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

Megan Testerman

Follow this and additional works at: http://scholarship.law.ufl.edu/flr

Part of the Family Law Commons

Recommended Citation
Available at: http://scholarship.law.ufl.edu/flr/vol67/iss6/6

This Note is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized administrator of UF Law Scholarship Repository. For more information, please contact outler@law.ufl.edu.
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.

INTRODUCTION ............................................................................................ 2105

I. HISTORICAL PERSPECTIVE ON ADOPTION ................................. 2108
   A. The Origin of Adoption in the United States and the Rise of International Adoption ........................................... 2108
   B. The Development of Adoption Legislation ............................. 2110

* Editor’s Note: This Note won the Gertrude Brick Prize for the best Note in Spring 2015.
** 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 Burriss 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.
II. THE EMERGENCE AND PRACTICE OF PRIVATE RE-HOMING ................................................................. 2113
   A. The Causes of Private Re-homing ................................................................. 2113
      1. Inadequate Medical and Social History Disclosure ................................................. 2114
      2. Insufficient Training for Adoptive Parents .............................................................. 2115
      3. Lack of Post-adoption Services and Support ............................................................. 2116
      4. Risky Alternatives and the Demand for Adopted Children ........................................ 2117
   B. The Process of Private Re-homing ........................................................................... 2118
      1. The Role of the Internet ......................................................................................... 2118
      2. The Use of a Power of Attorney Document ............................................................... 2119
   C. The Dangers and Consequences of Private Re-homing ............................................... 2120

III. AN ANALYSIS OF EXISTING LEGISLATION COMBATING PRIVATE RE-HOMING ......................................................... 2121
   A. Combating Private Re-homing at the State Level .......................................................... 2122
   B. Combating Private Re-homing with the ICPC ............................................................... 2128
   C. Combating Private Re-homing at the Federal Level ...................................................... 2129

IV. THE PROPOSED SOLUTION TO PRIVATE RE-HOMING ................................................................. 2131
   A. Pre-adoption Prevention of Private Re-homing .............................................................. 2132
      1. Preparation and Vetting of Adoptive Families ............................................................. 2132
      2. Mandated Medical and Social History Disclosure ....................................................... 2133
   B. Post-adoption Prevention of Private Re-homing ............................................................ 2134
      1. Provision of Post-adoption Services and Support ....................................................... 2134
      2. Requirement of Post-adoption Reporting ................................................................ 2137
      3. Use of the “Wrongful Adoption” Tort .................................................................... 2138
      4. Bringing Re-homing Above Ground ...................................................................... 2139
   C. Prohibiting Private Re-homing Through Legislation Specifically Targeting the Practice ......................................................... 2140
      1. At the State Level ................................................................................................. 2141
      2. Proposed State Statute ......................................................................................... 2141
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)).

Quita experienced this appalling practice firsthand. The Puchallas adopted Quita from Liberia, raised her for two years, and then decided they no longer wanted her. 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. 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. Then, by signing a notarized power of attorney document, the Puchallas gave these “virtual strangers” guardianship rights to Quita.

Soon after the Puchallas left Quita with the Easons, they became concerned because the Easons stopped responding to their requests for updates about Quita. 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. 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. As it turns out, Nicole Eason lost custody of her biological children because of psychiatric problems and violent tendencies; allegedly sexually abused children she babysat; and, according to Quita, wanted to sleep naked in bed with her.

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

---

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).
13. Id.
14. Id.
thoughtlessly and recklessly gave her away in the first place. No one took legal action, which left the Easons free to take another child the same way they took Quita and the same way Nicole Eason had helped take another child before Quita. 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.

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. Private re-homing, unlike adoption through the system, entails transferring custody of unwanted adopted children using online message boards. 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. 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.


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).


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 Feigenholz: “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)).
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. At its beginning, adoption existed to prevent the extinction of families. 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, the legislatures in the United States borrowed from other systems of law to develop adoption law. Legislatures primarily pulled from Roman law, 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

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

In the United States, adoption was private until 1851 when Massachusetts enacted the Massachusetts Adoption of Children Act. 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. Thus, the first big development in adoption law involved an investigation of prospective adoptive parents, 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.

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. American soldiers saw the vast number of children left homeless and parentless due to these conflicts and adopted some of them. 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. 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.

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).


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 . . . .”).


35. Long, supra note 34, at 829.

36. Estin, supra note 34, at 68.

B. The Development of Adoption Legislation

With adoption popularity on the rise, 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,” 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. 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. The ICPC prescribes the procedures and requirements for interstate adoptions. Under the ICPC, both the sending and receiving state must approve the placement. Anyone who violates the ICPC is subject to punishment based on state laws in both of the states involved in the adoption. 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.

