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# A SAFE HAVEN FOR NIXZMARY BROWN

BY: CHANTAL L. HAMLIN\*

## INTRODUCTION

On February 13, 2008, Governor Dave Heineman signed Nebraska's Safe Haven statute,<sup>1</sup> a law that would prove to be the broadest safe haven statute in the nation for approximately eight months.<sup>2</sup> The statute created safe havens at state licensed hospitals for a person to leave a baby in the custody of a hospital employee.<sup>3</sup> The statute was drafted very broadly without defining the terms "child" or the "person" who could have dropped the child off at a hospital. The Safe Haven legislation read: "No person shall be prosecuted for any crime based solely upon the act of leaving a child in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child."<sup>4</sup> In November 2008, this broad legislation was altered, and an age limit for the child was included.<sup>5</sup>

Before this statute was amended, practically, it was impossible for the government to limit the ages of children who were brought to hospitals in Nebraska before November 2008.<sup>6</sup> This resulted in children between the ages of one and seventeen being abandoned at hospitals, often by parents who could no longer care for their children.<sup>7</sup> Many people across America, including proponents of the law, believed at the time that parents and guardians were abusing the law and relinquishing their parental rights.<sup>8</sup> Senator Arnie Stuthman, the bill's original author said: "[t]here are family services out there, but some people may lack the

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\* J.D. Candidate, Benjamin N. Cardozo School of Law, 2010, B.A., Adelphi University, 2007; This note is dedicated to Nixzmary Brown and all victims of child abuse. The author wishes to thank God, her family and close friends who supported her in millions of ways throughout the entire writing process. Finally, the author wishes to thank the 2008-2009 Editors and 2009-2010 Editors and Staffers for their support and hard work.

<sup>1</sup> 2008 NEB. LAWS 157.

<sup>2</sup> See Eric Eckholm, *Older Children Abandoned Under Law for Babies*, N.Y. TIMES, Oct. 2, 2008 ("Officials have called the abandonments a misuse of a new law that was mainly intended to prevent so-called dumpster babies—the abandonment of newborns by young, terrified mothers—but instead has been used . . . [by parents and guardians] to escape financial and personal despair.").

<sup>3</sup> 2008 NEB. LAWS 157.

<sup>4</sup> *Id.*

<sup>5</sup> Eric Eckholm, *Nebraska Revises Child Safe Haven Law*, N.Y. TIMES, Nov. 21, 2008.

<sup>6</sup> *Id.*

<sup>7</sup> Eckholm, *supra* note 3.

<sup>8</sup> See *Nebraska Lawmaker Wants Limits on Safe Haven*, UNITED PRESS INT'L, Oct. 2, 2008.

resources to take advantage of them, and we've got to take a hard look at what more we can provide."<sup>9</sup> While this law is very expansive, and arguably stretches the law beyond its intended limits, it is an indication that families are struggling, and the current support systems that states provide may not be adequate to protect and support these families.

New York's version of a safe haven law was passed in July 2000, and is slightly different than the Nebraska law in that it provides affirmative defenses two offenses, abandonment and endangering the welfare of a child.<sup>10</sup> In relevant part, New York's Safe Haven Law, known as the Abandoned Infant Protection Act states that:

[A]ny prosecution for abandonment of a child, pursuant to section 260.00 of this article, based upon an alleged desertion of a child not more than five days old with an intent to wholly abandon such child, it is an affirmative defense that, with the intent that the child be safe from physical injury and cared for in an appropriate manner, the defendant left the child with an appropriate person or in a suitable location and promptly notified an appropriate person of the child's location.<sup>11</sup>

The New York Safe Haven statute, unlike Nebraska's statute, limits the age of the child to five days old, making it clear who the law does and does not protect.<sup>12</sup> Safe haven statutes are designed to protect children who would otherwise be left in unsafe environments after birth.<sup>13</sup> These types of statutes were enacted to prevent young mothers from having children in secret and disposing of the child in unsafe locations.<sup>14</sup> Safe haven laws also protect mothers who do not enjoy the support of their friends and family, and fear being a young parent.<sup>15</sup> The New York statute clearly addresses the problems facing this population of parents and children.

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<sup>9</sup> *Id.*

<sup>10</sup> N.Y. PENAL LAW §§ 260.03; 260.15 (McKinney 2008).

<sup>11</sup> N.Y. PENAL LAW § 260.03 (McKinney 2008). The Abandoned Infant Protection Act also applies to the charge of endangering the welfare of a child and similar language is set out as a defense in N.Y. PENAL LAW § 260.15. N.Y. PENAL LAW § 260.15 (McKinney 2008).

<sup>12</sup> N.Y. PENAL LAW §§ 260.03; 260.15 (McKinney 2008).

<sup>13</sup> Michael S. Raum & Jeffery L. Skaare, *Encouraging Abandonment: The Trend Towards Allowing Parents to Drop Off Unwanted Newborns*, 76 N.D. L. REV. 511, 513 (2000).

<sup>14</sup> *Id.* at 513 (Incidents of infanticide led to the enactment of laws that allow parents to leave their children at designated safe locations after a short period after birth in return for anonymity and freedom from prosecution.).

<sup>15</sup> Ana L. Partida, *The Case for "Safe Haven" Laws: Choosing the Lesser of Two Evils in a Disposable Society*, 28 NEW. ENG. J. ON CRIM. & CIV. CONFINEMENT 61, 62 (2002).

In a perfect world, all mothers would have prenatal care and supportive family and friends. But the reality is that many do not. If we do not give those parents an outlet to give up their newborns anonymously, some of them will leave their newborns on doorsteps or throw them in trash dumpsters . . . the parents who leave their newborns to die in dumpsters aren't traditional parents.

Although child abandonment and deaths related to such abandonments are a major problem in our society, other problems in the family, such as child abuse, can also cause severe trauma or death to a young child. In 2007, child abuse or neglect claimed the lives of 1,760 children in the United States—in Nevada and Colorado—and it is estimated that fifty to sixty percent of child fatalities due to abuse or neglect are not reported.<sup>16</sup> One such incident of death due to abuse occurred in Brooklyn, New York, on January 11, 2006; Nixzmary Brown, a seven year-old girl, died at the hands of her abusive stepfather, Cesar Rodriguez.<sup>17</sup> Nixzmary Brown<sup>18</sup> suffered abuse and torture for several months.<sup>19</sup> Despite reports of abuse, the Administration for Children's Services ("ACS") did not remove Nixzmary from her home.<sup>20</sup> ACS's failure to help Nixzmary coupled with her mother's failure to seek help, and the enactment of the Nebraska Safe Haven Law are catalysts for this Note, which advocates for a change in New York's safe haven laws.<sup>21</sup>

The goal of safe haven laws is to protect unwanted children from neglect, abandonment or certain death and in some states, this goal is achieved.<sup>22</sup> While safe haven laws have traditionally been enacted to protect newborns,<sup>23</sup> it is clear that the overarching goal of these laws is to protect children from harm.<sup>24</sup> The New York Safe Haven Law functions as a defense to two crimes that were enacted for the safety of all children.<sup>25</sup> Because the Safe Haven Law is limited and does

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<sup>16</sup> CHILD WELFARE INFORMATION GATEWAY, CHILD ABUSE AND NEGLECT FATALITIES: STATISTICS AND INTERVENTION 2 (2009), <http://www.childwelfare.gov/pubs/factsheets/fatality.pdf> (last visited Sep. 26, 2009).

<sup>17</sup> Michael Brick, *Murder Charge Detail Torture of 7-Year-Old*, N.Y. TIMES, Jan. 18, 2006.

<sup>18</sup> Nixzmary Brown was a seven-year-old girl who suffered years of abuse from her stepfather. She was killed on January 11, 2006, after suffering from an extremely violent disciplining episode the evening before. She was disciplined by her stepfather for taking a cup of yogurt without his permission and breaking his computer printer. Brown's mother did not stop the ongoing abuse of little Nixzmary Brown. See *infra* Part III. A.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* ("[T]he Administration for Children's Services . . . has taken criticism for failing to remove Nixzmary from the family apartment after a teacher reported signs of abuse.").

<sup>21</sup> See N.Y. PENAL LAW §§ 260.03; 260.15 (McKinney 2008).

<sup>22</sup> New Jersey is one state that records safe haven abandonments as well as unsafe abandonments. State of New Jersey Department of Children and Families, Safe Haven Statistics, <http://www.nj.gov/dcf/home/childdata/safehavenstats.html> (last visited Sep. 26, 2009). In New Jersey, since the enactment of the Safe Haven Law in 2000 through December 23, 2008, thirty-eight children have been surrendered safely to safe havens in contrast with twenty-eight unsafe surrenders. New Jersey Department of Children and Families, Safe Haven Surrenders 2000-2008 (2008), [http://www.nj.gov/dcf/home/childdata/SafeHavenStats2000-2008\\_12.23.08.pdf](http://www.nj.gov/dcf/home/childdata/SafeHavenStats2000-2008_12.23.08.pdf). See Safe Haven Infant Protection Act, FAQ's, <http://www.njsafehaven.org/faq.html> (Safe Haven Law established in New Jersey on August 7, 2000) (last visited Jan. 26, 2009).

<sup>23</sup> Partida, *supra* note 15, at 61.

