157* . . . 775 R
C. *The Nebraska Safe Haven Crisis* . . . 776 R
II. HISTORY AND PURPOSE OF SAFE HAVEN LAWS . . . 777 R
A. *The Early Legal Response to the Problem of Infanticide* . . . 778 R
B. *The Rise of Safe Haven Laws in the United States* . . . 779 R
C. *Common Features of Traditional Safe Haven Laws* . . . 781 R
1. AN APPROPRIATE AGE LIMIT . . . 782 R
2. ANONYMITY . . . 783 R
3. LIMITED PARTICIPANTS . . . 784 R
4. GUIDANCE FOR IMPLEMENTATION . . . 786 R
III. WHY A CHANGE TO NEBRASKA'S SAFE HAVEN LAW WAS NECESSARY . . . 787 R
A. *L.B. 157 Did Not Protect Infants From Neonaticide* . . . 787 R
B. *L.B. 157 Failed at Providing Anonymity and It Was Likely Impossible to Guarantee* . . . 788 R
C. *Unlimited Participants* . . . 788 R
D. *No Guidance for Hospital Staff* . . . 790 R
E. *Uncertain Legal Effect When A Child Was Dropped Off* . . . 791 R
F. *A Change to Nebraska's Safe Haven Law* . . . 792 R
IV. A CONTINUING CRISIS: CHILD MENTAL-HEALTH SERVICES IN NEBRASKA . . . 794 R
A. *What Was Learned From The "Misuse" of L.B. 157?* . . . 795 R
B. *Should L.B. 157 Have Remained?* . . . 796 R
C. *Then What Else Must Be Done?* . . . 800 R
1. HOTLINES DO NOT CREATE NEW MENTAL-HEALTHCARE SERVICES . . . 800 R
2. FOCUS ON INCREASING SERVICES & MOVING TO A REGIONAL-SERVICE MODEL . . . 802 R
3. ADDRESSING OTHER POSSIBLE CAUSES OF THE SAFE HAVEN CRISIS . . . 805 R
V. CONCLUSION . . . 807 R

INTRODUCTION

One Wednesday afternoon in September 2008, Gary Staton, a Nebraskan father, took nine of his ten children to an Omaha hospital, handed their birth certificates to hospital staff, and left them there.[1] Staton never intended to bring them home again.[2] He had recently lost

† J.D. candidate, 2010, University of Miami School of Law; B.A. 2007 The George Washington University. I would like to thank my parents for their constant encouragement and support. I am also very grateful to Professor Kele Williams for her insight and guidance. Special thanks to Jarrod Martin for his help editing.

1. Matthew Hansen, *A Happy Ending at "Haven" Hearing*, OMAHA WORLD-HERALD, Dec. 24, 2008, at 1B.

2. *See id.*

his wife and felt that he could no longer care for his children on his own.[3] Instead, Staton took advantage of a "quirk" in a recently adopted Nebraska law that made it possible for him to abandon his children without fear of prosecution.[4] Unlike traditional safe haven laws targeted at infants, Nebraska's law had no age limit.[5]

Staton was visibly distressed when reporters later inquired about his decision to abandon his children.[6] He explained, "I was able to get the kids to a safe place before they were homeless."[7] Staton then attempted to convey his belief that by abandoning his children he was actually helping them: "I hope their future is better without me around them."[8]

Unbeknownst to Staton, his action would spur other Nebraska parents to follow his lead. Like Staton, many parents thought abandoning their older children was actually the best way to help them.[9] Many of the abandoned children had serious mental health problems and their parents or guardians felt that they could not obtain the services their children needed any other way.[10] Frustrated, they turned to the law as a last resort.[11] However, as the number of "drop-offs"[12] of older children continued to rise, a firestorm of public criticism grew around the Nebraska law. Many did not believe that parents were actually helping their children; instead, they viewed the parents as simply failing to take responsibility for their children.[13] Consequently, both the public and the Nebraska legislature began to question whether the law was really the

3. Leonard Doyle, *How to Dump Your Kids: The Nebraska Solution*, THE INDEPENDENT (London), Oct. 15, 2008, World at 28; *see also* Daniel J. Bauer, *Thoughts on Abandoning Children*, FIN. TIMES LIMITED, Oct. 5, 2008; KCCI Des Moines, Neb. Father Talks About Abandoning His 9 Kids (Sept. 26, 2008), http://www.kcci.com/news/17564344/detail.html.

4. Doyle, *supra* note 3.

5. 2008 Neb. Laws 157 § 1.

6. Doyle, *supra* note 3.

7. *Id.*

8. *Id.*

9. Wendy Koch, *'Safe Haven' Law Exposes Family Struggles*, USA TODAY, Oct. 1, 2008, at 3A.

10. *See, e.g.*, Matthew Hansen & Leslie Reed, *Safe Haven Hearing*, OMAHA WORLD-HERALD, Nov. 18, 2008, at 1A; Martha Stoddard, *More Funds Sought For Mental Ills. A Foster Care Report Stresses Kids' Mental & Behavioral Needs*, OMAHA WORLD-HERALD, Dec. 12, 2008, at 1B ("Nearly one in five children enters Nebraska's foster care system because of mental or behavioral problems."); Martha Stoddard, *Struggles Similar in Dropoff Cases,* OMAHA WORLD-HERALD, Nov. 14, 2008, at 1B.

11. Hansen & Reed, *supra* note 10.

12. "Drop-off" is the terminology that has been used to describe the act of leaving children at Nebraska hospitals under the protection of the law. "Drop-off" will be used throughout this Note as the term to describe the action of leaving a child at a Nebraska hospital instead of "abandoning" due to the lack of clarity regarding the legal effect of leaving a child at a hospital under protection of the law.

13. Koch, *supra* note 9.

best way to meet the needs of these older children.[14]

That rash of abandonments of older children in Nebraska during the fall of 2008 led to a national debate over the purpose of safe haven laws. Although the Nebraska legislature ultimately chose to amend Legislative Bill 157 (L.B. 157),[15] the law that enabled parents like Staton to drop-off their older children at Nebraska hospitals without fear of sanction, they did so in the midst of continued misunderstandings of safe haven laws and without fully understanding the nature of the problems Nebraska's children and families were experiencing. This Note will offer support for the legislature's decision to revise the law by demonstrating that L.B. 157 was inconsistent with the purpose behind safe haven laws. This Note will then discuss the underlying problems Nebraska's children and families experienced that drove the safe haven crisis and attempt to provide guidance on how the legislature should address those problems.

Part I of this Note provides an overview of the legislative history of L.B. 157. Part II will examine the purpose of traditional safe haven laws, the history of their enactment in the United States in response to the problem of infanticide, and common provisions typically included in safe haven laws. That review of traditional safe haven laws will provide the basis for Part III, in which I will demonstrate why an appropriate age limit is a critical component to all safe haven laws and discuss why the absence of such a limit in L.B. 157 was one of several problems that necessitated a revision of the law.

In Part IV, after a brief discussion of the issues that arose during the special session for the revision of L.B. 157, I will shift the focus of this Note to address the more enduring problem that arose out of Nebraska's safe haven crisis: the difficulty accessing child mental-healthcare services in Nebraska. Inadequate mental-healthcare services for children will be identified as a primary cause of the safe haven crisis. It will be shown that the Nebraska legislature's initial move to amend L.B. 157, while important, was only the first step in addressing the underlying issues that drove the misuse of L.B. 157. Next, I will discuss the Nebraska legislature's recent efforts to improve mental-healthcare services for children, while emphasizing that a continued commitment to wide-ranging reform still is necessary. I will conclude by noting that both additional reform of the child-welfare system in Nebraska and a continued commitment to improving the child mental-healthcare system are essential to redress the problems that came to light in the safe haven crisis.

14. *Id.*
15. 2008 Neb. Laws 157 § 1.

I. Overview of Nebraska Safe Haven Law

A. *An Earlier Effort to Enact a Safe Haven Law*

Before enacting L.B. 157, the Nebraska legislature struggled for more than seven years to pass a safe haven law.[16] At least one legislator, Senator Ernie Chambers, firmly believed that passing any safe haven law was nothing more than a bad "'knee-jerk reaction' to isolated incidents" of baby abandonment in Nebraska that failed to deal with the underlying issues new mothers and their babies faced.[17] Others were skeptical because they did not believe that safe haven laws effectively reduced the number of unsafe abandonments.[18]

Despite the initial hesitancy of some Nebraskan legislators, Senator Richard Pahls pushed forward Nebraska's effort to enact a safe haven law by introducing Legislative Bill 6 (L.B. 6) to the Nebraska legislature in January 2007.[19] L.B. 6 resembled a traditional safe haven law: L.B. 6 afforded safe haven protection only to children under thirty days old, it provided guidance to those receiving infants about what information to request from the person leaving the infant, and it specifically stated a time period within which the Department of Health and Human Services (DHHS) was to attempt to notify any parent that their parental rights would be terminated.[20]

The stated purpose of L.B. 6 was "to provide distressed parents a way to anonymously leave a child in a safe place, rather than abandoning the child in a place that could lead to the harm or death of the child."[21] The age limit of thirty days was chosen to allow "the parents to evaluate all options and avenues available to them before they leave a child at a designated facility."[22] A ninety-day waiting period prior to beginning the process of terminating parental rights was included specifically "to allow a distressed parent . . . time to consider options to ensure they do, in fact, want the child to be put up for adoption."[23]

That those provisions were included in L.B. 6 demonstrate that, at least initially, the Nebraska legislature intended its safe haven law to

16. Lynn Safranek & Kevin Cole, *Scared Mom Sought Haven For Her Baby*, Omaha World-Herald, Sept. 7, 2007, at 1B.

17. *Id.*

18. Nancy Hicks, *State Debates Whether to Offer a Safe Haven*, Lincoln Journal Star, July 22, 2007, at A1.

19. Leg. Journal, 100th Leg., 2d Day, at 59 (Neb. 2007).

20. *Introducer's Statement of Intent for LB 6: Hearing on LB 6 Before the Comm. on the Judiciary*, 100th Leg., 1st Sess., 1–2 (Neb. 2007) (statement of Sen. Rich Pahls, Principal Introducer), *available at* http://uniweb.legislature.ne.gov/FloorDocs/100/PDF/SI/LB6.pdf.

21. *Id.*

22. *Id.*

23. *Id.*

resemble other traditional safe haven laws that already had been passed across the country.[24] In addition, those provisions also showed that the legislature was concerned about the practical application of the law, as L.B. 6 required the DHHS to "develop and implement a public information program to inform the general public of the Nebraska Safe Haven Act."[25] When the Nebraska Legislature abandoned L.B. 6 in favor of L.B. 157, nothing suggested that it was not still focused upon the same concerns underlying L.B. 6.[26]

B. *L.B. 157*

Indeed, when L.B. 157 was introduced, it too reflected the Nebraska legislature's desire to enact a traditional infant safe haven law that dealt with many of the same concerns expressed in L.B. 6.[27] At its introduction, L.B. 157 resembled a traditional infant safe haven law: it included an appropriate age limit and detailed guidance for what would happen when the law was utilized.[28] Its stated purpose, relatively similar to that of L.B. 6, was to provide protection for infants up to seventy-two hours old.[29]

However, the Nebraskan legislators were divided on the issue of an age limit. Passing L.B. 157, as it was introduced, became impossible.[30] Rather than fundamentally disagreeing about the age at which infants should stop receiving safe haven protection, seventy-two hours or thirty days, the primary concern of the legislators was whether hospital workers would be able to accurately apply the law in either situation. Specifically, they were concerned about the ability of those receiving the infants to determine whether the infant dropped off was under either age limit.[31]

While some legislators expressed concern for protecting fathers' rights and about the length of time before parental rights would be terminated, those concerns were not the main issues preventing the Nebraska

24. *See infra* Part II.

25. Legislative Bill 6, 100th Leg., 1st Sess. (Neb. 2007).

26. *See* Judiciary Comm., *Comm. Statement: LB 6*, 100th Leg., 2d Sess., 1–3 (2008) *available at* http://uniweb.legislature.ne.gov/FloorDocs/100/PDF/CS/LB6.pdf.

27. *See* LEG. JOURNAL, 100th Leg., 4th Day, at 138 (Neb. 2007).

28. *Id.*

29. *See Introducer's Statement of Intent for LB 157: Hearing on LB 157 Before the Comm. on the Judiciary*, 100th Leg., 1st Sess., 1 (Neb. 2007) (statement of Sen. Arnie E. Struthman, Principal Introducer), *available at* http://uniweb.legislature.ne.gov/FloorDocs/100/PDF/SI/LB157.pdf; Judiciary Comm., *Comm. Statement: LB 157*, 100th Leg., 1st Sess., 1–2 (2007) *available at* http://uniweb.legislature.ne.gov/FloorDocs/100/PDF/CS/LB157.pdf.

