

ONLINE GARAGE SALES, NOW OFFERING CHILDREN: A PROACTIVE APPROACH TO CURB RE-HOMING IN TEXAS

Comment

*by Meredith Larson**

I.	THE RE-HOMING PRACTICE—AN INTRODUCTION	164
A.	<i>Re-Homing Explained: It's Exactly As It Seems</i>	164
B.	<i>Adoption Statistics in America</i>	166
C.	<i>Re-Homing: An Unregulated Market</i>	167
II.	RE-HOMING AND THE POWER OF GUARDIANSHIP	168
A.	<i>The Power of Attorney: A General Overview</i>	168
B.	<i>Left Without a Legal Guardian</i>	169
III.	WEAKNESSES IN THE ADOPTION PROCESS	170
IV.	PROPOSED FEDERAL LEGISLATION	171
A.	<i>Protecting Adoptive Children Act: The Aims and Aspirations</i>	171
B.	<i>Congressman Langevin's Aspirations Will Remain Just That</i>	173
V.	STATES RESPOND TO RE-HOMING	174
A.	<i>Interstate Compact on the Placement of Children</i>	174
B.	<i>Power of the States</i>	175
C.	<i>Existing State Law Analysis</i>	176
1.	<i>Wisconsin</i>	176
2.	<i>Arkansas</i>	177
3.	<i>Louisiana</i>	177
4.	<i>Maine</i>	178
5.	<i>Other States</i>	178
VI.	RE-HOMING IN TEXAS	179
A.	<i>A Boy Named Moses</i>	179
B.	<i>Current Texas Laws</i>	180
C.	<i>If Texas Needs a Reason</i>	181
VII.	BOLSTERING LAWS IN TEXAS	183
A.	<i>Fixing a Broken System: A Non-Criminal Approach</i>	183
B.	<i>Fixing a Broken System: A Criminal Approach</i>	185
VIII.	CONCLUSION	188

* This comment is dedicated to my family and friends. Thank you for your unconditional love and support. Without you, none of this would be possible. I love you.

I. THE RE-HOMING PRACTICE—AN INTRODUCTION

A. *Re-Homing Explained: It's Exactly As It Seems*

“Born in October of 2000—this handsome boy, ‘Rick’ was placed from India a year ago and is obedient and eager to please.”¹ This is just one of the thousands of re-homing advertisements found online.² However, handsome, obedient, and eager-to-please, Rick is not a golden retriever in need of a new home; he’s a young, innocent child.³ What is even more astonishing is that Rick is not the only child whose own parents have legally advertised him like a piece of personal property.⁴

Historically, re-homing is the process associated with pet owners who are no longer capable or willing to care for their animals.⁵ This process is relatively straightforward and simple due to the rise of Internet bulletin boards, which have increased the ease of transfer and communication.⁶ Pet owners post an advertisement on a bulletin that they are seeking a new home for their pet, they receive a response, and the animal is thereafter re-homed.⁷ However, the Internet is no longer utilized just to re-home cats and dogs, but it also serves as a forum for desperate families to seek new homes for their adopted children as well.⁸

To say the Internet has changed society is an understatement.⁹ The Internet enables people to connect with each other around the world, receive news, build and maintain relationships, create dialogue, pay bills, and shop online.¹⁰ The Internet also facilitates the unregulated trade of adopted children.¹¹

Re-homing is now a term used to describe the largely unregulated private transfer of children who are adopted, frequently from foreign

1. Megan Twohey, *Americans Use the Internet to Abandon Children Adopted from Overseas*, REUTERS (Sept. 9, 2013), <http://www.reuters.com/investigates/adoption/#article/part1> [<https://perma.cc/CA4U-EM33>] [hereinafter Twohey, *Americans*].

2. *See id.*

3. *See id.*

4. *See id.*

5. *See id.*

6. *See* Leslie A. Gordon, *States Start to Crack Down on Parents ‘Re-homing’ Their Adopted Kids*, ABA J. (Dec. 1, 2014), http://www.abajournal.com/magazine/article/states_start_to_crack_down_on_parents_re_homing_their_adopted_kids/ [<https://perma.cc/EHE6-RVWJ>].

7. *See id.*

8. *See* Twohey, *Americans*, *supra* note 1.

9. *See* Caitlin Dewey, *36 Ways the Web Has Changed Us*, THE WASH. POST (Mar. 12, 2014), <https://www.washingtonpost.com/news/style-blog/wp/2014/03/12/36-ways-the-web-has-changed-us/> [<https://perma.cc/W2K9-R66E>].

10. *See id.*

11. Kelcy Dolan, *Langevin, Kilmartin Spotlight Tragedy of ‘Re-homing,’* WARWICK BEACON (May 29, 2014), <http://warwickonline.com/stories/Langevin-Kilmartin-spotlight-tragedy-of-re-homing,92966> [<https://perma.cc/8VS2-4HAL>].

countries, and whose adoptive parents no longer want them.¹² This phenomenon recently gained attention following a Reuters investigative series.¹³ The investigation unveiled that at least eight Internet groups served as an underground market for shipping adopted children from home to home.¹⁴ This child trade is essentially lawless, and children are often placed in serious danger because the process does not involve attorneys, social workers, or government agencies.¹⁵ Currently, re-homing does not violate any federal law, which some lawmakers find stunning.¹⁶ Until recently, the underground child transfer did not violate any state law either; however, many states have enacted legislation to specifically prohibit re-homing.¹⁷ Texas is not one of those states.¹⁸

Parents in Texas can legally shuffle their children from home to home with merely a simple power of attorney, which individuals can easily obtain through a Google search.¹⁹ Transferring children requires less paperwork, less oversight, and less effort than purchasing a car.²⁰ The government's inaction is deplorable, and our state and nation's laws fail to protect children from private entrepreneurs who transfer child custody for personal gain.²¹ This comment will discuss some of the issues associated with re-homing, including Texas's failure to pass any proactive legislation and how the unregulated trade of adopted children will continue to thrive until states enact laws to protect these children.²²

First, this comment will define re-homing and provide the necessary background into the process and the players involved in order to build an understanding of the practice.²³ Next, it will focus on the ease of transferring

12. Megan Holloway, *Re-Homing: A Virtual Black Market for Adoption*, BROWN POL. REV. (Nov. 4, 2014), <http://www.brownpoliticalreview.org/2014/11/re-homing-a-virtual-black-market-for-adoption/> [https://perma.cc/N3YF-443V].

