

SAFE SURRENDER

Submission to the
Standing Committee on Law Amendments
On
Bill 60, An Act to Amend the Family Services Act

By the
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Summary

Safe surrender laws, allowing for the safe anonymous surrender of infants, are equivalent to harm reduction programs: in order to reduce potential harm, we overlook established procedures and rights (children's right to their identity; child welfare, legal and mental health practice principles, etc). Safe surrender programs must therefore be reserved for those rare situations that could end up in infanticide. The best hope for the success of safe surrender laws depends on these laws becoming public knowledge, thus alerting parents and others to this option and to the risks of concealed pregnancy, a frequent characteristic of these cases. The danger, or the worst case scenario, with safe haven/surrender laws is that we adopt them, with little or no funding for implementation or evaluation, and do nothing else because we consider the issue is dealt with. The risk exists also of adding to a child's endangerment, for example, if a parent does not meet the set deadline for "safe surrender" and falsely believes they can no longer surrender the child without repercussions.

Would a safe surrender program have prevented any of the known infant abandonment and homicide situations in New Brunswick? Would other services have been more effective? We can only venture to say that the pregnancies may well have been unwanted.

Given the complexity of the issue and the risks, it is recommended that a safe surrender policy only be considered as part of a more comprehensive initiative addressing unplanned pregnancies and at-risk groups; it is also recommended that the decision to adopt a safe surrender policy await the results of the research on the causes of infant abandonment which the provincial government has committed to conduct.

Text of Bill 60, An Act to Amend the Family Services Act:

1 Section 1 of the Family Services Act, chapter F-2.2 of the Acts of New Brunswick, 1980, is amended by adding the following definition in alphabetical order:

"safe haven" means that parents of children 72 hours old or younger are able to give possession of their child away to an emergency room nurse without fear of prosecution provided the child has no signs of abuse or neglect;

2 Section 3 of the Act is amended by adding after subsection (3) the following:

3(4) The Minister and any person authorized under paragraph (1)(b) to exercise any authority, power, duty or function conferred upon the Minister shall create and implement a safe haven policy.

Introduction

We commend the Legislative Assembly for having accepted to study this issue.

We can all agree that prevention of the types of situations surrounding the recent rash of child abandonment and deaths in New Brunswick needs to begin early – before the woman is pregnant or early in her pregnancy. Safe haven laws are at one end of a continuum of measures that can be implemented to prevent the unsafe abandonment or homicide of unwanted infants. If the continuum of measures is not in place, some cases that would have been better served through other measures may end up as safe haven cases.

We will discuss those other measures later but we focus first on safe haven laws. We first note that in the nomenclature developing around these laws, the New Brunswick Bill is more appropriately called a safe surrender law, since it requires that the child be handed to a person, not just delivered to a location.

In History

Newborns have been relinquished to aunts, grandparents, nuns, nurses and officials as long as there have been babies. This is usually done without placing the child at risk. Mothers wishing to anonymously relinquish a baby into responsible hands have also been provided for through history – “baby hatches” and revolving door foundling wheels have been common around the world for centuries. In France, the “tours d’abandon” /abandonment towers introduced by Saint Vincent de Paul were closed down – they were too popular in hard economic times – eventually to be replaced by the current law allowing French women to give birth and leave their baby anonymously in hospitals (“sous X”). In Italy, baby boxes have recently been reopened to take in “trovatelli” (found babies) and mothers may deliver anonymously in hospitals.

New Brunswick adopted several laws to deal with infant abandonment through the years, including the 1792 Act to Provide for the Maintenance of Bastard Children, and the 1810 Act for Making Further Provisions to Prevent the Destroying and Murdering of Bastard Children. Early 19th century correspondence from missionaries in Caraquet notes the occurrence of infanticide in their parishes.

Safe Surrender as Harm Reduction

When lives are at stake, special measures can be justified. If it will protect a life, it is reasonable to give sanctuary despite the legal and human rights problems it may create. In that sense, safe haven and safe surrender laws are equivalent to harm reduction programs. In both instances, we overlook established

procedures in order to reduce potential harm. Safe surrender is an effort to provide “legal and anonymous surrender as an alternative to illegal and unsafe abandonment”¹.

But safe surrender creates serious issues to be resolved. It must therefore be reserved for those rare cases of mothers in desperate situations and children in life-threatening circumstances. Safe surrender must be a last resort. Here is why: we list some of the rights and procedures that are potentially sidestepped by a law providing for the anonymous abandonment of children.

- Children have a right to their identity, to know their parents, as provided for in the United Nations Convention on the Rights of the Child.² There are legal, medical and personal reasons to wish to know who one’s parents are.