30. *See* JoAnne Young, *Simpler Safe Haven Proposal Advances*, LINCOLN JOURNAL STAR, Feb. 1, 2008, at A1.

31. *Id.*

legislature from enacting the law; rather, almost the entirety of the dispute focused on the age limit.[32] Ultimately, in an effort to compromise, the final version of L.B. 157 substituted the word "child" for any specific age limit and made the law remarkably concise.[33] In its entirety, L.B. 157 read:

> For an act relating to children; to prohibit prosecution for leaving a child at a hospital; and to provide a duty for the hospital. Be it enacted by the people of the State of Nebraska,
>
> Section 1. No person shall be prosecuted for any crime based solely upon the act of leaving a child in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child.[34]

In L.B 157's final enacted version, not only was the age restriction deleted, but any explicit limitation on who could utilize the law, all guidance for hospital staff receiving children, and any specified waiting period before terminating parental rights were also deleted.[35] Although the Nebraskan legislators had previously debated the bill's provisions with fervor, only one out of forty-nine members of the Nebraska legislature voted against L.B. 157.[36] No one realized the magnitude of problems the seemingly innocuous compromise would create.[37]

C. *The Nebraska Safe Haven Crisis*

L.B. 157 almost immediately became the subject of intense national debate after news broke of Gary Staton abandoning nine of his ten children under the safety of the law.[38] L.B. 157 continued to become increasingly controversial as more and more older children continued to be dropped off at Nebraska hospitals, despite lawmakers' warnings that the law was not intended for such use.[39] Eventually, even parents from other states began driving to Nebraska to drop off their children under the protection of the law.[40] In the four months during which the law was

32. *See id.*

33. *Id.*

34. 2008 Neb. Laws 157 § 1.

35. *Id.*

36. LEG. JOURNAL, 100th Leg. 21st Day, at 539 (Neb. 2008); *see also* Leslie Reed, *Ernie Chambers*, OMAHA WORLD-HERALD, Apr. 20, 2008, at 1A.

37. Although Senator Gwen Howard did express concern that a safe haven law without an age limit would allow parents to leave teenagers at Nebraska's hospitals, it is not likely that even she imagined the enormity of the problem that would occur. *See* Young, *supra* note 30.

38. *See* Erik Eckholm, *License to Abandon Children in a Law to Save Them*, N.Y. TIMES, Oct. 3, 2008, at A21.

39. *See id.*

40. *See* Matthew Hansen & Karyn Spencer, *Safe Haven Meant Kids Finally Got Right Help,* OMAHA WORLD-HERALD, Feb. 1, 2009, at 1A.

in force, L.B. 157 was used twenty-seven times, with a total of thirty-six children being dropped off at hospitals by adults who chose to utilize its protections.[41] Most of the children dropped off were older children, pre-teens and teenagers—none were infants.[42] It did not take long for many to realize that L.B. 157 was a problem.

II. History and Purpose of Safe Haven Laws

In passing safe haven laws, almost all state legislatures, including Nebraska, were ostensibly motivated by a desire to halt the rise of "dumpster babies" and find a way to protect children from neonaticide.[43] The rationale for safe haven laws is that infants, as an especially vulnerable population, are in need of special protection because of their greater inability to protect themselves and their greater risk of being harmed by desperate young mothers.[44] Thus, an age limit that appropriately captures that specific concern for infants is a fundamental component to any safe haven law.

For lack of an appropriate age limit alone, L.B. 157 needed revision. Several other reasons also necessitated a change to the law. L.B. 157's compromised brevity also served to exclude provisions that would have made the law more appealing to its target audience and would have prevented confusion in its application.

---

41. Nebraska DHHS, LB 157—Safe Haven Cases (2008), *available at* http://www.dhhs.ne.gov/children_family_services/SafeHaven/cases.pdf.

42. Leslie Reed, *With Law Signed, Lawmakers Look Ahead To Fixing System,* Omaha World-Herald, Nov. 22, 2008, at 2A.

43. "Ostensibly" because some critics of infant safe haven laws suggest that that stated reason for enacting safe haven legislation were merely superficial and acted to hide suspect motivations related to a desire to legislate pro-life politics. *See* Carol Sanger, *Infant Safe Haven Laws: Legislating in the Culture of Life*, 106 Colum. L. Rev. 753, 759–60 (2006). It is possible that such pro-life policy motivations were one reason some Nebraskans supported a safe haven law. *See* Cindy Hochstetler, Letter to the Editor, *Story Demonized Mother*, Lincoln Journal Star, July 25, 2007, at B5. However, most supporters of infant safe haven laws, including members of the Nebraska legislature, when discussing the true purpose of L.B. 157, stated that preventing neonaticide was their primary motivation for enacting the legislation. Indeed, a string of baby abandonment incidents that occurred in Nebraska in 2007 seems to have been a stronger force behind the enactment of L.B. 157. *See, e.g.*, Hansen & Reed, *supra* note 10; Young, *supra* note 30; *see also* Shannon Farley, Comment, *Neonaticide: When the Bough Breaks and the Cradle Falls*, 52 Buff. L. Rev. 597, 598–601 (2004).

44. *See, e.g.,* Farley, *supra* note 43, at 622; Susan Hatters Friedman, Sarah McCue Horwitz & Phillip J. Resnick, *Child Murder by Mothers: A Critical Analysis of the Current State of Knowledge and a Research Agenda*, 162 Am. J. Psychiatry 1578, 1578 (2005) ("Mothers committing neonaticide were typically younger and unmarried . . . . In the case of neonaticide, d'Orban confirmed an association with unmarried status and younger mean maternal age"); Erik Eckholm, *Lawmakers to Amend 'Haven' Law in Nebraska,* N.Y. Times, Oct. 21, 2008, at A14; Gov. Dave Heineman, *Change Made to Safe Haven Law*, U.S. States News, Nov. 24, 2008.

A. *The Early Legal Response to the Problem of Infanticide*

Infanticide and neonaticide are phenomena that date back to ancient times.[45] Some scholars believe that the Biblical story of Abraham preparing to kill his son Isaac is the earliest reference to infanticide.[46] In ancient Greece, the practice of killing deformed infants was both approved and required by law in some states.[47] Furthermore, the killing of "normal" infants, while not officially approved, was rarely punished because to do so was viewed as a right of the head of the household.[48] The practice of infanticide continued despite Emperor Constantine's decree that "the killing of a son or daughter was as serious a crime as the killing of one's father."[49] Although social acceptance of the practice waned with the rise of Christianity, for centuries it continued to be unofficially tolerated.[50] Most at risk were infants who were "[h]andicapped, disabled, and those who had an unusual appearance or behaved inappropriately."[51]

Later, as sixteenth- and seventeenth-century European governments increasingly began to regulate sexual morality, the prior tolerance for the practice of neonaticide markedly disappeared.[52] In order to punish women who became pregnant in violation of the newly secularized sexual offenses of bastardy and fornication, strict enforcement of the laws punishing infanticide became essential for ensuring that women did not evade punishment for their perceived sexual deviance.[53] As a result, replacing the earlier unofficial tolerance of neonaticide, the 1623 Stuart Bastardy Act of England[54] established a contrary legal presumption, which held that "any unexplained death of an illegitimate child was the result of maternal neonaticide for it was believed women would do anything to avoid being ostracized."[55]

In the twentieth century, England replaced that harsh legal presumption with a more forgiving one based on a different explanation for

45. Farley, *supra* note 43, at 602–03.

46. James J. Dvorak, Comment, *Neonaticide: Less Than Murder?*, 19 N. ILL. U. L. REV. 173, 173–174 (1998). A parallel biblical reference can be identified within safe haven terminology: the use of the term "Baby Moses Laws" as a substitute for "safe haven law." *See* Debbe Magnusen, *From Dumpster to Delivery Room: Does Legalizing Baby Abandonment Really Solve the Problem?* 22 J. JUV. L. 1, 2 n.5 (2001).

47. Dvorak, *supra* note 46, at 173.

48. *Id.* at 173–74.

49. *Id.* at 174.

50. *See id.* at 174–75; Farley, *supra* note 43, at 603–04.

51. Dvorak, *supra* note 46, at 174.

52. *Id.* at 175.

53. *Id.*

54. Stuart Bastardy Act of England, 1623, 21 Jam. I, c. 27 (Eng.).

55. Farley, *supra* note 43, at 603.

what caused mothers to murder their babies.[56] Under the Infanticide Act of 1922,[57] English law presumed that mothers who murdered their infants did so because of some mental disturbance, and, as a result, those mothers were punished for manslaughter rather than murder.[58] The United States never adopted any similar law mitigating the mothers' blameworthiness.[59] Instead, departing from its usual roots in the laws of England, the United States' legal system seemingly remained "more inclined to incarcerate mothers who kill their neonates."[60]

B. *The Rise of Safe Haven Laws in the United States*

Despite its ancient practice, in the 1970s Phillip J. Resnick became the first person to undertake significant study of infanticide.[61] Resnick explained that the term infanticide inappropriately "lump[ed] together" the distinct subcategories of filicide and neonaticide.[62] The term filicide "refers specifically to a parent killing an infant or child older than one day."[63] Resnick believed that it was important to distinguish filicide from neonaticide because, "the murderer's motives and demographic characteristics differ between the two categories of child murder."[64] Resnick's study found that women in the filicide group were more likely to have depression and typically killed their children to protect them and relieve what they perceived to be as their children's suffering.[65] In contrast, women in the neonaticide group were more likely to kill their child simply because they did not want the child.[66] Counteracting neonaticidal mothers' belief that killing their babies was the only way to escape unwanted motherhood subsequently was recognized as an important component in efforts to prevent infanticide.[67]

Despite the initial failure of state legislatures to specifically address the problem of neonaticide in the U.S., as Professor Resnick's study indicated, the problem existed in the United States.[68] In recent decades,

56. *Id.* at 604.

57. Infanticide Act, 1922, 12 & 13 Geo. 5, c. 18, § 1(1) (Eng.)

58. Velma Dobson & Bruce Sales, *The Science of Infanticide and Mental Illness*, 6 PSYCHOL. PUB. POL'Y & L. 1098, 1098–99 (2000).

59. Farley, *supra* note 43, at 609.

60. *Id.*

61. Phillip J. Resnick, *Murder of the Newborn: A Psychiatric Review of Neonaticide*, 126 AM. J. PSYCHIATRY 1414, 1419 (1970); *see also* Farley, *supra* note 43, at 598.

62. Resnick, *supra* note 61, at 1414; *see also* Farley, *supra* note 43, at 599.

63. Farley, *supra* note 43, at 599; Resnick, *supra* note 61, at 1414.

64. Farley, *supra* note 43, at 599.

65. Resnick, *supra* note 61, at 1415.

66. *Id.* Resnick also noted that "a prominent feature in several of the neonaticides was the inability of the unwed girl to reveal her pregnancy to her mother." *Id.* at 1416.

67. *See* Resnick, *supra* note 61, at 1414–19

68. *Id.*

reports of neonaticide have become relatively common news stories across the country.[69] Reports indicate that "[i]n the United States, a baby is killed within 24 hours of birth at least once every three days. In fact the risk of homicide on the first day of life is 10 times greater than . . . during any other 24-hour period."[70] One of the most frequently mentioned incidents of infanticide is the story of Melissa Drexler, the "prom mom," who delivered her baby during her prom, choked him to death, and threw him in the garbage can before returning to the prom's festivities.[71] Another similarly notorious young mother is Amy Grossberg, a college student who delivered her baby in a hotel room before allowing her boyfriend to kill their baby.[72]

As previously seen underlying England's old legal presumption, and still considered a valid explanation today, a mother's effort to avoid ostracizing social effects of unwed motherhood is considered to be a predominant cause of neonaticide.[73] The typical mother who commits neonaticide is "young, poor, unmarried and afraid of being found out."[74] These young unwed mothers are afraid of suffering social stigma if they keep their babies.[75] Often such a mother's fears prevent her from telling her parents that she is pregnant. She fears that her parents will be disappointed and angry, and, consequently, that she will be punished, shunned, and humiliated.[76] In addition, these young, unwed women likely feel unable to assume the role of mother, as they are often just children themselves. Often, infanticide seems the only way to prevent their fears from materializing.

