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A World Wide Web of Unwanted Children: The Practice, the Problem, and the Solution to Private Re-Homing

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A WORLD WIDE WEB OF UNWANTED CHILDREN: THE PRACTICE, THE PROBLEM, AND THE SOLUTION TO PRIVATE RE-HOMING

S. Megan Testerman* **

Abstract

A deplorable practice has emerged in the world of adoption. Adoptive families are now using the Internet to give their unwanted adopted children over to complete strangers, some of whom are traffickers, pedophiles, child pornographers, or worse. This practice is known as private re-homing. Through the use of online message boards and a simple notarized power of attorney document, adoptive parents are circumventing the adoption system—including its home study and background check requirements for prospective parents—and placing children in great danger. Because only a handful of states have enacted legislation directly targeting private re-homing and because no such legislation exists at the federal level, this Note calls for drastic change to protect the best interests of adopted children. This Note also proposes a model state statute to combat private re-homing. Without regulation or restraint, private re-homing will perpetuate a world wide web of unwanted children. The dangers that this practice poses for adopted children and the severity of its consequences demand the holistic solution that this Note recommends, which includes taking steps at both the state and federal levels to prevent and prohibit private re-homing.

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** J.D. candidate 2016, University of Florida Levin College of Law; B.A. 2012, University of Florida. I would like to dedicate this Note to my mom for spending the final twenty-four years of her life stirring my passions and believing that I could change the world with my words. She was my biggest fan. I would like to thank the Fields and Kurdziel families for adopting and loving their children unconditionally as well as for being a constant reminder of how beautiful adoption can be. Additionally, I would like to thank Alyse Atkinson Young for her research on this deplorable practice and, along with Marie Banks, for spurring me on to fight for justice for the marginalized, victimized, and oppressed. I would also like to thank Professor Stephen Pennypacker for his guidance in writing this Note. Lastly, I would like to thank the members of the Florida Law Review, specifically Aubrey Burris and my advisors in the Notes & Comments department for making the Note-writing process a joy; Marla Spector Bowman and Rebekah Runyon for a warm welcome onto the Review, as well as for their encouragement, care, and laughter both in and out of the office; and all of the other members who worked hard to edit this Note.

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INTRODUCTION

Imagine spending the first few years of your life in a foreign institution with other orphans. The conditions disgust you. Diseases and disorders fill every crevice of the small, crowded space around you.¹ After years of neglect and inadequate nurturing and nutrition, you receive the news you have been awaiting—a family in America wants to adopt you. Hope rushes through your fragile frame at the first thoughts of a family, food, shelter, protection, comfort, and, most of all, love. Although the adoption process lasts for what feels like an eternity, your new family eventually brings you home. The transition is difficult, and problems arise between you and your adoptive family. However, even the worst days are still better than the days spent in that institution.

It all seems like a dream come true until one day, months later, your adoptive mother drives you to another state, hands you over to a couple you have never met, says goodbye, and drives away. Within a matter of hours, you long for the days in that crowded, disgusting institution as you realize your mother left you in the hands of a pedophile she found using an internet forum. Surely there is no way your own mother, the mother who traveled around the world to bring you home to live with her, could ever do this to you. But she did, and so do other parents across the United States through the practice of private re-homing.²

1. For a description of foreign orphanages, see Laura A. Nicholson, Note, *Adoption Medicine and the Internationally Adopted Child*, 28 AM. J.L. & MED. 473, 476 (2002) (“Foreign orphanages are often in deplorable condition. In 1996, for instance, Human Rights Watch, a human rights advocacy group, condemned China’s orphanages because of a ninety-percent death rate. Many orphaned children are malnourished, developmentally and physically stunted, and ill with indigenous infectious diseases. Russian orphans, for example, are often diagnosed with rickets, and Central American orphans often have parasites.” (citations omitted)).

2. See Megan Twohey, *Adopted Girl: I Was ‘Re-homed’ After Reporting Dad’s Alleged Sex Abuse*, NBC NEWS (Mar. 21, 2014, 11:06 AM), <http://www.nbcnews.com/storyline/re-homing/adopted-girl-i-was-re-homed-after-reporting-dads-alleged-n57671> [hereinafter Twohey, *Reporting Dad’s Abuse*] (describing the story of a fourteen-year-old girl whose adoptive parents re-homed her three times in two years, including into a family where the other children accused their father of molesting them); Megan Twohey, *Adopted Girl: ‘My Parents Didn’t Want Me. I Didn’t Want to Live,’* NBC NEWS (Sept. 11, 2013, 6:28 AM), <http://www.nbcnews.com/news/investigations/adopted-girl-my-parents-didnt-want-me-i-didnt-want-v20425102> [hereinafter Twohey, *Unwanted*] (describing the story of a girl re-homed to three different families, including a family with a violent husband who sexually abused her); Megan Twohey, *The Child Exchange: Inside America’s Underground Market for Adopted Children Part 1*, REUTERS (Sept. 9, 2013), <http://www.reuters.com/investigates/adoption/#article/part1> [hereinafter Twohey, *Child*].

Quita experienced this appalling practice firsthand.³ The Puchallas adopted Quita from Liberia, raised her for two years, and then decided they no longer wanted her.⁴ The family turned to the Internet for a solution to their problem, posted an advertisement online seeking a new family for Quita, and, within a matter of days, received an offer from a stranger willing to give Quita a new home.⁵ The Puchallas drove Quita from Wisconsin to Illinois, the location of the stranger's home—a trailer park—where the Puchallas met the Easons for the first time.⁶ Then, by signing a notarized power of attorney document, the Puchallas gave these “virtual strangers” guardianship rights to Quita.⁷

Soon after the Puchallas left Quita with the Easons, they became concerned because the Easons stopped responding to their requests for updates about Quita.⁸ Unbeknownst to the Puchallas, the Easons had taken Quita to New York without leaving any information about their new location or whether they would ever return.⁹ Only after the Puchallas attempted to track down the Easons and Quita did they learn the alarming truth about the family with whom they left their adopted daughter.¹⁰ As it turns out, Nicole Eason lost custody of her biological children because of psychiatric problems and violent tendencies;¹¹ allegedly sexually abused children she babysat;¹² and, according to Quita, wanted to sleep naked in bed with her.¹³

After discovering Quita's whereabouts in New York, the authorities' only response was returning Quita to the Puchallas,¹⁴ the family that so

Exchange Part 1] (describing the story of a girl re-homed to a family with a history of fraud and abuse); Megan Twohey, *The Child Exchange: Inside America's Underground Market for Adopted Children Part 2*, REUTERS (Sept. 9, 2013), <http://www.reuters.com/investigates/adoption/#article/part2> [hereinafter Twohey, *Child Exchange Part 2*] (describing the story of an adoptive parent re-homing her ten-year-old adopted son to a man later convicted on child pornography charges).

3. Twohey, *Child Exchange Part 1*, *supra* note 2.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* In another story involving Nicole Eason, Megan Twohey, a Reuters investigative reporter, elaborated on Eason's background to note the reasons Eason lost custody: “[t]he home environment was deplorable,” “physical abuse on another child,” and “severe psychiatric problems as well with violent tendencies.” Twohey, *Child Exchange Part 2*, *supra* note 2 (quoting a March 27, 2002, sheriff's report).

12. Twohey, *Child Exchange Part 1*, *supra* note 2.

13. *Id.*

14. *Id.*

thoughtlessly and recklessly gave her away in the first place.¹⁵ No one took legal action, which left the Easons free to take another child the same way they took Quita¹⁶ and the same way Nicole Eason had helped take another child before Quita.¹⁷ Instead of a happy ending, this story of Quita ends with her wondering how the same parents who adopted her could give her away to dangerous strangers they met on the Internet.¹⁸

Stories such as Quita's depict a deplorable reality in the world of adoption—adoptive families are using the Internet to give their adopted children over to others, some of whom would never be eligible to adopt children through the adoption system.¹⁹ Private re-homing, unlike adoption through the system, entails transferring custody of unwanted adopted children using online message boards.²⁰ Historically, people have used the term “private re-homing” to discuss finding new placements for pets, but now it describes custody transfers of children handled in much the same way.²¹ Treating these children as commodities, the adoptive parents pass them along to other families that often consist

15. This is not the only instance in which authorities sent the children back to the families that re-homed the children. Johnathan James Nobile, Note, *Adoptions Gone Awry: Enhancing Adoption Outcomes Through Postadoption Services and Federal and State Laws Imposing Criminal Sanctions for Private Internet Rehoming*, 53 FAM. CT. REV. 474, 476 (2015). Additionally, in multiple instances, authorities did not bring any charges against the families for re-homing the children. *Id.*

16. See Twohey, *Child Exchange Part 1*, *supra* note 2.

17. See Twohey, *Child Exchange Part 2*, *supra* note 2 (describing an incident where Nicole Eason took a child with the help of Randy Winslow, a man later convicted of child pornography).

18. See Twohey, *Child Exchange Part 1*, *supra* note 2.

19. See *id.* (revealing the practice of exchanging adopted children through internet advertisements).

20. Twohey, *Child Exchange Part 2*, *supra* note 2; see also Twohey, *Unwanted*, *supra* note 2 (“[P]arents market their unwanted kids online and pass them along to others – quickly, often illegally, and almost always without consequence for the adults.”).

21. Kathryn Huber, *Free to a Good Home: America's Unregulated Online Market for Adopted Children*, 19 PUB. INT. L. REP. 1, 2 (2013); see also Twohey, *Child Exchange Part 1*, *supra* note 2 (describing re-homing as “a term typically used by owners seeking new homes for their pets”). Surprisingly, when it comes to private re-homing, pets sometimes actually have more protections than these unwanted children. See Megan Twohey, *U.S. Lawmakers Call for Action to Curb Internet Child Trading*, REUTERS (Oct. 29, 2013, 5:37 PM), www.reuters.com/article/2013/10/29/us-adoption-react-idUSBRE99S1A320131029 (recounting the statement by Representative Sara Feigenholtz: “My cat has more protections than the children I’m talking about”). One proposed pre-adoption prevention of private re-homing that this Note does not address involves implementing protections similar to those provided for adopted pets known as pre-adoption contracts. Destinee Roman, Comment, *Please Confirm Your Online Order: One Child Adopted from Overseas at No Cost*, 52 HOUS. L. REV. 1007, 1025 (2015) (“Pet owners who violate these agreements, moreover, become liable for breach of contract, and courts can order them to return the pet or pay money damages. Extending this same protection to children by mandating a similar provision in adoption contracts might make parents think twice before rehoming their adopted children.” (citations omitted)).

of complete strangers.²²

If this practice remains unregulated and unrestrained, then parents will continue to give their unwanted adopted children to potentially dangerous strangers they meet on the Internet. Thus, an urgent need exists to combat private re-homing, and this Note proposes a solution. Part I begins with a historical look at adoption and the development of legislation focusing on the best interests of the child. Part II describes the practice and dangers associated with private re-homing, a practice contrary to the best interests of the child. Part III analyzes the limited existing legislation combating private re-homing, at both the state and federal levels. Finally, Part IV proposes a holistic solution to private re-homing through prevention and prohibition of the practice with the best interests of the child in mind. Part IV also proposes a model state statute and analyzes why that statute is more effective and comprehensive than any existing or currently proposed legislation.

I. HISTORICAL PERSPECTIVE ON ADOPTION

The earliest systems of law contain references to adoption.²³ At its beginning, adoption existed to prevent the extinction of families.²⁴ Since its arrival in the United States, adoption law has evolved to meet a new goal—protecting the best interests of the child—and to meet the demands of globalization. This Part discusses the arrival of adoption law in the United States, its expansion to include international adoption, and the development of legislation to protect and serve the best interests of the child.

A. *The Origin of Adoption in the United States and the Rise of International Adoption*

Without any English precedent,²⁵ the legislatures in the United States borrowed from other systems of law to develop adoption law.²⁶ Legislatures primarily pulled from Roman law,²⁷ but because that law focused on protecting the interests of parents through the continuation of the family line, American law diverged from the Roman system to focus

22. See Twohey, *Child Exchange Part 1*, *supra* note 2.

23. Leo Albert Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743, 744 (1956).

24. *Id.* at 743.

25. See *id.* at 745 (discussing the lack of adoption law in England due to the emphasis on blood lineage).

26. *Id.* at 747.

27. John Francis Brosnan, *The Law of Adoption*, 22 COLUM. L. REV. 332, 332 (1922).

on the interests of the child.²⁸ American adoption law therefore finds its deepest roots in a concern for the welfare of children.²⁹

In the United States, adoption was private until 1851 when Massachusetts enacted the Massachusetts Adoption of Children Act.³⁰ This act required probate courts to review adoptions and determine whether a prospective adoptive parent was able to care and provide for the adopted child.³¹ Thus, the first big development in adoption law involved an investigation of prospective adoptive parents,³² laying the foundation that American adoption law serves the best interests of the child. All states now have adoption laws that focus on the interests of the child.³³

Americans did not only adopt children living within the borders of the United States. After World War II, the Korean War, and the Vietnam War, Americans began adopting internationally.³⁴ American soldiers saw the vast number of children left homeless and parentless due to these conflicts and adopted some of them.³⁵ At the beginning of the twenty-first century, the United States welcomed more than 15,000 children each year through international adoptions, with the highest number—22,000 children—arriving in 2004.³⁶ Even with a decline in recent years, the United States still has a higher number of international adoptees entering the country each year than any other nation.³⁷

28. Kathleen M. Lynch, *Adoption: Can Adoptive Parents Change Their Minds?*, 26 FAM. L.Q. 257, 258–59 (1992); see also Huard, *supra* note 23, at 745 (stating that early adoption law involved no concern for what was in the best interests of the child).

