

Creating a Safer Haven: A Post-Dobbs Proposal for a Model Infant Safe Haven Law

RACHEL M. WAGNER*

Following a rash of headlines about infant abandonments in the 1990s, every state passed a Safe Haven Law (SHL) which permits the anonymous surrender of infants to a safe place, like a hospital. Over 4,000 infants have been surrendered in the last quarter century. SHLs received renewed attention after Dobbs v. Jackson Women's Health (the 2022 case that overturned Roe v. Wade and eliminated the constitutional protection for abortion), where they were cited in both oral argument and the majority opinion. Following Dobbs, nearly two dozen states enacted abortion bans or restrictions and subsequently saw an increase in their birthrates. At the same time, the idea of Baby Boxes—devices placed on the outside of hospitals and fire stations where an infant can be surrendered without a face-to-face encounter—gained traction. Many state legislatures have reacted to Dobbs and the Baby Box trend by re-evaluating their SHLs.

This Note evaluates current SHLs and makes recommendations for a Model Safe Haven Law to instruct states on how to best support mothers and infants in crisis as they update their statutes. Part I explains the data on infanticide and illegal infant abandonment and outlines the most significant shortcomings and strengths of SHLs thus far. Part II proceeds to analyze five key elements of SHLs: the maximum age of surrender, surrender locations, anonymity, parental rights, and criminal liability. Part III offers evidence-based recommendations in the form of a model law to help SHLs fulfill their promises of reducing illegal infant abandonment and supporting families in crisis.

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CONTENTS

INTRODUCTION	739
I. INFANT ABANDONMENT AND SAFE HAVEN LAWS IN THE UNITED STATES.....	745
A. Infanticide, Neonaticide, and the Need for Safe Haven Laws	746
B. Women and Infants Who Need Safe Haven Laws	750
C. Criticism of Safe Haven Laws	753
D. The Efficacy of Safe Haven Laws in Reducing Infanticide.....	755
II. ANALYSIS OF THE KEY COMPONENTS OF SAFE HAVEN LAWS	757
A. Maximum Age of Legal Surrender.....	758
1. <i>Current State Limits</i>	758
2. <i>Relinquishment Trauma by Infant Age</i>	760
B. Where an Infant May Be Surrendered	761
1. <i>Face-to-Face Surrender</i>	761
2. <i>Baby Boxes</i>	762
C. Anonymity and Biological Information.....	766
1. <i>Vital Records and Hospital Birth</i>	767
2. <i>Medical and Biological Information</i>	768
D. Parental Rights Post-Surrender	770
1. <i>Reclamation</i>	771
2. <i>Termination Proceedings</i>	773
E. Criminal Liability	775
III. A MODEL LAW FOR SAFER SAFE HAVEN LAWS.....	776
A. Benefits of Model Legislation	777
B. Age of Surrender	780
C. Location	780
D. Anonymity and Biological Information.....	782
E. Parental Rights	784
F. Criminal Liability	785
G. Safe Haven Components for Further Study.....	786
CONCLUSION	788
APPENDIX.....	789
The Model Safe Haven Law	789

INTRODUCTION

Surrendering a child in the face of adversity to protect their wellbeing is a familiar tale throughout history. Perhaps the most famous such story is that of Moses, whose mother set him afloat in a basket on the Nile to save him from the Pharaoh's decree to drown all Jewish male infants.¹ The term “foundling” originated in Europe in the fourteenth century to refer to an abandoned infant found and cared for by others.² One of the earliest efforts to support these “foundlings” was Florence, Italy's Ospedale degli Innocenti, a children's hospital that began caring for anonymously surrendered infants, typically “illegitimate” children or those born to families too poor to provide for them, before the turn of the fifteenth century.³ In London, the Foundlings Hospital opened in the eighteenth century when over 1,000 infants were abandoned each year due to poverty and other difficult circumstances.⁴ By the mid-nineteenth century, hundreds of thousands of children had been left at anonymous surrender sites.⁵

In early U.S. history, institutional settings, like secular or religious orphanages, handled the care of abandoned, surrendered, or orphaned children—each usually referred to as some type of

1. See *Exodus* 1:22–2:10. This famous story has led some to refer to safe haven laws as “Baby Moses Laws.” CHILD WELFARE INFO. GATEWAY, CHILD.'S BUREAU, ADMIN. FOR CHILD. & FAMS., U.S. DEP'T OF HEALTH & HUM. SERVS., INFANT SAFE HAVEN LAWS 1 (Sept. 2021), <https://www.childwelfare.gov/resources/infant-safe-haven-laws/> [https://perma.cc/LE57-AXE8] [hereinafter “Child Welfare”].

2. See *What Is a Foundling?*, FOUNDLING MUSEUM, <https://foundlingmuseum.org.uk/our-story/what-is-a-foundling/> [https://perma.cc/V3LN-WW2Q]; *Foundling*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/foundling#word-history> [https://perma.cc/FDZ9-PS8Y]. See also Owen D. Jones, *Evolutionary Analysis in Law: An Introduction and Application to Child Abuse*, 75 N.C. L. REV. 1117, 1196–98 (1997) (exposing the many problems with early efforts for foundlings, including women killing their own infants to serve as paid wet nurses in the Foundling hospitals, lack of surrender due to the possibility of being seen, poor conditions and high mortality rates in the founding hospitals, and more).

3. See *History of Innocenti*, UNICEF, <https://www.unicef-irc.org/history-of-innocenti> [https://perma.cc/54X9-8KMF] (describing the history of Ospedale degli Innocenti).

4. See *History*, FOUNDLING MUSEUM, <https://foundlingmuseum.org.uk/our-story/history/> [https://perma.cc/2A4W-898L] (“[E]ach year, some one thousand babies were abandoned by parents experiencing extreme poverty or other terrible maladies.”). The hospital cared for over 25,000 children in its two centuries of operation. *Id.*

5. Carol Sanger, *Infant Safe Haven Laws: Legislating the Culture of Life*, 106 COLUM. L. REV. 753, 763 (2006) (“By the mid-1800s, over 1,200 wheels were in operation in Italy alone, and hundreds of thousands of babies had been abandoned at such institutions throughout western Europe.”).

“orphan.”⁶ Institutional care faded with the advent of formalized adoption and foster care systems in the twentieth century.⁷ Calls for more rigorous social safety nets—particularly for abandoned infants—came in the late 1990s after several infant abandonments caught national attention and sparked outrage.⁸ These concerns led to the development of Safe Haven Laws (SHLs), laws that permit the anonymous surrender of unharmed infants.⁹ Texas passed the first SHL in 1999, and other states quickly followed suit.¹⁰

SHLs received renewed national attention¹¹ after Justice Amy Coney Barrett asked about them during oral arguments for *Dobbs v. Jackson Women’s Health Organization*.¹² *Dobbs* involved a constitutional challenge to a Mississippi law restricting access to

6. See Rachel Fuchs & Stephanie McBride-Schreiner, *Foundlings and Abandoned Children*, OXFORD BIBLIOGRAPHIES (Jan. 13, 2014), <https://www.oxfordbibliographies.com/display/document/obo-9780199791231/obo-9780199791231-0075.xml> [https://perma.cc/9GCK-5WUC]; Dale Keiger, *The Rise and Demise of the American Orphanage*, JOHNS HOPKINS MAG., Apr. 1996, <https://pages.jh.edu/jhumag/496web/orphange.html> [https://perma.cc/LP8V-MXNQ].

7. See Fuchs & McBride-Schreiner, *supra* note 6.

8. See Sanger, *supra* note 5, at 754; see, e.g., Jim Yardley, *A Flurry of Baby Abandonment Leaves Houston Wondering Why*, N.Y. TIMES (Dec. 26, 1999), <https://www.nytimes.com/1999/12/26/us/a-flurry-of-baby-abandonment-leaves-houston-wondering-why.html> [https://perma.cc/6NRU-HBR7].

9. See Child Welfare, *supra* note 1, at 1. “Infant” refers to a child younger than one year. *Child Development*, CTR. FOR DISEASE CONTROL, <https://www.cdc.gov/ncbddd/childdevelopment/positiveparenting/infants.html> [https://perma.cc/7HBE-EJLR] (Nov. 29, 2021). “Infant” is chosen because the maximum age of surrender in the United States is one year, making all children surrendered “infants.” See, e.g., N.D. CENT. CODE § 50-25.1-15(1)(a) (2022) (allowing surrender of infants up to one year). Some sources and states use the term “newborn,” but that term lacks a consistent definition and does not reflect all state laws. *Compare Newborn Health*, WORLD HEALTH ORG., <https://www.who.int/westernpacific/health-topics/newborn-health> [https://perma.cc/LR8V-CRCM] (defining a newborn as a child up to 28 days old), *with Your Baby’s Developmental Milestones at 2 Months*, UNICEF, <https://www.unicef.org/parenting/child-development/your-babys-development-milestones-2-months> [https://perma.cc/HEY2-G3E7] (using “newborn” when referring to a two-month-old child).

10. See Child Welfare, *supra* note 1, at 1.

11. See, e.g., Shannon Larson, *Amy Coney Barrett’s Focus on ‘Safe Haven’ Laws During Supreme Court Abortion Arguments Draws Attention, Scrutiny*, BOS. GLOBE (Dec. 3, 2021), <https://www.bostonglobe.com/2021/12/03/nation/heres-what-amy-coney-barrett-said-about-abortion-during-scotus-arguments/> [https://perma.cc/4HYM-AZGJ]; Astrid Galvan, *After SCOTUS Hearing, A New Look at Baby Safe Haven Laws*, U.S. NEWS (Dec. 22, 2021), <https://www.usnews.com/news/health-news/articles/2021-12-22/after-scotus-hearing-a-new-look-at-baby-safe-haven-laws> [https://perma.cc/U6NW-YGCS] [hereinafter *After SCOTUS Hearing*]; Saturday Night Live, *Weekend Update: Justice Amy Coney Barrett on Overturning Roe v. Wade—SNL*, YOUTUBE (May 8, 2022), <https://www.youtube.com/watch?v=D3pF5FhOmKU> [https://perma.cc/CC2F-WFH9].

12. Transcript of Oral Argument at 56–59, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392).

abortion after 15 weeks gestation. The petitioner, Mississippi's Department of Health, functionally sought to overturn *Roe v. Wade*, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, and their progeny, which had enshrined a constitutional right to abortion as a fundamental liberty interest.¹³ At oral argument, Justice Barrett questioned the respondents—Jackson Women's Health Organization, an abortion clinic, and one of its doctors—about SHLs and how they related to abortion:

JUSTICE BARRETT: [B]oth *Roe* and *Casey* emphasize the burdens of parenting, and insofar as you and many of your amici focus on the ways in which forced parenting, forced motherhood, would hinder women's access to the workplace and to equal opportunities, it's also focused on the consequences of parenting and the obligations of motherhood that flow from pregnancy. Why don't the Safe Haven Laws take care of that problem? . . . [W]hy didn't you address the Safe Haven Laws and why don't they matter?

MS. RIKELMAN: I think they don't matter for a couple of reasons, Your Honor. . . . [W]e don't just focus on the burdens of parenting, and neither did *Roe* and *Casey*. Instead, pregnancy itself is unique. It imposes unique physical demands and risks on women and, in fact, has impact on all of their lives, on their ability to care for other children, other family members, on their ability to work. . . .¹⁴

The majority opinion, citing SHLs as well,¹⁵ ultimately overturned *Roe* and returned the issue of abortion to the states.¹⁶ Two years after the *Dobbs* decision, 14 states have completely banned abortion¹⁷ and others have significantly restricted abortion

13. See generally *Dobbs*, 597 U.S. 215 (evaluating *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 883 (1992)).

14. Transcript of Oral Argument at 56–59, *Dobbs vs. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (No. 19-1392).

15. See *Dobbs*, 597 U.S. at 258 (“Americans who believe that abortion should be restricted press countervailing arguments about modern developments. They note that . . . [s]tates have increasingly adopted ‘safe haven’ laws, which generally allow women to drop off babies anonymously; and that a woman who puts her newborn up for adoption today has little reason to fear that the baby will not find a suitable home.”).

16. See *id.* at 231.

17. Abortion is completely banned in Alabama, Arkansas, Idaho, Indiana, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia. *Tracking Abortion Bans Across the Country*, N.Y. TIMES,

access.¹⁸ Only 27 states continue to protect abortion until at least 22 weeks gestation, excluding the states where the bans are currently enjoined.¹⁹

Given the increased number of women²⁰ unable to obtain an abortion, there are likely to be more babies born to women who do not wish to be parents.²¹ This is particularly true for people with limited means to travel to an abortion-friendly state, such as young people, people who are undocumented, single mothers, and people with limited economic resources.²² Early estimates find that states with abortion bans saw a 2.3% increase in their birth rates in the first six months of 2023.²³ While, historically, most people who are

<https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>
[<https://perma.cc/J7VC-29MX>] (Jan. 8, 2024).

18. Gestational age bans on abortion, prior to viability, have restricted access in Arizona, Florida, Georgia, Nebraska, South Carolina, North Carolina, and Utah. *Id.*

19. Abortion is legal, at least until 22 weeks gestation, in Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, and Wisconsin. *Id.*

20. For clarity and consistency with the literature, the terms “women” and “mother” are frequently used when referring to the person carrying and giving birth to a baby. This choice aligns with acceptable Associated Press standards for language about pregnancy in the Associated Press’ Stylebook. *Abortion Topical Guide*, ASSOCIATED PRESS STYLEBOOK (Dec. 15, 2022), https://www.apstylebook.com/topical_most_recent [<https://perma.cc/7C4D-VV2Z>]. That being said, pregnancy is not exclusively experienced by cisgender women, and not all pregnancies are carried by mothers, as in the case of surrogacy or non-female identifying people. Importantly, almost 30% of trans men experience unplanned pregnancies. Harmeet Kaur, *The Language We Use to Talk About Pregnancy and Abortion is Changing. But Not Everyone Welcomes the Shift*, CNN (Sept. 4, 2022), <https://www.cnn.com/2022/09/04/us/abortion-pregnant-people-women-language-wellness-ccc/index.html> [<https://perma.cc/4S7D-SBRS>]. For more discussion, see *id.*; Emma Green, *The Culture War Over ‘Pregnant People,’* ATLANTIC (Sept. 17, 2021), <https://www.theatlantic.com/politics/archive/2021/09/pregnant-people-gender-identity/620031/> [<https://perma.cc/2BBG-MKC2>]; *Inclusive and Gender-Neutral Language*, NAT’L INST. OF HEALTH, <https://www.nih.gov/nih-style-guide/inclusive-gender-neutral-language> [<https://perma.cc/69BZ-49W4>] (Jan. 17, 2024).

21. See Mary Kekatos, *More Than 150,000 Births Could Occur in the US Every Year Following the Reversal of Roe v. Wade, Report Predicts*, ABC NEWS (June 27, 2022), <https://abcnews.go.com/Health/150000-births-occur-us-year-reversal-roe-wade/story?id=85795552> [<https://perma.cc/M4NA-HSBV>]; DIANA GREENE FOSTER, *THE TURNAWAY STUDY: TEN YEARS, A THOUSAND WOMEN, AND THE CONSEQUENCES OF HAVING—OR BEING DENIED—AN ABORTION* 238–41 (2020) (estimating that between one-quarter and one-half of pregnant women would carry unwanted pregnancies to term after the overturning of *Roe*); Marianne Bitler & Madeline Zavodny, *Did Abortion Legalization Reduce the Number of Unwanted Children? Evidence from Adoptions*, 34 GUTTMACHER INST. 25, 27 (2003) (finding that access to abortion decreased the number of infants given up for adoption by white mothers).

22. See Katrina Kimport, *Abortion After Dobbs: Defendants, Denials, and Delays*, SCI. ADVANCES, Sept. 2022, at 1, 2; FOSTER, *supra* note 21, at 238–41.

23. See Daniel Dench et al., *The Effect of the Dobbs Decision on Fertility* 10 (IZA Inst. of Lab. Econ., Discussion Paper No. 16608, 2023).

denied an abortion go on to raise their children,²⁴ that is not always the case. Some women, after being unable to obtain an abortion, give up their children for adoption²⁵ or, tragically, illegally abandon or kill them.²⁶ It is possible that women who have been denied access to an abortion have used SHLs, but—likely due to the anonymous nature of surrenders—there is no data to support that supposition. Nevertheless, studies suggest that when abortion is accessible, the rates of illegal infant abandonment and infanticide decrease.²⁷ This data has not been re-evaluated in the post-*Dobbs* era, which is likely to alter the status quo regarding unwanted pregnancies and infants.

This Note takes no formal position on abortion policy²⁸ and should not be construed as an argument that SHLs are a substitute for abortion.²⁹ While *Dobbs* and subsequent changes in abortion

24. See Gretchen Sisson et al., *Adoption Decision Making Among Women Seeking Abortion*, 27 WOMEN'S HEALTH ISSUES 136, 139 (2017) (finding about 90% of women denied an abortion raised their child).

25. See *id.* (finding about 10% of women denied an abortion who give birthplace their child up for adoption).

26. See generally CHERYL L. MEYER & MICHELLE OBERMAN, *MOTHERS WHO KILL THEIR CHILDREN* 73–87 (2001).

27. See *id.* at 83 (“[R]egions with limited abortion access for pregnant women have higher rates of neonaticide than do other areas[.]”); David E. Kalist & Noelle A. Molinari, *Is the Marginal Child More Likely to be Murdered? An Examination of State Abortion Ratios and Infant Homicide*, 41 J. HUM. RES. 611, 622–23, 627 (2006) (finding an increased number of abortions after *Roe* led to a decrease in infant homicide); Andreea Mitrut & François-Charles Wolff, *The Impact of Legalized Abortion on Child Health Outcomes and Abandonment. Evidence from Romania*, 30 J. HEALTH ECON. 1219, 1228–30 (2011) (using data from Romania to find the “lift of the abortion ban has decreased the number of abandoned children in the total live births”); Jay Livingston, *Does Abortion Cause Infanticide?*, SOC’Y PAGES: SOCIO. IMAGES (May 19, 2013), <https://thesocietypages.org/socimages/2013/05/19/does-abortion-cause-infanticide/> [<https://perma.cc/Q3BH-JUGJ>] (“Some state laws make it harder for a woman to terminate an unwanted pregnancy. Under those conditions, more women will resort to infanticide.”).