13. See Dolan, *supra* note 11.

14. Twohey, *Americans*, *supra* note 1.

15. See *id.*

16. Megan Twohey, *Wisconsin Passes Law to Curb Private Custody Transfers of Children*, REUTERS (Apr. 16, 2014), <http://www.reuters.com/article/2014/04/16/us-wisconsin-adoption-idUSBREA3F1VS20140416> [https://perma.cc/7C8E-BZU4] [hereinafter Twohey, *Wisconsin*].

17. *Id.*

18. *Id.*

19. See Beverly Bird, *Non-Durable Power of Attorney for Temporary Custody in Texas*, LEGALZOOM, <http://info.legalzoom.com/nondurable-power-attorney-temporary-custody-texas-20599.html> [https://perma.cc/W8H5-HVUA] (last visited Sept. 9, 2015).

20. See Cheryl Wetzstein, *Adoptees Decry Re-homing as States Move to End Practice*, THE WASH. TIMES (May 25, 2015), <http://www.washingtontimes.com/news/2015/may/25/adoptees-decry-re-homing-as-states-move-to-end-pra/?page=all> [https://perma.cc/NK5X-5D6B] [hereinafter Wetzstein, *Adoptees Decry*].

21. Mirah Riben, *U.S. GOA Report on Adoption Rehoming*, HUFF POST PARENTS: THE BLOG (Sept. 21, 2015), http://www.huffingtonpost.com/mirah-riben/us-goa-report-on-adoption_b_8156396.html [https://perma.cc/28UV-BLCT].

22. Michelle Lillie, *Rehoming Adopted Children*, HUMAN TRAFFICKING SEARCH (Oct. 18, 2013), <http://humantraffickingsearch.net/wp/rehoming-adopted-children/> [https://perma.cc/MUG-QW4Z].

23. See *infra* Section I.C.

custody through a simple power of attorney and the guardianship implications this creates.²⁴ Then, this comment will explain the weaknesses in the adoption process that lead parents to re-home their child.²⁵ Next, it will delve into the proposed federal legislation known as the Protecting Adoptive Children Act, as well as why this proposed act will likely fail.²⁶ After discussing the lack of federal legislation, this comment will address the need for a state-by-state approach to specifically combat re-homing, as well as identify states that already have legislation in place.²⁷ Lastly, this comment will identify instances of re-homing in Texas, as well as the state's failure to respond legislatively.²⁸ The assertions in this comment will hopefully bring awareness to the public and legislators, and it will call for more stringent laws in Texas to specifically prohibit re-homing and protect our state's children.²⁹

B. Adoption Statistics in America

Since the late 1990's, Americans have brought more than 243,000 foreign-born children into the United States through international adoption.³⁰ According to the State Department's Intercountry Adoption Office, Americans adopted approximately 6,441 foreign-born children in 2014 alone.³¹ However, the number of adoptable children is declining because countries like China and Guatemala are imposing more stringent rules or closing their international adoption programs altogether.³² As a result of these restrictions, more Americans are adopting older and disabled children, which are more challenging and increase the likelihood for adoption dissolution.³³

Adoption dissolution occurs when an adoption is terminated after finalization.³⁴ The proper procedure for adoption dissolution requires parents

24. See *infra* Part II.

25. See *infra* Part III.

26. See *infra* Part IV.

27. See *infra* Part V.

28. See *infra* Part VI.

29. See *infra* Part VII.

30. Twohey, *Americans*, *supra* note 1.

31. Cheryl Wetzstein, *James Langevin pushes legislation to curb 'rehoming' of adopted children*, THE WASH. TIMES (Aug. 4, 2015), <http://www.washingtontimes.com/news/2015/aug/4/rep-james-langevin-pushes-legislation-to-curb-reho/?page=all> [https://perma.cc/W7VM-5JNX] [hereinafter Wetzstein, *James Langevin*].

32. Emily Matchar, *Broken Adoptions: When Parents "Re-Home" Adopted Children*, TIME (Sept. 20, 2013), <http://ideas.time.com/2013/09/20/broken-adoptions-when-parents-re-home-adopted-children/> [https://perma.cc/W777-U9CK].

33. *Id.*

34. Jill VanderZiel, *Free to a Good Home: Re-homing Adoptive Children*, LEGAL SOLS. BLOG (Dec. 22, 2014), <http://blog.legalsolutions.thomsonreuters.com/legal-research/free-good-home-re-homing-adoptive-children/> [https://perma.cc/VEA8-L4UY].

to place the child in the state or adoption agency's custody.³⁵ A child who is placed in the state's custody then enters the foster system.³⁶ Nationally, 1%–5% of adoptions are dissolved.³⁷ If an adoption is terminated prior to finalization it is known as a disrupted adoption.³⁸ The national rate for disrupted adoption is 10%–20%.³⁹

However, the statistics for the disruption and dissolution of foreign adoptions, specifically, are not as precise.⁴⁰ The estimated rate for failed foreign adoptions is 10%–25%.⁴¹ Based on this estimated rate, approximately 24,000 foreign-adopted children may no longer live with the parents who originally adopted them and brought them to this country.⁴² In reality though, the actual rate is likely higher because foreign adoptions frequently involve older children who are more likely to have an attachment disorder, which increases the probability of a failed adoption.⁴³ Children with attachment disorders often display numerous negative behaviors, such as withholding affection, destructiveness, or a lack of apparent remorse.⁴⁴ This long-term psychiatric condition occurs when a child does not have the opportunity to bond with a stable caregiver as a young child living in an orphanage or a foster care setting.⁴⁵

When difficulties like attachment disorders arise, the Internet provides a way for parents to circumvent the traditional method to dissolve and disrupt a failed adoption.⁴⁶ The Internet makes the national rate for adoption dissolution and disruption even less reliable because the statistics do not account for children who are re-homed.⁴⁷

C. Re-Homing: An Unregulated Market

Re-homing is a term used to describe the largely unregulated private transfer of children who are adopted, frequently from foreign countries, and whose adoptive parents no longer want them.⁴⁸ On a single Internet bulletin board, approximately 70% of the children advertised for re-homing were

35. Holloway, *supra* note 12.

36. *Id.*

37. VanderZiel, *supra* note 34.

38. *Id.*

39. *Id.*

40. Holloway, *supra* note 12.

41. *Id.*

42. *Id.*

43. *Id.*

44. Brenda McCreight, *Attachment Disorder and the Adoptive Family*, THE ADOPTION COUNSELOR 1, 3–5 <http://davethomasfoundation.org/WP-content/uploads/2015/03/Attachment-pamphlet.pdf> [<https://perma.cc/NXU4-XRBL>] (last visited Oct. 20, 2015).

