



1-1-2001

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Karen Vassilian

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Recommended Citation

Karen Vassilian, *Health and Welfare / Band-Aid Or a Solution: Child Abandonment Laws in California, A*, 32 MCGEORGE L. REV. 752 (2001).

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A Band-Aid or a Solution? Child Abandonment Laws in California

Karen Vassilian

Code Sections Affected

Health and Safety Code § 1255.7 (new); Penal Code § 271.5 (new); Welfare and Institutions Code §§ 300, 309, 361.5 (amended), 14005.24 (new).
SB 1368 (Brulte); 2000 STAT. Ch. 824

*"Abandonment and abuse are not acts of God, they are failures of love."*¹

I. INTRODUCTION

In 1998, as many as 31,000 children were abandoned by their mothers at local hospitals in the United States.² These newborns, although often sick, have a chance at life.³ The same, however, cannot be said for the number of babies never delivered to a hospital or other safe location.⁴ These are children whose mothers chose to leave them to die alone in a trash can, on the side of the road, or in some other secluded area.⁵ The number of children abandoned in this way is a growing problem in the United States.⁶ Although the federal government collects data on almost every type of child neglect, it has yet to track any statistics on newborns illegally abandoned in locations other than hospitals.⁷ The only substantive data comes from a recent United States Health and Human Services Department media survey noting 105

1. *Text of President George W. Bush's Inaugural Speech*, Yahoo News, available at http://dailynews.yahoo.com/hx/ap/20010120/pl/bush_speech_text_3.html (last visited Jan. 28, 2001).

2. *Safe Places for 'Discarded Babies'*, Editorial, USA TODAY, Feb. 8, 2000, at 15A.

3. *See Abandoned Infants Assistance Resource Center Website*, available at <http://cssr.berkeley.edu/aiarc/index.htm> (last visited September 12, 2000) (explaining that although these abandoned newborns are susceptible to health problems, most survive and grow up healthy).

4. *See Safe Places*, *supra* note 2 and accompanying text (noting that there were 105 discarded babies discovered last year alone, 33 of which were found dead).

5. *See Lynda Hurst, Saving Babies from the Trash*, THE TORONTO STAR, Mar. 5, 2000, available at http://www.thestar.com/thestar/back_issues/ED2.../20000305NEW06_FO-ABANDON.htm (last visited Aug. 15, 2000) (noting that abandoned newborns have been found in locations including: trash cans, sewers, rivers, back alleys, lying in debris alongside railroad tracks and stuffed down gas station toilets).

6. *See Chris Fletcher, Dumping of 13 Babies Alarms Houston*, THE ORANGE COUNTY REG., Dec. 30, 1999, at A25 (comparing the usual one to two abandonments per year in Harris County, Texas to the thirteen in ten months in 1999).

7. *Id.* (explaining that the federal government keeps data on the number of boarder babies and on the number of babies exposed to drugs or HIV during pregnancy, but not on the number of abandoned babies; *see also id.* (noting that major cities also do not maintain any records of newborn abandonment)).

cases of newborn abandonment in 1998, up from 65 in 1991.⁸ Even more alarming than the existence of such abandonments is that these newborns are being deprived of life by their own mothers because of an overwhelming shame, panic, or fear of motherhood.⁹ California, like many other states, has taken its first step in giving hope to these newborns, and a chance at life, by enacting Chapter 824.¹⁰ This measure allows mothers who have just given birth, to surrender their newborn within the first 72 hours of its life, to a designated hospital employee, anonymously and without fear of prosecution.¹¹ Hopefully, by giving fearful mothers an alternative to abandonment, California can also save these children from their own mothers' "failures of love."¹²

II. A GROWING PROBLEM

A recent rash of newborn abandonments in the United States and California has prompted legislative action.¹³ One of the most publicized and shocking cases is that of an 18 year old high school senior, who, like most seniors, wanted to have a fun night at her prom.¹⁴ A few weeks prior, she had gone "prom shopping" for a new dress for the special occasion.¹⁵ Melissa Drexler's special occasion, however, was hampered by a 'small problem'. He was a six-pound six-ounce baby boy, which she carried to full term and then delivered in the stall of a bathroom at her high school prom.¹⁶ Within twenty minutes after arriving at the dance, she delivered the baby, unassisted, into the toilet, lifted him out of the toilet and after wrapping several garbage bags around him, threw him into a trash can before returning to the dance.¹⁷ This secret would have been hers to keep had no one reported the blood all over the

8. See Rick Hampson, *Saving Babies Left to Die*, USA TODAY, Feb. 9, 2000, at 1A. (explaining that this data was compiled by searching newspaper archives). Therefore, although the numbers may be an accurate reflection of publications about newborn abandonments, cases of abandonment that were unpublicized or undiscovered cases of abandoned newborns, are not accounted for in this survey.