29. See Huard, *supra* note 23, at 748–49.

30. Lynch, *supra* note 28, at 259; see also J. Savannah Lengsfelder, *Who Is a “Suitable” Adoptive Parent?*, 5 HARV. L. & POL’Y REV. 433, 433 (2011) (stating that the first American adoption statute existed in Massachusetts in 1851). *But see* Huard, *supra* note 23, at 748 (stating that the earliest adoption statute was in Mississippi in 1846).

31. Lynch, *supra* note 28, at 259.

32. Huard, *supra* note 23, at 749.

33. Lynch, *supra* note 28, at 259; see, e.g., FLA. STAT. § 63.022 (2015) (“It is the intent of the Legislature that in every adoption, the best interest of the child should govern and be of foremost concern in the court’s determination. The court shall make specific finding as to the best interests of the child . . .”).

34. Ann Laquer Estin, *Families Across Borders: The Hague Children’s Conventions and the Case for International Family Law in the United States*, 62 FLA. L. REV. 47, 80 (2010); Elizabeth Long, Note, *Where Are They Coming from, Where Are They Going: Demanding Accountability in International Adoptions*, 18 CARDOZO J.L. & GENDER 827, 829 (2012).

35. Long, *supra* note 34, at 829.

36. Estin, *supra* note 34, at 68.

37. U.S. DEP’T OF STATE, OFFICE OF CHILDREN’S ISSUES, INTERCOUNTRY ADOPTION FROM A TO Z 3, available at http://travel.state.gov/content/dam/aa/pdfs/Intercountry_Adoption_From_A_Z.pdf (last visited Nov. 20, 2015).

B. *The Development of Adoption Legislation*

With adoption popularity on the rise,³⁸ the United States needed to develop adoption legislation to ensure that all adoptions, whether domestic or international, would be in the best interests of the child. Because “[t]he goal of adoption is to create a new legal family with some semblance of permanence,”³⁹ the legislation had to fulfill that goal.

Regarding domestic adoption, each state created its own set of laws to regulate adoptions that occur within its borders.⁴⁰ However, not all domestic adoptions occur within state lines. All fifty states therefore enacted the Interstate Compact on the Placement of Children (ICPC) to protect children whose adoptions occur over state lines.⁴¹ The ICPC prescribes the procedures and requirements for interstate adoptions.⁴² Under the ICPC, both the sending and receiving state must approve the placement.⁴³ Anyone who violates the ICPC is subject to punishment based on state laws in both of the states involved in the adoption.⁴⁴ The ICPC, like all other adoption laws in the United States, is in place to ensure that the placement is in the child’s best interests.⁴⁵

Regarding international adoption, some countries were concerned about adopting children from other countries that did not regulate adoptions. However, the condition of children living in institutions in some of those countries created the need to find a way for international adoption to both continue and thrive.⁴⁶ The 1989 United Nations Convention on the Rights of the Child provided that “all children have the right to education, right to a home, right to family, right to health and

38. See Elizabeth Bartholet, *Permanency Is Not Enough: Children Need the Nurturing Parents Found in International Adoption*, 55 N.Y.L. SCH. L. REV. 781, 782 (2010–2011) (noting that at its highest number, approximately 40,000 children found homes through international adoption each year, “including more than 20,000 homes in the United States”).

39. Lynch, *supra* note 28, at 257.

40. See *State Adoption Laws*, ADOPTION.COM, <http://laws.adoption.com/statutes/state-adoption-laws.html> (last visited Nov. 20, 2015) (containing links to adoption laws by state); see also U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILDREN’S BUREAU, WHO MAY ADOPT, BE ADOPTED, OR PLACE A CHILD FOR ADOPTION? 1 (2012), available at <https://www.childwelfare.gov/pubPDFs/parties.pdf> (summarizing the state laws regarding who may adopt, who may be adopted, and who may place a child for adoption).

41. See AM. PUB. HUMAN SERVS. ASS’N, GUIDE TO THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN 1–2, 8–25 (2002), available at <http://www.childsworld.ca.gov/res/pdf/ICPCGuidebook.pdf> (containing the ICPC and regulations).

42. *Id.* at 2.

43. See Lori L. Klockau, *A Primer on Adoption Law*, FAM. ADVOC., Winter 2009, at 16, 19.

44. AM. PUB. HUMAN SERVS. ASS’N, *supra* note 41, at 6.

45. See *id.* at 3.

46. See Estin, *supra* note 34, at 56.

medical care, and right of protection from abuse and neglect.”⁴⁷ Although the United States did not sign this convention,⁴⁸ it paved the way for the subsequent Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention)⁴⁹ and the Intercountry Adoption Act (IAA)⁵⁰ by emphasizing the best interests of the child in international adoption.⁵¹ On March 31, 1994, the United States signed the Hague Convention.⁵² In 2000, Congress passed the IAA to implement the provisions of the Hague Convention.⁵³ Finally, in April of 2008, the Hague Convention took effect in the United States.⁵⁴

The Hague Convention matched the United States’ focus on the best interests of the child by stating that adoption, even international adoption, is more desirable than a child remaining in an institution.⁵⁵ Not only does the Hague Convention serve the interests of the child,⁵⁶ it also benefits the prospective adoptive parents because it makes international adoption more predictable and reliable.⁵⁷ It does so by removing some of the risks of international adoption, including fraud and illegality.⁵⁸

Overall, the Hague Convention acts as an international agreement to protect adoptions.⁵⁹ It protects adoptions by requiring the use of accredited adoption agencies or service providers in facilitating adoptions.⁶⁰ Additionally, the Hague Convention requires that the

47. Jaci L. Wilkening, Note, *Intercountry Adoption Act Ten Years Later: The Need for Post-adoption Requirements*, 72 OHIO ST. L.J. 1043, 1047–48 (2011).

48. *Id.* at 1048. One reason the United States did not sign the United Nations Convention on the Rights of the Child was because it stated that institutions in the child’s home country were preferable to international adoption. See Estin, *supra* note 34, at 56. The Hague Convention, on the other hand, emphasized that “adoption [is] preferable to institutional care, even when this required that a child move to another country.” *Id.*

49. Hague Conference on Private International Law, Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, S. TREATY DOC. No. 105-51 [hereinafter Hague Convention], available at <http://www.hcch.net/upload/conventions/txt33en.pdf> (enumerating the text of the Hague Convention).

50. 42 U.S.C. §§ 14901–14954 (2012).

51. See *id.* § 14901; Hague Convention, *supra* note 49.

52. Andrew C. Brown, Comment, *International Adoption Law: A Comparative Analysis*, 43 INT’L LAW. 1337, 1340 (2009).

53. *Id.*

54. *Id.*

55. See Estin, *supra* note 34, at 56.

56. See Hague Convention, *supra* note 49 (stating that a purpose of the Hague Convention is to “ensure that intercountry adoptions are made in the best interests of the child”).

57. Long, *supra* note 34, at 842.

58. See *id.*

59. See U.S. DEP’T OF STATE, *supra* note 37, at 11.

60. *Id.* at 5.

sending country ensures that the child is adoptable,⁶¹ that efforts have been made to find a placement in the child's home country, and that this particular adoption is in the best interests of the child.⁶² The role of the receiving country is to ensure that the prospective adoptive parents are both eligible and suitable to adopt.⁶³ The regulations implementing the Hague Convention and the IAA⁶⁴ require a home study to determine the suitability to adopt,⁶⁵ a statement disclosing the prospective adoptive parents' training and counseling,⁶⁶ and a criminal background check on the prospective parents.⁶⁷

The Hague Convention "[recognizes] that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding."⁶⁸ However, not every country that Americans adopt from is a party to the Hague Convention.⁶⁹ Different methods of international adoption exist depending on the country from which they are adopting.⁷⁰ Parents use the Orphan Adoption Process when adopting children from non-Hague Convention countries or the Hague Adoption Convention Process when adopting children from Hague Convention countries.⁷¹ Regardless of the method, prospective adoptive parents must file an application with the U.S. Citizenship and Immigration Services, which includes a form, home study, fee, and other required documents.⁷² Thus, all American international adoption legislation ensures that each adoption is in the best interests of the child.

61. See Brown, *supra* note 52, at 1348 (stating that to be adoptable means "th[e] child must meet the requirements of adoptability under the laws of her home country as well as the immigration and naturalization laws of her adoptive parents' home country").

62. See Estin, *supra* note 34, at 84; Hague Convention, *supra* note 49.

63. See Hague Convention, *supra* note 49.

64. 22 C.F.R. §§ 96–98 (2015).

65. See *id.* § 96.47 (stating the home study requirements).

66. See *id.* § 96.48 (stating the preparation and training requirements).

67. Wilkening, *supra* note 47, at 1051.

68. Hague Convention, *supra* note 49.

69. See *Convention Countries*, U.S. DEP'T OF STATE, <http://travel.state.gov/content/adoptionsabroad/en/hague-convention/convention-countries.html> (last visited Nov. 20, 2015).

70. Long, *supra* note 34, at 835.

71. See *id.*

72. See *Eligibility to Adopt*, U.S. DEP'T OF STATE, <http://travel.state.gov/content/adoptionsabroad/en/adoption-process/who-can-adopt/eligibility-to-adopt.html> (last visited Nov. 20, 2015). The form for adoptions from non-Hague Convention countries is the I-600A, and the form for adoptions from Hague Convention countries is the I-800A. *Id.*; see also U.S. DEP'T OF STATE, *supra* note 37, at 14 (outlining the qualifications for classification as an orphan adoptee and a convention adoptee in regard to the visa application).

Despite the extensive requirements for both domestic and international adoptions to protect the best interests of the child, the adoption system contains flaws that this Note discusses. However, the system is far better than what some adoptive parents now consider as an alternative—private re-homing.

II. THE EMERGENCE AND PRACTICE OF PRIVATE RE-HOMING

“Everybody figures you come home and you’re one big, happy family . . . I expected it to be like a greeting card, but it doesn’t happen that way,” one parent said.⁷³ When it does not happen that way, adoptive parents face many difficult decisions. Unfortunately for adopted children across the United States, some parents turn to the Internet to find new homes for their unwanted adopted children. This Part discusses the various causes of private re-homing, the process of this child exchange, and the consequences of the practice.

A. *The Causes of Private Re-homing*

Because adoptive parents endure the long and expensive process of adopting through the system,⁷⁴ the fact that some turn to the Internet to quickly and freely give these adopted children away seems unbelievable. Surprisingly, people who are clearly bad parents are not the only ones who resort to private re-homing; even those who are suitable and eligible to adopt may turn to private re-homing because they are unprepared and overwhelmed.⁷⁵ Few options exist for adoptive parents who become overwhelmed by their adopted children,⁷⁶ and unfortunately not everyone has access to even those limited options.

Thanks to a perfect storm of weak legal protections with even weaker enforcement, the fact that no authority tracks what happens to a child in the U.S. after an international

73. Olga Grosh, Note and Comment, *A Call of Duty: Preventing Adoption Disruption by Expanding Adoption Providers’ Responsibility to Investigate and Disclose Adoptive Children’s Medical History*, 11 WHITTIER J. CHILD & FAM. ADVOC. 149, 157 (2011) (quoting an adoptive parent of children with mental and physical development problems).

74. Cf. *Child Exchange Part 1*, *supra* note 2 (contrasting the requirements of the adoption system, such as background checks and home studies, with the lack of those in private re-homing).

75. Nila Bala, *The Children in Families First Act: Overlooking International Law and the Best Interests of the Child*, 66 STAN. L. REV. ONLINE 135, 137 (2014).

76. See generally EVAN B. DONALDSON ADOPTION INSTITUTE, KEEPING THE PROMISE: THE CRITICAL NEED FOR POST-ADOPTION SERVICES TO ENABLE CHILDREN AND FAMILIES TO SUCCEED (2010), available at http://aap.uchc.edu/events/pdfs/keeping_promise_10_20_2010.pdf (discussing the need for post-adoption services for adoptive families); *Child Exchange Part 1*, *supra* note 2 (describing reasons why parents turn to the Internet, including the cost of treatment centers, lack of aid from social services, and a fear of being investigated for abuse or neglect if parents go to the authorities for help).

adoption, the prevalence of online groups devoted to private custody transfers, and the lack of support or resources for overwhelmed adoptive families, parents are increasingly turning to the internet to give their children away to strangers—with no legal repercussions or oversight.⁷⁷

Regardless of whether parents adopt a child domestically or internationally, the allure of an easy way out of an adoption in a desperate situation leads to an Internet full of advertisements for unwanted adopted children.⁷⁸ So what exactly creates this desperate situation in the first place?

1. Inadequate Medical and Social History Disclosure

Without adequate disclosure of adopted children's medical and social histories, prospective adoptive parents cannot properly prepare for their children.⁷⁹ A leading cause of adoption disruption⁸⁰ is inadequate information about the children.⁸¹ Because of inadequate disclosures, adoptive parents are left with unrealistic expectations⁸² as well as potential harm to themselves and their children.⁸³ Parents raising an adopted child may face different challenges from those of raising a

77. Huber, *supra* note 21, at 2 (citations omitted).

78. See *Child Exchange Part 1*, *supra* note 2 (surveying a list of thousands of internet postings advertising children adoptive parents wanted to re-home).