28. This position is consistent with many SHL advocate organizations. See Manny Ramos, *Safe Haven Advocates ‘Starting to Panic’ About Supreme Court Eyeing Abortion Rights*, CHI. SUN TIMES (May 4, 2022), <https://chicago.suntimes.com/metro-state/2022/5/4/23057570/illinois-safe-haven-advocates-starting-to-panic-about-supreme-court-eyeing-abortion-rights> [<https://perma.cc/E9PG-RFFT>] (reporting “the [Save Abandoned Babies] foundation takes no position [on *Roe v. Wade*], we believe that the child we’re dealing with has already been born”); Zoom Interview with Heather Burner, Executive Director, National Safe Haven Alliance & Leah Kipley, Assistant Director, National Safe Haven Alliance (Mar. 8, 2023) [hereinafter Burner & Kipley Interview] (stating the same).

29. See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 397 (2022) (Breyer, J., Sotomayor, J., & Kagan, J., dissenting) (arguing SHLs do not “reduce[e] the health risks or financial costs of going through pregnancy and childbirth. Moreover, the choice to give up parental rights after giving birth is altogether different from the choice not to carry a pregnancy to term.”); Transcript of Oral Argument at 57–58, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392) (counsel for respondents arguing the same).

access provided the catalyst for reevaluating SHLs, this Note does not support the idea that SHLs are inextricably linked to abortion. SHLs arose during *Roe*'s tenure and the recent decline in abortion access only heightens the need for comprehensive legislation centered on mother and infant safety. History demonstrates that there will be women who find themselves in desperate situations with an infant child, regardless of their past access to abortion. Moreover, SHLs were developed as a response to public outcry over infant homicide,³⁰ not abortion, and their reception has been overwhelmingly bipartisan.³¹ In many states, both anti-abortion and abortion-rights³² groups supported the initial SHLs.³³ Finally, this Note discusses only one element of social policy that can be used to prevent infanticide. Other facets including economic support, affordable childcare, and educational programming are outside of its scope.³⁴

This Note likewise does not seek to villainize women who safely surrender their infants, or even those who, driven by overwhelming circumstances, take unthinkable actions like infanticide. Instead, this Note offers an approach to SHLs that best supports infants and their mothers. It acknowledges that parenthood is difficult and not for everyone, and that safely

30. See *Dobbs*, 597 U.S. at 397 n.16 (Breyer, J., Sotomayor, J., & Kagan, J., dissenting) (SHLs “were not enacted as an alternative to abortion, but in response to rare situations in which birthing mothers in crisis would kill their newborns or leave them to die”); Lizzie Widdicombe, *The Baby-Box Lady of America*, *NEW YORKER* (Dec. 18, 2021), <https://www.newyorker.com/news/news-desk/the-baby-box-lady-of-america> [<https://perma.cc/SKA2-NK7B>].

31. Sanger, *supra* note 5, at 773.

32. Anti-abortion and abortion-rights are chosen in place of the terms “pro-life” and “pro-choice” to focus on the action and goal of the advocates. Elizabeth Jansen, Opinion, *Reviewing NPR's Language for Covering Abortion*, NPR PUB. ED. (May 29, 2019), <https://www.npr.org/sections/publiceditor/2019/05/29/728069483/reviewing-nprs-language-for-covering-abortion> [<https://perma.cc/U7LP-DBRU>]. This choice is consistent with the Associated Press' Stylebook. See ASSOCIATED PRESS STYLEBOOK, *supra* note 20.

33. See Sanger, *supra* note 5, at 779; see, e.g., *Hearing on S.B. 191 Before the Assemb. Comm. on Health & Human Servs.*, 2001 Leg., 71st Sess. (2001) (where Planned Parenthood, Nevada anti-abortion groups, and the Catholic Church endorsed the bill).

34. See Rebecca F. Wilson et al., *Infant Homicides Within the Context of Safe Haven Laws, United States, 2008–2017*, 69 *CTR. FOR DISEASE CONTROL: MORBIDITY AND MORTALITY WKLY. REP.* 1385, 1386 (2020); Katie Cox, *Indiana's Safe Haven Baby Boxes are Saving—and Changing—Lives*, *WRTV INDIANAPOLIS* (July 24, 2019), <https://www.wrtv.com/news/local-news/indianas-safe-haven-baby-boxes-are-saving-lives> [<https://perma.cc/GDA2-ZHK3>] (the founder of Safe Haven Baby Boxes reporting 758 hotline calls in 2018 resulting in only four surrenders after providing callers with other resources).

surrendering an infant one cannot care for is an unselfish and benevolent act.

This Note follows the U.S. Center for Disease Control's (CDC) advice to "evaluate the effectiveness of [states'] Safe Haven Laws and other prevention strategies to ensure they are achieving the intended benefits of preventing infant homicides."³⁵ The suggestions presented in this Note for SHLs seek to offer maximum support for women in crisis and their infants, aiming to close the gap identified by infanticide researchers who, after looking at SHLs post-*Dobbs*, found "[n]obody is collecting the information needed to safeguard infants and their parents."³⁶

Moreover, there is growing concern that "wildly inconsistent" SHLs pose a risk to their success and create barriers to women seeking help.³⁷ This Note looks at five key elements of state SHLs: (a) maximum age of surrender, (b) legal places for surrender, (c) anonymity and biological information, (d) termination of parental rights, and (e) criminal liability, and analyzes them, compares state approaches, and makes a recommendation for the best combination of elements for both women and infants. Part I provides background on infant abandonment and SHLs. Part II analyzes and discusses the key elements of current SHLs. Part III provides a recommendation in the form of a model SHL for states to adopt and explains the rationale behind each provision.

I. INFANT ABANDONMENT AND SAFE HAVEN LAWS IN THE UNITED STATES

Before analyzing the selected elements of each state's SHL, it is crucial to understand the landscape from which SHLs emerged and in which they operate today. While governments have accepted anonymous infant surrender for centuries, the SHLs

35. Wilson et al., *supra* note 34, at 1385.

36. Clara Lewis & Michelle Oberman, *Wildly Inconsistent Safe Haven Laws Put Surrendered Infants, Parents at Risk*, CHI. TRIB. (Jan. 11, 2023), <https://www.chicagotribune.com/2023/01/11/clara-lewis-and-michelle-oberman-wildly-inconsistent-safe-haven-laws-put-surrendered-infants-parents-at-risk/> [https://perma.cc/K2MT-VQY9].

37. See *id.*; Hannah Howard, *Safe Haven Laws: An Invitation to Life*, CHARLOTTE LOZIER INST.: ON POINT (Oct. 31, 2022), <https://lozierinstitute.org/safe-haven-laws-an-invitation-to-life/> [https://perma.cc/S6X2-QQQJ] ("Ultimately, as resources allow, states could strive to provide more uniform laws . . . to serve those living close to state lines and out-of-state college students who may not be aware of differences in the law from state to state.").

enacted at the turn of the twenty-first century represent a more formal, structured attempt to address infant abandonment. This section offers a background on infanticide in the United States and a preliminary evaluation of SHLs.

When evaluating SHLs, it is important to consider that research involving SHLs is inherently limited by anonymity.³⁸ Therefore, many data sources used below are not representative, make assumptions about unknowns, and rely on anecdotes and self-reported information.³⁹ Moreover, SHLs received most of their academic attention when the laws first began to appear in the early 2000s, meaning there are fewer current sources of information.⁴⁰

Despite these constraints, this Note is able to conduct an analysis of SHLs based on the existing—though limited—data that other scholars have been able to collect, social science studies, and recommendations from experts in the field. Much of the Note is informed by the author’s interviews with activists and researchers in the field of SHLs, including the Executive and Assistant Directors of the National Safe Haven Alliance (NSHA), and the author’s work with an SHL policy group of experts seeking to advance federal minimum standards legislation for SHLs.⁴¹ This Part proceeds in four sections: Section A explains the demand for SHLs by discussing concerns about infanticide and neonaticide in the 1990s. Section B offers data on the women most likely to need and utilize SHLs. Sections C and D explore criticisms of SHLs and respond by sharing their efficacy at reducing infanticide.

A. INFANTICIDE, NEONATICIDE, AND THE NEED FOR SAFE HAVEN LAWS

State legislatures passed SHLs in response to growing concerns about infanticide. One important distinction that scholars recognize is the difference between neonaticide (homicide of a child within the first 24 hours of life) and other forms of infanticide

38. E-mail from Malinda Seymore, Professor of Law, Tex. A&M Univ. Sch. L., to author (Feb. 25, 2023) (on file with author) [hereinafter Seymore E-mail].

39. For an exceptional recent piece involving data obtained from local child services, see Micah Orliiss et al., *Safely Surrendered Infants in Los Angeles County: A Medically Vulnerable Population*, 45 CHILD: CARE, HEALTH & DEV. 861 (2019).

40. Zoom interview with Malinda Seymore, Professor of Law, Tex. A&M Univ. Sch. L. (Feb. 23, 2023) [hereinafter Seymore Interview].

41. See *infra* Part III.A.

(which occurs any time before a child's first birthday).⁴² SHLs seek to prevent both types of infant death but primarily focus on neonaticides and other early deaths, given that most states only accept very young infants through SHLs.⁴³ Infanticide may be "passive," such as abandonment leading to starvation or exposure to the elements, or "active," such as violent injury, drowning, or suffocation.⁴⁴

The number of instances of neonaticide, abandonment, and surrender is, unsurprisingly, correlate with state population.⁴⁵ Compared to their urban counterparts, rural areas have higher rates of infanticide and general infant mortality.⁴⁶ States with higher levels of women of childbearing age living in poverty and those with high per capita income averages—which leads to a more extreme wealth disparity for impoverished women—had the highest rates of infanticide between 1984 and 1996.⁴⁷

Between 1989 and 1998, the rate of infanticide in the United States was 8.3 per 100,000 person-years.⁴⁸ Of these deaths, the rate of neonaticide was 222.2 per 100,000 person-years, making the risk of death on the first day of life more than ten times greater than at any other point in life.⁴⁹ Generally, the youngest infants are the most at risk—over half of the infants killed between 2017

42. See Natalia López, *Infanticide*, HUMANIUM, <https://www.humanium.org/en/infanticide/> [<https://perma.cc/6PV7-8XAJ>]; Diane S. Kaplan, *Who Are the Mothers Who Need Safe Haven Laws? An Empirical Investigation of Mothers Who Kill, Abandon, or Safely Surrender Their Newborns*, 29 WIS. J. L., GENDER & SOC'Y 447, 450 (2014) (citing Phillip J. Resnick, *Murder of the Newborn: A Psychiatric Review of Neonaticide*, 126 AM. J. PSYCHIATRY 1389, 1414 (1970)).

43. See *infra* Part II.A.

44. See López, *supra* note 42; Kaplan, *supra* note 42, at 453; Marcia E. Herman-Giddens et al., *Newborns Killed or Left to Die by a Parent: A Population-Based Study*, 289 J. AM. MED. ASSOC. 1425, 1425 (2003).

45. See Kaplan, *supra* note 42, at 459.

46. See DANIELLE M. ELY & DONNA L. HOYERT, DIFFERENCES BETWEEN RURAL AND URBAN AREAS IN MORTALITY RATES FOR THE LEADING CAUSES OF INFANT DEATH: UNITED STATES, 2013–2015 4 (2018).

47. See DeAnn K. Gauthier et al., *A Sociological Analysis of Maternal Infanticide in the United States, 1984–1996*, 24 DEVIANT BEHAV. 393, 401 (2003).

48. See Wilson et al., *supra* note 34, at 1388. Person-years are used because "presenting rates in person-years allows for the calculation of homicide risk by week during infancy and by day during the first week of life." *Id.* at 1386. Person-years account for the number of people in the study and how long they remained there. For example, a one-year-old has one person-year, while a one-day-old only has 1/365 person-years. See *id.* at Supplementary Table. Using person-years allows meaningful data to be drawn week-to-week, or else the sample sizes of infants who are killed at any given point (say, three weeks) would be too small.

49. See *id.* at 1388.

and 2020 were younger than three months old.⁵⁰ Scientists largely agree that infanticide numbers are underestimated due to undiscovered bodies and misclassifications as deaths by natural causes,⁵¹ but there have also been reports of wrongful convictions for infanticide⁵² after a pregnancy loss or stillbirth.⁵³

In the United States, the issue of infant abandonment reached national attention in the late 1990s with headlines such as *A Flurry of Baby Abandonment Leaves Houston Wondering Why*⁵⁴ and *Police Say Infant Dumped in Trash was Suffocated*.⁵⁵ National media covered the trial of New Jersey “Prom Mom” Melissa Drexler, who gave birth at her high school prom and left her infant—who later died—in the bathroom,⁵⁶ and the story became

50. See Isabelle Horon & Anne K. Driscoll, *Homicides Among Infants in the United States, 2017–2020*, 72 NAT'L VITAL STAT. REP. 1, 3 (2023).

51. See, e.g., Susan Hatters Friedman & Phillip J. Resnick, *Child Murders by Mothers: Patterns and Prevention*, 6 WORLD PSYCHIATRY 137, 137 (2007); John L. Emery, *Child Abuse, Sudden Infant Death Syndrome, and Unexpected Infant Death*, 147 AM. J. DISEASES CHILD. 1097, 1097 (1993); Fiona Brookman & Jane Nolan, *The Dark Figure of Infanticide in England and Wales: Complexities of Diagnosis*, 21 J. INTERPERS. VIOLENCE 869, 870 (2006); Bernard Ewigman et al., *The Missouri Child Fatality Study: Underreporting of Maltreatment Fatalities Among Children Younger Than Five Years of Age, 1983 Through 1986*, 91 PEDIATRICS 330, 335 (1993).

52. See, e.g., Alicia Carriquiry, *Misuse of Statistics in the Courtroom: The Sally Clark Case*, CTR. STAT. & APP. FORENSIC EVIDENCE (Feb. 16, 2018), <https://forensicstats.org/blog/2018/02/16/misuse-statistics-courtroom-sally-clark-case/> [<https://perma.cc/96ZV-AK3K>].

53. See generally Farah Diaz-Tello, *Roe Remains for Now . . . Will it be Enough?*, 45 ABA HUM. RIGHTS (Sept. 7, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/health-matters-in-elections/roe-remains-for-now-will-it-be-enough/ [<https://perma.cc/2U28-EDNA>] (“There have been more than 1,200 women arrested across the United States based on their pregnancy outcomes—including miscarriages, stillbirths, abortions, or neonatal losses—since *Roe* was decided.”); see, e.g., *Marsha Colbey*, EQUAL JUST. INITIATIVE, <https://eji.org/cases/marsha-colbey/> [<https://perma.cc/M2B8-7UTW>]. Criminalization of pregnancy loss and stillbirth are especially prominent among women of color. See Priscilla Thompson & Alexandra Turcios Cruz, *How an Oklahoma Woman’s [sic] Miscarriage Put a Spotlight on Racial Disparities in Prosecutions*, NBC NEWS (Nov. 5, 2021), <https://www.nbcnews.com/news/us-news/woman-prosecuted-miscarriage-highlights-racial-disparity-similar-cases-rcna4583> [<https://perma.cc/SE8F-37TF>]. It is important to note, however, that not all of these arrests resulted in convictions or were for infanticide—many states have a separate crime of “feticide.” See *id.*

54. Yardley, *supra* note 8.

55. Tina Nguyen, *Police Say Infant Dumped in Trash Was Suffocated*, L.A. TIMES (Mar. 19, 1996), <https://www.latimes.com/archives/la-xpm-1996-03-19-me-48873-story.html> [<https://perma.cc/F2XS-SV5S>].

56. See Robert Hanley, *New Jersey Charges Woman, 18, with Killing Baby Born at Prom*, N.Y. TIMES (June 25, 1997), <https://www.nytimes.com/1997/06/25/nyregion/new-jersey-charges-woman-18-with-killing-baby-born-at-prom.html> [<https://perma.cc/DG4K-ELWB>]; Associated Press, *‘Prom Mom’ Released from Prison*, CBS NEWS (Nov. 26, 2001), <https://www.cbsnews.com/news/prom-mom-released-from-prison/> [<https://perma.cc/G5EV-ZW5W>].

infamous in pop culture.⁵⁷ The number of children abandoned in public places, as opposed to children abandoned in hospitals, increased 62% between 1991 and 1998, from 65 infants to 105.⁵⁸ Approximately two-thirds of abandoned infants were found outside, commonly in the garbage.⁵⁹ About one-third of the abandoned children were found deceased.⁶⁰ Rates of survival of infants abandoned outdoors, in the trash, or in a bathroom were less than 40%, whereas over 90% of infants abandoned at or near churches or hospitals survived.⁶¹ Increased news coverage of abandoned babies prompted action from grassroots organizations, first responders, and community activists.⁶² These efforts ultimately spurred state legislators into action.

In 1999, Texas became the first state to adopt an SHL after 13 infants were found abandoned in the state that year.⁶³ To spread awareness of the law, which permitted mothers to safely surrender their newborns to hospitals or fire stations, lawmakers launched a public information campaign.⁶⁴ The new law offered an alternative to adoption for mothers wishing to remain anonymous or who lacked the ability to participate in a formal adoption proceeding. In 2002, Congress authorized states to use federal funding for Safe Haven programs.⁶⁵ By 2008, all 50 states and Puerto Rico had adopted an SHL⁶⁶ with nearly unanimous approval in every state.⁶⁷ Legislators seemed to agree on the basic premise of these laws: given the choice, women who would otherwise resort to

57. See, e.g., *Grey's Anatomy: Time Has Come Today* (ABC television broadcast Sept. 21, 2006) (in which doctors treat an infant abandoned at a high school); *Family Guy: Airport '07* (Comedy Central television broadcast Mar. 4, 2007) (featuring a song titled "Prom Night Dumpster Baby"); *Murder Made Me Famous: Prom Mom* (Reelz Channel television broadcast May 12, 2018).