9. See *infra* Part V.A (explaining that young women abandon because of the fear and shame associated with young motherhood); see also *Brief Summary: Information Related to Discarded Infants*, National Abandoned Infants Assistance Resource Center, available at <http://socrates.berkeley.edu/~aiarc/discarded/discards.htm> (last visited Nov. 22, 2000) (explaining that women who abandon fear that others will know of their illegitimate pregnancy or they believe that the child will be an obstacle to their personal achievements).

10. *Infra* text accompanying note 13.

11. CAL. HEALTH & SAFETY CODE § 1255.7 (enacted by Chapter 824); see also *infra* Part V and accompanying text (discussing Chapter 824 in further detail).

12. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1368, at 2 (Aug. 7, 2000).

13. See *id.* (indicating that abandonment in California is reaching epidemic proportions and noting that 15-20 dead newborns are reported each year by the Los Angeles county coroner).

14. Allison Garvey, *Longtime Friends Urge Others Not to Judge Accused Prom Mom*, ASBURY PARK PRESS, June 10, 1997, available at www.injersey.com/news/prom/story/1,1466,50980,00.html (last visited Sept. 14, 2000).

15. *Id.*

16. Lisa Fried, *A Possible Infanticide Probed in Death of Prom Baby*, ASBURY PARK PRESS, June 10, 1997, available at www.injersey.com/news/prom/story/1,1466,54864.html (last visited Sept. 14, 2000).

17. *Id.*

stall.¹⁸ The janitor who cleaned up the stall decided to throw out the trash but grew curious when the bag he lifted felt abnormally heavy.¹⁹ Inside, he found Melissa's baby boy, already dead.²⁰

Although the cold-hearted nature of Melissa Drexler's crime is shocking, many similar stories are emerging.²¹ Within the last two years, newborns were found in unthinkable places, including: an oversized coffee can; a pile of debris next to railroad tracks; behind disposable diapers on a supermarket shelf; drowned in a toilet; stabbed to death by scissors in a bedroom; left on the floor of a car; and, in many cases, dumped in a trash bin.²²

Stories of bright, educated young girls such as Melissa have helped the California Legislature conclude that anonymity, in order to avoid shame, is what these girls need.²³ Although not all mothers abandon their children because of shame, panic or fear, Chapter 824 is specifically targeted to those women who will do so for such reasons.²⁴ Chapter 824 allows mothers who have carried their babies to full term to anonymously hand over their newborn to a designated hospital staff member, rather than discarding their child in a trash bin or some other isolated place to die.²⁵

III. EXISTING LAW

Under existing law, any form of child neglect or abuse is punishable under the Penal Code.²⁶ Specifically, a parent who does not provide the clothing, food, shelter or medical care that his or her child needs, can be found guilty of a misdemeanor.²⁷ Parents who do not provide a home for their minor child, whether in their own house or in an adequate alternative, can also be punished.²⁸ In addition, any parent who deserts and intentionally abandons his or her child, before the child reaches age 14,

18. *Id.* at 5.

19. *Id.*

20. *See id.* (describing how the high school health teacher quickly responded after the janitor found the newborn, attempted to resuscitate the baby but ultimately failed).

21. *Infra* text accompanying note 22.

22. Hurst, *supra* note 5 and accompanying text (indicating that some were found dead and some still living); *see Safe Places*, *supra* note 2, at 15A (explaining that a newborn was found in an oversized coffee can).

23. *See* Robert T. Garrett, *Infant-Abandonment Bills Clear Legislative Committees*, PRESS ENTERPRISE, Apr. 26, 2000, at A7 (quoting Assemblymember Ken Maddox, author of a similar bill, AB 1764, and co-author of SB 1368, in his belief that, California, with the enactment of Chapter 824 would pledge to respect the anonymity that these mothers seek).

24. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1368, at 4 (Apr. 25, 2000).

25. CAL. HEALTH & SAFETY CODE § 1255.7(a)(1) (enacted by Chapter 824).

26. *See infra* notes 27-29.

27. *See* CAL. PENAL CODE § 270 (West 1999) (noting that if convicted, a parent can be fined up to two thousand dollars, or be jailed for up to a year, or both).