With those fears as a driving force behind neonaticide, it was understood that to prevent neonaticide, young mothers had to be provided with a way to safely turn over their babies before they were exposed to the stigma they dreaded.[77] Throughout history, efforts to save

69. *See, e.g.*, Justin Fenton, *Death of Baby Found in Trash Bin Ruled a Homicide*, BALTIMORE SUN, Oct. 29, 2008, at 13A; Steve Pardo, *Dead Newborn's Mom Charged*, DETROIT NEWS, Oct. 21, 2008, at 2B.

70. Stephanie Desmon, *Infant Killings Aren't Rare*, BALTIMORE SUN, Aug. 4, 2007, at 1B.

71. *Id*; Magnusen, *supra* note 46, at 2.

72. Magnusen, *supra* note 46, at 2; Sanger, *supra* note 43, at 754.

73. Farley, *supra* note 43, at 603–04; Resnick, *supra* note 61, at 1416 ("The stigma of having an illegitimate child is the primary reason for neonaticide in unmarried women today, as it has been through the centuries.").

74. Demson, *supra* note 70.

75. Farley, *supra* note 43, at 600–01; Sanger, *supra* note 43, at 764 ("Many aspects of the old system are [still] reflected [in society] . . . . includ[ing] the motivating role of maternal shame; the status and availability of abortion; secrecy as an inducement; the participation of public, private, and religious organizations; policy concerns about the moral effects of legal abandonment; and background views regarding the sanctity of life.").

76. Farley, *supra* note 43, at 600–01.

77. Sanger, *supra* note 43, at 755 ("The central idea behind the legislation is that young

unwanted babies from death at the hands of their mothers reflected an awareness of the need to mitigate these fears.[78] Despite many earlier informal efforts,[79] state legislatures did not enact any statutes focused on preventing neonaticide until the late twentieth century. The first statute enacted in the United States, Texas's "Baby Moses" statute in 1999,[80] was passed in response to a perceived increase in the prevalence of neonaticide. Following Texas's lead, state legislatures nationwide hastily, and with very little opposition, adopted infant safe haven laws to remedy the increasing number of baby-murders by mothers fitting the patterns of Resnick's neonaticide group.[81] Like many of the earlier informal efforts to prevent neonaticide, these early safe haven laws clearly were designed to give young mothers an alternative way to opt-out of unwed motherhood and its ill social effects.

The fact that these laws were enacted in a swift legislative response to a perceived crisis of neonaticide demonstrates that the intent of those legislatures was to address the specific problem of neonaticide.[82] Removed from this context of neonaticide, safe haven laws make little sense and likely would never have been adopted. Where lawmakers in the United States had been so slow to implement any statutory response to the centuries-old problem of infanticide, it is very unlikely that they intended safe haven laws to afford parents a new statutory route to abandon their children without suffering any adverse legal consequences.

C. *Common Features of Traditional Safe Haven Laws*

In the ten years since Texas passed the nation's first safe haven law, every state has followed suit by enacting an infant safe haven law.[83] Despite their varying details, most states' safe haven laws, with L.B. 157 as the notable exception, contain several similar provisions.[84] The following section will identify those common provisions, describe how

---

woman will be discouraged from killing their newborns if only they are offered the right incentives.").

78. Siri Agrell, *State's Loophole Creates Safe Haven for Child Desertion*, THE GLOBE & MAIL (Canada), Nov. 18, 2008, at A1 (describing Pope Innocent III's order in 1198 A.D. that required orphanages to a have a type of small revolving door through which babies could be dropped off from the outside and swiveled inside to the orphanage's nuns).

79. *Id.*

80. *See supra* text accompanying note 46.

81. *See* Dayna R. Cooper, Note, *Fathers Are Parents Too: Challenging Safe Haven Laws with Procedural Due Process*, 31 HOFSTRA L. REV. 877, 879 (2003).

82. *See* Heineman, *supra* note 44; Magnusen, *supra* note 46, at 2–3.

83. Paul Goodsell, Henry Cordes & Virgil Larson, *Top 10 Midlands Stories of 2008*, OMAHA WORLD-HERALD, Dec. 31, 2008, at 1A; *see also* Farley, *supra* note 43, at 622–25; Magnusen, *supra* note 46, at 2 n.12.

84. *See* Magnusen, *supra* note 46, at 6–11.

they relate to the underlying concern of neonaticide, and explain why they are important components in any safe haven law.

1. An Appropriate Age Limit

An appropriate age limit is an essential feature of all states' safe haven laws not only because it ensures that the law is well tailored to the definitional scope of the crime of neonaticide, but also because, absent such a limit, the underlying causes of neonaticide are not addressed.[85] The most commonly used age limits are: seventy-two hours,[86] one week,[87] ten days,[88] and one month.[89] Aside from L.B. 157, the highest age limit in any other state is one year, and only one state has a one-year age limit.[90]

Nearly a century before Nebraska enacted L.B. 157, it seemed as though history had already demonstrated that a child's age was an important factor in infanticide and its prevention: the English Infanticide Act of 1922[91] "failed to define 'newly-born' child . . . [and contained] no stipulated [age] limit."[92] Parliament decided that the Infanticide Act of 1922 was overly ambiguous, likely due to its failure to define a "newly-born child"—a term that was seemingly less expandable than L.B. 157's ambiguous "child"—and eventually recognized that

85. *See* Sanger, *supra* note 43, at 768 ("[An appropriate age limit] underscores the intended exceptionalism of anonymous abandonment. Safe Havens are not receiving stations for unwanted babies generally; the intended beneficiaries are newborns born in secret and therefore at unique risk on the first day of life."); *see also* Cooper, *supra* note 81, at 881–82 ("The primary limitation imposed by all states is a age limit.").

86. Ala. Code § 26-25-1(a) (LexisNexis 2009); Ariz. Rev. Stat. § 13-3623.01(H)(1) (LexisNexis 2009); Cal. Health & Safety Code § 1255.7(a)(1)(A) (Deering 2009); Colo. Rev. Stat. § 19-3-304.5(1)(a) (2009); Ky. Rev. Stat. Ann. § 216B.190(1) (LexisNexis 2009); Mich. Comp. Laws Serv. § 712.1(2)(k) (West 2009); Minn. Stat. § 609.3785(1) (2009); Miss. Code. Ann. § 43-15-201(1) (2009); Tenn. Code. Ann. § 68-11-255(b)(1) (2009); Utah Code Ann. § 62A-4a-801(2) (2009); Wis. Stat. Ann. § 48.195(1) (West 2009).

87. Fla. Stat. § 383.50(1) (2009) ("The term 'newborn infant' means a child who a licensed physician reasonably believes is approximately 7 days old or younger").

88. Md. Code Ann., Cts. & Jud. Proc. § 5-641(a)(1) (LexisNexis 2009).

89. Ark. Code. Ann. § 9-34-202(a) (2009); Conn. Gen. Stat. § 17a-58(a) (2008); Idaho Code Ann. § 39-8203(1)(a) (2009); La. Child. Code. Ann. art 1150(3) (2009); Me. Rev. Stat. Ann. tit. 22, § 4018(2) (2009); Mont. Code Ann. § 40-6-402(10) (2009); Nev. Rev. Stat. § 432B.630(1) (2009); N.J. Stat. Ann. § 30:4C-15.7(a) (West 2009); Ohio Rev. Code Ann. § 2151.3516 (LexisNexis 2009); Or. Rev. Stat. § 418.017(1)(a) (West 2009); 23 Pa. Cons. Stat. Ann. § 6502 (2009) (restricting the definition of newborn to twenty-eight days of age); R.I. Gen. Laws § 23-13.1-2 (2009); S.C. Code Ann. 63-7-40(G)(3) (2008); Vt. Stat. Ann. tit. 13, § 1303(b)(1) (2009); W. Va. Code Ann. § 49-6E-1 (LexisNexis 2009).

90. N.D. Cent. Code § 50-25.1-15(1)(a) (2009) (referring to the definition of abandoned infant as defined in N.D. Cent. Code § 27-20-02.2 (2009)).

91. Infanticide Act of 1922, 12 & 13 Geo. 5, ch. 18, 1(1).

92. Brenda Barton, Comment, *When Murdering Hands Rock the Cradle: An Overview of America's Incoherent Treatment of Infanticidal Mothers*, 51 SMU L. Rev. 591, 596 n.38 (1998).

the Act had to be amended.[93] In its place, Parliament enacted the English Infanticide Act of 1938,[94] and specifically defined a newborn as a child a year of age or less.[95]

Even if Nebraska legislators failed to notice the lesson learned by the English Parliament in the early twentieth century, Nebraska legislators could not have failed to realize that, in light of the circumstances in which infanticide occurs, to be effective any safe haven law must focus on allowing young mothers to safely turn over their babies before they act out of a fear of social stigma.[96] To prevent this stigma from attaching, a mother must be able to give up her infant before others learn that she had the baby. Once others become aware of a baby's existence, safe haven laws become ineffective. The age restrictions included in most traditional safe haven laws take that reality into account, and by doing so, focus the laws' protection on the babies most at risk of neonaticide.[97]

2. Anonymity

Anonymity provisions, almost uniformly included in safe haven laws, further demonstrate legislators' efforts to account for the sense of urgency felt by the fearful young mothers safe haven laws target. By including anonymity provisions, lawmakers have acknowledged that in order to effectively protect a mother from public disclosure of her pregnancy, and subsequent exposure to the stigma she fears, safe haven laws must allow a mother to remain anonymous.[98] To ensure anonymity, many states do not require parents to provide any identification or leave any information with authorities about how to get in touch with them after they leave their babies.[99]

---

93. *Id.* at 596.

94. Infanticide Act of 1938, 1 & 2 Geo. 6, ch. 36, 1(1).

95. Michelle Voirol, Comment, *Hush Little Baby; Don't Say a Word: Saving Babies Through the No Questions Asked Policy of "Dumpster Baby Statutes"*, 5 T.M. Cooley J. Prac. & Clinical L. 115, 119 (2002).

96. *See supra* note 76 and accompanying text.

97. *See* Magnusen, *supra* note 46, at 7 (describing the varying age restrictions, ranging from seventy-two hours to one year, in different states safe haven laws).

98. *See* Farley, *supra* note 43, at 622–25 (describing the greater success of statutes that provide anonymity as opposed to those that only provide an affirmative defense to mothers after they are arrested and criminally charged with abandonment); Jeffrey A. Parness & Therese A. Clarke Arado, *Safe Haven, Adoption and Birth Record Laws: Where Are the Daddies?*, 36 Cap. U. L. Rev. 207, 212 n.27 (2007) (quoting anonymity provision in safe haven statutes from Arizona, Indiana, and West Virginia).

99. Ariz. Rev. Stat. Ann. § 13-3623.01(E) (LexisNexis 2009) ("A parent or agent of a parent who leaves a newborn infant with a safe haven provider may remain anonymous, and the safe haven provider shall not require the parent or agent to answer any questions."); Tex. Fam. Code Ann. § 262.302(b) (Vernon 2009) ("The designated emergency infant care provider has no legal duty to ascertain the parent's identity and the parent may remain anonymous."); *see also In re* Guardianship of Doe, 189 Misc. 2d 512, 513–14 (N.Y. Fam. Ct. 2001) ("The County created

But safe haven laws have not always provided anonymity,[100] and, even though most now afford some level of anonymity, inadequate protection remains. Some safe haven laws, for example, do not expressly guarantee anonymity, but instead include partial anonymity provisions that require receivers to request information first and then inform the person leaving the baby that they may *choose* not to provide identifying information.[101] Critics of these types of safe haven laws, as well as those that only provide parents with an affirmative defense—and not immunity from prosecution—repeatedly stress that anonymity is a necessary feature of any safe haven law.[102] Without the unwavering protection of unquestionable anonymity,[103] many of the targeted mothers would not feel comfortable utilizing the laws, thereby rendering them ineffective.[104] Thus, without a strong guarantee of anonymity, mothers targeted by safe haven laws will not truly believe that safe haven laws enable them to escape the stigma accompanying undesired motherhood—a stigma that might otherwise drive them to commit neonaticide—likely rendering the laws ineffective.

3. Limited Participants

Another common feature of most state safe haven laws, limited participation, like anonymity provisions, further advances the underlying need for privacy. Through limited-participation provisions, most states restrict the protection afforded by safe haven laws to narrow categories

several 'safe havens' . . . whereby a parent could deliver an unwanted newborn to a designated site, *in anonymous fashion*, without threat of reprisal or criminal prosecution.") (emphasis added); Cooper, *supra* note 81, at 884 (discussing South Carolina's law, which instructs hospital staff to give parent a form that can be mailed in to provide medical information); Karen Vassilian, *A Band-Aid or a Solution? Child Abandonment Laws in California*, 32 McGeorge L. Rev. 752, 756 (2001) (discussing California's safe haven law's requirement that those receiving the child do not ask for medical information but give an identifier to the parent in case they later wish to reclaim the baby).