<sup>24</sup> *Id.* "Safe haven statutes . . . encourage those who were already going to abandon their newborns, to do so in a manner that would guarantee the safety of the newborn." *Id.*

<sup>25</sup> The Safe Haven Law provides defenses to N.Y. PENAL LAW § 260.10, Endangering the Welfare of a Child. N.Y. PENAL LAW § 260.10 (McKinney 2008). N.Y. PENAL LAW § 260.03 allows for the prosecution of a parent or guardian's abandonment of a child. N.Y. PENAL LAW § 260.03 (McKinney 2008).

not apply to children older than five days, Nixzmary and/or her mother were unable to escape their abusive situation, and Nixzmary was killed.<sup>26</sup> Nixzmary's mother, Nixzaliz Santiago, was convicted of endangering the welfare of a child, among other crimes. Ironically, if Nixzmary was under five days old, and Nixzaliz abandoned her at a safe haven, the New York Safe Haven Law would have provided an affirmative defense for Nixzaliz.<sup>27</sup>

There have been many child abuse death cases in New York<sup>28</sup> proves the fact that newborns and older children are in need of more protection from the state and local governments. This Note proposes a hypothetical law entitled the Abused Minor Child Protection Act ("AMCPA"). Hypothetically, this law will allow a parent or guardian to take an abused child, not more than 18 years of age, to a local safe haven and relinquish his or her rights, if that parent is unable to escape the abusive home environment with their child or children. Under this hypothetical law, the parent or guardian could leave identifying information for the child and could notify the safe haven personnel if there are any other abused children in the home. If there are other children in the home, the safe haven personnel should notify the appropriate authorities and have those children removed quickly. In the case of child abuse deaths, neither the perpetrator(s) nor the non-abusing parent should be given immunity for the crime. This addition to the current safe haven statute would allow a mother to avoid the abuse and perhaps acceleration of the deaths of family members in an abusive environment by making a scene and calling the police to the home in the midst of an act of abuse.

Under this proposed safe haven law for abused children, a parent could take the child to a safe location and authorities would be able to intervene in the home, remove the children and arrest the abuser. Perhaps this would provide a peaceful exit for the abused family members. Our children are the future and without doing all we can as a society to protect them, we are failing them. It is our duty to choose life and to protect the children across the country who are in similar positions as was Nixzmary Brown. While a change in the safe haven law requires action by a parent or guardian to protect a child, it can also work in tandem with existing child services, namely ACS, to provide even more opportunities for escape to all those involved in serious cases of child abuse.

Part I of this Note discusses traditional safe haven laws and the theories behind them. Part II discusses the Nebraska Safe Haven Law development and implications.<sup>29</sup> In Part III, the New York Safe Haven Law, Family Court Act and

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<sup>26</sup> See Brick, *supra* note 17.

<sup>27</sup> See N.Y. Penal Law §§ 260.03; 260.15 (McKinney 2008) (affirmative defense for abandonment of a child under five days old); see also Kareem Fahim & Colin Moynihan, *Verdict is Manslaughter for Abused Girl's Mother*, N.Y. TIMES, Oct. 18, 2008 ("Ms. Santiago was also convicted of assault, unlawful imprisonment and endangering the welfare of a child.").

<sup>28</sup> See Ray Rivera, *Agency Lags in Protecting Children, Report Says*, N.Y. TIMES, Aug. 10, 2007.

<sup>29</sup> 2008 NEB. LAWS 157.

surrender laws are discussed and analyzed.<sup>30</sup> Part IV outlines Nixzmary Brown's case and the trials of her mother, Nixzaliz Santiago and step-father, Cesar Rodriguez. Part V offers suggestions for a modified version of the Nebraska Safe Haven Law to be passed in New York that can help children suffering from child abuse. Part VI discusses the need for parental accountability in preventing abuse in the home or reporting an abuser to authorities. Finally, Part VII concludes the Note and argues that we should choose to put more resources and programs into saving lives instead of the prosecution of abusers, which, although retributive, does not save the life of a child already lost to abuse.

### I. SAFE HAVEN LAW THEORIES

Safe havens are facilities designated by law to receive abandoned children, usually a hospital, fire station, police station or some other emergency care facility.<sup>31</sup> Texas was the first state to enact a safe haven law in 1999.<sup>32</sup> This law is similar to the New York Safe Haven Law in that it provides a defense to abandonment charges when an infant is abandoned at a designated facility.<sup>33</sup> Many states have enacted safe haven statutes, including Nebraska.<sup>34</sup> Typically, a parent or agent of the parent may take a baby to a safe haven location.<sup>35</sup>

Proponents of safe haven laws argue that the law provides a safe and important alternative for people who were going to abandon their children anyway.<sup>36</sup> In fact, it is argued that the safe haven law supports abandonment statutes in that both statutes have a common goal of protecting children.<sup>37</sup> The law provides a much-needed option to curb infant deaths since unwanted infants are often found in dumpsters and public bathrooms.<sup>38</sup>

Generally, safe haven laws follow a standard format that includes the following key components: abandoner anonymity,<sup>39</sup> child's age<sup>40</sup> and immunity for

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<sup>30</sup> N.Y. PENAL LAW §§260.03; 260.15 (McKinney 2008); N.Y. FAM. CT. ACT § 1011 (McKinney 2008); N.Y. SOC. SERV. LAW § 384 (McKinney 2008).

<sup>31</sup> Raum & Skaare, *supra* note 13, at 518-20. Louisiana allows a child to be abandoned at an "emergency care facility . . . any public health unit, any fire station, any police station or any pregnancy crisis facility [sic]." *Id.* at 520.

<sup>32</sup> Partida, *supra* note 15, at 69. "[A]s a legislative response to the problem of newborn abandonment . . . [Texas . . . provide[d] a defense to abandonment charges when a newborn is abandoned in a hospital or fire station." *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> State Stat. Surveys Safe Haven, Westlaw (2006).

<sup>35</sup> CHILD WELFARE INFORMATION GATEWAY, INFANT SAFE HAVEN LAWS 2 (2007), available at [http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/safehavenall.pdf](http://www.childwelfare.gov/systemwide/laws_policies/statutes/safehavenall.pdf). [hereinafter Safe Haven Laws]. Nebraska, Delaware, Illinois, Maine, New Mexico, South Carolina and Vermont do not specify who can leave a child at a safe haven. See *id.* Nebraska's statute simply reads, "[n]o person." 2008 NEB. LAWS 157.

<sup>36</sup> Partida, *supra* note 15, at 61.

<sup>37</sup> *Id.* at 69.

<sup>38</sup> *Id.* at 68.

<sup>39</sup> *Id.* at 71-72. Generally, a statute provides immunity from prosecution to encourage would-be abandoners to leave the child at a safe haven location. *Id.*

the safe haven while the child is in its custody.<sup>41</sup> The age requirement is set with adoption in mind; the younger a child is, the more likely the child will be adopted and able to form a biological-like relationship with his or her adoptive parents.<sup>42</sup> The age is generally limited to a few days after birth for a better transition into an adoptive home, and to prevent any trauma to the child due to being abandoned.<sup>43</sup> However, since the hospital is relying on the information obtained from the person relinquishing the child, there is no way to know for sure the exact age of the child being relinquished.<sup>44</sup>

Anonymity is also a component of the safe haven laws.<sup>45</sup> Preserving anonymity is especially important; people are likely to abandon their children at a safe haven only if they know they will not be prosecuted for abandonment.<sup>46</sup> However, some state safe haven laws only give the parent temporary anonymity.<sup>47</sup> These states have anonymity for a short period of time because their laws require a search for the parents before the filing of a petition to terminate the parental rights.<sup>48</sup> Although there may be a search and the parent's name(s) may be found, they are still immune from prosecution for abandonment.<sup>49</sup> Some laws give the relinquished child an identification bracelet and the abandoning parent an identification number to reunite the two in the event that the parent changes his or her mind.<sup>50</sup> Reunification could also happen through the use of an identification bracelet that would allow the holder of the bracelet to participate in custody proceedings or request reunification with the child.<sup>51</sup> These states may not return a child if there are indications that the child was abused.<sup>52</sup>

Many safe haven laws provide for termination of the parental rights when the child is left at a safe haven location.<sup>53</sup> In terminating the parental rights, provisions

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<sup>40</sup> *Id.* at 74. Generally, Safe Haven statutes are only applicable to infant children; some states allow children up to the age of one month old to be relinquished at a safe haven. See Safe Haven Laws, *supra* note 35, at 2.

<sup>41</sup> Partida, *supra* note 15, at 83. "Safe haven providers are given protection from liability for anything that might happen to the infant while in their care, unless there is evidence of major negligence on the part of the provider." Safe Haven Laws, *supra* note 35, at 3.

<sup>42</sup> Partida, *supra* note 15, at 74.

<sup>43</sup> *Id.*

<sup>44</sup> Raum & Skaare, *supra* note 13, at 525.

<sup>45</sup> Partida, *supra* note 15, at 72.

<sup>46</sup> *Id.* at 71-72.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 72 n.83.

<sup>50</sup> Raum & Skaare, *supra* note 13, at 535.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* ("In California . . . the child is returned unless a health prosecutor, 'knows or reasonably suspects that the child has been the victim of child abuse or neglect.'").