28. *See id.* § 270.5 (penalizing violators with a maximum \$500 fine).

can be charged with a felony or misdemeanor.²⁹ Thus, any form of abandonment of a minor by a parent is punishable under the California Penal Code.³⁰

Under existing law, once a child is abandoned and is entered into a child welfare services agency, or into the Child Protective Services (CPS) system, certain procedures must be followed.³¹ A social worker must immediately file a petition with the juvenile court for a dependency hearing, which is held within 30 days of the filing, in order to determine whether a child is to be a ward of the court.³² The case social worker must then diligently attempt to find each parent.³³ If found, the parents are to be informed of the time and place of the dependency hearing.³⁴ Before the court terminates parental rights to the child, it must try to provide reunification services to the parent or guardian.³⁵ Under existing law, if any one of the following four circumstances exist in a particular case, the court has the power to refuse to provide reunification services to that parent:

- a) the whereabouts of the parent or guardian are unknown and after a reasonably diligent search, the court has failed to locate the parent or guardian; b) the parent or guardian is suffering from a mental disability; c) the parent has caused the death of another child through abuse or neglect; and d) the parent has a history of extensive, abusive and chronic use of drugs and alcohol.³⁶

Prior to Chapter 824, if a baby was abandoned, and the parents could be found, they had to be offered reunification services before parental rights were terminated.³⁷ A young mother who abandoned her baby could be tracked down and identified, both for the possibilities of prosecution and reunification. Thus, taking the baby to a hospital was more likely to reveal her identity than throwing the baby in a dumpster.³⁸ Chapter 824 was enacted in order to establish anonymity for young mothers considering abandonment and create a solution to the abandonment problem.³⁹

29. *Id.* § 271.

30. *Supra* text accompanying notes 27-29.

31. *Infra* text accompanying notes 32-36 and accompanying text.

32. *See* CAL. WELF. & INST. CODE § 311 (West 1998) (explaining that the petition is for a dependency hearing which is held within 30 days after the petition has been filed).

33. *Id.*

34. *Id.*

35. *Id.* § 361.5(a).

36. *Id.*

37. *Id.* § 361.5(a) (specifying that if the parents have mental disabilities or a history of abuse then reunification services need not be offered).

38. *See* SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1368, at 6 (May 2, 2000) (noting that even with the enactment of Chapter 824, many young girls may still feel that leaving a baby at a hospital incurs more risk of revealing their identities).

39. *See infra* Part IV.

IV. THE SOLUTION: CHAPTER 824

Chapter 824 specifically focuses on aiding young mothers who have carried their babies to full term but fear motherhood.⁴⁰ Rather than risking the baby's health and safety, the California Legislature gives these mothers a safer alternative, while maintaining anonymity.⁴¹ Specifically, Chapter 824 allows a mother or a person with lawful custody of a newborn, to voluntarily surrender it, within the first 72 hours of its life, to a designated employee on duty at a public or private hospital emergency room or any other location designated by the county, without fear of prosecution for abandonment.⁴² Once a baby is given to a hospital employee, the employee places a unique coded ankle bracelet on the infant and gives the person surrendering the infant a confidential copy of the bracelet.⁴³ Hospital employees are not responsible if the person surrendering a baby quickly leaves without accepting a coded bracelet, as long as the employee makes a good faith effort to provide it.⁴⁴ Employees must also attempt to provide a medical questionnaire to the parent or legal custodian.⁴⁵ No identifying information is required by the questionnaire; only medical information to assist in the child's future medical needs.⁴⁶ After a child is taken into physical custody, a medical screening examination and necessary medical care is provided.⁴⁷ Child Protective Services or the county agency providing child welfare services then investigates the matter and files a petition for a dependency hearing.⁴⁸ Investigation of the matter, however, does not include investigation into the parents' identity.⁴⁹ If CPS has not yet filed the petition and the hospital still has custody of the newborn and the person who surrendered the child returns to reclaim the child within 14 days, the hospital without any verification of the identity of the person claiming custody can return the child to the person.⁵⁰ If the hospital has filed the petition, but the person who surrendered custody returns to reclaim the child within 14 days, the child welfare agency, after verifying the identity of the person, and his or her ability

40. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1368, at 3 (June 27, 2000).

41. CAL. HEALTH & SAFETY CODE § 1255.7(a) (enacted by Chapter 824) (describing how a person may voluntarily surrender a newborn).

42. *Id.* (enacted by Chapter 824); CAL. PENAL CODE § 271.5 (enacted by Chapter 824).

43. *Id.*

44. *Id.*

45. *See id.* § 1255.7 (a)(2) (enacted by Chapter 824) (stating that employees need only make a good faith effort to provide the questionnaire which can be filled out at the hospital, taken home and sent in, or declined by the person surrendering the child).

46. *Id.* (enacted by Chapter 824).

47. *Id.* § 1255.7(b) (enacted by Chapter 824).