- Anonymous abandonments bypass time-tested child welfare practice principles and legal and mental health principles relating to termination of parental rights.³ They deny children and parents the safeguards provided for in laws and principles relating to adoption as well as the benefit of the specialized programs assisting parents considering custody relinquishment. Some jurisdictions with safe haven or safe surrender laws report instances of mothers in hospital maternity ward simply leaving without the baby. Some were not persons inclined to harm the child but they chose the safe haven/surrender procedure because this method seemed simple and anonymous, compared to the established ways for mothers to give up babies for adoption. However the established ways would support her and her rights as well as the child’s, etc. and should not be too easily supplanted by safe haven/surrender programs. Having said that, some women who give birth in the hospital may feel both incapable of parenting and incapable of going through the formal procedure for relinquishing a child for adoption as it exists.

- Some mothers who surrender their child might have benefitted from the specialized programs to assist women living in violent relationships. A woman living in a violent situation may actually want the child but may choose to abandon it because her partner does not want one or because she fears the child would be in danger at home. If provided the support that is available, the mother might not make the decision to abandon her child, nor her right to raise her child. The same can be said for women living with addictions or mental health problems.

We all have in our mind the recent horrific cases of child abandonment and deaths. We must make sure that those are the types of cases that take advantage of a safe surrender program. The killing of infants is

¹ *The Number of Illegally Abandoned and Legally Surrendered Newborns in the State of Texas, Estimated From News Stories, 1996-2006*, Sandi L. Pruitt, Univ. of Texas Houston Health Science Center’s School of Public Health, Child Maltreatment, Feb. 2008, Sage. <http://cmx.sagepub.com/cgi/content/abstract/13/1/89> .

² “Children also have the right to know and, as far as possible, to be cared for by their parents. Children have the right to an identity – an official record of who they are. Governments should respect children’s right to a name, a nationality and family ties.” www.unicef.org/crc/files/Rights_overview.pdf

³ A 2009 case in Angers, France is raising the issue of grandparents’ rights: They had visited the child in hospital before the mother abandoned it anonymously (“sous X” as is allowed in France) and have asked the courts to remain in contact with the child.

rare.⁴ A safe surrender program is for those rare situations that could end up in infanticide. It is emergency assistance for certain babies during a period and in circumstances when they are in the most danger. The Vermont law on safe haven opens with a statement to that effect: “It is preferable for a wide array of services to be available to all expectant mothers and to newborn infants and their mothers. The procedure established in this act should be considered a safeguard that will be followed only in extraordinary circumstances.”

What Do We Know? What Do We Need To Know?

A public health program should be evidence-based. We should have a basis to believe that it will do what it is meant to do. The following questions must therefore be asked:

- How old were the babies that have been abandoned unsafely? Is the proposed 72-hour deadline appropriate? The period provided for in United States laws varies between 72 hours and one year.
- If a parent does not meet the deadline, and falsely believes they can no longer surrender the child without repercussions, could a safe surrender law potentially add to the child’s endangerment?
- What justifies having a time limit on safe surrender of a child by a desperate parent? The government of Saskatchewan considered a safe haven law, but concluded in 2007 that such a law would not accomplish anything further than that province’s standing policy not to prosecute a mother who hands over a baby to an appropriate health or social agency. “We need to get out the message that, in effect, we have safe havens,” said their Justice Minister at the time.⁵
- What are the known risk factors for unsafe abandonment or infanticide and which of these risk factors does the law address?
- Are emergency room nurses the only persons able to provide safe surrender? Given that the targeted population is often isolated and poor, could other professionals, such as ambulance paramedics or maternity team professionals, be designated also?
- Why has New Brunswick had a rash of child abandonment and homicides? Is it related to reduced access to emergency contraception⁶, to abortion, to outreach services, to prenatal and

⁴ Cases of dangerous child abandonment, infanticide and infant homicide have been infrequent. Regarding infanticide (a mother who causes the death of her newborn while she is not fully recovered from the effects of giving birth), New Brunswick had 2 cases between 1977 and 2007 (StatCan, CANSIM table 252-0013).

⁵ *Sask. policy like safe-haven law*, Regina Leader-Post, May 25, 2007.

⁶ Plan B emergency contraception can help a woman avoid a pregnancy up to 3 days after unprotected sex. While the estimated number of units of Plan B purchased in New Brunswick has risen since its sale without prescription has been allowed (2005), N.B. has a relatively low take-up, when sales are compared to number of women of child bearing age. In 2008, emergency contraception was approved for sale on pharmacy shelves, but in N.B., it remains

maternal health or parenting services, to addiction or mental health services? Is it related to New Brunswick's high birth rate to teenagers compared to the national average⁷?

- Is sexual assault of the mother a factor in any cases? Is intimate partner violence? Is postpartum depression? Is denial of pregnancy?