45. *Id.*

46. Holloway, *supra* note 12.

47. VanderZiel, *supra* note 34.

48. See Twohey, *Americans*, *supra* note 1.

foreign-born.⁴⁹ Frequently, parents who resort to re-homing have grown to regret the adoption, which typically stems from their child's behavioral or mental health issues.⁵⁰ Parents then turn to the Internet for answers, and instead, they find a forum to facilitate transferring their child to someone else.⁵¹ The Reuters investigation identified as many as eight Internet bulletin boards that served as meeting grounds for parents, middlemen, and prospective new homes.⁵²

These private custody transfers rarely involve an attorney, social worker, or any kind of government agent; therefore, re-homing is essentially a lawless network.⁵³ At most, the parents will obtain a notarized power of attorney to effectuate the transfer.⁵⁴ Essentially, re-homing is an easy, legal way for adoptive parents to rid themselves of a child who they now consider a burden.⁵⁵

II. RE-HOMING AND THE POWER OF GUARDIANSHIP

A. *The Power of Attorney: A General Overview*

The power of attorney (POA) is a notarized statement granting an adult, other than the child's parents, the responsibility of caring for the child.⁵⁶ This device offers flexibility, and in certain situations, the ease of transfer is beneficial because it allows a child to stay with a trusted relative during hard times.⁵⁷ The power of attorney authorizes an individual to make significant decisions for the child, including medical care, school enrollment, and participation in certain activities.⁵⁸ The authority to make such decisions gives the impression that the custody change was performed within the child welfare system rather than over the Internet.⁵⁹

In Texas, childcare power of attorney forms are easily accessed because a number of state and private websites readily provide them.⁶⁰ Granting power of attorney only requires that the grantor sign the documents in the

49. *Id.*

50. See Megan Twohey, *About the Series*, REUTERS, <http://www.reuters.com/investigates/adoption/#article/about> [https://perma.cc/V7CU-U2KR] (last visited Sept. 10, 2015).

51. See *id.*

52. *Id.*

53. Twohey, *Americans*, *supra* note 1.

54. See *id.*

55. Le Trinh, *Can Parents Re-Home an Adopted Child?*, FINDLAW (July 16, 2015), http://blogs.findlaw.com/law_and_life/2015/07/can-parents-re-home-an-adopted-child.html [https://perma.cc/P5U2-TC8C].

56. Twohey, *Americans*, *supra* note 1.

57. *Id.*

58. *Texas Power of Attorney for Childcare Law*, U.S. LEGAL FORMS, <http://www.uslegalforms.com/lawsum/?l=5199> [https://perma.cc/L7LD-SQ2Q] (last visited Feb. 4, 2016).

59. See Twohey, *Americans*, *supra* note 1.

60. Bird, *supra* note 19.

presence of a notary.⁶¹ The recipient of the notarized power of attorney does not have to file the device anywhere; merely giving the form to the “agent” is sufficient.⁶² Furthermore, executing a power of attorney does not require much effort.⁶³ The simplicity of these forms makes the task as easy as filling in blank spaces.⁶⁴ Children are shuffled from home to home with the functional equivalent of a receipt.⁶⁵

The rise of the Internet and the accessibility of power of attorney forms provide a way for parents to circumvent legal oversight through re-homing.⁶⁶ The re-homing process is generally conducted without any background checks, let alone the vetting normally required during the legal adoption process.⁶⁷ As a result, children are often placed in complete strangers’ hands in which the child may endure extreme circumstances, including severe emotional and physical abuse.⁶⁸

B. Left Without a Legal Guardian

In one instance, a young girl named Inga was re-homed three times via the Internet, and she endured abuse, neglect, and sexual assault all within two short years after her adoption from Russia.⁶⁹ After Inga was re-homed through a power of attorney, she was ultimately left without a legal guardian.⁷⁰ She eventually became a ward of the state because her adoptive parents refused to take her back, and the subsequent families provided an unsuitable home life.⁷¹ The repercussions are severe, and in some cases, children who become a ward of the state face deportation if neither their parents nor any of their subsequent caretakers completed United States naturalization papers.⁷²

The purpose of a power of attorney is to only delegate temporary responsibility for a child.⁷³ It is neither intended to act as a substitute for long-term parental care, nor does it remove parents’ legal responsibility to assure a child is safe.⁷⁴ Typically, no state or federal agency regulates a

61. *Id.*

62. *Id.*

63. *See id.*

64. *See id.*

65. *See* Twohey, *Americans*, *supra* note 1.

66. *See id.*

67. *See id.*

68. *See id.*

69. Holloway, *supra* note 12.

70. *Id.*

71. *Id.*

72. *See* Wetzstein, *Adoptee Decry*, *supra* note 20.

73. *See* Memorandum from JooYeun Chang & Mark Greenberg to State Agencies Administering or Supervising the Administration of Title IV-B and IV-E of the Social Security Act 1, 2 (May 30, 2014), <https://www.acf.hhs.gov/sites/default/files/cb/im1402.pdf> [<https://perma.cc/T9SL-AXDT>] [hereinafter Chang & Greenberg].