48. CAL. WELF. & INST. CODE § 16501 (West Supp. 2000).

49. CAL. HEALTH & SAFETY CODE § 1255.7(a)(2) (enacted by Chapter 824).

50. *See id.* § 1255.7(c) (enacted by Chapter 824) (requiring the designated hospital employee to return the child with no questions asked unless the employee "knows or reasonably suspects that the child has been the victim of child abuse or neglect", in which case the employee must contact the child protective agency. *Id.*

to parent, must return the baby and request that the juvenile court dismiss the petition for dependency.⁵¹

This law immunizes hospital employees from any criminal, civil or administrative liability for accepting a surrendered newborn, so long as they had a good faith belief that their actions were required under this law.⁵² Accordingly, it also grants mothers or persons in legal custody of the child immunity from criminal prosecution, so long as the above-mentioned procedures are followed.⁵³

Of all the provisions of this law, the grant of anonymity is the most complicated, due to the many existing laws regarding abandonment of children.⁵⁴ Prior to Chapter 824, laws in this area focused on children taken from parents by the state or children given up for adoption by one parent without the knowledge of the other parent.⁵⁵ Thus, the law required a social worker to contact either one or both parents in order to inform them of their rights to claim the child.⁵⁶ Chapter 824 provides anonymity, by amending this existing law and adding an exception.⁵⁷ Where the law requires contacting the parent or parents of the child and then releasing the child to that parent, Chapter 824 adds that the social worker should not do so if the child has been legally abandoned according to the procedures described.⁵⁸ Chapter 824 also amends the reunification law, by providing that a child abandoned legally through the correct procedures should not be reunified with his or her parents.⁵⁹

Chapter 824 also has a reporting requirement.⁶⁰ Once a year, between 2003 and 2005, the State Department of Social Services must report on the effectiveness of

51. *Id.* § 1255.7(f) (enacted by Chapter 824) (explaining that the child welfare agency must confirm that none of the conditions described in Welfare and Institutions Code section 319 (a)-(d) exist before the child can be returned to the mother).

52. *Id.* § 1255.7(g) (enacted by Chapter 824).

53. CAL. PENAL CODE § 271.5 (enacted by Chapter 824) (immunizing a mother who surrenders her child according to Health and Safety Code section 1255.7 from criminal liability under existing California Penal Code sections 270, 270.5, 271 or 271(a)).

54. CAL. WELF. & INST. CODE § 309 (West 1998) (requiring a social worker to contact the parents of an illegally abandoned baby or a child put up for adoption by only one parent and release the child to them); *id.* § 361.5 (West 1998) (requiring the court to reunify a child with his biological parents before terminating their parental rights but not if the child would have "sustained severe or permanent disability, injury, illness, or death" had there been no intervention by a person or agency).

55. *Id.*

56. *Id.*

57. See *infra* text accompanying note 58.

58. CAL. WELF. & INST. CODE § 309(a)(5) (amended by Chapter 824) (making an exception for children abandoned according to Health and Safety Code section 1255.7).

59. CAL. WELF. & INST. CODE § 361.5(b)(9) (amended by Chapter 824) (adding that if children are abandoned legally as set out in Health and Safety Code section 1255.7, then the children need not be reunified with their parents except when the mother returns within 14 days to reclaim the child, the child can be returned to her).

60. See *infra* text accompanying notes 61 and 62.

this new law to the Legislature.⁶¹ The report, includes among other statistics, the number of infants surrendered under Chapter 824.⁶²

V. IS IT REALLY A SOLUTION?—ANALYSIS OF CHAPTER 824

When the words newborn and death are linked together, any solution eliminating such a problem understandably garners widespread support.⁶³ The most vocal advocate of the new law is Debi Faris, the Director of the non-profit agency “Garden of Angels”.⁶⁴ In the last three-and-a-half years, “Garden of Angels” has buried 38 newborns who died as a result of parental abandonment.⁶⁵ Every time a newborn is found dead, Debi Faris goes to the coroner’s office, unwraps the child, cleans it, wraps it in a baby blanket and provides a proper burial in the garden-like cemetery.⁶⁶ Prompted by Faris’ compassion for these children and the media focus on the “Garden of Angels,” James Brulte, a California Senator drafted proposals to prevent some of these newborn deaths.⁶⁷ Senator Brulte expressed what many supporters of this law feel: “if we can save one, two, 10 lives of innocent kids who have done nothing wrong, then I think [it is] a legitimate action of government.”⁶⁸

A. Teen Pregnancy

One of the many arguments made in support of Chapter 824 is that teen pregnancy rates are higher in California than any other state in the nation, with the exception of Nevada.⁶⁹ Consequently, California must address the drastic measures