<sup>53</sup> See Partida, *supra* note 15, at 79. Some statutes prescribe a period of time for which the mother has her rights automatically terminated. *Id.* at 80. In North Dakota, procedures exist for a court to terminate a parent's rights if the court has reason to believe that:

[A] parent's act or failure to act deprives the child, and the deprivation is currently causing or will in the future cause serious physical, mental or moral harm, the county

in the safe haven law require that both parents are notified of the proceedings.<sup>54</sup> A safe haven law needs to provide notice and a chance to be heard if the other parent was not aware of the abandonment.<sup>55</sup> This type of notice can include notice in a newspaper<sup>56</sup>—which could be sufficient for locating a parent in order to proceed with a petition for termination of parental rights.<sup>57</sup>

Several key components of the safe haven laws can be expanded to include abused children to form a new law—the AMCPA. One of the reasons provided for safe haven laws maintaining a young age limit is to prevent trauma to the child as a result of being abandoned.<sup>58</sup> While the trauma of being abandoned is important to prevent, such trauma would be inherent in an abusive situation where the abuse itself is the traumatizing and marking factor. If trauma prevention and providing a child with the best opportunity to bond with parents are concerns of safe haven laws, it seems that expanding the statute in the limited situations of child abuse would accomplish both of these underlying factors. Presumably, a child of an abusive environment would be better off in a non-abusive adoptive home with a loving and caring family. The source of the child's continued trauma would be excised from his or her life allowing the child to be more comfortable and secure. If the law was expanded to include abused children, then these children would be protected from traumatizing abusive environments.

In expanding the law for abused children, a parent should have limited anonymity if there are other children in danger. In that case, the parent should have to leave identifying information—including name and address. Even if the identification requirement is used in circumstances only where there are other children in the home who may be at risk of abuse, the law would retain much of its anonymity aspects in situations where there are not other children in the home. A modified safe haven statute would be in the best interests of the child because it would allow the child to be removed from a harmful environment and placed with a loving family.

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social service department may petition the court to terminate the parental rights of such parent . . . behavior that may justify terminating parental rights includes both verbal and physical abuse directed towards the child . . .

Raum & Skaare, *supra* note 13, at 542.

<sup>54</sup> See Partida, *supra* note 15, at 80. A father's parental rights would need to be adjudicated since presumably a mother who left her child at the safe haven would be giving up her rights according to any statutory time limits. *Id.* In a case such as that of Nixzmary's, her biological father did not play a role in her life, according to an aunt that attended Nixzmary's funeral. Brick, *supra* note 17. In Nixzmary's case, if her mother had surrendered her, her father would need to be given notice regarding the potential termination of his parental rights. See Partida, *supra* note 15, at 77-78.

<sup>55</sup> Partida, *supra* note 15, at 78.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Partida, *supra* note 15, at 74.



The reunification concept of some safe haven statutes<sup>59</sup> could be a concept that is inserted into the hypothetical AMCPA to allow reunification of a parent with a former abused child. The parent could be united with the child when the abuser is removed from the home through government action or privately between the two individuals. If reunification is allowed, it may help with the stability of an older child, by returning that child to a familiar family member or home. On the other hand, this could also present problems with the mental health of the child in overcoming the abuse with the parent that may have allowed the abuse to occur over a period of time. While this is noted, it is beyond the scope of this Note. If this modified hypothetical safe haven statute were enacted, it would codify the best available procedures to protect and encourage a child's mental health development.

A safe haven law for specific situations relating to child abuse is necessary, especially in New York where child protective services are usually strained.<sup>60</sup> A safe haven law specifically for abused children would provide an alternative to relying on ACS and those required to report child abuse to the authorities. Since the law would be constrained and only implemented to benefit children who are victims of abuse, it would not be subject to the type of "abuse" that occurred in Nebraska.<sup>61</sup> While this statute may not end the problem of child deaths due to abuse, it provides another option, and when it comes to saving the lives of children, as many options as possible are necessary to ensure that the state is doing all it can to protect them.

## II. EXPANSIVE NEBRASKA SAFE HAVEN LAW LEADS PARENTS TO "SHIRK" THEIR RESPONSIBILITIES

### *A. Legislative History of Nebraska Safe Haven Law*

The full Nebraska statute reads: "Section 1. No person shall be prosecuted for any crime based solely upon the act of leaving a child in the custody of an employee on duty at a hospital licensed by the State of Nebraska. The hospital shall promptly contact appropriate authorities to take custody of the child."<sup>62</sup> As indicated earlier, in the law passed in February 2008, there was no limitation on the child's age; in fact, the statute was rather limited in what it did say, providing very vague and general guidelines to those wishing to take advantage of the law. However, the law was not always so vague; indeed, initially it was created only for

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<sup>59</sup> *Id.* As of 2000, only seven states that considered safe haven statutes included provisions for parent reunification. *Id.*

<sup>60</sup> See Sewell Chan, *Ranks of Child Welfare Caseworkers Swell*, N.Y. TIMES, Feb. 28, 2007. "High turnover among caseworkers, who often become burned out or demoralized, has resulted in an annual attrition rate of 20 to 30 percent." *Id.* Mayor Bloomberg told 2007 new ACS hires that he would work with the state legislature to pass laws and increase training that would help workers work in the area despite high turnover rates. *Id.*

<sup>61</sup> Eckholm, *supra* note 3.

<sup>62</sup> 2008 NEB. LAWS 157.

infants<sup>63</sup> and included provisions for how a hospital staff member should proceed once an infant was abandoned.<sup>64</sup>

On January 17, 2007, Nebraska Senator Arnie E. Stuthman, introduced the Nebraska Safe Haven Law, Legislative Bill 157.<sup>65</sup> When the Bill was introduced, it was intended to help infants that were seventy-two hours old or younger, by allowing them to be relinquished to an on-duty firefighter or hospital staff member.<sup>66</sup> In the Introducer's Statement of Intent,<sup>67</sup> Senator Stuthman allowed the safe haven staff member four hours, from the time the child was dropped off, to report the abandoned child to law enforcement.<sup>68</sup> The Bill also required the Department of Health and Human Services ("Department") to keep a monthly count of abandoned children and to place each abandoned child with an adoptive parent as soon as possible.<sup>69</sup> The Bill directed the Department "to terminate the parental rights of the parent that leaves the child with a firefighter or hospital staff member."<sup>70</sup>

The original Bill included a complicated provision for abandoning a child at a safe haven location.<sup>71</sup> Subsections (a) and (b) of subsection one required that a child be seventy-two hours old or younger and that the child's parent(s) intended to leave the child.<sup>72</sup> Subsection one of the first section of the Bill allows a firefighter or hospital staff member to take temporary physical custody of a child when said firefighter or hospital staff member is on duty when a child is left at a hospital or fire station.<sup>73</sup> Also, the hospital or firefighter staff member must have been a person "who engages in the admission, care or treatment of patients."<sup>74</sup> The Bill goes on to require that the staff member:

perform any act necessary, in accordance with generally accepted standards of professional practice, to protect, preserve, or aid the physical health or safety of the child during the temporary physical custody . . . (3) A firefighter or hospital staff member shall incur no civil or criminal liability

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<sup>63</sup> *Introducer's Statement of Intent*, Legis. B. 157, 100th Leg. 1st Sess. (2007) [hereinafter *Introducer's Statement*] (statement of Sen. Arnie E. Stuthman, Member, Judiciary Comm.). "Legislative Bill 157 would allow a parent to leave an infant with an on-duty firefighter or hospital staff member within seventy-two hours of the infant's birth." *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> As per the Nebraska Unicameral Legislature website, a statement of intent is "a statement, prepared by the sponsor of a bill, that briefly describes the bill and the reasons why it is being introduced." Nebraska Legislature Glossary of Legislative Terms, <http://www.nebraskalegislature.gov/about/glossary.php#s> (last visited Sep. 26, 2009).

<sup>68</sup> *Introducer's Statement*, *supra* note 63, at 1.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Legis. B. 157, 100th Leg., 1st Sess. (Neb. 2007).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

for any good faith acts or omissions performed pursuant to this section . . . (6) . . . the department shall submit an annual report to the Legislature that compiles the monthly reports . . . (7) . . . The department shall file a petition pursuant to the Nebraska Juvenile Code to terminate the parental rights of a parent who leaves a child with a firefighter or hospital staff member . . .<sup>75</sup>

Shortly after the Bill was introduced, the Judiciary Committee made some amendments.<sup>76</sup> The Judiciary provided for changes amending the Nebraska criminal statutes against abandonment and created an exception for prosecution when the parent follows the Safe Haven statute guidelines.<sup>77</sup> The Judiciary Committee also struck the safe haven's immunity from criminal prosecution based on a good faith act or omission, increased the age requirement to thirty-days old and eliminated the parental intent requirement.<sup>78</sup>

On March 27, 2007, the Bill was amended, all amendments and sections were stricken and entirely new sections were introduced by Senator Stuthman.<sup>79</sup> In the amended Bill—Legislative Bill 157 AM 844—Senator Stuthman proposed that the age of the infant be changed back to seventy-two hours old.<sup>80</sup> This illustrates Senator Stuthman's desire to keep the age limitation restricted, perhaps in order to avoid the situation that later ensued in Nebraska. The Act in this revised form clearly refers to a "mother" who is seeking safe haven care,<sup>81</sup> not a "parent" as the previous Bill suggested.<sup>82</sup> Also, the Bill limited the safe haven locations to hospitals and to "a hospital staff member who engages in the admission, care or treatment of patients, when such hospital staff member is at a hospital."<sup>83</sup> Perhaps the change in the legislation is due to the fact that at a hearing before the Judiciary Committee, the Nebraska Volunteer Firefighters were represented as opponents to the legislation.<sup>84</sup> However, there is no clear indication as to why the firefighters opposed the legislation. The Senator also reinstated immunity for the good faith acts or omissions clause and included it in his amendment.<sup>85</sup> Finally, the amended Bill required the Department to "place [the] child in a licensed foster family home . . . or with a licensed child placement agency . . . and take all steps necessary to

<sup>75</sup> *Id.* (emphasis in original).