58. See *Abandoned Babies—Preliminary National Estimates*, ADMIN. FOR CHILD. & FAM. SERVS., <https://web.archive.org/web/20041101045205/http://www.acf.dhhs.gov/news/stats/abandon.htm> [<https://perma.cc/5NDL-KQBB>] [hereinafter *Abandoned Babies*].

59. See Kaplan, *supra* note 42, at 484–86.

60. See *Abandoned Babies*, *supra* note 58.

61. See Kaplan, *supra* note 42, at 486.

62. See, e.g., Galvan, *supra* note 11; Yardley, *supra* note 8; Diane Herbst, *New York Man Rescues Abandoned Infants and Helps Them Find a Loving Home*, PEOPLE (Feb. 23, 2017), <https://people.com/human-interest/new-york-man-rescues-abandoned-infants-and-helps-them-find-a-loving-home-ive-cried-over-a-lot-of-babies/> [<https://perma.cc/K2ND-SGAX>].

63. See Yardley, *supra* note 8.

64. See *id.*

65. Promoting Safe and Stable Families Amendments of 2001, Pub. L. No. 107–133, 115 Stat 2413 (2002); 42 U.S.C. § 629a(a)(1)(F) (2022).

66. See Wilson et al., *supra* note 34, at 1385.

67. See Sanger, *supra* note 5, at 773.

infanticide would prefer to surrender their infants safely.⁶⁸ Generally speaking, SHLs allow mothers to surrender unharmed infants to hospitals and other safe locations⁶⁹ on the condition of anonymity and immunity from prosecution.⁷⁰ Once an infant is surrendered, the law considers them legally abandoned; the exact procedures vary from state to state, but ultimately parental rights are terminated and the child becomes adoptable.⁷¹

B. WOMEN AND INFANTS WHO NEED SAFE HAVEN LAWS

To address both infanticide and SHLs, it is necessary to understand the people who most need these laws: mothers who would otherwise kill or abandon their infants.⁷² The focus on mothers advances this Note's objective to craft a model SHL to support at-risk infants, at-risk birthing parents, and surrenderers (i.e., the individuals handing over the infants at designated Safe Havens). Moreover, this focus is consistent with research indicating that infanticide is most often committed by the child's biological mother⁷³ and that most surrendered infants are surrendered by their biological mother.⁷⁴

Even though data on mothers who safely surrender their infants is scarce because of anonymity provisions, some surrendering mothers may voluntarily share information with the SHL provider.⁷⁵ Demographic data on women who illegally

68. See Kaplan, *supra* note 42, at 449; N.J. STAT. ANN. § 30:4C-15.6 (West 2022).

69. See *infra* Part II.B, Chart [<https://perma.cc/2MKP-HL2V>].

70. See Child Welfare, *supra* note 1, at 1.

71. See *id.* at 4–5.

72. This Note shares many legislatures' assumptions that at least some women who utilize SHLs may have otherwise committed infanticide or illegal abandonment. See *infra* Part I.A.

73. See Heidi Stöckl et al., *Child Homicide Perpetrators Worldwide: A Systemic Review*, 1 *BMJ PAEDIATRICS OPEN* 1, 4 (2017) (noting that over 75% of infanticides are committed by the infant's parents and that approximately 70% of parental infanticides and statistically 100% of neonaticides are committed by the infant's biological mother); Neil S. Kaye et al., *Families, Murder, and Insanity: A Psychiatric Review of Paternal Neonaticide*, 35 *J. FORENSIC SCIS.* 133, 135 (1990) (finding only four reported cases of paternal neonaticide between 1751 and 1990).

74. See Kaplan, *supra* note 42, at 484 (noting that most infants are surrendered by their biological mother).

75. See *id.* at 461. Though anonymity provisions prevent safe haven locations from requiring certain information from the surrenderer, mothers may still provide biological information when surrendering their children. These mothers may be aware that giving their child access to this information in the future may prove helpful to them (discussed *infra*, Part II.C).

abandon their infants is more widely available.⁷⁶ Diane Kaplan conducted the most comprehensive study of infant surrenders and abandonments from media reports in all 50 states from 1996 to 1998 (pre-SHLs) and from 2005 to 2007 (after the adoption of most SHLs), and looked at 559 cases to answer the study's titular question: *Who Are the Mothers Who Need Safe Haven Laws?*⁷⁷

Overwhelmingly, the mothers of surrendered and abandoned infants were young and members of low socioeconomic classes. Mothers of illegally abandoned infants in the Kaplan study had a mean and median age of 21, with a total range of 12 to 42 years old.⁷⁸ Generally speaking, the risk of abuse—including infanticide and abandonment—decreases as the age of the mother increases.⁷⁹ The study was unable to collect statistically significant data on the age of mothers of surrendered infants, but available data suggested that they tended to be older than the mothers of illegally abandoned infants, with a greater percentage of the cohort in their twenties and thirties.⁸⁰ Mothers who committed infanticide often had low socioeconomic status,⁸¹ and surrendered infants are often surrendered in low-income areas.⁸²

When the media reports made such information available, the Kaplan study identified further trends in these mothers' characteristics. The religious affiliations of 73 mothers who abandoned their infants revealed that the vast majority (84%) identified as Catholic; including the Catholic mothers, 93% belonged to religions that formally disapprove of contraception.⁸³

76. See Kaplan, *supra* note 42, at 460. The U.S. government also collects data on victims of infanticide and their families, though it is not categorized by abandonment. See, e.g., Wilson et al., *supra* note 34; Horon & Driscoll, *supra* note 50.

77. See Kaplan, *supra* note 42, at 449, 460. Kaplan's utilization of media reports of abandonments and surrenders is common among SHL researchers but warrants a note on the data's accuracy: the facts are limited to those that reporters managed to discover and chose to divulge, meaning the absence of a fact does not indicate its nonoccurrence. *Id.* at 458.

78. See *id.* at 462.

79. See Jones, *supra* note 2, at 1205–06; see also *Researchers Identify Risk Factors for Infants Most Likely To Be Homicide Victims*, NAT'L INST. CHILD HEALTH & HUM. DEV. (Oct. 21, 1998), <https://www.nichd.nih.gov/newsroom/releases/homicid> [<https://perma.cc/P3DJ-A6NG>] (finding that infants were most at risk if their mother was under 15 years old); Wilson et al., *supra* note 34, at 1387 (studying all infanticides, not just abandonments); Horon & Driscoll, *supra* note 50, at 2 (same).

80. See Kaplan, *supra* note 42, at 464.

81. See Jones, *supra* note 2, at 1206.

82. See, e.g., Orless et al., *supra* note 39, at 863.

83. See Kaplan, *supra* note 42, at 467. Earlier research suggested that many women who abandon or kill their infants while suffering from disassociation—not understanding she is pregnant and denying the existence of the pregnancy and infant—are from religious

Mothers of all educational backgrounds abandoned their infants; the majority of the studied mothers completed high school, but only five percent had completed college at the time of giving birth.⁸⁴ Over 21% of women who went on to abandon their infant were reported to have concealed their pregnancy from family, friends, and others.⁸⁵ Many women who went on to surrender, abandon, or kill their infants suffered from some form of “pregnancy denial” where, likely due to trauma or fear, the pregnant woman is unable to acknowledge her pregnancy.⁸⁶ The large majority of abandoned infants were born at home or in a bathroom without anyone assisting the mother.⁸⁷

Over 90% of surrendered infants were under one week old, and over half were surrendered the day they were born.⁸⁸ Unsurprisingly, an infant’s mother was the most frequent surrenderer, followed by other relatives, such as the infant’s father or grandparent.⁸⁹ While an early study found that surrendered infants tended to be healthy and unharmed,⁹⁰ research involving 80 surrendered infants in Los Angeles County found that over half had “medical problems.”⁹¹ The same study found that the race of surrendered infants tended to match the local population.⁹² In the Kaplan study, the surrendering mothers, compared to mothers who abandoned their infants, tended to be older, more independent (not living with parents), and more likely to have had previous live births.⁹³

While some adoption advocates worry that women surrender infants rather than going through the formal adoption process, their concern is likely unfounded given the differing demographics of adoptive birth mothers. Like mothers who surrender or kill

backgrounds which do not support pre-marital sexual relations or contraception. *Id.* However, 40% of the religious mothers studied here acknowledged their pregnancies. *Id.*

84. *See id.* at 468–69. This is very likely correlated to the age of the mothers—an average of 21 years old. *Id.* at 462. The rates of infanticide generally decrease the more education the mother completes. *See* Wilson et al., *supra* note 34, at 1388.

85. *See* Kaplan, *supra* note 42, at 477.

86. *See id.* at 453–56; Burner & Kipley Interview, *supra* note 28 (reporting that about 80% of callers to their hotline had “some kind of pregnancy denial”).

87. *See* Kaplan, *supra* note 42, at 479; *see also* Seymore E-mail, *supra* note 38 (saying this secrecy helps explain young maximum age requirements in SHLs).

88. *See* Kaplan, *supra* note 42, at 481; *see also* Orliiss et al., *supra* note 39, at 863.

89. *See* Kaplan, *supra* note 42, at 482.

90. *See id.* at 484.

91. *See* Orliiss et al., *supra* note 39, at 863.

92. *See id.*

93. *See id.* at 487.

their infants, most birth mothers who participate in traditional adoptions have limited income.⁹⁴ However, on average, birth mothers who participate in traditional adoptions are in their mid-to-late twenties and have at least a high school diploma or equivalent;⁹⁵ by comparison, the Kaplan study found that mothers who surrender or kill their infants tended to be younger and have lower educational attainment (perhaps due to their age).⁹⁶ Nearly 70% of adoptive birth mothers contacted the adoption agency prior to giving birth, which would not be possible for a woman experiencing pregnancy denial like many of the women that SHLs target.⁹⁷

SHLs must aim to be a resource for all women and infants in crisis, but understanding those most in need of SHLs can guide policymakers in reforming SHLs. To reach the people most likely to use them, SHLs should be accessible to young women with few economic resources and a high school education.⁹⁸ SHLs should permit the surrender of very young infants—the group most likely to be abandoned or surrendered.⁹⁹ Finally, anonymity is a crucial aspect of SHLs, as many women concealed their pregnancy before abandoning their infants, with mothers of dead abandoned infants concealing their pregnancy twice as frequently as those whose infants were found alive.¹⁰⁰

C. CRITICISM OF SAFE HAVEN LAWS

Despite their universally appealing objective (i.e., to save infant lives), the tactics of SHLs are not without their critics. First, some scholars doubt the foundational assumption that SHLs actually target those who would have otherwise committed infanticide or illegal abandonment.¹⁰¹ Some adoption advocates worry that

94. See Gretchen Sisson, *Who Are the Women Who Relinquish Infants for Adoption? Domestic Adoption and Contemporary Birth Motherhood in The United States*, 54 *PERSPS. ON SEX. & REPROD. HEALTH* 46, 49 (2022) (finding that 92% of mothers earned less than \$25,000 annually).

95. See *id.*; *Profiles in Adoption: Birth Parent Experiences*, NAT'L COUNCIL FOR ADOPTION 6 (2023).

96. See Kaplan, *supra* note 42, at 462, 469.

97. See Sisson, *supra* note 94, at 49.

98. See generally *id.*

99. See Kaplan, *supra* note 42, at 481.

100. See *id.* at 477.

101. See, e.g., Michelle Hammond et al., *Safe Haven Laws as Crime Control Theater*, 34 *CHILD ABUSE & NEGLECT* 545, 546 (2010); Seymore Interview, *supra* note 40, and accompanying text.

SHLs are often used by women who would have otherwise participated in a traditional adoption in which they could receive counseling and other safeguards.¹⁰² Others argue that SHLs interfere with paternal rights and leave the child to grow up without any genetic or cultural history.¹⁰³ Adoption advocates point out that most American adoptions are open, meaning that the genetic family stays in contact with the adoptive family and the child; even in closed adoptions, the process creates records that could be opened for good cause later—a surrendered infant, on the other hand, has little recourse to learn anything about their genetic family.¹⁰⁴

Some scholars critique SHLs for failing to address the underlying social concerns that lead women to abandon infants,¹⁰⁵ and claim the laws act as a “band-aid” to the real problem.¹⁰⁶ Others argue that some desperate women will continue to abandon their children despite the availability of SHL surrender because they are not in the right frame of mind to seek out a safe haven location.¹⁰⁷ More generally, people express concern that, because

102. See, e.g., ANNETTE BARAN, UNINTENDED CONSEQUENCES: ‘SAFE HAVEN’ LAWS ARE CAUSING PROBLEMS, NOT SOLVING THEM 2 (Evan B. Donaldson Adoption Inst. 2003); Seymore E-mail, *supra* note 38; Seymore Interview, *supra* note 40 (citing Safe Place for Newborns Improvement Act, S.B. 187, 2023 Sess., Reg. Sess. (Ga. 2023), which would allow adoption agencies to be acceptable locations of surrender, to emphasize her point); *Safe Haven Laws: Why Adoptions Together Opposes Safe Haven Laws*, ADOPTIONS TOGETHER (Aug. 26, 2013), <https://www.adoptionstogether.org/blog/2013/08/26/safe-haven-laws-why-adoptions-together-opposes-safe-haven-laws/> [<https://perma.cc/DMF3-NLMH>] [hereinafter *Adoptions Together Opposes*]. But see Burner & Kipley Interview, *supra* note 28 (sharing that when they receive “Safe-Haven oriented” calls to their crisis hotline about 40% of cases end with the mother pursuing a traditional adoption rather than anonymous surrender). To emphasize that adoption is preferable, Illinois’ SHL states that “[i]t is recognized that establishing an adoption plan is preferable to relinquishing a child using the procedures outlined in this Act, but to reduce the chance of injury to a newborn infant, this Act provides a safer alternative.” 325 ILL. COMP. STAT. 2/5 (2023).

103. See, e.g., *Adoptions Together Opposes*, *supra* note 102; Vicky Baker, *Drop-off Baby Boxes: Can They Help Save Lives in the U.S.?*, BBC NEWS (Jan. 23, 2019), <https://www.bbc.com/news/world-us-canada-46801838> [<https://perma.cc/B4QZ-SNLG>]; 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, 260 (2005).

104. See, e.g., Seymore Interview, *supra* note 40.

105. See, e.g., Wilson et al., *supra* note 34, at 1386 (“Programs and policies that strengthen economic supports, provide affordable childcare, and enhance and improve skills for young parents might contribute to the prevention of infant homicides.”).

106. See Burner & Kipley Interview, *supra* note 28 (admitting that the laws are a “band-aid,” but believing that they are necessary).

107. See, e.g., Galvan, *supra* note 11; Baker, *supra* note 103 (“The main problem . . . is these initiatives are unlikely to be reaching their targets. The pregnant women who suddenly find themselves giving birth alone are often very young teenagers who have been

SHLs were passed so quickly in response to widespread, emotionally charged headlines about dead infants, they are under-researched and merely “crime control theater.”¹⁰⁸

Finally, SHLs have been criticized for being co-opted as a tool for the anti-abortion movement. Some worry that SHLs work to falsely connect abortion and infanticide, arguing that SHLs “shape social understandings of women as untrustworthy persons by reinforcing the proposition that women who abort and mothers who abandon newborns are the same: Both kill babies.”¹⁰⁹ Other abortion-rights advocates are concerned that SHLs are presented as substitutes for abortion and that anti-abortion advocates argue they obviate the need for abortion.¹¹⁰ A majority of the Supreme Court gave credence to these arguments in *Dobbs*, opining that “Americans who believe that abortion should be restricted press countervailing arguments about modern developments[,] . . . [including] that States have increasingly adopted ‘safe haven’ laws.”¹¹¹

D. THE EFFICACY OF SAFE HAVEN LAWS IN REDUCING INFANTICIDE

Advocates of SHLs are quick to defend them, arguing that they are successful if even one infant is saved.¹¹² While there has yet to be a study conclusively demonstrating causation between falling infanticide rates and SHLs, there is data to suggest a strong correlation.¹¹³ Between 2007 and 2017, the rate of infanticide in the United States dropped to 7.2 per 100,000 person-years and

denying or concealing their pregnancies out of fear and shame. ‘I find it hard to imagine that immediately after delivering baby, by herself in [the] bathroom, she is expected to know the law, and get on a bus and into an Uber and drop it off[.]’”); Racine, *supra* note 103, at 253–55.

108. See, e.g., Hammond et al., *supra* note 101, at 545; Racine, *supra* note 103, at 243–45.

109. Sanger, *supra* note 5, at 761.

110. See, e.g., *id.* at 779; see also Transcript of Oral Argument at 56, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392). SHLs are playing a prominent role in the post-*Dobbs* discourse and should continue to be assessed as a bipartisan attempt to reduce infanticide, regardless of one’s position on the abortion debate. See *supra* Introduction.

111. See *Dobbs*, 597 U.S. at 258–59.

112. See Racine, *supra* note 103, at 245.

113. Professor Malinda Seymore, an expert on Adoption Law who is currently researching SHLs, calls herself a “Safe Haven Skeptic,” in part because she has found no proof of SHLs’ efficacy in reducing infanticide, rather than other causes. Seymore Interview, *supra* note 40.

neonaticide rates decreased to 74.0 per 100,000 person-years, representing a 66.7% decrease from the 1988 to 1998 rates.¹¹⁴ Infanticide in which the cause of death was ruled to be abandonment decreased from 19% before SHLs were passed in the United States to only five percent after they took effect.¹¹⁵ NSHA reports that 4,707 infants have been surrendered through SHLs since 1999.¹¹⁶ This number is likely under-representative of the total number of infants actually surrendered because many states do not count surrendered infants found to be exposed to alcohol or drugs as SHL surrenders since they are not “unharmful.”¹¹⁷

SHLs have also failed to erase the problem of illegal infant abandonment completely. Illegal abandonment often leads to health problems (up to and including death) from exposure, starvation, or dehydration.¹¹⁸ Since 1999, about 1,600 infants have been illegally abandoned, of whom 934 were found deceased.¹¹⁹ Between 2007 and 2017, 111 infants were killed within their first week of life, and 2,851 were killed before their first birthday.¹²⁰ While not all of these infants would have necessarily been safely surrendered,¹²¹ experts believe it is possible that more infants would have been surrendered if SHLs had been better known or more effective.¹²² In publishing data on infant homicides from

114. See Wilson et al., *supra* note 34, at 1388.

115. Deaths classified as abandonment include dehydration, starvation, hypothermia, and exposure. See Kaplan, *supra* note 42, at 492–93.