61. CAL. WELF. & INST. CODE § 14005.24 (enacted by Chapter 824).

62. *Id.* (listing the items that must be included in the report as: “(a) [t]he number of [infants] one year old or younger who are found abandoned, dead or alive, in the state, (b) [t]he number of infants surrendered pursuant to this act, (c) [t]he number of medical history questionnaires completed, (d) [t]he number of instances where a parent or legal guardian comes to reclaim their child, (e) [w]hether the parent who seeks to reclaim custody is the one who surrendered the child, (f) [t]he number of children surrendered under this act who have been abused or neglected, and (g) [t]he number of parents located and contacted by social workers”). The last requirement is in reference to mothers or guardians that drop the child off and leave the name of another parent or guardian. *Id.*

63. See ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1368, at 7-8 (Aug. 7, 2000) (listing many supporters, including Blue Shield of California, California Peace Officers’ Association, California Police Chiefs Association, California Professional Firefighters, International Association of Fire Fighters, Child Abuse Prevention Council of Contra Costa County, Children’s Advocacy Institute, County Welfare Directors Association of California, National Association of Social Workers, City of El Monte Police Department; Prevent Child Abuse-California, California Ambulance Association, Planned Parenthood, and City and County of San Francisco).

64. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1368, at 4 (May 2, 2000).

65. Dara Akiko Williams, *California Bill Would Protect Parents Who Abandon Newborns at Safe Sites*, MILWAUKEE J. SENTINEL, Feb. 20, 2000, at 18A.

66. *Id.*

67. See *id.* (explaining that California Senator Brulte was “moved to action” after visiting the Garden of Angels).

68. *Id.*

69. *The National Campaign to Prevent Teen Pregnancy*, Fact Sheet, August 1999, available at <http://www.teenpregnancy.org/usa/ca.htm> (last visited Sept. 13, 2000) (detailing teen pregnancy rates in the country, state by state, for girls aged 15-19, including California with 125 pregnancies per 1000, and Nevada with 140 per 1000).

that these young and scared teenagers are prone to take.⁷⁰ Education, alone, has been insufficient, as most well-known alternatives, such as adoption or foster care, do not offer the anonymity that these new mothers are desperately seeking.⁷¹ These young girls fear disappointment and reprisal by their parents, stigma and shame from the community and humiliation by their friends.⁷² Chapter 824 focuses primarily on these young girls, rather than adult women who are not subject to the peer pressures to which teenage mothers can succumb.⁷³ Specifically, it gives young girls who do not want their parents or friends to know that they are pregnant an option that protects their anonymity as well as their newborns.⁷⁴ Before Chapter 824 was enacted, there was no such option.⁷⁵

B. *Distinguishing Between Malicious Acts and Sheer Desperation*

If these young mothers are not given an alternative, courts will continue to struggle with differentiating between cold blooded killers and mothers who feel that they have no other option but to abandon their child.⁷⁶ In a recent abandonment case, the California Court of Appeals, in a depublished opinion, reversed a second degree murder conviction.⁷⁷ Jackie Lynn Anderson had hid her pregnancy, delivered her baby unassisted, and then put the baby in a box in her trunk.⁷⁸ The Appellate Court held that "no one sitting on an appellate panel can speculate exactly what a woman should or can do immediately after giving birth, alone and in a weakened state . . . [w]e are not unmindful of the fact that Anderson did not go to a hospital to give birth. But to imply malice from the failure of good judgment without any evidence that, had she embarked on such a path, the baby would have lived, is precarious at best."⁷⁹ Rather than allowing a conviction on a theory of implied malice, the Appellate Court seemed to characterize the mother's actions as poor judgment.⁸⁰

The average for the United States was 97 pregnancies per 1000. *Id.*

70. *Supra* text accompanying notes 23 and 24.

71. See Marsha Ginsburg, *Little Lost Souls, Girls Who Throw Away Their Babies*, S.F. EXAMINER, Jan. 16, 2000, at A1 (indicating that although most women have access to birth control and abortion, and despite the fact that there are long waiting lists for adoption, these "girls, plagued by guilt and shame, feel like there is no other way out than to abandon their babies").

72. *Id.*

73. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1368, at 6 (May 2, 2000) (arguing that "according to supporters, Chapter 824 is primarily intended to provide an alternative to panicked teenagers who have concealed their pregnancies from friends and family and are frightened by the ramifications of having a baby").

74. *Id.*

75. See *supra* Part III.

76. See Ginsburg, *supra* note 71, at A1 (explaining that abandonment cases are difficult to prosecute because no one can really understand what the woman who abandoned was thinking at the time).

77. See *People v. Anderson*, 91 Cal. Rptr. 2d 563, 566 (1999) (reversing the second degree murder charge and convicting Anderson of voluntary manslaughter).