<sup>76</sup> See Sen. Brad Ashford, *Provide for leaving an infant with a firefighter or hospital staff member*, Legis. B. 157, 100th Leg., 1st Sess. 2 (2007).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Legis. B. 157, 100th Leg., 1st Sess. (Neb. 2007) (as amended by Sen. Stuthman, Mar. 27, 2007).

<sup>80</sup> Legis. B. 157, 100th Leg., 1st Sess. § 1 (Neb. 2007) (as amended by Sen. Stuthman, Mar. 27, 2007).

<sup>81</sup> *Id.*

<sup>82</sup> Legis. B. 157, 100th Leg., 1st Sess. § 1 (Neb. 2007).

<sup>83</sup> Legis. B. 157, 100th Leg., 1st Sess. § 1 (as amended by Sen. Stuthman, Mar. 27, 2007).

<sup>84</sup> Ashford, *supra* note 76, at 2.

<sup>85</sup> Legis. B. 157, 100th Leg., 1st Sess. § 1(3) (Neb. 2007) (as amended by Sen. Stuthman, Mar. 27, 2007).

facilitate adoption of such child as soon as possible . . . [t]he department shall make reasonable efforts to notify the biological father . . . .”<sup>86</sup>

Notably, this amended version of the Bill is missing a clear statement that the Department will terminate the rights of the parent that abandoned the child at the safe haven.<sup>87</sup> When the Bill was first introduced it included an express provision that “the department shall file a petition pursuant to the Nebraska Juvenile Code to terminate the parental rights of a parent who leaves a child with a firefighter or hospital staff member under this section.”<sup>88</sup> Without a clear provision regarding the termination of parental rights, it is unclear whether the parental rights can be terminated, thus creating a problem with future adoption proceedings.<sup>89</sup>

Moreover, in amendment AM844, Nebraska’s abandonment statutes are amended and Safe Haven Law requirements are inserted.<sup>90</sup> The provision permits the abandonment of children under seventy-two hours old and is specific to a mother leaving her child with a hospital staff member.<sup>91</sup> This differs from the option to leave a child at a fire station or hospital in the original Bill.<sup>92</sup> Lastly, the Bill injects an identity requirement for a woman wishing to take advantage of a safe haven.<sup>93</sup> Perhaps this requirement is to allow the Department to identify the biological father and notify him of the adoption.<sup>94</sup>

After the final amendments in 2007, the Legislature’s session ended and the bill went to the next session.<sup>95</sup> On January 10, 2008, Senator Stuthman reintroduced the Bill—Legislative Bill 157 AM 1539—with new amendments, while the amendments from the previous year were once again stricken.<sup>96</sup> At this point, the bill is more detailed and involves several new aspects that would make the administration of the law less complicated. The age of the child remains at seventy-two hours old, the person abandoning the child is restricted to the mother

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<sup>86</sup> Legis. B. 157, 100th Leg., 1st Sess. § 2 (Neb. 2007) (as amended by Sen. Stuthman, Mar. 27, 2007).

<sup>87</sup> Legis. B. 157, 100th Leg., 1st Sess. § 1 (Neb. 2007).

<sup>88</sup> Legis. B. 157, 100th Leg., 1st Sess. §§ 7, 3 (Neb. 2007).

<sup>89</sup> See Partida, *supra* note 15, at 82. If the court is unable to terminate parental rights, adoptive parents may be fearful of adopting a child and connecting with such child when the biological parents still retain their rights. *Id.*

<sup>90</sup> Legis. B. 157, 100th Leg., 1st Sess. § 4 (as amended by Sen. Stuthman, Mar. 27, 2007).

<sup>91</sup> *Id.*

<sup>92</sup> Legis. B. 157, 100th Leg., 1st Sess. § 1 (Neb. 2007).

<sup>93</sup> Legis. B. 157, 100th Leg., 1st Sess. § 4 (Neb. 2007) (as amended by Sen. Stuthman, Mar. 27, 2007). “It is not a violation of this section for a mother to leave a child who is seventy-two hours old or younger with a hospital staff member pursuant to section 1 of this act if the mother provides the hospital staff member with proof of her identity.” Legis. B. 157, 100th Leg., 1st Sess. § 4 (as amended by Sen. Stuthman, Mar. 27, 2007).

<sup>94</sup> Legis. B. 157, 100th Leg., 1st Sess. § 2 (as amended by Sen. Stuthman, Mar. 27, 2007).

<sup>95</sup> Legislative Journal, Carryover Legislation, *Bill Titles, Resolutions, and Subject and Section Indexes Introduced in the One Hundredth Legislature, First Session, 2007, and Pending Before the One Hundredth Legislature, Second Session, 2008*, at 13 (Jan. 9, 2008).

<sup>96</sup> Legis. B. 157, 100th Leg., 2d Sess. (Neb. 2008) (as amended by Sen. Stuthman, Jan. 10, 2008).

and the safe haven location is still limited to a hospital.<sup>97</sup> The amended bill—AM1539—however, includes a provision for the Department of Health and Human Services to inform the Nebraska State Patrol to determine whether the child is a missing person.<sup>98</sup> The newly amended bill also requires the Department to create a “public information program” to inform the public of the Safe Haven law.<sup>99</sup> Notably, the statute is missing the previous requirements to notify the father of a pending adoption,<sup>100</sup> place the child with a foster family, have adoption completed as soon as possible<sup>101</sup> and terminate the rights of the parent who relinquished the child.<sup>102</sup>

Finally, the January 15, 2008<sup>103</sup> and January 21, 2008<sup>104</sup> amendments to the Safe Haven law made further changes. Major changes include the addition of a reclaim provision for mothers who left their child at a hospital and wanted to claim the child within forty-eight hours.<sup>105</sup> That provision was later removed by Legislative Bill 157 ER8131’s amendment to the Safe Haven law.<sup>106</sup> Legislative Bill 157 ER8131 amended the Safe Haven law and extended the age of an abandoned child to “thirty days of age or younger.”<sup>107</sup> That amendment also made the following changes: it allowed any parent, as opposed to only a mother, to make use of the Safe Haven law, deleted the requirement that law enforcement officials receive notice of an abandoned child so as to check that child’s identity against missing persons records, deleted the requirement that the Department quickly place a child in an adoptive home or with a foster family, deleted the father notification requirement, struck the language regarding termination of the rights of the parent who dropped off the child, and deleted the reclaiming provision instituted in the amendment directly before ER8131.<sup>108</sup> It is clear that the Safe Haven law amendments in Legislative Bill 157 ER8131 extremely limited the bill, making it even narrower than it was when the bill was first introduced, by stripping the law of many directives to state actors who were in charge of receiving infants.<sup>109</sup> Perhaps

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<sup>97</sup> Legis. B. 157, 100th Leg., 2d Sess. § 1 (Neb. 2008) (as amended by Sen. Stuthman, Jan. 10, 2008).

<sup>98</sup> Legis. B. 157, 100th Leg., 2d Sess. § 2 (as amended by Sen. Stuthman, Jan. 10, 2008).

<sup>99</sup> Legis. B. 157, 100th Leg., 2d Sess. § 4 (as amended by Sen. Stuthman, Jan. 10, 2008).

<sup>100</sup> Legis. B. 157, 100th Leg., 1st Sess. § 2 (Neb. 2007) (as amended by Sen. Stuthman, Mar. 27, 2007).

<sup>101</sup> Legis. B. 157, 100th Leg., 1st Sess. § 1(7) (Neb. 2007).

<sup>102</sup> Legis. B. 157, 100th Leg., 1st Sess. § 7(3) (Neb. 2007).

<sup>103</sup> Legis. B. 157, 100th Leg., 2d Sess. (Neb. 2008) (as amended by Sen. Stuthman, Jan. 15, 2008).

<sup>104</sup> Legis. B. 157, 100th Leg., 2d Sess. (Neb. 2008) (as amended by Enroll. and Rev. Comm., Jan. 21, 2008).

<sup>105</sup> Legis. B. 157, 100th Leg., 2d Sess. § 2 (as amended by Sen. Stuthman, Jan. 15, 2008).

<sup>106</sup> See Legis. B. 157, 100th Leg., 1st Sess. § 1 (Neb. 2007); Legis. B. 157 (as amended by Enroll. and Rev. Comm., Jan. 21, 2008).

<sup>107</sup> Legis. B. 157, 100th Leg., 2d Sess. § 1 (as amended by Enroll. and Rev. Comm., Jan. 21, 2008).