74. *See id.*

power of attorney, thus a child's whereabouts may be completely unknown.⁷⁵ Parents who grant power of attorney to a complete stranger are often desperate, and they feel that they have nowhere to turn because of the lack of pre- and post-adoption support.⁷⁶

III. WEAKNESSES IN THE ADOPTION PROCESS

Among other things, the lack of preparation and support are contributing factors to failed adoptions.⁷⁷ Parents may receive insufficient information about the health and wellbeing of their child, and they may be ill prepared to meet their child's specific needs to ensure a successful transition.⁷⁸ While states are individually responsible for setting training requirements for foster care adoptions, the State Department regulates training for international adoptions.⁷⁹ Federal government regulations require only ten hours of training for international adoptions, but states are free to impose additional training requirements as they see fit.⁸⁰ In Wisconsin, for example, the state requires eighteen training hours, and the sessions cover topics such as attachment, cultural sensitivity, and the effects of abuse and neglect.⁸¹

Additional education is also required if the potential parents are adopting from a country that is a member of the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention).⁸² The Hague Convention is an international agreement that strives to safeguard and regulate international adoption through uniform standards of practice.⁸³ Adopting from a Hague Convention country requires that the potential parents take ten hours of parent education, in addition to the federally required ten hours.⁸⁴ However, if the international adoption is taking place in a non-Hague Convention country, additional parent education is only mandatory if the state or adoption agency so requires.⁸⁵

75. Congressional Report, *Steps Have Been Taken to Address Unregulated Custody Transfers of Adopted Children*, U.S. GOV'T ACCOUNTABILITY OFFICE 1, 6 (Sept. 2015), <http://www.gao.gov/assets/680/672575.pdf> [https://perma.cc/N9B9-G83D].

76. *See infra* Part III.

77. Congressional Report, *supra* note 75, at 16.

78. *Id.*

79. *Id.* at 17.

80. *Id.* at 18.

81. *Id.*

82. *See Hague vs Non-Hague Adoption Process*, BUREAU OF CONSULAR AFFAIRS-U.S. DEP'T OF STATE, <http://travel.state.gov/content/adoptionsabroad/en/hague-convention/hague-vs-non-hague-adoption-process.html> [https://perma.cc/S53L-ZZVT] [hereinafter *Hague vs Non-Hague*] (last visited Sept. 23, 2015).

83. *Understanding the Hague Convention*, BUREAU OF CONSULAR AFFAIRS-U.S. DEP'T OF STATE, <https://travel.state.gov/content/adoptionsabroad/en/hague-convention/understanding-the-hague-convention.html> [https://perma.cc/N8GV-MT73] (last visited Jan. 18, 2016).

84. *Hague vs Non-Hague*, *supra* note 82.

85. *Id.*

Many officials are concerned that even if parents receive pre-adoption education, they resort to re-homing because the post-adoption support services are inadequate.⁸⁶ In 2014, the Donaldson Adoption Institute surveyed forty-nine states, and it found that approximately one-third of the states offered little-to-no post-adoption assistance beyond offering a subsidy to families.⁸⁷

Recently, the United States Government Office of Accountability (GAO) released a report regarding re-homing.⁸⁸ According to the report, in a sample of seven selected states, each claimed they provide some form of post-adoption services.⁸⁹ For example, Wisconsin now provides a 24-hour hotline, referral services, and connects families with support groups.⁹⁰ Other states offer parents library resources, newspapers, and brochures; however, none of the seven sample states provided extensive services to adoptive families.⁹¹ Some states offer these services exclusively to families who adopt from the state's foster care system.⁹² The states mainly attribute the lack of post-adoption services to the high cost of offering these services, which the GAO estimates can add up to thousands of dollars per month to support a single child in a residential setting.⁹³

IV. PROPOSED FEDERAL LEGISLATION

A. *Protecting Adoptive Children Act: The Aims and Aspirations*

The media coverage of re-homing grabbed at least a few lawmakers' attention.⁹⁴ In response to re-homing, Congressman James Langevin, a Democratic representative from Rhode Island, proposed federal legislation H.R. 2068, also known as Protecting Adopted Children Act.⁹⁵ If enacted, the bill would address weaknesses throughout the entire adoption process.⁹⁶ The proposed legislation calls for expanding definitions to specifically include re-homing, delegating responsibility for re-homing cases to the Internet

86. Congressional Report, *supra* note 75, at 20.

87. *Id.* at 22.

88. *Id.* at 1.

89. *Id.* at 21.

90. *Id.*

91. *Id.*

92. *Id.* at 20.

93. *Id.* at 23.

94. See Stefano Montanari, *Federal Protecting Adopted Children Act to Curb "Re-Homing,"* THE DONALDSON ADOPTION INST. (May 1, 2015), <http://adoptioninstitute.org/news/federal-protecting-adopted-children-act-to-curb-re-homing/> [https://perma.cc/NVE2-AQGK] [hereinafter Montanari, *Protecting Adopted Children*].

95. See H.R. 2068: *To ensure the safety and well-being of adopted children*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/114/hr2068> [https://perma.cc/QC94-LGKS] (last visited Sept. 8, 2015).

96. See Montanari, *Protecting Adopted Children*, *supra* note 94.

Crimes Against Children Task Force (ICAC), and strengthening pre- and post-adoption services for parents and children.⁹⁷

One of Congressman Langevin's goals includes defining re-homing as a form of exploitation.⁹⁸ Exploitation, as it is currently defined in the Protect Our Children Act of 2008, does not include re-homing.⁹⁹ However, if enacted the Protecting Adopted Children Act would expand exploitation's current definition to specifically include re-homing.¹⁰⁰ Further, Congressman Langevin's proposed bill delegates the responsibility of regulating and reacting to instances of re-homing to the ICAC.¹⁰¹ The ICAC is a network of law enforcers at the local, state, and national levels who are responsible for responding to Internet child enticement and pornography cases.¹⁰²

Additionally, the Protecting Adopted Children Act would target pre- and post-adoption issues that ultimately result in private re-homing or placing the child in foster care.¹⁰³ The bill would provide adoptive parents with access to peer-to-peer mentor groups, support groups, and a 24-hour emergency hotline.¹⁰⁴ Funding would also provide adopted children with pre- and post-adoptive counseling, including social skills training, recreational therapy, outpatient mental health services, and substance abuse treatment.¹⁰⁵ The proposed legislation requires states to provide these services until the child is twenty-one years old, and each state must collect and analyze data to evaluate the effectiveness of these services.¹⁰⁶ Congressman Langevin stated in an email: "We need to find a solution that includes law enforcement but also addresses the root causes behind why adoptive parents could feel so desperate that they would re-home an innocent child into the custody of strangers."¹⁰⁷

Overall, the congressman's legislation aims to provide a more stable home environment for adopted children.¹⁰⁸ Congressman Langevin recognizes that "[a]ll children deserve a loving home," but unfortunately

97. *See id.*

98. *See id.*

99. *Id.* "The term 'child exploitation' means any conduct, attempted conduct, or conspiracy to engage in conduct involving a minor that violates section 1591, chapter 109A, chapter 110, and chapter 117 of title 18 or any sexual activity involving a minor for which any person can be charged with a criminal offense." 42 U.S.C. § 17601(1) (West 2014).