78. *Id.* at 567.

79. *Id.* at 572.

80. *Id.*

Whether these young girls kill because of fear and poor judgment or because of a malicious intent is difficult to ascertain.⁸¹ Regardless, the outcome remains the same. With Chapter 824 in place, the courts might be more willing to accept a theory of implied malice because of the availability of alternatives granting anonymity which seems to preclude arguments of poor judgment and desperation.

C. Paternal Rights

With the enactment of Chapter 824, some questions have arisen regarding the potential impact on a father's parental rights.⁸² Under the new law, a new mother can surrender her newborn without ever having contacted the biological father and without fear that hospital personnel or state officials will attempt to contact him.⁸³ However, any impact of Chapter 824 would change very little from the reality that exists today.⁸⁴ Currently, a mother who conceals her pregnancy from the biological father and then illegally abandons their child or gives the child up for adoption without correctly identifying the father, effectively circumvents that father's parental rights.⁸⁵ Because Child Protective Services will not know who to contact or will contact the wrong man, the biological father will have his parental rights terminated without notice and without his consent.⁸⁶ These circumstances remain the same under the new law.⁸⁷ In both situations, if a woman chooses not to identify the father of her child, CPS will not be able to contact the father and the father's parental right will be terminated without his knowledge.⁸⁸

81. *See Deadly Secrets: The Tragedy of Neonaticide*, BBC ONLINE, June 26, 1998, available at <http://www.bbc.co.uk/qed/neo.shtml> (last visited Sep. 13, 2000) (asserting that the killing of their newborns by mothers "is not born of violence").

82. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 1368, at 8 (May 2, 2000) (raising concern over the parental rights of a father who was kept in the dark about a pregnancy).

83. CAL. WELF. & INST. CODE § 309(a) (5) (amended by Chapter 824).

84. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1368, at 2 (Aug. 7, 2000) (explaining that even under the standard procedures of adoption or illegal abandonment, a father who is never identified by the mother never gets to assert his parental rights).

85. *Id.*

86. *Id.*

87. CAL. WELF. & INST. CODE § 309(a)(5) (amended by Chapter 824).

88. *See supra* notes 58 and 84 and accompanying text.

D. Legal Guardian Presumption

Criticism has also been directed toward presumptions created by Chapter 824.⁸⁹ This law only allows persons with “lawful custody of a child” to surrender the child.⁹⁰ Since identifying information may not be requested, in order to maintain anonymity, it is difficult to see how hospital personnel can know or find out whether the person surrendering the child has lawful custody.⁹¹ Although no longer explicit in the text of Chapter 824 this measure continues to create a presumption that the person surrendering does have legal custody of the child.⁹² This raises the possibility that a child being relinquished may have been kidnapped.⁹³ Opponents argue that Chapter 824 will give kidnappers an incentive to not only kidnap a newborn but to later sell the coded identification anklet to someone waiting to adopt a child but wanting to avoid the time consuming procedure of adoption.⁹⁴ The person purchasing the bracelet can then return to the hospital immediately, prior to the filing of the petition and within 14 days, and reclaim the child without the hospital requiring any identifying information.⁹⁵ Conceivably, this could encourage kidnapping and put children in jeopardy, although the possibility of this occurring is slight and does not outweigh the benefit of the statute.⁹⁶

E. Identity of Person Reclaiming Newborn

Apart from the presumption that the person dropping the child off has legal custody, Chapter 824 also presumes that the person returning to reclaim the child with the identification bracelet is the same person who surrendered the child.⁹⁷ As mentioned above, after the dependency petition has been filed, the identity of the

89. See generally Letter from Dr. Joyce Maguire Pavao, Founder and Director, Center for Family Connections, to The Boston Globe (Apr. 10, 2000) (expressing opposition) (copy on file with the *McGeorge Law Review*); Letter from Robert R. Crowe, Board President, Post Adoption Center for Education & Research, to Mary Kennedy, Deputy Council, Public Service Committee, California State Senate (May 1, 2000) (same) (copy on file with the *McGeorge Law Review*); Statement from Carolyn Hoard, Legislative Director, American Adoption Congress, to Senator James Brulte (May 1, 2000) (same) (copy on file with the *McGeorge Law Review*).

90. CAL. HEALTH & SAFETY CODE § 1255.7(a)(1) (enacted by Chapter 824).

91. See *id.* § 1255.7(a)(2) (enacted by Chapter 824) (explaining that the only form which the person surrendering the child needs to fill out, the medical questionnaire, “shall not require any identifying information about the child, parent or the person surrendering the child”).

