



BASTARD NATION
THE ADOPTEE RIGHTS ORGANIZATION
P.O. BOX 1469
EDMOND, OK 73083-1469
VOICE/ FAX: 415-704-3166
WWW.BASTARDS.ORG

SUBMITTED TESTIMONY
NEBRASKA UNICAMERAL
SPECIAL SESSION, JUDICIARY COMMITTEE
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SUPPORT TO REPEAL LB 157
OPPOSE LB 1, LB 3 AND ANY ATEMPT TO RETAIN 'SAFE HAVEN
ABANDONMENT" LANGUAGE IN NEBRASKA LAW

Honorable Members of the Judiciary Committee:

Thank you for the opportunity to submit this testimony.

Bastard Nation, the Adoptee Rights Organization is pleased that Governor Dave Heineman has called this special session of the Unicameral to correct the problems caused by LB 157. We understand that the only item that can be resolved during this special session is the age of children eligible for "legal abandonment."

At this time the Unicam is looking at LB 1 and LB 3. LB 1 limits the age of children who can be abandoned legally by their parents without prosecution to 72 hours. LB 3 creates a 2-tiered system of "legal abandonment": one for infants up to one year of age; the other for children between the ages of 1 and 16. The second tier also creates regional and state "intervention teams" to assist families in abandonment crisis enabling them to access services and avoid abandoning their children if possible. There is no intervention team for infants and their moms.

REPEAL IS THE ONLY SOLUTION TO LB 157

Bastard Nation calls for the immediate repeal of LB 157. We oppose LB 1 and LB 3 and any other bill that continues the "safe haven" concept of legal abandonment in the State of Nebraska.

THE NORMALCY OF CHILD ABANDONMENT

BN was the first organization to condemn "legalized" baby dumping as a public policy solution for newborn abandonment and neonaticide. We, along with many others in adoption reform, were initially incredulous that in the late 20th century baby abandonment would be promoted by the government. But with the 1999 passage of the Texas Baby Moses Law, and the interest evoked in other states for similar measures, we saw that the US was taking a backward turn in child welfare, which had struggled over the last 100 years to build a child-centered environment of rights, responsibility and education. Child abandonment, a heinous crime throughout history, was suddenly affirmed and approved by the government as long as abandonment was done within the rules—or close to it.

On January 28, 2000 we published the following:

These laws represent a radical change in child welfare policy toward promoting rather than discouraging abandonment. These laws also run counter to the spirit, and perhaps the letter of many statutes and initiatives such as relinquishment revocation periods, and putative birth father registries, that empower all parties involved in a child's life to make informed choice regarding the child's best interest. The anonymity built into these laws open up the door to the potential abuse, fraud, and the worst excesses of the past when abandonment was the norm.

We warned that once this policy became institutionalized, it would become normalized.

We were right.

By the end of 2003, 45 states, caught up in a moral panic over the so-called epidemic of neonaticides and newborn abandonment in the US, had passed "safe haven" laws which they claimed would staunch the flow of both. Some saw "safe haven" as a way to decrease abortion. The dangerous and even life-threatening, message was it's OK to carry out a secret pregnancy, give secret birth, and then drop the baby off anonymously to a secret "safe haven," and nobody has to know. No shame. No blame. No name. Or as one "safe haven" organization now advertises: No cost. No parents. No cops."

The fact is there was and is no epidemic. The "panic" was constructed by special interests and their high paid lobbyists, playing on emotions, who devised baby dump laws as a way to circumvent traditional adoption practice and hinder progressive reform movements such as original birth certificate access and identity rights for adopted persons, putative fathers rights, and the Indian Child Welfare Act (ICWA) which gives tribes, in many instances, rights over Indian children placed for adoption. They were joined by well-intentioned amateur groups, inexperienced in adoption and child welfare history, practice and politics who mostly genuinely believed the myth of rampant newborn abandonment.