100. Farley, *supra* note 43, at 622–24 (describing the old Texas safe haven statute).

101. Alaska Stat. § 47.10.013(d)(2) (2009) (allowing authorized receivers to tell a parent dropping of a baby that they may, but are not required, to answer questions about them or their baby).

102. *See* Farley, *supra* note 43, at 623–24 (describing the relative value of Texas and Indiana's affirmative defense approaches); Viorol, *supra* note 95, at 127–31 (offering a comparison of Texas's affirmative defense approach with California's no prosecution policy).

103. Except, of course, for cases involving abuse.

104. Cooper, *supra* note 81, at 882 ("A large component of safe haven legislation is the anonymity that it guarantees."); Farley, *supra* note 43, at 622–25 (discussing the difference between safe haven statutes that provide mothers with an affirmative defense and those providing immunity from prosecution and finding the prior to be generally ineffective in achieving their stated goals); Sanger, *supra* note 43, at 755; Viorol, *supra* note 95, at 137 ("A mother suffering from hysterical denial of pregnancy will probably never use the Texas law because it does not offer her confidentiality, which is of primary concern.").

of individuals as a way to limit who may turn over a baby.[105] Usually, these provisions restrict use to the parents of the child being abandoned and, in some cases, to only their mothers.[106] By including some type of limited-participation provision, safe haven laws recognize that, in general, only a handful of people will be aware of the baby's existence. Limiting who may leave a baby to this narrow category of people implicitly supports the underlying goal of anonymity because it ensures that no one else needs to know about the baby before the law can be used.[107] Furthermore, limited-participant provisions serve to tailor safe haven laws better to their intended purpose. Limited-participant provisions, like age restrictions, ensure that only those individuals who the legislature truly intended to afford protection receive it.

Critics of traditional safe haven laws, particularly those that authorize only mothers to abandon their babies, argue that the limited-participant provisions of safe haven laws can undermine rights certain individuals, namely fathers, have to the babies.[108] While those arguments are valid, their concerns seem minimal in comparison to similar problems that could arise under a safe haven law, like L.B. 157, that fails to provide any limit on who may abandon a child under its protection. While it is likely true that traditional safe haven laws often undermine fathers' rights, these fathers' rights can be protected in other ways, such as through putative father registries. In contrast, under a law with no limited-participants provision, not only would a father's concerns remain,[109] but possibly, albeit likely only in a rare case, mothers' rights could also be violated if, for example, a baby was abandoned without a

105. ALA. CODE § 26-25-1(a) (LexisNexis 2009) (authorizing only a parent to deliver the child under the statute's protections); *see also* Child Welfare Information Gateway, *Infant Safe Haven Laws* (2007), *available at* http://www.childwelfare.gov/systemwide/laws_policies/statutes/safehaven.cfm (describing who may leave a baby at safe haven in most states).

106. Parness, *supra* note 98, at 211–13 (explaining that even if many statutes are gender neutral, in reality safe haven statutes are almost exclusively used by mothers); Sanger, *supra* note 43, at 765–66.

107. *See* Parness, *supra* note 98, at 213 n.31 (describing procedures included in safe haven statutes from Arizona, Georgia, Ohio, Wyoming, and Maine).

108. Parness *supra*, note 98, at 213–17 (critiquing safe haven laws for failing to give equal standing to father's interests in their children); *see also* Cooper, *supra* note 81, at 895–900. Indeed, several states' safe haven laws fail to consider paternal rights. Despite these criticisms, several states continue to limit safe haven laws' use to mothers. GA. CODE ANN. § 19-10A-4 (2009) (limiting the safe haven law's protection from criminal prosecution to the mother of the child); MD. CODE ANN., CTS. & JUD. PROC. § 5-641(a)(2) (2009) ("If the person leaving a newborn under this subsection is not the mother of the newborn, the person shall have the approval of the mother to do so."); MINN. STAT. ANN. § 609.3785(3) (2009) (allowing only the mother or someone with the mother's approval to leave the newborn); TENN. CODE. ANN. § 68-11-255(b)(3) (2009) (limiting use to persons who purport to be the child's mother).

109. *See* Parness, *supra* note 98, at 213–17.

mother's knowledge in a state where the safe haven law also included strict anonymity provisions.

4. Guidance for Implementation

Apart from those provisions that serve to limit safe haven laws' scope to address the underlying concern for neonaticide, most safe haven laws also provide some guidance both to parents utilizing the laws and to hospital staff receiving the babies.[110] Specifically, safe haven laws generally include provisions: explaining the legal effect of leaving a baby; clarifying that the act of abandonment is limited to a "literal handover" of the child to the designated authorities;[111] authorizing parents who later change their mind to reclaim their baby; designating certain locations as "safe havens"; and describing the procedures to be followed during drop-offs.[112] The last two categories ensure not only that those using the laws know where they can safely leave a baby, but also that designated people at those locations know how to respond[113]—something that was not always true under L.B. 157.[114]

The quality and quantity of guidance for implementation provided, especially under the last category of instructions, varies from state to state and many statutes do not guide safe haven site staff or parents through the law's operation as thoroughly as is desirable. Yet, these variations, and, at times, omissions in guidance might not always be as problematic as they first appear. They could instead embody the judgment that better procedures will be developed outside of the statutory framework by the professional staff at the safe haven sites. Alternatively, the omissions and inconsistencies could reflect a need for flexi-

110. Conn. Gen. Stat. § 17a-57 (2008) (requiring that there be a member of the nursing staff on duty during normal business hours at every hospital during normal business hours and that there be a designated place within each emergency room where the exchange of physical custody can occur); *see also* Child Welfare Information Gateway, *supra* note 105 (describing other responsibilities of safe haven providers).

111. Sanger, *supra* note 43, at 765–66; Child Welfare Information Gateway, *supra* note 105 (describing the consequences of relinquishment).

112. Ariz. Rev. Stat. § 13-3623.01(B) (LexisNexis 2009) (instructing safe havens to post notices at all entrances that it accepts newborns); Cal. Health & Safety Code § 1255.7(b) (Deering 2009) (describing how to identify safe-surrender sites, who may accept the infant, the receiver's responsibilities to place a coded ankle bracelet on the infant and provide or make a good faith effort to provide a copy of the ankle bracelet identification number and medical information questionnaire to the parent or person surrendering the child, the receiver's responsibility to ensure the child receives a medical screening exam and any necessary medical care, and how a parent may reclaim the surrendered infant).

113. Child Welfare Information Gateway, *supra* note 105 (discussing various states' safe haven providers).

114. Matthew Hansen, *Safe Haven Law, Hospitals Ask for Clarity When Dealing with Parents*, Omaha World-Herald, Oct. 18, 2009, at 1A (describing the confusion of hospital workers when the safe haven drop offs began).

bility in safe haven situations. A more thorough analysis of the value and necessity of detailed statutory guidance for implementation will be undertaken in the subsequent discussion of L.B. 157, one such safe haven statute that did fail to include any guidance for implementation.

III. Why A Change to Nebraska's Safe Haven Law Was Necessary

Aside from the obvious problem of the failure to include an appropriate age limitation, L.B. 157 also suffered from its failure to include most of the other features discussed above that are considered to be important parts of a safe haven law.[115] First, the specific problem of neonaticide did not seem to play as large of a role in L.B. 157 as it does in the majority of other state safe haven laws.[116] The omission of any provisions in L.B. 157's text linking its protection to infants, or addressing the underlying issues that drive the crime of neonaticide, made the law seem bizarre when compared to other safe haven laws. This disconnect likely played a large role in causing the unintended effects that occurred under L.B. 157.

A. *L.B. 157 Did Not Protect Infants From Neonaticide*

With the absence of any link to neonaticide, it is not clear that L.B. 157 functioned to protect a particularly vulnerable subset of children from a subset of parents who fear being stigmatized, as the law initially was intended to do. Although it is possible that the adults who utilized L.B. 157 acted in response to some other type of perceived social stigma, such as a fear of being stereotyped as a "bad parent," such social disapproval is different from, if not less entrenched than, the social stigma unwed mother's perceive themselves to face.[117] While the fear experienced by those who utilized L.B. 157 prior to abandoning their older children might subjectively have been as great as that of an unwed

115. Indeed, out of all those clarifying provisions generally included within a safe haven law discussed above in Section 3, only the designation of a drop-off location was included in L.B. 157. *See* 2008 Neb. Laws 157 § 1.

116. *Id.*

117. Examples of this perceived stereotyping are found in the comments in an online discussion of L.B. 157. *See* Posting by Anonymous to *Michigan Mom Uses Nebraska Safe Haven Law*, WOWT-DT Omaha, http://www.wowt.com/home/headlines/30926774.html (Oct. 14, 2008, 10:13 EST).

> [W]e can blame ourselves for a lack of disciplining our children . . . . People want to blame the system instead of blaming themselves—shame on you. Discipline your children, take responsibility for them, and then you might have a chance of them turning out to be something other then diliquents [sic] on compliments of state. Yes, I have a little more compassion for parents at the end ofthe [sic] rope.

Id.

mother, an important difference remains: those individuals who used L.B. 157 were not as likely to resort to neonaticide or kill their children. For that reason alone, these parents were never intended to be the beneficiaries of a special law providing safe haven protection.[118]

B. *L.B. 157 Failed at Providing Anonymity and It Was Likely Impossible to Guarantee*

Even assuming that the subjective fear of those who utilized L.B. 157 rose to the same level as that commonly attributed to unwed mothers, L.B. 157 could not have offered the parents of older children an escape from the stigma in the same way traditional safe haven laws can for unwed mothers. Ultimately, L.B. 157's failure to include any guarantee of anonymity for those using the law would have been irrelevant to its success or failure. Indeed, given the facts of the safe haven cases that occurred in Nebraska, it would have been very difficult for any of the adults to remain anonymous.[119] Anonymity for the parents of older children dropped off under L.B. 157 was not possible in the same way as it would be for the parents of babies left under traditional safe have laws if only because older children can usually identify their parents and have already established relationships with a much larger group of people.[120] When those realities are combined with the significant media attention that was paid to the drop-offs in Nebraska's safe haven crisis, the potential to be stigmatized seemed far greater for those seeking to utilize L.B. 157 than for those merely afraid of being labeled as bad parents.

C. *Unlimited Participants*

L.B. 157's failure to be tailored to the social problem of neonaticide was also seen in its omission of a "limitation participant" provision.[121] L.B. 157 enabled any "person" to drop off a child, but did not

118. Although it is highly implausible that immediately prior to being dropped off the children left under L.B. 157 were potential victims of neonaticide, it is possible that they were a subset of particularly vulnerable children for other reasons. For a discussion of both those possible alternate reasons for their vulnerability, namely that they were children with unmet mental-healthcare needs, and whether a safe haven law could effectively protect them from that risk *see infra* Part IV.

119. In some situations, the parents actively sought out publicity, much to their children's dismay. *See* Martha Stoddard, *Keep Mum About Troubled Boy, Parents Told*, OMAHA WORLD-HERALD, Jan. 6, 2009, at 1B; *see also* Karyn Spencer, *No Talk About Teen's Case*, OMAHA WORLD-HERALD, Dec. 11, 2008, at 1B ("About half of the parents or guardians who used the safe haven law have given interviews to news media.").

120. *See* Spencer, *supra* note 119.