<sup>108</sup> *Id.*

<sup>109</sup> See Legis. B. 157, 100th Leg., 2d Sess. (as amended by Enroll. and Rev. Comm., Jan. 21, 2008).

these amendments explain why the law was enacted in February 2008 was one sentence long.<sup>110</sup>

The last amendment and the bill that was actually passed struck all the amendments and original sections up to January 29, 2008, and simply said that no one would be prosecuted for leaving a child at a licensed Nebraska hospital.<sup>111</sup> It also said that the hospital should notify the authorities to take custody of the child.<sup>112</sup> Senator Arnie Stuthman indicated that the reason the law was enacted so broadly was because “lawmakers thought the state’s law . . . should be broader to protect all children.”<sup>113</sup> This broad law created a loophole for citizens; since there was no age limit included in the law, children of all ages were taken to safe haven locations in Nebraska.<sup>114</sup>

### *B. Problems with Implementation of the Safe Haven Law*

The law was enacted on February 13, 2008 as an act relating to children, yet there was no clear definition of which children were covered by the statute.<sup>115</sup> The law was therefore utilized by parents who had children that were much older than the infants typically protected by safe haven laws.<sup>116</sup> The situation which captured the most media attention was that of Gary Stanton, a father who relinquished nine of his ten children at a Nebraska hospital.<sup>117</sup> Stanton abandoned the children—who ranged in age from one to seventeen years old<sup>118</sup>—after his wife passed away.<sup>119</sup> Reportedly, Stanton said, “I was able to get the kids to a safe place before they were homeless . . . . I hope they know I love them. I hope their future is better without me around them.”<sup>120</sup> Stanton’s wife died in February 2007, and he deeply mourned her loss. Stanton stated, “I didn’t think I could [raise the children] alone. I fell apart. I couldn’t take care of them.”<sup>121</sup> It did not appear that the children were in any immediate danger or emergency situation.<sup>122</sup>

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<sup>110</sup> See 2008 NEB. LAWS 157.

<sup>111</sup> *Id.*

<sup>112</sup> Legis. B. 157, 100th Leg., 2d Sess. (Neb. 2008) (as amended by Sen. Pirsch, Jan. 29, 2008).

<sup>113</sup> UNITED PRESS INT’L, *supra* note 9, at 1; See also Bryan Painter, *Oklahoma’s Safe Haven Law Aims to Protect Babies*, THE DAILY OKLAHOMAN, Oct. 2, 2008, available at 2008 WLNR 18745858 (Senator Stuthman said “a compromise with Nebraska state senators worried about arbitrary age limits expanded [the bill].”).

<sup>114</sup> Jim Kavanagh, *With Teens Being Left at Hospitals, Nebraska Legislature Sets Hearing*, CNN, Oct. 8, 2008, <http://www.cnn.com/2008/US/10/08/nebraska.safe.haven/index.html>.

<sup>115</sup> See 2008 NEB. LAWS 157.

<sup>116</sup> Eckholm, *supra* note 3.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Eckholm, *supra* note 3.

<sup>122</sup> Kavanagh, *supra* note 114; Eckholm, *supra* note 3. The State director of Children and Family Services cites economic distress as the major issue in Stanton’s case.

Many Nebraska officials frowned upon this type of action by parents. One such person, the director of the state's Children and Family Services, stated: "[It] is not appropriate [to] just say I'm tired of dealing with this and drop the child off at a hospital."<sup>123</sup> Governor of Nebraska, Dave Heineman, another opponent of the law, said "[s]afe haven laws were not designed to allow families having difficulty with older youth and teenagers to abandon their children or responsibilities as parents."<sup>124</sup> Judy Kay of Nebraska's Child Saving Institute said "[Nebraska has] the resources that many parents are not aware of or are not using."<sup>125</sup> Many officials believe that the families should be turning to the social services offered by the state instead of to the Safe Haven law.<sup>126</sup> However, what happened in Nebraska due to this overly-broad law indicates that families are in crisis in America and are struggling to survive every day.<sup>127</sup> The crisis in Nebraska was an indication that while the law was broad and not intended to create a safe haven for all children, there is a demand for a better or different type of service for parents in need of help with their children.

### *C. The Law is Limited*

After much criticism and public outcry about parents so-called shirking their responsibilities, the Nebraska Legislature held a joint hearing on November 13, 2008 to discuss changing the law and providing a solution to the problem.<sup>128</sup> On November 21, 2008, the Legislature revised the statute and limited the age of children who are dropped off at local hospitals under the Safe Haven law to thirty days old.<sup>129</sup> By the time the law was passed, up to thirty-five children, many of whom were over ten years old,<sup>130</sup> had already been dropped off at Nebraska hospitals and police stations.<sup>131</sup> Many children who were abandoned suffered from psychological disabilities, were uncontrollable and were unable to receive any necessary helpful treatment while remaining with their parents.<sup>132</sup> It was said that the relinquishment of so many children was a clear indication that more family services were needed to help families with older children.<sup>133</sup> The Governor has

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<sup>123</sup> Eckholm, *supra* note 3.

<sup>124</sup> Kavanagh, *supra* note 114.

<sup>125</sup> Eckholm, *supra* note 3.

<sup>126</sup> See Eric Eckholm, *An Outcry in U.S. Over Abandoned Youths*, INT'L HERALD TRIB., Oct. 3, 2008, available at 2008 WLNR 18798515. Senator Stuthman says, "[t]here are family services out there, but some people may lack the resources to take advantage of them, and we've got to take a hard look at what more we can provide." *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> Kavanagh, *supra* note 114.

<sup>129</sup> Eckholm, *supra* note 6.

<sup>130</sup> *Id.*

<sup>131</sup> Erik Eckholm, *Special Session Called on Nebraska Safe-Haven Law*, N.Y. TIMES, Oct. 30, 2008.

<sup>132</sup> Eckholm, *supra* note 6.

<sup>133</sup> *Id.*

since established a commission to assist the parents of children with mental illnesses in finding help and support.<sup>134</sup>

Although the Nebraska law was changed to be more in line with the Safe Haven laws of other states and to protect infants, it is clear that there is a familial crisis not only in Nebraska, but in all of the states. There were five cases in which children were brought to Nebraska from other states.<sup>135</sup> One child was brought to Nebraska from as far as California.<sup>136</sup> It is evident, due to some dire family circumstances, that some parents are unable to care for their children and believe that the children will be better off in the hands of the state. This should not be viewed as a shirking of parental responsibility; rather, it should be viewed in a positive light that the parents are aware that their children need someplace safe to be and are aware that they, as parents, cannot provide that for their children.

Although Nebraska chose to limit the law, during the brief time that it was in effect, some of the reported reasons parents took their children to hospitals included mental illness and overall unmanageable behavior.<sup>137</sup> This indicates that the Safe Haven law should be extended to help children in other circumstances, not necessarily just newborn infants. The Nebraska statute and ensuing problems of implementation, coupled with Nixzmary Brown's story illustrate that families in many different situations, including abusive ones, could benefit from a safe haven law as well. An expanded safe haven law in situations of child abuse can provide a parent with an option to protect their child and bring them to a safe location. This option will help non-abusive parents take action to protect their children, while avoiding prosecution for child abandonment or murder if the child were to stay in the abusive situation.

### III. NEW YORK CHILD PROTECTION LAWS

#### *A. Abandoned Infant Protection Act*

The overarching goals of safe haven laws are to provide a safe environment for infants as well as anonymity for parents—presumably young mothers—who choose to leave their children with the authorities. On July 18, 2000, New York passed the Abandoned Infant Protection Act, which provides an affirmative defense to charges of abandonment and endangering the welfare of a child.<sup>138</sup> The Safe Haven statute provides a defense to a charge of abandonment or endangering the welfare of a child; it does not provide outright immunity from crimes, but is instead pleaded as a defense. Practically speaking, the prosecutors probably would not

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<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Boy Dropped Off as Law Changes*, N.Y. TIMES, Nov. 22, 2008.

<sup>137</sup> See Eckholm, *supra* note 6.

<sup>138</sup> Abandoned Infant Protection Act, 2000 N.Y. Sess. Laws ch. 156.



seek out such abandoners, press charges and go through the trial procedures if they knew the child was abandoned under the provisions of the Safe Haven law. Pursuing such a charge would be a waste of prosecutorial and judicial resources.

The Act provides for several amendments to current New York state laws including New York Social Services Law Section 372-g, New York Penal Law Section 260.03 and New York Penal Law Section 260.15.<sup>139</sup> The Act provides the following defense to the charge of child abandonment<sup>140</sup> and endangering the welfare of a child:<sup>141</sup>

[B]ased upon an alleged desertion of a child not more than five days old with an intent to wholly abandon such child, it is an affirmative defense that, with the intent that the child be safe from physical injury and cared for in an appropriate manner, the defendant left the child with an appropriate person or in a suitable location and promptly notified an appropriate person of the child's location.<sup>142</sup>

New York's age limit on abandoned children is five days old, which is older than the age first considered by the Nebraska legislature.<sup>143</sup> However, unlike the Nebraska Legislature, the New York Act provides no clear indication of what particular places serve as safe havens and who the "appropriate person" is that the parent should notify about the child's location.<sup>144</sup>

<sup>139</sup> *Id.* at §§2-4.