116. See *Our Cause*, NAT'L SAFE HAVEN ALLIANCE, <https://www.nationalsafehavenalliance.org/our-cause> [<https://perma.cc/YB7E-2E8U>].

117. Heather Burner, NSHA's Executive Director, estimates the number in these states—like Arizona—to be two or three times higher than reported. See Kathy Ritchie, *Q&AZ: If Roe v. Wade is Overturned, Could More Arizona Babies be Given Up Under the Safe Haven Law?*, KJZZ (June 22, 2022), <https://kjzz.org/content/1784771/qaz-if-roe-v-wade-overturned-could-more-arizona-babies-be-given-under-safe-haven-law> [<https://perma.cc/J7FB-FH4L>]; see also Burner & Kipley Interview, *supra* note 28 (saying SHLs have saved more babies than are officially reported).

118. Infants who survived illegal abandonment were primarily healthy, but about one-quarter of the infants were hypothermic, dehydrated, or suffering from blood loss. See Kaplan, *supra* note 42, at 490.

119. See Liisa R. Speaker, *More Than Just a Baby in a Box: A Critical Analysis of Safe Haven Legislation to Balance the Rights of Surrendered Children and Biological Parents*, 36 J. AM. ACAD. MATRIM. LAWYERS 139, 143–44 (2023).

120. See Wilson et al., *supra* note 34, at 1387–88.

121. See, e.g., Baker, *supra* note 103 (suggesting that some of the laws are relatively unknown and that women are unlikely to be in the frame of mind to come drop the infant off).

122. See, e.g., *id.*; Kathryn A. Thomas & Chloe J. Kaminsky, *The Association Between State-Level Safe Haven Laws and Rates of Infant Mortality in the United States: A Legal Epidemiology Study*, MEDRXIV (Sept. 14, 2023), <https://www.medrxiv.org/content/10.1101/2022.11.16.22282430v2> [<https://perma.cc/MJ7T-LYAF>]. But see Sanger, *supra* note 5, at

2007 to 2017, the CDC encouraged states “to evaluate the effectiveness of their [SHLs] and other prevention strategies to ensure they are achieving the intended benefits of preventing infant homicides.”¹²³

This Note proceeds to follow the CDC’s recommendation—evaluating the current state of SHLs and proposing meaningful reforms to reduce infanticide and support women in crisis. While infanticide and neonaticide numbers have improved since the advent of SHLs, people continue to illegally abandon or kill their infants rather than take them to a Safe Haven location or avail themselves of other resources. Using data from the last 25 years of SHLs, firsthand accounts from Safe Haven experts, and cross-disciplinary research on infant development, this Note offers a way to create a safer haven for women and infants in crisis.

II. ANALYSIS OF THE KEY COMPONENTS OF SAFE HAVEN LAWS

SHLs are creatures of state law.¹²⁴ This Note analyzes the disparate approaches by various states and recommends a model for SHLs in the post-*Dobbs* era. The benefits of this analysis are twofold. First, it offers insights into promising practices that states can use to update their SHLs to better protect vulnerable mothers and infants. Second, increased uniformity among state laws may eliminate confusion for surrenderers. This Note analyzes and compares the 50 states’ approaches to (a) the maximum age of legal surrender, (b) the location of surrender, (c) anonymity and biological information, (d) parental rights post-surrender, and (e) criminal liability. These elements frequently vary among states and are among the central topics of debate around SHLs.

776 (using anecdotal evidence suggesting changes to the law may not have mattered for some mothers because of lack of access to transportation or the lack of presence of mind to decide on surrender); Seymore E-mail, *supra* note 38 (explaining mothers who are in the midst of crisis probably do not have the wherewithal to use SHLs, regardless of public information).

123. See Wilson et al., *supra* note 34, at 1389.

124. See Chart [<https://perma.cc/2MKP-HL2V>]. But see Speaker, *supra* note 119, at 144 (advocating for a federal law with minimum standards for state SHLs); Burner & Kipley Interview, *supra* note 28 (same).

A. MAXIMUM AGE OF LEGAL SURRENDER

1. *Current State Limits*

State laws vary greatly regarding the maximum age of an infant that may be surrendered.¹²⁵ The CDC has found no correlation between the maximum age of surrender and rates of infanticide by state.¹²⁶ However, 92.4% of infanticides occurred after a child was too old for surrender in their state of birth, prompting the CDC to recommend that states reevaluate their policies generally, including maximum age restrictions.¹²⁷

As explored above, available data suggests that most infants are surrendered the day they are born—which is also the day they are most likely to be a victim of homicide. From 2008 to 2017, an infant was 5.4 times more likely to be killed on their first day of life than at any other point.¹²⁸ Every state’s SHL allows for an infant to be surrendered the day they are born. Therefore, an increase in the acceptable age for surrender is unlikely to stop these deaths. While the likelihood of death is higher on the day of birth, these homicides still represent only a small portion of infanticides (only 2.8% of infanticides occurred on the day of birth).¹²⁹ Very young infants are still at the highest risk, though, with 50% of infanticides occurring in the first three months.¹³⁰ The risk of infanticide to very young children indicates that SHLs should target these vulnerable infants.

As of February 2023, the maximum age of surrender ranges from three days (in six states) to one year (in one state), with a plurality of states (21) allowing surrender up to one month.¹³¹ Young maximum age limits are thought to “underscore[] the intended exceptionalism of anonymous abandonment . . . [because] the intended beneficiaries are newborns born in secret and

125. For example, compare N.D. CENT. CODE § 50-25.1-15(1)(a) (2022) (allowing surrender of infants up to one year), and MONT. CODE ANN. § 40-6-402(10) (West 2021) (30 days), with COLO. REV. STAT. § 18-6-401(9)(a) (2022) (72 hours); see generally Wilson et al., *supra* note 34, at 1386.

126. See Wilson et al., *supra* note 34, at 1388.

127. See *id.* at 1388–89.

128. See *id.* at 1387.

129. See *id.*

130. See Horon & Driscoll, *supra* note 50, at 6.

131. See Chart [<https://perma.cc/2MKP-HL2V>].

therefore at unique risk on the first day of life.”¹³² Moreover, these early deadlines are consistent with the fact that many women who surrender their infant had concealed their pregnancy and birth, so they surrender shortly after birth.¹³³

Because of the anonymous nature of Safe Haven surrenders, there is little available data on the average age of surrendered infants. However, the early deadline in many states¹³⁴ and the focus of advocates on newborns¹³⁵ indicate that SHLs are intended to target newborns within the first few days of life. In one study of media-reported Safe Haven surrenders from 2005 to 2007, the oldest surrendered infant was three weeks old, over half of the infants were surrendered within 24 hours of birth, and all but two infants were surrendered within a week of birth.¹³⁶

Since their initial passage, many states have increased the legal age of surrender. Virginia, for example, increased its maximum age from two weeks to one month in 2022 with bipartisan support.¹³⁷ In 2020, Tennessee changed its law from 72 hours to two weeks;¹³⁸ the bill’s sponsors pushed for the extended timeline to give parents in crisis more time to make a decision

132. See Sanger, *supra* note 5, at 768. When one state inadvertently permitted the surrender of all children under 18 years of age, the country looked on in horror before the mistake was rectified. Nebraska’s initial SHL referred only to a “child,” and therefore included all minor children. In less than three months, parents had surrendered 35 children who were older than one year, up to age 17. The state quickly enacted an emergency measure to limit legal surrender to children 30 days old or younger. See *Safe Haven Law and History*, NEB. DEP’T HEALTH & HUM. SERVS., <https://dhhs.ne.gov/Pages/Safe-Haven.aspx> [<https://perma.cc/PNE7-FXSG>]; Erik Eckholm, *Nebraska Revises Safe Haven Law*, N.Y. TIMES (Nov. 21, 2008), <https://www.nytimes.com/2008/11/22/us/22nebraska.html> [<https://perma.cc/XFF8-CH67>].

133. See Seymore E-mail, *supra* note 38; Kaplan, *supra* note 42, at 477 (noting that many mothers who abandoned their infants hid their pregnancies from their families).

134. See Chart [<https://perma.cc/2MKP-HL2V>].

135. See *Department of Children’s Services Praises Tennessee Lawmakers for Passing New Safe Haven Law*, TENN. DEP’T CHILD. SERVS. (Aug. 5, 2020), <https://www.tn.gov/dcs/news-events/newsroom/2020/8/5/new-safe-haven-law.html> [<https://perma.cc/2XJV-RTVH>] (“[I]t is always in the best interest for the infant to be surrendered as soon as possible”); Nick Silverio, “*Safe Haven Babies*” Advocacy, A SAFE HAVEN FOR NEWBORNS, <https://asafehavenfornewborns.com/what-we-do/safe-haven-advocacy/> [<https://perma.cc/KE52-QP9D>] (focusing on “newborns”).

136. See Kaplan, *supra* note 42, at 481.

137. See Kate Masters, *Virginia Legislators Expand ‘Safe Haven’ Laws Allowing Parents to Give Up Infants*, VA. MERCURY (Mar. 7, 2022), <https://www.virginiamercury.com/2022/03/07/virginia-legislators-expand-safe-haven-laws-allowing-parents-to-give-up-infants/> [<https://perma.cc/B8DD-FCNL>].

138. S.B. 2629, 111th Gen. Assemb., 2020 Sess. (Tenn. 2020) (amending TENN. CODE ANN. § 36-1-142(a)).

about surrender.¹³⁹ An older maximum age of surrender may also remove the difficulty in determining if the child is within the appropriate age range.¹⁴⁰ Some states have language indicating flexibility on the exact age of the child, asking only that the child is reasonably believed to be within the maximum age,¹⁴¹ while others require a medical determination of age.¹⁴²

2. *Relinquishment Trauma by Infant Age*

A key consideration when evaluating the maximum age of surrender is the effect of surrender on the infant's development. Unfortunately, the trauma of relinquishment and adoption to an infant is unavoidable. Because infants bond with their mothers in utero, even a same-day relinquishment can be traumatic.¹⁴³ Although infants are unlikely to remember the trauma, it becomes part of their subconscious and affects the way their brain develops into adulthood.¹⁴⁴

The most critical stage of brain development in life is infancy, before a child's first birthday.¹⁴⁵ Infants are able to overcome adverse situations because they are still developing attachments.¹⁴⁶ At around six weeks old, infants enter the "pre-attachment" phase and begin to differentiate between their primary caregiver and strangers.¹⁴⁷ By around six months of age,

139. *Department of Children's Services Praises Tennessee Lawmakers for Passing New Safe Haven Law*, *supra* note 135.

140. *See* Sanger, *supra* note 5, at 768.

141. *See, e.g.*, DEL. CODE ANN. tit. 16, § 902(2) (2022).

142. *See, e.g.*, KY. REV. STAT. ANN. § 405.075(1) (West 2022).

143. *See* Marie Dolfi, *Relinquishment Trauma: The Forgotten Trauma*, <https://mariedolfi.com/adoption-resource/relinquishment-trauma-the-forgotten-trauma/> [<https://perma.cc/ND2B-6P5D>] (explaining that infants learn their mother's heartbeat, voice, gait, and more while in utero and can become distressed when their caregiver does not share these qualities).

144. *See id.* (explaining the way a post-natal experience of trauma can impact brain development, leading many adoptees to struggle with long-term mental health concerns).

145. *See* Robert Winston & Rebecca Chicot, *The Importance of Early Bonding on the Long-Term Mental Health and Resilience of Children*, 8 LONDON J. PRIMARY CARE 12, 12 (2016).

146. *See* Linda van den Dries et al., *Fostering Security? A Meta-Analysis of Attachment in Adopted Children*, 310 CHILD. & YOUTH SERVS. REV. 410, 418 (2009). An infant's attachment reflects their ability and security in reaching out to a caregiver when they need something or are frightened, and can lead to the development of coping skills in the future. *See id.* at 410.

147. Kendra Cherry, *What is Attachment Theory*, VERYWELL MIND (Feb. 22, 2023), <https://www.verywellmind.com/what-is-attachment-theory-2795337> [<https://perma.cc/M52A-JEXC>].

babies begin to experience “stranger danger” and separation anxiety from their primary caregiver.¹⁴⁸ Literature studying adopted children into adulthood has found that infants adopted before their first birthday develop healthy attachments just as well as their non-adopted peers.¹⁴⁹ This may not be true, however, for infants who experience trauma—such as neglect, malnourishment, or abuse—before they are adopted.¹⁵⁰ Ideally, should a mother wish to surrender her infant, she would do so shortly after birth, giving the child an opportunity to bond with their new caregiver while the infant’s brain is most elastic—thereby limiting the adverse effects of relinquishment trauma.¹⁵¹ While the reality of relinquishment trauma cannot be discredited, SHLs remain a viable option for very young infants when the alternative could very well be death. A model age limit would carefully balance the needs of surrendering mothers with the potential impact of trauma on the child.

B. WHERE AN INFANT MAY BE SURRENDERED

1. *Face-to-Face Surrender*

State SHLs vary greatly regarding where and to whom an infant may be surrendered. Every state designates hospitals as acceptable places of surrender.¹⁵² From there, however, states take markedly different approaches. For some, the hospital is the only legal surrender site.¹⁵³ Most states also allow for surrender at fire and police stations.¹⁵⁴ Other commonly designated Safe Havens are medical facilities or personnel, first responders, and participating religious facilities.¹⁵⁵

A key concern is the lack of access to these facilities. Sixteen percent of Americans live more than 30 minutes by car from a

148. *Id.*

149. *See* van den Dries et al., *supra* note 146, at 417.

150. *See id.* (reporting that “children are particularly vulnerable for caregiving experiences during their first year of life”).

151. *See* Dolfi, *supra* note 143.

152. *See generally* Chart [https://perma.cc/2MKP-HL2V]; Child Welfare, *supra* note 1, at 1.

153. *See, e.g.*, N.D. CENT. CODE § 50-25.1-15(1)(b) (2022); ALA. CODE § 26-25-1 (2022); *see generally* Chart [https://perma.cc/2MKP-HL2V]; Child Welfare, *supra* note 1, at 1.

154. *See generally* Chart [https://perma.cc/2MKP-HL2V]; Child Welfare, *supra* note 1, at 2.

155. *See generally* Chart [https://perma.cc/2MKP-HL2V].

hospital (the most common Safe Haven location among states).¹⁵⁶ In response to these concerns, Colorado created an exception for rural areas that have limited access to hospitals, permitting surrender to a staff member at seasonal clinics and those with only limited hours of operation.¹⁵⁷ Additionally, mothers who cannot drive face further hurdles.¹⁵⁸ One potential solution for these and other mothers may be found in the states that allow a surrenderer to call 911 and release the baby to first responders.¹⁵⁹ Having such disparate policies from state to state can create confusion for surrenderers, especially if they are young, lacking secondary education, and experiencing a crisis.¹⁶⁰ If someone's only knowledge of Safe Havens comes from another state, they may try to bring their infant to an unacceptable and unsafe location.¹⁶¹

2. *Baby Boxes*

Some states, like California, require the surrenderer to physically hand the infant off to an approved person, such as a firefighter.¹⁶² A growing number of states—17 as of April 2024—

156. See Caitlin Ostroff & Ciara Bri'd Frisbie, *Millions of Americans Live Nowhere Near a Hospital, Jeopardizing Their Lives*, CNN (Aug. 3, 2017), <https://www.cnn.com/2017/08/03/health/hospital-deserts/index.html> [<https://perma.cc/V5XF-BRK2>].

157. See COLO. REV. STAT. § 19-3-304.5(9)(b) (2022) (creating an exception to the rule that infants may only be surrendered to locations open and staffed all day, every day of the year).

158. See e.g., Lorna Collier, *Havens for Abandoned Babies Occupy Tricky Terrain*, CHI. TRIB. (Feb. 18, 2001), <http://proxy.library.vanderbilt.edu/login?url=https://www.proquest.com/newspapers/havens-abandoned-babies-occupy-tricky-terrain/docview/419226806/se-2> [<https://perma.cc/65LW-8PTP>] (suggesting that even if a Safe Haven Law had been in effect it would not have been useful because the mother could not drive); Baker, *supra* note 103 (criticizing Safe Haven laws for not being accessible to people who need them, including young teenagers who are unable to drive).

159. See, e.g., IOWA CODE § 233.2 (2022); LA. CHILD. CODE ANN. art. 1151 (2022); see also SAFE HAVEN BABY BOXES, ANNUAL REPORT 2018 9 (2018) [hereinafter SHBB 2018] (reporting on a woman who lived an hour away from the nearest Baby Box and could not drive, prompting her to call 911).

160. See, e.g., Howard, *supra* note 37 (explaining that state-to-state variances impact those who have recently moved, college students, and those live near state borders).

161. Firefighters in Chicago expressed disdain and concern for infant safety after NBC's Chicago Fire featured a baby box surrender which is not permitted by Illinois law. See Zareen Syed, *Chicago FD Criticizes 'Chicago Fire' for Baby Box Surrender Scene: 'We Just Don't Do That Here'*, EMS1 (Jan. 9, 2023), <https://www.ems1.com/safe-haven-law/articles/chicago-fd-criticizes-chicago-fire-for-baby-box-surrender-scene-we-just-dont-do-that-here-k3mtKKxwid1bh3rg/> [<https://perma.cc/PZP5-4D5Q>].