79. See Note, *When Love Is Not Enough: Toward a Unified Wrongful Adoption Tort*, 105 HARV. L. REV. 1761, 1761 (1992) [hereinafter *When Love Is Not Enough*]. For an illustrative example of the repercussions of inadequate disclosure of information about adopted children, see Twohey, *Unwanted*, *supra* note 2. The adoption agency told Igna's adoptive parents that she was younger than she actually was, and the agency failed to disclose that she could not read or write and that she suffered from depression and post-traumatic stress disorder. *Id.* Consequently, Igna became a victim of private re-homing. *Id.*

80. Disruption is when an adoption ends before it is legally finalized. U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILDREN'S BUREAU, ADOPTION DISRUPTION AND DISSOLUTION 1 (2012) [hereinafter DHHS, CHILDREN'S BUREAU, DISRUPTION AND DISSOLUTION], available at https://www.childwelfare.gov/pubPDFs/s_disrup.pdf. Adoption dissolution, however, occurs when an adoption ends after the adoption is finalized. *Id.*

81. Grosh, *supra* note 73, at 161; see also *When Love Is Not Enough*, *supra* note 79, at 1764 ("Of the families surveyed, roughly one-third of those that had adopted physically abused children were not informed of the abuse at the time of the adoption; more than one-half of the families that had adopted sexually abused children were not told of the abuse before they finalized the adoptions.").

82. D. Marianne Brower Blair, *Admonitions or Accountability?: U.S. Implementation of the Hague Adoption Convention Requirements for the Collection and Disclosure of Medical and Social History of Transnationally Adopted Children*, 40 CAP. U. L. REV. 325, 332–33 (2012).

83. See Dianne Klein, 'Special' Children: Dark Past Can Haunt Adoptions, L.A. TIMES (May 29, 1988), http://articles.latimes.com/1988-05-29/news/mn-5567_1_adoptive-parents/2 (depicting the dangers of a failure to disclose the medical history of an adopted child).

biological child.⁸⁴ Adopted children are at an elevated risk for behavioral, emotional, psychological, and developmental problems.⁸⁵ Additionally, children adopted internationally pose different challenges from those adopted domestically because international adoptees have unique medical and behavioral problems.⁸⁶ These differences create a heightened need for detailed and comprehensive medical and social history disclosure.

Unfortunately for adoptive parents, legislation related to the adopted child's medical and social history disclosure fails to adequately protect the children and their families.⁸⁷ This is because the legislation does not specify standards for the duty to disclose information, leaving agencies with the discretion to determine which facts to disclose.⁸⁸ The regulations are also too vague and lack important information about what to provide for adequate disclosure.⁸⁹ Without accurate details about the adopted child's medical and social history, parents may find themselves unable to properly care for the child and may then turn to private re-homing in hopes of finding a family better suited for their child.

2. Insufficient Training for Adoptive Parents

Although prospective adoptive parents must receive training prior to adoption, many parents are still unprepared to raise an adopted child.⁹⁰ Each state prescribes its own training requirements,⁹¹ but international adoptions differ from domestic adoptions in that parents adopting

84. See EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 76, at 13–15 (describing studies on adopted youth). Other “[s]tudies show that roughly seventy-five percent of adopted children have special needs.” Nobile, *supra* note 15, at 477.

85. EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 76, at 5. This is because adopted children often face some kind of maltreatment. See *id.* Statistically speaking, “approximately three to six percent of children below the age of six in the general population suffer from behavior problems as compared to approximately twenty-five to forty percent of foster children.” Nobile, *supra* note 15, at 477.

86. Bala, *supra* note 75, at 137; see also Blair, *supra* note 82, at 345 (discussing the impact of institutions on adopted children's medical and social histories); EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 76, at 10 (discussing the problematic conditions faced by international adoptees).

87. See *When Love Is Not Enough*, *supra* note 79, at 1765.

88. See *id.*

89. See Blair, *supra* note 82, at 360 (“Certain critical categories of information necessary to obtaining a thorough medical and social history are excluded, which is particularly surprising because their absence or withholding have been at the heart of much of the litigation involving both foreign and domestic adoption.”).

90. See Nicholson, *supra* note 1, at 481.

91. See, e.g., 12 COLO. CODE REGS. § 2509-8:7.710.55 (2015). For a discussion of the strengths of Colorado's legislation, see *infra* notes 232–36 and accompanying text.

internationally receive even less training—if they receive any at all.⁹² Parents adopting internationally under the Hague Convention must receive at least ten hours of training,⁹³ but even this amount is inadequate and the quality of the programs may vary.⁹⁴ This leaves many parents unprepared for what could be a daunting task of raising an adopted child and leaves the children highly susceptible to re-homing.⁹⁵ Consequently, whether adopting domestically or internationally, parents are often not adequately prepared to understand the difficulties of raising an adopted child, how to properly handle these difficulties, or where to turn for help.⁹⁶ This lack of preparation can easily lead to “feelings of anxiety, anger and inadequacy [that] can feed a destructive cycle”⁹⁷ and eventually lead to private re-homing.⁹⁸

3. Lack of Post-adoption Services and Support

The stories of re-homing illustrate the strong need for post-adoption services.⁹⁹ Categories of post-adoption services include clinical services, material services, and educational and information services.¹⁰⁰ Even if services are available, however, some adoptive parents cannot afford to send their adopted child to a treatment center that could provide professional help and counseling for the child,¹⁰¹ and social services will not always be able to help in these situations.¹⁰² Sadly for adoptive families needing help with their international adoptees, Congress

92. *Child Exchange Part 1*, *supra* note 2.

93. See Blair, *supra* note 82, at 374–75.

94. See Lengsfelder, *supra* note 30, at 446.

95. See Twohey, *Child Exchange Part 1*, *supra* note 2 (“International adoptees are especially susceptible to being re-homed.”); Huber, *supra* note 21, at 3 (“Internationally adopted children are uniquely vulnerable to re-homing.”).

96. See EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 76, at 9.

97. Kate Snow, Kevin Monahan & Monica Alba, ‘The Wildest Ride’: Adoptive Parents Struggle to Conquer Trauma, NBC NEWS (Mar. 22, 2014), <http://www.nbcnews.com/storyline/re-homing/wildest-ride-adoptive-parents-struggle-conquer-trauma-n58891>.

98. See Leslie A. Gordon, *Far from Home: States Begin to Crack Down on Parents ‘Re-Homing’ Their Adopted Kids*, A.B.A. J., Dec. 2014, at 17, 18 (describing “woefully slim pre-adoption training” as a cause of re-homing).

99. See Bala, *supra* note 75, at 136. For international adoptions, “post-adoption services are defined as the services performed after a final adoption decree is granted in the sending country.” Wilkening, *supra* note 47, at 1053.

100. Richard P. Barth & Julie M. Miller, *Building Effective Post-adoption Services: What Is the Empirical Foundation?*, 49 FAM. REL. 447, 450 (2000).

101. See EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 76, at 26–27.

102. See *id.* at 27 (citing budget cuts and subsidy reductions in many states as the cause of social services’ inability to help); see also Snow, Monahan & Alba, *supra* note 97 (describing how the Dittenbers “tried without success to get help from social service agencies” when they immediately clashed with their adopted daughter Nita).

specifically did not include funding for post-adoption services under the IAA.¹⁰³ Adoptive families need access to the full range of services,¹⁰⁴ and “much more remains to be done if families are to receive a full continuum of the supports they need.”¹⁰⁵

The Supporting Adoptive Families Act could have provided families with adoption support and services,¹⁰⁶ but nothing happened to this act after its introduction in September of 2013.¹⁰⁷ Because of the lack of post-adoption services and support available for adoptive families, parents turn to private re-homing when they cannot handle their adopted child because no other available alternative seems to exist.¹⁰⁸

4. Risky Alternatives and the Demand for Adopted Children

Parents also turn to private re-homing because of the risks involved in legal forms of re-homing. If parents dissolve an adoption, they may have to pay the fees for re-adoption as well as legal and medical bills.¹⁰⁹ If parents give the child to welfare services, they risk charges and might have to pay child support until the adopted child reaches the age of eighteen.¹¹⁰ They may also risk losing their biological children in the process.¹¹¹ Each of these potential risks deters adoptive parents from utilizing the legal system if they are unable to adequately and properly care for their adopted children. Without the possibility of a seemingly safe legal solution, parents pursue private re-homing, even at the risk of harm to their adopted children.¹¹²

103. Bala, *supra* note 75, at 137; *see also* H.R. REP. NO. 106-691, pt. 1, at 21 (2000), available at <http://www.gpo.gov/fdsys/pkg/CRPT-106hrpt691/pdf/CRPT-106hrpt691-pt1.pdf> (“The Committee amended the definition of ‘adoption services’ by deleting the subparagraphs relating to counseling and post-adoption services.”).

104. Hardly any states provide the full range of post-adoption services. *See* EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 76, at 55.

105. *Id.* at 51.

106. S. 1527, 113th Cong. § 2 (2013).

107. *See Actions: S. 1527—Supporting Adoptive Families Act*, CONGRESS.GOV, <https://www.congress.gov/bill/113th-congress/senate-bill/1527/actions> (last visited Nov. 20, 2015).

108. *See* Marianne Levine, *Advocates for Adopted Children Decry ‘Private Re-homing,’* L.A. TIMES (July 8, 2014), <http://www.latimes.com/nation/la-na-senate-adoption-transfers-20140709-story.html>.

109. *See* Nicholson, *supra* note 1, at 486.

110. *Id.*; *see also* Twohey, *Child Exchange Part 2*, *supra* note 2 (describing a mother who turned to private re-homing for fear of charges of abuse and neglect).

111. *See* Anneliese Mahoney, *You Don’t Hear About This Side of Adoption*, LAWSTREET (Nov. 15, 2013), <http://lawstreetmedia.com/news/headlines/you-dont-hear-about-this-side-of-adoption>.

112. *See* Krysten E. Beech, Comment, *The Perfect Storm: When Failing Adoptions Collide*

Private re-homing also happens because a demand exists for adopted children.¹¹³ For those seeking to legally adopt, the process can be long, tiresome, and expensive.¹¹⁴ Private re-homing therefore offers a cheaper and easier alternative to adoption.¹¹⁵ Because of the regulations on international adoption, private re-homing also appeals to those who may not pass muster for adoption approval under those regulations.¹¹⁶ With adoptive parents who want to be free of their unwanted adopted children and others who are willing to take custody, the practice of private re-homing perpetuates.

B. *The Process of Private Re-homing*

Private re-homing unfortunately entails a very simple process of advertising an unwanted child on the Internet, delivering the child to a willing stranger, and signing a power of attorney document to transfer parental rights. The Internet acts as the avenue for the process, and the power of attorney document acts as the vehicle by which adoptive parents circumvent the adoption system.

1. The Role of the Internet

“[T]he Internet is rapidly changing the way adoption is practiced,”¹¹⁷ and the rise of the Internet has worked to facilitate the practice of private re-homing.¹¹⁸ A 2013 Reuters investigative report discusses how the Internet has created an “underground market for adopted children, a . . . network where desperate parents seek new homes for kids they

with an Ineffective Legal System, Re-homing Emerges as a Viable Option for Adoptive Parents—Suggestions for Fixing a Broken System, 46 U. TOL. L. REV. 449, 450 (Winter 2015) (“Consequently, when one person cannot be approved for adoption and another person has no legal way to remove a child from his or her home, the two sides meet outside the court system and take it upon themselves to solve their problem.”).

113. *See id.* at 456 (stating that adopted children “are completely at the mercy of parents desperate to get rid of them and others who are all too desperate to get their hands on them for the wrong reasons”).

114. *See* Nicholson, *supra* note 1, at 477; *see also* Beech, *supra* note 112, at 450 (stating that “[t]he approximate cost of a domestic adoption ranges from \$0 to \$50,000); Long, *supra* note 34, at 831 (stating that international adoption can cost between \$12,000 and \$30,000).

115. Levine, *supra* note 108; *see also* Twohey, *Child Exchange Part 1*, *supra* note 2 (stating that private re-homing often entails free adoption).

116. *See* Twohey, *Child Exchange Part 1*, *supra* note 2 (discussing the appeal of internet exchanges).

117. Michelle M. Hughes, *Internet Promises, Scares, and Surprises: New Realities of Adoption*, 41 CAP. U. L. REV. 279, 279 (2013). Hughes’s article also discusses the different ways the Internet has influenced adoption.

118. *See* Twohey, *Child Exchange Part 1*, *supra* note 2 (“[W]ith the rise of the Internet, parents are increasingly able to find complete strangers willing to take in unwanted children.”).

regret adopting.”¹¹⁹ Adoptive parents created this network through online forums, such as Yahoo and Facebook groups,¹²⁰ where they advertise their unwanted adopted children and where others can find a child to bring into their family.¹²¹ The Reuters report compiled a long list of advertisements placed in the Yahoo group titled “Adopting-from-Disruption” by adoptive parents who were desperate to re-home their adopted children.¹²² After analyzing 5029 posts from the group, an investigator found that parents advertised one child per week for re-homing.¹²³

The Internet has also changed the use of advertisement in adoptions, which previously occurred through newspapers.¹²⁴ Not only did the Internet change the media used for advertisement, it also changed who places these advertisements.¹²⁵ Many states regulate advertisement of adoption services, but each state has different laws.¹²⁶ Some of these regulations on advertisement do not even apply to the use of the Internet,¹²⁷ the primary avenue for private re-homing. Thus, the Internet provides a place for desperate parents to find others who are willing to take their unwanted adopted children using a “do it yourself” method of adoption.¹²⁸

2. The Use of a Power of Attorney Document

Private re-homing typically occurs by transferring custody to parents found on the Internet using a notarized power of attorney document.¹²⁹ A power of attorney document can transfer custody temporarily, but the

119. *Id.*

120. *See* Mahoney, *supra* note 111. Adoptive parents originally created these groups to discuss issues related to parenting adopted children. *Id.* After learning about how these groups developed into a “marketplace” for exchanging adopted children, Yahoo immediately began shutting down the groups. *See* Twohey, *Child Exchange Part 1*, *supra* note 2. The Facebook groups, however, remain active. *See id.*

121. *See* Twohey, *Child Exchange Part I*, *supra* note 2.