Legislatures, looking for a quick fix to a perceived problem, passed bills with little or no concern for the lifelong consequences of government encouraged and facilitated infant abandonment to the people directly involved, public policy and the public good in general. Those who dissented from the perceived wisdom of "safe havens," especially adoptees whose ranks would be increased by the addition of drive-by, no-questions-asked "relinquishments," were particularly held up to scorn. They were labeled ungrateful, disturbed, and even baby killers for standing up for the right of potential and future adoptees to their identities and histories and dignity.

In the last few years, baby dumping, encouraged by the government, has become "just another option," for parents who might otherwise seek out services that would assist them to keep their children, place them in temporary fostercare while they worked out their problems, or place them for adoption in a traditional informed process. Baby dumping, they are told, is easier.

In some states, the age of children eligible for dumping has edged up and drop-off sites have increased to make the process more "convenient" How-to-abandon your baby units are mandated in the curriculum of several states. There has been a steady increase in

“drive-by relinquishments” by parents who have no intention of ever harming their children, but are looking for an easy way out or simply don’t know better, while the rate of dangerous discard and neonaticide remain the same. A 2005 survey of county coroners, through public records requests by the adoption reform group California Open found that the number of newborns dying from abandonment and neglect since 2001 in that state remained at 13-15 per year despite the state’s Safely Surrender Baby Act. The causes of newborn abandonment and neonaticide—social isolation, denial of pregnancy, substance abuse, poverty, and untreated mental illness remain untouched.

Child abandonment at any age is never a solution. It only makes the problem and pathology worse and carries lifelong consequence for all party’s involved. The question of what to do with Nebraska’s current broken services, including mental health treatment for adolescents and their families, deserves intense study and careful consideration. A special 7-day session of the Unicam, is not the place to do that. Any attempt to fix this mess before Thanksgiving is dangerous and pokes a stick in the already festering wounds of the families who have used LB 157 as a sad last-ditch solution. By all means, repeal LB 157, but don’t replace it with something worse.

It is essential that child abandonment be decoupled from family assistance. The first effort of the Unicam this week should be to lift the onus of legalized baby dumping in the state, and to return Nebraska to its pre-LB 157 ethical place. Once that is accomplished, the legislature can concentrate on the real problem at hand: delivery of services to families, children, and pregnant women in crisis. Abandonment should not be an option.

The remainder of this testimony will focus on why the Unicam should repeal LB 157 and reject government supported child dumping and replacement bills which facilitate the practice. We will refer to LB 1 and LB 3 in places, but our objections extend to any other baby dumping bill that may be introduced here, and to any baby dumping law currently in effect in the country.

BABIES ARE PEOPLE, TOO

Child abandonment marks a failure, and the state should never encourage it. Although we do not support LB 3, we abhor that intervention services would be provided for families of children over the age of 1, but not for newborns and their families. Why are newborns exempt from Big Kid protection?

Recently, Tim Jaccard, the president of the National Safe Haven Alliance was quoted by the Associated Press:

When children are older they have the ability to understand what’s going on and they’re thinking Mommy and Daddy don’t want me anymore, so they’re throwing me in a hospital.” That’s a psychological blow.”

Apparently memory and articulation is what makes one class of dump “ethical” and “good” and the other not. Does anyone actually believe that the act of abandonment is not traumatic at any age? Infants may not remember abandonment (some will argue they do), but as they grow into adulthood they are burdened with scores of unanswerable questions. Where did I come from? Who do I look like? Does cancer run in my family? Why was I thrown away? No re-assuring words of bureaucrats and kitchen table activists will fill the hole in the heart of the abandoned. The traditionally adopted even in the

sealed records system, in theory, have the possibility of recovering information of their pre-relinquished selves; the anonymously dumped do not.