100. Montanari, *supra* note 94. H.R. 2068 would amend the PROTECT Our Children Act of 2008 by inserting the phrase, "'or the offer to engage or engaging in the transfer of permanent custody or control of a minor in contravention of a required legal procedure.'" H.R. 2068, *supra* note 95.

101. Montanari, *supra* note 94.

102. *Id.*

103. *Id.*

104. *See Langevin Introduces Bill to Protect Adopted Children*, CONGRESSMAN JIM LANGEVIN (Oct. 30, 2013), <http://langevin.house.gov/press-release/langevin-introduces-bill-protect-adopted-children> [https://perma.cc/8NHA-YD2M] [hereinafter CONGRESSMAN JIM LANGEVIN].

105. Montanari, *Protecting Adopted Children*, *supra* note 94.

106. *Id.*

107. *Id.*

108. *See* CONGRESSMAN JIM LANGEVIN, *supra* note 104.

children of adoption do not always get their happy ending.¹⁰⁹ The fact that families are oftentimes ill-equipped and unprepared to care for a child gives rise to the need to have “safe mechanisms in place through which an adopted child can be transitioned into a more stable environment,” Langevin said.¹¹⁰

B. Congressman Langevin’s Aspirations Will Remain Just That

Despite the media coverage and a few legislators’ valiant effort, this proposed federal legislation will probably fail.¹¹¹ Currently, 11,644 bills and resolutions are before the United States Congress, and only 4% of those will become enacted law.¹¹² Unfortunately, the Protecting Adopted Children Act, or H.R. 2068, will likely not make the cut.¹¹³ The Act was assigned to a congressional committee on April 28, 2015, and as of November 3, 2016, there is a 1% chance that Congress will enact the bill.¹¹⁴

The Protecting Adopted Children Act is not the first proposed federal legislation to address re-homing.¹¹⁵ Previous versions of this bill, which were introduced in September and October 2013, failed to move past the committee stage during the 2013–2015 congressional session.¹¹⁶ Congressman Langevin attributes the previous bills’ failure to an overall unawareness of the re-homing practice.¹¹⁷ Despite the unsuccessful track record, Congressman Langevin appears hopeful that this bill will receive greater support due to the increased media coverage of re-homing.¹¹⁸ “There is a growing awareness of this problem . . . and I feel confident that when people learn about re-homing and some of the atrocities that have taken place because of this illegal practice, they will understand the critical need for action,” Langevin said.¹¹⁹

Some professionals believe that federal action is the answer and that state-by-state solutions are insufficient because children are predominately re-homed across state lines, making re-homing an interstate issue.¹²⁰ However, the federal government is failing to take action against private entrepreneurs who are trading children for personal gain and it is failing to

109. *Id.*

110. *Id.*

111. *See H.R. 2068, supra* note 95.

112. *Bills and Resolutions*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/> [https://perma.cc/NEA4-HHCE] (last visited Sept. 9, 2015).

113. *See H.R. 2068, supra* note 95.

114. *Id.*

115. Montanari, *Protecting Adopted Children, supra* note 94.

116. *Id.*

117. *See id.*

118. *Id.*

119. *Id.*

120. Megan Twohey, ‘Re-homing’ to be topic of U.S. Senate Hearing, REUTERS (July 7, 2014), <http://www.reuters.com/article/2014/07/07/us-usa-adoption-hearing-idUSKBN0FC1MA20140707> [https://perma.cc/7EFV-USDU].

protect our nation's youth.¹²¹ Although federal legislation may be more efficient, children's issues are not a top priority for federal lawmakers, and therefore, a state-by-state approach is necessary.¹²² According to Barbara Babb, University of Baltimore law professor and director of the Sayra and Neil Meyerhoff Center for Families, Children, and the Courts, "[t]his requires urgent attention, but children and families are at the bottom of the totem pole in policymaking."¹²³

V. STATES RESPOND TO RE-HOMING

A. *Interstate Compact on the Placement of Children*

Although there is not currently any federal legislation, the Interstate Compact on the Placement of Children (ICPC) is an agreement between all fifty states, Washington D.C., and the Virgin Islands that regulates transferring children across state lines.¹²⁴ Although the ICPC is codified, it is not strictly followed or enforced.¹²⁵ The ICPC's primary regulation requires that a parent who wants to transfer a child across state lines to live with non-relatives must notify authorities in both states prior to the transfer.¹²⁶ Individuals do not frequently adhere to this ICPC requirement because it is not common knowledge, and it rarely results in prosecution.¹²⁷

Additionally, the consequences for violating the ICPC are non-uniform because each state determines its own punishment.¹²⁸ If ICPC violators are even discovered, at most the state may remove the child from the new home, but neither party in the transaction faces punishment.¹²⁹ "Unfortunately, the compact is often ignored and the language of the compact appears to limit itself to the application of children who are placed for adoption," said David Phillips, a prosecuting attorney in Ohio.¹³⁰ Parents can deem the transfer as respite care, rather than adoption, and effectively circumvent the ICPC rules on a mere technicality.¹³¹

121. See Riben, *supra* note 21.

122. See Gordon, *supra* note 6.

123. *Id.*

124. See Twohey, *Americans*, *supra* note 1.

125. See *id.*

126. See *id.*

127. See Megan Twohey, *Despite 'grave danger,' government allows Internet forums to go unchecked*, REUTERS (Sept. 10, 2013), <http://www.reuters.com/investigates/adoption/#article/part4> [<https://perma.cc/92QF-T8GJ>] [hereinafter Twohey, *Despite 'grave danger'*].