122. *E.g., id.* (“I am totally ashamed to say it but we do truly hate this boy.” (quoting a post from July 2012)); Twohey, *Child Exchange Part 2*, *supra* note 2 (“I would have given her away to a serial killer, I was so desperate.” (quoting a post from March 2012)).

123. Twohey, *Child Exchange Part 1*, *supra* note 2.

124. Hughes, *supra* note 117, at 281.

125. *See id.*

126. *Id.* at 285–86; *see also id.* at 287 (describing various state statutes restricting adoption advertisement).

127. *See id.* at 286.

128. *Id.* at 301.

129. *See* Gordon, *supra* note 98, at 17. A power of attorney is “[a]n instrument granting someone authority to act as agent or attorney-in-fact for the grantor.” BLACK’S LAW DICTIONARY 1360 (10th ed. 2014). People use these documents to “produce a change in legal relations by doing whatever acts are authorized.” *Id.*

document was never intended to be a substitute for creating permanent parental care.¹³⁰ Additionally, transferring custody, even temporarily, does not go completely unregulated. States have laws governing such transfers, but they are all different.¹³¹ Some states allow for a temporary transfer of up to twelve months, whereas Massachusetts only allows a transfer for up to sixty days.¹³²

Yet with a power of attorney document, those who receive custody can make educational and health decisions for the adopted child.¹³³ This power in the context of private re-homing enables complete strangers to become, in essence, the child's new adoptive parents. The principal problem with this method of transferring custody is that it involves no oversight by government authorities or lawyers; no investigation is required into the lives of the new adoptive parents.¹³⁴ Consequently, parents can completely circumvent the adoption system, potentially putting children in serious danger.

C. *The Dangers and Consequences of Private Re-homing*

The stories of Quita and others also illustrate the dangerous and damaging consequences of private re-homing.¹³⁵ Unregulated private re-homing creates the risk of exploitation, abuse, neglect, and human trafficking.¹³⁶ The victims of private re-homing report “gruesome tales of physical, sexual or emotional abuse by their new guardians.”¹³⁷ Adopted children are at risk because traffickers and pedophiles can use the Internet to easily find and acquire these children.¹³⁸ Furthermore, the

130. See U.S. DEP'T OF HEALTH & HUMAN SERVS., ADMIN. ON CHILDREN, YOUTH & FAMILIES, INFORMATION MEMORANDUM 2 (2014) [hereinafter DHHS, ACYF, INFORMATION MEMORANDUM], available at <https://www.acf.hhs.gov/sites/default/files/cb/im1402.pdf>.

131. See Beech, *supra* note 112, at 456.

132. *Id.* at 457 (“Seventeen states limit the time for which a parent or guardian may delegate his or her authority to another. The most restrictive state, Massachusetts, allows parents and guardians to delegate their authority for only 60 days. Nine states allow parents and guardians to delegate their authority for up to six months. The remaining seven states allow parents and guardians to delegate their authority for up to 12 months.” (footnotes omitted)).

133. See DHHS, ACYF, INFORMATION MEMORANDUM, *supra* note 130, at 2.

134. Gordon, *supra* note 98, at 17; see also DHHS, ACYF, INFORMATION MEMORANDUM, *supra* note 130 (calling this practice “fundamentally inappropriate”).

135. See *supra* Introduction. For the details of Quita's story, see *supra* notes 3–18 and accompanying text.

136. Huber, *supra* note 21, at 3; see also Tiffany L. Parks, *Bill Designed to Thwart 'Child Trading,'* AKRON LEGAL NEWS (Oct. 28, 2014), <http://www.akronlegalnews.com/editorial/11457> (noting that “rehoming appears to be a relatively new concept in the world of human trafficking”).

137. Gordon, *supra* note 98, at 17.

138. See *id.* at 18 (“That's precisely where people like the mentally ill and pedophiles go to get children. At best, it's abandonment, and at worst, it's human trafficking.” (quoting Ann M.

internationally adopted children are particularly vulnerable to exploitation because they are in a new country and may not speak English.¹³⁹ These seemingly obvious dangers result from giving away a child to a complete stranger who has not undergone any kind of background check or home study¹⁴⁰—requirements all adoptive families must fulfill when adopting legally through the system.¹⁴¹

Another consequence of unregulated private re-homing involves the long-term mental and emotional effects moving from home to home can have on adopted children.¹⁴² Research reveals that these “children need permanency in order to thrive,”¹⁴³ and re-homing removes the possibility of permanency. Re-homed children can suffer from anything from overwhelming stress and eating disorders to suicidal thoughts.¹⁴⁴ Additionally, these effects may be deeply imbedded in the lives of these children or may even be irreparable. Although the extent of the effects on the children is uncertain, private re-homing certainly is endangering the very children whom U.S. adoption legislation is supposed to protect.¹⁴⁵

“It’s hard to imagine that being adopted could lead to worse conditions than being in an orphanage, but it’s possible.”¹⁴⁶ Private re-homing creates that possibility.

III. AN ANALYSIS OF EXISTING LEGISLATION COMBATING PRIVATE RE-HOMING

Some states have responded to the startling emergence of private re-homing. Most states, however, neither prioritize the restriction of internet advertisement related to adoption nor explicitly prohibit private re-

Haralambie, a former chair of the ABA Family Law Section’s Juvenile Law and Needs of Children Committee)).

139. See Twohey, *Child Exchange Part 1*, *supra* note 2.

140. See DHHS, ACYF, INFORMATION MEMORANDUM, *supra* note 130.

141. See Wilkening, *supra* note 47, at 1051.

142. See Twohey, *Child Exchange Part 1*, *supra* note 2; see also Grosh, *supra* note 73, at 158–60 (discussing the effect of disruption on children of various ages).

143. Tiffany Woo, Comment, *When the Forever Family Isn’t: Why State Laws Allowing Adoptive Parents to Voluntarily Rescind an Adoption Violate the Adopted Child’s Equal Protection Rights*, 39 SW. L. REV. 569, 589 (2010); accord Bartholet, *supra* note 38, at 782 (“For children to flourish, they need true, nurturing parenting, and they need permanency in the form of stable parenting from early infancy through adulthood.”).

144. Recounting Nita’s story of being re-homed multiple times, “The stress of being sent from family to family was overwhelming . . . leading her to suffer from an eating disorder and contemplate suicide.” Twohey, *Reporting Dad’s Abuse*, *supra* note 2. Igna also had suicidal thoughts, as evidenced from the following testimony: “My parents didn’t want me. Russia didn’t want me. I didn’t want to live.” Twohey, *Unwanted*, *supra* note 2.

145. See *infra* Sections I.A–B.

146. Mahoney, *supra* note 111.

homing.¹⁴⁷ Additionally, nothing exists at the federal level that expressly or effectively curbs this practice. This Part analyzes the existing state and federal legislation in place to target private re-homing.

A. Combating Private Re-homing at the State Level

In response to the Reuters investigative report revealing the dangers of private re-homing, some states have recently enacted legislation targeting the practice. State approaches to curbing private re-homing involve implementing legislation that restricts the advertisement of children on the Internet,¹⁴⁸ legislation that regulates the transfer of children to nonrelatives,¹⁴⁹ or legislation that targets both of these parts of the private re-homing process.¹⁵⁰ Due to the growing epidemic of private re-homing, additional states have recently proposed legislation that targets the practice, which typically incorporates elements of existing enacted legislation.¹⁵¹ This recent outpouring of proposed legislation

147. See Gordon, *supra* note 98, at 18.

148. See COLO. REV. STAT. § 19-5-213.5 (2015); FLA. STAT. § 63.212 (2015); IDAHO CODE § 18-1512A (2015); WIS. STAT. § 48.825 (2015). See generally U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILDREN'S BUREAU, USE OF ADVERTISING AND FACILITATORS IN ADOPTIVE PLACEMENTS 1, 5–28 (2012) [hereinafter DHHS, CHILDREN'S BUREAU, ADVERTISING AND FACILITATORS], available at <https://www.childwelfare.gov/pubPDFs/advertising.pdf> (containing a state-by-state list of advertisement legislation).

149. See FLA. STAT. § 63.212; LA. REV. STAT. ANN. § 14:46.4 (2015); WIS. STAT. § 48.979; 2015 Ark. Acts 1092. As of September 1, 2015, Arkansas was the most recent state to enact legislation combating re-homing, specifically targeting custody transfers to nonrelatives. 2015 Ark. Acts 1092. This legislation came about after a state representative, Justin Harris, re-homed his adopted daughters to friends. See Stefano Montanari, *Federal Protecting Adopted Children Act to Curb "Re-homing,"* CHRONICLE OF SOCIAL CHANGE (May 1, 2015), <https://chronicleofsocialchange.org/featured/federal-protecting-adopted-children-act-to-curb-re-homing/10840>; see also Benjamin Hardy, *Casting out Demons: Why Justin Harris Got Rid of Kids He Applied Pressure to Adopt*, ARK. TIMES (Mar. 12, 2015), <http://www.arktimes.com/arkansas/casting-out-demons-why-justin-harris-got-rid-of-kids-he-applied-pressure-to-adopt/Content?oid=3725371>. One of those friends, "Eric Francis[,] is serving 40 years in prison on charges of raping the child the Harrises rehomed and sexually assaulting other children." *Id.* Representative Harris has not suffered any repercussions for his actions. Benjamin Hardy, *Months After the Rehoming of Their Adopted Daughters Was Made Public, Justin and Marsha Harris Have Yet to Face Consequences*, ARK. TIMES (May 28, 2015), <http://www.arktimes.com/arkansas/months-after-the-rehoming-of-their-adopted-daughters-was-made-public-justin-and-marsha-harris-have-yet-to-face-consequences/Content?oid=3871740>. Arkansas also passed legislation to provide for post-adoption services. 2015 Ark. Acts 1018. Because this legislation was enacted after the first draft of this Note, there is no further discussion of Arkansas's legislation.

150. The states that have legislation targeting both internet advertisement and the transfer of parental rights include Florida and Wisconsin. See statutes cited *supra* notes 148–49.

151. As of September 1, 2015, Maine, Maryland, Massachusetts, Nebraska, North Carolina, and Ohio have proposed legislation specifically targeting private re-homing. Until every state has the legislation containing the elements this Note discusses in Section IV.C, other states may

reflects the seriousness and severity of the potential repercussions of continuing to allow private re-homing.

A problem with the legislation is that every state has its own adoption laws.¹⁵² Differences in the laws include limitations on who may advertise and the types of advertisements subject to restriction, which can create confusion for those trying to adhere to the law.¹⁵³ States also differ in regard to the transfer of parental rights, including the length of time permitted for a transfer of rights and to whom parents can transfer these rights.¹⁵⁴ With all of this confusion, even existing legislation may be ineffective. Until every state has effective, comprehensive legislation containing the elements discussed in this Note,¹⁵⁵ the practice of private re-homing will perpetuate and adopted children will remain in danger.

Wisconsin, which has a statute restricting advertisement for adoption on the Internet¹⁵⁶ and a statute restricting the delegation of parental power,¹⁵⁷ is “on the national forefront of addressing re-homing and attacking it head on.”¹⁵⁸ Wisconsin’s legislation against private re-

continue to propose legislation in an attempt to curb the practice. Most of this existing proposed legislation is similar to that enacted in other states. *See* H.P. 911, 127th Leg., Reg. Sess. (Me. 2015) (proposing legislation prohibiting the unauthorized transfer of minors to nonrelatives without court approval, specifically noting that such action is illegal after an adoption is finalized); S.B. 208, 435th Gen. Assemb., Reg. Sess. (Md. 2015) (proposing legislation that defines and prohibits re-homing, distinguishes practices that do not constitute re-homing, and implements a felony conviction if a person violates the statute); H.B. 101, 189th Gen. Court (Mass. 2015) (proposing legislation that prevents the transfer of a minor for more than sixty days without court approval while also mandating disclosure, training, and the provision of post-adoption services); Legis. B. 302, 104th Leg., Reg. Sess. (Neb. 2015) (proposing legislation that defines the offense of re-homing, enumerates a list of custody transfers that do not constitute re-homing, and implements a felony conviction for anyone guilty of this offense); S.B. 652, 2015 Gen. Assemb., Reg. Sess. (N.C. 2015) (proposing legislation that defines re-homing and makes it unlawful, prohibits internet advertisement, and declares a violation of this statute to be a Class F felony); H.B. 438, 130th Gen. Assemb., Reg. Sess. (Ohio 2013) (proposing unique legislation that involves reporting instances in which someone uses a power of attorney document to register a child in school or presents one for use with medical treatment). Because Ohio’s legislation proposed a unique angle by which to combat private re-homing, this Note discusses this piece of proposed legislation in greater depth in this Section than the other proposed legislation.