92. See ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1368, at 1 (Aug. 7, 2000) (summarizing Chapter 428 prior to enactment and amendment and stating that it “[p]rovides a presumption affecting the burden of producing evidence that a person who voluntarily surrenders physical custody of a child to a designated employee has lawful physical custody of the child”).

93. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1368, at 11 (Apr. 25, 2000).

94. *Id.* (explaining that “[t]here is no safeguard in [chapter 824] for a situation where the person who surrendered the child transfers the identification code to another, for money or otherwise, so that the child may be reclaimed without trace of or repercussions for the abandonment”).

95. *Supra* note 50 and accompanying text.

96. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1368, at 11 (Apr. 25, 2000).

97. CAL. HEALTH & SAFETY CODE § 1255.7(e) (enacted by Chapter 824).

person reclaiming the child must be verified.⁹⁸ Prior to the filing of the petition though, no such verification is required.⁹⁹ Thus, even if a mother legitimately relinquishes her child to a hospital according to the requirements in this measure, anyone who obtains the bracelet, either by stealing it or buying it from the mother, can reclaim the child with no questions asked.¹⁰⁰

F. Similar Programs

The strongest criticism of Chapter 824 is that there is no evidence that such a law can ever achieve its purpose.¹⁰¹ Texas, which was the first state to enact an abandonment law, has not had any success with it, thus far.¹⁰² Since the adoption of the law in 1999, 12 babies have been abandoned, yet none were surrendered to a hospital employee, as the law requires.¹⁰³ Although proponents attribute these illegal abandonments to the lack of public knowledge of the newly enacted law, opponents predict that similar results will occur in California.¹⁰⁴

Whether this law will be effective in California will be proven in time. Although the Texas law was not successful in its first year, other states have had better results.¹⁰⁵ In Mobile, Alabama, a program called "A Secret Safe Place for Newborns" has saved the lives of three newborns since its inception in November of 1998.¹⁰⁶ The program, which is somewhat similar to Chapter 824, allows mothers

98. *Supra* note 50 and accompanying text.

99. *Supra* text accompanying note 51.

100. CAL. HEALTH & SAFETY CODE § 1255.7(e) (enacted by Chapter 824) (providing that the child can be reclaimed without questions asked so long as the petition has not been filed and the child has not been abused).

101. Statement from Carolyn Hoard, Legislative Director, American Adoption Congress, to Senator James Brulte (May 1, 2000) (copy on file with the *McGeorge Law Review*) (providing data from Texas indicating that 12 newborns have been illegally abandoned even after inception of the new abandonment law, as proof that the law is ineffective).

102. *Id.*; see also Information Clearinghouse on Children, available at <http://www.acusd.edu/childrens/issues/sb1368.tml> (last visited Aug. 15, 2000) (noting that the Texas abandonment bill (HB 3423) became effective on September 1, 1999).

103. See Ruth Papazian, *Texans Ignore Baby Abandonment Law*, APB NEWS, Feb. 8, 2000, available at http://www.apbnews.com/safetycenter/family/2000/03/08/texasbabies0308_01.html (last visited Aug. 15, 2000) (noting that even though six of the newborns were abandoned in hospitals, they were not abandoned according to procedure).

104. *Supra* note 101 and accompanying text; see *supra* note 103 (explaining that although there has been "a push to publicize the new law . . . [t]he word may not have gotten out yet").

105. See Information Clearinghouse on Children, *supra* note 102, at 2-3 (noting that Alabama already has a program in effect which has been successful); see also Facsimile from National Right to Life Committee, to Senator James Brulte (Aug. 8, 2000) (copy on file with the *McGeorge Law Review*) (discussing a recently enacted New Jersey law, the New Jersey Safe Haven Infant Protection Act, which saved its first life when a young girl delivered her newborn at home and handed it over to the New Jersey Police).

106. Stacy Teicher, *Rescuing Babies from Abandonment*, CHRISTIAN SCIENCE MONITOR, Jan. 24, 2000, at 3; see Information Clearinghouse on Children, *supra* note 102, at 3 (discussing the success of the Alabama program in saving the lives of two newborns, counseling two women out of abandoning their children and rescuing one from a trash pile).

to anonymously drop off their newborns, 72 hours or younger, at a hospital.¹⁰⁷ One difference is that mothers have six months to reclaim the child.¹⁰⁸ The biggest similarity, and one that can be credited for the success of the program, is the provision granting mothers freedom from prosecution.¹⁰⁹ Officials from Mobile hospitals, welfare offices and the district attorney's office collectively agreed not to prosecute these women.¹¹⁰ The rest of the state soon followed Mobile's example.¹¹¹ The success of the Alabama program, which grants immunity from prosecution, can be distinguished from the ineffective Texas law a child, which does not grant the same immunity.¹¹² In Texas, a woman who abandons a child is prosecuted, but can assert an affirmative defense that she abandoned the child according to the procedures outlined in the abandonment law.¹¹³ The fact that she will be prosecuted and that the public will hear of her actions may be the cause of the law's failure in Texas.¹¹⁴ Including Texas and Alabama, there are a total of 13 states that have already enacted abandonment legislation,¹¹⁵ and 11 others that are considering enactment.¹¹⁶

