

RE-HOMING IS DE-HOMING:
AN ARGUMENT FOR REGULATING
UNREGULATED CUSTODY TRANSFERS

Tara Kade*

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* LL.M. Candidate 2023, London School of Economics and Political Science; J.D. Candidate 2023, Columbia Law School; B.A. 2020, University of California, San Diego. The author would like to thank Professor Jane Spinak and all of the other incredible people who gave her feedback, advice, and support as she worked on this Note. This Note would not be what it is without each and every one of them.

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INTRODUCTION

When Nora Gateley was thirteen years old, she was adopted from an orphanage in Guangdong, China, by Patricia and Mike McLaughlin.¹ Only a year later, Nora was taken to the home of Tom and Debra Schmitz, a couple whom neither she nor her parents had ever met, and left there.² The McLaughlins, Nora would later learn, had written a post in an Internet group dedicated to “rehoming” children whom people no longer wanted to care for, asking if anyone was interested in taking Nora.³ The McLaughlins’ actions, Nora recalled, came just after her sister accused her of hitting her during a fight.⁴ The couple’s “ad” was answered by the Schmitzes and, without so much as lightly vetting the couple, the McLaughlins decided to send Nora to live with them.⁵

Nora was subsequently tormented by her new “guardians.”⁶ Among other things, the Schmitzes forced Nora and the other children that lived with them to dig their own graves in the yard in an effort to scare them.⁷ The couple also told Nora that because no one knew she was there, no one would miss her if she disappeared.⁸ This statement was not entirely untrue. No one knew where Nora was except for the McLaughlins, and they would never come back to check on her.⁹ During her time with the Schmitzes, Nora and the seventeen other children she lived with were abused physically and psychologically.¹⁰ When the abuse came to light, and all eighteen children were finally removed from the Schmitzes’ home, the McLaughlins were not punished for handing their young daughter to

1. Megan Twohey, *A Chinese Girl is Moved to Tennessee and ‘Hell’ Begins*, from *The Child Exchange: Inside America’s Underground Market for Adopted Children*, REUTERS INVESTIGATES (Sept. 11, 2013), <https://www.reuters.com/investigates/adoption/#article/part5> [<https://perma.cc/UKD2-4VW8>] [hereinafter Twohey, *The Survivors*]. Nora’s story is the final of several Twohey reported in the September 2013 Reuters Investigative Report. It was written based on records of events that took place as well as Nora’s own account of her time with the McLaughlins, with the Schmitzes, and since being rescued. *Id.*

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

strangers.¹¹ On the contrary, they were asked if they were amenable to taking Nora back.¹² Patricia McLaughlin said though they were “horrified” by what had happened to Nora, taking her back was out of the question.¹³ As a result of her parents transferring custody of her to strangers, Nora’s adolescence was plagued by abuse, trauma, and psychological and physical harm.¹⁴ Nora’s story is not the only one of its kind.¹⁵ Many other cases like Nora’s have been reported, and it is likely that even more have not.¹⁶

Contrary to what one might believe, what happened to Nora Gateley was not entirely illegal. While the Schmitzes’ abuse itself violated the law,¹⁷ the couple’s act of taking physical custody of children that were not theirs did not.¹⁸ Nor did the McLaughlins’ act of handing their child off to strangers.¹⁹ In the United States, there is no federal legislation on the books dealing with unregulated custody

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. See Megan Twohey, *The Child Exchange: Inside America’s Underground Market for Adopted Children*, REUTERS INVESTIGATES (Sept. 9, 2013), <https://www.reuters.com/investigates/adoption/#article/> [<https://perma.cc/X87H-5HUX>] [hereinafter Twohey, *The Report*] (detailing several other accounts of children whose parents gave them to strangers on the internet and the abuse that followed). The accounts in Twohey’s five-part series are in no way representative of the volume of cases of this type. See U.S. GOV’T ACCOUNTABILITY OFF., GAO-15-733, CHILD WELFARE: STEPS HAVE BEEN TAKEN TO ADDRESS UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN (2015) (“Little is known about the prevalence of unregulated transfers. Because they happen without any oversight, these transfers are difficult to track and no federal agency keeps statistics on their occurrence.”); see also Megan Twohey, *About the Series*, from *The Child Exchange: Inside America’s Underground Market for Adopted Children*, REUTERS INVESTIGATES, <https://www.reuters.com/investigates/adoption/#article/about> [<https://perma.cc/9USW-EKMJ>] (“Reporters identified eight online bulletin boards where participants advertised unwanted children, often international adoptees, as part of an informal practice that’s called ‘private re-homing.’”).

16. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 15.

17. Twohey, *The Survivors*, *supra* note 1 (“Debra Schmitz pleaded no contest to 14 counts of child abuse and one count of child trafficking, all misdemeanors. She was sentenced to six months in jail and placed on probation. The case against Tom Schmitz has been expunged.”).

18. See *id.* (quoting the Tennessee Department of Children’s Services saying, “seven of the 18 children removed from the [Schmitzes’] home did not legally belong to the Schmitzes.”). Even after thorough investigation, detectives were never able to figure out where some of the kids came from. *Id.*

19. *Id.*

transfers.²⁰ According to the Child Welfare Information Gateway, a service through the U.S. Department of Health and Human Services (HHS), fewer than half of the states have enacted any laws that prohibit the unregulated transfer of custody of children.²¹ This is extremely problematic because even in cases not as egregious as Nora Gateley's, "all rehomed children are at greater risk for child abuse, neglect, and exploitation due to the additional trauma caused by the disruption to their home life and the lack of placement oversight."²²

In 2013, Reuters published a five-part investigative report titled "The Child Exchange: Inside America's Underground Market for Adopted Children" ("the Report") which subsequently brought attention to unregulated custody transfers.²³ Little if anything had been published about unregulated custody transfers prior to the Report.²⁴ In addition, the few state laws that have been enacted to curb unregulated transfers of custody were introduced after the Report shed light on this dangerous practice.²⁵ As this Note will later discuss, both state and federal legislators who have addressed this practice have cited directly to the Report.²⁶ In addition, a significant

20. See *infra* Part II.A, for more on federal legislation. In a press release for the Safe Home Act of 2019, cosponsored by Representatives Jim Langevin and Don Bacon, the lack of federal legislation dealing with unregulated custody transfers was described as a "loophole in federal law." Press Release, Congressman Don Bacon, Rep. Bacon Co-Leads Bipartisan Bill that Will Protect Adopted Children from Rehoming (Feb. 28, 2019), <https://bacon.house.gov/news/documentsingle.aspx?DocumentID=321> [<https://perma.cc/D3UN-5BC9>].

21. CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN 2 (2018) [hereinafter CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN]. As of October 2017, only 13 states considered unregulated transfers of custody a criminal act, and while this number has increased since then, the majority of states continue to implicitly permit these transfers.

22. *Unregulated Custody Transfers of Adopted Children*, ADOPTION TRIAD (Aug. 2019), <https://www.childwelfare.gov/news-events/adoptiontriad/editions/aug2019/> [<https://perma.cc/CDC3-P799>].

23. Twohey, *The Report*, *supra* note 15.

24. Various sources credit the Report with bringing the practice of unregulated transfers of custody to light. See, e.g., CAPACITY BUILDING CTR. FOR STATES, UNREGULATED CUSTODY TRANSFER/RE-HOMING OF ADOPTED CHILDREN 1 (2016) ("The practice of 're-homing' was brought to light in the fall of 2013 through the Reuters News Agency investigative article series . . ."); see *infra* Part I.F.2 for information on the impact of the Report.

25. See *infra* Part II.B, for more on state legislation.

26. See *infra* Part I.F.1; see e.g. Megan Twohey, *Wisconsin Passes Law to Curb Private Custody Transfers of Children*, REUTERS (Apr. 16, 2014),

amount of scholarship that has been published on this topic in recent years cites back to the Report.²⁷

This Note will analyze and advocate for federal and state legislation intended to combat unregulated custody transfers and safeguard the welfare of children. Part I will break down what unregulated custody transfers are and why they must be regulated. Part II will engage in an in-depth analysis of a federal bill and a proposed model state law. Part III will utilize that in-depth analysis to suggest amendments to proposed legislation on the state and federal level. This Note ultimately argues that the United States must have a law on the books that explicitly criminalizes the unregulated transfer of custody of children.

I. The Reality of Rehoming

Part I of this Note will provide an in-depth look at unregulated custody transfers. Part I.A will define what types of transfers this Note is addressing. Part I.B will give an overview of U.S. adoption law to show how unregulated custody transfers are distinct from legal adoptions. Part I.C will explain precisely how unregulated custody transfers are carried out. Part I.D will show how the practice is detrimental to children. Part I.E will describe why individuals resort to the practice despite the danger. Finally, Part I.F will introduce the state of the law today.

A. Defining the Scope

Unregulated custody transfers of children occur when a parent or legal guardian of a child gives custody of that child to

<https://www.reuters.com/article/us-wisconsin-adoption-idUSBREA3F1VS20140416> [<https://perma.cc/P584-Q7V4>] [hereinafter Twohey, *Wisconsin Passes Law to Curb Private Custody Transfers of Children*] (“The Reuters reports outlined massive pratfalls in current law that allowed children to be advertised on social networks on the Internet,” said Republican state Rep. Joel Kleefisch, who sponsored the Wisconsin legislation.”); *see also Children and Families*, CONGRESSMAN JIM LANGEVIN, <https://langevin.house.gov/issues/children-and-families> [<https://perma.cc/2LUT-3JEB>] (“A 2013 Reuters investigation exposed an alarming trend of adopted children being ‘re-homed’ into the custody of strangers without any oversight, putting the children at risk for neglect and abuse.”).

27. See *infra* note 44, for some of that scholarship.

another individual without utilizing a state agency or court.²⁸ These transfers are distinct from legal adoptions because while adoptions require court approval, unregulated custody transfers are carried out without any state involvement.²⁹ The nuances in what precisely the term “unregulated custody transfer” covers are key to understanding the harm that results from the practice. This section will define the scope of what is covered by the phrase “unregulated custody transfers of children.”

1. Defining the Scope of the Term “Children”

Legislators and academics alike have differing opinions regarding the scope of “children” they are referring to when discussing unregulated custody transfers. In this Note, “children” means all individuals under the age of majority,³⁰ whether biological

28. “Private rehomings,” “rehomings,” and “unauthorized custody transfer” are some other terms that have been used to as synonyms for “unregulated transfer of custody.” See e.g., CAPACITY BUILDING CTR. FOR STATES, *supra* note 24, at 1 (“Unregulated custody transfer (UCT) [is] also known as ‘re-homing’ . . .”). Proponents of the practice sometimes elect instead to refer to the practice as “second chance adoption” or “adopting from disruption.” *The 2nd Chance Adoption Program*, WASATCH INTERNATIONAL ADOPTION, <https://wiaa.org/2nd-chance-adoption/> [<https://perma.cc/UR7S-JTW3>]. Regardless of what it is referred to as, the practice is logistically the same. As such, this Note will use the terms “rehoming” and “unregulated custody transfer” interchangeably.

29. See *Adoption Laws*, ADOPTION CTR., <https://adopt.org/adoption-laws#> [<https://perma.cc/P8ZC-45SZ>] (“Finalization is the legal process which transfers custody of the child from the adoption agency, county, or state to the adoptive parents. In a court hearing, an attorney represents the family and presents the case to the judge, resulting in the adoption decree.”); Megan Twohey, *Americans Use the Internet to Abandon Children Adopted from Overseas*, from *The Child Exchange: Inside America’s Underground Market for Adopted Children*, REUTERS INVESTIGATES (Sept. 9, 2013), <https://www.reuters.com/investigates/adoption/#article/part1> [<https://perma.cc/X87H-5HUX>] [hereinafter Twohey, *The Network*] (“Legal adoptions must be handled through the courts, and prospective parents must be vetted.”). CHILD WELFARE INFO. GATEWAY, COURT JURISDICTION AND VENUE FOR ADOPTION PETITIONS 2 (2022) (“All 50 states, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands specify in their statutes one or more types of courts that have jurisdiction over adoption cases.”).

30. The term “age of majority” refers to the age in which an individual becomes a legal adult. *Legal Age*, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/legal_age [<https://perma.cc/ZG9R-3HPK>].

or adopted.³¹ Further, “parents” will refer to all legal parents, legal guardians, and custodians.³² While some recommendations this Note makes may be narrowly tailored to certain family structures, unless otherwise specified, this Note is not distinguishing adoptive parent-child relationships from biological ones. In this way, this Note intends to ensure the solutions it proposes, both on the federal and state level, are comprehensive responses to unregulated transfers of custody.³³

Limiting the scope of the term “children” to only *adopted* children is problematic because doing so excludes an entire group of kids who also need protection.³⁴ One example of an organization over-limiting the scope of this term can be seen on The Capacity Building Center for States’ tip sheet for child protection and welfare professionals.³⁵ The tip sheet explicitly defines unregulated custody

31. The definition used in this Note is keeping with the definition of “child” written in the federal Child Abuse Prevention and Treatment Act (CAPTA). CAPTA defines a “child” as an individual under the age of 18 or the age of majority specified by the state in which the individual resides. Child Abuse Prevention and Treatment Act of 1974, 42 U.S.C. § 5101 (1974). The definition is also keeping with the definition articulated by the United Nations Convention on the Rights of the Child. The Convention states “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” Convention on the Rights of the Child art. 1, Nov. 20, 1989, 1577 U.N.T.S. 3.

32. *Definition of “Parent” and Related Variations in Child Welfare*, NATIONAL CONFERENCE OF STATE LEGISLATURES, https://www.ncsl.org/documents/cyf/definitions_of_parent.pdf [https://perma.cc/43AW-QJQX] (“Almost every state has some statutory provision that defines parent, mother, father, or related variations, such as caregiver, parent-child relationship, relative, putative father, etc.”). Though these definitions vary somewhat by state, this Note will use intuitive definitions. This Note defines “parents” as natural or adoptive parents. In addition, for the purposes of this Note, a step-parent who has not adopted their spouse’s child and a foster parent will fall under the category of “guardians” as they do not have legal custody of the child but are caretakers.

33. Several student Notes that have been published to date limit the scope of children they are addressing and, in doing so, limit the scope of solutions they propose. See *infra* note 44, for some of those Notes.

34. The need for equal protections for both adopted and biological children was recognized by the Uniform Law Commission and participating observers. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM’N, Draft for Approval July 15, 2021).

35. CAPACITY BUILDING CTR. FOR STATES, *supra* note 24. The Capacity Building Center for States’ purpose is to help improve child welfare agencies, so children and families are afforded protections to keep them “safe and thriving.” See *About the Center for States*, CAPACITY BUILDING CTR. FOR STATES, <https://capacity.childwelfare.gov/states/about> [https://perma.cc/KNQ3-D77Z]. As

transfers as only affecting adopted children.³⁶ In this way, the tip sheet encourages professionals to focus only on adopted children when seeking to identify potential cases of unregulated custody transfers.³⁷ This may lead some professionals to fail to consider the potential of biological children being similarly treated.

Though this tip sheet with its limited definition remains current, there have been some recent shifts in how scholars and practitioners think about the scope of the term “children.” For example, when the Uniform Law Commission (ULC)³⁸ began drafting a model law to prevent unregulated custody transfers in 2018, it focused exclusively on writing a law that addressed children adopted from outside the United States.³⁹ After a series of discussions among

part of its commitment to child welfare, the Center consults on projects, develops and disseminates publications and tools, hosts information events, facilitates conversation between child welfare professionals, connects those with lived experience and expertise in child welfare, conducts research, and advocates for diversity, equity, and inclusion. *Id.* The tip sheet for child protection and welfare officials is one tool the Center developed and disseminated.

36. CAPACITY BUILDING CTR. FOR STATES, *supra* note 24, at 1. (“Unregulated custody transfer (UCT), also known as ‘re-homing,’ is the practice of adoptive parents transferring custody of a child to another individual or group without involvement of relevant authorities. UCT/re-homing is inclusive of all types of adoptions: public/foster, private, and intercountry.”).