162. See Dana Goldstein, *Drop Box for Babies: Conservatives Promote a Way to Give Up Newborns Anonymously*, N.Y. TIMES (June 13, 2023), <https://www.nytimes.com/2022/08/06/us/roe-safe-haven-laws-newborns.html> [<https://perma.cc/W73E-UPDN>]; CAL. PENAL CODE § 271.5(a)–(b) (West 2022); CAL. HEALTH & SAFETY CODE § 1255.7(a)(1) (West 2022).

allow for surrender to a “Baby Box,” a temperature-controlled bassinet behind a door accessible from outside of a building, like a fire station, where a surrenderer may leave a baby, causing an alert to sound inside.¹⁶³

The use of Baby Boxes is a source of great disagreement, even among advocates of SHLs. Monica Kelsey, the founder of Safe Haven Baby Boxes (SHBB), an organization focused on bringing awareness to Safe Haven programs and installing Baby Boxes, champions the Baby Box cause across the country.¹⁶⁴ Kelsey, a former firefighter and medic, argues that the Boxes should not be controversial and help to save lives.¹⁶⁵ While many states have instituted the practice and over 100 Boxes are currently in operation across the United States, the practice has staunch dissenters.¹⁶⁶ In Michigan, for example, former Governor Rick Snyder, a Republican, vetoed legislation that would have permitted the use of Baby Boxes, saying that he “do[es] not believe it is appropriate to allow for parents to surrender a baby by simply depositing the baby into a device, rather than physically handing the baby to a uniformed police, fire or hospital employee.”¹⁶⁷ The bill had passed the Michigan House and Senate with wide margins of bipartisan support,¹⁶⁸ where lawmakers had argued that the Boxes provided an added layer of necessary anonymity for surrendering parents may be seeking.¹⁶⁹

163. See Chart [<https://perma.cc/2MKP-HL2V>]; Child Welfare, *supra* note 1, at 3 (formally calling “Baby Boxes” “newborn safety devices”). See *id.* for more information regarding “Baby Box” requirements; see generally Goldstein, *supra* note 162. For a video demonstrating a Box in use, see Safe Haven Baby Boxes, *How the Safe Haven Baby Boxes Work*, YOUTUBE (Sept. 21, 2020), <https://www.youtube.com/watch?v=4fIui02-Bkc> [<https://perma.cc/M5YJ-RBYJ>].

164. See Masters, *supra* note 137; *Our History*, SAFE HAVEN BABY BOXES, <https://shbb.org/about-us> [<https://perma.cc/2P86-GPZ6>].

165. See Baker, *supra* note 103.

166. See Goldstein, *supra* note 162.

167. Letter from Rick Snyder, Governor of Michigan, to the Michigan Senate and Michigan House of Representatives, on Vetoing Safe Delivery of Newborns Law (Dec. 27, 2018). The legislature did not override the veto, and so the law did not pass.

168. H.B. 5750, 99th Leg., Reg. Sess. (Mich. 2018).

169. See Johnathan Oosting & Beth Leblanc, *Michigan Senate Approves ‘Baby Box’ Plan for Surrendered Newborns*, DETROIT NEWS (Dec. 18, 2018), <https://www.detroitnews.com/story/news/local/michigan/2018/12/18/michigan-senate-approves-baby-box-newborns/2359495002/> [<https://perma.cc/8H6G-XNNZ>]. Anonymity is a key topic of debate among supporters and opponents of Baby Boxes. Anonymity is addressed below, see *infra* Section II.C.

In 2012, the United Nations Committee on the Rights of the Child (UNCRC) advocated for a ban on the use of Baby Boxes.¹⁷⁰ The Committee stated that the practice encourages mothers to abandon their children, does not have safeguards against infants' being abandoned against their mothers' wishes, and violates the rights of the child to know their parents.¹⁷¹ Others argue that face-to-face surrender, or even requiring the surrenderer to identify themselves, may prevent surrender as a result of coercion, misinformation, or kidnapping.¹⁷² Moreover, advocates for face-to-face surrender believe that the practice supports surrendering mothers who may need resources, including immediate medical care:¹⁷³ "At least with [the] safe haven at an ER or fire house to a person, they can offer her a postnatal exam, etc. We can figure out if she's in her right mind. We can stop her from bleeding out after an unattended birth god-knows-where."¹⁷⁴

States and other SHL-focused organizations have taken various approaches to address concerns about Baby Boxes. SHBB requires Baby Boxes to contain resources for the surrenderer, including a pamphlet on health information for "what to look for after giving birth," saying "the majority [of surrendered] babies are not born in hospitals. . . . [W]e want to make sure mom is okay."¹⁷⁵ To address informational concerns, 17 states—including several that permit Baby Boxes—require the receiver to provide the surrenderer with information about the legal implications of surrender and about services for help parenting if they keep the infant and other resources.¹⁷⁶ In addressing concerns about kidnapped infants

170. See Sophia Jones, *U.N. Committee Calls for an End to Centuries-Old Practice of 'Baby Boxes'*, NPR: THE TWO-WAY (Nov. 26, 2012), <https://www.npr.org/sections/thetwo-way/2012/11/26/165942545/u-n-committee-calls-for-an-end-to-centuries-old-practice-of-baby-boxes> [<https://perma.cc/5XKK-3W7S>]. The Committee did not, however, comment on the general practice of Safe Haven Laws. See *id.*

171. See *id.*

172. See BARAN, *supra* note 102, at 7; Goldstein, *supra* note 162; Widdicombe, *supra* note 30.

173. See Darlene Bradley, *Perspectives on Newborn Abandonment*, 19 PEDIATRIC EMERGENCY CARE 108, 111 (2003) ("Care for the mother should not be neglected.").

174. Seymore E-mail, *supra* note 38.

175. See Safe Haven Baby Boxes, *What's in the Orange Bag*, YOUTUBE (Dec. 18, 2022), <https://www.youtube.com/watch?v=2jBfWpi-IAc> [<https://perma.cc/M9SW-BUC2>] [hereinafter *Orange Bag*].

176. See Child Welfare, *supra* note 1, at 3; Bradley, *supra* note 173, at 110–11 (recommending such information be provided). Counseling also probably occurs in states where it is not mandated. See Rachel Engel, *7 Things Public Safety Officials Need to Know about Safe Haven Laws*, POLICE1 (Feb. 7, 2019), <https://www.police1.com/legal/articles/7->

being surrendered, especially given the heightened anonymity of Boxes, 18 states require law enforcement to check missing children reports before surrendered infants are put in a preadoptive home.¹⁷⁷ Many states or associated private entities also offer informational websites and anonymous phone “hotlines” for mothers to receive information about resources, counseling, and other supportive services; surrender is suggested only as a “last resort” to women in crisis.¹⁷⁸ These hotlines are available to mothers who did not participate in a face-to-face surrender and may want more information.

Finally, Baby Boxes are the only major expense for states discussed in this Note. Each box costs between \$10,000 and \$20,000 for installation and training, not including an annual \$300 maintenance fee.¹⁷⁹ Some states, like Indiana, have approved state funding specifically for their installation.¹⁸⁰ Critics argue, however, that the state money spent on Baby Boxes would be better allocated for pregnancy prevention, subsidized childcare, or

things-public-safety-officials-need-to-know-about-safe-haven-laws-YIaEC1Yfc5MF2EEV/ [https://perma.cc/X93U-UDUE].

177. See Child Welfare, *supra* note 1, at 5; see also *Arkansas Safe Haven*, ARK. DEP’T HUM. SERVS., <https://humanservices.arkansas.gov/learn-about-programs/programs-for-children-families/arkansas-safe-haven/> [https://perma.cc/BHN2-R3DF] (“When a baby is given up, the Division of Children and Family Services shall use the Missing Persons Information Clearinghouse and any other national and state resources to determine whether the child is a missing child.”). Thankfully, the number of infant kidnappings in the United States is small and most are found (noting that of the 337 infants kidnapped since 1964, 321 have been found). *Infant Abduction—By the Numbers*, NAT’L CTR. FOR MISSING & EXPLOITED CHILD., <https://www.missingkids.org/theissues/infantabductions#bythenumbers> [https://perma.cc/6RP4-E9Y8]. See *infra* Section II.D for information regarding biological fathers’ rights.

178. See *Our History*, *supra* note 164 (of 8,000 calls to their hotline, only 100 infants were surrendered); Burner & Kipley Interview, *supra* note 28 (emphasizing the importance of the “conversation model” in the use of their hotline to share resources, which often encourages women to parent their child or pursue a traditional adoption); see, e.g., *Safe Haven Law*, TENN. DEP’T CHILD. SERVS., <https://www.tn.gov/dcs/program-areas/child-safety/safe-haven-law.html> [https://perma.cc/7DF9-JSTQ] (offering information on the law and a confidential phone number for questions).

179. See *Arguments Against Safe Haven Baby Boxes and Answers*, SAFE HAVEN BABY BOXES 2 (May 9, 2021) (giving the cost as \$10,000); Angele Latham, *Jackson to Begin Fundraising for Tennessee’s First ‘Safe Haven’ Baby Drop-off Law*, JACKSON SUN (Aug. 12, 2022), <https://www.jacksonsun.com/story/news/2022/08/13/jackson-fundraising-first-safe-haven-baby-drop-off-box-tennessee/10282483002/> [https://perma.cc/P49Q-NBYF] (saying the cost is \$20,000 plus an annual \$300 maintenance fee).

180. See, e.g., Charles Melton, *Protecting the Unborn, Supporting Hoosier Mothers and Families*, IND. H. REP. REPUB. CAUCUS (Aug. 19, 2022), <https://www.indianahouserpublicans.com/news/press-releases/protecting-the-unborn-supporting-hoosier-mothers-and-families/> [https://perma.cc/8VZH-S6XJ] (announcing a one-million-dollar appropriation for Baby Box installation and marketing).

other measures to support women.¹⁸¹ Many Baby Boxes are funded by private donations to SHBB¹⁸² or from the community looking to install the Box.¹⁸³

Baby Boxes remain controversial in the fight to end illegal infant abandonment. While dissenters argue that they are expensive and lack important safeguards, proponents highlight their near-complete anonymity and frequency of use. With Baby Boxes' use on the rise, any attempt at SHL reform must take a stance on the practice.

C. ANONYMITY AND BIOLOGICAL INFORMATION

Anonymity in the context of SHLs is relevant to infant surrender, as well as for any further action that might be taken against the surrenderer. Several aspects of SHLs are affected by anonymity, or the lack thereof; specifically, concerns when parents seek to reinstate parental rights,¹⁸⁴ if law enforcement brings charges against the parent(s) or surrenderer,¹⁸⁵ and when the infant's caregivers seek medical information.¹⁸⁶ Anonymity is thought to be SHLs' "central lure" and a key "incentive" to encourage the use of Safe Haven surrender.¹⁸⁷ Forty-seven states' SHLs explicitly protect anonymity.¹⁸⁸ This can be especially important for women in small towns who are concerned that they may be recognized.¹⁸⁹

SHLs approach anonymity in several ways, primarily in provisions regarding face-to-face surrender, hospital birth, and what, if any, information surrenderers are asked to provide. Absent a Baby Box or similar device, an infant generally must be left with an approved person to guarantee the law's goal of infant

181. See Lori Bruce, *'Baby Boxes' Aren't a Solution to Roe's Repeal*, PROGRESSIVE (Mar. 2, 2023), <https://progressive.org/op-eds/baby-boxes-arent-solution-to-roes-repeal-bruce-230302/> [<https://perma.cc/T74C-S2UW>].

182. See *Arguments Against Safe Haven Baby Boxes and Answers*, *supra* note 179, at 2.

183. See Latham, *supra* note 179.

184. See *infra* Section II.D.

185. See *infra* Section II.E.

186. See generally Goldstein, *supra* note 162.

187. See Sanger, *supra* note 5, at 771; see also *In re Doe*, 3 A.3d 657 (N.J. Super. Ct. Ch. Div. 2010) (promoting mothers giving birth in hospitals, remaining anonymous, and redacting their name on the infant's birth certificate because of the importance of maternal safety and anonymity).

188. See Chart [<https://perma.cc/2MKP-HL2V>].

189. See 2020 ANNUAL REPORT, SAFE HAVEN BABY BOXES 6 (2021) (reporting a woman concerned about surrendering in her small town).

safety.¹⁹⁰ A few states, however, allow for the surrenderer to leave the baby in a designated Safe Haven as long as they are “reasonably sure an individual on duty is aware that the newborn infant has been left.”¹⁹¹ Anonymity provisions must also be addressed in the contexts of hospital records and information about the infant’s biological family.

1. *Vital Records and Hospital Birth*

States vary considerably in how they approach surrenders of infants born in hospitals. Some states, such as Minnesota, proscribe the surrender of infants born in hospitals because there is a vital record of their birth (like a birth certificate), and the mother is no longer anonymous.¹⁹² Other states allow mothers to retain anonymity and utilize SHLs if they give birth in a hospital. These protections may be based in common law, such as in New Jersey, where a court found that surrendering an infant born in a maternity ward qualified as a Safe Haven surrender.¹⁹³ But some states, like Mississippi, offer explicit statutory protections for hospital births, clarifying that “[a] female presenting herself to a hospital through the emergency room or otherwise, who is subsequently admitted for purposes of labor and delivery, does not give up the legal protections or anonymity guaranteed under [Mississippi’s SHL].”¹⁹⁴

Advocates for SHL reform promote anonymous birth as a crucial element in providing women in crisis who want to remain anonymous with a safer birth experience.¹⁹⁵ Birth outside of a hospital carries risks for both the mother and baby; neonatal mortality rates for home births are approximately double those of hospital-born babies, and women face the risk of hemorrhaging or

190. See Child Welfare, *supra* note 1, at 2.

191. See, e.g., IOWA CODE § 233.2 (2022); Chart [<https://perma.cc/2MKP-HL2V>].

192. See, e.g., *Safe Place for Newborns*, MINN. DEP’T HUM. SERVS. (June 6, 2022), <https://mn.gov/dhs/people-we-serve/children-and-families/services/child-protection/programs-services/safe-place-for-newborns/> [<https://perma.cc/U5AF-GVCF>] (“The Safe Place for Newborns law does not apply if mothers give birth in a hospital, as a hospital delivery creates a vital record, and anonymity would no longer be possible at that point.”).

193. See *In re Doe*, 3 A.3d 657 (N.J. Super. Ct. Ch. Div. 2010).

194. MISS. CODE ANN. § 43-15-201(3) (2020).

195. Anonymous birth means the birth mother’s information is not registered at all. *Confidential Birth Definition*, U.S. BIRTH CERTIFICATES (May 20, 2022), <https://www.usbirthcertificates.com/glossary/confidential-birth> [<https://perma.cc/KMK6-KVNU>]. Alternatively, some advocate for confidential birth, meaning the information is registered but not accessible to the public or to child before they reach adulthood. *Id.*

being unable to deliver a baby in the breech (sideways or bottom-first) position.¹⁹⁶ In Michigan, when the statute changed to allow anonymous birth certificates of surrendered infants in 2017, surrenders increased dramatically.¹⁹⁷ Alabama recently followed suit, amending their law to permit in-hospital surrenders and anonymous birth in 2023.¹⁹⁸ In Austria, neonaticides decreased when the legislature permitted anonymous in-hospital birth; crucially, however, when public messaging around anonymous birth availability declined, neonaticides increased once again.¹⁹⁹ During the first ten years of the anonymous birth law, 90% of women taking advantage of Austria's SHL gave birth in a hospital.²⁰⁰ Anonymous birth represents a vital component of any SHL truly committed to mother and infant safety.

2. *Medical and Biological Information*

Anonymity in surrender can leave many adopted infants and their adoptive parents with questions, particularly regarding the child's genetic and medical history. While this lack of information also presents problems for traditional adoptions (particularly closed adoptions), the anonymous nature of Safe Haven surrenders makes data collection exceedingly difficult. The growing Baby Box movement exacerbates these concerns, with some Safe Haven advocates citing it as a reason to prohibit the Boxes.²⁰¹ The UNCRC says that the practice "violates children's rights . . . to know who their parents are, and their own identity."²⁰²

As with other SHL elements, states vary in the way they handle data collection, if they address it at all. In 33 states, the receiving

196. See COMM. ON OBSTETRIC PRAC., AM. COLL. OBSTETRICS & GYNECOLOGY, *Committee Opinion No. 697: Planned Home Birth*, OBSTETRICS & GYNECOLOGY 118–119 (2017); *Unassisted Birth: Definition, Reasons, Risks, and More*, HEALTHLINE (Oct. 14, 2020), <https://www.healthline.com/health/pregnancy/unassisted-birth#takeaway> [<https://perma.cc/AFD7-DF2Y>].

197. See Speaker, *supra* note 119, at 146 (finding that the average number of surrenders doubled in the four years following the change).

198. ALA. CODE § 26-25-1.1 (2023).

199. See Chryssa Grylli et al., *Anonymous Birth Law Saves Babies—Optimization, Sustainability and Public Awareness*, 19 ARCHIVES WOMEN'S MENTAL HEALTH 291, 294 (2016).

200. See *id.*

201. See Jones, *supra* note 170; *Adoptions Together Opposes*, *supra* note 102; see also BARAN, *supra* note 102, at 7 (noting the opposite trend in adoption to increasing open adoptions where information is shared from the biological family).

202. Jones, *supra* note 170.

party is required to ask the surrenderer for the infant's family and medical history, but there is no obligation to provide the information;²⁰³ receivers in states that do not mandate asking for information may still make this request.²⁰⁴ The National Safe Haven Alliance recommends seeking the infant's "birthdate, location of birth, medical history including any birth trauma or defects, medical conditions of family members and race."²⁰⁵ Because many diseases and conditions are hereditary, genetic medical information can be critical to the health of an individual as they age, especially in early screening and prevention.²⁰⁶ A 2016 study of 169 young adult adoptees found that their number one curiosity about their birth parents was their medical or health history.²⁰⁷

In comparison to surrenders, almost all other domestic adoptions in the United States are considered "open," meaning that there is some degree of contact between the biological and adoptive families.²⁰⁸ Adoptees overwhelmingly appreciate access to biological relatives and their medical information and feel more satisfied with their adoption overall.²⁰⁹ Openness in adoptions, moreover, can decrease unresolved birth mother grief,²¹⁰ increase adoptee attachment to their adoptive parents,²¹¹ and prevent

203. See Chart [<https://perma.cc/2MKP-HL2V>]; see, e.g., CAL. HEALTH & SAFETY CODE § 1255.7 (West 2022). If a state uses boxes from the Safe Haven Baby Box organization, the boxes contain a form surrenderers are encouraged to fill out and mail back with biological information about the baby. See *Orange Bag*, *supra* note 175.