121. L.B. 157 included no restrictions on who could drop off a child. *See* 2008 Neb. Laws 157 § 1.

explicitly require that person leaving the child to be a parent, or even related to the child.[122] The lack of an explicit restriction on who could drop off a child under L.B. 157 had the potential to create significant legal issues regarding violations of parental rights if someone other then a parent dropped off a child.[123]

Some might argue that a lack of a strong limitation on who could make the drop-offs was the only way to ensure that the children most in need of help could obtain it. They would argue that if parents or legal custodians are not providing their children necessary care, it might be necessary for someone else, the ambiguous "person" of L.B. 157, to bring them to the safe haven of a Nebraska hospital. However, this argument in favor of maintaining L.B. 157 as written, without a limited-participant provision, falters in light of the fact that the juvenile dependency system provides independent grounds for children to receive help by authorizing the state to intervene in cases of abuse, neglect, or abandonment.[124] When parents or legal guardians are not providing children with necessary care, or are actually hurting their children, the state already, without needing to resort to L.B. 157, had the ability to protect these children. Where alternatives exist that allow children to be placed under state care without parental approval, the arguments in favor of unlimited participation under safe haven laws fail, especially in light of the heightened constitutional protection afforded to parental rights.[125]

Critics of traditional safe haven laws express concern with safe haven laws that give a mother the unilateral right to abandon a baby without concern for the father's due process rights.[126] Yet, the reverse situation that occurs under a law like L.B. 157, where potentially anyone can "abandon" the baby, raises the same concern, and additional ones over whether the person abandoning the baby is also violating the mother's rights by doing so. Even in light of L.B. 157's lack of an anonymity provision and the ability of state officials to notify any individual with a protected interest, the potential for abuse existed.[127] The potential

122. Leslie Reed, *'Safe Haven' Bill Moves Closer to Approval*, OMAHA WORLD-HERALD, Feb. 1, 2008, at 3B.

123. *See supra* note 109 and accompanying text.

124. *See* Neb. Rev. Stat. § 43-247(3) (2009).

125. The Due Process Clause of the Fourteenth Amendment has been held to include a substantive component that, "'provides heightened protection against government inference with certain fundamental rights and liberty interests' . . . . The liberty interest . . . [of] parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court." Troxel v. Granville, 530 U.S. 57, 65 (2000) (quoting Reno v. Flores, 507 U.S. 292, 301–02 (1993)).

126. *See* Cooper, *supra* note 81, at 895–900; Parness, *supra* note 98, at 213–17.

127. *See* Matthew Hansen & Karyn Spencer, *Safe Haven Meant Kids Finally Got Right Help,* OMAHA WORLD-HERALD, Feb. 1, 2009, at 1A (describing a grandmother who dropped off her out

would have been even greater if the safe haven statute had any anonymity provisions. Wholly apart from L.B. 157's failure to align itself to the problem of neonaticide, the potential legal issues that could have arisen because of L.B. 157's failure to explicitly limit those who may drop-off children under the law necessitated a change to the law.

D. *No Guidance for Hospital Staff*

It is likely that the omissions of both anonymity and limited participant provisions were by-products of the larger shortcomings that resulted from the compromised brevity of L.B. 157. As seen through L.B. 157's earlier forms and its predecessor L.B. 6, it is unlikely that the Nebraska legislators truly intended to omit the provisions; rather, it is more likely that they failed to realize the need for the provisions to be expressly stated.[128] In addition to the problems those omissions caused, the bill's overall brevity was also harmful because of its failure to provide any instructions to the hospital staff receiving the children. L.B. 157 provided no guidance for hospital workers on how to handle a situation when a child was dropped off.[129] Although the DHHS attempted to provide some guidance, in the first few drop-offs, hospital workers largely had to handle the situations with no greater guidance than their own best judgment.[130]

Those who wanted L.B. 157 to remain unchanged likely would not have been bothered by this omission. During the safe haven crisis, hospital staff quickly adopted their own procedures and generally responded well.[131] Arguably, legislators inexperienced in actual emergency (room) response practices would not have crafted guidance standards as effectively as hospital officials could have—and did—on their own. Indeed, as discussed earlier, some other safe haven laws vary in the amount of guidance they provide to staff. Some laws that provide only limited guidance seem no more helpful than complete omission of guidance.[132]

---

of control grandson and describing actions the state should have taken either forcing parents into treatment or removing children from their homes).

128. *See supra* notes 20, 27, & 29 and accompanying text.

129. 2008 Neb. Laws 157 § 1.

130. DEP'T HEALTH & HUMAN SERVS., CONSIDERATIONS FOR HOSPITALS, *available at* http://www.dhhs.ne.gov/children_family_services/SafeHaven/ConsiderationsforHospitals.pdf; DEP'T HEALTH & HUMAN SERVS., LB157 PROCESS FLOW CHART, *available at* http://www.dhhs.ne.gov/children_family_services/SafeHaven/LB157FlowChart.pdf; Hansen, *supra* note 114 (discussing the confusion over how to handle situations where L.B. 157 is used and the differing and evolving strategies utilized by hospitals and police officers in advising parents of alternatives to abandonment).

131. *See* Hansen, *supra* note 114.

132. Some of these statutes provide so little guidance that they can be argued to be of little use to safe haven staff. *See* ALA. CODE § 26-25-1(b) (LexisNexis 2009) (providing only that "an

While those who were unbothered by the lack of guidance in L.B. 157 correctly recognize the value of relying on the experience of those professionals who would have to implement the law, they overlook the need for having clear expectations from the beginning of the law's implementation and for uniformity in operating procedures across hospitals. Rather than failing to include any guidance or including guidance that is out of touch with what actually happened when a baby is dropped off, Nebraska and other states would be better served by going to the professionals before writing, or now amending, their safe haven laws. This type of collaboration would not only ensure that professionals' knowledge and experience is given the value it deserves, but also would enable uniformity across hospitals and establish clear expectations for hospital staff up front. This type of guidance would minimize the risk inherent in allowing ad hoc procedures to be implemented during an emergency situation.

E. *Uncertain Legal Effect When A Child Was Dropped Off*

Additionally, the law's brevity created legal issues over whether parental rights automatically terminated under the law and over whether children should be placed with other family members or enter the foster care system. The resulting confusion subjected children to needless trauma and left them in a state of uncertainty regarding who had responsibility for them.[133] In defining abandonment, the Supreme Court of Nebraska stated:

> Abandonment requires a finding that a parent intentionally withheld from a child, without just cause or excuse, the parent's presence, care, love, protection, maintenance, and the opportunity for the display of parental affection for the child. The question of abandonment is largely one of intent, to be determined in each case from all the

emergency medical services provide who takes possession of a child . . . shall perform any act necessary to protect the physical health or safety of the child.").

133. Although "best interest of the child" is the standard for determining children's placement, other opinions indicate that placement with family members is an important objective and often in the best interests of the child. *See In re* Kelley D. & Heather D. ., 590 N.W.2d 392, 402 (Neb. 1999) ("[W]hen temporary separation is necessary . . . to *consider relatives as a preferred potential placement resource*, and to assure every reasonable effort possible to reunite the juvenile and his or her family.") (emphasis added); *In re* Vincent P., 730 N.W. 2d 403, 407 (Neb. Ct. App. 2007) ("The Nebraska Juvenile Code must be liberally construed to accomplish its purpose of serving the best interests of juveniles who fall within it.") (citations omitted). In light of those decisions, Judge Crnkovich's actions in one of the safe haven cases seemed contradictory. *See* Lynn Safranek, *Judge Lashes Out at Safe Haven Law*, Omaha World-Herald, Oct. 2, 2008, at 3B. ("The nine were placed in two relatives' homes while the state maintains legal custody of them . . . . [Crnkovich] ordered that the children be removed from the relative's home within 24 hours.").

facts and circumstances.[134]

Applying that definition to the cases that arose under L.B. 157, by focusing on the intention of those who left children at the hospitals, there seemed to be potential support for finding abandonment.[135]

Yet, because L.B. 157 did not specifically use the word abandon, but rather described it as, "the act of leaving a child in the custody of an employee on duty at a hospital," it was not clear what legal effect the act had on parental rights.[136] This issue alone created a significant problem in its potential to inject great uncertainty into the lives of the children dropped off, but amidst the other problems arising in the Safe Haven Crisis, it received relatively little attention from the media.[137] However, when this problem is viewed in combination with the numerous other problems under L.B. 157, they resoundingly show that the law needed to be changed.

F. *A Change to Nebraska's Safe Haven Law*

Although not necessarily for the same reasons discussed above, by late October 2008, most Nebraskan legislators realized that L.B. 157 was not an adequate safe haven law. Announcing his decision to call a special session to amend L.B. 157, Governor Dave Heineman said, "the state would have to examine the accessibility of social services for older children and their families."[138] While the Governor's recognition of the problems the state's families faced was an important initial step in the government's response to the safe haven crisis, not all who had to come together to address the problem agreed with the Governor.[139] Some key leaders of the DHHS were unsympathetic to parents who saw L.B. 157 as their only way to receive the help they needed.[140] Still others were not

134. *In re* Mainor T. & Estela T., 674 N.W.2d 442, 462 (Neb. 2004) (citation omitted).

135. As seen in Gary Staton's case, his intention clearly was to abandon his children. *See supra* note 1 and accompanying text.

136. 2008 Neb. Laws 157 § 1.

137. *See* Martha Stoddard, *Special Session Called,* OMAHA WORLD-HERALD, Oct. 30, 2008, at 1A ("Nebraska's safe haven law protects people from being prosecuted in Nebraska for leaving a child with a hospital employee on duty. They can, however, be charged with other acts of abuse and neglect and *can lose their parental rights*.") (emphasis added). Most news articles discussing Nebraska's safe haven law did not specifically address the legal effect dropping-off a child had on parental rights. Those, such as Stoddard, who did mention that parents could potentially lose parental rights, in no way spoke definitively on the issue. *See, e.g.,* Agrell, *supra* note 78; Hansen, *supra* note 114; Hansen & Reed, *supra* note 10.

138. Erik Eckholm, *Special Session Called on Nebraska Safe-Haven Law*, N.Y. TIMES, Oct. 30, 2008, at A29.

139. *See* Karyn Spencer & Martha Stoddard, *Safe Haven Law: Frustrated Families Frustrate the System*, OMAHA WORLD-HERALD, Sept. 28, 2008, at 1A.

140. DHHS Director Todd Landry voiced his opinion about the parents using L.B. 157 by giving his opinion that:

convinced that the law needed revision because they believed that, even though L.B. 157 did not function as a traditional safe haven law, it was not problematic to use L.B. 157 as a conduit to help older children.[141]

Despite those differing views, the stakeholders ultimately came together to address the safe haven crisis: in a special legislative session, on November 21, 2008, the Nebraska legislature revised L.B. 157 and limited the state's safe haven protection to infants up to thirty-days old.[142] In contrast to the almost unopposed passage of L.B. 157,[143] during the special session five of forty-eight Nebraskan legislators voted against the revision.[144] Although that opposition was still relatively small, it was indicative of the ongoing debate over the proper scope of the safe haven law that continued despite the safe haven crisis[145]

Now, under Nebraska Revised Statutes § 29-121,[146] Nebraska has a safe haven law that specifically focuses on preventing neonaticide. In its entirety the new law reads:

> No person shall be prosecuted for any crime based solely upon the act of leaving a child thirty days old or younger in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child.[147]

The new safe haven law still does not contain many provisions that have been demonstrated to be an important part in safe haven laws.[148] Those omissions and the law's overall brevity is likely due to the need to repeal L.B. 157 quickly, and the need to bring together many legislators' divergent opinions. Although it would have been desirable for the legislature

---

> The parents simply decided they did not want to continue on this journey with their kids . . . . The department's initial review of the cases has not turned up problems with the state's system for responding to families in crisis . . . . [T]here has been no indication that the families had been hit by economic troubles . . . . It's been less an issue of knowing where to turn and more of an issue of I simply don't want to do this job.

Id. (internal quotations omitted).

141. Editorial, *New Safe Haven Cutoff Too Soon*, DAILY NEBRASKAN, Nov. 24, 2008, via University Wire. The concerns of those who felt L.B. 157 could and *should* be used as a way to obtain mental health services for older children will be addressed in Part IV(B) *infra.*

142. NEB. REV. STAT. § 29-121 (2009); *see also* Erik Eckholm, *Nebraska Limits Safe-Haven Law to Infants*, N.Y. TIMES, Nov. 22, 2008, at A10; Heineman, *supra* note 44.

143. *See supra* note 36 and accompanying text.

144. Leslie Reed, *With Law Signed, Lawmakers Look Ahead To Fixing System,* OMAHA WORLD-HERALD, Nov. 22, 2008, at 02A.

145. Even during the special session, multiple revisions were made concerning the proper age restriction. Different suggestions included, seventy-two hours, one year, and four months. LEG. JOURNAL, 100th Leg. 1st Special Sess., 4th Day, Nov. 18, 2008, at 51, 55, & 57 (Neb. 2008).

146. NEB. REV. STAT. § 29-121 (2009).

147. *Id.*

148. It affords no express guarantee of anonymity, does not on its face limit who may utilize the law, and does not provide extensive guidance for hospital staff. *Id.*

to use the opportunity afforded to them in the Special Session to enact a more comprehensive safe haven law, the compromise is somewhat understandable given the urgency of the safe haven crisis. In the future, when the more urgent concerns resulting from the safe haven crisis have been dealt with, it would be beneficial for the legislature to return to the current safe haven law and include some of the other provisions that they failed to include in this revision.