37. *Id.* The tip sheet’s stated purpose is to aid Child Welfare and Child Protection Professionals. *Id.* However, it lists the first step in identifying unregulated custody transfers as determining if the child was adopted and living with their original adoptive parents. *Id.* They provide no instruction for identifying children that lived with their biological parents before being transferred to the custody of another.

38. The Commission is comprised of “practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands . . .” *About Us*, UNIFORM LAW COMMISSION, <https://www.uniformlaws.org/aboutulc/overview> [https://perma.cc/8HPN-UT4Q]. The Commission has been drafting model laws for states since 1892. *Id.* The ULC draws on the expertise of commissioners and observers to draft laws in areas where they identify a need for uniformity among states. *Id.* Retired Supreme Court Justice Sandra Day O’Connor credits the ULC with being a key reason why our government works. Uniform Law Commission, *Associate Justice (Retired) Sandra Day O’Connor on the Uniform Law Commission*, YOUTUBE (Aug. 7, 2018), <https://www.youtube.com/watch?v=OvGNeFpCRnY> [https://perma.cc/W82A-CB2E]. She notes there is a value of having uniform laws in some areas where there would otherwise be direct conflict. *Id.*

39. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT 1 (UNIF. L. COMM’N, Draft for Approval July 15, 2021) (“Initially, the scope of this act was

members of the drafting committee and observers, the ULC identified the need to include children that were adopted within the United States but that had special needs.⁴⁰ The drafting committee eventually expanded their scope to include unregulated transfers of *all* children whether adopted or biological.⁴¹ They note that “[a] parent’s unregulated custody transfer of a biological child is just as problematic and dangerous for a biological child as for an adopted child.”⁴² This mindset shift is not limited to the ULC.⁴³

Even with recent shifts in thinking about the range of children affected by this practice, a great deal of scholarship discusses only unregulated transfers of adopted children.⁴⁴ Some scholarship is further limited only to children adopted from abroad.⁴⁵ In this way, the literature does not fully address the extent of unregulated custody transfers. As a result, solutions these scholars set forth are sometimes so narrowly tailored that they solve only part of the problem.⁴⁶

limited to unregulated transfers of children who were the product of intercountry adoptions.”).

40. *Id.* at 1 (“In discussions among committee members and observers, it became clear that prospective adoptive parents of children with certain other special needs required the same information and training as the prospective adoptive parents of children in intercountry adoptions.”).

41. *Id.* at 2 (“Finally, the article prohibiting unregulated child custody transfers was expanded to apply not only to custody transfers of adopted children with special needs but also to custody transfers of any child.”).

42. *Id.*

43. Recent bills introduced by federal legislators have also sought to curb the practice as it applies to both adopted and biological children. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021).

44. See, e.g., Abby Holland, Note, *Regulating Unregulated Custody Transfer: A Comprehensive Solution*, 33 GEO. J. LEGAL ETHICS 591 (2020); Emma C. Martin, Note, *A (Re)adoption Story: What Is Driving Adoptive Parents to Rehome Their Children and What Can Texas Do About It?*, 5 TEX. A&M L. REV. 537 (2018); Andrea B. Carroll, Note, *Breaking Forever Families*, 76 OHIO ST. L. J. 259, 260–61 (2015); Joanna E. Jordan, Note, *There’s No Place Like Home: Overhauling Adoption Procedure to Protect Adoptive Children*, 18 J. GENDER RACE & JUST. 237 (2015).

45. See, e.g., Holland, Note, *supra* note 44, at 592 (confining Note to international adoptions).

46. See *supra* note 44, for some of that scholarship.

2. Defining the Scope of the Term “Unregulated Transfer”

While the best definition of “children” is the broadest one, the best definition of “unregulated transfer” is somewhat limited.⁴⁷ In this Note, “unregulated transfers” will refer only to transfers to strangers.⁴⁸ “Strangers” are individuals whom the child and child’s parent(s) do not know.⁴⁹ In some cases, these strangers are found on the internet, and after only a short period of messaging back and forth, the parent decides to transfer custody of their child.⁵⁰ Limiting the scope of “unregulated transfers” will prevent the practice from being defined so broadly that it prohibits granting custody to someone known to be well-suited to care for the child.⁵¹

47. Some states define unregulated custody transfers as any transfer of custody not authorized by the state; some of these states do not differentiate based on the circumstances of the transfer, the duration of time the child will be transferred, or the individual to which the child is being transferred to. CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN, *supra* note 21.

48. This has already been done in some state legislation through carve-outs for transfers to family or family-like individuals. *Id.* This is also the suggested approach in current state and federal proposals. *See, e.g.*, UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM’N 2021); Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021).

49. This refers to any individual the parent(s) and child do not have enough familiarity with to deem a safe, suitable guardian for the child. *See, e.g.*, Megan Twohey, *In a Shadowy Online Network, a Pedophile Takes Home a ‘Fun Boy,’* from *The Child Exchange: Inside America’s Underground Market for Adopted Children*, REUTERS INVESTIGATES (Sept. 9, 2013), <https://www.reuters.com/investigates/adoption/#article/part2> [<https://perma.cc/LEL7-7TDQ>] [hereinafter Twohey, *The Dangers*] (reporting that Glenna Mueller transferred custody of her ten-year-old son to Nicole Eason and Randy Winslow despite the fact that she “wasn’t certain where or if Eason or Winslow worked . . . she knew nothing about Eason’s two biological children having been taken away, or of Winslow’s affinity for young boys . . . [and] wasn’t even sure of their address.”).

50. *Id.* Glenna Mueller began exchanging emails with Nicole Eason the morning of July 14, 2006. By that afternoon, Nicole Eason and Randy Winslow had driven 5 hours to meet Mueller’s son. An hour after that meeting began, Mueller gave Eason and Winslow her consent to take her son home with them permanently.

51. *See infra* Part I.C, for further discussion of the concern some have that prohibitive legislation would overcorrect.

This Note is deliberately excluding family-like transfers of custody⁵² as there are lower risks and notable benefits associated with this practice.⁵³ Transferring children to strangers is particularly dangerous because of the risk to the child of sexual, physical, or psychological abuse.⁵⁴ Web pages advertising children are perused by traffickers, pedophiles, sex offenders, and others unsuited to be parents.⁵⁵ On the other hand, family-like transfers of custody are generally instances where a parent transfers custody of their child to

52. Both the Uniform Unregulated Child Custody Act and the Safe Home Act of 2021 lay out specific relationships that are exempt from prohibitions. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021); UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM'N 2021). See *infra* note 63, for the specific relationships.

53. The threat to the wellbeing of children transferred to strangers comes from the fact that neither the parent nor child knows whether the person the child is being given to is a safe, appropriate guardian for the child. Twohey, *The Report*, *supra* note 15. However, in cases where children are given to people the family knows, there is a significantly lower risk of that individual being detrimental to the wellbeing of the child. In addition, in cases where a parent is truly unable or unwilling to care for their child, there is a benefit to allowing the child to live with someone who can care for them. “Kinship care” refers to situations in which children are living with their kin and not their birth parents. Heidi Redlich Epstein, *Kinship Care is Better for Children and Families*, AM. BAR ASS'N (July 1, 2017), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/july-aug-2017/kinship-care-is-better-for-children-and-families/ [https://perma.cc/A74R-QPJA]. Of the 2.5 million children in these situations, only 120,000 are being formally fostered by their kin. *Id.* States have begun to see benefits of placing children with kin as opposed to having people they do not know foster them. *Id.* Living with kin can minimize trauma, improve children’s well-being, increase permanency, improve behavioral and mental health outcomes, promote sibling ties, provide a bridge for older youth, and preserve children’s cultural identity and connections when children cannot safely live with their parents. *Id.* Further, “[p]ursuant to 42 U.S.C. 671, states must ‘consider giving preference to an adult relative over a nonrelated [sic] caregiver when determining placement for a child, provided that the relative caregiver meets all relevant state child protection standards.’” *Id.*

54. Twohey, *The Dangers*, *supra* note 49. Parents are often not conducting background checks on the people they are sending their children to live with. See *infra* note 138. In addition, parents sometimes draw in predators with the language they use in posts advertising their children. See *infra* notes 173–174 and accompanying text.

55. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT 1 prefatory note (UNIF. L. COMM'N 2021) (“By means of the Internet or other media, potential child molesters or sex traffickers seeking children contacted parents who were experiencing difficulties parenting a child.”).

a family member, friend, or another individual they know well and have reason to believe would be better suited to care for the child than themselves.⁵⁶ Family-like transfers are not completely devoid of harm as there is inherent psychological harm to children when they are separated from their families.⁵⁷ However, in these types of custody transfers there tend to be long-term benefits to the child's wellbeing as well as ways to mitigate harm.⁵⁸

Children should be with people who are best suited to provide them with the love and care they need.⁵⁹ The solution to the dangers of unregulated custody transfers is not to have people who are ill-suited or unwilling to parent a child continue to do so.⁶⁰ It is in the

56. The specific individuals who are encompassed within the carve-out differ slightly depending on the legislation one looks at. See *infra* note 63, for the specific relationships.

57. "Studies have shown that if a child suddenly loses a parent, either through death, abandonment, or a prolonged separation, the child experiences intense fear, panic, grief (a combination of sadness and loss), depression, helplessness and hopelessness." Meri Wallace LCSW, *The Effect of Separating Children From Their Parents*, PSYCHOLOGY TODAY (June 18, 2018), <https://www.psychologytoday.com/us/blog/how-raise-happy-cooperative-child/201806/the-effect-separating-children-their-parents> [https://perma.cc/C7NK-V63R]. Meri Wallace, LCSW is a parenting expert and child and family therapist. Her post was reviewed by Jessica Schradner.

58. While children who have experienced neglect have "disregulated [sic] cortisol" levels which can lead to psychological disorders "including anxiety, mood disorders, behavior problems and post-traumatic stress disorder," kids living with "more responsive caregivers were more likely to develop more normal cortisol patterns over time." Kirsten Weir, Feature, *The Lasting Impact of Neglect*, 45 AM. PSYCHOLOGICAL INSTITUTION MONITOR ON PSYCHOLOGY 36 (2014), <https://www.apa.org/monitor/2014/06/neglect> [https://perma.cc/T4R4-RPR3].

59. Studies have found that having neglectful caretakers is both psychologically and physically detrimental to children. *The Science of Neglect: The Persistent Absence of Responsive Care Disrupts the Developing Brain* (Nat'l Scientific Council on the Developing Child at Harv. Univ., Working Paper No. 12, 2012), <https://developingchild.harvard.edu/wp-content/uploads/2012/05/The-Science-of-Neglect-The-Persistent-Absence-of-Responsive-Care-Disrupts-the-Developing-Brain.pdf> [https://perma.cc/AJV2-G93M]. For younger children, some of the harm includes "poor impulse control, social withdrawal, problems with coping and regulating emotions, low self-esteem, pathological behaviors such as tics, tantrums, stealing and self-punishment, poor intellectual functioning and low academic achievement." Weir, *supra* note 58. Neglect does not only mean failure to meet a child's physical needs. A parent can ensure their child is fed, clean, and housed and still be emotionally neglectful or absent. *Id.*

60. Forcing a parent to keep a child they are unable or unwilling to care for may affect the quality of care that child receives. In some cases, a child may be at

best interest of the child to be with those who can care for them,⁶¹ and if a parent reasonably identifies a loved one as that person, they should not be prevented from being able to transfer custody. The benefits of allowing these transfers have been recognized by some scholars and legislators.⁶² However, while the proposed legislation this Note addresses includes carve-outs for family-like transfers of custody,⁶³ some existing state laws do not.⁶⁴ These carve-outs are essential to ensuring that in enacting laws to protect children, legislatures do not overcorrect and enact laws that are contrary to children's best interests.⁶⁵

risk of neglect. Physical or emotional neglect can be extremely damaging to a child. *The Science of Neglect*, *supra* note 59.

61. “Best interests of the child” . . . refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child.” CHILD WELFARE INFO. GATEWAY, DETERMINING THE BEST INTERESTS OF THE CHILD 2 (2020), https://www.childwelfare.gov/pubPDFs/best_interest.pdf [<https://perma.cc/PGK4-NR59>]. The specific considerations of the court vary by state, but some factors considered by many states include the emotional ties a child has to the family they live with, the capacity of the parents to adequately care for the child, the health needs of the child, the health of the parents, and whether there is domestic violence in the home. *Id.* at 2–3. This Note does not use the phrase “best interest” to refer to any specific legal consideration but rather to reference the principal courts across the country use when making decisions that involve children.

62. See, e.g., UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM’N 2021); see also CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN, *supra* note 21 (detailing state laws with carve-outs for certain types of transfers).

63. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT § 202 cmt. at 6 (UNIF. L. COMM’N 2021) (“The exempt transfers are those made to a parent, stepparent, family member, family-like individual, Indian custodian, or member of the child’s indigenous customary family”); see also Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021) (exempting placement with “(i) the child’s parent, step-parent, grandparent, adult sibling, adult uncle or aunt, legal guardian, or other adult relative;” “(ii) a friend of the family who is an adult and with whom the child is familiar;” “(iii) a member of the federally recognized Indian tribe of which the child is also a member.”).

64. As of 2017, five out of 13 state laws identified in a report published by the Child Welfare Information Gateway included no carve-outs for any type of unregulated custody transfer. CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN, *supra* note 21, at 4.

65. This is a concern of people who are hesitant to back widespread legislation prohibiting unregulated custody transfers. See *infra* Part II.C, for comments by individuals who are wary of legislation.

B. Adoption Laws in the United States

Before exploring how unregulated custody transfers work, this Note will provide a brief overview of the current state of adoption law in the United States. This overview will introduce the oversight built into adoption proceedings which will later be contrasted with the complete lack of oversight in unregulated transfers of custody.⁶⁶ This overview will also show exactly how a legal loophole for unregulated transfers of custody came to exist.

Adoption law in the United States exists as a compilation of federal, state, and intercountry laws. However, “adoption is *primarily* regulated by State laws, and these laws vary from State to State.”⁶⁷ Still, states must remain compliant with the framework set forth by federal legislation.⁶⁸ Because each state’s adoption process is governed by its respective laws and because there are many different facets to adoption, there is no one procedure that legal adoptions follow.⁶⁹ There are, however, common protections that have been adopted for the benefit of children and parents.⁷⁰ This section will briefly touch on federal legislation before turning to a deeper analysis of states’ laws.

66. The distinction between unregulated custody transfers and private adoptions is that the former requires no state intervention while the latter requires a court order. See *supra* note 29, for the requirements of a legal adoption.

67. *Laws Related to Adoption*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/adoption/laws/> [<https://perma.cc/3T7R-B6SV>] [hereinafter *Laws Related to Adoption*] (emphasis added).

68. U.S. intercountry adoption processes “must comply with U.S. Federal law as well as the laws of a prospective adoptive parent’s state of residence and the prospective adoptive child’s country of origin.” *Intercountry Adoption: Adoption Process*, U.S. DEP’T OF STATE – BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process.html> [<https://perma.cc/RQT2-XXR3>].

69. These facets include, but are not limited to, whether: the adoption is open or closed; the prospective adoptive parent first fostered the child; the adoption is a private one; the adoption is an intercountry one; and the prospective adoptive parent is the child’s step-parent or relative. ADOPTION CTR., *supra* note 29.

70. CHILD WELFARE INFO. GATEWAY, BACKGROUND CHECKS FOR PROSPECTIVE FOSTER, ADOPTIVE, AND KINSHIP CAREGIVERS (2019), <https://www.childwelfare.gov/pubPDFs/background.pdf> [<https://perma.cc/NK2D-NQ9G>] [hereinafter CHILD WELFARE INFO. GATEWAY, BACKGROUND CHECKS].