- What effort did the mothers in known cases of infant deaths make to get information or support? At what points could they have been provided options?

- Would a safe surrender program have prevented any of the known infant abandonment and homicide situations in New Brunswick? Would other services have been more effective?

Can Safe Surrender Laws Be Successful?

A safe surrender law says to desperate parents that they will not be prosecuted if they surrender their newborn safely. But currently, parents who surrender their newborn safely are rarely if ever prosecuted.

It can also be said that a safe surrender law is an attempt to encourage those who might kill their infant or abandon them unsafely (on a doorstep or in a bathroom, for example) to instead hand them over safely to a health professional. But the literature⁸ tells us that many mothers who would unsafely abandon or kill their newborn are isolated persons, who are not necessarily making rational decisions. This is a very difficult group to reach. Often they are in denial of their pregnancy⁹ and/or are not able to set in motion a plan to safely surrender their infant. The likelihood may therefore be small of them becoming aware of safe surrender provisions and locations and of them doing what is required, especially given the terror, exhaustion and hormonal state they may be in immediately after childbirth.

The best hope for the success of safe surrender laws may be if these laws become public knowledge. It then could serve to alert others – parents, teachers and friends – to the risks and options.

available mostly through a pharmacist, after a questionnaire has been filled and a pharmacist's "counselling fee" paid. (IMS Health, Canadian Drug Store & Hospital Purchases Audit).

⁷ 485 teenage girls gave birth in New Brunswick in 2007 (5 were younger than 15). The birth rate among N.B. teens is higher than the Canadian rate. In 2006, there were 19 live births for every 1,000 female aged 15 to 19 in N.B.; the Canadian average was 14/1,000. In 2006, 6.2% of newborns in N.B. were to teens, compared to 4.1% in Canada. The 2005 abortion rate among N.B. teens is 6.4 induced abortions/1,000 N.B. teens; 15.3 for Canada. (Service NB, 2007 Vital Statistics Annual Report; StatCan, Births 2006; StatCan, CANSIM Table 102-4503 ; StatCan, Induced Abortion Statistics 2005).

⁸ *Neonaticide: Phenomenology And Considerations For Prevention*, S.H. Friedman & P.J. Resnick, Case Western Reserve Univ. School of Medicine. *Characteristics of Women Who Deny or Conceal Pregnancy*, Friedman et al, Psychosomatics, Mr-Apr 2007 <http://psy.psychiatryonline.org/cgi/reprint/48/2/117>. *Discarded Infants & Neonaticide: A Review Of Literature*, National Abandoned Infants Assistance Resource Centre, Univ. of California, 2004. *A Systematic Investigation of 16 Cases of Neonaticide*, M. G. Spinelli, American Journal of Psychiatry 2001 <http://ajp.psychiatryonline.org/cgi/reprint/158/5/811>.

⁹ Texte de synthèse sur le déni de grossesse, Association Française pour la Reconnaissance du Déni de Grossesse, 2004. www.afrdg.info/spip.php?article2

“If widely publicized, safe haven laws could place others on notice of the possibility that someone in their lives might be concealing a pregnancy. Seen from this perspective, safe haven laws are ...opportunities to educate the public about the reality of unacknowledged pregnancy. Fully implemented, these laws might, for example, be discussed in schools, with the result that the teacher becomes a “safe” adult, approachable by concerned friends, if not by the pregnant girl herself. Publicity about safe haven laws might provide the impetus for conversations among family members and/or friends of those suspected of concealing a pregnancy. By encouraging others to reach out, these laws might deflect the trajectory of infant abandonment long before the trauma of an unattended labor and delivery. Their success might be measured not by numbers of babies relinquished to safe havens but rather by numbers of young women obtaining prenatal care and safely delivering their babies.”¹⁰

This potential indirect benefit from a safe haven/surrender law depends on it being well publicized. But given that such a law will likely be rarely used, will an effective information campaign be mounted and sustained over years? A low-cost minimum measure would be to provide information on the safe surrender and adoption options through the appropriate school courses.

The danger, or the worst case scenario, with safe haven/surrender laws is that we might adopt them, with little or no funding for implementation or evaluation, and do nothing else because we consider the issue is dealt with.

Even with a safe surrender law, it should be expected that some infants will continue to be illegally abandoned. Texas was the first state in the United States to adopt a safe haven/surrender law (1999) and a recent study noted that of 54 infants identified from 1999 to 2006, 43 were illegally abandoned and 11 legally surrendered. The average yearly number of illegally abandoned infants after passage of the law was as high, if not higher, than during before 1999. The nature of the cases and the lack of recordkeeping make it difficult to assess the effectiveness of the law - there is no way to determine whether people abandoning infants at safe havens are those who would have abandoned unsafely in the absence of the law.¹¹

The impact of safe surrender laws depends on whether they provide a viable option to those who would abandon a child. We note that the provincial government has committed to conducting research on the causes of infant abandonment. The findings of that research will likely help evaluate the potential impact – positive or negative – of safe surrender laws.