This Note has provided, albeit postenactment, support for the decision to revise L.B. 157 and include an age limit restricting the law's application to infants by showing that as previously written L.B. 157 did not serve the purposes behind traditional safe haven laws. Despite that support for its revision, however, it is important to acknowledge that even an "ideal" safe haven law reflective of the concerns discussed earlier, would be subject to criticism.[149] Rather than an attempt to rebut the attacks against all safe haven laws, this Note is limited to discussing why the continued use of L.B. 157, in its prerevision form—as an escape from an otherwise troubled child welfare system—could have caused substantial problems, and not as a Note offering unabashed support for safe haven laws.

Now that the Nebraska's safe haven law has been amended, it is likely that a relatively smaller number of incidents will fall within its scope.[150] The safe haven crisis, however, cannot be dismissed, as it has come to represent the emergence of public awareness as to the magnitude of the problems Nebraskan families face. At this point, the focus of this Note will shift to address the more pervasive problems that older children and their families continue to face in Nebraska. These problems are now perceived to have been a significant cause of the safe haven crisis and were not resolved simply by the enactment of a traditional safe haven law in Nebraska. Most notably, and of greatest concern going forward, the safe haven crisis strikingly revealed the inadequacy of mental-healthcare services for the children of Nebraska.

IV. A Continuing Crisis: Child Mental-Health Services in Nebraska

Substantial work awaits the Nebraska legislature before the underlying problems that caused the safe haven crisis are adequately addressed. Nebraska legislators must now focus on the main problem

149. *See, e.g.* Jennifer R. Racine, *A Dangerous Place for Society and its Troubled Young Women: A Call for an End to Newborn Safe Haven Laws in Wisconsin and Beyond*, 20 Wis. Women's L.J. 243, 243–46 (2005); Sanger, *supra* note 43, at 759–60.

150. Sanger, *supra* note 43, at 763 ("[T]he number of newborns killed or abandoned in the United States is tiny.").

that was revealed to have fueled the safe haven crisis: Nebraska's older children are unable to attain the mental-healthcare services they need.[151] The events leading up to Lavennia Coover's decision to drop off her son under L.B. 157 paralleled the experiences of many other parents who utilized L.B. 157 to drop off their older children.[152] Coover's son, like many of the other older children dropped off under L.B. 157, suffered from behavioral and mental-health problems.[153] During the special session to amend L.B. 157, Coover told the Judicial Committee that her son was bipolar and had physically attacked her in the past.[154] Coover explained that, despite her efforts to obtain state mental-healthcare services, she only managed to get her son short stays in children's psychiatric wards, not the continued treatment he needed.[155] Indeed, in the months following the safe haven crisis, it became clear that parents' frustration over their inability to obtain mental-healthcare services for their older children through less drastic measures was a driving force behind much of the "misuse" of L.B. 157.[156] In many cases, parents who utilized L.B. 157 did not seek to abandon parental responsibility, but instead were trying to fulfill their parental obligations in the only way they thought possible.[157] In light of that reality, it seems that the Nebraska safe haven crisis would have better been labeled the Nebraska child mental-healthcare crisis.

A. *What Was Learned From The "Misuse" of L.B. 157?*

During the special session, Senator Steve Synowiecki stated that although he thought the mental-health system in Nebraska had improved in recent years, the safe haven crisis made him realize that, despite reforms to adult mental healthcare services, child mental-healthcare services in Nebraska remained inadequate.[158] Senator Annette Dubas acknowledged during the special session that, "[s]ervices are available

151. Hansen & Reed, *supra* note 10.

152. *Id.*

153. *Id; see also* Martha Stoddard, *More Funds Sought For Mental Ills*, OMAHA WORLD-HERALD, Dec. 12, 2008, at 1B ("Nearly one in five children enters Nebraska's foster care system because of mental or behavioral problems."); Martha Stoddard, *Struggles Similar in Dropoff Cases,* OMAHA WORLD-HERALD, Nov. 14, 2008, at 1B.

154. Hansen & Reed, *supra* note 10.

155. *Id.*

156. Martha Stoddard, *More Funds Sought For Mental Ills,* OMAHA WORLD-HERALD, Dec. 12, 2008, at 1B ("Most of the 36 children who were dropped off at hospitals this year under Nebraska's former safe haven law had mental health or behavioral problems.").

157. Hansen & Reed, *supra* note 10.

158. Leslie Reed & Matthew Hansen, *Second OK Is Given to Haven Limit of 30 Days. Lawmakers Emphasize That Help Is Available For Parents With Troubled Older Children*, OMAHA WORLD-HERALD, Nov. 19, 2008, at 1A.

(for older children) but rarely attainable."[159] County foster care case workers similarly acknowledged that many of the children dropped off had fallen through the cracks of Nebraska's Foster Care system:

> The safe haven cases fell short of requirements for help through existing routes: through police, if children commit a crime; through the Department of Health and Human Services, if the situation is immediately unsafe for them to live at home; and through a hospital psychiatric ward, if the children are an immediate danger to themselves or others.[160]

Most of the children dropped-off under L.B. 157 needed mental-health-care services.[161] In contrast, in the Nebraska foster care system as a whole, less than eight percent of foster care cases in the second half of 2006 involved children with diagnosed mental-health issues.[162] That disparity seems indicative of the difficulty children with mental-health problems experienced trying to obtain services and affords an explanation as to why so many adults utilized L.B. 157 after failing to find help elsewhere.

B. *Should L.B. 157 Have Remained?*

Across the United States, numerous cases similar to those in the safe haven crisis have occurred where parents felt compelled to relinquish custody of their children in order to obtain mental-healthcare services for their children: an estimated 12,700 children were placed in child welfare or juvenile justice systems as a last resort effort to receive mental-healthcare services.[163] That striking national estimate, in combination with the recent Nebraska safe haven crisis, provides support for the observation that in the eyes of many frustrated parents the child-welfare system has become, "the default health care provider for chil-

159. Hansen & Reed, *supra* note 10 (quoting Senator Dubas) (alteration in original).

160. Karyn Spencer & Lynn Safranek, *Safe Haven Law's Impact The System*, OMAHA WORLD-HERALD, Nov. 9, 2008, at 2A.

161. Martha Stoddard, *Struggles Similar in Dropoff Cases,* OMAHA WORLD-HERALD, Nov. 14, 2008, at 1B.

162. Spencer & Safranek, *supra* note 160 (showing that 207 out of the 2,668 cases in the second half of 2006 involved children with mental-health conditions).

163. *See, e.g.*, PRESIDENT'S NEW FREEDOM COMMISSION ON MENTAL HEALTH, ACHIEVING THE PROMISE: TRANSFORMING MENTAL HEALTH CARE IN AMERICA: FINAL REPORT 33 (2003) *available at*: http://www.mentalhealthcommission.gov/reports/FinalReport/downloads/FinalReport.pdf; Tracy J. Simmons, *Relinquishing Custody in Exchange for Mental Healthcare Services: Undermining the Adoption and Safe Families Act's Promise of Reasonable Efforts Towards Family Preservation and Reunification*, 10 J. L. & FAM. STUD. 377, 377 (2008) ("Approximately five to nine percent of children in the United State have serious emotional disturbances. A survey found that the parents of approximately one-fifth of these children relinquish custody to obtain mental health care services for their children.").

dren."[164] Some parents and legislators who realized that reality, and viewed L.B. 157 as a much-needed path to enter the child-welfare system and obtain help for older children, opposed amending L.B. 157 to only apply to infants.[165] They argued that, "[t]he safe haven concept fits into this continuum of the state's involvement with troubled families and children . . . . It gets us working on problems before the violence starts, before the bigger problems you inevitably see show up."[166] While it is true that many of children in the safe haven crisis received adequate mental-healthcare services only after entering the foster-care system through L.B. 157, those who argue that this unintended access path should have remained open fail to fully appreciate the problems that are inherent in utilizing the foster care system as a default mental-healthcare provider.[167]

The foster care system was not intended to be a default mental-healthcare provider.[168] In reality, it is a dangerous default because it endangers parents' ability to maintain their parental rights.[169] Instead of being able to confine their use of the foster-care system to simply obtaining mental-healthcare services for their children, parents who utilize this path often find that all control over their children is taken away from them and their parental rights are terminated under the mandate of federal law.[170] More so, apart from those effects on parental rights, the child-welfare system in Nebraska and across the country, though well intentioned, is riddled with problems and the effects of placing a child in the foster-care system can often end up being more harmful than helpful.[171]

Why then, given the risks associated with the practice, have foster care and juvenile justice systems come to be perceived as a default for obtaining mental-healthcare services for children? While some parents

164. Simmons, *supra* note 163, at 377.

165. Martha Stoddard, *40 Lawmakers Would Limit Nebraska's Safe Haven*, OMAHA WORLD-HERALD, Oct. 21, 2008, at 1B ("State Sen. Tom White of Omaha said he still believes that the law should apply beyond the first three days of life. He has argued that the law should extend to children up to age 14. 'The day somebody convinces me a 4-day-old doesn't deserve the same protection as a 3-day-old, I will support the proposed amendment, he said. 'I can't tell you when life stops deserving [sic] of protection.'"); *see also* Robert Nelson, *A Safe Haven For Saving Juveniles?*, OMAHA WORLD-HERALD, Sept. 26, 2008, at 1B.

166. Nelson, *supra* note 165.

167. *See* Hansen & Spencer, *supra* note 127.

168. Tammy Seltzer, Bazelon Center for Mental Health Law, *Keeping Families Together: Removing Barriers That Force Parents to Relinquish Custody of Their Children to Secure Mental Health Services*, Testimony Before the S. Comm. of Governmental Affairs, 108th Cong. (July 15, 2003), available at http://www.bazelon.org/issues/children/custody/7-15-03seltzertestimony.htm.

169. Simmons, *supra* note 163, at 388.

170. *See* 42 U.S.C. § 675(5)(e) (2008)

171. Marcia Robinson Lowry & Sara Bartosz, *Why Children Still Need A Lawyer*, 41 U. MICH. J.L. REFORM 199, 200–03 (2007).

realize the risks of placing their children into the foster-care system, they often feel that the risks are unavoidable given the gravity of their situation.[172] Other parents, aware that their children generally have no guaranteed right to government provided mental-healthcare services,[173] know that after their children enter foster care, the government will be required to provide services their children would not otherwise necessarily be entitled to receive.[174]

In addition to having a minimal knowledge of the dangers of the foster-care system and the belief that because children have a right to care once in the system they will receive better care, other factors reinforce the belief that the child-welfare system is a viable option: an inability to access services for their children on their own, gaps and limitations in coverage under their own health-insurance policies, general bureaucratic difficulties, inadequate staffing and facilities near the children's homes, and state encouragement of relinquishment.[175] State incentivization of relinquishment is stronger than one might imagine: "Numerous mental health care facilities *require* that children be in state custody for treatment: 'Many institutions refuse to treat a child who is not in state custody, so relinquishment is strongly recommended to parents as a means of receiving appropriate treatment for their children.'"[176] The presence of these factors indicates that the current mental-healthcare system actually channels children into foster care. In addition, that structure reinforces some parents' unfortunate view that relinquishing custody of children is both the only way to obtain necessary services and an adequate option that will benefit their children.

In Nebraska, the use of L.B. 157 was particularly attractive because of the substantial difficulty of obtaining mental-healthcare services any other way.[177] Parents often had problems obtaining mental-healthcare services for their children through Nebraska's Medicaid system: despite

172. *See* Hansen & Spencer, *supra* note 127 (describing Coover's experience).

173. Leigh Mello, *Department of Mental Health Continuing Care Services, in* 2 LEGAL RIGHTS OF INDIVIDUALS WITH DISABILITIES ch. 19 § 11.5.3(a) (Stanley J. Eichner & Christine M. Griffin eds., 2002).

174. *See* Youngberg v. Romeo, 457 U.S. 307 (1982) ("As a general matter, a State is under no constitutional duty to provide substantive services for those within its border. When a person is institutionalized—and wholly dependent on the State—it is conceded by petitioners that a duty to provide certain services and care does exist, although even then a State necessarily has considerable discretion in determining the nature and scope of its responsibilities.") (citations omitted); Marisol A. v. Giuliani, 929 F. Supp. 662, 674–76 (S.D.N.Y 1996); Mello, *supra* note 173.