128. See Twohey, *Americans*, *supra* note 1.

129. See *id.*

130. Tiffany L. Parks, *Bill Designed to Thwart 'Child Trading,'* AKRON LEGAL NEWS (Oct. 28, 2014), <http://www.akronlegalnews.com/editorial/11457> [<https://perma.cc/QZ2M-Z9LF>].

131. *Id.* "Respite care provides and parents and other caregivers with short or long-term child care services that offer temporary relief. . ." *Respite Care Resources*, CHILDREN OF ALL NATIONS, <http://adoptiondissolutionsupport.org/tag/rehoming/> [<https://perma.cc/4B7M-GL6F>] (last visited Jan. 20, 2016).

A variety of existing state laws relate to re-homing, such as prohibiting unlicensed individuals from facilitating adoptions or advertising children for adoption.¹³² However, many states do not have any restrictions in place for transferring child custody, and a uniform federal law currently does not exist.¹³³ In the absence of a federal law, legislators at the state level are drafting and enacting legislation to specifically address and combat re-homing.¹³⁴

B. Power of the States

To a large extent, states have the power to regulate the adoptive process and adoption transfers.¹³⁵ Additionally, states chiefly govern a number of other related legal issues, including: child abuse, child neglect, guardianship, and the power of attorney.¹³⁶ The Child Abuse Prevention and Treatment Act (CAPTA) requires that states have provisions and procedures in place to respond to child abuse and neglect reports.¹³⁷ CAPTA also defines child abuse and neglect.¹³⁸ However, it is up to the states individually to determine the actions that fall within those definitions, and therefore, qualify as child abuse, neglect, abandonment, or exploitation.¹³⁹

Currently, CAPTA's abuse and neglect definitions are broad enough to include re-homing.¹⁴⁰ Implementing a uniform national law to address re-homing is not necessary because states have the power to determine that re-homing qualifies as child abuse or neglect.¹⁴¹ Rather, it is the states' responsibility to enforce criminal and dependency laws.¹⁴² Individuals who

132. See Megan Twohey, *U.S. Lawmakers Call for Action to Curb Internet Child Trading*, REUTERS (Oct. 29, 2013), <http://www.reuters.com/article/2013/10/29/us-adoption-react-idUSBRE99S1A320131029> [https://perma.cc/3LBE-A3VX].

133. See *id.*

134. See *id.*

135. Marianne Levine, *Advocates for Adopted Children Decry 'Private re-homing,'* L.A. TIMES (July 8, 2014), <http://www.latimes.com/nation/la-na-senate-adoption-transfers-20140709-story.html> [https://perma.cc/P8FR-EQNR].

136. *Testimony from Joo Yeun Chang on Child Trafficking and Private Re-homing Before the Subcomm. on Children and Families, Comm. on Health Education, Labor and Pensions*, 113th Cong. (2014), <http://www.acf.hhs.gov/programs/olab/resource/testimony-from-joo-yeun-chang-on-child-trafficking-and-private-re-homing> [https://perma.cc/T9SL-AXDT] [hereinafter *Testimony*] (regarding the testimony of Joo Yeun Chang, Associate Commissioner, The Children's Bureau).

137. *Id.*

138. *Id.*

139. *Id.*

140. Stefano Montanari, *As Arkansas Outlaws Rehoming, Other States Might Follow Suit*, THE DONALDSON ADOPTION INST. (Apr. 15, 2015), <http://adoptioninstitute.org/news/as-arkansa-outlaws-rehoming-other-states-might-follow-suit/> [https://perma.cc/7GBX-YCZ9] [hereinafter Montanari, *Arkansas*].

141. See *id.*

142. *Id.*

oppose private re-homing hope that legislative efforts at the state level will encourage and motivate federal lawmakers to reform adoption laws.¹⁴³

State laws do exist to regulate property and pet transfers, however very few states regulate child transfers.¹⁴⁴ “We owe it to the kids to have the same standards as cars, boats, and dogs,” said Maureen Flatley, a child welfare expert.¹⁴⁵ Some states are implementing those standards and safeguards in response to the Reuters investigation.¹⁴⁶ At this time, at least fifteen states have taken some steps to address re-homing.¹⁴⁷ A handful of states have tightened restrictions on advertising children and transferring custody.¹⁴⁸ However, only seven of those states have passed laws to criminalize re-homing.¹⁴⁹

C. Existing State Law Analysis

1. Wisconsin

In 2014, Wisconsin lead the way and became the first state to specifically respond to the re-homing practice.¹⁵⁰ Wisconsin lawmakers recognized the massive legal pitfalls identified in the Reuters report.¹⁵¹ “With virtually no oversight, children could literally be traded from home to home. In Wisconsin, that is now against the law. Hopefully citizens of the country will follow our lead,” Republican State Representative Joel Kleefisch said.¹⁵²

The law in Wisconsin prohibits an unlicensed individual from advertising a child for adoption or any other form of custody transfer online or in print.¹⁵³ The re-homing law also requires a judicial grant for a parent to transfer custody of a child to a non-relative if the custody is to last longer than one year.¹⁵⁴ Violators face up to nine months in jail, up to \$10,000 in fines, or both.¹⁵⁵

143. See Tiffany Chan, *Adoptive Parents Use the Internet to Re-home Children From Overseas*, 22 NEWS WWLP.COM (June 2, 2015), <http://wwlp.com/2015/06/02/adoptive-parents-use-the-internet-to-re-home-children-from-overseas/> [https://perma.cc/Y28H-YNPB].