204. See, e.g., Engel, *supra* note 176; SAFE HAVEN GUIDELINES—ADA COUNTY, ADA CNTY. IDAHO 2 (2017).

205. E-mail from Leah Kipley, Assistant Director, National Safe Haven Alliance, to author (Feb. 23, 2023) (on file with author) [hereinafter Kipley E-mail].

206. See BARAN, *supra* note 102, at 8; see also Thomas May et al., *Does Lack of "Genetic-Relative Family Health History" Represent a Potentially Avoidable Health Disparity for Adoptees?*, 16 AM. J. BIOETHICS 33 (2016) (finding lack of familial medical history creates a "health disparity" for adoptees).

207. See Gretchen Miller Wrobel & Harold D. Grotevant, *Adoption Related Curiosity at Emerging Adulthood*, BETHEL UNIV. (May 13, 2016), <https://scholarworks.umass.edu/entities/publication/c706cd7c-6ae6-4a85-befd-aff41300ac96> [<https://perma.cc/H348-BV2N>].

208. See Child Welfare Information Gateway, *Adoption: Considering Your Options and Making a Plan*, U.S. DEP'T OF HEALTH & HUM. SERVS 11 (2020); *Open Adoption*, CREATING A FAMILY, <https://creatingafamily.org/adoption/resources/open-adoption/> [<https://perma.cc/2S4T-9EBP>].

209. See *Open Adoption*, *supra* note 208.

210. See Harold D. Grotevant et al., *Contact Between Adoptive and Birth Families: Perspectives From the Minnesota/Texas Adoption Research Project*, 7 CHILD DEV. PERSPS. 193, 196 (2013).

211. See generally Rachel H. Farr et al., *Adoptees' Contact with Birth Parents in Emerging Adulthood: The Role of Adoption Communication and Attachment to Adoptive Parents*, 53 FAM. PROCESS 656 (2014).

maladaptive externalization of behaviors in adoptees.²¹² On the other hand, a recent qualitative study of adults who were abandoned as infants found that they struggled with self-identity long after they learned about the circumstances of their adoptions.²¹³ If information can be obtained from the surrenderer, it would be of obvious benefit to the child and their adoptive parents. However, *requiring* such information would represent a dramatic shift from current SHL practices and could cause doubt about the anonymity of the surrender.

D. PARENTAL RIGHTS POST-SURRENDER

The way a statute handles parental rights for parents of surrendered infants affects the infant's ability to be adopted and the biological parents' possibility of reclaiming their child. For a surrendered infant to be eligible for adoption, both parents' rights must be terminated²¹⁴—which creates complications when one or both parents are unknown to the legal system in the circumstances of a Safe Haven surrender.²¹⁵

212. See generally Lynn Von Korff et al., *Openness Arrangements and Psychological Adjustment in Adolescent Adoptees*, 20 J. FAM. PSYCH. 531 (2006).

213. See Lorraine Sherr et al., *Disclosure and Identity Experiences of Adults Abandoned as Babies: A Qualitative Study*, 5 COGENT PSYCH. 1, 8 (2018). After interviewing 16 adults who had been adopted after infant abandonment, researchers found that many struggled with their sense of self, saying things like “I was in a sea of confusion” and “I feel I haven’t got an identity because I can’t. I have no idea where I came from.” *Id.* at 8–9. Other common trends included their desire to know more medical and genetic history and searches for information about their abandonment including news reports and reaching out the first responders responsible for their rescue. *Id.*

214. See Child Welfare Information Gateway, *Termination of Parental Rights*, U.S. DEP’T HEALTH & HUM. SERVS., <https://www.childwelfare.gov/topics/systemwide/courts/processes/legal-adoption/termination/> [https://perma.cc/VHH7-WAH2]. This is true for any child to be adopted in the United States; it is not specific to surrendered infants. *Id.*

215. In keeping with the focus of this Note on mothers and their infants, paternal rights are not analyzed apart from general parental rights processes. The literature on putative fathers and how SHLs affect biological fathers is expansive and contains its own recommendations that states should consider in updating their SHLs. A common solution involves extensive public notice of a surrendered baby in the hopes that a genetic father could come forward. See, e.g., Stephanie E. Dreyer, *Texas’ Safe Haven Legislation: Is Anonymity, Legalized Abandonment a Viable Solution to Newborn Discardment and Death*, 12 TEX. J. WOMEN & LAW 167, 177–81 (2002); Dayna R. Cooper, *Fathers Are Parents Too: Challenging Safe Haven Laws with Procedural Due Process*, 31 HOFSTRA L. REV. 877, 878 (2003); see also *infra* Part II.D.2 for more on notice. Another potential option is allowing men who believe they could have fathered a baby and are interested in parenting to supply a DNA sample for a registry against which surrendered infants could be compared. See Cooper, *supra*, at 901. Other advocates for fathers’ rights propose abandoning SHLs entirely. See, e.g., Jeffrey A. Parness & Therese A. Clarke Arado, *Safe Haven, Adoption and Birth Record Laws: Where are the Daddies*, 36 CAP. U. L. REV. 207, 248 (2007); Jeffrey A.

Upon surrender, an infant is considered abandoned, and the local department of children's services (or a similar agency) assumes custody of the infant. The agency must then seek the formal termination of parental rights.²¹⁶ Courts often presume that surrender constitutes a voluntary relinquishment of parental rights absent an attempt at reunification within a certain period.²¹⁷ Some states provide that surrender waives all rights to the child²¹⁸ (a key issue with Safe Haven critics).²¹⁹ A parental rights termination is a final judgment—after the rights are terminated, the child is legally able to be adopted.²²⁰

1. *Reclamation*

Many states lay out specific procedures for parents to reclaim their parental rights and custody (reclamation or reunification) in their SHL.²²¹ Other states lack a formal procedure, but still generally permit reunification.²²² Due to the anonymous nature of these cases, exact data on parental reclamations are rare and rely mainly on anecdotes. For example, the founder of the Florida-based non-profit A Safe Place for Newborns reports that four mothers reclaimed their surrendered infants out of 160 surrenders in 11 years (about three percent).²²³ This number is similar to the rate at which birth mothers working with adoption agencies change their minds (between one and six percent).²²⁴ A Los

Parness, *Lost Paternity in the Culture of Motherhood: A Different View of Safe Haven Laws*, 42 VAL. U. L. REV. 81, 94 (2007). For cases involving fathers and SHLs, see S.C. Dep't of Soc. Servs. v. Patterson, No. 2016-UP-129, 2016 WL 853376 (S.C. Ct. App. Mar. 3, 2016); John Agar, *Judge Criticizes Legal System After Man Loses Right to Child Who Was Surrendered by Estranged Wife*, MLIVE (Nov. 17, 2022), <https://www.mlive.com/news/grand-rapids/2022/11/judge-criticizes-legal-system-after-man-loses-right-to-child-who-was-surrendered-by-estranged-wife.html> [<https://perma.cc/3UFU-XHXT>].

216. See Child Welfare, *supra* note 1, at 4–5.

217. See *id.* at 5.

218. See, e.g., KY. REV. STAT. ANN. § 405.075(4)(a) (West 2022).

219. See Sanger, *supra* note 5, at 767 n.72.

220. See Child Welfare, *supra* note 1, at 4–5; see e.g., IDAHO CODE § 39-8206 (2022).

221. See Child Welfare, *supra* note 1, at 5.

222. See Chart [<https://perma.cc/2MKP-HL2V>].

223. See Gary Taylor, *Safe-Haven Law's Surrendered Babies Often Adopted Quickly*, ORLANDO SENTINEL (Aug. 21, 2011), <https://www.orlandosentinel.com/2011/08/20/safe-haven-laws-surrendered-babies-often-adopted-quickly/> [<https://perma.cc/PAP6-Z8G4>].

224. See *Can a Birthmother Reclaim an Adopted Child?*, LIFETIME ADOPTIONS, <https://lifetimeadoption.com/adoptive-families/can-birthmother-reclaim-adopted-child/> [<https://perma.cc/Y7JX-F4M3>]; *Birthmothers Who Change Their Minds About Adoption*, FAM. EDUC., <https://www.familyeducation.com/kids/adoption/birthmothers-who-change-their-minds-about-adoption> [<https://perma.cc/2JZG-8KXZ>].

Angeles study, however, found the percentage of reclamations to be upwards of ten percent.²²⁵

Among states with statutory reclamation procedures, some require Safe Havens to link the infant and surrenderer with an anonymous identifier, while others have no formal matching process. A few states, for example, have programs that give the surrenderer a numbered wristband or matching identifier that connects them with their infant without sacrificing their anonymity.²²⁶ These matching identifiers do not allow the surrenderer to reclaim the infant at will, but, rather, create standing for a custody hearing.²²⁷ California's informational poster for their "Safely Surrendered Baby Law" tells surrenderers that they will receive "matching ID bracelets [which] will help [them] reconnect with [their] bab[ies] if [they] change [their] mind," and sets the reclamation deadline at 14 days.²²⁸ States without matching identifiers, like Illinois and Washington, allow parents to contact their local children's services and file a petition for custody.²²⁹

Most states set a deadline for parents or family members to initiate petitions for custody of surrendered infants, usually between two weeks²³⁰ and 60 days.²³¹ The American Civil Liberties Union (ACLU) recommends that states permit this "grace period" between surrender and termination of parental rights to "protect[] a parent who makes the decision to abandon under desperate circumstances but who quickly reconsiders or secures the resources and support necessary to provide for her baby."²³² States

225. See Orliiss et al., *supra* note 39, at 862–63.

226. See Child Welfare, *supra* note 1, at 3; see, e.g., CAL. HEALTH & SAFETY CODE § 1255.7 (West 2022); see Sanger, *supra* note 5, at 767 n.69 (explaining that historically, infants were surrendered with some kind of token to identify parents if the family became able to care for them).

227. See, e.g., CONN. GEN. STAT. § 17a-57 to -60 (2022); see generally Chart [https://perma.cc/2MKP-HL2V].

228. See Office of Child Abuse Prevention, *There Is a Way to Safely Surrender Your Baby*, CAL. DEP'T SOC. SERVS., <https://dcfas.saccounty.net/CPS/Documents/New%20Internet%20Format%20RK/Safely%20Surrendered%20Baby/PUB400%20Safely%20Surrendered%20baby.pdf> [https://perma.cc/K6UH-YLAL].

229. See 325 ILL. COMP. STAT. 2/55 (2022); WASH. REV. CODE § 13.34.360 (2022); *Changing Your Mind*, WASH. DEP'T CHILD., YOUTH, & FAM., <https://www.dcyf.wa.gov/safety/changing-your-mind> [https://perma.cc/A2CN-W7YR].

230. See, e.g., CAL. HEALTH & SAFETY CODE § 1255.7(g) (West 2022).

231. See, e.g., 325 ILL. COMP. STAT. 2/55 (2022).

232. "Safe Surrender" or "Infant Abandonment" Legislation, AM. C.L. UNION (Jan. 18, 2001), <https://www.aclu.org/other/safe-surrender-or-infant-abandonment-legislation> [https://perma.cc/9B9Q-FENT] [hereinafter "Safe Surrender"].

without a waiting period may still have a practical grace period given the judicial and administrative hurdles because “it takes several months before the parents’ rights are legally terminated.”²³³ A grace period for reclamation may support women who surrendered their child while experiencing “Baby Blues,” an emotional, hormonal reaction consisting of mood swings, anxiety, trouble sleeping, and feeling overwhelmed.²³⁴ Baby Blues usually begin two or three days after birth and resolve without medical intervention by about two weeks postpartum.²³⁵

If a parent—or, in some states, another relative—wishes to obtain custody of the surrendered infant, they must pursue legal recourse to establish their relationship. In many states, petitions for custody of a surrendered infant depend on a DNA test and parental fitness exam, usually involving a home study.²³⁶ Although some state laws, like Indiana, do not address genetic testing specifically, it may be done in practice as a way of ensuring a genetic relationship.²³⁷ Key considerations for SHL reforms of reclamation proceedings include whether to use matching identifiers and DNA testing, and the process for determining custody if a biological parent comes forward.

2. Termination Proceedings

If parents do not make reclamation efforts or if their efforts are unsuccessful, any parental rights to a surrendered infant are

233. See COLO. REV. STAT. § 19-3-304.5(7) (2022); *The Safe Haven Law*, COLO. SAFE HAVEN FOR NEWBORNS, <https://coloradosafehaven.com/> [https://perma.cc/27G6-ZHST] [hereinafter “COLO. SAFE HAVEN”].

234. See *Postpartum Depression*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/postpartum-depression/symptoms-causes/syc-20376617> [https://perma.cc/4DE7-6M2Y]; see also Burner & Kipley Interview, *supra* note 28. Unlike the more severe—and rare—Postpartum Depression, nearly all women will experience the Baby Blues after giving birth. *Postpartum Depression*, *supra*. Postpartum Depression is more intense and longer lasting than Baby Blues, and often requires treatment by a mental health professional. *Id.*

235. See *id.*

236. See *e.g.*, CONN. GEN. STAT. § 17a-60 (2022); LA. CHILD. CODE ANN. arts. 1149–1161 (2022). See generally Chart [https://perma.cc/2MKP-HL2V].

237. See, *e.g.*, Courtney Crown, *Update: DCS Says DNA Test Will Be Done Before Child Left in Baby Box is Returned to Parent*, FOX 59 (June 9, 2022), <https://fox59.com/news/baby-box-founder-claims-infant-given-back-to-parent-without-dna-test/> [https://perma.cc/ZHL6-FNP3] (stating that Indiana law does not address genetic testing for parents attempting to reclaim surrendered infants, but the Department of Child Services ordered testing). DNA testing has been ordered in at least two Indiana reclamations by biological family members. *Id.*; see also *Scared Mom Places Her Newborn in a Safe Haven Baby Box*, SAFE HAVEN BABY BOXES, <https://shbb.org/fl/scared-mom-places-her-newborn-in-a-safe-havenbaby-box> [https://perma.cc/4AT2-PULR].

terminated, making the infant eligible for adoption.²³⁸ Due to the anonymous nature of SHLs, the state does not undergo efforts that might usually be made to find relatives—or at least not in the usual way.²³⁹ Notifications and searches for relatives are usually done through a non-identifying newspaper listing,²⁴⁰ if done at all.²⁴¹ Some advocates have opposed newspaper service as potentially compromising anonymity,²⁴² but others raise procedural due process claims if there is no notice,²⁴³ especially for the non-surrendering parent.²⁴⁴

Although the parents of a surrendered infant are usually not criminally liable for abandonment,²⁴⁵ surrendered infants are considered legally abandoned for the purposes of terminating parental rights.²⁴⁶ Parental rights termination laws may treat Safe Haven surrender as an implicit or explicit presumption of abandonment, and judges make specific findings at a hearing.²⁴⁷ In deciding whether to terminate parental rights, courts often look at factors including: no party's coming forward to assert custody, the infant's surrendered status, the parent(s)' desire to give away their rights, the parent(s)' lack of communication about the child, and the parent(s)' lack of financial support.²⁴⁸ Any such proceeding is usually perfunctory, since, absent parental unification efforts, surrender implies a relinquishment of rights.

238. See Child Welfare, *supra* note 1, at 4–5.

239. See, e.g., *In re Doe*, 2021 WL 761802, at *2–3 (Conn. Super. Ct. Jan. 11, 2021) (“The Department’s policy is to make no such effort [to locate parents] when the parents have invoked the Safe Haven Law. This affords safety to the child; anonymity and privacy to the parents.”); *In re Baby Girl Doe*, 2013 WL 1365004, at *1 (Conn. Super. Ct. Mar. 12, 2013) (“Because of the mother’s assertion of the Safe Haven Act, the court concludes that unification efforts are not required.”).

240. See, e.g., *In re Doe*, 2021 WL 761802, at *2 (“DCF lawfully served both parents by publication using a newspaper with a circulation in the community where the parents appeared to live.”); see also *In re Commitment of Baby Girl Hope*, 932 N.Y.S.2d 832, 834 (N.Y. Fam. Ct. 2011) (Safe Haven law does not permit dispensing of service); DEL. CODE ANN. tit. 16, § 907A(h) (2022).

241. See, e.g., *In re Baby Girl Doe*, 2013 WL 1365004, at *1 (Conn. Super. Ct. Mar. 12, 2013) (“Because of the mother’s assertion of the Safe Haven Act, the court concludes that unification efforts are not required.”).

242. See *Safe Surrender*, *supra* note 232.

243. See *Baby Girl Hope*, 932 N.Y.S.2d at 834.

244. See Cooper, *supra* note 215.

245. See *infra* Section III.E.

246. See Child Welfare, *supra* note 1, at 4; see e.g., *In re Doe*, 2021 WL 761802, at *2 (Conn. Super. Ct. Jan. 11, 2021) (the actions of parents who surrendered their infant after a hospital birth “constitute abandonment under the statutory definition”).

247. Compare *In re Guardianship of Doe*, 733 N.Y.S.2d 326, 328 (N.Y. Fam. Ct. 2001) (explicit presumption), with *In re Doe*, 2021 WL 761802, at *3 (implicit presumption).

248. See, e.g., *In re Doe*, 2021 WL 761802, at *2; *Baby Girl Hope*, 932 N.Y.S.2d at 834.

E. CRIMINAL LIABILITY

States offer surrendering parents either complete immunity from prosecution or an affirmative defense to criminal liability for child abandonment, neglect, and abuse.²⁴⁹ This Note uses the term “immunity from prosecution” to refer to an absolute bar on prosecution if the terms of the SHL are complied with, whereas an affirmative defense abrogates guilt of otherwise wrongful conduct if prosecution takes place.²⁵⁰ All states require the surrendered infant to be unharmed when surrendered to qualify for these provisions; otherwise, the parent may be prosecuted for abandonment or similar crimes.²⁵¹ Some advocates have criticized the “unharmed” standard, saying that birth can be a traumatic experience and may result in unintentional harm to the infant that may discourage women from surrendering.²⁵² State courts have shown a willingness to be flexible if the mother “follow[s] the spirit of the law” regarding other elements of the statute,²⁵³ such as when a mother surrendered their infant at a police station (which in that state was not a designated Safe Haven provider),²⁵⁴ when a mother gave birth in the maternity ward and surrendered her infant there (rather than in the statutorily required emergency room),²⁵⁵ and when a mother relinquished her infant after calling 911 when the state’s SHL did not expressly allow it.²⁵⁶

249. Compare CAL. PENAL CODE § 271.5 (West 2022) (no prosecution if surrender baby under Safe Haven provisions), and GA. CODE ANN. § 19-10A-4 (2022) (same), with MISS. CODE ANN. § 43-15-205 (2022) (“absolute affirmative defense”), and COLO. REV. STAT. § 18-6-401(9)(a) (2022) (“affirmative defense”).