152. Hughes, *supra* note 117, at 286.

153. *Id.*; *see also* DHHS, CHILDREN’S BUREAU, ADVERTISING AND FACILITATORS, *supra* note 148, at 6–28 (including a state-by-state survey of legislation regarding the use of advertisement in adoptions).

154. Compare LA. REV. STAT. ANN. § 14:46.4, with FLA. STAT. § 63.212, and WIS. STAT. § 48.979.

155. *See infra* Section IV.C.

156. *See* WIS. STAT. § 48.825.

157. *See id.* § 48.979.

158. Twohey, *Reporting Dad’s Abuse*, *supra* note 2 (quoting Republican State Representative Joel Kleefisch); *see also* Bala, *supra* note 75, at 141 (stating that “Wisconsin has been a leader”).

homing appears to be the most comprehensive in nature despite its failure to expressly prohibit the practice of private re-homing. In Wisconsin, advertising on the Internet to “[find] a child to adopt or to otherwise take into permanent physical custody” or to “find an adoptive home or any other permanent physical placement for a child” is unlawful.¹⁵⁹ This language regarding other permanent physical placements targets private re-homing, although not expressly. Additionally, Wisconsin leaves professionals in control of advertising. This restriction on advertisement does not apply to licensed child welfare agencies, foster care and adoption resource centers funded by the state, individuals with an approved recommendation regarding their fitness as parents,¹⁶⁰ or attorneys licensed in Wisconsin.¹⁶¹ Violating this legislation may lead to a fine of up to \$10,000, imprisonment for up to nine months, or both.¹⁶²

Wisconsin also restricts a parent’s ability to delegate parental powers to another by power of attorney,¹⁶³ which targets the primary means by which private re-homing takes place. A parent may delegate certain parental powers¹⁶⁴ to a nonrelative for a period no longer than one year¹⁶⁵—a power that may be beneficial in certain circumstances.¹⁶⁶ However, the statute does not specify the circumstances in which this temporary custody transfer is appropriate. For an individual to delegate parental powers for a period longer than one year, the parent must either delegate parental powers to a relative or receive court approval.¹⁶⁷ This court approval can prevent children from ending up with dangerous people. For the court to approve an extended delegation of parental powers to a nonrelative, the court must hold a hearing¹⁶⁸ to consider the best interests of the child.¹⁶⁹ If an individual violates this statute by delegating parental rights to a nonrelative for a period longer than one

159. WIS. STAT. § 48.825(2).

160. *See id.* § 48.825(3).

161. *Id.* § 48.825(4).

162. *Id.* § 48.825(5).

163. *See id.* § 48.979.

164. *See id.* § 48.979(1)(a) (stating that a parent may delegate any and all parental powers to another individual “except the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on or for the child, the termination of parental rights to the child, or the enlistment of the child in the U.S. armed forces”).

165. *See id.* § 48.979(1)(am).

166. The use of a power of attorney to temporarily transfer custody of a child may be beneficial, for instance, in the event that the child’s parents are incarcerated, serve in the military, or undergo medical treatment. Thus, legislation should not prohibit the use of a power of attorney document to transfer custody; instead, legislation should specify instances in which the use of a power of attorney is permissible.

167. WIS. STAT. § 48.979(1)(am).

168. *Id.* § 48.979(1m)(b).

169. *See id.* § 48.979(1m)(d).

year, such as by private re-homing, courts may fine that individual up to \$10,000, imprison that individual for up to nine months, or both.¹⁷⁰

Florida has also recently passed legislation that addresses private re-homing,¹⁷¹ but it is weaker than Wisconsin's legislation. The Florida legislation prohibits advertising to make a child available for adoption or to seek a child to adopt.¹⁷² Florida, like Wisconsin, provides exceptions to this rule to allow particular people and entities to advertise, including adoption entities.¹⁷³ Attorneys licensed in Florida may also advertise but only through a paid advertisement or listing in a telephone directory, not through the Internet.¹⁷⁴ Transferring a child to someone other than a relative or a stepparent is also unlawful unless an adoption entity performs this transfer.¹⁷⁵ If an individual violates the restriction on advertising, the violation constitutes a second-degree misdemeanor.¹⁷⁶ But if an individual violates any other part of the statute, the violation is a third-degree felony.¹⁷⁷

Florida's legislation is weak for a few reasons. Court approval, such as that required in Wisconsin, is a better solution than the adoption entity requirement because of the uniform and credible review courts can provide in determining what is in the best interests of the child. Florida's statute also falls short of the effectiveness of other legislation in its failure to specifically address instances of otherwise permanent physical custody transfers that do not qualify as adoption, such as those the Wisconsin statute addresses. Without this specification, the Florida statute may completely fail to target private re-homing because private re-homing may not fall under the classification of adoption.

Louisiana also has a unique and effective statute that expressly defines and criminalizes the practice of private re-homing.¹⁷⁸ This statute defines re-homing as a

170. *Id.* § 48.979(1m)(g).

171. *See* FLA. STAT. § 63.212 (2015).

172. *Id.* § 63.212(1)(g).

173. *See id.*; *see also id.* § 63.032(3) (defining "adoption entity" as the Florida Department of Children and Families, a "child-caring agency," an "intermediary," or a "child-placing agency").

174. *Id.* § 63.212(1)(g).

175. *Id.* § 63.212(1)(b).

176. *Id.* § 63.212(2)(c). In Florida, the punishment for a second-degree misdemeanor includes imprisonment not exceeding sixty days. *Id.* § 775.082(4)(b). The punishment may also include a fine not exceeding \$500. *Id.* § 775.083(1)(e).

177. *Id.* § 63.212(8). In Florida, the punishment for a third-degree felony includes imprisonment not exceeding five years. *Id.* § 775.083(3)(e). The punishment may also include a fine not exceeding \$5000. *Id.* § 775.083(1)(c).

178. *See* LA. REV. STAT. ANN. § 14:46.4 (2015).

transaction, or any action taken to facilitate such transaction, through electronic means or otherwise by a parent or any individual or entity with custody of a child who intends to avoid or divest himself of permanent parental responsibility by placing the child in the physical custody of a nonrelative, without court approval.¹⁷⁹

This statute expressly prohibits private re-homing and requires court approval to transfer custody.¹⁸⁰ The statute permits, however, the transfer of custody to a relative, stepparent, licensed adoption agency, the Louisiana Department of Children and Families, or a licensed attorney.¹⁸¹ The statute also permits short-term transfers to nonrelatives under certain listed circumstances when the parent expresses a specified intent and time at which to regain custody.¹⁸² Again, courts should allow temporary custody transfers but should closely regulate these and other transfers. Louisiana's legislation, unfortunately, neither specifies the length of a short-term period nor restricts internet advertisement of children that facilitates private re-homing. Violating this legislation subjects an individual to a fine of up to \$5000 or imprisonment at hard labor for a period of up to five years.¹⁸³

Colorado and Idaho, on the other hand, fail to effectively combat private re-homing because their legislation only restricts the use of internet advertisement and not custody transfers, which are the essence of private re-homing. In 2014, Colorado passed legislation targeting internet advertisement that facilitates re-homing.¹⁸⁴ This legislation prohibits advertising to find a child to adopt and to find a new adoptive home for a child.¹⁸⁵ It also covers advertisement pertaining to other permanent physical custody transfers in the same way that Wisconsin's legislation does.¹⁸⁶ The exception is that employees of the state department of human services or a licensed child placement agency, a person who has received an adequate favorable recommendation regarding the person's fitness as a parent, and an attorney licensed in Colorado who performs services related to adoption may post advertisements to find a child to adopt or to find an adoptive home for a child.¹⁸⁷ If an individual violates this statute, the violation constitutes a

179. *Id.* § 14:46.4(A)(1).

180. *See id.* § 14:46.4.

181. *See id.* § 14:46.4(B).

182. *See id.*

183. *Id.* § 14:46.4(C).

184. *See* COLO. REV. STAT. § 19-5-213.5 (2015).

185. *Id.* § 19-5-213.5(2).

186. *See id.*

187. *See id.* § 19-5-213.5(3).

class-six felony.¹⁸⁸

In Idaho, most individuals may not advertise on the Internet to offer a child to another individual or to seek a child to adopt.¹⁸⁹ Unlike Colorado, Idaho limits the advertisement to that related to adoption without reference to other permanent transfers, which again may fail to combat private re-homing because the practice may not qualify as adoption. Idaho's statute, like Colorado's, contains a list of those who may advertise,¹⁹⁰ which includes the following: an authorized agent of the Colorado Department of Health and Welfare, an authorized children's agency, and a licensed institution that performs services to place children.¹⁹¹ This legislation also falls short of even Colorado's legislation in the way it states the consequences of a violation of the statute.¹⁹² It neither describes the category of the violation as a misdemeanor or felony nor expressly states a penalty for a violation.¹⁹³

In contrast to all of these pieces of enacted legislation, Ohio had proposed legislation that would have offered an alternative way to combat private re-homing, but unfortunately it would have only been effective at revealing instances of private re-homing after the fact.¹⁹⁴ This bill, which died in committee, focused on reporting private re-homing instead of expressly prohibiting the practice.¹⁹⁵ Thus, its effectiveness would have rested on its ability to deter people who were considering taking a child through private re-homing because an agency could discover the transfer and remove the child from the person's custody if the person failed to meet the standards of the ensuing investigation.¹⁹⁶ According to the bill,

188. *Id.* § 19-5-213.5(4). In Colorado, the sentencing range for a class-six felony is one year to eighteen months. *Id.* § 18-1.3-401(1)(a)(V)(A). The applicable fine may range from \$1000 to \$100,000. *Id.* § 18-1.3.401(1)(a)(III)(A).

189. *See* IDAHO CODE § 18-1512A(2) (2015).

190. *Compare id.*, with COLO. REV. STAT. § 19-5-213.5(3).

191. IDAHO CODE § 18-1512A(2).

192. *Compare id.* § 18-1512A(3) (declaring a violation as an unfair or deceptive trade practice without stating the category of violation), with COLO. REV. STAT. § 19-5-213.5(4) (declaring a violation as a class six felony).

193. A violation of this legislation is a matter affecting public interest, and it constitutes an unfair or deceptive act of trade or commerce. *See* IDAHO CODE § 18-1512A(3). As such, a violation calls for the application of Idaho's Consumer Protection Act. *Id.*

194. H.B. 438, 130th Gen. Assemb., Reg. Sess. (Ohio 2013).

195. *Id.* Another way to combat private re-homing that this Note does not discuss involves educating "teachers, school administrators, and doctors . . . on the laws of their states" and on how "to identify a troublesome situation" because they may see a power of attorney document when a person uses one to enroll a child in school or to seek medical assistance. *See* Beech, *supra* note 112, at 469. With this education, these individuals would almost act as first responders if they suspect an instance of private re-homing.

196. The proposed legislation would not, however, have been effective at deterring the original adoptive parents from re-homing their children because the legislation did not address

when a school district, medical personnel, or government service provider became aware of a child in the temporary physical care of another through a power of attorney document, that person or entity would have been required to notify public-welfare child agencies with the name and address of the child.¹⁹⁷ Upon receiving the report, the agency would then have been required to investigate the attorney-in-fact¹⁹⁸ by performing a home study, a criminal background check, and a check of court records.¹⁹⁹ Although this type of legislation could have worked as an important safeguard related to private re-homing, legislation that expressly prohibits and prevents the practice from happening in the first place, such as that of Wisconsin and Louisiana, is also necessary.

B. *Combating Private Re-homing with the ICPC*

Because states use the ICPC²⁰⁰ to oversee custody transfers across state lines,²⁰¹ it could prevent private re-homing from occurring in some instances if properly enforced. Although the ICPC has great potential to effectively combat private re-homing, this legislation unfortunately is flawed. One problem with the ICPC is that many law enforcement officers do not know about it.²⁰² Authorities without knowledge of legislation have no way of enforcing it. Additionally, unless someone informs authorities, they have no reason to think parents are transferring a child across state lines.²⁰³ In instances of private re-homing, no one would notify authorities, and therefore they would have no way of enforcing the ICPC. Thus, the ICPC, as it stands, is ineffective at combatting private re-homing.

Another problem with the ICPC is that each state determines how to punish a person for violating it.²⁰⁴ This is problematic because some states have no penalties in place, and the states that do have penalties

them at all.

197. Ohio H.B. 438.

198. An attorney-in-fact is “one who is designated to transact business for another; a legal agent.” BLACK’S LAW DICTIONARY 147 (9th ed. 2009). In the context of private re-homing, the attorney-in-fact is the individual who receives the child and the signed power of attorney document from the original adoptive parents.

199. *Id.*

200. *See supra* Section I.B.

201. AM. PUB. HUMAN SERVS. ASS’N, *supra* note 41, at 8–25. The purpose of the ICPC “is to ensure that suitable out-of-state placement is located for the subject child *prior* to the child being placed there.” Beech, *supra* note 112, at 460–61.

202. *See* Twohey, *Reporting Dad’s Abuse*, *supra* note 2.