¹⁰ *Infant Abandonment in Texas*, Michelle Oberman, Santa Clara Univ., Child Maltreatment, Feb. 2008, Sage.

¹¹ *The Number of Illegally Abandoned and Legally Surrendered Newborns in the State of Texas, Estimated From News Stories, 1996-2006*, Sandi L. Pruitt, Univ. of Texas Houston Health Science Center's School of Public Health, Child Maltreatment, Feb. 2008., Sage. <http://cmx.sagepub.com/cgi/content/abstract/13/1/89>

Providing Guidance for the Policy

A safe surrender policy will have to solve several issues, on which the law may wish to provide guidance:

- If someone leaves an infant with a designated person, what should that designated person do while the parent is there, to the extent possible – what questions are asked, what offer of assistance is made?
- If a person surrendering a child is not required to reveal any identifying information, must they be offered the opportunity to provide information concerning the child's or family's medical history?
- What training is given to designated persons and what public and targeted campaigns will inform other persons that the target women may come in contact with, about the safe surrender program?
- How is it determined that the person presenting the child is the mother or the father? We note that some states are reportedly modifying their safe surrender law to reduce their administrative burden and liability “by creating a presumption that the person abandoning an infant is the child's biological parent and intends to relinquish parental rights¹²”, and providing that a search for relatives is not required.
- If a man surrenders a child, how could the mother's condition and her willingness to relinquish the child be determined?
- If a parent who gave up a child under the safe surrender program then wants to regain custody of the child, what procedure will be followed? If there are costs, how will they be covered?
- Women who consider abandoning their child under safe surrender programs are often isolated and living in hardship, and so, often have little knowledge of government programs, have little or no contact with services during their pregnancy and little means to get to emergency rooms. How will the safe surrender program be made known? What other services are available to a woman facing an unwanted pregnancy or in need of support in parenting?
- Allowing parents to abandon children without repercussion does not absolve us of the responsibility of finding out why the child is being abandoned and preventing those circumstances in the future. For this purpose and in order for an evaluation of the program to be done after implementation, information about cases of safe and unsafe infant abandonment, infanticide and infant homicide should be collected.

¹² Comment: Evan B. Donaldson Adoption Institute Response, Child Maltreatment, Feb. 2008, Sage. <http://cmx.sagepub.com/cgi/content/abstract/13/1/98>

Prevention

Would a safe surrender program have prevented any of the known infant abandonment and homicide situations in New Brunswick? Would other services have been more effective? What we can venture to say that the pregnancies were likely unwanted and that the tragic situations would have been avoided if the pregnancy had been avoided.

The Advisory Council has recommended a Planned Pregnancy Initiative to favour planned pregnancies, thereby promoting strong families and preventing unwanted pregnancies. Its objectives would be to:

- improve family planning services
- improve knowledge of and access to contraception, including emergency contraception
- improve support of parental and school efforts to educate youth on sexual matters
- improve services to those dealing with unplanned pregnancies.

The Advisory Council has also recommended that midwives be integrated in the maternity team in the public health system, a service which could be important in identifying cases in need of support or intervention.

Conclusion and Recommendations

Given the complexity of the situations, and given the safeguards and services that are bypassed by anonymous surrender and so, the need to ensure that safe surrender is used only by mothers in the most desperate situations, and given the difficulty in reaching that population group, **the Advisory Council recommends** that a safe surrender policy only be considered as part of a more comprehensive initiative addressing unplanned pregnancies and at-risk groups and that the decision to adopt a safe surrender policy await the results of the research on the causes of infant abandonment which the provincial government has committed to conduct.

However, if a safe surrender law is adopted at this time, **the Advisory Council recommends:**

- that it be based on evidence about the known cases of infant abandonment and deaths.
- that additional health professionals be designated, along with emergency room nurses, to receive surrendered infants, in order to increase access to the safe surrender option.
- that the prescribed period for legal surrender be longer than 72 hours and be established based on research.
- that information about how to relinquish care of a child beyond the set deadline be part of all information campaigns relating to the safe surrender program, in order to prevent situations where parents falsely

believe they cannot surrender the child without repercussions beyond the safe surrender law's stated deadline.

- that it include the obligation to collect information about cases of safe and unsafe infant abandonment, infanticide and infant homicide.

- that it require that an evaluation of the safe surrender policy be made public after a number of years.

- that resources be provided for school-based and public information campaigns about its provisions, the risks surrounding concealed pregnancies and the available services.