175. Simmons, *supra* note 163, at 380–81.

176. Simmons, *supra* note 163, at 380–81 (emphasis added)(quoting Gwen Goodman, Comment, *Accessing Mental Health Care for Children; Relinquishing Custody to Save the Child*, 67 ALB. L. REV. 301, 306 (2003)).

177. *See* Hansen & Spencer, *supra* note 127.

the Nebraska's Medicaid system's claim to provide a broad range of mental-healthcare services for children and adolescents,[178] when families attempted to obtain Medicaid services to meet their children's mental-health needs, after filling out extensive applications and sometimes waiting more than a month to have their application processed, families received lower levels of care than they requested and generally remained unsatisfied with the services they did receive.[179] Even the DHHS acknowledged that the Nebraska Medicaid program's mental-healthcare services, as provided under a contract with Magellan Behavioral Services, at times acted as a "barrier to children receiving the mental health services they need."[180] Parents have been especially vocal in criticizing the Magellan plan's focus on short-term services at the expense of long-term care.[181]

In the face of those obstacles, some families may have come to believe that obtaining services by relinquishing custody of their children is a preferred option. Yet, the foster-care system often is more harmful than beneficial for the children it serves.[182] One study, not limited to Nebraska, found that, "[t]he immediate psychological effects of exposure to the foster care system are devastating . . . . [The study] indicates that as many as 90% of children in the foster care system suffer from mental health problems warranting clinical intervention."[183] Within Nebraska, in a 2008 report on the foster-care system, the DHHS acknowledged that, despite its efforts to address the mental-healthcare needs of children in the foster-care system, concerns remained about the "lack of follow-up services or care, [the] little ongoing assessment, and [the] lack of knowledge among workers about the services needed and provided, and occasionally the provision of inappropriate services."[184]

These studies support arguments criticizing reliance on the foster care system as a default provider of child mental-healthcare services. Because they indicate that exposure to the foster-care system, on its

178. NEBRASKA MEDICAID PROGRAM, MEDICAID SERVICES: SERVICES COVERED BY MEDICAID, *available at*: http://www.hhs.state.ne.us/med/medserv.htm (listing the different types of outpatient, middle intensity, and hospital mental-health services available to children in Nebraska).

179. Karyn Spencer, *Gatekeeper to Kids' Care Has Eye on Bottom Line*, OMAHA WORLD-HERALD, Dec. 28, 2008, at 1A.

180. NEB. DEP'T OF HEALTH & HUMAN SERVS., DIVISION OF CHILD & FAMILY SERVICES POLICY SECTION, STATEWIDE ASSESSMENT 94 (2008).

181. *Id.* at 90. However, it is important to note that children within the foster-care system, who were already wards of the state, experienced the same access problems. *Id.*

182. *See supra* note 171 and accompanying text; *see also* Daniel A. Starett, *A Plea For Permanence After Termination of Parental Rights: Protecting the Best Interests of the Child in Ohio*, 56 CLEV. ST. L. REV. 419, 427–30 (2008).

183. Starett, *supra* note 182, at 428.

184. NEB. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 180, at 89.

own, has been shown to increase a child's risk for experiencing mental-health problems, they demonstrate that placing children in an environment where they are likely to develop more problems would be contrary to the presumed goals of the parents who relinquish custody in an effort to provide their children with better mental healthcare.[185] While those who advocated for the continued use of the foster care system as a default child mental-healthcare service provider might be willing to take their chances in order to obtain the services needed now, they run the risk of sacrificing much more than they may realize.

C. *Then What Else Must Be Done?*

Soon after the safe haven crisis, Nebraskan legislators realized that an underlying child mental-healthcare crisis played a significant role in the misuse of L.B. 157.[186] By amending L.B. 157, the legislators decided that Nebraska's foster-care system should not be used as a default child mental-healthcare services provider. They instead resolved to improve children's access to mental-healthcare services outside of the foster-care system.[187] Nebraskan legislators almost immediately began to introduce legislation designed to address the child mental-healthcare crisis in Nebraska.[188] While their efforts initially were disconnected and limited in nature, as the public began to call for comprehensive reform of Nebraska's mental-healthcare system, a more unified and comprehensive approach emerged.[189] Despite that initial progress, it is not clear that the efforts they have suggested, to date, are sufficient.

1. Hotlines Do Not Create New Mental-Healthcare Services

Initially, Senator Amanda McGill planned to introduce a proposal that "would require each of the state's six behavioral health regions to operate a crisis information and referral service, staffed twenty-four hours a day with trained behavioral health specialists."[190] In many ways her proposed "information and referral system" did not substantially dif-

185. Starett, *supra* note 182, at 428.

186. Martha Stoddard, *Bills Aim For Early Help For Children*, Omaha World-Herald, Jan. 12, 2009, at 1B.

187. *Id.*

188. *Id.*

189. *Compare* Stoddard, *supra* note 186 (discussing the initially limited and divergent mental-healthcare reforms proposals of the legislators) *with* Editorial, *Good Move on Safe Haven Bills*, Lincoln Journal Star, Mar. 14, 2009 at B7 (discussing the more to a more cohesive reform effort) *and* Martha Stoddard, *Nebraska Legislature More Mental Health Care For Kids Debated*, Omaha World-Herald, Mar. 10, 2009 at 03B (discussing the competing reform efforts, which are more comprehensive than initial reform proposals).

190. Stoddard, *supra* note 186.

fer from the state's previously derided 211 line,[191] a "human services information line"[192] that acts as a database "containing information on several thousand [health and human services] agencies, programs, and services across the state."[193] Perhaps anticipating such criticism, in discussing her proposal Senator McGill acknowledged that, "[t]his is one thing I think we can practically do . . . . We're not going to be able to do everything."[194]

Another proposal, Legislative Bill 346 (L.B. 346),[195] was similar to Senator McGill's proposal in that it also sought to create a hotline via which families may receive information about existing community mental-healthcare services.[196] Both Senator McGill's proposal and L.B. 346 were inadequate for several reasons. First, they failed to recognize the inadequacy of the current mental-healthcare services that were available.[197] Creating a hotline is not equivalent to creating services. Both proposals seemed unaware of the likely possibility that even if a hotline was available, the services to which it would direct callers would be inadequate to meet the callers' needs. While it was true that the safe haven crisis was at least partially caused by the fact that some parents' experienced difficulty obtaining information about *existing* services, that aspect of the crisis was relatively insignificant in comparison to the inadequacy of existing services for those parents who did know what services were available.[198] The Nebraska Appleseed Center for Law in the Public Interest testified in opposition to L.B. 346 for some of the same reasons: "[W]e believe that the proposed legislation, as written . . . does not address the lack of behavioral health services for children raised by the safe haven law."[199] In its testimony, Nebraska Appleseed stressed the need to *create* services for children, rather than simply "cre-

191. Matthew Hansen, *I Don't Know What to Tell You. The State's Widely Promoted 211 Help Line Gets Calls That Experts Say It Isn't Equipped To Handle*, OMAHA WORLD-HERALD, Dec. 7, 2008, at 1A.

192. NEB. DEP'T HEALTH & HUMAN SERVS., FINDING RESOURCES FOR ALCOHOL & SUBSTANCE ABUSE, GAMBLING ADDICTION & MENTAL HEALTH (2007), http://www.hhs.state.ne.us/beh/Treatment.htm.

193. NE211, *About Us* (2009), http://www.ne211.org/about.php.

194. Stoddard, *supra* note 186.

195. Legislative Bill 346, 101st Leg., 1st Sess. (Neb. 2009).

196. *Id.*

197. "All of Nebraska's counties, with the exception of Mental Health Catchment Area 6 . . . are federally designated mental health HSPAs [Health Professional Shortage Areas]." NEBRASKA CENTER FOR RURAL HEALTH, "A CRITICAL MATCH": NEBRASKA'S HEALTH WORKFORCE PLANNING PROJECT 3 (2009), *available at* http://www.unmc.edu/rural/documents/NebraskaWorkforceProjectFinal091509.pdf. "Over a third (37) of Nebraska's 93 counties have no behavioral health professionals (Figure 86)." *Id.* at 88.

198. *See* Reed & Hansen, *supra* note 158.

199. *Testimony on L.B. 275 & L.B. 346*, *Before the Health and Human Servs. Comm.*, 101st Leg., 1st Sess. (Neb. 2009) (statement of Sarah Helvey, The Nebraska Appleseed Center for Law

ate[ ] a new 'doorway' that does not have the necessary services on the other side."

While supporters of Senator McGill's proposal and L.B. 346 might point to the successful use of a crisis line in Region 3 Behavioral Health, a coverage zone in the south-central part of the state,[200] a critical difference in Region 3 is that there the crisis line does not operate alone.[201] Instead, it is used in combination with a team of peer support specialists who work within the local communities the line serves.[202] If anything, Region 3's success suggests that a hotline alone is insufficient, but may add value when used as part of a more comprehensive care plan. A second problem is that, when these criticisms are viewed in light of the current economic troubles facing Nebraska and the nation at large,[203] funding even one program that fails to bring the necessary reform would be especially detrimental as it could prevent other more beneficial proposals from being implemented.[204]

2. Focus on Increasing Services & Moving to a Regional-Service Model

New proposals have continued to be introduced. Legislative Bill 356,[205] (L.B. 356), was one that initially received a lot of attention, possibly because of its proposal to allocate an additional fifteen million dollars a year of state money to child mental-healthcare services.[206] It might have received this attention also because it was generally a better proposal. Not only did the legislature allocate substantial funding specifically to child mental-healthcare services under L.B. 356, but it also affirmed that parents do not have to relinquish legal or physical custody to obtain state services.[207] Equally important, it provided a specific way for children in need of long-term treatment to request that their care be extended

in the Public Interest), *available at* http://neappleseed.org/docs/lb275_346_testimony_combined.pdf.

200. Editorial, *Behavioral Health Gains Made in Nebraska*, Omaha World-Herald, Jan. 17, 2009, at 4B.

201. *Id.*

202. *Id.*

203. Stoddard, *supra* note 186 ("Winning passage of any bill with a large price tag will be difficult this year, with the gap between expected state revenue and projected expenses already at $377 million for the two-year budget period starting July 1.").

204. *Testimony, supra* note 199 (statement of Sarah Helvey) ("We cannot see how anything would be gained by redirecting funds in this way.").

205. Legislative Bill 356, 101st Leg., 1st Sess. (Neb. 2009).

206. Judiciary Amendment 529, 101st Leg., 1st Sess. (Neb. 2009); *see also* Martha Stoddard, *Nebraska Legislature More Mental Health Care For Kids Debated*, Omaha World-Herald, Mar. 10, 2009 at 3B.

207. Legislative Bill 356 § 1(3), 101st Leg., 1st Sess. (Neb. 2009).

beyond the ninety days guaranteed under the law.[208] While this procedure for extending treatment still does not guarantee that children would not have to fight to receive long-term care, it does indicate that they would at least be able to have their needs carefully evaluated before having their treatment cut off.

Many of the reform proposals, in addition to being too narrow in scope or failing to address the lack of availability of child mental-healthcare services in Nebraska, appeared problematic also because they were premised upon Nebraska's old regional-health-center model.[209] Rather than wasting state resources on sustaining the Nebraska's old regional-health-center model, any reform undertaken by the legislature should focus on improving the availability of community-based mental-healthcare services.[210] Nebraska has already begun a transition to a community-based mental-healthcare model; however, it has only taken significant efforts towards making that transition in the area of *adult* mental healthcare.[211] Even though it has taken somewhat limited actions, the DHHS has made progress in transitioning to a community-based model for adult mental healthcare: in implementing L.B. 1083 in 2008, $30.1 million was transferred from regional centers to community services.[212]

In the Implementing Report for L.B. 542, a plan based on L.B. 1083 but focused on *child's* mental healthcare needs, the DHHS recognized the need to develop community-based mental-healthcare services and develop the state's service capacity under its plan to implement L.B. 542.[213] However, in approaching child mental healthcare, the DHHS's initial outlook was restrained: the Nebraska Center for Mental Health Services, explicitly noted that the "system for children is multifaceted, fragmented and complex . . . . In addition, Nebraska is primarily a rural/

208. Legislative Bill 356 § 2(1), 101st Leg., 1st Sess. (Neb. 2009).

209. Stoddard, *supra* note 186.

210. Lois A. Weithorn, *Envisioning Second-Order Change In America's Responses to Troubled & Troublesome Youth,* 33 HOFSTRA L. REV. 1305, 1363–67 (2005).