BABY DUMP: BAD PRACTICE

(1) Baby dump laws circumvent best practice state and federal laws and endanger pregnant women and their children. They abrogate the rights of parents, especially the parental rights of the non-custodial parent (usually the father). They deny due process. They unilaterally, remove infants from their families and heritages, with no hope of recovery. Baby dump laws erode adoptee civil rights by increasing the number of children (perhaps anonymously) available for adoption through unethical and unprofessional practices.

Baby dump laws establish parallel child welfare systems, where one system opposes the long-standing principles of the other. LB 3 especially creates a whole new system where some children can be subject to professional intervention, and others not, based strictly on age. Those long-standing principles are informed consent and a full record of identifying information and social and medical histories. Any attempt to maintain infant abandonment language eliminates adoptees' rights to identity by denying their access to original birth and heritage records. Baby dump advocates claim that only through anonymous abandonment can courts maintain "parental privacy"--though adoption proceedings are already closed and confidential in every state.

Baby dump laws deny parents, particularly non-surrendering parents (usually the father) --their right to due process by eliminating their ability to locate the dependency proceeding to which they are a party. They contravene the family reunification guidelines of the federal Adoption and Safe Families Act and parts of the federal Indian Child Welfare Act, something that Nebraska needs to monitor closely. According to statistics published by the Nebraska Department of Human Services, one recently dumped child is part American Indian. WOW-TV reported that there may be an ICWA claim on the 9 Staton siblings.

Baby dump laws replace professional best practice standards with unprofessional and unethical "non-bureaucratic placement" by letting parents abandon solely for convenience or out of ignorance. The law preys on parents who honestly believe they are surrendering their child for adoption instead of providing evidence to be used in a dependency hearing at which they have a right and duty to appear. The laws encourage parents literally to default at their hearings. Supporters call that "proper" and "courageous."

(2) Baby dump laws disenfranchise natural parents, encourage unethical behavior, and hides crime.

Baby dumps are promoted as an easy solution for mothers so desperate that unless they can abandon their newborns anonymously the mothers will kill the children. State-published reports and news accounts tell a different story. The "Safely Surrendered and Abandoned Infants in Los Angeles County" ICAN report published in 2002 and updated in 2005, identified "safe haven-protected" parents who were interviewed as poor, overwhelmed, and ignorant of child welfare practice. Some parents appeared to be undocumented workers, leery of professional assistance.

News accounts throughout the country regularly tell us of clean, immaculately dressed newborns with stuffed animals, baby blankets, and notes to doctors, left at ER's in no

danger of neglect or death. Newspapers have also reported instances in which hospital officials, in conflict with established hospital programs that discourage incidents of “boarder baby abandonment” encourage identified, confined mothers to leave their newborns at the hospital when they are discharged with no ethical parenting or child placement counseling to guide them.

Baby dump laws are open to further abuses as shown by the Twyana Davis case in Ohio. Davis, an adult, conceived a child with her 12-year old cousin. Davis recklessly abandoned the newborn. After years of supporting “safe haven” laws, Davis admitted the father's identity and age. She is currently doing 10-25 years in prison for rape. In April 2006, in Rochester, New York, Lamar Brown, 31, attempted to drop off a newborn he claimed he found in a nearby park. When hospital personnel became suspicious and called police, Brown admitted that he had had sexual relations with the 13-year old mother 9 months earlier and had helped deliver the baby. He was charged with 2nd degree rape and endangering the welfare of a child. He served 180 in the county jail and was released on 10 years probation. Currently living in Florida, on October 28, Brown was charged with failure to sign on to the Florida Sex Offender Registry, and sent to prison on a parole violation. He is now on the New York and Florida Sex Offender Registries. Baby dump proponents would have Davis and Brown legally abandon these babies anonymously and then call them heroes. The government is essentially, through dump laws, offering parents who have committed, or are contemplating, crimes a cover up.