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. 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...
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 Cooperation 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

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.
51. See id. § 14901; Hague Convention, supra note 49.
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.
sends 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.
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.
70. Long, supra note 34, at 835.
71. See id.
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

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).
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 disruption\(^80\) is inadequate information about the children.\(^81\) Because of inadequate disclosures, adoptive parents are left with unrealistic expectations\(^82\) 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 adopted 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.”).


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.

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

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.
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.
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


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.


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).


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. For those seeking to legally adopt, the process can be long, tiresome, and expensive. Private re-homing therefore offers a cheaper and easier alternative to adoption. 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. 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,” and the rise of the Internet has worked to facilitate the practice of private re-homing. 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).


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.”).
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 1, 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. Additionally, transferring custody, even temporarily, does not go completely unregulated. States have laws governing such transfers, but they are all different. Some states allow for a temporary transfer of up to twelve months, whereas Massachusetts only allows a transfer for up to sixty days.

Yet with a power of attorney document, those who receive custody can make educational and health decisions for the adopted child. 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. 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. Unregulated private re-homing creates the risk of exploitation, abuse, neglect, and human trafficking. The victims of private re-homing report “gruesome tales of physical, sexual or emotional abuse by their new guardians.” Adopted children are at risk because traffickers and pedophiles can use the Internet to easily find and acquire these children. Furthermore, the

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. 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 study—requirements all adoptive families must fulfill when adopting legally through the system.

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. Research reveals that these “children need permanency in order to thrive,” and re-homing removes the possibility of permanency. Re-homed children can suffer from anything from overwhelming stress and eating disorders to suicidal thoughts. 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.

“It’s hard to imagine that being adopted could lead to worse conditions than being in an orphanage, but it’s possible.” 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-
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, legislation that regulates the transfer of children to nonrelatives, or legislation that targets both of these parts of the private re-homing process. 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. This recent outpouring of proposed legislation

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


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 Marsh 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. 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. 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. 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, 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 Internet and a statute restricting the delegation of parental power, is “on the national forefront of addressing re-homing and attacking it head on.” Wisconsin’s legislation against private re-homing continues 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).
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. 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, or attorneys licensed in Wisconsin. Violating this legislation may lead to a fine of up to $10,000, imprisonment for up to nine months, or both.

Wisconsin also restricts a parent’s ability to delegate parental powers to another by power of attorney, which targets the primary means by which private re-homing takes place. A parent may delegate certain parental powers to a nonrelative for a period no longer than one year—a power that may be beneficial in certain circumstances. 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. 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 hearing to consider the best interests of the child. If an individual violates this statute by delegating parental rights to a nonrelative for a period longer than one year.

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.
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.\footnote{Id. \S 48.979(1m)(g).}

Florida has also recently passed legislation that addresses private re-homing,\footnote{See Fla. Stat. \S 63.212 (2015).} 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.\footnote{Id. \S 63.212(1)(g).} Florida, like Wisconsin, provides exceptions to this rule to allow particular people and entities to advertise, including adoption entities.\footnote{See id.; see also id. \S 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”).} Attorneys licensed in Florida may also advertise but only through a paid advertisement or listing in a telephone directory, not through the Internet.\footnote{Id. \S 63.212(1)(g).} Transferring a child to someone other than a relative or a stepparent is also unlawful unless an adoption entity performs this transfer.\footnote{Id. \S 63.212(1)(b).} If an individual violates the restriction on advertising, the violation constitutes a second-degree misdemeanor.\footnote{Id. \S 63.212(2)(c).} But if an individual violates any other part of the statute, the violation is a third-degree felony.\footnote{Id. \S 63.212(8).}

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.\footnote{See La. Rev. Stat. Ann. \S 14:46.4 (2015).} This statute defines re-homing as a

\begin{enumerate}
\item Id. \S 48.979(1m)(g).
\item Id. \S 63.212(1)(g).
\item See id.; see also id. \S 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”).
\item Id. \S 63.212(1)(g).
\item Id. \S 63.212(1)(b).
\item Id. \S 63.212(2)(c). In Florida, the punishment for a second-degree misdemeanor includes imprisonment not exceeding sixty days. Id. \S 775.082(4)(b). The punishment may also include a fine not exceeding $500. Id. \S 775.083(1)(e).
\item Id. \S 63.212(8). In Florida, the punishment for a third-degree felony includes imprisonment not exceeding five years. Id. \S 775.083(3)(e). The punishment may also include a fine not exceeding $5000. Id. \S 775.083(1)(c).
\end{enumerate}
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).
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).


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.


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. Upon receiving the report, the agency would then have been required to investigate the attorney-in-fact by performing a home study, a criminal background check, and a check of court records. 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 ICPC to oversee custody transfers across state lines, 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. 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. 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. This is problematic because some states have no penalties in place, and the states that do have penalties

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. Additionally, states rarely impose penalties even if they have them. “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].’” 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.