1. Federal Adoption Laws

A few of the primary federal laws that govern adoption in the United States are the Multiethnic Placement Act (MEPA),⁷¹ the Interethnic Placement Act of 1996 (IEPA),⁷² the Adoption and Safe Families Act of 1997 (ASFA),⁷³ and the Indian Child Welfare Act (ICWA).⁷⁴ These laws set forth standards that states must adhere to and serve to protect both children and prospective parents. In addition to requirements states must adhere to, states are incentivized to comply with additional federal guidelines to receive funding for various child welfare, protection, and adoption programs.⁷⁵ The two most significant federally-funded programs are authorized under Titles IV-B and IV-E of the Social Security Act.⁷⁶ Unregulated custody transfers do not adhere to any federal law because they are carried out through private citizens without state intervention. While states are incentivized to adhere to regulations set forth by the federal government to remain eligible for federal funding, private citizens have no such incentive.⁷⁷ Thus, there are no

71. Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, tit. V, pt. E, § 551, 108 Stat. 3518, 4056 (1994).

72. Removal of Barriers to Interethnic Adoption, Pub. L. No. 104-188, tit. I, § 1808, 110 Stat. 1755, 1903 (1996).

73. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997).

74. Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963 (1978).

75. CHILD WELFARE INFO. GATEWAY, MAJOR FEDERAL LEGISLATION CONCERNED WITH CHILD PROTECTION, CHILD WELFARE, AND ADOPTION (2019), <https://www.childwelfare.gov/pubPDFs/majorfedlegis.pdf> [<https://perma.cc/9MX2-PCQ6>] [hereinafter CHILD WELFARE INFO. GATEWAY, MAJOR FEDERAL LEGISLATION].

76. Title IV-E reimburses states' part of the cost of foster care for children who suffered neglect or abuse. 42 U.S.C. § 671. Among other things, Title IV-E requires states to "plan provisions for completing" various checks on prospective adoptive parents including criminal record checks and child abuse and neglect registry checks. CHILD WELFARE INFO. GATEWAY, BACKGROUND CHECKS, *supra* note 70, at 1. Title IV-B provides states with federal funding for services to children and their families. CHILD WELFARE INFO. GATEWAY, MAJOR FEDERAL LEGISLATION, *supra* note 75, at 1-2; *see also* 42 U.S.C. § 621 (stating purpose for funding incentives). Title IV-B requires states to have a plan for child welfare services that meet an extensive list of criteria, including a statewide system that provides information on the placement of every child in foster care, a case review system, "preventive services" for children "at risk of foster care placement," and consultation with tribal organizations. 42 U.S.C. § 622.

77. *Laws Related to Adoption*, *supra* note 67.

regulations or protections for children who are transferred from the custody of one individual to another in unregulated ways.

2. State Adoption Laws

a. General Requirements

Each state has its own requirements regarding “initial placement, background checks, consent, and finalization”⁷⁸ However, as a baseline, “[a]ll States, the District of Columbia, Guam, the Northern Mariana Islands, and Puerto Rico have statutes or regulations requiring background investigations of prospective foster and adoptive parents and kinship caregivers.”⁷⁹ Some states also require that every adult living in the prospective parents’ household undergo a background check.⁸⁰ When parents engage in unregulated transfers of custody, they rarely conduct formal background checks on the individuals seeking custody of their children and sometimes fail to even ask those individuals basic screening questions.⁸¹

b. The Interstate Compact on the Placement of Children

The Interstate Compact on the Placement of Children (ICPC) puts forth a set of requirements that must be met before custody of a child can be moved from an individual residing in one state to an individual residing in another state.⁸² The ICPC requires that a social

78. *State Laws on Domestic Adoption*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/adoption/laws/laws-state/domestic/> [https://perma.cc/N77F-KPJG].

79. CHILD WELFARE INFO. GATEWAY, BACKGROUND CHECKS, *supra* note 70, at 1.

80. *Id.*

81. See Twohey, *The Dangers*, *supra* note 49 (describing an instance in which a mother transferred her son to a couple without investigating their marital or employment status, address, or criminal history).

82. *ICPC FAQ's*, AM. PUB. HUM. SERV. ASS'N., https://aphsa.org/AAICPC/AAICPC/icpc_faq_2.aspx#question2 [https://perma.cc/6M6T-6QEC]. There are several substantive and procedural requirements of the ICPC. However, the ICPC essentially requires that an adoption entity in the state the child resides in create a “placement request packet” which must include “such items as the child’s social, medical, and educational history and the current status of any court case involving the child” as well as information on the prospective adoptive parent. *Id.* The ICPC also requires social services of the receiving state conduct home studies and background checks. *Id.* Only once the ICPC office of the receiving state has

services agency “go out to [a prospective parent’s] home, meet with everyone in the home, do background screening, and make a determination as to whether the home should be approved for the child to come and live there.”⁸³ The ICPC’s requirements exist to ensure a child is placed with a “safe, suitable” caregiver who is “able to meet the child’s needs.”⁸⁴

There is a distinct lack of clarity regarding whether the ICPC applies to unregulated custody transfers. Capacity Building Center for States, a service through the HHS, cites the ICPC as a potential recourse for unregulated custody transfers.⁸⁵ In addition, Reuters reported that “[w]hen a child is transferred across state lines for re-adoption or new guardianship, the families must secure the approval of authorities in both the sending and receiving state. Failure to do so violates the [ICPC].”⁸⁶ The text of the ICPC itself, however, appears to limit the compact to cases of “placement in foster care or as a preliminary to a possible adoption.”⁸⁷ This excludes unregulated custody transfers which are distinct from foster care and adoption.⁸⁸

Even assuming the ICPC does apply to unregulated custody transfers, it is not an adequate safeguard. Not only is the ICPC never applicable in cases where children are not moved across state lines, but even when the terms of the ICPC are applicable, “some states attach no penalties to violations of the pact.”⁸⁹ In states that do have

approved the adoption and the ICPC office of the originating state has been made aware, can a child be transferred across state lines. *Id.*

83. *Id.*

84. *Id.*

85. CAPACITY BUILDING CTR. FOR STATES, *supra* note 24, at 1 (“ICPC is to be initiated for all out-of-State permanent child placements with the exception of ‘the sending or bringing of a child into a receiving state by [a specified relative] or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state.’”). The ICPC binds all 50 states as well as Washington D.C. and the U.S. Virgin Islands. *See* AM. PUB. HUM. SERV. ASS’N, *supra* note 82.

86. *See* Twohey, *The Dangers*, *supra* note 49.

87. *Text of Interstate Compact on the Placement of Children*, AM. PUB. HUM. SERV. ASS’N, https://aphsa.org/AAICPC/AAICPC/text_icpc.aspx [<https://perma.cc/XQ85-M85V>].

88. *See* ADOPTION CTR., *supra* note 29, for the requirements of a legal adoption.

89. Megan Twohey, *Despite ‘Grave Danger,’ Government Allows Internet Forums to Go Unchecked*, from *The Child Exchange: Inside America’s Underground Market for Adopted Children*, REUTERS INVESTIGATES (Sept. 10, 2013), <https://www.reuters.com/investigates/adoption/#article/part4> [<https://perma.cc/9UDF-Z7DZ>] [hereinafter Twohey, *The Failures*].

penalties, “officials almost never prosecute offenders.”⁹⁰ And even in states that do attach penalties and prosecute offenders but where a violation of the ICPC is only a misdemeanor, some parents who know about the pact find “any legal risk is outweighed by the need to remove a troublesome child.”⁹¹ Reuters explicitly stated that though the power of attorney documents that parents use to transfer custody of children across state lines violate the ICPC, this does not stop some parents from doing so.⁹²

3. International Adoption Laws

a. The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption

In cases of intercountry adoptions, there is the potential additional requirement of compliance with the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (“the Convention”).⁹³ “[T]he Convention establishes international standards of practices for intercountry adoptions.”⁹⁴ “The United States signed the Convention in 1994, and the Convention entered into force for the United States on April 1, 2008.”⁹⁵ Every U.S. citizen habitually residing in the United States must comply with the Convention when adopting a child that is a resident of a country that is party to the Convention.⁹⁶ The

90. *Id.*

91. *Id.*

92. *Id.*

93. Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 1870 U.N.T.S. 167 [hereinafter Hague Convention on Protection of Children]. The Convention was implemented in the United States by the Intercountry Adoption Act of 2000. Intercountry Adoption Act of 2000, 42 U.S.C. 14901 et seq. (2000).

94. *Understanding the Hague Convention*, U.S. DEP’T OF STATE – BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html>

[<https://perma.cc/QD2A-KUB7>]; *see also* Hague Convention on Protection of Children, *supra* note 93, at art. 2 (“The Convention shall apply where a child habitually resident in one Contracting State . . . has been, is being, or is to be moved to another Contracting State . . .”).

95. *Understanding the Hague Convention*, *supra* note 94.

96. Hague Convention on Protection of Children, *supra* note 93, at art. 2. As of September 8, 2021, the countries that are party to the Hague Convention are Albania, Andorra, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium,

Convention sets forth a series of requirements that must be established by “competent authorities of the State of origin”⁹⁷ and “competent authorities of the receiving State.”⁹⁸ However, the Convention does not regulate what happens to a child beyond legal adoption.⁹⁹ As such, the Convention does not include any provisions that prohibit parents who adopt a child from later rehoming that child. Like federal and state adoption laws, the Convention does, however, provide a counterpoint to unregulated custody transfers by showing some of the types of the regulations that exist in formal adoptions.

Belize, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cabo Verde, Chile, China (and Hong Kong), Colombia, Côte d’Ivoire, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, Eswatini, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, India, Ireland, Israel, Italy, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Macedonia, Madagascar, Mali, Malta, Mauritius, Mexico, Moldova, Monaco, Mongolia, Montenegro, Namibia, Netherlands, New Zealand, Niger, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of the Congo, Romania, Rwanda, Saint Kitts and Nevis, San Marino, Senegal, Serbia, Seychelles, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Togo, Turkey, United Kingdom, Uruguay, Venezuela, Vietnam, and Zambia. *Convention Countries*, U.S. DEPT OF STATE – BUREAU OF CONSULAR AFF., <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention/convention-countries.html> [<https://perma.cc/2K9P-9PHW>].

97. Hague Convention on Protection of Children, *supra* note 93, at art. 4. The requirements of the state of origin include “establish[ing] the child is adoptable,” “determin[ing] . . . an intercountry adoption is in the child’s best interests,” and establishing the applicable appropriate consent has been given for the adoption.

98. Hague Convention on Protection of Children, *supra* note 93, at art. 5. The requirements of the receiving include “determin[ing] that the prospective parents are eligible and suited to adopt,” ensuring they have been appropriately counseled, and “determin[ing] that the child is or will be authorized to enter and reside permanently in that State.”

99. Hague Convention on Protection of Children, *supra* note 93, at art. 2.

b. The Intercountry Adoption Universal Accreditation Act

Another limitation on international adoption is the Intercountry Adoption Universal Accreditation Act (UAA).¹⁰⁰ The UAA was created to establish uniformity between the international adoption laws that existed across different U.S. states; to do so, the UAA established federal standards.¹⁰¹ With few exceptions, the UAA requires that “[a]ll agencies or persons providing adoption services in orphan intercountry adoption cases be accredited or approved in compliance with the Intercountry Adoption Act and Department of State (DOS) accreditation regulations.”¹⁰² The UAA applies to adoptions from countries that are party to the Convention as well as from countries that are not to “[assure] families pursuing an intercountry adoption that, regardless of which country they intend to adopt from, the [adoption service provider] they choose will comply with the same ethical standards of practice and conduct.”¹⁰³ Like the Convention, the UAA provides no safeguards against unregulated transfers of custody. But also like the Convention, the UAA provides a counterpoint to unregulated custody transfers by showing some of the regulations that exist in formal adoptions.

C. The Logistics of an Unregulated Custody Transfer

When a parent decides they are no longer able or willing to care for their child and decides, for whatever reason, not to go through formal channels of relinquishing custody,¹⁰⁴ they turn to the practice of private rehomings. This section will break down the steps of rehomings, from soliciting a new guardian on the internet to handing

100. Intercountry Adoption Universal Accreditation Act of 2012, 42 U.S.C. § 14925 (2013).

101. Candise Gilbert, *The Universal Accreditation Act for International Adoption: The Act Goes into Effect on July 15, 2014. How Will it Affect Your Adoption?*, ADOPTION.COM (Apr. 22, 2014), <https://adoption.com/the-universal-accreditation-act-for-international-adoption> [<https://perma.cc/227H-8M39>].

102. *The Universal Accreditation Act*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Jun. 30, 2021), <https://www.uscis.gov/adoption/immigration-through-adoption/the-universal-accreditation-act> [<https://perma.cc/Z3QN-3MVN>].

103. *Id.*

104. The reasons parents choose not to use formal channels vary. See *infra* Part I.E.1, for a breakdown of the reasons. “Formal channels” refers to methods and procedures that fall within the scope of federal and state adoption law. See *supra* Part I.B, for a breakdown of federal and state law.

the child over. In doing so, this section will provide an overview of the landscape as it exists today.

1. A Parent Places an Advertisement for their Child

In cases where a parent decides to rehome their child to someone they do not already know, they often begin by posting what is essentially an advertisement of the child on the internet.¹⁰⁵ These ads are sometimes posted on web pages created specifically to connect individuals who want to give their child away with individuals who are seeking out children.¹⁰⁶ In 2013, the Report found several of these pages were on Yahoo and Facebook.¹⁰⁷ Reuters identified six groups on Yahoo alone, one of which had been active for six years.¹⁰⁸ The infinite potential for sites of this kind on the internet means it is impossible to gauge how many advertisements there are.¹⁰⁹ However, on just one of the six Yahoo message boards analyzed, there were “5,029 posts from a five-year period.”¹¹⁰ Many of these ads described children in ways that people would describe pets.¹¹¹ One read, “[b]orn in October of 2000 – this handsome boy, ‘Rick’ was placed from India a year ago and is obedient and eager to please.”¹¹²

Responses to the identification of these advertisements have varied. After Reuters identified certain pages in 2013, Yahoo immediately took them down, stating that “the activity of the group violated the company’s terms-of-service agreement.”¹¹³ Facebook, however, initially refused to do the same, stating that “the internet is a reflection of society and people use it for all kinds of communications and to tackle all sorts of problems, including very complicated issues such as this one.”¹¹⁴ Finally, in 2015, two years

105. Twohey, *The Network*, *supra* note 29.

106. *Id.*

107. *Id.* (“Through Yahoo and Facebook groups, parents and others advertise the unwanted children and then pass them to strangers with little or no government scrutiny, sometimes illegally, a Reuters investigation has found.”).

108. *Id.*

109. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 15.

110. Twohey, *The Network*, *supra* note 29. This message board, “Adopting-from-Disruption,” has since been taken down. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* (quoting a Facebook spokeswoman explaining that Facebook would not be taking down “Way Stations of Love,” a page that facilitated unregulated custody transfers).

after these groups were brought to Facebook's attention, the company decided to take one of them down.¹¹⁵ This shutdown came after a series of state prohibitions on advertising children with the intent to transfer custody.¹¹⁶ While shutting down that group was a substantial first step, parents continue to use the internet, including websites like Facebook, to rehome their children.

a. Facebook Today

Locating two Facebook pages that provide platforms for unregulated custody transfers took under an hour.¹¹⁷ While the organizations that operate these pages are technically compliant with the law, this is only because the law in most states leaves gaps in the regulation of child custody. One of the pages includes some variation of the following language on its posts: "Due to state laws, we are unable to place this child in CT, MA, NY, FL, DE or WI. If you live in Oregon, you may need to travel to the child's state to finalize the

115. Cheryl Wetzstein, *Facebook Disables 'Rehoming' Adopted Children Page: UK News Outlet*, THE WASHINGTON TIMES (Mar. 19, 2015), <https://www.washingtontimes.com/news/2015/mar/19/facebook-disables-rehoming-adopted-children-page-u/> [<https://perma.cc/7R6D-SMWN>] ("Facebook has 'investigated and shut down' a page called 'Adoption Through Disruption,' Krishnan Guru-Murthy, a news anchor with Channel 4 News in London said in a Thursday broadcast.")