Abuses are not the exception. In several cases the parent has communicated to the safe haven recipient that they were surrendering the child anonymously out of love or because they lacked resources. Some openly weep. Those parents did not feel homicidal, but simply wanted a quick or secret adoption or knew of no other way out of their predicament. By law, nobody could offer to channel them into ethical child-centered options. Temporary and permanent surrender options have existed for decades and are used by thousands of new parents every year. We have welfare and other programs through children's services that new parents can use when they lack funds or support.

Unfortunately, “safe haven” promoters have convinced parents they have only two options: The Dumpster or the Safe Haven. The responsible alternatives to baby dumping are not mentioned: counseling, public assistance, temporary surrender, permanent surrender for adoption, and family communication. That omission keeps new and potential parents ignorant of real solutions. As Bob Brandt, former Executive Director of The Nebraska Children's Home Society said in 2004 during a “safe haven” campaign in the legislature

Safe Haven laws are a way to circumvent adoption laws and have unintended consequences...I hope society doesn't get to the point where they think abandonment of a child is a good thing. We just get the word out there that there is safe help. We think we have laws that allow us to protect the babies.”

NEBRASKA DOES NOT NEED A BABY DUMP LAW

There is no epidemic of newborn abandonments and neonaticides in the state. Since 1996, 5 discarded newborns have been found alive (2-3 in relatively safe locations) and 1 found dead from unknown causes. During the approximate four months Nebraska's “safe haven” law has been in effect, not one newborn was surrendered, despite all the publicity. Moreover, thirty-four children, most of them pre-teens and teens were turned

over and at least a dozen other dumps were attempted. According to the November 12 reported issued by Todd Landry, director of HSS, none of these children were in immediate danger.

LB 1, LB 3 and LB 157 trivialize baby abandonment by presenting it as just another consumer choice. No blame. No shame. No name. Furthermore, by encouraging identity erasure, parental ignorance, irresponsibility, and secrecy, and by refuting the due process rights of parents, these bills endanger the integrity and safety of all families in the State of Nebraska--not just those at risk for unsafe abandonment.

CONCLUSION

No law is valid because it might "save a life." Otherwise, we would not have our Bill of Rights. We do not let the police pull drivers over randomly and give them Breathalyzer tests because "it might save a life." We do not outlaw guns because "it might save a life." The state should not help parents hide their own children's identities and histories because "it might save a life." It should not help parents hide children from each other because "it might save a life."

Aging down LB 157 does nothing to change the message that it is OK to dump your child. By continuing to promote child abandonment at any age, the message will remain: it's OK to dump your child.

Nebraska had it right the first time. It was the last state to pass a "safe haven" law. Nebraska can be the first to repeal this misbegotten law before any more families are harmed or even destroyed. Nebraska can lead the rest of the country in dragging itself out of this moral quagmire.

Protect Nebraska families! Vote to Repeal LB 157. Reject LB 1 and LB 3 and all attempts to allow legal baby dumping in Nebraska. Make Nebraska a safe place for its children and their families.

Submitted by:

Marley Greiner

Executive Chair, Bastard Nation: the Adoptee Rights Organization

2562 Glen Echo Drive

Columbus, OH 43202

614-571-2999 (cell)

MEGreiner@gmail.com

Bastard Nation is dedicated to the recognition of the full human and civil rights of adult adoptees. Toward that end, we advocate the opening to adoptees, upon request at age of majority, of those government documents which pertain to the adoptee's historical, genetic, and legal identity, including the unaltered original birth certificate and adoption decree. Bastard Nation asserts that it is the right of people everywhere to have their official original birth records unaltered and free from falsification, and that the adoptive status of any person should not prohibit him or her from choosing to exercise that right. We have reclaimed the badge of bastardy placed on us by those who would attempt to shame us; we see nothing shameful in having been born out of wedlock or in being adopted. Bastard Nation does not support mandated mutual consent registries or intermediary systems in place of unconditional open records, nor any other system that is less than access on demand to the adult adoptee, without condition, and without qualification