203. Mahoney, *supra* note 111.

204. Twohey, *Child Exchange Part 1*, *supra* note 2.

typically only treat a violation of the ICPC as a misdemeanor.²⁰⁵ Additionally, states rarely impose penalties even if they have them.²⁰⁶ “Oregon’s deputy administrator of the ICPC even plainly stated, ‘Speaking honestly, we wouldn’t be that concerned about the penalty for the person who violated [the ICPC].’”²⁰⁷ This treatment of a violation does little to deter desperate adoptive parents from exchanging their unwanted adopted children across state lines, and it leaves children in danger.²⁰⁸

C. Combating Private Re-homing at the Federal Level

Senator Ron Wyden of Oregon found it “stunning” that “this practice of advertising children, usually over state borders, does not seem to violate any federal laws (unless the children are being advertised for sexual exploitation or forced labor).”²⁰⁹ What may be even more stunning is that no federal laws expressly prohibit private re-homing. This is particularly stunning because the federal government should strive to protect all children, even adopted children, against the dangers and consequences of private re-homing.²¹⁰ Although no express prohibition exists, some federal legislation could prevent and combat private re-homing if properly enforced, enacted, or amended.

One piece of proposed federal legislation may prove effective at combatting private re-homing. The Protect Our Children Act of 2008 defines child exploitation,²¹¹ and a proposal exists to expand that definition.²¹² If this proposal—the Protecting Adopted Children Act²¹³—passed, the definition of child exploitation would also include “the offer to engage or engaging in the transfer of permanent custody or control of a minor in contravention of a required legal procedure.”²¹⁴ Although at

205. *See id.* “Texas, Illinois, Oregon, and New York all classify violations of the ICPC as a misdemeanor.” Beech, *supra* note 112, at 463.

206. AM. PUB. HUMAN SERVS. ASS’N, *supra* note 41, at 6.

207. Beech, *supra* note 112, at 463.

208. *See id.* at 465 (“Because it is inconsistently or inadequately enforced, the ICPC poses no real threat and has no real deterrent value to those participating in re-homing. If there is no penalty involved for violating the ICPC, or if the only penalty is for one to lose the child he or she has received, especially if all that person has to do is find another child online, then there is no reason to adhere to the requirements at all.”).

209. Letter from Senator Ron Wyden to Attorney General Holder, Secretary Kerry, Secretary Sebelius, and Acting Secretary Beers (Oct. 29, 2013), *available at* http://msnbcmedia.msn.com/i/msnbc/sections/news/Wyden_Agencies_Rehoming_Letter.pdf.

210. *See Nobile, supra* note 15, at 477 (stating that “[t]he federal government has a duty to protect children adopted” domestically and internationally).

211. *See* 42 U.S.C. § 17601(1) (2012).

212. H.R. 2068, 114th Cong. (2015).

213. Montanari, *supra* note 149.

214. H.R. 2068.

first glance this legislation seems as if it could target private re-homing, the move to expand the Protect Our Children Act of 2008 might be unproductive because it is unclear whether the custody transfers this legislation would combat include transfers of custody through private re-homing.²¹⁵ Without more legislation prohibiting private re-homing, it is difficult to discern whether private re-homing constitutes a transfer “in contravention of a required legal procedure.”²¹⁶ Overall, no federal law prohibits private re-homing, and even the existing proposed legislation may fail to actually combat the deplorable practice.

In addition to prohibiting the practice, federal legislation could combat private re-homing through a federal statute restricting advertisement related to adoption or other permanent custody transfers.²¹⁷ Although this Note addresses the need for state statutes restricting advertisement, it does not expressly propose a federal statute to do the same.²¹⁸ Such a statute, however, could be beneficial because many instances of private re-homing occur across state lines.²¹⁹ The statute could also effectively combat those instances of re-homing by simply mirroring previously enacted state legislation.²²⁰ Therefore, with minimal effort from legislatures, a federal statute could prevent private re-homing across state lines through restricting the advertising that helps facilitate the process.

Lastly, federal legislation could provide additional funding for pre- and post-adoption services for adopted children and their families. The Protecting Adopted Children Act mentioned above includes provisions

215. See ALYSE ATKINSON YOUNG, CTR. FOR ADOPTION POLICY, SYNOPSIS OF FEDERAL RESPONSE TO THE PRACTICE OF PRIVATE RE-HOMING (2014), available at <http://www.adoptionpolicy.org/pdf/10-5-14%20CAP%20Rehoming%20Research%20Synopsis%20Federal.pdf>.

216. H.R. 2068.

217. Nobile, *supra* note 15, at 480 (“In order to deter adoptive parents from using the Internet to illegally rehome their children and to avoid putting adopted children at risk, it is essential to create a uniform federal law that bans the advertisement of children for adoption online.”).

218. For an example of a proposed federal model statute of this sort, see *id.* at app. One flaw of the proposed statute is that it classifies a violation as a misdemeanor. *Id.* This Note suggests that a violation related to private re-homing, whether as a result of advertising or transferring custody, should be a felony. The proposed federal model statute, however, still imposes a very harsh penalty for violation because “a person would be subject to criminal charges for *each* advertisement, thus, potentially making the fines very large and the duration of imprisonment very long.” *Id.* at 480.

219. *Id.* (“[D]ue to the substantial risks of advertising adoptions online, and the fact that oftentimes adopted children are rehomed across state lines, Congress should enact a uniform federal law banning and criminalizing the advertisement of adoptions.”).

220. One suggestion is that the statute could “mirror the Illinois statute that prohibits all adoption advertisement unless the advertiser is authorized in adoption placement.” *Id.*

regarding such funding.²²¹ Because these services can effectively prevent private re-homing, providing the necessary funding for quality services should become a federal priority. The Protecting Adopted Children Act includes support and services for both domestic and international adoptions, including direct services, educational resources, mentoring and support groups, and informational resources.²²² Additionally, it provides grants as well as \$20,000,000 each fiscal year to fund mental health services.²²³ Funding from the federal government would go a long way in combatting private re-homing.

IV. THE PROPOSED SOLUTION TO PRIVATE RE-HOMING

Given the nature and potential harms of private re-homing, individuals have developed ideas about ways to combat the practice. One such idea reads as follows:

There are *at least* two ways a solution to re-homing would need to be framed: (1) post-adoption services and support to prevent re-homing from happening in the first place—a long-term solution; and (2) oversight from child welfare authorities in those cases in which . . . adoptees *are* moved to a new family—a safety net when it is impossible to prevent disruption.²²⁴

The “at least” is the most important aspect of this idea because there are countless angles from which to approach the end to private re-homing. One proposal involves more training and support for adoptive parents, regulating internet advertisements, and increasing legal protections.²²⁵ Another idea involves more severe penalties for illegal custody transfers, increased enforcement of adoption laws and post-adoption support, and the creation of a task force that focuses on re-homing.²²⁶ Additionally, in the recent case *In re Adoption of Child A and Child C*,²²⁷ the court’s solution centered on amending legislation “to prohibit the unsavory and unsupervised practice of adoptive parents ridding themselves of the responsibility of caring for their children by placing them with people whose motives and qualifications are, at best, entirely unknown.”²²⁸ This Part proposes a holistic solution to private re-homing involving both the

221. H.R. 2068, 114th Cong. (2015); *see also* Beech, *supra* note 112, at 465 (stating that the proposal “would provide for enhanced services”).

222. H.R. 2068.

223. *Id.*

224. Bala, *supra* note 75, at 141 (first emphasis added).

225. *See* Huber, *supra* note 21, at 5.

226. *See id.* at 4 (describing Professor Stephen Pennypacker’s proposal).

227. 997 N.Y.S. 2d 312 (Sur. Ct. 2014).

228. *Id.* at 314. The court went on to say that “[t]his decision is a first step to control Re-Homing and the unofficial adoption process.” *Id.*

prevention and prohibition of the practice.

A. *Pre-adoption Prevention of Private Re-homing*

A proper approach to preventing private re-homing requires taking steps prior to the initial adoption. These steps involve preparing and vetting adoptive families as well as mandating medical and social history disclosures.

1. Preparation and Vetting of Adoptive Families

Because knowledge of both adoption and the needs of adopted children can work to create successful adoptions,²²⁹ prospective adoptive parents need thorough training and preparation. In addition to training on the risks associated with adoption, parents also need education on available resources and services that they can utilize when necessary.²³⁰ The current training requirements are inadequate to properly prepare adoptive parents. Legislation therefore needs to increase the number of hours required for training and tailor this requirement to the parents' specific needs. For instance, because a child's age affects rates of disruption,²³¹ parents adopting older children should undergo additional training. The same is true for parents adopting internationally.

Colorado's training requirements for adoptive parents could act as a model for other states.²³² Colorado requires every adoptive parent to undergo at least sixteen hours of face-to-face training.²³³ Additionally, parents either adopting children over the age of twelve months or adopting internationally must undergo an additional four hours of training, for a total of twenty hours.²³⁴ For those parents adopting internationally, a requirement of an additional four hours of training exists on top of that, for a total of twenty-four hours.²³⁵ This regulation reflects the different needs of parents adopting older children or international children, and it specifies topics to cover under each training requirement.²³⁶ Similar state legislation would serve the best interests of the child by better preparing prospective adoptive parents for their particular child's needs, thus working to prevent private re-homing.

229. See Barth & Miller, *supra* note 100, at 449.

230. See *id.*

231. See *id.*

232. 12 COLO. CODE REGS. § 2509-8:7.710.55 (2015).

233. *Id.* § 2509-8:7.710.55(A)(1).

234. *Id.* § 2509-8:7.710.55(C)(1).

235. *Id.* § 2509-8:7.710.55(C)(2).

236. See *id.* § 2509-8:7.710.55.

A home study determines whether a person and the person's home are suitable for a child.²³⁷ Each state has different rules about home studies, particularly regarding who may conduct the home study.²³⁸ Statutes also provide specific information that the home study preparer must acquire during the home study.²³⁹ For legislation to be effective, it should expressly enumerate all important information related to home study requirements. Effective legislation should also contain the Hague Convention's requirement that a licensed person must perform the home study.²⁴⁰ The use of a licensed person helps prevent fraud, which further ensures that the child ends up in a suitable environment. Legislation could also require a secondary home study that would not only determine that the prospective adoptive parent and the home are suitable for a child but also that they are suitable for that *particular* child.²⁴¹ As the existence of private re-homing evidences, not every person deemed eligible and suitable to adopt is the right match for certain adopted children. This secondary home study would help to ensure that all adopted children are in homes suited for their individual needs, which works in their best interests and prevents private re-homing.

2. Mandated Medical and Social History Disclosure

Like proper training and vetting, full disclosure of an adopted child's medical and social history benefits both the child and the prospective adoptive family.²⁴² This is the only way that parents can make fully informed decisions²⁴³ and avoid the disruption that often results from inadequate and inaccurate disclosure.²⁴⁴ Full disclosure also helps ensure that children are placed with the most appropriate adoptive family and that they receive all necessary care.²⁴⁵ Thus, statutes that mandate full disclosure are "vital."²⁴⁶ Not only must mandatory disclosure statutes

237. *Home Study Requirements*, U.S. DEP'T OF STATE, <http://travel.state.gov/content/adoptionabroad/en/adoption-process/who-can-adopt/home-study-requirements.html> (last visited Nov. 20, 2015).

238. *Id.*

239. *See id.* (listing the general requirements of a home study).

240. *Id.*

241. *See* Diane B. Kunz, *A Presentation to the Interagency Working Group on Secondary Placements*, CTR. FOR ADOPTION POLICY 1, 5 (Nov. 4, 2014) (stating that "a key question to be asked is 'whether this family suits this child at this time?'").

242. *When Love Is Not Enough*, *supra* note 79, at 1764.

243. *See* Grosh, *supra* note 73, at 150–51.

244. *Id.* at 163.

245. *See* Blair, *supra* note 82, at 332.

246. Grosh, *supra* note 73, at 164.

exist, they must also require specific information²⁴⁷ and timely disclosure of that information.²⁴⁸

Oklahoma has a strong, specific mandatory disclosure statute²⁴⁹ that other states could use as a model. Under this statute, the required medical and social history report of the adopted child must contain all reasonably available information pertaining to medical, dental, psychological, and educational records.²⁵⁰ This statute also requires providing a form for all of this information,²⁵¹ which is a useful method to enumerate the required information and guarantee that the agency or provider supplies all of the appropriate available information. In Oklahoma, the form for the child's medical history includes information about the child, the child's biological parents, and other relatives.²⁵² Additionally, a separate social history form exists.²⁵³ Other states should implement a similar comprehensive statute so that adoptive parents receive adequate and accurate medical and social history information about the adopted child, thus eliminating a major reason that parents resort to private re-homing.

B. *Post-adoption Prevention of Private Re-homing*

A proper approach to preventing private re-homing also requires taking steps after the initial adoption. These steps include providing post-adoption services, requiring post-adoption reporting, using "wrongful adoption," and bringing private re-homing above ground.

1. Provision of Post-adoption Services and Support

Adoptive families desperately need post-adoption services to care for their adopted children.²⁵⁴ "It is optimal for child welfare agencies to be

247. One suggestion on specific information to require in disclosures involves family history of genetic conditions and mental illness, an inquiry into abuse, information about the child's behavior, specific information related to prenatal history, and the reasons for prior placements of the adopted child. *See Blair, supra* note 82, at 360–62. Unfortunately, the IAA does not specify the necessary information that agencies and providers should gather from background studies. *See Grosh, supra* note 73, at 172.

248. *Grosh, supra* note 73, at 177.

249. 10 OKLA. STAT. tit. 10, § 7504-1.1 (2015); *Grosh, supra* note 73, at 173–74.

250. 10 OKLA. STAT. tit. 10, § 7504-1.1(A)(1).

251. *Id.* § 7504-1.1(B).

252. *Id.* § 7504-1.1(B)(2).