116. Jeffrey Johnson, *Facebook Reacts to Recent State Bans on Rehoming Adoptions*, FREE ADVICE (last updated Jul. 15, 2021), <https://www.freeadvice.com/legal/facebook-reacts-to-recent-state-bans-on-rehoming-adoptions/> [<https://perma.cc/6ATZ-FGJG>] ("[It] appears the company intends to simply shut down the site rather than make an effort to comply with the growing movement by states to put a stop to unauthorized transfers of adopted children.")

117. Wasatch International Adoptions (@WasatchAdoptions), FACEBOOK, <https://www.facebook.com/WasatchAdoptions> [<https://perma.cc/4DES-NXQK>] (containing, as of November 24, 2022, 2,563 followers); Brooklyn Hope Adoption Consultants (@bhadoptions), FACEBOOK, <https://www.facebook.com/bhadoptions/> [<https://perma.cc/33TX-L9Z3>] (containing, as of November 24, 2022, 1,240 followers). Wasatch is licensed and has an official website. *The 2nd Chance Adoption Program*, *supra* note 28. Despite the organization's work to regulate the rehoming it facilitates, the organization's public Facebook page provides an easy to access forum for individuals interested in rehoming. Brooklyn Hope Adoption Consultants is even more concerning. It does not appear to have any license or official website. Further, the group itself has acknowledged that it was accused of pretending to be a subsidiary of Wasatch. Brooklyn Hope Adoption Consultants (@bhadoptions), FACEBOOK, <https://www.facebook.com/bhadoptions/> [<https://perma.cc/33TX-L9Z3>].

adoption.”¹¹⁸ In this way, the pages’ moderators are carefully circumventing some states’ adoption laws and, in doing so, avoiding violating Facebook’s terms of service.¹¹⁹ On this page, a child is posted every “Waiting Child Wednesday.”¹²⁰ Each post includes a child’s first name and age, some details about where they came from, some details about their personality, and a short description of the problem in their current home (in other words, why their parent seeks to give them to someone else).¹²¹ One post began with a short paragraph that read “Please meet Marty. He is 11-years-old and was adopted from a European country in 2015. As is common with adopted children being placed in a family who has biological children younger than the adopted child, there has been jealousy of the bio children.”¹²² While the organization requires a home study to be submitted before they place a child, they do not conduct the studies themselves, and it is important to note how easily some individuals have been able to fabricate home study documents.¹²³ Further, they have no regulations that stop individuals from using their public page to arrange their own informal custody transfers.¹²⁴

118. Wasatch International Adoptions (@WasatchAdoptions), *supra* note 117.

119. Facebook’s Terms of Service includes “Self-Serve Ad Terms.” These terms state that individuals may not post advertisements that do not “comply with all applicable laws, regulations, and guidelines . . .” *Self-Serve Ad Terms*, FACEBOOK, https://www.facebook.com/legal/self_service_ads_terms [https://perma.cc/U6KT-XUTS]. Because creating a post to rehome a child has not yet been defined as an advertisement across all states and has not yet been prohibited by all states, users are not necessarily violating this policy when they post their children.

120. *See, e.g.*, Wasatch International Adoptions (@WasatchAdoptions), *Waiting Child Wednesday! Meet Marty!*, FACEBOOK (Nov. 17, 2021), <https://www.facebook.com/WasatchAdoptions/posts/pfbid0LwgRxAWB48Qbi4n2wd1bMB1nuHahNEDajoN3q61E6a6aGZ1KQx48w21Ft55NPG411> [https://perma.cc/49WX-XY2S].

121. *Id.*

122. *Id.* The post included no additional information about why Marty was being rehomed. All other information about Marty in the post painted a picture of his personality. Marty likes science, space, dinosaurs, art, being outdoors, playing with other kids, and dogs. *Id.* He has high energy, he has a quirky sense of humor, and he is intelligent. *Id.* Marty is being described like the child that he is and being advertised like a product that he is not. The juxtaposition is unnerving.

123. Twohey, *The Network*, *supra* note 29. (“Illinois authorities determined that the Easons had fabricated a document they provided to the Puchallas called a ‘home study.’ It purported to be from a social worker Actually, Nicole [Eason] had found a sample document on the Internet and filled it out herself.”)

124. Wasatch International Adoptions (@WasatchAdoptions), *supra* note 117.

These two pages are not the only ones where children are being advertised that remain on Facebook. This Note also looked to popular social media sites, including Quora Digest and Reddit, for additional information about advertisements for children saturated across Facebook. One Reddit user posted about “a Facebook page dedicated to ‘rehome’ adopted children” they found with “tens of thousands of people following the page.”¹²⁵ A different Reddit user posted a screenshot of a Facebook post they found, which opened with the line “[l]ooking for a new home for a 13 year old Chinese female.”¹²⁶ Another Reddit user linked to a TikTok video where a woman reacts to an ad for a “sweet 15 year old boy who is deaf, bilaterally implanted and best communicates in ASL.”¹²⁷ This ad was posted by Jennifer Ruppert on a page called “Texas Foster & Adoptive Parents.”¹²⁸ Ruppert is not the mother of the child but instead says she is “advocating” for the child because the parents, who had the child for *nine* years before choosing to rehome him, asked her to take him in and she cannot.¹²⁹ A different TikTok user also identified a Facebook page where several parents were attempting to rehome

125. *I Found a Facebook Page Dedicated to “Rehome” Adopted Children*, from *r/Adoption*, REDDIT, https://www.reddit.com/r/Adoption/comments/fxkj4c/i_found_a_facebook_page_dedicated_to_rehome/ [<https://perma.cc/EC8Y-JR9F>]. I was unable to identify the Facebook page as Reddit moderators removed any mention of the name and any links to the page to avoid individuals “brigad[ing]” it. However, several other commenters confirmed they also saw the page.

126. *Casually “Looking for a New Home” for Your Adopted Child, Complete with a Facebook Post That Reads Exactly Like a Re-homing Ad for a Dog*, from *r/iamatotalpieceofshit*, REDDIT, https://www.reddit.com/r/iamatotalpieceofshit/comments/og22qi/casually_looking_for_a_new_home_for_your_adopted/ [<https://perma.cc/FLD3-MX2P>] (likening the Facebook post to advertisements for pets).

127. *TIL That Rehome Adopted Children on FB is a Thing*, from *r/TikTokCringe*, REDDIT https://www.reddit.com/r/TikTokCringe/comments/omupqv/til_that_rehome_adopted_children_on_fb_is_a/ [<https://perma.cc/VRB4-E52F>]. “TIL” is an acronym for “today I learned.” *TIL*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/til> [<https://perma.cc/85JS-6H6C>].

128. *TIL That Rehome Adopted Children on FB is a Thing*, from *r/TikTokCringe*, *supra* note 127.

129. *Id.* Ruppert did not include any details about why the child was being rehomed. *Id.* The TikTok user reacting to the ad was horrified by it in its entirety, but she was particularly struck by the fact that the family had this boy for nine years before deciding to rehome him. *Id.*

their children.¹³⁰ One post spoke about an attempt to find a new family for a boy the parents had adopted *ten* years ago.¹³¹ The TikTok user replied saying, “[h]ow do y’all have a kid for ten years and then decide, you know what, you’re too much for me, I’m gonna [sic] get rid of you.”¹³²

b. Seemingly Harmless Websites that Facilitate Unregulated Transfers

Facebook is not the only place on the Internet that facilitates unregulated custody transfers. Christian Homes and Special Kids (CHASK) is “not an adoption agency” but “a ‘matching service’ for families.”¹³³ However, due to the lack of security on their site, CHASK functions as an easy way for people to privately rehome children.¹³⁴ The organization recognizes this danger and explicitly warns users that the information parents post about children may be shared outside the organization by “an internet user or another adoption group.”¹³⁵ They further warn that anyone can email parents and that they should beware of people who are “child-gathering.”¹³⁶ CHASK also suggests that parents require home studies and references as well as make a personal home visit, but because CHASK is a “matching service” and not an adoption agency, it cannot enforce this or any sort of regulation.¹³⁷

2. Someone Replies to the Ad and Custody of the Child is Transferred

130. *Several Adoptive Parents Exposed for Trying to ‘Rehome’ Their Children on Facebook*, MY JOY ONLINE, <https://www.myjoyonline.com/several-adoptive-parents-exposed-for-trying-to-rehome-their-children-on-facebook/> [https://perma.cc/JLE4-KHXS] (“Kirsta, a Greek adoptee, posted a video on TikTok that went viral, exposing adoptive parents who are backtracking on their adoption via a Facebook group.”).

131. *Id.*

132. *Id.*

133. *Children Waiting for Families*, CHASK: CHRISTIAN HOMES AND SPECIAL KIDS, <https://www.chask.org/adoption/waiting-children/> [https://perma.cc/SAK9-T5P3].

134. CHASK does not regulate or oversee any part of the adoption process. In fact, CHASK does little more than post information on children and contact information for the people seeking to rehome them. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

Regardless of what website is used, the next step for a parent rehoming their child is to wait for someone to express interest in taking custody. Once someone responds to the ad, the child's parent either vets the interested party or simply does not.¹³⁸ One example of a parent who did not is Melissa Puchalla, an individual who rehomed her sixteen-year-old daughter Quita.¹³⁹ Puchalla said that the Easons, the couple she gave Quita to, "seemed wonderful."¹⁴⁰ However, Reuters noted that had Puchalla done more vetting, she would have learned that the Easons had lost custody of their biological children and that the sheriff deputy who had helped remove the children wrote that the "parents have severe psychiatric problems as well with violent tendencies" in his report.¹⁴¹ They also would have learned that the Easons had previously been accused of sexual abuse and that the glowing home study they provided Puchalla was fake.¹⁴²

In addition to foregoing vetting, some parents transferred custody of their children almost immediately.¹⁴³ In some cases, *physical* custody was transferred on the same day an individual expressed interest in the child.¹⁴⁴ In some cases, parents tried to stay

138. Glenna Mueller is a textbook example of someone who handed her child over without knowing anything about the people she was giving her child to. See Twohey, *The Dangers*, *supra* note 49. Glenna Mueller transferred custody of her ten-year-old son to Nicole Eason and Randy Winslow despite the fact that she "wasn't certain where or if Eason or Winslow worked . . . she knew nothing about Eason's two biological children having been taken away, or of Winslow's affinity for young boys; she wasn't even sure of their address." *Id.*

139. Twohey, *The Network*, *supra* note 29.

140. *Id.*

141. *Id.* The sheriff's office report read, "[t]he home environment was deplorable for an infant, trash, clothes, stale food and stagnant water The parents have an open investigation in (Massachusetts) where their parental rights are being terminated due to physical abuse on another child. Parents have severe psychiatric problems as well with violent tendencies." Twohey, *The Dangers*, *supra* note 49.

142. Twohey, *The Network*, *supra* note 29. As an adult, Quita has revealed that she was sexually abused by the Easons. Quita's account paralleled claims made by Anna, another young girl who at one point lived with the couple. See *infra* Part I.D.2, for more on the abuse Anna and Quita suffered.

143. Glenna Mueller, for example, handed her child over mere hours after connecting with Nicole Eason online. Twohey, *The Dangers*, *supra* note 49. ("On July 14, 2006, Eason connected online with Glenna Mueller By that afternoon, Eason and Winslow were heading north . . . to . . . where Mueller lived After less than an hour outside the Fairfield Inn, Eason and Winslow drove off with a young boy . . .").

144. *Id.*

in contact with their child for a while, and in other cases, they disappeared immediately after handing their child over, as the McLaughlins did after giving thirteen-year-old Nora Gateley to the Schmitzes.¹⁴⁵

The process of transferring *legal* custody is equally quick and unregulated. While a legal *adoption* cannot occur without judicial oversight,¹⁴⁶ in states where unregulated custody transfers are still legal, a “power of attorney document” is all that one needs to transfer care of their child to someone else.¹⁴⁷ In fact, a power of attorney document is nothing more than “a notarized statement declaring the child to be in the care of another adult.”¹⁴⁸ With this incredibly simple-to-obtain document, a stranger found on the internet is able to undertake almost any action that a parent would be able to regarding a child’s care, or lack thereof.¹⁴⁹ In fact, because the power of attorney document allows the new “guardian” to enroll the child in school and obtain government benefits, these custody transfers fall “outside the purview of child welfare authorities.”¹⁵⁰ In some cases, neither party files the power of attorney document anywhere and the document “functions, in essence, as a receipt.”¹⁵¹ The lack of formality, regulation, or recorded documentation of any part of this process is

145. See Twohey, *The Survivors*, *supra* notes 1–14 and accompanying text, for Nora’s story.

146. ADOPTION CTR., *supra* note 29 (describing the requirements of a legal adoption).

147. Twohey, *The Network*, *supra* note 29.

148. *Id.* Fillable forms and instructions are available online. *Power of Attorney Forms: By State*, POWEROFATTORNEY.COM, <https://powerofattorney.com/> [<https://perma.cc/9NXS-GNPL>]. There is no barrier to obtaining this document and the document itself requires very basic information. Power of attorney documents were originally intended to be temporary delegations of custody but are abused by parents who no longer want to care for their children. CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN, *supra* note 21, at 2.

149. Twohey, *The Network*, *supra* note 29.

150. *Id.* While some children are enrolled in school, others, like Quita, a girl who disappeared just days after being transferred to the custody of a couple her parents “barely knew” are not. *Id.* “When [Quita’s mother] called the school that Quita was supposed to attend, an administrator told [her] that the teenager had never shown up . . . [Quita’s parents] had no idea what had become of her.” *Id.*

151. Twohey, *The Network*, *supra* note 29. Power of attorney documents do not need to be filed or recorded anywhere. Because there is no record of these documents, there is no way to determine how many custody transfers were carried out using them.

the primary reason the U.S. government has no idea how prevalent this practice is.¹⁵²

D. The Harm that Can Result from an Unregulated Custody Transfer

Finding a new guardian for a child via Internet advertisement is dehumanizing and dangerous. Children are handed off as though they are not people and often spoken about as if there is something wrong with them.¹⁵³ One woman who wrote a post advertising her son went as far as to say that she and her husband “do truly hate this boy.”¹⁵⁴ To show some of the harm rehomed children are at risk of, this section is going to focus on the Easons and three of the six children Reuters identified that they had abused.¹⁵⁵

1. Psychological Harm

Whether or not something physically harmful happens, children who are rehomed suffer psychological harm.¹⁵⁶ Children who are sent away from their families undergo stress and do not have a stable adult relationship to support them.¹⁵⁷ As an adult, Quita

152. U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 15; see Twohey, *The Report*, *supra* note 15 (describing how there are more children who have been given to someone dangerous than there is record of and not even the person that gave them away knows what is happening to them).

153. One example of this is a parent who cited her reason for rehoming her child as his feet being “too big” and ears looking “funny.” Megan Twohey, *With Blind Trust and Good Intentions, Amateurs Broker Children Online*, from *The Child Exchange: Inside America's Underground Market for Adopted Children*, REUTERS INVESTIGATES (Sept. 10, 2013), <https://www.reuters.com/investigates/adoption/#article/part3> [<https://perma.cc/PEL7-BA5P>] [hereinafter Twohey, *The Middleman*].

154. Twohey, *The Network*, *supra* note 29.

155. Twohey, *The Report*, *supra* note 15.

156. See Wallace, *supra* note 57 (discussing studies showing “that if a child suddenly loses a parent, either through death, abandonment, or a prolonged separation, the child experiences intense fear, panic, grief (a combination of sadness and loss), depression, helplessness and hopelessness”).