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).” 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. 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, and a proposal exists to expand that definition. If this proposal—the Protecting Adopted Children Act—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.” Although at

---

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.”).
210. See Nobile, supra note 15, at 477 (stating that “[t]he federal government has a duty to protect children adopted” domestically and internationally).
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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{217} Although this Note addresses the need for state statutes restricting advertisement, it does not expressly propose a federal statute to do the same.\textsuperscript{218} Such a statute, however, could be beneficial because many instances of private re-homing occur across state lines.\textsuperscript{219} The statute could also effectively combat those instances of re-homing by simply mirroring previously enacted state legislation.\textsuperscript{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

\begin{flushright}
\end{flushright}

\begin{flushright}
\textsuperscript{216} H.R. 2068.
\end{flushright}

\begin{flushright}
\textsuperscript{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.”).
\end{flushright}

\begin{flushright}
\textsuperscript{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. \textit{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.” \textit{id.} at 480.
\end{flushright}

\begin{flushright}
\textsuperscript{219} \textit{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.”).
\end{flushright}

\begin{flushright}
\textsuperscript{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.” \textit{id.}
\end{flushright}
regarding such funding. 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. Additionally, it provides grants as well as $20,000,000 each fiscal year to fund mental health services. 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.

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. 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. Additionally, in the recent case In re Adoption of Child A and Child C, 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.” 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).
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, 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. 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, 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. Colorado requires every adoptive parent to undergo at least sixteen hours of face-to-face training. 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. 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. This regulation reflects the different needs of parents adopting older children or international children, and it specifies topics to cover under each training requirement. 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.
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. Each state has different rules about home studies, particularly regarding who may conduct the home study. Statutes also provide specific information that the home study preparer must acquire during the home study. 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. 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. 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. This is the only way that parents can make fully informed decisions and avoid the disruption that often results from inadequate and inaccurate disclosure. Full disclosure also helps ensure that children are placed with the most appropriate adoptive family and that they receive all necessary care. Thus, statutes that mandate full disclosure are “vital.” Not only must mandatory disclosure statutes
exist, they must also require specific information and timely disclosure of that information.

Oklahoma has a strong, specific mandatory disclosure statute 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. This statute also requires providing a form for all of this information, 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. Additionally, a separate social history form exists. 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. "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.


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 rehoming.”); cf.

http://scholarship.law.ufl.edu/flr/vol67/iss6/6
able to provide opportunities for . . . support services in an effort to stabilize adoptions before disruption in order to mitigate resulting trauma, loss and separation.”

Post-adoption services must be available for all adopted children, and families must know how to access and utilize these services. They also must be available for as long as the adopted children need such services. A noted barrier to successful adoptions is the cost and lack of awareness of post-adoption services. The Hague Convention and the IAA do not address post-adoption services, although they focus extensively on pre-adoption requirements. Some states, however, have statutes that provide for post-adoption services, 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. Despite this need and the importance of mental health services, many post-adoption service programs do not offer mental health services. 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

---

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/adopttalk/postadopthome.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.”

One problem impacting the provision of post-adoption services and support is funding. 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. 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. Legislatures should therefore make all efforts to pass the Protecting Adopted Children Act 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.

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. In other states, parents have to relinquish custody of their children before they can receive the help they need. 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, 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.


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)).


274. Levine, supra note 108.


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. 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, 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. When compared to adoption disruption, wrongful adoption is the better alternative because it provides assistance to adoptive families while keeping the family together. 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.

Wrongful adoption came to light in Burr v. Board of County Commissioners when the Ohio Supreme Court allowed wrongful adoption if an agency intentionally and affirmatively misrepresented information about the adopted child. Later, in Michael J. v. Los Angeles County Department of Adoptions, the court created a good faith standard for agencies to disclose material facts about the adopted child’s condition and history. 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.

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. 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.
283. 23 Ohio St. 3d 69 (1986).
284. See When Love Is Not Enough, supra note 79, at 1770.
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

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).
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.
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. This definition does not simply limit transfers constituting adoptions; rather, it prohibits permanent transfers of custody that would include private re-homing. 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 statute—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.

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:

305. Id.
306. See id. § 14:46.4(B).
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 following:

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 include:

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.\textsuperscript{313} A person who violates this Part shall be fined not more than $10,000,\textsuperscript{314} imprisoned for a period not more than five years,\textsuperscript{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.\textsuperscript{316}

B. Except as provided in Section C, it is unlawful to do any of the following\textsuperscript{317}:

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 following\textsuperscript{318}:

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

\textsuperscript{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).

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

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

\textsuperscript{317} These advertising prohibitions come from the Wisconsin statute. \textit{Id.} § 48.825(2).

\textsuperscript{318} The language regarding the exceptions to the advertisement statute comes from both the Wisconsin and Florida statutes restricting advertisement. \textit{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 ICPC 322 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.
[^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).