Additionally, interest in this compelling problem has not been limited to the United States.¹¹⁷ Project Findelbaby was launched in Germany in March of 2000.¹¹⁸ Similar to Chapter 824, it provides immunity from prosecution and a place for mothers to drop off unwanted newborns.¹¹⁹ But rather than walking into a hospital and handing a newborn to medical personnel, German mothers are able to drop the

107. Information Clearinghouse on Children, *supra* note 102, at 3.

108. Edith Stanley, *A Safe Place for Unwanted Babies*, L.A. TIMES, Jan. 28, 2000, at A3.

109. Teicher, *supra* note 106, at 3 (claiming that protecting a woman's confidentiality by not investigating her identity or prosecuting her is essential to the success of the program).

110. *Drive to Legalize Baby Abandonment Gains Steam*, ABP NEWS, May 25, 2000, at 2, available at http://www.apbnews.com/safetycenter/family/2000/05/25/babies0525_01.html (last visited Aug. 15, 2000).

111. *Id.*

112. See Information Clearinghouse, *supra* note 102, at 3 (explaining that the only real difference between the two laws in the different states is that one grants the mother immunity from prosecution).

113. *Id.*

114. *Id.* and accompanying text.

115. COLO. REV. STAT. §§ 18-6-401, 19-3-304.5 (2000); CONN. GEN. STAT. §§ 53-21(b), 53-23(b) (2000); FLA. STAT. ANN. § 383.50 (2000); IND. CODE § 31-34-2.5 (2000); LA. CHILD. CODE ANN. § 1701-1706 (2000); MINN. STAT. §§ 145.902, 609.3785 (2000); MICH. PEN. CODE § 135 (2000); N.J. CODE § C.30:4C-15.1 (2000); S.C. GEN. STAT. § 20-7-85 (2000); TEX. FAM. CODE §§ 161.001(S), 262.301(D) (1999); W.V. CODE § 49-6E-1 (2000); See also *Infant Abandonment*, National Conference of State Legislatures, Sept. 1, 2000, available at <http://www.ncsl.org/programs/cyf/ABSL2000.htm> (last visited Feb. 4, 2001) (listing the 13 states which have already enacted similar legislation).

116. *Infant Abandonment*, National Conference of State Legislatures, Sept. 1, 2000, available at <http://www.ncsl.org/programs/cyf/ABSL2000.htm> (last visited Feb. 4, 2001) (listing the states which have introduced similar measures as Chapter 824).

117. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1368, at 2 (Apr. 25, 2000) (describing the use of baby chutes in Germany and what they call a "revolving crib" in Johannesburg, South Africa).

118. See Carol Williams, *World Perspective Germany Project Opens Doors for Babies Left Abandoned*, L.A. TIMES, Mar. 31, 2000, at A5 (describing the "inauguration of Germany's first designated foundling drop off site since the 1700's").

119. *Id.*

baby in a chute, at the bottom of which is a warm, soft bed.¹²⁰ Once a newborn falls into the bed, a sensor alerts the day care staff on duty of the arrival.¹²¹ The purpose of the baby chutes is to further ensure the anonymity of the abandoning mother, eliminating the fear, shame and panic that remains the root of this social epidemic.¹²²

VI. CONCLUSION

Legal or illegal, the concept of a mother abandoning her child disturbs our society.¹²³ "It violates our notions of family, of parenthood [and] of the special wonder and sanctity of young life."¹²⁴ Chapter 824 may not be the cure to our social ills. It may seem inhumane, or inadequate, like a Band-Aid covering a wound, but not healing it.¹²⁵ Even if the skeptics are correct in their belief that this law does not get to the root of the problem, until such cure is found or such law is enacted, this measure will at least save the lives of children today.¹²⁶ California has taken the first step toward giving innocent children some hope. Their mothers may have failed them, but by enacting Chapter 824, the California legislature has decided that it will not do the same.

120. *Id.*

121. *Id.*

122. See Marjorie Williams, *Babies in the Trash*, WASH. POST, Feb. 4, 2000, at A31 (noting that most women who abandon are in the "grip of a fear and denial and despair").

123. *Id.*

124. *Id.*

125. *Supra* note 5 at 4.

126. *Supra* Part II.