<sup>140</sup> N.Y. PENAL LAW § 260.00 reads,

[a] person is guilty of abandonment of a child when, being a parent, guardian or other person legally charged with the care or custody of a child less than fourteen years old, he deserts such child in any place with intent to wholly abandon it. Abandonment of a child is a class E felony.

N.Y. PENAL LAW § 260.00 (McKinney 2008).

<sup>141</sup> N.Y. PENAL LAW § 260.10 reads:

A person is guilty of endangering the welfare of a child when:

1. He knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his life or health; or
2. Being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming an "abused child," a "neglected child," a "juvenile delinquent" or a "person in need of supervision," as those terms are defined in articles ten, three and seven of the family court act. Endangering the welfare of a child is a class A misdemeanor.

N.Y. PENAL LAW § 260.10 (McKinney 2008).

<sup>142</sup> N.Y. PENAL LAW § 260.03 (McKinney 2008).

<sup>143</sup> Nebraska considered seventy-two hours old as the initial age requirement in its safe haven statute.

<sup>144</sup> A family court case in Suffolk County described who is designated as an appropriate person and what place is designated as an appropriate place. *See In re Guardianship of Doe*, 189 Misc. 2d 512, 513-14 (N.Y. Fam. Ct. 2001). The Suffolk County Department of Social Services worked with hospitals in this case to establish safe havens and hospital staff received children dropped off at designated safe haven locations. *Id.* at 514.

*B. Surrender Statute*

At the time the Safe Haven law was proposed, there were arguments from opponents of the legislation who said that a New York statute that satisfied the goals of the Safe Haven law was already in effect.<sup>145</sup> Social Services Law Section 384 “permits parents to surrender guardianship of children, regardless of age, to an authorized agency. Parents electing to take advantage of this process are not subject to criminal prosecution. However, this bill is directed at parents who believe they are in an immediate situation, with no other alternative than abandonment.”<sup>146</sup>

The New York Social Services Law Section 384, Guardianship and custody of children not in foster care, in relevant part reads:

1. Method. The guardianship of the person and the custody of a child who is not in foster care under the age of eighteen years may be committed to an authorized agency by a written instrument which shall be known as a surrender, and signed:

- (a) if both parents shall then be living, by the parents of such child, or by the surviving parent, if either parent of such child be dead;
- (b) if either one of such parents shall have for a period of six months then next preceding abandoned such child, by the other of such parents . . . .<sup>147</sup>

An initial reading of this statute appears to target situations like that of Nixzmary Brown’s. However, the statute requires a parent to sign a written instrument, requiring both parents to relinquish their parental rights to a child if they are still living.<sup>148</sup> In Nixzmary’s situation, where family members told the press that her biological father was not involved in her life,<sup>149</sup> it would have been permissible for her mother to take her to a state agency to give her up for placement in a foster home for adoption.<sup>150</sup> However, it is not clear whether an abused child can be surrendered. The agency would most likely want to prosecute the abandoning parent for abusing the child, the surrender law does not provide for “quasi immunity” from abandonment or endangering the welfare of a child. The hypothetical modified Nebraska law, the AMCPA, would cover instances of abuse, including those instances where the child was being abused by a parent who did not abandon the child. The hypothetical law proposes to address those situations directly, by allowing either parent to take their abused child to a safe haven if they are unable to provide a safe environment for the child. Also, the AMCPA would work in tandem with the Safe Haven statute and provide similar protection as the

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<sup>145</sup> N.Y. Bill Jacket, S.B. 6688, 223rd Leg., ch. 156, ¶ 4 (2000).

<sup>146</sup> *Id.* at ¶ 5.

<sup>147</sup> N.Y. SOC. SERV. LAW § 384 (McKinney 2008).

<sup>148</sup> N.Y. SOC. SERV. LAW § 384(1)(a) (McKinney 2008).

<sup>149</sup> Brick, *supra* note 17.

<sup>150</sup> N.Y. SOC. SERV. LAW § 384(1)(b) (McKinney 2008).

surrender statute for the non-abusing parent of an abused child by providing a defense that could be used only to mitigate a sentence or charge against that parent.

*C. New York Family Court Act*

The Family Court Act in reference to abused children was established in order to protect children from injury and to help safeguard children's mental, physical and emotional health.<sup>151</sup> Through the Act, the Family Court is able to intervene in certain situations irrespective of the parent's wishes.<sup>152</sup> The Family Court Act works in concert with New York Penal Law section 260.10, Endangering the Welfare of a Child.<sup>153</sup> The Family Court Act sets out the definitions for an abused child that are used in many of the statutes that prosecute caregivers for the death or abuse of a minor.<sup>154</sup> An abused child is defined in the Family Court Act:

- (e) "Abused child" means a child less than eighteen years of age whose parent or other person legally responsible for his care
- (i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or
- (ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ . . . .<sup>155</sup>

According to the plain language of the statute, Nixzmary was an abused child and her mother, Nixzaliz Santiago, allowed her husband to commit substantial, violent physical injury against Nixzmary.<sup>156</sup> This definition of child abuse provides a strong and clear message to parents or guardians of children of what abuse is as defined by the state. If a child is suffering from some of the types of abuse, pain and injury that are of concern in the statute, it would make sense to provide the most help for a child in this dire situation. If the onus was not only on

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<sup>151</sup> N.Y. FAM. CT. ACT § 1011 (McKinney 2008).

<sup>152</sup> *Id.*

<sup>153</sup> See N.Y. PENAL LAW § 260.10 (McKinney 2008). Section two of § 260.10 states that a parent or guardian in care of a child younger than eighteen years old is responsible for preventing a child from becoming an abused child as defined in article ten of the Family Court Act. *Id.*

<sup>154</sup> See N.Y. FAM. CT. ACT § 1011 (McKinney 2008). The Act defines several "types" of children, including an abused child and neglected child, and those definitions are often referenced in New York Penal Laws, such as Endangering the Welfare of a Child and Social Services Laws, which guide the activities of Child Protective Agencies. See N.Y. SOC. SERV. LAW § 412 (McKinney 2008); N.Y. PENAL LAW § 260.10 (McKinney 2008).

<sup>155</sup> N.Y. FAM. CT. ACT § 1012 (McKinney 2008).

<sup>156</sup> Andy Newman, *At Trial, Mother as Victim or Catalyst in Girl's Death*, N.Y. TIMES, Sept. 19, 2008. "[Rodriguez] confronted her [Nixzmary], beat her viciously, held her head under cold running water and left her in a bedroom. A few hours later she was dead." *Id.*

ACS to intervene in a home when a problem was reported, but also on the non-abusing parent or guardian, this would assist in saving children from dying at the hands of abusers. It is this additional protective measure option for abused children that the AMCPA seeks to create.

#### IV. NIXZMARY BROWN, A SILENT MOTHER AND VIOLENT STEPFATHER

##### *A. The Abuse and Crime*

On January 10, 2006, Nixzmary Brown was severely beaten by her stepfather, Cesar Rodriguez.<sup>157</sup> Rodriguez repeatedly “disciplined” Nixzmary in violent ways.<sup>158</sup> Rodriguez admitted to “us[ing] all [of his] force” to discipline Nixzmary, saying that he told her: “This is for your own good.”<sup>159</sup> Rodriguez accused Nixzmary of being disobedient and stubborn.<sup>160</sup> He admitted to locking Nixzmary in a room where she used a litter box to urinate and that he sometimes would tie her to a chair with duct tape and twine.<sup>161</sup> Nixzmary weighed thirty-six pounds when she died; Rodriguez said she refused to eat most times.<sup>162</sup>

On January 11, 2006, Nixzmary died in her home.<sup>163</sup> The night before Nixzmary’s death she was beaten by her stepfather when her mother, Nixzaliz Santiago, discovered yogurt missing from the refrigerator.<sup>164</sup> After discovering the missing yogurt, Santiago reportedly notified her husband and Nixzmary denied taking the yogurt.<sup>165</sup> Later that evening Rodriguez noticed his computer printer was not working and was told by one of Nixzmary’s siblings that Nixzmary broke the printer.<sup>166</sup> Brooklyn District Attorney Charles Hynes reported that upon hearing this: “Rodriguez went into a tirade.”<sup>167</sup> Rodriguez beat Nixzmary in front of Santiago and then stripped Nixzmary and dragged her into the bathroom where he ran cold water in the bathtub and held her head under the running water.<sup>168</sup> Hynes continued, “When Rodriguez had Nixzmary in the bathroom, loud banging

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<sup>157</sup> Corey Kilgannon, *Stepfather Recalls Beatings: ‘This Is for Your Own Good’*, N.Y. TIMES, Jan. 20, 2006.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* This room was called “the dirty room” by Nixzmary’s siblings. Brick, *supra* note 17.

<sup>162</sup> Kilgannon, *supra* note 159. Nixzmary’s thirty-six pound weight was half the weight of an average girl her age. Colleen Long, *NYC Jury Convicts Mom in Malnourished Girl’s Death*, WASH. POST, Oct. 17, 2008.

<sup>163</sup> *New Details in Tortured New York Girl’s Death Girl Buried Today as Parents Face Murder Charges*, ABC NEWS, Jan. 18, 2006, <http://abcnews.go.com/US/LegalCenter/story?id=1517137>.