253. *Id.* § 7504-1.1(C). The social history form includes information about the child's educational history, hobbies and interests of the child, relationships the minor has had with others the minor has lived with, the circumstances leading to the adoption, and so on. *Id.*

254. *See supra* Subsection II.A.3; Nobile, *supra* note 15, at 476 ("The success of adoptions is contingent upon postadoption assistance and support to the adopted families facing crises involving severe behavioral problems manifested with time. The lack of access and effective postadoption services drive adopted families to dissolve adoptions and Internet rehomeing."); *cf.*

able to provide opportunities for . . . support services in an effort to stabilize adoptions before disruption in order to mitigate resulting trauma, loss and separation.”²⁵⁵ Post-adoption services must be available for all adopted children, and families must know how to access and utilize these services.²⁵⁶ They also must be available for as long as the adopted children need such services.²⁵⁷ A noted barrier to successful adoptions is the cost and lack of awareness of post-adoption services.²⁵⁸ The Hague Convention and the IAA do not address post-adoption services, although they focus extensively on pre-adoption requirements.²⁵⁹ Some states, however, have statutes that provide for post-adoption services,²⁶⁰ and every state should implement such statutes. Moreover, Congress should amend the IAA to include post-adoption services.

In addition to the normal post-adoption services, a strong need exists for mental health services for adopted children.²⁶¹ Despite this need and the importance of mental health services, many post-adoption service programs do not offer mental health services.²⁶² To be most effective, post-adoption services must encompass all types of services, including mental health counseling, and professionals educated in the intricacies and traumas of adoption should perform the mental health services. “[A]n ideal system of post-adoption programs is composed of a range of services, from education and support to therapeutic counseling and

EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 76 (discussing the various needs of adoptive families).

255. DHHS, ACYF, INFORMATION MEMORANDUM, *supra* note 130, at 3.

256. *See id.* at 3–4. Recent enacted legislation in Arkansas states that “[t]he department shall adopt rules to ensure that post-adoptive services are provided to adoptive parents who seek the assistance of the department to prevent the adoption from being disrupted.” 2015 Ark. Acts 1018. Other states should enact similar legislation to ensure the provision of these services to all adopted children.

257. Nobile, *supra* note 15, at 477 (“To enhance adoption outcomes, it is *essential* to provide access to effective postadoption services to all adoptive families . . . for as much time as services are needed.” (emphasis added)). This is necessary because some problems related to adopted children do not surface until years after the adoption takes place. *Id.* at 478.

258. DHHS, CHILDREN’S BUREAU, DISRUPTION AND DISSOLUTION, *supra* note 80, at 8.

259. *See* Wilkening, *supra* note 47, at 1046.

260. Tennessee has a post-adoption services statute that other states could follow because it enumerates the services that the state provides. TENN. CODE ANN. § 36-1-143 (2015). However, unlike the Tennessee statute, states must make these services available to all adopted children and families. *Cf. id.* § 36-1-143(c) (providing services to only certain adoptive families).

261. *See* N. AM. COUNCIL ON ADOPTABLE CHILDREN, POST-ADOPTION SERVICES: MEETING THE MENTAL HEALTH NEEDS OF CHILDREN ADOPTED FROM FOSTER CARE 1–2 (2007), available at <http://www.nacac.org/adoptalk/postadoptpaper.pdf>; *see also id.* at 2 tbl.1 (including a list of mental health services needed by adoptive families). Not only are mental health services necessary, but those providing such services must also be trained to handle the particular needs of adopted children. Nobile, *supra* note 15, at 479.

262. N. AM. COUNCIL ON ADOPTABLE CHILDREN, *supra* note 261, at 8.

preservation of families in crisis.”²⁶³

One problem impacting the provision of post-adoption services and support is funding.²⁶⁴ Not only does a need exist for increased federal funding for post-adoption services, but states also need more flexibility regarding ways to use the funds.²⁶⁵ Without federal funding dedicated to post-adoption services, states will continue to struggle to provide these services, and the existing services will be at constant risk of being cut due to budget constraints.²⁶⁶ Legislatures should therefore make all efforts to pass the Protecting Adopted Children Act²⁶⁷ previously mentioned as a way to provide such federal funding. If finding homes for adopted children is so important to the federal government, then funding should reflect an interest in maintaining those adoptive families through post-adoption services. Furthermore, because adoption potentially saves the government billions of dollars each year, the government should be more than willing to contribute substantial funding to ensure these families stay together.²⁶⁸

Another problem is the prerequisites that sometimes exist for parents to receive post-adoption services for their children. In some states, an adoptive parent must agree to charges of abuse and neglect to receive these services.²⁶⁹ In other states, parents have to relinquish custody of their children before they can receive the help they need.²⁷⁰ Policies that require adoptive parents to give up custody of their adopted children to receive the necessary services are not in the best interests of the child,²⁷¹ so states should eliminate them. Additionally, in some states, post-adoption services are only available for children adopted from state foster

263. EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 76, at 55.

264. A growing need for services creates a growing need for more federal funding. *Senate Looks at Children’s Service Gaps, Trafficking & “ReHoming,”* CHILD WELFARE LEAGUE OF AM. (July 11, 2014), <http://www.cwla.org/senate-looks-at-childrens-service-gaps-trafficking-rehoming/> (reporting on the Senate Subcommittee hearing titled “Falling Through the Cracks: The Challenges of Prevention and Identification in Child Trafficking and Private Re-homing”).

265. N. AM. COUNCIL ON ADOPTABLE CHILDREN, *supra* note 261, at 8.

266. *See* EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 76, at 55.

267. H.R. 2068, 114th Cong. (2015). Although such a statute seems like a simple and effective way of preventing re-homing, “[i]n September and October 2013, Langevin and Sen. Amy Klobuchar (D-Minn.) introduced two similar bills that did not move past the committee stage in the 2013–2015 Congress session.” Montanari, *supra* note 149. With the best interests of the child in mind, this legislation must not fail to pass again.

268. Nobile, *supra* note 15, at 480 (“A recent study estimated that the government saved between one and six billion dollars as a result of the adoptions of 50,000 children from foster care each year. Thus it is beneficial to the federal government to invest in postadoption mental health resources to help keep adoptive families together.” (footnote omitted)).

269. N. AM. COUNCIL ON ADOPTABLE CHILDREN, *supra* note 261, at 3.

270. *See id.*

271. EVAN B. DONALDSON ADOPTION INSTITUTE, *supra* note 76, at 62.

care, which excludes all internationally and privately adopted children.²⁷² Some of these excluded children need the services the most; therefore, statutes should provide post-adoption services to all adopted children and families. Providing every adopted child with access to post-adoption services would help prevent private re-homing.

The passage of the Supporting Adoptive Families Act or a similar statute would allow adoptive families to receive adoption and support services, including education, mentoring, and counseling.²⁷³ This legislation would combat private re-homing at the federal level by helping the families that would otherwise turn to private re-homing. Lawmakers need to make a greater effort to ensure that this legislation passes because of its value to the best interests of the child. Services such as those that the Supporting Adoptive Families Act provides could keep adoptive parents from becoming overwhelmed and desperate, thus eliminating the need to turn to the Internet to find a new home for their adopted children.

2. Requirement of Post-adoption Reporting

A need for post-adoption reporting exists because currently no one tracks what happens to children adopted domestically or internationally.²⁷⁴ The benefit of this reporting is the ability to track the progress and development of adopted children.²⁷⁵ With post-adoption reports, others would receive notice if an adoptive parent privately re-homed a child, and accountability would exist to prevent private re-homing. Some countries require adoptive parents to submit post-adoption reports, but these requirements vary depending on the country from which the parent adopts the child.²⁷⁶ The U.S. Department of State, however, has no authority to force parents to comply with these requirements,²⁷⁷ so parents often fail to follow through with providing these reports to the respective country. Additionally, neither the Hague Convention, the IAA, nor their regulations address or require post-

272. *See id.* at 43; *see also* Nobile, *supra* note 15, at 477 (“Currently, only Alabama, Illinois, New Jersey, Pennsylvania, Virginia, and Wisconsin supply state-supported postadoption services to all adoptive families, while the remaining states only provide services to those adopted from state foster care systems. Post adoption services are essential to the welfare of all adoptive families notwithstanding the origin of adoptive children.” (footnote omitted)).

273. S. 1527, 113th Cong. § 2 (2013).

274. Levine, *supra* note 108.

275. *See Post Adoption*, U.S. DEP’T OF STATE (Aug. 17, 2013), <http://travel.state.gov/content/adoptionsabroad/en/adoption-process/how-to-adopt/post-adoption.html>.

276. *See id.*; *see also* Wilkening, *supra* note 47, at 1057 (describing different reporting requirements from various countries).

277. Wilkening, *supra* note 47, at 1058.

adoption reports.²⁷⁸ Yet because these reports are in the best interests of the child and can reveal instances of private re-homing, both federal and state legislation should require such reports to prevent private re-homing.

3. Use of the “Wrongful Adoption” Tort

Because the goal of adoption is to provide children with permanent and safe homes,²⁷⁹ options must be available that allow families to stay together in the event of troubled adoptions. One such option is “wrongful adoption.” Wrongful adoption grants adoptive families monetary relief if the agency misrepresented information about the adopted child.²⁸⁰ When compared to adoption disruption, wrongful adoption is the better alternative because it provides assistance to adoptive families while keeping the family together.²⁸¹ Because wrongful adoption is in the child’s best interests, as well as those of the parents and society, adoptive parents should be aware of this option, and others should encourage them to pursue it instead of adoption abrogation.²⁸²

Wrongful adoption came to light in *Burr v. Board of County Commissioners*²⁸³ when the Ohio Supreme Court allowed wrongful adoption if an agency intentionally and affirmatively misrepresented information about the adopted child.²⁸⁴ Later, in *Michael J. v. Los Angeles County Department of Adoptions*,²⁸⁵ the court created a good faith standard for agencies to disclose material facts about the adopted child’s condition and history.²⁸⁶ Currently, the elements of wrongful adoption include a false representation or concealment of a material fact with the intent to mislead that results in harm due to reliance on the representation or concealment.²⁸⁷

However, wrongful adoption is often not available in cases of international adoption due to exculpatory clauses in adoption contracts and restrictions in the IAA that prevent private rights of action.²⁸⁸ Yet, international adoptions are equally prone to misrepresentation and subsequent adoption disruption, so wrongful adoption needs to become a viable option for adoptive families of internationally adopted children as well. With the option of wrongful adoption, parents may no longer see a

278. *Id.* at 1046, 1057.

279. *When Love Is Not Enough*, *supra* note 79, at 1762.

280. *Id.*

281. *See Woo*, *supra* note 143, at 591.

282. *See Lynch*, *supra* note 28, at 272.

283. 23 Ohio St. 3d 69 (1986).

284. *See When Love Is Not Enough*, *supra* note 79, at 1770.

285. 247 Cal. Rptr. 504 (Cal. Ct. App. 1988).

286. *See When Love Is Not Enough*, *supra* note 79, at 1771.

287. *Lynch*, *supra* note 28, at 270.

288. *Wilkening*, *supra* note 47, at 1060.

need to turn to private re-homing.

4. Bringing Re-homing Above Ground

“In *almost* all cases, maintaining the family will be in the best interest of the child.”²⁸⁹ Focusing on the word “almost,” it becomes clear that instances exist in which the best interests of the child require removal from the adoptive family.²⁹⁰ In those rare cases, adoption annulment is appropriate.²⁹¹

[P]rotection of a child requires that parents not be permitted to abandon a child because they are experiencing difficulties raising the child; nor should parents be permitted to abandon a child because they are experiencing difficulties raising the child; nor should parents be permitted to abandon a child because of economic or other considerations. . . . On the other hand, there are circumstances where it is clearly necessary to permit parents to relinquish voluntarily their rights to a child.²⁹²

When this occurs, however, oversight must exist.²⁹³ State law governs adoption annulment,²⁹⁴ but legislation and scholars have not given courts much direction on how to handle cases of adoption annulment.²⁹⁵ Additionally, adoption annulment raises tough policy issues because of the need to reconcile permanency in adoption, prevention of fraud and misrepresentation, and the best interests of the child.²⁹⁶ Potential harm could result from adoption annulment,²⁹⁷ so states should have very

289. Lynch, *supra* note 28, at 273 (emphasis added).

290. Removal from the adoptive family may sometimes be in the child’s best interests. “[A]s the last decade has demonstrated, far worse fates than disruption befall adopted children when their placements are unsuccessful.” Andrea B. Carroll, *Breaking Forever Families*, 76 OHIO ST. L.J. 259, 265 (2015). For an extreme example, examine the case of Peggy Hilt, “the well-known adoptive mother of a Russian two-year-old, Nina,” where “nearly two years of heartbreak finally erupted in one tragic day when Peggy choked and beat Nina to death as they were packing for a family vacation.” *Id.*

291. Annulment revokes the adoption decree, and the parents no longer have legal responsibilities to the child. *When Love Is Not Enough*, *supra* note 79, at 1765. *But see* Woo, *supra* note 143 (discussing the problems of adoption annulment including how adoption annulment violates the adopted child’s equal protection rights and offering alternatives to annulment including disclosure statutes and mandated training for adoptive parents).

292. *In re J.F.*, 862 A.2d 1258, 1261 (Pa. Super. Ct. 2004).

293. *See* Gordon, *supra* note 98, at 18.

294. Woo, *supra* note 143, at 570; *see also* Lynch, *supra* note 28, at 264–68 (discussing different types of state statutes allowing abrogation).

295. *See* Lynch, *supra* note 28, at 258.

296. *Id.* at 260.