211. *See* NEB. REV. STAT. § 71-810 (2009) (implementing legislation aimed at reforming adult behavioral services); NEB. DEP'T HEALTH & HUMAN SERVS., CREATING CHANGE AND PROVIDING HOPE FOR NEBRASKA'S CHILDREN, ADOLESCENTS AND THEIR FAMILIES, LB 542 IMPLEMENTATION REPORT, 7 (2008), *available at* http://www.hhs.state.ne.us/beh/mh/LB542.pdf; REGION V SYSTEMS, LB 1083 IMPLEMENTATION (2004), *available at* http://www.region5systems.net/Summary_of_Legislative_Bill_1083_May_Report.pdf. This was also likely the bill Senator Synowiecki referred to in saying he assumed child mental-healthcare services had already been addressed. Reed & Hansen, *supra* note 157.

212. NEB. CENTER FOR MENTAL HEALTH SERVICES DIVISION OF STATE AND COMMUNITY SYSTEMS DEVELOPMENT, UNIFORM APPLICATION, FY 2008 - STATE IMPLEMENTATION REPORT, COMMUNITY MENTAL HEALTH SERVICES BLOCK GRANT, 7 (2008), *available at* http://www.dhhs.ne.gov/beh/mh/NE-Implementation-Report-2008.pdf.

213. NEB. DEP'T HEALTH & HUMAN SERVS., *supra* note 211, at 7.

frontier state which impacts access due to lack of appropriate services, workforce shortage and distance."[214] Those concerns seemed somewhat overemphasized. The same problems existed when Nebraska began efforts to overhaul adult mental-healthcare services. Yet, Nebraska's rural infrastructure and the disjointed nature of the old *adult* mental-healthcare system did not block reform of the adult mental healthcare system. The success that Nebraska achieved in adult mental healthcare suggests that similar results can be obtained for children despite these concerns.[215]

Community leaders and members of the Children's Behavioral Health Task force have already demonstrated that they are committed to the community-based reform effort and that they will not support plans that divert financial resources to new institutions that do not improve community-based services.[216] Responding to Scot Adams's, DHHS Behavioral Health Director, assertion that adequate security will not be provided to the violent youths outside of the existing institutional settings, Topher Hansen, Executive Director of the private treatment center CenterPointe, said that "there is no reason to believe the community providers couldn't successfully treat the youths."[217] This exchange between the DHHS, wed to its existing regional institutional model, and community leaders in the mental-health field committed to change indicates that a transition to a community-based child mental-healthcare model will not come easily. It also indicates, however, that those fighting for the change are committed to the effort and will not easily give up.

There are, admittedly, limits on the extent to which the community-based model can be implemented. Nebraska does have a large rural population, which makes the efficient and cost-effective provision of services across its territory difficult.[218] In addition, the state already faced staffing shortages under the regional-institution model, which presuma-

214. NEB. CENTER FOR MENTAL HEALTH SERVICES DIVISION OF STATE AND COMMUNITY SYSTEMS DEVELOPMENT, *supra* note 212, at 29.

215. *See* Reed & Hansen, *supra* note 158 (providing legislators' statements supporting the need for similar reforms to be made in child mental healthcare).

216. Martha Stoddard, *$18 Million Question for State Is a New Facility for Troubled Youths Needed? Agency Says Yes*, OMAHA WORLD-HERALD, Dec. 21, 2008, at 1B.

217. *Id.*

218. U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., STATE FACT SHEETS: NEBRASKA (2009), *available at* http://www.ers.usda.gov/stateFacts/NE.htm (showing that 743,536 Nebraskans live in rural areas); *see generally* THE MEDICARE RURAL HOSPITAL FLEXIBILITY STEERING COMMITTEE, THE NEBRASKA RURAL HEALTH PLAN (2008), *available at* http://www.nebraskaruralhealth.org/Nebraska_Rural_Health_Plan_11-20-08.pdf (describing various healthcare problems in Rural Nebraska, including shortages of healthcare professionals, lack of services, underinsurance, and economic constraints).

bly requires less manpower.[219] And the already existing staffing constraints are predicted to increase: the demand for health professionals is projected to increase between 2010 and 2025,[220] but supplies are not expected to keep up.[221] In addition, funding concerns loom even larger than usual, given the current economic downturn.[222]

Ultimately all of those concerns did not prevent the legislature from enacting a law designed to improve community-based behavioral health services for children in Nebraska: Legislative Bill 603 (L.B. 603).[223] The passage of L.B. 603 does not mean that all of Nebraska's mental-healthcare problems have been solved. Instead, a continued commitment by state officials is essential to ensuring that the bill's goals are effectively implemented. Additional efforts must still be taken to actually bring more mental-healthcare professionals into the state and to ensure that necessary services are available.[224] Furthermore, the legislature must remained committed to fully funding new mental-healthcare programs, even if it requires that they explore the availability of alternative sources of funding.[225]

3. Addressing Other Possible Causes of the Safe Haven Crisis

Concurrent with those efforts to reform children's mental-health-

---

219. The Medicare Rural Hospital Flexibility Steering Committee, *supra* note 218, at 13.

> "Nebraska has many rural areas that are underserved and have shortages of physicians, mid-level practitioners, mental health professionals, and other health professionals . . . . In 2005, more than one-half of Nebraska's counties (49 of 93) were federally designated primary care Health Professional Shortage Areas (HSPAs). Over 95 percent of Nebraska counties (89 of 93) were designated as mental health HSPAs. In addition, there are many more counties that qualify as state-designated shortage areas."

*Id.*at 13; *see also* Martha Stoddard, *Older Kids' Plight Still in Mind Safe Haven Law Raises New Issues for Lawmakers*, Omaha World-Herald, Nov. 1, 2008, at 1B (referring to Senator Tim Gay's statement that he was looking for "ways to help ease the shortage of behavioral health workers in the state, with an eye to increasing the availability of services").

220. Nebraska Center for Rural Health, *supra* note 197, at 113 (showing the projected demand of different health professionals, including psychologists and psychiatrists).

221. *Id.* at 3 ("Nebraska will face future shortages of nurses, physicians, and dentists."). While it is predicted that "Nebraska will face a shortage of 3,800 RNs by 2020," *id.* at 110, it is estimated that the current shortage of physicians in Nebraska will end by 2020. *Id.* at 109.

222. Stoddard, *supra* note 186 ("Winning passage of any bill with a large price tag will be difficult this year, with the gap between expected state revenue and projected expenses already at $377 million for the two-year budget period starting July 1.").

223. 2009 Neb. Laws 603.

224. Editorial, *In the Wake of Safe Haven: Time to Solve the Shortage*, Omaha World-Herald, Feb. 18, 2009, at 6B (noting the establishment of a legislative committee to consider ways to increase the number of mental-healthcare professionals in the state).

225. *Id.* (discussing the success of private contributions in Omaha).

care services, it is important to realize that the inadequacy of the mental-healthcare services might not have been the only significant problem that contributed to the safe haven crisis. Not every safe haven case involved a parent who had exhausted all their options to try and obtain help for their children.[226] Some parents failed to use the services afforded to them and seemed to actually "hamper[ ] the state's efforts to provide care."[227] More important than blaming those parents post facto, however, is recognizing that even parents of children without mental-health issues are experiencing problems that they are unable to handle on their own.

In addition to the mental-healthcare reforms being considered, the Nebraska legislature should not to forget about parents whose children may not be suffering from mental-health problems, but who still desperately need help caring for and controlling their children. Under § 43-284, Nebraska Revised Statutes, Nebraska already provides parents with "juvenile[s] in need of assistance or special supervision" a way to receive such help.[228] Section 43-284 is Nebraska's version of a juvenile status offender law, authorized and funded by congress under the Juvenile Justice and Delinquency Prevention Act of 2002 (JJDPA).[229] Juvenile status offenses include curfew violations, truancy, running away, underage drinking, and other behaviors that generally make a child beyond the control of their parents.[230]

The JJDPA and its companion state laws were created out of a desire to help children who "were disobedient, but not delinquent," whose offenses "lay not in any criminal conduct, but in their failure to conform their behavior to their status as children."[231] It was thought to be beneficial to allow the state to intervene, in some circumstances, and provide these children help before they became delinquents.[232] Over time, as status offenders were being placed in facilities where they were commingled with delinquent youth, Congress and the states became "persuaded that social service, community-focused interventions were

226. Hansen & Spencer, *supra* note 40.

227. *Id.*

228. NEB. REV. STAT. § 43-284 (2009).

229. Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. §5601 (2009).

230. U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PROGRAMS, STATISTICAL BRIEFING BOOK, GLOSSARY, *available at* http://ojjdp.ncjrs.org/ojstatbb/glossary.html. The definition of status offense is "a nondelinquent/noncriminal offense; an offense that is illegal for underage persons, but not for adults." *Id.*

231. Robert A. Baruch Bush, Lisa Hershman, Robert Thaler, & Christena Vitkovich, *Supporting Family Strength: The Use of Transformative Mediation in a PINS Mediation Clinic*, 47 FAM. CT. REV. 148, 149 (2009); *see also* Claire Shubik & Jessica Kendall, *Rethinking Juvenile Status Offense Laws: Considerations for Congressional Review of the Juvenile Justice and Delinquency Prevention Act*, 45 FAM. CT. REV. 384 (2007).

232. *See* Bush et al., *supra* note 231, at 149.

more effective and less costly means of responding to runaways, truants, and disobedient youth."[233] As a result, under the reauthorized JJDPA, "not less than 75 percent of funds available to the State . . . shall be used for—(a) community-based alternative (including home-based alternatives) to incarceration and institutionalization."[234]

While the JJDPA and its state counterparts have, at times, proven difficult to work with and have resulted in more children being detained in correctional facilities than is desirable,[235] it is worth considering the framework established under Nebraska's juvenile pretrial diversion programs as another route through which the legislature can consider improving children's access to services in Nebraska.[236] The juvenile pretrial diversion program authorizes counties to provide status offenders with counseling and treatment.[237] If the pretrial diversion programs were mandatory, in contrast to the current programs which are voluntarily opted into on a county-by-county basis,[238] Nebraska could open another door through which its children can take advantage of treatment services that are already available, or will hopefully become available soon.

Critics of this proposal might argue that this would, much like the hotline proposals, only create a new access point without adding new services to meet increasing demands. However, when these programs are used in combination with the other reforms already underway, they would provide another way to ensure that even children without diagnosed mental-health problems can still receive the state's help without requiring their parents to relinquish custody. In so doing, this proposal could also decrease the number of children removed from their families, by allowing status offenders to receive treatment instead of being placed in juvenile detention facilities. While a pretrial diversion program alone would not be an adequate response to the safe haven crisis, it could be a useful complementary proposal that would ensure that no Nebraskan child gets left behind in the post-safe haven crisis reform effort.

V. Conclusion

In response to a question asking whether, in light of the safe haven crisis, Nebraska Senator Brad Ashford would have done anything differently, Senator Ashford responded, "No. I mean, basically, everyone stood up and said we are a caring state. We're going to—w e're going to

233. Shubick, *supra* note 231, at 384.
234. 42 U.S.C. § 5633(a)(9)(a) (2006).
235. Shubick, *supra* note 231, at 388–89.
236. Neb. Rev. Stat. §§ 43-260.01–07 (2009).
237. *Id.* § 43-260.05.
238. *Id.* § 43-260.01.

address this issue. I'm proud of that."[239] In light of the problems revealed through the safe haven crisis, one hopes that Senator Ashford was referring to more than just the missing age restriction in L.B. 157. Although it was important fort L.B. 157 to be revised, both to make it resemble a traditional safe haven law and to discourage using the foster care system as a default mental-healthcare provider for troubled youth, that revision was only the first of many reforms that are needed in Nebraska.

The Nebraska legislature must continue to improve the state's child mental-healthcare services and focus on reforms that allow parents to attain such services without having to first relinquish their parental rights. To accomplish this, the legislature needs to continue working to implement a community-based mental-healthcare services model, to the greatest extent feasible given the Nebraska's rural infrastructure and budgetary constraints, because this model has the greatest chance of successfully achieving the state's policy of keeping children in their homes with their families whenever possible.

As the legislators continue to discuss the various problems underlying the safe haven crisis and better understand the extent of the problems Nebraska's children and parents experience in trying to obtain help, they must renew their commitment to fixing *all* of the underlying problems that drove parents across the state, and even across the country, to abandon their children, and not merely those which receive the most public attention. In so doing, the legislature will assure *all* of Nebraska's youth that their state has not yet abandoned hope for improving their future.

239. *American Morning* (CNN Nov. 19, 2008 6:00 AM EST).