144. See Wetzstein, *James Langevin*, *supra* note 31.

145. *Id.*

146. Levine, *supra* note 135.

147. Wetzstein, *James Langevin*, *supra* note 31.

148. Levine, *supra* note 135.

149. Wetzstein, *supra* note 31.

150. Twohey, *Wisconsin*, *supra* note 16.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

2. Arkansas

In Arkansas, the prohibition on re-homing hit a little closer to home.¹⁵⁶ The law followed a revelation that an Arkansas lawmaker re-homed his two young, adopted daughters, and thereafter, one child was sexually abused in the new home.¹⁵⁷ Now in Arkansas, parents are forbidden from transferring custody of an adopted child to a non-relative without court approval.¹⁵⁸ Violating this law is a felony offense.¹⁵⁹

The Arkansas statute specifically targets and criminalizes re-homing an adopted minor.¹⁶⁰ The statute takes a comprehensive approach to address all roles of the re-homing practice and includes soliciting, obtaining, providing, transporting, recruiting, harboring, transferring, or advertising a minor for placement.¹⁶¹ A violation of this law is an unclassified felony, and it carries punishment of up to five years in jail and a fine up to \$5,000.¹⁶²

3. Louisiana

During the 2014 Regular Session, Louisiana enacted a law prohibiting the private custody transfer of adopted children to non-relatives.¹⁶³ Court approval is now required for individuals to divest their permanent parental responsibility to a non-relative.¹⁶⁴ Section 14.46.4 of the Louisiana Revised Statute explicitly defines re-homing to include parents, individuals, or entities who participate directly in such a transaction or facilitate such a transaction, either online or through other means.¹⁶⁵ Any person, who transports, provides, obtains, solicits, conspires, or assists in any way to re-home a child faces fines up to \$5,000 and imprisonment at hard labor for up to five years.¹⁶⁶

The Louisiana law also explicitly outlines actions that do not constitute re-homing.¹⁶⁷ This qualifier allows parents to place children with relatives, relinquish their child under the safe haven law, or place a child temporarily

156. See Steve Barnes, *Arkansas governor signs adoption law banning 're-homing'*, REUTERS (Apr. 7, 2015), <http://www.reuters.com/article/2015/04/07/us-usa-arkansas-adoption-idUSKBN0MY00R20150407> [<https://perma.cc/HTL3-KK4W>].

157. *Id.*

158. *Id.*

159. *Id.*

160. See ARK. CODE ANN. § 5-27-211 (West 2014).

161. See *id.*

162. See *id.*

163. Julie Deisher-Edwards, *Louisiana governor signs law prohibiting non-legalized re-adoption of children*, JURIST (June 22, 2014), <http://jurist.org/paperchase/2014/06/louisiana-governor-signs-law-prohibiting-non-legalized-re-adoption-of-unwanted-children.php> [<https://perma.cc/V83E-SZSC>].

164. *Id.*

165. LA. REV. STAT. ANN. § 14:46.4(A) (West 2014).

166. *Id.*; § 14:46.4(C).

167. See § 14:46.4(B).

in another home due to circumstances like military service or medical treatment without facing criminal penalties.¹⁶⁸ This portion of the statute also protects licensed attorneys, adoption agencies, and the Department of Children and Family Services, who may all legally place a child in another home.¹⁶⁹

4. Maine

As of June 2015, re-homing is illegal in Maine.¹⁷⁰ Despite the governor's veto, the legislature unanimously voted to override the veto and enact the proposed legislation.¹⁷¹ The bill summary states that it creates a new crime to address the re-homing practice, and like other states, Maine law prohibits transferring custody and long-term care to a non-relative without court authorization.¹⁷² Further, it requires teachers and medical professionals to report to child services if they suspect a child is no longer living with the child's family and is possibly a victim of re-homing.¹⁷³ Individuals who participate in re-homing face the existing penalties for abandonment, which range from a Class C crime to a Class D crime, depending on the child's age.¹⁷⁴

5. Other States

North Carolina, Maryland, and Virginia have also introduced bills in response to re-homing.¹⁷⁵ In March 2015, North Carolina legislators

168. *Id.*

169. *Id.*

170. Craig Hickman, *Hickman's bill to prohibit "rehoming" of adopted children becomes law*, HICKMAN IN THE HOUSE (July 2, 2015), http://hickmaninthehouse.blogspot.com/2015_07_01_archive.html [https://perma.cc/7NZA-GYES].

171. *Id.*

172. 2015 Maine House Paper No. 911, Maine 127th Legislature – First Regular Session.

173. Congressional Report, *supra* note 75, at 32.

174. Hickman, *supra* note 170. "The person leaves the child who is less than 14 years of age in a place with the intent to abandon the child. . . is a Class D crime; The person leaves the child who is less than 6 years of age in a place with the intent to abandon the child. . . is a Class C crime." ME. REV. STAT. ANN. tit. 17-a, § 533(1)(A)–(B) (2015); "The court shall set the term of imprisonment. . . [i]n the case of a Class C crime, the court shall set a definite period not to exceed 5 years." *Id.* at § 1252(2)(C). An individual who commits a Class C crime may also be fined up to \$5,000.00. *Id.* at § 1301(1-A)(C). "The court shall set the term of imprisonment. . . [i]n the case of a Class D crime, the court shall set a definite period of less than one year." *Id.* at § 1252(2)(D). Individuals who commit a Class D crime may be fined up to \$2,000.00. *Id.* at § 1301(1-A)(D).

175. S.B. 652, 2015 Gen. Assemb., Reg. Sess. (N.C. 2015). S.B. 208, 435th Gen. Assemb., Reg. Sess. (Md. 2015); Dr. Diane B. Kunz, *Synopsis of State Laws Regarding the Practice of Private Re-Homing*, CTR. FOR ADOPTION POLICY, Sept. 18, 2014, <http://www.adoptionpolicy.org/pdf/10-4-14%20Center%20for%20Adoption%20Policy%20Rehoming%20Research%20Synopsis%20State.pdf> [https://perma.cc/5B27-ESSM].

introduced a bill that if enacted, classifies re-homing as a felony.¹⁷⁶ The bill defines re-homing as permanently transferring custody of an adopted child without a court order.¹⁷⁷ The law would also outlaw soliciting or responding to an advertisement to facilitate a re-homing transaction.¹⁷⁸

In February 2015, Maryland lawmakers introduced a bill that if passed will create criminal consequences for a number of parties involved in the re-homing practice.¹⁷⁹ Maryland lawmakers want to prohibit advertising, soliciting, harboring, transporting, recruiting, and receiving a child for re-homing.¹⁸⁰ Any individuals who violate this comprehensive proposed legislation commit a felony and face punishment of up to five years in jail, a fine up to \$10,000, or both.¹⁸¹