<sup>164</sup> *Final Days of Girl’s Life Reveal Horrors*, USA TODAY, Jan. 21, 2006, [http://www.usatoday.com/news/nation/2006-01-21-child-death\\_x.htm](http://www.usatoday.com/news/nation/2006-01-21-child-death_x.htm).

<sup>165</sup> *Id.*

<sup>166</sup> ABC NEWS, *supra* note 165.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

noises and her screams, ‘Mommy,’ could be heard throughout the apartment.”<sup>169</sup> After this incident, Hynes stated that Rodriguez carried Nixzmary into a room designated the dirty room by her siblings and left her naked on the floor.<sup>170</sup>

Sometime after this beating, Santiago went into the room where Nixzmary lay and gave her a warm bath to warm her up, gave her water, dressed her and left her near a radiator.<sup>171</sup> Eventually, after checking on Nixzmary several times, Santiago notified Rodriguez that something was wrong, but she did not call authorities.<sup>172</sup> By the time Santiago used a neighbor’s phone to call 911, Nixzmary had already been dead for hours.<sup>173</sup> Santiago had her neighbor, Ulbis Rivera, call 911.<sup>174</sup> Rivera stated that Santiago was calm when she came to call 911 and only became emotional when she called 911; Rivera believed the act was staged for the telephone call.<sup>175</sup> Santiago reported to Rivera that Nixzmary had harmed herself.<sup>176</sup> Later, “[a]n autopsy revealed that [Nixzmary] died of cranial bleeding caused by blows to the head.”<sup>177</sup>

### *B. The Trials*

Rodriguez and Santiago were both indicted for second-degree murder, manslaughter, endangering the welfare of a child and unlawful imprisonment.<sup>178</sup> Rodriguez also faced an additional charge of first-degree sexual assault.<sup>179</sup> Rodriguez’s trial was held first, followed by Santiago’s trial.

Rodriguez was convicted of first degree manslaughter<sup>180</sup> and sentenced to twenty-six and one-third years to twenty-nine years in prison with a minimum of fifteen years.<sup>181</sup> Rodriguez admitted to several problems in his life—losing a job and being unable to pay bills.<sup>182</sup> Rodriguez stated: “I just felt like everything was closing in.”<sup>183</sup> Rodriguez’s sense of helplessness and lack of control over his anger was apparent when he said in an interview that he asked Santiago to let Nixzmary live with her grandmother in Puerto Rico, believing that a different living situation

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<sup>169</sup> *Id.*

<sup>170</sup> USA TODAY, *supra* note 165.

<sup>171</sup> Newman, *supra* note 158.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> Fahim & Moynihan, *supra* note 27.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> Andy Newman & Annie Correal, *Stepfather is Convicted of Manslaughter in Beating Death of 7-Year Old Girl*, N.Y. TIMES, Mar. 19, 2008.

<sup>178</sup> ABC NEWS, *supra* note 165.

<sup>179</sup> *Id.*

<sup>180</sup> Newman & Correal, *supra* note 179.

<sup>181</sup> Andy Newman, *Maximum Term for Stepfather in Death of Girl*, N.Y. TIMES, Apr. 4, 2008.

<sup>182</sup> Kilgannon, *supra* note 159.

<sup>183</sup> *Id.*

would be better for the entire family.<sup>184</sup> Rodriguez also stated, “If I could do it all over, I would pressure myself to take her to the precinct and just leave her there.”<sup>185</sup> This comment by Rodriguez is enlightening in light of the purpose of this Note. It appears that Rodriguez was suffering from many family and personal issues as well inappropriately dealing with Nixzmary’s alleged misbehavior. He was a parent at the end of his rope, and although he is not a sympathetic character, the fact that he admitted that giving Nixzmary over to someone else’s care would have been the better decision illustrates a need in some way for safe haven services for abused children.

At Santiago’s trial, her defense attorneys pointed out her many problems as a woman and a mother.<sup>186</sup> They pointed to her struggles to form successful relationships as evidenced by her failed relationships and her being a homeless single mother at twenty-two with four children.<sup>187</sup> Her struggles with learning disabilities as a child were also highlighted.<sup>188</sup> The defense attorneys referred to Santiago as unbalanced; Santiago had suffered a miscarriage and kept some of the fetal tissue at home in a jar.<sup>189</sup> Santiago’s attorney argued that she was unaware of the severity of Nixzmary’s situation and pleaded with her husband to stop beating Nixzmary but failed to adequately help the young girl.<sup>190</sup> Santiago’s attorney continued that Santiago “did what she thought best based on what she perceived.”<sup>191</sup> During the trial, the prosecution reported that Santiago “urged Mr. Rodriguez to deal with Nixzmary harshly after the child jammed his computer printer, and then tried to distance herself from his punishments . . . .”<sup>192</sup>

Unfortunately for Santiago, the picture painted by the defense of a helpless damaged woman was not adequate to acquit her of the charges she faced. Santiago was convicted of manslaughter, unlawful imprisonment and endangering the welfare of a child.<sup>193</sup> Santiago was sentenced to forty and one-third to forty-three years in prison.<sup>194</sup>

Arguably, both depictions of Santiago are accurate, the depiction painted by the prosecution of an indifferent mother and the one painted by the defense of a

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<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> See Fahim & Moynihan, *supra* note 27.

<sup>187</sup> See *id.*

<sup>188</sup> See *id.*

<sup>189</sup> See *id.*; Newman, *supra* note 158 (Santiago miscarried around late 2005 during which time her attorney reported that she became “sufficiently unhinged,” she took the fetus home from the hospital in a jar.).

<sup>190</sup> Andy Newman, *Jury Asked to Decide if Girl Died Because of Her Mother’s Indifference*, N.Y. TIMES, Oct. 15, 2008.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> See Fahim & Moynihan, *supra* note 27.

<sup>194</sup> See Kareem Fahim & Karen Zraick, *Some See Failure of Mother as Factor in Sentencing*, N.Y. TIMES, Nov. 16, 2008.

helpless mother.<sup>195</sup> Due to Santiago's mental imbalance, and perhaps the intimidation by her husband, she remained in her home afraid to contact the authorities to help Nixzmary.<sup>196</sup> In that sense, Santiago remained helpless and that helplessness was perceived as indifference. If Santiago had the option to save Nixzmary by removing Nixzmary from her abusive situation, would Nixzmary be alive today? This is the option that a modified safe haven law for children like Nixzmary and parents, like Santiago, could provide; such a law would afford protection to Santiago by removing Nixzmary from an abusive situation and perhaps assist Santiago in relocating from her home. Perhaps Santiago was afraid of leaving her home with six children, including a newborn.<sup>197</sup> An opportunity to remove Nixzmary from the home, without having to immediately risk the loss of shelter for herself and her family, could have provided an alternative for Santiago. Removal of Nixzmary may have been the best opportunity for her survival, especially since Rodriguez admitted that he wished he could have taken Nixzmary to a police station to leave her there.<sup>198</sup>

One of Santiago's charges was endangering the welfare of a child.<sup>199</sup> If Santiago could have taken advantage of section two of 260.15 of the New York Safe Haven Law, she would have had an affirmative defense for that charge. Santiago would not have been barred by the age limitation in the statute and would have been able to provide a safe location for Nixzmary—away from her dangerous husband. As the prosecution stated during Santiago's trial, she was unbalanced and probably unaware of the severity of that final beating.<sup>200</sup> Arguably, if Santiago was unable to protect her child in her final moments, it may be likely that she would not have been able to notice that something was wrong sooner. This is disputable since at trial Santiago's attorneys pointed to the fact that she attempted on several occasions to intervene during Nixzmary's attacks.<sup>201</sup> Perhaps on some level Santiago was aware of the severe damage that her husband was causing her child. If Santiago could have acted during a period where there was not an immediate crisis situation—the point at which Nixzmary was beaten so severely—she could have taken Nixzmary to the proper authorities for help.

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<sup>195</sup> See Newman, *supra* note 158. "Ms. Santiago fatally shirked a parent's most basic duty: to protect and help her child." *Id.*

<sup>196</sup> See *id.* ("Ms. Santiago . . . was not a killer but another victim of Mr. Rodriguez, immobilized by his rage.") *Id.*

<sup>197</sup> See Long, *supra* note 164; see also Kilgannon, *supra* 159.

<sup>198</sup> See Kilgannon, *supra* note 159.

<sup>199</sup> See Fahim & Moynihan, *supra* note 27.

<sup>200</sup> See *id.*

<sup>201</sup> See Newman, *supra* note 183.

#### V. EXPANDING THE SAFE HAVEN LAW WITHOUT DIMINISHING CHILD PROTECTIVE LAWS

Since the overarching goal of safe haven laws is safety, the desire to protect children in abusive homes should be high on the list for safe haven proponents. While there it is always the state's goal to prosecute abusers and remove abused children from the home, there are situations such as Nixzmary's where for an unknown reason the latter did not occur.<sup>202</sup>

Using Nebraska and New York's safe haven laws as templates, this Note proposes a hypothetical safe haven law for abused children titled the "Abused Minor Child Protection Act" ("AMCPA"), that sets out standards and requirements for removing abused children from their homes and relinquishing them to the state. The AMCPA would contain several provisions addressing the child's age, the person(s) who can relinquish a child, to whom and where the abused child should be released, the actions the state can take to place the child in an appropriate setting, how the state can determine whether any further action is needed in the child's home, and how to prosecute the abuser.