157. While stress is a normal part of the human experience, children who experience “strong, frequent, and/or prolonged adversity . . . without adequate adult support” are at risk of toxic stress. *Toxic Stress*, CTR. ON THE DEVELOPING CHILD AT HARVARD UNIV., <https://developingchild.harvard.edu/science/key-concepts/toxic-stress/> [<https://perma.cc/8LH9-5GNL>]. In fact, it is relationships with adults that draw the line between a tolerable stress response in children and a toxic stress response. *Id.* Children who experience toxic stress are at risk for

reflected on spending the entire night crying when her parents, the Puchallas, told her they would be sending her to live with complete strangers, the Easons, at sixteen years old.¹⁵⁸ This misery contrasts with the happiness Quita felt when she was initially adopted by the Puchallas.¹⁵⁹ Quita said she felt she was going to “a nicer place, a safer place” than the orphanage she was living at in Liberia.¹⁶⁰ As an adult, Quita no more understood why she was given up than she did as a child.¹⁶¹ Anna Mealey, a child who was given to the Easons three months before Quita was, also expressed the misery she felt at being sent away.¹⁶² Anna said, “I couldn’t stop [crying] . . . I just kept telling them, ‘Please don’t send me to them. Please, I’m begging you. I will get down on my knees.’”¹⁶³

2. Sexual Abuse

Quita and Anna’s emotional turmoil was only the tip of the iceberg. Both girls would go on to be sexually abused by the Easons.¹⁶⁴ Quita says she was forced to sleep in between Calvin and Nicole Eason and that Nicole slept naked.¹⁶⁵ Anna, who was no longer with the Easons by the time Quita arrived, reported the same thing and also stated that Nicole told her that she had kissed Anna in her

“developmental delays and later health problems, including heart disease, diabetes, substance abuse, and depression.” *Id.*

158. Twohey, *The Network*, *supra* note 29 (explaining that Quita was worried, in part, because she knew her parents did not know whether the people she was being sent to live with were good people).

159. *Id.*

160. *Id.*

161. *Id.* (“How would you give me up when you brought me to be yours?”).

162. Twohey, *The Failures*, *supra* note 89.

163. *Id.*

164. Twohey, *The Network*, *supra* note 29; Twohey, *The Failures*, *supra* note 89. The risk of sexual abuse is so dangerous because children who are sexually abused may display emotional and behavioral reactions such as “[a]n increase in nightmares and/or other sleeping difficulties; Withdrawn behavior; Angry outbursts; Anxiety; Depression; Not wanting to be left alone with a particular individual(s); Sexual knowledge, language, and/or behaviors that are inappropriate for the child’s age.” *Sexual Abuse: Effects*, THE NATIONAL CHILD TRAUMATIC STRESS NETWORK, <https://www.nctsn.org/what-is-child-trauma/trauma-types/sexual-abuse/effects> [https://perma.cc/QB5A-LA9N]. Sexual abuse is traumatizing for children and can have long term effects on their physical and mental health in the form of “post-traumatic stress disorder, depression, and anxiety,” as well as an inability to trust adults. *Id.*

165. Twohey, *The Network*, *supra* note 29.

sleep.¹⁶⁶ The experience of living with the Easons, Quita said in an interview as an adult, was a “nightmare.”¹⁶⁷ Equally horrific is the fact that Quita and Anna were not the first children to be sexually abused after being handed over to the Easons.¹⁶⁸ Years earlier, Nicole Eason and Randy Winslow, Eason’s then-roommate, took custody of a ten-year-old boy the same day Eason replied to his mother’s post in a Yahoo Group called ConsideringDisruptinganAdoption.¹⁶⁹ A federal agent later learned that Winslow would “graphically boast of molesting boys.”¹⁷⁰ And while Winslow would be sentenced to federal prison for trading child pornography, Eason would go on to take in Anna, Quita, and more children after them.¹⁷¹

The sites on which children are advertised are accessible to everyone—meaning pedophiles, sex traffickers, and other predators are able to see children, proclaim themselves to be suitable caretakers, and take custody.¹⁷² Reuters interviewed Michael Seto, an expert on the sexual abuse of children at the Royal Ottawa Health Care Group in Canada, who stated that advertising that a child has a history of sexual or physical abuse or has issues with substance abuse or “sexually acting out” draws in predators.¹⁷³ Eric Ostrov, a Chicago-based forensic psychologist who evaluates sex offenders, added that “describ[ing] children as troubled and lacking a consistent parental

166. Twohey, *The Failures*, *supra* note 89.

167. Twohey, *The Network*, *supra* note 29.

168. *Id.* (“The Easons each had been accused by children they were babysitting of sexual abuse, police reports show.”)

169. Twohey, *The Dangers*, *supra* note 49. The ConsideringDisruptinganAdoption Yahoo Group has since been shut down. *Id.*

170. *Id.*

171. *Id.*; see Twohey, *The Report*, *supra* note 15 (detailing the stories of six children Eason took custody of). New York State Police took Quita away from the Easons, who had taken Quita to New York only a few days after the Puchallas had dropped her off at their Illinois trailer. Twohey, *The Network*, *supra* note 29. The police sent Quita back to the Puchallas in Wisconsin but did nothing further after concluding “the Easons had committed no crimes in their jurisdiction.” *Id.* Neither Illinois nor Wisconsin authorities did anything either. *Id.* So, Nicole Eason was left free to “tap” “the child exchange” again. *Id.*

172. Twohey, *The Dangers*, *supra* note 49 (“The unregulated nature of this market makes it especially dangerous. Because the government doesn’t oversee the bulletin boards, people like Randy Winslow can easily gain custody of a child, without authorities ever knowing.”).

173. *Id.*

figure” is a “tremendous lure” to predators.¹⁷⁴ In analyzing online posts, Reuters found much of the language Seto and Ostrov warned against.¹⁷⁵ Although authorities can get involved when sexual abuse is identified, children like Nita, a young girl who was afraid she would be rehomed again if she spoke up, are sometimes unable or unwilling to report it.¹⁷⁶

3. The Risk of Children Never Being Discovered

Because so many cases of rehoming are not discovered, there are many children that are never rescued from the dangerous situations they were put in. In addition, because in much of the United States there is no penalty associated with rehoming children or taking them, nothing stops people from doing it repeatedly. Reuters identified six children taken by the Easons.¹⁷⁷ The couple implied that there were more, but there is no record of them.¹⁷⁸ For

174. *Id.* Ann Haralambie, former chair of the ABA Family Law Section’s Juvenile Law and Needs of Children Committee, has also expressed her concern stating, “[the internet is] 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.” Leslie A. Gordon, *States Start to Crack Down on Parents ‘Re-Homing’ Their Adopted Kids*, AM. BAR ASS’N (Dec. 1, 2014), https://www.abajournal.com/magazine/article/states_start_to_crack_down_on_parents_re_homing_their_adopted_kids/ [<https://perma.cc/3RVN-RKRN>].

175. Twohey, *The Dangers*, *supra* note 49.

176. Nita Dittenber, a young girl who had been rehomed four times in only two years, was so afraid of being sent away again that for months she did not tell anyone that her new “guardian” was sexually abusing his other children. Megan Twohey, *Adopted Girl: I Was ‘Re-homed’ After Reporting Dad’s Alleged Sex Abuse*, NBC NEWS (Mar. 21, 2014), <https://www.nbcnews.com/storyline/re-homing/adopted-girl-i-was-re-homed-after-reporting-dad-s-n57671>

[<https://perma.cc/NU3H-A8NL>]. “I didn’t want to get passed around anymore,” Nita said years later. *Id.* When Nita finally told a relative of the family about the sexual abuse, the family did what Nita was so desperately afraid they would do and immediately sent her away to ensure she would not be able to “participate in the resulting investigation.” *Id.* One of the abused girls in the home was “also threatened . . . with re-homing unless she wrote a letter saying her accusations . . . were ‘not true.’” *Id.*

177. Twohey, *The Failures*, *supra* note 89. These six children were an unnamed 10-year-old boy, an unnamed 8-year-old girl, Dmitri Stewart, Anna Barnes, Quita Puchalla, and an unnamed 5-year-old boy. *Id.*

178. *Id.* In an interview, Reuters asked Nicole Eason if she planned to take in more kids. *Id.* She replied that she already had. *Id.* Prior to this, she also allegedly showed Anna a photo of a young boy and girl who she said used to live with her and had died. *Id.* When asked by Reuters, Nicole did not deny this. She

years, the Easons were not stopped despite involvement from officials who knew what they were doing, because there was no applicable law to prosecute the couple under.¹⁷⁹

E. Why People Resort to Unregulated Custody Transfers

This section will explain why parents privately rehome their children and why individuals agree to take custody of a child they see advertised on the internet.

1. Why People Post Their Children

There are a number of reasons people who no longer can or want to care for their child turn to unregulated custody transfers. Some parents feel they have no other choice.¹⁸⁰ “Residential treatment centers can be expensive, and some parents say social services won’t help them; if they do contact authorities, they fear being investigated for abuse or neglect.”¹⁸¹ Parents have expressed despair when their children have become violent toward other children in the household or toward the parents themselves.¹⁸² Some “described how their children molested siblings, tried to crash their cars, pulled knives on them, killed or tortured animals, or took

merely said she could not recall which children she showed her. *Id.* If what Nicole said was true, there were more children than those discussed in the Report who were harmed or killed by the Easons, and no one except the couple and the people who gave the children to them will ever know.

179. Twohey, *The Report*, *supra* note 15. Despite losing custody of their own kids, despite authorities removing traumatized children who had been rehomed to them several times, and despite repeated allegations of sexual abuse, the couple was not stopped from continuing to take in children for years. *Id.* In 2016, three years after this report came out, the Easons were finally convicted of “kidnapping” and “transporting [a] minor with intent to engage in sexual activity.” Press Release, U.S. Dep’t of Just., Illinois Couple Sentenced for Multiple Kidnappings and Transporting Minor with Intent to Engage in Sexual Activity (June 21, 2016), <https://www.justice.gov/opa/pr/illinois-couple-sentenced-multiple-kidnappings-and-transporting-minor-intent-engage-sexual> [<https://perma.cc/CAJ6-SYE6>]. The taking of a child without a formal custody order was not what made the Easons’ actions kidnapping; rather, it was the fact that Nicole deceived parents with a fake home study and “fraudulently induced” minors and their parents to “voluntarily transport” or “allow [Eason] to transport” them “for the purposes of ‘rehoming’ [them] with the [Easons].” *United States v. Eason*, No. 15-20015, 2016 WL 3545467, at *2 (C.D. Ill. June 22, 2016), *aff’d*, 854 F.3d 922 (7th Cir. 2017).

180. Twohey, *The Network*, *supra* note 29.

181. *Id.*

182. *Id.*

weapons to school.”¹⁸³ Other parents fear negative repercussions if they relinquish custody of their child through formal channels.¹⁸⁴ One Texas couple, Lisa and Gary Barnes, said they were told that “[i]f they turned [their daughter] Anna over to the state of Texas . . . they would be considered unfit parents and have to pay child support until she turned 18.”¹⁸⁵ Similarly, Arkansas Representative Justin Harris said he rehomed his three-year-old and five-year-old daughters “because he would have faced abandonment charges by the state” if he had formally relinquished custody which “could have cost him custody of his three biological sons.”¹⁸⁶

Some parents do not turn to this practice out of desperation or fear but instead because they do not care for their child and cannot be bothered to deal with them anymore. One couple that rehomed their child explained that they wanted to do so because “the 4-year-old’s feet were too big and his ears looked funny.”¹⁸⁷ Some parents are unaware of the danger in which they are placing their children. One

183. Robin Respaut, *Parents Struggle to Get Assistance After Adopting from Overseas*, REUTERS INVESTIGATES (Mar. 26, 2014), <https://www.reuters.com/investigates/adoption-follows/> [<https://perma.cc/F9L5-QZAK>]. One mother, Amanda Alexander, said that her daughter attacked her, her classmates, and herself. *Id.* She said that though she reached out to other parents, school officials, and social workers for help, there was little to be found. *Id.* While the Alexanders never considered giving their daughter to “a stranger they met online,” their story is an insight into how little support there is, particularly in special needs, international adoptions. *Id.*

184. Twohey, *The Failures*, *supra* note 89. To fully relinquish custody such that they have no right to or responsibility for their child, a parent must voluntarily terminate their parental rights. While the process of terminating parental rights looks somewhat different in each state, every state requires a court to approve the termination. Because terminating parental rights means a parent will have no responsibility for their child anymore, many courts are reluctant to grant it; *see, e.g.*, CAL. FAM. CODE § 7820 (West 2022) (providing that a proceeding may be brought to terminate parental rights if the child comes within certain descriptions set out in the family code). The power of attorney documents parents use to transfer custody of their children do not terminate their legal responsibility to their child. CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN, *supra* note 21, at 2.

185. Twohey, *The Failures*, *supra* note 89.

186. Benjamin Hardy, *Casting Out Demons: Why Justin Harris Got Rid of Kids He Applied Pressure to Adopt*, ARKANSAS TIMES (Mar. 12, 2015), <https://arktimes.com/news/cover-stories/2015/03/12/casting-out-demons-why-justin-harris-got-rid-of-kids-he-applied-pressure-to-adopt> [<https://perma.cc/6EXJ-WAZC>].

187. Twohey, *The Middleman*, *supra* note 153.

such set of parents, Gary and Lisa Barnes, came to collect their daughter Anna as soon as they learned she might be in danger with the Easons.¹⁸⁸ Others elect to ignore any danger, like a mother who wrote about rehomings her twelve-year-old daughter: “I would have given her away to a serial killer, I was so desperate.”¹⁸⁹ In addition, while some parents did not know they were violating the ICPC, others did know but chose to accept the risk of legal repercussions.¹⁹⁰ Regardless of what parents think, they continue to utilize legal loopholes to transfer custody of their children without utilizing adoption agencies, lawyers, social workers, or courts, and children continue to suffer as a result.

2. Why People Answer Their Ads

There are a number of reasons individuals turn to unregulated means of getting custody of a child. Some would not be approved to adopt a child if a formal background check and home study were conducted.¹⁹¹ Others are looking for a way to gain custody of a child that is less expensive than formal adoption.¹⁹² The Easons are a textbook example of both.¹⁹³ Nicole Eason told Reuters that “[i]f you don’t want to pay \$35,000 for a kid, you take your chances.”¹⁹⁴ The couple also expressed that they “view re-homing as a way around a prying government.”¹⁹⁵ When asked, Nicole Eason said she wanted

188. Twohey, *The Failures*, *supra* note 89.

189. Twohey, *The Dangers*, *supra* note 49 (referring to any person the parent and child are not sufficiently familiar with to deem “safe”).

190. Twohey, *The Failures*, *supra* note 89; see *supra* Part I.B.2.b, for a full discussion of the ICPC.

191. In assessing whether an individual is eligible to adopt, legal systems and licensed child placing agencies look to whether they will provide safe and suitable care. Individuals who cannot will not be allowed to adopt. *What Can Disqualify Me from Being Able to Foster or Adopt?*, GLADNEY CTR. FOR ADOPTION (Feb. 6, 2020), <https://adoption.org/can-disqualify-able-foster-adopt> [https://perma.cc/K8UW-VP8M].

192. Adoption costs vary based on a number of factors including whether the adoption is private or public and whether it is domestic or intercountry. CHILD WELFARE INFO. GATEWAY, PLANNING FOR ADOPTION: KNOWING THE COSTS AND RESOURCES 3–5 (2016) (explaining that private agency adoptions “may range from \$30,000 to \$60,000 . . . [a]n independent adoption outside the public child welfare system . . . may range from \$25,000 to \$45,000,” and intercountry adoption costs “may run between \$20,000 and \$50,000.”).

193. Twohey, *The Network*, *supra* note 29.

194. *Id.*

195. *Id.*

a child because being a mother made her “feel important.”¹⁹⁶ She did not mince words when she told Reuters that her parenting style was “a little mean” and that she would “threaten to throw a knife” at the children in her care.¹⁹⁷ This behavior, which was described as violent by a sheriff deputy, was exasperated by the fact that the Easons has already lost custody of their biological children and had been accused of sexual assault by children they had babysat.¹⁹⁸ This meant that the couple would not have been approved to adopt a child, even if they had been willing to pay the costs associated with doing so.