297. *See id.* at 270.

specific statutes that enumerate the conditions under which annulment should take place and short time periods during which an adoptive parent can annul the adoption.²⁹⁸

Instead of turning to private re-homing, adoptive parents should pursue legal, above-ground methods of transferring custody of their adopted children if it is in the child's best interests. In addition to adoption annulment, which forces the child to return to the state's social welfare system and foster care,²⁹⁹ one option is formal re-adoption—adoptive parents terminate parental rights through the courts, and a new family submits to a background check and formal vetting.³⁰⁰ Another alternative involves transferring guardianship in court without terminating parental rights.³⁰¹ Both of these methods are preferable to the less formal use of a power of attorney document, which does not require court oversight. Parents should know of these legal and better alternatives to private re-homing because “[f]inding families for vulnerable children should never be a do-it-yourself process.”³⁰²

C. *Prohibiting Private Re-homing Through Legislation Specifically Targeting the Practice*

In addition to preventing private re-homing, the United States should take steps to prohibit the practice. Legislatures should criminalize private re-homing³⁰³ because it goes against the best interests of the child and is thus contrary to all existing adoption law. Therefore, this Note proposes a model state statute specifically targeting the practice and analyzes why the proposed model statute is more effective and comprehensive than enacted and currently proposed legislation. Prohibiting private re-homing should, however, occur at both the state and federal levels with legislation specifically targeting the practice.

298. *Id.* at 273; *see also* Beech, *supra* note 112, at 467 (“[T]he system must find a way to protect adopted children from being returned to foster care for frivolous reasons.”).

299. Lynch, *supra* note 28, at 263.

300. Twohey, *Child Exchange Part 2*, *supra* note 2.

301. *Id.* Another proposal that this Note does not discuss involves using safe havens for adopted children in the same way parents use them for their biological children. Carroll, *supra* note 290, at 295. Of course, this also does not provide a solution that keeps families together in the same way that the holistic solution that this Note proposes might be able to do.

302. Editorial, *Shut Down Internet Adoptions*, CHI. TRIB. (Oct. 31, 2013), http://articles.chicagotribune.com/2013-10-31/opinion/adopt-ct-edit-1031-20131031_1_child-welfare-adoptions-two-children (quoting Senator Ron Wyden).

303. *See* Gordon, *supra* note 98, at 18.

1. At the State Level

Every state should adopt uniform, comprehensive legislation targeting both the custody transfer of adopted children and internet advertisement surrounding this transfer. To start, state legislation should expressly define re-homing using the definition that Louisiana has enacted.³⁰⁴ This definition does not simply limit transfers constituting adoptions; rather, it prohibits permanent transfers of custody that would include private re-homing.³⁰⁵ Using that definition, the state statute should then expressly state that private re-homing is unlawful. Because some instances of transferring custody are beneficial, the statute should also expressly describe circumstances that do not constitute re-homing, such as those contained in Louisiana's statute³⁰⁶—transfers to relatives or stepparents and transfers adhering to the guidelines of the ICPC. Transferring custody should also only be permitted on a temporary basis, so the statute should expressly limit the temporary time period to six months, and it should require that the parents specify the length of time and their intent to regain custody of the child. For a parent to transfer custody in other circumstances or for longer periods of time, the parent should need to receive court approval, such as that required in Wisconsin.³⁰⁷

Beyond the regulation of custody transfers, the state legislation should also prohibit advertising children for re-homing. This legislation should prohibit only advertisement related to re-homing, not the advertisement that facilitates legal adoptions. States should therefore specify the prohibition of advertisement used to facilitate private re-homing, and they should restrict advertisement for legal adoptions to those licensed to advertise.

Lastly, comprehensive legislation should expressly state a severe felony violation with appropriate imprisonment and fines for violating any part of the statute. The severity of the dangers of private re-homing demands severe consequences to protect the best interests of the child.

2. Proposed State Statute

Based on the above analysis, states should enact the following proposed criminal statute prohibiting private re-homing and internet advertisement that perpetuates the practice:

304. *See* LA. REV. STAT. ANN. § 14:46.4 (2015).

305. *Id.*

306. *See id.* § 14:46.4(B).

307. *See* WIS. STAT. § 48.979(1)(am) (2015).

RE-HOMING OF ADOPTED CHILDREN

PART 1: TO PROHIBIT RE-HOMING OF A CHILD.

- A. Re-homing of a child is any one of the following³⁰⁸:
1. A transaction, or any action taken to facilitate such transaction, through electronic means or otherwise, by a parent or any individual or entity with custody of a child who intends to avoid or divest himself of permanent parental responsibility by placing the child in the physical custody of a nonrelative, without court approval, unless Section C of this Part applies. Actions include but are not limited to transferring, recruiting, harboring, transporting, providing, soliciting, or obtaining a child for such transaction.
 2. The selling, transferring, or arranging for the sale or transfer of a minor child to another person or entity for money or anything of value or to receive such minor child for such payments or thing of value.
 3. Assisting, aiding, abetting, or conspiring in the commission of any act described in Subsections 1 and 2 of this Section by any person or entity, regardless of whether money or anything of value has been promised to or received by the person.
- B. Re-homing of a child as defined in Section A shall be unlawful.
- C. Re-homing does not include³⁰⁹:
1. Placement of a child with a relative, stepparent, licensed adoption agency, licensed attorney, or the Department of Children and Family Services.
 2. Placement of a child by a licensed attorney, licensed adoption agency, or the Department of Children and Family Services.
 3. Temporary placement of a child by parents or custodians for designated short-term periods with a specified intent and time period for return of the

308. This language comes from the definition of re-homing contained in the Louisiana statute. LA. REV. STAT. ANN. § 14:46.4(A).

309. This language, apart from that in Subsections (3)(a)–(b), comes from the exceptions to the definition of re-homing contained in the Louisiana statute. *Id.* § 14:46.4(B).

child due to a vacation or a school-sponsored function or activity, or the incarceration, military service, medical treatment, or incapacity of a parent.

- a. Temporary placement as described in Paragraph 3 should be for a period no longer than six months.³¹⁰
 - b. A temporary placement as described in Subsection 3 for a period of longer than six months must be approved by a court.³¹¹
 - c. A petition to the court for this extended temporary placement must include all of the following³¹²:
 - (1) Whether the parent wishes to delegate to the agent full parental power regarding the care and custody of the child or partial parental power regarding the care and custody of the child.
 - (2) The proposed term of the delegation of powers, the reason for the delegation of powers, and whether the parent proposes to provide any support to the agent during that term. If so, the petition shall indicate the amount of that support.
 - (3) Facts and circumstances showing that the delegation of powers would be in the best interests of the child and that the person nominated as agent is fit, willing, and able to exercise these powers.
4. Placement of a child in another state in accordance with the requirements of the Interstate Compact on the Placement of Children.

310. Six states use a six-month time period as the limitation for delegation of parental powers, although some states allow for a time period of up to twelve months. *See supra* note 132 and accompanying text.

311. This exception to the temporary custody time period with court approval comes from the Wisconsin statute. *See* WIS. STAT. § 48.979(1)(am). However, this proposed statute contains a shorter time period than that allowed in Wisconsin.

312. The language for requirements for this petition comes from the Wisconsin statute. *Id.* § 48.979(1m)(a)(4)–(6).

5. Relinquishment of a child pursuant to the safe haven provisions of law.

D. A violation of this Part constitutes a felony.³¹³ A person who violates this Part shall be fined not more than \$10,000,³¹⁴ imprisoned for a period not more than five years,³¹⁵ or both.

PART 2: TO RESTRICT ADVERTISEMENT RELATED TO ADOPTION.

A. “Advertise” means to communicate by any public medium that originates within this state, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio, or television, or by any computerized communication system, including by electronic mail, internet site, internet account, or any similar medium of communication provided via the Internet.³¹⁶

B. Except as provided in Section C, it is unlawful to do any of the following³¹⁷:

1. Advertise for the purpose of finding a child to adopt or to otherwise take into permanent physical custody.
2. Advertise that the person will find an adoptive home or any other permanent physical placement for a child or arrange for or assist in the adoption, adoptive placement, or any other permanent physical placement of a child.
3. Advertise that the person will place a child for adoption or in any other physical placement.

C. Section B does not apply to any of the following³¹⁸:

313. Both enacted and proposed legislation classify the crime of re-homing as a felony. *E.g.*, FLA. STAT. § 63.212(8) (2015).

314. While different legislation contains different monetary penalties, the highest seems to be \$10,000. The higher the penalty, the greater a deterrent this statute will be. For a statute containing a penalty of this magnitude, see, for example, WIS. STAT. § 48.979(g).

315. Both enacted and proposed legislation primarily include a period of imprisonment of this length. *E.g.*, LA. REV. STAT. ANN. § 46.4(C) (2015).

316. This definition of “advertise” comes from the Wisconsin statute. WIS. STAT. § 48.825(1)(a).

317. These advertising prohibitions come from the Wisconsin statute. *Id.* § 48.825(2).

318. The language regarding the exceptions to the advertisement statute comes from both the Wisconsin and Florida statutes restricting advertisement. *See id.*; FLA. STAT. § 63.212(g).

1. The department, a county department, or a child welfare agency licensed to place children for adoption in licensed foster homes or group homes or in the homes of guardians.
 2. An adoption entity licensed under the laws of the state.
 3. A person who is an attorney licensed to practice law in the state.
- D. It is unlawful for any person to advertise to facilitate private re-homing as defined in this Statute.³¹⁹
- E. A violation of this Part constitutes a felony.³²⁰ A person who violates this Part shall be fined not more than \$10,000, imprisoned for not more than eighteen months, or both.³²¹

3. Leveraging the ICPC

States should also leverage the ICPC³²² to prohibit private re-homing across state lines.³²³ To do so, states must educate law enforcement officials about the legislation and private re-homing. Only then can officials make efforts to enforce the legislation. All states should also enact a standardized penalty for violation of the ICPC, preferably with a penalty more severe than a misdemeanor. With penalties in place, states must take seriously the necessity of enforcing the penalties on those who violate the ICPC. Only with severe penalties and strict enforcement will the ICPC be able to do as intended—provide children with the “opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a

319. Although this piece of legislation restricts advertisement related to adoption generally, it is important to expressly prohibit all advertisement used to facilitate private re-homing, regardless of the person who may advertise.

320. Some statutes classify a violation related to advertising differently than a violation specifically targeting re-homing, but each should be a felony to show the severity of both re-homing and facilitating the process. For a statute classifying this kind of violation as a felony, see COLO. REV. STAT. § 19-5-213.5(4) (2015). *But see* FLA. STAT. § 63.212(8) (classifying this violation as a misdemeanor).

321. For a statute implementing similar punishment for this kind of violation, see WIS. STAT. § 48.825(5).

322. *See supra* Sections I.B & III.B (describing the ICPC and illuminating its flaws).

323. Beyond the recommendations for leveraging the ICPC mentioned in this Subsection, an alternative suggestion involves simplifying the ICPC to make it easier for law enforcement to understand and enforce. *See* Beech, *supra* note 112, at 471–71.

necessary and desirable degree and type of care.”³²⁴ States can only guarantee this type of care through the prohibition of private re-homing.

4. At the Federal Level

“A state-led solution . . . is admirable, but given that children are often moved illegally and re-homed across state lines, there is a need for federal commitment to policing and preventing re-homing.”³²⁵ Additionally, a recent court decision suggested that “a local rule will likely be both improper and inadequate.”³²⁶ There must therefore be a move at the federal level to prohibit private re-homing to protect the best interests of the child.

The piece of proposed legislation that could combat private re-homing involves expanding the Protect Our Children Act of 2008.³²⁷ The proposed addition includes “combating the transfer of permanent custody or control of a minor in contravention of a required legal procedure, and for other purposes.”³²⁸ However, because private re-homing is not always expressly “in contravention of a required legal procedure,” the bill should specifically discuss combating private re-homing. Federal legislation expressly prohibiting private re-homing could make tremendous strides in eradicating the practice. Lawmakers must make efforts to pass this bill or similar legislation because adopted children are potentially placed in great danger otherwise. By specifically enumerating a prohibition of the practice in the bill, those seeking to participate in private re-homing will know the federal government is working to stop them. Because combating private re-homing serves the best interests of the child, the serving of those interests must occur at the federal level too.

CONCLUSION

This Note offers a solution that provides an alternative ending to stories such as that of Quita and the other adopted children who fall victim to private re-homing. An ending involving permanency and protection is far better than an ending involving an internet exchange that leaves children at the hands of dangerous and abusive parents. Because of the number and severity of the risks and consequences of private re-homing, both states and the federal government must urgently make all efforts to end this deplorable practice. Adoption laws are in place to protect and serve the best interests of the child, and all efforts to immediately and

324. AM. PUB. HUMAN SERVS. ASS’N, *supra* note 41, at 8.

325. Bala, *supra* note 75, at 142.

326. *In re Adoption of Child A and Child C*, 997 N.Y.S. 2d 312, 314 (Sur. Ct. 2014).

327. H.R. 4704, 113th Cong. (2014).

328. *Id.*

effectively combat private re-homing should do the same. Representative James Langevin recently stated, “There is a growing awareness of this problem, however, and I feel confident that when people learn about re-homing and some of the atrocities that have taken place because of this illegal practice, they will understand the *critical* need for action.”³²⁹ The purpose of this Note in raising awareness of this deplorable practice and proposing a solution to the problem is just that—to elicit a *critical* need for immediate and effective action. With the best interests of the child in mind, private re-homing must end now.

329. Montanari, *supra* note 149 (emphasis added).