An imperative portion of the AMCPA would be the determination of the child's age; Nixzmary Brown was seven years old when she was beaten and killed by her stepfather.<sup>203</sup> Also, many children who were relinquished to the State of Nebraska before the Legislature decreased the age limit in the Safe Haven Law were over ten years old, which is far beyond the later decreased statutory limit.<sup>204</sup> These instances show that the laws, as they stand, do not assist children who fall outside of the traditional purview of safe haven laws. In an effort to protect older children, the hypothetical AMCPA would provide that children less than eighteen years old could be relinquished to the state if they are abused. The circumstance under which a child is considered to be abused and the definition of an abused child should correlate directly to the abused child definitions, as set out in the Family Court Act and currently used as definitions for many of New York's protective child laws.<sup>205</sup>

Secondly, and just as important as the child's age, is who can relinquish an abused child to the state. In Nebraska, parents made use of the safe haven law for the most part, and in situations of abuse it is most evident that a parent, presumably the non-abusing parent, would want to make use of the AMCPA. The non-abusing

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<sup>202</sup> See Richard Pérez-Peña and Andy Newman, *A Child's Death Commands Lasting Attention and Outrage*, N.Y. TIMES, Jan. 18, 2006. There were many fingers pointed at ACS after Nixzmary's death for its lack of investigation into Nixzmary's home given the complaints of abuse. *Id.* Caseworkers investigated claims of abuse in several cases yet, in many cases, just like that of Nixzmary's, the children ended up dying. *Id.* Nixzmary's death sparked a review of the Administration for Child Services with an announcement of disciplinary action against caseworkers who were involved in Nixzmary's case but failed to assist in her situation to prevent her death. *Id.*

<sup>203</sup> See Kilgannon, *supra* note 159.

<sup>204</sup> See Eckholm, *supra* note 6.

<sup>205</sup> N.Y. FAM. CT. ACT § 1011 (McKinney 2008).



parent should be allowed to take their child to a safe haven location. When an abuser would like to remove an abused child from his or her home the abuser could take an abused child to a safe haven but this relinquishment would only serve as a mitigating factor in the arrest and prosecution of such an abuser.<sup>206</sup> Since the government serves dual roles of protecting children and showing an aggressive hand towards illegal violent activity, the abuser who makes use of the AMCPA would still be subject to child abuse laws, such as endangering the welfare of a child.

In order to prevent the AMCPA from becoming a broad grant of power to anyone to remove a child from an abusive home, certain restrictions should be added. If a person who is not a parent of an abused child is aware of abuse in the home, that person should report the abuse to the proper authorities. While the law should be restricted in terms of who can physically surrender a child, the law should be advertised to tout the importance of reporting abuse crimes to the police. This advertising can aid the authorities, non-abusive parents, and ACS in removing children from abusive homes in a safe and fast manner.

Thirdly, the issues of location and to whom a child may be abandoned are important. Nebraska Safe Haven Law states that a child can be left in the custody of a hospital staff person.<sup>207</sup> The New York Safe Haven Law on the other hand is much less specific about where and to whom a child may be surrendered.<sup>208</sup> In the case of an abused child, the AMCPA, like the Nebraska Safe Haven Law, should state that a child be left at a hospital in the care of a hospital employee.<sup>209</sup> Because abused children should be evaluated psychiatrically and physically upon surrender, the best location for a child is usually the hospital.

Fourthly, like some traditional safe haven laws, if the parent who surrenders the child does not wish to be anonymous, an identification bracelet system can be used to link the parent with the child.<sup>210</sup> This could provide an opportunity for the non-abusing/surrendering parent to remove him or herself from an abusive environment and later re-claim the child. A reunification period should be established so the state is not in limbo when deciding how to best care for the child. A reunification period of six months, where the child could be reunited with his or her parent, may be sufficient. After the end of a reunification period, the state should have proceedings to terminate the parent's rights and take the child into custody. If a parent wishes to be anonymous, issues of foster care placement,

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<sup>206</sup> Rodriguez stated in an interview that he wished he could just leave Nixmary at a police station. Fahim & Moymihan, *supra* note 27.

<sup>207</sup> 2008 NEB. LAWS 157.

<sup>208</sup> N.Y. PENAL LAW § 260.15 (McKinney 2008). The law only requires that the person intended for the child to be safe and appropriately cared for and that the child was left at an appropriate place with an appropriate person. *Id.*

<sup>209</sup> See 2008 NEB. LAWS 157.

<sup>210</sup> See Raum & Skaare, *supra* note 13, at 535, for a discussion of identification bracelets and safe havens.

adoption or termination of parental rights should be assessed. Those issues need to be analyzed to better assess how the state should determine the best interests of the child.

Fifthly, the AMCPA should provide connections with other social services for parents of children who are in continuously abusive home environments. Perhaps the AMCPA could give the parent information on shelters or financial services for assistance in leaving an abusive home. The AMCPA should require that a questionnaire be completed for each child. In this questionnaire, the parent should list his or her address and whether or not any other children are in the home. This will allow the AMCPA, in circumstances where there are other children in the home, to intervene. This would provide another avenue, in addition to the ACS, to prevent further child abuse and ensure safety for all persons involved. If a non-abusing parent is afraid of confrontation or is unable to call the police to the home to report abuse as it is occurring, he or she should use the questionnaire. This would ensure that the abused child is out of harm and allows intervention to occur without the non-abusing parent bearing the responsibility of calling the police to his or her home in the midst of a confrontation.

Since the AMCPA provides an opportunity for a parent to relinquish his or her child into state custody, any ensuing child abuse or death investigation should be prosecuted accordingly against the non-abusing/non-acting parent. The AMCPA should allow for a crime of non-action. The AMCPA would remove the affirmative defense for endangering the welfare of a child that the Abandoned Infant Protection Act provides in non-action instances. In cases of abuse, non-action should be viewed as assisting the abuser to commit the crime. This law would put the onus on the parents to take control of their lives, for their children's sake, and to ensure their safety and the prevention of premature deaths that occur each year.

## VI. PARENTAL ACCOUNTABILITY

Parents should be included in the list of persons who are obligated to report child abuse to the authorities.<sup>211</sup> Extending the obligation for parents to report abusive situations could improve parental accountability for the non-abusing parent. In Nixzmary's situation, Santiago was a permissive parent that allowed her husband to physically injure Nixzmary on several occasions.<sup>212</sup> Santiago should be held accountable for her actions and the fact that she allowed Nixzmary to suffer a helpless, violent, and unnecessary death.

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<sup>211</sup> See Suzanne M. Nicholls, *Responding to the Cries of the Innocent: Holding Non-Offending Parents Criminally Responsible for Failing To Protect the Abused Child*, 30 T. JEFFERSON L. REV. 309, (2007) (reporting statutes should be extended to obligate parents of abused children to report the abuse).

<sup>212</sup> Kilgannon, *supra* note 159.

A way to make Santiago accountable for her actions is to expand the reporting requirements of child abuse laws. An expanded reporting requirement could work in tandem with the AMCPA. The AMCPA could allow a parent or guardian to take his or her child, who is abused by another person in the home, to a location and relinquish parental rights. This could prevent deaths, allow the child's healing process to begin, and hopefully assist the parent in relocating from an abusive environment. Parents who choose not to take advantage of such a law would be held accountable for a failure to report—non-action—as well as charges that would arise from the child's abuse and death of the child, if the child was killed due to the abuse.

Currently, New York has parents in a permissive section of its abuse reporting statute.<sup>213</sup> This means that since parents are not expressly listed in the reporting statute, they are not required to report instances of child abuse to the authorities.<sup>214</sup> “[A] parent who is aware of her own child's abuse, at the hands of another person, cannot be held criminally liable for failing to report the abuse under permissive reporting statutory schemes, such as New York's.”<sup>215</sup> Arizona obligates parents to report child abuse.<sup>216</sup> Criminal liability for lack of reporting, coupled with an opportunity to remove your child to a safe haven and prevent continuing abuse or even death, is a way to address the dire situation of children dying at the hands of abusers in their homes because the non-abusing parent did not help. If non-abusing parents are held to a strict and high standard for allowing their children to be abused without taking any action, it will send out a clear message that the state's intention is first and foremost to save children's lives and to do so through aggressive means against non-abusers, if necessary.

## VII. CONCLUSION

In conclusion, a hypothetical law, the AMCPA, could provide a safe haven for abused children in dire situations. The AMCPA would combat the extensive problem of child deaths from abuse. If parents are able to act to protect their children in this way, then perhaps some children can be saved. While choosing to save lives may infringe on the important mandate to prosecute those who perform illegal actions, it appears to be a necessary concession in the case of child abuse. If the government does not change the way child abuse situations are managed, more children will continue to die and more parents will be charged with their murders. But this will not bring the children back. If the law stays the same and a new approach to helping abused children is not devised, children will continue to live in

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<sup>213</sup> Nicholls, *supra* note 213, at 319.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.* at 319-20.

<sup>216</sup> *Id.* at 320.

a world where they are considered only after the fact because they cannot be saved before the fact.