Some individuals reply to these ads for purely nefarious reasons, while others have pure intent. Both Michael Seto and Eric Ostrov noted the ways in which these internet advertisements of children draw in predators.¹⁹⁹ When Reuters spoke to New York State Police investigator Timothy Northrup, he expressed similar concerns.²⁰⁰ Of course, there are individuals who take children in with no nefarious intent. Megan Exon and her husband, for example, took in the four-year-old boy who was described as having “big” feet and “funny” ears with no intentions other than to care for him.²⁰¹ However, the chance of having kind, loving, capable people take in children who are not wanted by their parents is outweighed by the significant risk that results from a lack of regulation.²⁰²

196. *Id.*

197. *Id.*

198. *Id.* (“[A]uthorities . . . discovered information that could have precluded the Easons from taking custody of the teenager, if the proper officials had been involved, adoption experts say.”).

199. Twohey, *The Dangers*, *supra* note 49. Michael Seto is an expert on the sexual abuse of children, and Eric Ostrov is a forensic psychologist who evaluates sex offenders. Both experts detailed the way the language used in these ads puts children at especially high risk of being sought out by predators. *See supra* notes 173–174 and accompanying text.

200. Twohey, *The Failures*, *supra* note 89 (“You’re going to have kids rehomed to pedophiles who will hold them down there in some cell . . . You’re opening these kids to human trafficking, sex trafficking and sex slavery.”).

201. Twohey, *The Middleman*, *supra* note 153.

202. Serious risks to children transferred to strangers on the internet include the threat of psychological, physical, and sexual abuse. *See supra* Part I.D, for more on these risks. This danger outweighs the chance that a child will be rehomed to someone suitable. Megan Exon came to understand this herself after learning that Nicole Eason, who she had personally introduced to two families, was harming children. Twohey, *The Middleman*, *supra* note 153. Exon later told Reuters that within the internet re-homing group she was moderating, “[w]e

F. The State of the Law Today

Since the 2013 Reuters Investigative Report was published, some states have passed legislation criminalizing unregulated custody transfers.²⁰³ In addition, the ULC has drafted, approved, and recommended the Uniform Unregulated Child Custody Transfer Act to regulate adoption in all states.²⁰⁴ Federally, legislators have introduced several bills to curb unregulated transfers of custody.²⁰⁵ Most recently, Representative Jim Langevin and Senator Amy Klobuchar introduced identical companion bills titled the Safe Home Act of 2021.²⁰⁶

1. The Reuters Investigative Report Spurred the Push for Change

The 2013 Reuters Investigative Report appears to be a large part of the push for legislation combating unregulated custody transfers. Less than a week after the report was published, several nations “call[ed] on the United States to account for what [had] become of international adoptees.”²⁰⁷ Not long after, Representative

weren’t doing background checks. We didn’t have any way of knowing who these people were . . . I felt sick to my stomach.” *Id.*

203. See CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN, *supra* note 21 (discussing state legislation criminalizing unregulated custody transfers). More states have adopted laws since this was compiled in 2017, but there has not been a more recent state survey. *Id.*

204. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM’N 2021).

205. See, e.g., Safe Home Act of 2019, H.R. 1389, 116th Cong. (2019); Safe Home Act of 2019, S. 1446, 116th Cong. (2019); Safe Home Act of 2018, H.R. 6115, 115th Cong. (2018); Safe Home Act of 2018, S. 3173, 115th Cong. (2018), for federal legislation aimed at unregulated custody transfers. See *infra* Part II.A.1, for a complete discussion of these bills.

206. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021). See *infra* Part II.A.2, for a complete discussion of these bills.

207. Respaut, *supra* note 183. These nations included Russia, Brazil, and Guatemala. Sergey Chumarev, senior counselor for legal matters for the Russian embassy in Washington, called out both the procedural failures that allow children to slip under the radar of the U.S. government, as well as the problematic mindset that led to a failure to track these children. Megan Twohey, *Governments Call on U.S. to Track Foreign Adoptees*, REUTERS (Sep. 13, 2013), <https://www.reuters.com/article/us-usa-childexchange-reaction-idUSBRE98C0XX20130913> [<https://perma.cc/QFP2-FQV6>]. Rudy Zepeda, spokesman for Guatemala’s National Adoption Board, called for increased

Joel Kleefisch, the sponsor of a Wisconsin bill addressing rehoming, cited directly to the Report and the danger it illuminated in a statement about his bill.²⁰⁸ In addition, Representative Langevin credits the Report with “expos[ing] an alarming trend of adopted children being ‘re-homed’ into the custody of strangers without any oversight, putting the children at risk for neglect and abuse.”²⁰⁹ It was after becoming aware of this practice in 2013 that Representative Langevin originally introduced legislation addressing unregulated custody transfers.²¹⁰ Since the Report was published, Representative Langevin and Senator Klobuchar have continued to introduce legislation aimed at stopping rehoming every year to date.²¹¹

State and federal legislators are not the only ones who have recognized the impact of the Report. In a joint statement, a number of

supervision of the “phenomenon” of unregulated custody transfers. *Id.* George Lima, head of the Brazilian authority that watches over adoptions, announced that Americans adopting children from Brazil were required to go through Brazil’s federal adoption authority so the nation could track where the children end up. *Id.* He further advised that the U.S. track children that arrived in the nation on their end. *Id.*

208. Twohey, *Wisconsin Passes Law to Curb Private Custody Transfers of Children*, *supra* note 26 (“The Reuters reports outlined massive pratfalls in current law that allowed children to be advertised on social networks on the Internet,” said Rep. Joel Kleefisch.”).

209. *Children and Families*, *supra* note 26. “Langevin became aware of this crisis after *Reuters* published an investigative series, ‘The Child Exchange,’ that detailed shortcomings in adoption services and found instances in which international adopted children in particular were re-homed and placed into dangerous situations.” Press Release, Congressman Jim Langevin, Doggett, Langevin React to GAO Report on Re-homing (Sept. 17, 2015), https://www.legistorm.com/stormfeed/view_rss/673541/member/327/title/doggett-langevin-react-to-gao-report-on-re-homing.html [<https://perma.cc/Y9HL-AE3T>]. After crediting the Report with exposing unregulated transfers of custody, Representative Langevin introduced legislation to combat the practice of rehoming. *Children and Families*, *supra* note 26.

210. *Langevin Introduces Bill to Protect Adopted Children*, CONGRESSMAN JIM LANGEVIN (Oct. 30, 2013), <https://langevin.house.gov/media/press-releases/langevin-introduces-bill-protect-adopted-children> [<https://perma.cc/J8MD-YCWY>]. In this bill, Representative Langevin focused on pre-adoption and post-adoption services and did not address unregulated transfers of custody by name. Protecting Adopted Children Act, H.R. 3423, 113th Cong. (2013). This bill was a companion bill to the substantively similar Act introduced by Senator Klobuchar. Supporting Adoptive Families Act, S. 1527, 113th Cong. (2013). Klobuchar reintroduced the bill following outcry that came after the publication of the Report. *See* Respaut, *supra* note 183 (detailing some of this national and international outcry).

211. *See supra* Part II.A, for a discussion of the introduced legislation.

child welfare and adoption organizations also credited Reuters with “prompt[ing] legislation banning parents from transferring custody of their children outside the legal system.”²¹² The ULC’s Uniform Unregulated Child Custody Transfer Act also cited the Report as the beginning of public awareness on this topic.²¹³ In addition, after attention was brought to the unregulated custody transfers in 2013, a U.S. Working Group was formed and

produced a report specifying three issues that should be addressed in legislation: (1) a clear provision stating that an unregulated custody transfer is a violation of state law; (2) authorization for the state child protection agency to investigate and interdict instances of unregulated transfers; and (3) a requirement that child-placing agencies provide better information and training for prospective adoptive parents so that they know what to anticipate when adopting children with certain special needs and how to deal with them.²¹⁴

Several states have adopted statutes that in some way dealt with unregulated custody transfers, but Utah most closely followed the recommendations of the Working Group.²¹⁵ As a result, Utah’s statute provided the foundation for what would eventually become the Uniform Unregulated Child Custody Transfer Act.²¹⁶

212. CHILD WELFARE LEAGUE OF AM., RESPONDING TO REHOMING: PROTECTING CHILDREN & STRENGTHENING ADOPTIVE FAMILIES 1 (June 2015), http://www.cwla.org/wp-content/uploads/2015/06/Joint-Statement_Responding-to-Rehoming_June2015.pdf [<https://perma.cc/W2RE-N95Q>]. The Organizations that signed onto this statement are The Center for Adoption Support and Education (CASE), Child Welfare League of America (CWLA), Congressional Coalition on Adoption Institute (CCAI), Dave Thomas Foundation for Adoption (DTFA), Donaldson Adoption Institute (DAI), North American Council on Adoptable Children (NACAC) and Voice for Adoption (VFA). *Id.* These organizations also co-attributed the start of legislation to “the high-profile public case of an Arkansas state Representative transferring guardianship of his two adopted daughters to a man who later sexually assaulted one of the children . . .” *Id.* See Hardy, *supra* note 186, for more information on that Representative.

213. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT 1 background (UNIF. L. COMM’N 2021).

214. *Id.*

215. *Id.* at 2.

216. *Id.*

2. The Problem with the Status Quo

To date, there is no federal legislation prohibiting the unregulated transfer of custody of children.²¹⁷ Legislation has been introduced, but all bills that have been introduced in the House and the Senate thus far have died save for the Safe Home Act of 2021, which has not yet been decided on.²¹⁸ In addition, most U.S. states currently have no laws addressing unregulated custody transfers, and those that do are inconsistent and range from making the practice a felony to limiting the extent to which it is sanctioned.²¹⁹ Having no laws in much of the country means people are free to carry out this dangerous practice. In addition, having inconsistencies in the law across the country may encourage individuals to “shop” for a state where it is permissible to transfer custody of their child.²²⁰ As such, for prohibitions on unregulated custody transfers to be effective, they must cover the entire country, and their terms must be consistent across the country. The best course of action would be comprehensive federal legislation coupled with substantively similar state laws.

II. Attempts at Regulation

In Part II, this Note will focus on two of the most recent attempts to combat unregulated custody transfers: the Safe Home Act of 2021²²¹ and the Uniform Unregulated Child Custody Transfer Act.²²² Part II.A will provide an overview of failed federal bills before beginning a comparative analysis of the companion bills currently in Congress. Part II.B will turn to an analysis of the ULC’s proposed model law. It will also address limited custody transfers, a provision that some states have enacted but which is not present in the ULC’s model law. Finally, Part II.C will address arguments that have been made in opposition to enacting legislation.

217. See *infra* Part II.A, for a discussion of federal legislation.

218. See *infra* Part II.A.

219. CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN, *supra* note 21, at 4.

220. There have been attempts to circumvent state laws through forum shopping on Facebook. See, e.g., FACEBOOK, *supra* note 119 and accompanying text.

221. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021).

222. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM’N 2021).

A. Federal Law

While federal bills have been introduced to stop unregulated custody transfers, none have yet passed Congress.²²³ This section will analyze those bills, beginning with the ones that have already died before turning to the ones that are currently in Congress. In doing so, this section will address the bills' strengths and weaknesses.

1. Failed Federal Bills: An Overview

One of the earliest attempts to introduce federal legislation aimed at curbing unregulated custody transfers came from bills introduced by Representative Langevin and Senator Klobuchar in 2013.²²⁴ Those companion bills focused on enhancing pre-adoption and post-adoption services.²²⁵ They did not address unregulated transfers of custody directly and did not introduce legislation that would benefit biological children at risk of being transferred.²²⁶ Though the bills were not a complete solution to the problem of unregulated custody transfers, they nonetheless would have been a good first step. Unfortunately, both bills died.²²⁷

Since 2013, there have been several bills introduced with the specific aim of curbing unregulated custody transfers. Most recently and most relevantly, there have been a series of companion bills titled the Safe Home Act.²²⁸ The first iteration, the Safe Home Act of 2018, was two substantively identical companion bills introduced by Representative Langevin and Senator Klobuchar during the 115th

223. See *infra* Part II.A.1, for a full analysis of those federal bills.

224. H.R. 3423, 113th Cong. (2013); S. 1527, 113th Cong. (2013).

225. H.R. 3423; S. 1527.

226. H.R. 3423; S. 1527.

227. There is no published information detailing why the bills died. H.R. 3423 was referred to the Subcommittee on Health but went no further. *H.R. 3423 - To Ensure the Safety and Well-Being of Adopted Children*, CONGRESS.GOV (2013), <https://www.congress.gov/bill/113th-congress/house-bill/3423> (on file with the *Columbia Human Rights Law Review*). S. 1527 was referred to the Committee on Finance but went no further. *S.1527 - Supporting Adoptive Families Act*, CONGRESS.GOV (2013), <https://www.congress.gov/bill/113th-congress/senate-bill/1527> (on file with the *Columbia Human Rights Law Review*).

228. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021); Safe Home Act of 2019, H.R. 1389, 116th Cong. (2019); Safe Home Act of 2019, S. 1446, 116th Cong. (2019); Safe Home Act of 2018, H.R. 6115, 115th Cong. (2018); Safe Home Act of 2018, S. 3173, 115th Cong. (2018).

Congress.²²⁹ The purpose of these bills was “[t]o amend the Child Abuse Prevention and Treatment Act [(CAPTA)] to include an act of unregulated custody transfer in the definition of child abuse and neglect, and for other purposes.”²³⁰ Unfortunately, both bills died.²³¹

The following year, in the 116th Congress, Representative Langevin and Senator Klobuchar introduced the next iteration of the Safe Home Act in the companion bills known as the Safe Home Act of 2019.²³² Like the Safe Home Act of 2018, the Safe Home Act of 2019 called for unregulated custody transfers to be included in CAPTA’s definition of child abuse and neglect.²³³ The 2019 bills also included two additional sections.²³⁴ The first explains the “sense of Congress” in introducing these bills.²³⁵ Though the articulated “sense” places an emphasis on safeguarding *adopted* children, nothing in this section or any other section of the bill limited the terms of the bill to only adopted children.²³⁶ The second new section introduces an additional amendment to CAPTA which adds a requirement that the Secretary prepare a report on unregulated custody transfers and guidance for states.²³⁷ Though the Safe Home Act of 2019 placed greater emphasis on why it was necessary legislation and included additional

229. H.R. 6115; S. 3173.

230. H.R. 6115; S. 3173.

231. There is no published information detailing why the bills died. H.R. 6115 was referred to the Subcommittee on Early Childhood, Elementary, and Secondary Education but went no further. *H.R.6115 - Safe Home Act of 2018*, CONGRESS.GOV (2018), <https://www.congress.gov/bill/115th-congress/house-bill/6115> (on file with the *Columbia Human Rights Law Review*). S. 3173 was referred to the Committee on Health, Education, Labor, and Pensions but went no further. *S.3173 - Safe Home Act of 2018*, CONGRESS.GOV (2018), <https://www.congress.gov/bill/115th-congress/senate-bill/3173> (on file with the *Columbia Human Rights Law Review*). Neither Representative Langevin nor Senator Klobuchar’s teams returned the author’s request for additional information about what happened with these bills.

232. Safe Home Act of 2019, H.R. 1389, 116th Cong. (2019); Safe Home Act of 2019, S. 1446, 116th Cong. (2019).

233. H.R. 1389; S. 1446.

234. H.R. 1389; S. 1446.

235. H.R. 1389 § 2; S. 1446 § 2. Though there is no explicit explanation for why a section dedicated to the “sense of Congress” was added to the bill, the section serves to highlight why unregulated custody transfers are dangerous and why Congress finds that this bill would suitably combat them. Thus, the section works to persuade as well as to clarify the goals of the bill.