250. See *Affirmative Defense*, L. DICTIONARY, <https://thelawdictionary.org/affirmative-defense/> [<https://perma.cc/CC9F-VWXC>].

251. See, e.g., DEL. CODE ANN. tit. 11, §§ 1102–1103 (2022).

252. See, e.g., Lori Bruce, *Unmet Needs, Unwanted Persons: A Call for Expansion of Safe Haven Laws*, 46 HASTINGS CTR. REP. 7, 7 (2016). In 2023, the Kansas amended its SHL by changing the standard from accepting infants who “ha[ve] not suffered bodily harm” to accepting infants who “ha[ve] not suffered *great* bodily harm.” KAN. STAT. ANN. § 38-2282(c)(1) (2023). See also *infra* Part III.F.

253. See, e.g., S.B. 195, 94th Gen. Assemb., Reg. Sess. (Ariz. 2023) (“There is a heightened need to encourage safe, voluntary surrenders of newborns whose parents determine they cannot care for them, even when the letter of the law is not followed.”).

254. See Taylor, *supra* note 223; FLA. STAT. § 383.50(1) (2022).

255. See *In re Doe*, 3 A.3d 657 (N.J. Super. Ct. Ch. Div. 2010).

256. See SHBB 2018, *supra* note 159 (woman in Indiana surrendered infant to paramedics); Holly V. Hays, *Safe Haven Baby Boxes: What to Know About Surrendering Infants in Indiana*, INDYSTAR (June 17, 2021), <https://www.indystar.com/story/news/2021/06/17/safe-haven-baby-boxes-heres-what-you-need-know-devices/7448788002/> [<https://perma.cc/MX7T-3DH3>] (Indiana later changed its law to explicitly allow for surrenders via 911).

Affirmative defenses are problematic for the anonymity promised by SHLs because they can only be invoked after criminal proceedings begin.²⁵⁷ The ACLU decries affirmative defenses for SHLs, arguing that they call the entire scheme into question by opening the possibility of haling the surrendering parent into court on a criminal charge.²⁵⁸ Affirmative defenses may also serve to confuse would-be surrenderers who do not understand the nuances of the law, especially since most surrenderers are young.²⁵⁹

In many, if not all, states with affirmative defense provisions, the provisions may effectively operate as grants of immunity from prosecution: there are no records of a criminal case against a surrendering parent who complied with the law where they would have needed to assert the defense.²⁶⁰ Moreover, some states promote their SHLs by saying that women can surrender infants “without fear of arrest or prosecution”²⁶¹ and with “no questions asked,”²⁶² despite only providing an affirmative defense provision.²⁶³ While not every state offers full statutory immunity from prosecution, states unanimously refrain from prosecuting the parents of surrendered infants for abandonment.

III. A MODEL LAW FOR SAFER SAFE HAVEN LAWS

For SHLs to fulfill their purpose—to offer a safe alternative for women in crisis who might otherwise resort to infanticide or illegal abandonment—they must be carefully crafted using evidence-based practices. The quarter century since the first SHL was enacted has seen dramatic reductions in infanticide and over 4,000 infants surrendered. However, SHLs can and should be updated

257. See *Affirmative Defense*, *supra* note 250.

258. See *Safe Surrender*, *supra* note 232.

259. See Kaplan, *supra* note 42, at 468–69; see *supra* Section I.B (while surrendering mothers tend to be older than infanticidal mothers, they are still often relatively young, and this Note assumes that the mothers who need SHLs are those who would otherwise commit infanticide).

260. Extensive searching through Westlaw, Google, and relevant literature could not find a single record of a criminal case against a surrendering parent who complied with their state’s SHL.

261. *Safe Haven Law*, IND. DEP’T CHILD. SERVS., <https://www.in.gov/dcs/newsroom/supplemental-information/safe-haven-law/> [<https://perma.cc/H8EJ-G595>].

262. See, e.g., COLO. SAFE HAVEN, *supra* note 233.

263. See, e.g., IND. CODE § 35-46-1-4(c) (2022); COLO. REV. STAT. § 18-6-401(9)(a) (2022). For example, The New Jersey Safe Haven Infant Protection Act, in one section, says that women are “free[] from prosecution,” while in another proclaims that surrender under the law is an “affirmative defense to prosecution for abandonment of a child.” Compare N.J. STAT. ANN. § 30:4C-15.6 (West 2022), *with id.* at § 15.7.

to better support women and infants so that illegal abandonment and infanticide continue to decline. Lessons from all 50 states' policies, social science, and SHL experts inform this Note's proposed model law, which is meant to serve as a template for states to follow as they update their SHLs in the wake of recent changes to the reproductive landscape in America.

Importantly, many factors impact infanticide and neonaticide rates other than a state's SHL, such as abortion and other healthcare access, the mother's mental health, access to surrender facilities, and her knowledge of the laws. Still more factors affect a woman's decision to raise her child or not—including economic resources and support from loved ones. However, given the rising restrictions on abortion access and the undeniable tie between states with highly restricted abortion access and infanticide, this Note offers one approach to support women and their infants in crisis.

A. BENEFITS OF MODEL LEGISLATION

The proposed Model Safe Haven Law (MSHL) incorporates the best practices from many states to protect the interests of mothers and infants. This solution is practical and timely, given the number of states currently moving to update their SHLs²⁶⁴ and the bipartisan support enjoyed by recent SHL legislation.²⁶⁵ Updating SHLs has increased urgency after *Dobbs*; a recent study found that, in just six months, abortion bans led to more than 32,000 births above the pre-*Dobbs* rates.²⁶⁶

This Note is not the only work pushing for SHL reform. Recently, Liisa Speaker, a Michigan-based family law attorney with research interests in SHLs, proposed that SHLs be updated by creating federal minimum standards to which state laws must comply.²⁶⁷ In many respects, Speaker's minimum standards align with the MSHL—both proposals support one-month surrender periods, anonymous birth, and reclamation proceedings based on

264. See Chart [<https://perma.cc/2MKP-HL2V>].

265. See, e.g., Kansas' recent SHL passed unanimously in the House and with only a single dissent in the Senate. H.B. 2024, 2023–2024 Legis. Sess. (Kan. 2023), https://www.kslegislature.org/li/b2023_24/measures/hb2024/ [<https://perma.cc/HN8C-SALU>].

266. See Dench, *supra* note 23, at 15.

267. See Speaker, *supra* note 119.

DNA testing and the best interests of a child.²⁶⁸ Speaker's standards discuss the specifics of the infant's care after surrender and public information campaigns, but do not address criminal liability or the advisability of requesting genetic information from the surrenderer.²⁶⁹ This Note's proposal also differs in its recommendations regarding Baby Boxes; Baby Boxes remain a source of contention in the SHL space, and any meaningful legislative changes must account for their divisiveness and increasing numbers. The MSHL supports the use of existing Baby Boxes and the creation of new, privately funded Boxes, while Speaker's recommendations would eliminate Boxes altogether.²⁷⁰ Most importantly, the proposals agree that the changes to reproductive policies and advancements in knowledge about Safe Haven users necessitate an update to existing state statutes.²⁷¹

With minor exceptions, the two proposals need not be mutually exclusive.²⁷² First, federal minimum standards could mirror the MSHL's provisions and incentivize states to adopt them; Speaker's proposal already incorporates many of the MSHL's recommendations. Second, a model law also has the added benefit of ensuring uniformity among the states. Federal minimum standards legislation would not necessarily lead to consistency, as state laws could vary widely as long as they met the minimum standards. Continuity between state SHLs would help eliminate confusion for women already in crisis.²⁷³ The women who most need SHLs are predominately young, impoverished, have no advanced education, lack family support, and have recently been through the physical trauma of birth.²⁷⁴ Expecting these women to navigate the intricacies of state laws—especially if they live near a border or have recently moved—is, at best, unrealistic and, at worst, deadly.

Finally, while federal legislation is a promising future addition to the landscape, a model law can be utilized much sooner and

268. *See id.* at 166–72.

269. *See id.*

270. *See id.* at 170.

271. *See id.* at 163–64.

272. The author is proud to be a member of a policy working with SHL stakeholders and researchers working to pass federal minimum standards legislation; she believes the MSHL and federal legislation can work together in many ways to improve SHLs for women and children.

273. *See* Lewis & Oberman, *supra* note 36; Howard, *supra* note 37; Burner & Kipley Interview, *supra* note 28 (saying they see frequent confusion from callers to their hotline).

274. *See supra* Part I.B.

more efficiently than waiting for Congress to pass a federal statute (which, given polarization, has become onerous). A state-law-focused SHL reform may be quicker to take effect because the MSHL would only modify existing laws—in some cases, only very slightly—rather than creating entirely new federal guidelines. The federal government has very little power to dictate family law;²⁷⁵ the Supreme Court has made clear that “[t]he whole subject of the domestic relations . . . belongs to the laws of the States and not to the laws of the United States.”²⁷⁶ When Congress acts in the realm of family law, it often does so under the authority of the Constitution’s Spending Clause—Congress can use its spending powers to condition federal funding to states on the states’ meeting certain conditions.²⁷⁷ Presently, Congress authorizes funding grants for many state-based child welfare programs, including adoption and foster care, under the Social Security Act’s Promoting Safe and Stable Families provisions.²⁷⁸ States are permitted—but not required—to use the funding for Safe Haven programs, but the funding is not conditioned on any standards for those programs.²⁷⁹ To implement minimum standards, Congress would need to condition money on states’ compliance and pass a completely new legislative scheme.

On the other hand, states would merely modify existing laws. The numerous updates to state SHLs post-*Dobbs* makes clear that SHLs are already top of mind for many state legislators on both sides of the aisle;²⁸⁰ the recent updates to SHLs passed relatively quickly, too.²⁸¹ State legislatures also enact more legislation annually than Congress.²⁸² Ultimately, while a federal minimum

275. See ALISON M. SMITH, CONG. RSCH. SERV., RL31201, FAMILY LAW: CONGRESS’S AUTHORITY TO LEGISLATE ON DOMESTIC RELATIONS QUESTIONS 1 (2012).

276. *Ex parte Burrus*, 136 U.S. 586, 593–94 (1890).

277. See Smith, *supra* note 275, at 13–14.

278. See *id.* at 16; 42 U.S.C. § 629 (2022).

279. See 42 U.S.C. §§ 629b–i (2022).

280. See, e.g., Masters, *supra* note 137; S.B. 2629, 111th Gen. Assemb., 2020 Sess. (Tenn. 2020) (amending TENN. CODE ANN. § 36-1-142(a)); ALA. CODE § 26-25-1.1 (2023) (permitting anonymous birth).

281. See, e.g., H.B. 473, 2023 Leg., Reg. Sess. (Ala. 2023) (updating the Alabama SHL took less than three weeks from introduction to enactment); *SB 63 Safe Haven Protections; Newborn Safety Device at Hospitals for Reception of Children*, VA. LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?221+sum+SB63> [<https://perma.cc/FZK9-XKT7>] (Virginia updated their SHL in about three months).

282. See *State Legislatures Vs. Congress: Which Is More Productive?*, QUORUM, <https://www.quorum.us/data-driven-insights/state-legislatures-versus-congress-which-is-more-productive/> [<https://perma.cc/9RCF-JRPV>] (finding state legislatures pass more than 5.5 times more of the bills introduced than Congress).

standards law may be possible in the future, states can implement the MSHL quickly and inexpensively. The current uptick in births only fuels the need to act with urgency to increase uniformity and better protect mothers and infants.

B. AGE OF SURRENDER

In keeping with the growing trend in states' expansion of their maximum age of surrender,²⁸³ the MSHL recommends that states allow for the surrender of infants "reasonably believed to be one month old or less." This recommendation aligns with many advocates' positions²⁸⁴ and creates the best opportunity for infants to form secure attachments to caregivers.²⁸⁵ The MSHL's one-month provision aims to provide wide coverage for at-risk infants without deemphasizing how exceptional SHL surrenders should be (as opposed to traditional adoption).²⁸⁶ This maximum age gives mothers of older newborns in crisis an alternative to otherwise drastic measures like abandonment or worse.²⁸⁷ If even one of these infants was able to be saved through safe surrender, the law should accommodate that without imposing potential criminal liability on the mother for abandonment—the usual outcome if they surrender their child outside of the Safe Haven age limit.²⁸⁸

C. LOCATION

The MSHL recommends that designated surrender facilities include staffed hospitals and clinics, fire stations, police stations (including campus police),²⁸⁹ 911-summoned first responders, and,

283. See, e.g., Masters, *supra* note 137; S.B. 2629, 111th Gen. Assemb., 2020 Sess. (Tenn. 2020) (amending TENN. CODE ANN. § 36-1-142(a)).

284. See Howard, *supra* note 37, at 3; Kipley E-mail, *supra* note 205 ("Some states have added to this timeframe and that's fine, we just recommend a 30 day minimum to allow a parent more time to make a life altering decision to surrender or parent their baby.").

285. See *infra* notes 143–150 and accompanying text.

286. See Seymore E-mail, *supra* note 138 ("The older the child, the more it looks like a conventional adoption is the best choice, including counseling for the mother about her options.").

287. Ninety-two percent of infants killed were too old for their states' SHLs. See Wilson, *supra* note 34, at 1387.

288. See, e.g., ME. REV. STAT. tit. 17-A, § 553(3) (2021) (the abandonment of a child older than their Safe Haven law is a crime).

289. See, e.g., 325 ILL. COMP. STAT. ANN. 2/10 (2022); see generally Howard, *supra* note 37 (recommending college police be included as Safe Haven locations); Kaplan, *supra* note 42, at 467, 479, 493 (telling the stories of women who gave birth in college dorm rooms).

subject to strict constraints, Baby Boxes. Moreover, the MSHL requires these locations to be operational 24 hours a day, 365 days a year. This requirement eliminates the possibility of confusion or tragedy if a surrenderer arrives at a location without staff and either unsafely leaves their child or is forced to find another location. These locations were chosen to provide options for surrenderers, especially those with limited mobility or access to hospitals, and to ensure the safety of the surrendered infant by placing them with people who have medical training.

Some Safe Haven locations that have been allowed in a few states—such as churches, adoption agencies,²⁹⁰ and other healthcare professionals (e.g., dentists, chiropractors, etc.)²⁹¹—have been excluded from the MSHL. Infant safety and eliminating confusion for surrenderers necessitated the exclusion of these locations. There is no indication that non-emergency personnel are trained to handle an infant or a mother with urgent medical needs, thus resulting in the need to call the authorities anyway. As such, the MSHL allows for surrender to first responders but eliminates surrender to certain non-emergency intermediaries. Additionally, by only allowing surrenders to locations staffed 24 hours a day, seven days a week, or to first responders, the MSHL eliminates the possibility of confusion in acceptable surrender locations. For example, surrenderers may be confused about whether a given church meets their states' SHL criteria.²⁹² By eliminating these locations as possible surrender sites, the MSHL supports the physical and emotional safety of both mother and child.

Like a growing number of state laws, the MSHL approves of Baby Boxes as possible surrender locations. Although Baby Boxes pose serious concerns,²⁹³ they are undoubtedly useful and have the potential to save infant lives. Many babies have already been surrendered in Baby Boxes in states where they could have also surrendered the baby to a person.²⁹⁴ Moreover, the Boxes have

290. See, e.g., ARIZ. REV. STAT. ANN. § 13-3623.01(H)(2) (2022).

291. See, e.g., ME. REV. STAT. tit. 22, § 4018(1)(A) (2022).

292. See, e.g., ARIZ. REV. STAT. ANN. § 13-3623.01 (2022) (“[C]hurch’ means a building that is erected or converted for use as a church, where services are regularly convened, that is used primarily for religious worship and schooling and that a reasonable person would conclude is a church by reason of design, signs or architectural or other features.”).

293. See *supra* Section II.B.

294. See *Resources*, SAFE HAVEN BABY BOXES, <https://shbb.org/resources> [<https://perma.cc/P934-G2GD>] (reporting 23 surrenders to their boxes across multiple states since their inception in 2016, and three babies surrendered to personnel at the Baby Box location); Liz Calvario, *First Newborn Surrendered to Florida’s Only Safe Haven Baby Box*,

made national headlines²⁹⁵ and gone viral on TikTok,²⁹⁶ helping to spread awareness of SHLs—which is crucial to their success.²⁹⁷

However, while condoning the use of Baby Boxes, the MSHL does not provide for state funding for Baby Boxes. This provision helps advance the MSHL in two key ways: first, it makes the MSHL less controversial—and therefore more likely to be passed by state legislatures; second, it reduces the costs of administering the MSHL by avoiding the \$20,000 Baby Box installation fee and any maintenance fees.²⁹⁸ This money would be better spent caring for surrendered infants, raising awareness of SHLs, or running programming to reduce unwanted pregnancies.

By avoiding the costs of Baby Boxes, the MSHL would also avoid significant increases in state expenditures. Most of the MSHL surrender locations are already funded by the state, and the MSHL does not require additional staff or opening hours—if a given hospital or fire station does not meet the 24 hours per day, 365 days per year requirement, they are simply not a surrender location.²⁹⁹ States that have not previously allowed fire stations and emergency responders to receive surrenders would likely incur some initial training costs, however.³⁰⁰ Ultimately, the MSHL surrender site provisions offer numerous options to mothers and cost very little for states.

D. ANONYMITY AND BIOLOGICAL INFORMATION

Anonymity is a key benefit and concern in Safe Haven legislation. The MSHL seeks to balance mothers' need for anonymity with children's interests in safety, health, and genetic history. In choosing to permit Baby Boxes, ensure anonymity for

TODAY (Jan. 6, 2023), <https://www.today.com/parents/babies/first-newborn-surrendered-florida-only-safe-haven-baby-box-rcna64738> [<https://perma.cc/ZAW3-9AXU>].