236. H.R. 1389 § 2; S. 1446 § 2.

237. H.R. 1389 § 4; S. 1446 § 4.

procedural steps to aid states with compliance, it, like its 2018 predecessor, also died.²³⁸

The Safe Home Act of 2019 was not the only attempt in the 116th Congress to safeguard children from unregulated custody transfers. During that same session, Representative Schrier introduced the Stronger Child Abuse Prevention and Treatment Act.²³⁹ Select provisions of this Act were introduced to “ensure child welfare officials have the authority they need to investigate and respond to [rehoming] cases.”²⁴⁰ The authors of those provisions stated, “[i]t’s clear that [rehoming] is a form of child abuse and neglect”²⁴¹ Unfortunately, though the Stronger Child Abuse Prevention and Treatment Act passed the House, it died in the Senate.²⁴²

2. The Safe Home Act of 2021

Most recently, in the 117th Congress, Representative Langevin and Senator Klobuchar introduced substantively identical companion bills individually and collectively known as the Safe Home Act of 2021.²⁴³ The 2021 iteration of the Safe Home Act is identical to

238. There is no published information detailing why the bills died. H.R. 1389 was referred to the Committee on Education and Labor but went no further. *H.R.1389 - Safe Home Act of 2019*, CONGRESS.GOV (2019), <https://www.congress.gov/bill/116th-congress/house-bill/1389>. S. 1446 was referred to the Committee on Health, Education, Labor, and Pensions but went no further. *S.1446 - Safe Home Act of 2019*, CONGRESS.GOV (2019), <https://www.congress.gov/bill/116th-congress/senate-bill/1446>. Neither Representative Langevin nor Senator Klobuchar’s teams returned the author’s request for additional information about what happened with these bills.

239. Stronger Child Abuse Prevention and Treatment Act, H.R. 2480, 116th Cong. (2019).

240. Press Release, Congressman Jim Langevin, House Passes Langevin, Bacon Provisions to Protect Adopted Children from Rehoming (May 20, 2019), <https://langevin.house.gov/media/press-releases/house-passes-langevin-bacon-provisions-protect-adopted-children-rehoming> [<https://perma.cc/M9MH-Y7FY>]. These provisions were authored by Representative Langevin and Representative Bacon, the co-sponsors of the Safe Home Act bills introduced in the House.

241. *Id.*

242. *H.R.2480 - Stronger Child Abuse Prevention and Treatment Act*, CONGRESS.GOV (2019), <https://www.congress.gov/bill/116th-congress/house-bill/2480> [<https://perma.cc/AM44-GPQL>].

243. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021).

the 2019 one.²⁴⁴ Representative Langevin's bill has since been referred to the House Committee on Education and Labor,²⁴⁵ and Senator Klobuchar's bill has been referred to the Committee on Health, Education, Labor, and Pensions.²⁴⁶ To better articulate what legislators are attempting to do with the Safe Home Act ("the Act"), this Note will analyze its specific terms.

The Safe Home Act's primary provision is adding "unregulated custody transfers" to the definition of "child abuse and neglect" in CAPTA.²⁴⁷ Congress enacted CAPTA, the first and arguably most important law that governs the way states structure their child welfare services, in 1974.²⁴⁸ All states are required to follow CAPTA, so the definition that Congress puts forth for child abuse and neglect is the baseline to which every state child abuse and neglect statute must adhere.²⁴⁹ The Act's goal of adding unregulated custody transfers to that definition is key because classifying these transfers as a form of abuse or neglect gives state child welfare agencies the authority to investigate these cases and take appropriate

244. H.R. 1247; S. 397; Safe Home Act of 2019, H.R. 1389, 116th Cong. (2019); Safe Home Act of 2019, S. 1446, 116th Cong. (2019).

245. *H.R.1247 - Safe Home Act of 2021*, CONGRESS.GOV (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1247> [<https://perma.cc/6PHM-WDZS>].

246. *S.397 - Safe Home Act of 2021*, CONGRESS.GOV (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/397> [<https://perma.cc/P2CA-SQSH>].

247. Safe Home Act of 2021, H.R. 1247, 117th Cong. § 3 (2021); Safe Home Act of 2021, S. 397, 117th Cong. § 3 (2021); Child Abuse Prevention and Treatment Act of 1974, 42 U.S.C. §§ 5101–5106 (1974) (adding the proposed additional language from the Safe Home Act of 2021 to the existing definition in the Child Abuse Prevention and Treatment Act of 1974 would have paragraph 2 of section 3 of CAPTA read: "the term 'child abuse and neglect' means, at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation (including sexual abuse as determined under section 111), or an act or failure to act which presents an imminent risk of serious harm, or an unregulated custody transfer.").

248. CHILD WELFARE INFO. GATEWAY, MAJOR FEDERAL LEGISLATION, *supra* note 75, at 1; *see also* Child Abuse Prevention and Treatment Act of 1974, 42 U.S.C. §§ 5101–5106 (1974) (providing the official text of the law).

249. CHILD WELFARE INFO. GATEWAY, ABOUT CAPTA: A LEGISLATIVE HISTORY 1 (2019), <https://www.childwelfare.gov/pubPDFs/about.pdf> [<https://perma.cc/74MR-USB2>].

action for the wellbeing of affected children.²⁵⁰ As the case of the Easons demonstrated, even when rehousing is discovered, officials often lack the authority to get involved.²⁵¹ Making rehousing per se abuse or neglect authorizes state actors to take action when they find a child living with strangers.²⁵²

The specific procedures that child welfare agencies, otherwise known as child protective services (CPS), undertake after abuse or neglect is alleged depends on the state.²⁵³ However, CPS generally has the authority to investigate allegations of child abuse, and, if they are substantiated, CPS can initiate legal action to remove the child from the home.²⁵⁴ While removing children from a home is never ideal, in cases where children are with predators who their parents found on the internet, it is necessary. Adding unregulated custody transfers to the definition of child abuse makes it possible.

The Act's scope is broad regarding the children it pertains to but narrow in what conduct constitutes an unregulated custody transfer. CAPTA defines a child as a person who is under age eighteen or under the age specified "by the child protection law of the State in which the child resides,"²⁵⁵ and the Act does not promulgate

250. "Each State or locality has a public child welfare agency responsible for receiving and investigating reports of child abuse and neglect and assessing child and family needs . . ." CHILD WELFARE INFO. GATEWAY, WHAT IS CHILD WELFARE? A GUIDE FOR EDUCATORS 1 (2018), https://www.childwelfare.gov/pubPDFs/cw_educators.pdf [<https://perma.cc/L4JV-ERS4>] [hereinafter CHILD WELFARE GUIDE FOR EDUCATORS].

251. Despite officials removing children from the Easons' care on multiple occasions, no one was able to stop them from taking in more children for years. Twohey, *The Failures*, *supra* note 89. Eventually, they were charged, not for taking in these children, but for making misrepresentations to some of the children's parents. See *supra* note 179, for details.

252. For the most part, states define what constitutes child abuse and neglect in their jurisdiction. However, CAPTA provides a national definition of abuse and neglect. CHILD WELFARE INFO. GATEWAY, HOW THE CHILD WELFARE SYSTEM WORKS 2 (2020), <https://www.childwelfare.gov/pubPDFs/cpswork.pdf> [<https://perma.cc/T6A9-WJVC>].

253. *Id.* at 2.

254. *Id.* at 4. CPS is also able to provide various family resources to keep a child safely in a home or to make a home safe for a child to return to. *Id.* However, in cases where children have been given to individuals who are unsuitable to take care of them, CPS would likely have to remove the child and place them with people who have undergone background checks and home studies.

255. Child Abuse Prevention and Treatment Act of 1974, 42 U.S.C. § 5101 (1974).

a limitation on this definition.²⁵⁶ Thus, the Act applies to all children. The Act's definition of "unregulated custody transfer" includes a carve-out for family-like transfers of custody.²⁵⁷ It further states that parents are not practicing unregulated custody transfers if they,

(i) reasonably ensur[e] the safety of the child and permanency of the placement of the child, including by conducting an official home study, background check, and supervision; and (ii) [transfer] the legal rights and responsibilities of parenthood or guardianship under applicable Federal and State law to a person [who falls under the family-like transfer exception].²⁵⁸

These carve-outs are key to ensuring the Act does not overcorrect and punish people who are genuinely trying to do right by their children and place them in homes better suited for their wellbeing.²⁵⁹ What is somewhat concerning is that the two bills titled the "Safe Home Act of 2021" are essentially identical to the two bills titled the "Safe Home Act of 2019," which died in their respective houses.²⁶⁰ Notably, the issue with passing this legislation is not a partisan one. In fact, along with being bicameral, both bills are bipartisan.²⁶¹

256. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021).

257. H.R. 1247 § 3; S. 397 § 3. The Act limits the scope of unregulated custody transfers to placements that are not with "(i) the child's parent, step-parent, grandparent, adult sibling, adult uncle or aunt, legal guardian, or other adult relative;" "(ii) a friend of the family who is an adult and with whom the child is familiar;" or "(iii) a member of the federally recognized Indian tribe of which the child is also a member." *Id.*

258. *Id.*

259. The risk of overcorrecting and prohibiting beneficial behaviors is a concern of some who are hesitant to support legislation aimed at criminalizing unregulated custody transfers. See *infra* Part II.C.1, for additional details.

260. H.R. 1247; S. 397; Safe Home Act of 2019, H.R. 1389, 116th Cong. (2019); Safe Home Act of 2019, S. 1446, 116th Cong. (2019). See also *H.R. 1247: Safe Home Act of 2021*, GOVTRACK, <https://www.govtrack.us/congress/bills/117/hr1247> [<https://perma.cc/PB5C-42P2>] and *S. 397: Safe Home Act of 2021*, GOVTRACK, <https://www.govtrack.us/congress/bills/117/s397> [<https://perma.cc/WB22-GC8J>] (reporting that Skopos Labs has given both S. 397 and H.R. 1247 only a 3% chance of being enacted). While there is no independent verification that this is an accurate prediction, it is worth noting that the odds of a successful outcome do not seem to be in favor of proponents of the Act.

261. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021). What the issue actually is remains unclear. Part II.C will discuss some of the public pushback against enacting legislation

B. State Law

In 2017, the Child Welfare Information Gateway identified three methods states were using to curb unregulated custody transfers.²⁶² These were (1) criminalizing unregulated transfers, (2) “placing limits on delegating parental authority through the use of power of attorney documents,” and (3) “restricting the use of advertising to find placements for a child.”²⁶³ Methods (1) and (3) are discussed in the model law known as the Uniform Unregulated Child Custody Transfer Act, but method (2) is not.²⁶⁴ This Note will discuss methods (1) and (3) within a comparative analysis of the model law before addressing method (2) separately.

1. The Uniform Unregulated Child Custody Transfer Act

The Uniform Unregulated Child Custody Transfer Act (“the Model Law”) was approved and recommended for adoption by all states in 2021.²⁶⁵ Though the Model Law includes some provisions that are specifically geared toward adopted children, overall, it focuses on all children.²⁶⁶ In addition, the ULC explicitly states that

generally but there is no available commentary on Congress’s hesitancy regarding these bills.

262. CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN, *supra* note 21, at 2.

263. *Id.*

264. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM’N 2021).

265. *Id.* In order for an act to be approved, ULC Commissioners “sit as a Committee of the Whole” and consider each section of the act in at least two annual conferences. *Frequently Asked Questions*, UNIF. L. COMM’N, <https://www.uniformlaws.org/aboutulc/faq> [<https://perma.cc/WG29-D4ZM>]. After the ULC Committee of the Whole approves the act, each state has an opportunity to vote on it. *Id.* For an act to be officially approved, at least 20 states must vote in favor of it. *Id.* Further, votes in favor must make up the majority of the states present. *Id.* Only then is an act submitted to state legislatures so they can consider enacting it. *Id.* As of November 2022, the Unregulated Child Custody Transfer Act has been enacted in Washington and Utah and introduced in Missouri. *2021 Unregulated Child Custody Transfer Act*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=473903e2-ea5a-4088-a8be-ba3f9086d46b> [<https://perma.cc/W2VJ-N5GF>].

266. In its Prefatory Note, the Model Law explains that some parents have found difficulty caring for their child after birth or adoption. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT 1 prefatory note (UNIF. L. COMM’N 2021). Further, within the Model Law’s draft for approval, the ULC details how the law was

the Model Law “would complement any federal statutory enactment on this topic.”²⁶⁷ Thus, its terms do not contradict the bills in Congress. The Model Law consists of four articles.²⁶⁸ Article 1 sets forth definitions and scope.²⁶⁹ Article 2 prohibits unregulated custody transfers and empowers child protection agencies to investigate suspected violations.²⁷⁰ Article 3 sets forth provisions to assist parents who are adopting children with physical or psychological needs.²⁷¹ Finally, Article 4 sets forth effective dates for Articles 2 and 3.²⁷² The Model Law is distinct from some states’ enacted legislation²⁷³ in key ways, which this Note will address in analyzing relevant provisions.

a. Article 1

In Article 1, the Model Law provides its scope.²⁷⁴ It defines “children” as all individuals under the age that their home state has designated as the age of majority.²⁷⁵ Thus, the term “children” is not being limited to only adopted children. In fact, the Model Law makes explicit that the only children to which it does not apply are Native American children “to the extent [their] custody is governed by the Indian Child Welfare Act”²⁷⁶ The Model Law also articulates its scope as applying to both parents and legal guardians.²⁷⁷ Ensuring the Model Law applies to both adopted and biological children

expanded to apply to all children whether adopted or biological. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT 2 background (UNIF. L. COMM’N, Draft for Approval July 15, 2021). The only provision of the Model Law that explicitly applies to adopted children alone is the “comprehensive requirements to minimize the risk of disruption in adoptions.” UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT 1 prefatory note (UNIF. L. COMM’N 2021).

267. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT 2 background (UNIF. L. COMM’N 2021).

268. *Id.*

269. *Id.* art. 1.

270. *Id.* art. 2.

271. *Id.* art. 3.

272. *Id.* art. 4.

273. CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN, *supra* note 21, at 2.

274. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT art. 1 (UNIF. L. COMM’N 2021).

275. *Id.* § 102. Their home state refers to the state in which the individual is a permanent resident.

276. *Id.* § 103.

277. *Id.* § 102.

ensures equal protections and ensuring the law applies to all parents and guardians ensures equal enforcement. The Model Law further defines “custody” as “the exercise of physical care and supervision of a child.”²⁷⁸ The definitions in the Model Law make certain that prohibitions on unregulated custody transfers are not so narrow that they are not useful.²⁷⁹

b. Article 2

In Article 2, the Model Law sets forth its prohibitions on unregulated custody transfers, but it begins by excluding family-like transfers of custody from its scope.²⁸⁰ Specifically, it exempts transfers “to a parent, stepparent, family member, family-like individual, Indian custodian, or member of the child’s indigenous customary family.”²⁸¹ Unlike the Model Law, some enacted state legislation does not include carve-outs for family-like transfers.²⁸² One example is Maine which prohibits custody transfers to anyone but a relative without court approval.²⁸³ Maine’s law is an example of an overcorrection and precisely what opponents of a law prohibiting unregulated custody transfers fear.²⁸⁴ Much like an inclusive definition of children was key to ensuring the Model Law was not so narrow it was not useful, this carve-out ensures it is not so broad that it prohibits transfers that are in the best interest of the child.²⁸⁵

278. *Id.* This is a broad definition of custody. Here, the Model Law is making explicit that it does not seek to only prohibit legal custody transfers, but physical ones as well. See *supra* Part I.C.2, for further discussion on physical and legal custody transfers.

279. See *supra* Part I.A, for a full analysis of definitions and scope as they apply to unregulated custody transfers.

280. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT § 202 (UNIF. L. COMM’N 2021). Family-like individuals are those who have a close and long-standing relationship with the child or with their parent.

281. *Id.*

282. CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN, *supra* note 21, at 2.

283. ME. STAT. Tit. 17-A § 553 (2019) (“Abandonment of child”).

284. See *infra* Part II.C, for a discussion of arguments made by opponents of enacting legislation.

285. See *supra* Part I.A.2, for a discussion of why carve-outs for family-like transfers should be exempt from prohibitions on unregulated custody transfers.

After stating which custody transfers are not prohibited, the Model Law turns to defining its prohibitions.²⁸⁶ The Model Law explains the methods by which a parent may transfer custody including through a child-placing agency or judicial act.²⁸⁷ It explicitly states that any other method of transferring custody is unlawful.²⁸⁸ This clear and direct line between what is permissible and what is not is the core of the Model Law and the reason it has potential to be effective legislation if enacted. One weakness of this provision is that it leaves it to the discretion of states to determine what class of violation unregulated custody transfers are.²⁸⁹ This is problematic because, as demonstrated by the overall lack of adherence to the ICPC, when states do not attach penalties to crimes or attach penalties that are too light, individuals choose to risk a sanction to get rid of their child.²⁹⁰

In addition to explicitly prohibiting unregulated custody transfers, Article 2 of Model Law has two other provisions.²⁹¹ First, it provides child welfare agencies the authority to conduct home visits and “take appropriate action to protect the welfare of [a] child” who they believe has been transferred in violation of this provision.²⁹² It further authorizes law enforcement to investigate potential violations and take legal action.²⁹³ This provision, one that is also present in the federal bills, is essential because without methods of enforcement, the criminalization of an act is not enough to prevent it. Second, the Model Law prohibits soliciting or advertising children in violation of

286. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT § 203 (UNIF. L. COMM’N 2021).

287. *Id.*

288. *Id.*

289. *Id.*

290. Thus far, states have been varied regarding the class of offense assigned to unregulated custody transfers. Some have made the practice a misdemeanor while others have made it a felony. CHILD WELFARE INFO. GATEWAY, UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN, *supra* note 21, at 2, 4. A lack of uniformity in class of offense runs counter to a goal of having a uniform law to ensure people do not “shop” for a jurisdiction with lighter penalties to transfer custody. See *supra* Part I.B.2.b, for further discussion of the lack of adherence to the ICPC.

291. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT art. 2 (UNIF. L. COMM’N 2021).

292. *Id.* § 204.

293. *Id.* § 206.

the aforementioned custody transfer requirements.²⁹⁴ This provision is not included in the federal bills, but it is important because it allows authorities to get involved after seeing an advertisement or solicitation rather than forcing them to wait until a physical transfer has occurred.²⁹⁵ Allowing authorities to step in before a child is transferred to a stranger may mitigate the harm that child suffers. This provision's core weakness is that it, like the provision prohibiting transfers, also leaves determinations about the class of offense to the discretion of states.²⁹⁶

c. Article 3

Article 3 of the Model Law is optional and only recommended for states that do not “have comparable requirements.”²⁹⁷ The suggestions put forth in Article 3 are centered around supporting prospective adoptive parents.²⁹⁸ The Model Law states that before a child is placed with them, prospective parents should have adoption information which must address “possible physical, mental, emotional, and behavioral issues,” “the effect that access to resources, including health insurance, may have on the ability of an adoptive parent to meet the needs of a child,” “causes of disruption of an

294. *Id.* § 205. Solicitation refers to posting about intending to take in a child and advertisement refers to posting about giving up a child. Ann Haralambie, former chair of the ABA Family Law Section's Juvenile Law and Needs of Children Committee, expressed her concern about advertisements for children stating, “Kids shouldn't be in want ads like: ‘Our dog just had puppies. Want one for free?’” Leslie A. Gordon, *States Start to Crack Down on Parents ‘Re-Homing’ Their Adopted Kids*, AM. BAR ASS'N (Dec. 1, 2014), https://www.abajournal.com/magazine/article/states_start_to_crack_down_on_parents_re_homing_their_adopted_kids/ [https://perma.cc/9HW3-JWME].

295. The Safe Home Act is a very general prohibition on unregulated custody transfers in that it simply adds the act to the definition of child abuse and neglect. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021). Thus, it leaves a lot to state interpretation which runs the risk that some states will interpret the provision so narrowly that they only allow authorities to get involved after a child has physically been handed over. For some children, this may be too late to prevent trauma.

296. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT § 205 (UNIF. L. COMM'N 2021). This is problematic because lack of assigned penalties and lack of strong penalties will not adequately deter people from rehomeing their children. See *supra* note 290 and accompanying text, for further discussion.

297. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT art. 3 (UNIF. L. COMM'N 2021).

298. *Id.*

adoptive placement or dissolution of an adoption and resources available to help avoid disruption or dissolution,” and information on the prohibitions against unregulated custody transfers, solicitation, and advertising.²⁹⁹

Article 3 also authorizes law enforcement to investigate if there is an allegation that an agency did not comply with the aforementioned requirements.³⁰⁰ It also allows the state’s licensing authority to determine whether the agency has complied and to suspend or revoke their license if they have not.³⁰¹ The important goals of this section are preemptive work to prevent adoptive parents from being in a situation where they feel the need to rehome their child.

2. Limited Delegations through Power of Attorney Documents

The Model Law focuses on cases where a parent intends to abandon their rights and responsibilities permanently, and does not explicitly lay out provisions that govern delegations of custody that are limited in time and assigned powers.³⁰² An example of enacted legislation that does include this permitted limited delegation exists in Indiana.³⁰³ Indiana law allows for a parent to delegate parental authority for no more than twelve months via a power of attorney.³⁰⁴ This parental authority includes “powers regarding health care, support, custody, or property of the minor or protected person” but does not include the authority to consent to adoption or marriage or

299. *Id.* § 303. The bulk of the remainder of Article 3 sets forth additional pieces of information child-placing agencies need to provide for prospective parents including the child’s background, health, circumstances that may affect their health, medical history, placement history, and immigration status. *Id.* § 304. Prospective parents must also be informed about what resources are available to them. *Id.* The agency must also provide “guidance and instruction specific to the child to help prepare the parent to respond effectively to needs of the child that are known to or reasonably ascertainable by the agency.” *Id.* § 305. The agency should also provide information about available financial assistance and support services. *Id.* § 306.

300. *Id.* § 307.

301. *Id.*

302. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM’N 2021).

303. IND. CODE 29-3-9-1 (2021) (“Delegation of powers by executed power of attorney; limitations.”).

304. *Id.*

the authority to petition for dissolution of marriage, legal separation, or annulment on behalf of the minor.³⁰⁵ There are benefits to allowing people to transfer custody of their child for a time; however, for the safety of the child, even those transfers should be conducted through the state or limited to family-like individuals.³⁰⁶

C. Arguments Against Legislation

This section will address two arguments against enacting legislation that criminalizes unregulated custody transfers. It will begin with concerns people have voiced about prohibiting this practice specifically before discussing a general concern about criminalizing conduct.

1. The Risk of Prohibiting Transfers that are in the Child's Best Interest

Those hesitant about outlawing unregulated custody transfers have expressed concern that there will be an *overcorrection* and transfers that are in the best interest of a child will be prohibited.³⁰⁷ Carl Gilmore, the former chair of the Adoption Committee of the ABA Family Law Section, voiced this concern succinctly.³⁰⁸ He said, "I'm always hard-pressed to say under all circumstances that a practice should always be illegal I can see circumstances where replacement of children might be advantageous, such as when there's been no attachment between the child and the family."³⁰⁹ However, Gilmore admits, "there needs to be oversight."³¹⁰ Gilmore's concern of overcorrecting, while valid, is entirely addressed

305. *Id.*

306. Allowing for transfers to family-like individuals to occur without state interference means that parents who need a little help with their child for a time need not worry about the state launching an investigation into their suitability as parents. But limiting the allowance of those transfers to only family-like individuals mitigates the risk that a parent will hand their child off to someone and never see them again or that the child will be preyed on during the duration of their time with their temporary caregiver. See *supra* Part I.A.2, for additional discussion.

307. Gordon, *supra* note 294.

308. *Id.*

309. *Id.*

310. *Id.*

by the carve-outs that exist for family-like transfers in both the Act and the Model Law.³¹¹

2. The Risk of Pushing this Practice Further Underground

Another concern that often follows any type of large-scale prohibition is that banning an act can sometimes make it more dangerous by pushing it further underground. However, this Note does not simply propose that the United States ban the transfer of custody of children. Instead, this Note proposes the United States enact narrowly drawn restrictions on only those transfers of custody that put children at risk of serious physical and psychological harm. The legislation this Note advocates for deliberately excludes transfers that are in the best interest of the child.

III. An Effective Solution

Part III will outline the specifics of what this Note recommends as a solution to unregulated transfers of custody. Part III.A will introduce ideas that are beyond the scope of this Note but that should be assessed further in future scholarship. While interesting and potentially impactful, these ideas are not sufficient to combat unregulated transfers. Part III.B will turn to the primary suggestion of this Note: that the U.S. enact legislation that makes unregulated custody transfers illegal. Part III.B.1 will advocate for federal legislation, including the passage of the Safe Home Act of 2021.³¹² Part III.B.2 will similarly advocate for state legislation, including enactment by all states of the Uniform Unregulated Child Custody Act.³¹³ This Note ultimately concludes that while there are several services and regulations that will help prevent parents from rehomeing their children, there is no substitute for a law explicitly prohibiting these transfers.

311. See *supra* note 63, for a complete list of carve-outs.

312. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021). See *supra* Part II.A.2, for an analysis of the Safe Home Act.

313. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM'N 2021). See *supra* Part II.B.1, for an analysis of the Uniform Unregulated Child Custody Transfer Act.

A. Steps Beyond a Brightline Prohibition

The primary measure to prevent unregulated custody transfers is services for parents and children. One of the main reasons parents choose to rehome their children is that they find the child too difficult to care for.³¹⁴ Another is that they believe the child is not assimilating well into the family.³¹⁵ The United States needs services for children including therapy, medical care, teaching aids, after school programs, and social support groups. These programs already exist in some states, but they are not always affordable.³¹⁶ Government subsidies for these services would help parents get the help they need to properly care for their children and would mitigate the feelings that there is no solution but to rehome their child. The United States should also fund therapy for parents as well as informational classes and materials on dealing with special needs, sibling conflict, and attachment disorders. Parents need support to navigate the situations that leave them feeling desperate to be rid of their child. While a comprehensive law prohibiting unregulated transfers is necessary to combat this practice, these services have the potential to make a significant impact. The details of the suggestions in this section are beyond the scope of this Note but are certainly something future scholarship should explore further.

B. A Brightline Prohibition

Regardless of what other programs or legislation the United States enacts to combat unregulated transfers, it must have a comprehensive law prohibiting the practice. Even if the United States manages to implement preventative measures such that these transfers are one in a million, it is essential that officials have the authority to do something in the cases where they do occur. A situation like that of the Easons, where the couple continued to take in and abuse children for years despite being on the authorities' radar, should never happen again.³¹⁷ The comprehensive law can come from the passage of the Safe Home Act³¹⁸ or it can come in the enactment of the Uniform Unregulated Child Custody Transfer

314. See *supra* Part I.E.1, for more on why parents rehome their children.

315. See *supra* Part I.E.1, for more on why parents rehome their children.

316. See *supra* Part I.E.1, for further discussion.

317. Twohey, *The Failures*, *supra* note 89.

318. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021).

Act.³¹⁹ Ideally, it would come in the form of both. The Act is a federal law that requires every state in the United States to treat unregulated custody transfers like abuse and neglect,³²⁰ so it sets a minimum standard for the country. The Model Law is also important because it includes important provisions that are not in the Act, most notably the prohibition on advertising or soliciting children.³²¹ Because the Act is so general, it leaves significant discretion to individual states to determine when they want to step in, whereas the Model Law specifically authorizes officials to take action as soon as an advertisement or solicitation is identified.³²²

1. Federal Law

The Safe Home Act of 2021 should be passed.³²³ However, based on the history of iterations of this law,³²⁴ it would be unreasonable to assume that it is certain to pass. This Note supports its passage as drafted, but if the Act does not pass and there is another iteration of the bill, there are a few improvements that can be made. First, the “sense of Congress” should be expanded.³²⁵ Right now, it focuses on struggles that adopted children face.³²⁶ While that information should remain in the text, the “sense of Congress” should also discuss the harm that biological children face as a result of unregulated custody transfers. This is so that when states begin to adhere to the legislation, they are aware that unregulated custody transfers affect all children, and they structure their policies accordingly. Second, the Act should include a prohibition on soliciting

319. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM’N 2021).

320. H.R. 1247; S. 397.

321. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM’N 2021).

322. *See supra* notes 294–295 and accompanying text. The earlier officials can step in, the better the chance a child will not have to endure harm before they are removed from the strangers they were placed with.

323. Safe Home Act of 2021, H.R. 1247, 117th Cong. (2021); Safe Home Act of 2021, S. 397, 117th Cong. (2021).

324. Safe Home Act of 2019, H.R. 1389, 116th Cong. (2019); Safe Home Act of 2019, S. 1446, 116th Cong. (2019); Safe Home Act of 2018, H.R. 6115, 115th Cong. (2018); Safe Home Act of 2018, S. 3173, 115th Cong. (2018).

325. H.R. 1247 § 2; S. 397 § 2.

326. H.R. 1247 § 2; S. 397 § 2.

and advertising children for the purpose of transferring custody.³²⁷ This prohibition would help prevent states from enacting regulations that only allow officials to act after a transfer has occurred. Allowing officials to get involved when an advertisement is identified may allow them to step in before the child is harmed.³²⁸

2. State Law

The Uniform Unregulated Child Custody Transfer Act should be adopted by all states.³²⁹ This Note supports the adoption of the Model Law as is but acknowledges that one amendment would strengthen it significantly. This amendment would be explicitly stating that violations of the law should be a felony or should be a misdemeanor with significant penalties attached. Because the Model Law has already been approved³³⁰ and is unlikely to be amended, this Note instead suggests that states enact the Model Law and individually assign significant penalties to violations. While this Note acknowledges the negative aspects of criminalizing conduct, let alone assigning significant penalties, the Model Law covers a very narrow set of circumstances which are so genuinely and inarguably dangerous to children that prioritizing deterrence is appropriate. Weak penalties or lack of enforcement may lead parents to decide that the benefit of being rid of their child outweighs the risk of sanctions, as they have with the ICPC.³³¹

While the Uniform Unregulated Child Custody Transfer Act sets forth an incredible framework for states to utilize in enacting their own legislation, there is a possibility that states will want to craft their own laws with less deference to the provisions set forth in the Model Law. If states decide this, they should be mindful that there are some provisions that are necessary for a law to be comprehensive enough to suitably combat unregulated transfers of custody. An effective law will need to be broad enough to cover the various instances where this practice endangers children. However, it

327. See *supra* notes 294–295 and accompanying text, for an analysis of the significance of outlawing advertisement and solicitation.

328. See *supra* Part I.D, for discussion of harm that children face after they are transferred.

329. UNIF. UNREGULATED CHILD CUSTODY TRANSFER ACT (UNIF. L. COMM'N 2021).

330. *Id.*

331. See *supra* Part I.B.2.b, for more information on why parents do not adhere to the ICPC.

is also important that a law is not so broad as to prevent custody transfers that are in the best interest of the child.

For a law to be comprehensive and effective, it would need:³³²

- To define children as *all* children, not just adopted children.
- To criminalize the act of transferring custody of a child to someone the parent and child do not personally know without a formal custody consent decree.
- To criminalize taking custody of a child one does not know without a formal custody consent decree.
- To criminalize the advertisement or solicitation of children with the intent of transferring custody of said children.
- To criminalize facilitating or assisting in the unregulated transfer of custody of children.
- To include broad carve-outs for family-like transfers of custody.
- To allow limited, temporary custody transfers to people known to the parent(s) and child.
- To make violations a felony or a misdemeanor with significant penalties attached.

CONCLUSION

Safeguarding the well-being of children and preventing unregulated custody transfers is a more complicated process than it sounds on paper. Enacting federal legislation to include the practice in the definition of child abuse and neglect may sound intuitive, but it is not so simple as evidenced by the bills that keep dying. Enacting state laws criminalizing the act is similarly complicated, as evidenced by how few states have done so to date. However, while there are several strong suggestions for how to stop the unregulated transfer of custody of children, to truly combat the practice, the United States must enact a comprehensive law that explicitly makes it illegal. The nine years that have passed since this practice was brought to public attention has shown that enacting legislation to combat it is an uphill battle. But while we cannot go back in time and protect Quita and Anna from sexual abuse, Nora from intense psychological trauma,

332. See *supra* Part II, for a full analysis of the necessity of the provisions in this list.

and Nita from being passed around like she was not a person, we owe it to all the children like them out there now to stop this practice. Enacting a straightforward and complete law that criminalizes unregulated custody transfers is the way to do that.