295. See Calvario, *supra* note 294.

296. See *Safe Haven Baby Boxes Gets Global Attention After Viral TikTok Video*, WANE (Apr. 8, 2021), <https://www.wane.com/news/local-news/safe-haven-baby-boxes-gets-global-attention-after-viral-tiktok-video/> [<https://perma.cc/3AZL-8Q7H>].

297. See Sanger, *supra* note 5, at 792–95.

298. See Bruce, *supra* note 181.

299. While this standard still requires surrenderers to determine whether a given hospital, fire station, or police station meets the requirements for the SHL, it is more likely that these locations, as opposed to a church or dentist's office, are staffed 24/7.

300. Depending on state law requirements for training, they may be able to utilize the free training offered by the National Safe Haven Alliance. See *Training*, NAT'L SAFE HAVEN ALLIANCE, <https://www.nationalsafehavenalliance.org/training> [<https://perma.cc/4TZU-SHDD>].

hospital births, and require Safe Haven locations to provide an optional form for mothers to provide health history, the MSHL hopes to remove barriers for women seeking to surrender their infants and to promote lifelong physical and mental health for surrendered infants.

To ensure both maternal and neonatal safety, the MSHL permits and encourages women to give birth in hospitals, even if they wish to surrender their infant.³⁰¹ The mother should be free to remain anonymous and unlisted on the child's birth certificate. Many surrendered infants are delivered in unsafe conditions, risking the health of both mother and baby³⁰²—a risk that could be reduced if women felt they could preserve anonymity in a hospital. This provision may require some state expenditures to the extent that women do not have insurance or choose not to provide it due to anonymity concerns.³⁰³ However, given the relatively low number of SHL babies surrendered each year, these expenditures are likely to be de minimis, especially when weighed against the risks and costs of forcing an unattended birth.

The MSHL requires all Safe Haven providers, including Baby Boxes, to ask—but not require—the surrenderer to provide as much health history as possible for the infant and any other genetic background that they can recall. This information could be given in person or filled out later in a pre-paid, addressed envelope given to the surrenderer.³⁰⁴ Professor Malinda Seymore, a self-described “Safe Haven skeptic,” worries that surrenders may feel their trust has been broken because advocates often promote SHLs by saying there will be “no questions asked” and then proceed to

301. See *supra* Section II.C.1.

302. See, e.g., *Orange Bag*, *supra* note 175 (explaining that most mothers who surrender to their organization do not give birth in hospitals and often follow unsafe or incomplete birthing practices).

303. At least some legislators have expressed concern, however, about women using confidential birth to avoid incurring labor and delivery costs rather than to surrender via SHLs. E-mail from Lori Bruce, Associate Director, Ctr. for Bioethics, Yale Univ., to author (Jan. 31, 2024) (on file with author). Alabama addressed this concern in their most recent SHL which permits surrender after hospital birth but allows the hospital to collect information “only for purposes of securing payment of labor and delivery costs.” See ALA. CODE § 26-25-1.1(b) (2023).

304. See Bradley, *supra* note 173, at 110 (“Consider a readymade packet that could be given to the mother at the time the infant is dropped off. Included in this packet should be an attempt to collect information about the medical history of the child as is required in some states.”). Illinois’ SHL offers an example of this provision in practice. 325 ILL. COMP. STAT. 2/35 (2023).

ask a series of questions.³⁰⁵ To balance the interests of the surrendered infant in the information with the mother's interests in understanding how SHLs work, states and advocates are advised to avoid language suggesting that there will be no questions when advertising their SHL.

Under the MSHL, Baby Boxes would contain a packet or folder for the surrenderer, including information on reclamation and the Safe Haven process, a matching identifier to link the parent to the baby, medical resources for the mother, resources for the parents on their rights and domestic violence, and a pre-paid, addressed envelope with a questionnaire—in English and the second-most common language in the locality—asking about health history and any non-surrendering parent who may be interested in custody.³⁰⁶ The availability to connect surrenderers with this information will hopefully offset some of the concerns around Baby Boxes.

E. PARENTAL RIGHTS

The MSHL requires the surrendering party to be informed of the procedures for reclamation, including the 30-day grace period and that after 30 days³⁰⁷ their rights will be permanently terminated. There are no other notice or service requirements in the MSHL. Notice and service provisions have a strong appeal, especially when considering the infant's possible desire to know other biological family members (such as their father)³⁰⁸ who may come forward, as well as the biological family's interests. Ultimately, however, preserving anonymity—the central feature of SHLs—must be the driving consideration.³⁰⁹ Given the fears of

305. See Seymore Interview, *supra* note 40. For an example of this currently in practice, compare *Safely Surrendered Baby*, CA. DEP'T. SOC. SERVS., <https://www.cdss.ca.gov/inforesources/safely-surrendered-baby> [<https://perma.cc/U74P-AU6F>] (“no questions asked”), with CAL. HEALTH & SAFETY CODE § 1255.7 (West 2022) (requiring SHL providers to give out a medical questionnaire about the infant to the surrenderer).

306. See Bradley, *supra* note 173, at 110–11 (“Community resources should be supplied for financial and psychosocial counseling, family planning, local health or medical clinics, and social services.”).

307. See Kipley E-mail, *supra* note 205 (recommending a 30-day window); Howard, *supra* note 37, at 18 (same).

308. This Note is open to the idea of the MSHL requiring running the infant's DNA through a putative father's registry but makes no official recommendation.

309. See *Safe Surrender*, *supra* note 232.

small-town recognition,³¹⁰ potential for domestic violence, and general appreciation for the mother's privacy, there is no way to craft the perfect amount of information to release via newspaper service without risk. The mother should be given an opportunity to provide any known information about the father or other family members at the point of surrender if she wishes.

Surrenderers and their infants should be matched with identifiers, such as a numerical code or bracelet, to support any attempted reclamation efforts.³¹¹ As is the case in states currently employing this practice, the matching identifier creates standing for a petitioner to assert custody but does not create or confirm parental rights.³¹² Non-surrendering parents may also petition for custody, subject to a judicial determination of standing. All parties petitioning for custody or parental rights must take a DNA test to confirm their relationship to the infant and must pass an evaluation for parental fitness to ensure that custody with the petitioner meets the child's best interests.

F. CRIMINAL LIABILITY

The MSHL provides complete immunity from prosecution for surrendering parents who conform to the law. This decision is indicative of this Note's central belief that infant surrender is not wrong and should not be subject to prosecution, even in theory.³¹³ In practice, almost all states already embrace immunity despite affirmative defense provisions.³¹⁴ Moreover, the immunity provision in the MSHL removes any potential confusion for would-be surrenderers regarding the law's nuances and eliminates any concerns about anonymity for those who understand that an affirmative defense would necessarily be raised in court.

The MSHL codifies states' tradition of recognizing surrenders that do not conform to the exact confines of the law.³¹⁵ Law

310. See 2020 ANNUAL REPORT, SAFE HAVEN BABY BOXES 6 (2021), <https://shbb.org/resources> [<https://perma.cc/GQ4R-MR2W>] (reporting a woman concerned about surrendering in her small town).

311. See Bradley, *supra* note 173, at 111 (suggesting surrenderers be given an identifying number in a packet with other resources).

312. See Child Welfare, *supra* note 1, at 3; see, e.g., CAL. HEALTH & SAFETY CODE § 1255.7 (West 2022).

313. See *supra* Introduction.

314. See *supra* Part II.E.

315. See e.g., DEL. CODE ANN. tit. 11, § 1102A (2022); Taylor, *supra* note 223; FLA. STAT. § 383.50(1) (2022); *In re Doe*, 3 A.3d 657, 665 (N.J. Super. Ct. Ch. Div. 2010).

enforcement and children's services organizations should be generous about surrenders involving reasonable mistakes or small deviations from the law, such as a slightly-too-old baby³¹⁶ or an infant left *near* a hospital with a phone call (which some states currently permit,³¹⁷ but which the MSHL does not due to safety concerns). Moreover, the MSHL recognizes that some birth injuries are normal, and should not preclude affording the surrendering mother immunity and anonymity. Although "benefit of the doubt" is not a legal standard, the MSHL encourages that it serve as a guiding principle when considering whether to deny immunity to a parent based on a child's minor injuries. Ultimately, full immunity from prosecution best supports women in crisis by fully realizing the promise of SHLs and by acknowledging that safely surrendering an infant one cannot care for is a selfless act and not something that should be criminally prosecuted.

G. SAFE HAVEN COMPONENTS FOR FURTHER STUDY

The MSHL represents a research-based, best-practices approach to the most basic and essential elements of state SHLs. This Note does not address many additional SHL topics due to the unavailability of data and its desire to analyze the foundational elements of SHLs appearing in all current state laws. However, truly comprehensive Safe Haven legislative action will require more nuance and further study. Legislatures and researchers should focus primarily on three additional components: (1) training for surrender site personnel, (2) public awareness and education, and (3) carefully defining what it means for an infant to be "unharmful."

First, training for personnel at SHL surrender sites is paramount to ensuring a safe and supportive environment for mothers and infants.³¹⁸ For researchers, this task likely involves the study of effective methods of training, looking at how often training should take place, and evaluating who is best to train.³¹⁹

316. The MSHL adopts the standard "reasonably believed to be within 30 days old" and requires no particular medical determination.

317. See, e.g., IOWA CODE § 233.2 (2022).

318. For one example of training, see *Training*, *supra* note 300 (NSHA's online training modules).

319. At least one such study of emergency department nurses and pediatric social workers found that staff knowledge of SHL procedures increased after an online professional development module and a simulated surrender. See *generally* Sarah Bassitt,

For legislatures, addressing training should take the form of providing or permitting funding for such training and, perhaps, creating training requirements based on the research. Researched-backed training programs are essential for SHL providers to carry out the laws to their fullest potential.

Second, public awareness of SHLs is crucial. Several studies show that awareness of SHLs improves their efficacy.³²⁰ One model may be Illinois' approach, which requires classes that teach "[c]omprehensive personal health and safety and comprehensive sexual health education" to educate students on SHLs.³²¹ Past awareness efforts have included advertisements, easy to remember slogans, and hotlines.³²² Research should attempt to identify the best way to target those most likely in need of SHLs, and legislatures should consider supporting education efforts through funding.

Finally, states and researchers must identify the most supportive definition of "unharmed," as all states permit only "unharmed" infants to be surrendered. Currently, many states classify infants found to have been exposed to drugs or alcohol in utero as "harmed," and therefore left out of the SHL calculation and protections;³²³ alternatively, many states do not define "unharmed" in their statutes, which could lead to disparate applications of the law among providers. NSHA advocates for including substance-exposed children under SHL protections and data collection, since their mothers are acting selflessly and are likely struggling with addiction.³²⁴ Other concerns could arise over normal birth injuries, such as bruising or collarbone fractures.³²⁵ Researchers can help legislators craft a clearer definition of unharmed that allows SHLs to be utilized even in cases of pre-birth substance exposure and normal birth injuries.

Low Volume, High Risk: Increasing Staff Knowledge and Teamwork During Safe Haven Events, 37 J. PERINATAL & NEONATAL NURSING 131 (2023).

320. See, e.g., Grylli, *supra* note 199, at 294; Susan Ayres, *Kairos and Safe Havens: The Timing and Calamity of Unwanted Birth*, 15 WM. & MARY J. WOMEN & L. 227, 251–52 (2009) (explaining that no one utilized Louisiana's SHL until after a state-sponsored public awareness campaign).

321. 105 ILL. COMP. STAT. 5/27-9.1a (2021).

322. See Ayres, *supra* note 320, at 250–77 (summarizing state efforts).

323. See Ritchie, *supra* note 117; Burner & Kipley Interview, *supra* note 28.

324. See Burner & Kipley Interview, *supra* note 28.

325. See *Birth Injuries*, STAN. MED., <https://www.stanfordchildrens.org/en/topic/default?id=birth-injuries-90-P02687> [<https://perma.cc/C9DN-EXGW>].

CONCLUSION

While SHLs “don’t take care of [the] problems”³²⁶ inherent to carrying an unwanted pregnancy to term and the denial of abortion access, it is not as if “Safe Haven Laws . . . don’t matter.”³²⁷ In the wake of *Dobbs* and the subsequent restrictions on abortion throughout the United States,³²⁸ the possibility of more unwanted pregnancies, women in crisis, and infants at risk cannot be ignored. The MSHL advocates for comprehensive state SHL reform to support these women and their infants.

This Note should not be construed to suggest that improved SHLs are an end goal in and of themselves. Ideally, there would be no need for SHLs due to the elimination of infanticide and illegal abandonment through other social programming and policies that decrease unwanted pregnancies and offer support to those who want to raise their child but feel constrained by financial, social, or emotional circumstances. That being said, given the relationship between abortion restrictions and infanticide, Safe Haven surrenders are “the least worst option.”³²⁹ Therefore, regardless of one’s political affiliation or abortion policy beliefs, SHLs should continue to receive widespread bipartisan support. The time is ripe for state legislatures to revisit their Safe Haven legislation and adopt the provisions of the MSHL in order to create a safer haven for women and infants in crisis.

326. Transcript of Oral Argument at 56, *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022) (No. 19-1392).

327. *Id.* at 57.

328. *See supra* Part I, II.

329. Baker, *supra* note 103.

APPENDIX

THE MODEL SAFE HAVEN LAW

§ 1. Definitions

- (1) Emergency Responder: an adult dispatched as a result of a 911 call, including emergency medical personnel, police officers, and firefighters.
- (2) Employee or Volunteer: an adult officially affiliated with the location in question.
- (3) Family: the biological family of the infant.
- (4) Parent: a biological parent of the infant.
- (5) Infant: a child reasonably believed to be one month old or younger.
- (6) Informational Resources: including, but not limited to, resources about post-birth medical care, domestic violence and shelters, parenting, childcare, economic resources, and the reclamation process.
- (7) Safe Haven Provider: the adult or organization who accepts custody of the surrendered infant.
- (8) Surrender: the voluntary relinquishment by a parent of an unharmed infant.
- (9) Surrenderer: the parent who relinquishes the infant.
- (10) Unharmed: the infant has no more harm than injuries that could be reasonably explained as “birth injuries” by a competent physician.³³⁰

330. See Arcangela Lattai Basset, *Birth Injuries in Newborns*, MERCK MANUAL CONSUMER VERSION (Oct. 2022), <https://www.merckmanuals.com/home/children-s-health-issues/general-problems-in-newborns/birth-injuries-in-newborns> [https://perma.cc/2QN4-BMAM] (explaining many common birthing injuries, such as bruising, swelling, and misshapen heads).

§ 2. MSHL

(1) An unharmed infant, reasonably believed to be one month old or younger, may be surrendered by a parent³³¹ to

a. an employee or volunteer at a hospital or 24-hour clinic;

i. If the mother of an infant wishes to voluntarily surrender physical custody of the infant while the mother is in the hospital to give birth to the infant, the mother shall provide notice that she wishes to surrender physical custody of the infant to any employee or volunteer. No hospital employee or health care provider shall disclose the name of the mother.

b. an employee or volunteer at a 24-hour fire station;

c. an employee or volunteer at a 24-hour police station, including campus police;³³²

d. an emergency responder summoned by 911 or a call to a hospital, fire station, hospital, or campus police; or

e. a Baby Box³³³

i. The Box should contain a folder for the surrenderer, including the information described in parts (2)–(9).

ii. A Baby Box may not be funded through state funds. A Box can only be funded through donations or fundraising.

(2) The employee or folder shall ask, but not require, that the surrendering parent provide, either in person or through a pre-paid, addressed envelope with a form,

331. See generally Thomas & Kaminsky, *supra* note 122, at 9 (researching the relationship between permitted surrenderers under state law and infant mortality rates and finding that states in which only the mother could surrender had higher rates of infant mortality).

332. Importantly, the MSHL would not require these places to stay open 24 hours a day if they do not already do so—such places would simply not be eligible as SHL surrender locations.

333. Subject to official recommendations on safety, etc. See, e.g., IND. CODE § 31-34-2.5-1 (2022).

- a. the name of the parent(s);
 - b. information on the medical history of the infant, parents, and biological family;
 - c. the infant's name and date of birth;
 - d. whether the infant's birth has been registered in the state vital records system prior to the surrender of the infant; and
 - e. if the surrendering parent is aware of any other parent or family who may be interested in custody of the infant.
- (3) The employee or folder shall provide the surrenderer with, but not require them to take:
- a. information on reclamation procedures identified in (7)–(8);
 - b. a matching identifier to link the surrenderer to the infant; and
 - c. informational resources.
- (4) The information provided to surrenderers shall be provided in English and, at a minimum, the second-most common language in the area served.
- (5) The surrender process is completely anonymous. No identifying information may be released to the public and the surrenderer is not required to provide any such information.
- (6) As soon as practicable after taking custody of the infant, the local child's services department or law enforcement agency shall check the National Missing Child Clearinghouse to ensure the infant is not a victim of kidnapping.
- a. This step may be omitted if the infant was born and surrendered in a hospital pursuant to § 2(1)(a)(i).
- (7) Should a parent wish to obtain custody of the infant:
- a. They must contact the local department of children's services or the location of the infant's surrender within 30 days.

- b. The individual must present the matching identifier, or a judge must determine standing for the purposes of a custody hearing.
 - c. They must take a DNA or other genetic test to confirm their parenthood or other biological connection to the infant.
 - d. They must undergo and pass a home inspection and parental fitness evaluation to ensure that the infant's best interests are met.
- (8) After 30 days, absent contact from the infant's family, or in the case of a failed petition to establish custody, a court shall deem the infant abandoned, terminate any outstanding parental rights, and allow the child to be eligible for adoption.
- a. Surrender waives a right to notice or service to these hearings for any party.
- (9) A parent who surrenders an unharmed infant under the provisions of this law, or reasonably attempts to comply with the law, is absolutely immune from prosecution for abandonment, neglect, or other charges related to the surrendered infant.
- (10) The Legislature shall provide a procedure to collect statewide data on surrenders under this Act.