In 2014, a Virginian senator introduced a re-homing bill.¹⁸² The proposed legislation prohibited transferring child custody through a power of attorney, or any similar device, without going through the state's adoption process.¹⁸³ However, following a review, a senate committee called for further study regarding re-homing and adoption law prior to making suggestions to the General Assembly.¹⁸⁴

VI. RE-HOMING IN TEXAS

A. *A Boy Named Moses*

Texas is not immune to the re-homing phenomenon.¹⁸⁵ In 2006, Ian and Carol Johnson, a Canadian couple, re-homed their five-year-old, Liberian-born son to a Houston woman who they found online but never met in person.¹⁸⁶ The Texas woman contacted the Johnsons shortly after Carol posted an advertisement in an online forum for adoptions gone wrong.¹⁸⁷ After a few months of email communications, the Johnsons' concerns, if any, were dispelled—they found their solution—and sent Moses on a plane to Houston.¹⁸⁸ Moses had concerns of his own: “. . . I was

176. S.B. 652, 2015 Gen. Assemb., Reg. Sess. (N.C. 2015)

177. *Id.*

178. *Id.*

179. S. B. 208, 2015 435th Gen. Assemb., Reg. Sess. (Md. 2015).

180. *Id.*

181. *Id.*

182. Kunz, *supra* note 175, at 2.

183. *Id.*

184. *Id.*

185. See Allya Davidson & Julia Whalen, *Online adoption 'rehoming': Legal loopholes allow children to be given away*, CBC NEWS (Nov. 13, 2014), <http://www.cbc.ca/news/canada/online-adoption-rehoming-legal-loopholes-allow-children-to-be-given-away-1.2833796> [<https://perma.cc/JYT4-YL3V>].

186. *See id.*

187. *See id.*

188. *See id.*

scared. . . I wasn't going to have a family."¹⁸⁹ Unfortunately for Moses, Texas offers very little protection for children in his situation.¹⁹⁰

B. Current Texas Laws

While Texas is a member state of the ICPC, the ICPC requirements are rarely enforced and easily circumvented.¹⁹¹ The agreement allows each state to determine the consequences of violating the ICPC, and in Texas, ICPC violators commit a Class B misdemeanor.¹⁹² A Class B misdemeanor carries punishment of a fine not to exceed \$2,000, imprisonment not to exceed 180 days, or both.¹⁹³ Further, if the offender holds any licenses from the Department of Family and Protective Services or any license or certification as an individual, agency, or corporation to practice in Texas, the court will revoke such license or certification upon conviction.¹⁹⁴ However, these consequences are rarely enforced because parents deem the transfer as respite care rather than an adoption, and they effectively circumvent the ICPC's requirements and repercussion.¹⁹⁵ Additionally, the ICPC only imposes restrictions if a child is transferred across state lines, thus there is nothing to protect a child who is re-homed within Texas's borders.¹⁹⁶

Additionally, Texas prohibits individuals from advertising to place or obtain a child for adoption in the public media, which includes the Internet.¹⁹⁷ First-time offenders commit a Class A misdemeanor, which carries fines not to exceed \$4,000.00, up to one year in jail, or both.¹⁹⁸ If the individual has a previous conviction for this crime, the violation increases to a third-degree felony.¹⁹⁹

Although Texas prohibits advertising a child for adoption, this law is confusing and rarely results in criminal repercussions.²⁰⁰ For instance, in 2013, a Houston mother faced misdemeanor charges after she posted an advertisement on Craigslist placing her three-year-old biological son for adoption.²⁰¹ However, she was released from jail the next day after she

189. *See id.*

190. *See infra* Section VI.B.

191. TEX. FAM. CODE ANN. § 162.102 (West).

192. *Id.* § 162.107.

193. TEX. PENAL CODE ANN. § 12.22 (West).

194. FAM. § 162.107.

195. Parks, *supra* note 130.

196. Ann Wrixon, *Rehoming Adoption, and How to Fix It*, INDEP. ADOPTION CTR. (Sept. 12, 2013), <http://www.adoptionhelp.org/blog/2013/rehoming-adoption-and-how-to-fix-it/> [https://perma.cc/PG3L-59ZM].

197. PENAL § 25.09.

198. *Id.*; PENAL § 12.21.

199. PENAL § 25.09.

200. *See* Twohey, *Wisconsin*, *supra* note 16.

201. M. Alex Johnson, *Texas woman charged with offering 3-year-old son for adoption on Craigslist*, NBC NEWS (May 15, 2013), http://usnews.nbcnews.com/_news/2013/05/15/18278988-texas-woman-charged-with-offering-3-year-old-son-for-adoption-on-craigslist?lite [https://perma.cc/798V-ZFDB].

posted the \$1,000.00 bail.²⁰² Additionally, parents who re-home frequently come away unscathed because they claim they are advertising for respite care and not for a true adoption.²⁰³

Lastly, the CAPTA requires Texas to have provisions and procedures in place to respond to child abuse and neglect reports.²⁰⁴ While CAPTA defines child abuse and neglect, it is within the state's discretion to determine which actions fall within those definitions and therefore, qualify as child abuse, neglect, abandonment, and exploitation.²⁰⁵ CAPTA's abuse and neglect definitions are broad enough that re-homing could fit within that meaning.²⁰⁶ However, Texas does not explicitly include re-homing as an action that constitutes child abuse or neglect.²⁰⁷

C. If Texas Needs a Reason

The legal implications, or lack thereof, are not the only reason for concern.²⁰⁸ Re-homing contradicts social and moral values, as well as the way society views children.²⁰⁹ "Kids shouldn't be in want ads like: 'Our dog just had puppies. Want one for free?'" said Ann Haralambie, an Arizona child welfare and custody lawyer.²¹⁰ Re-homing is comparable to selling a baby and child abandonment, both of which are, and have always been, recognized crimes.²¹¹

As the Reuters series discussed, children are frequently re-homed into dangerous situations, increasing the risk of child exploitation.²¹² Even if the new home is not an unfit or dangerous environment, society generally finds it fundamentally inappropriate for a parent to relinquish parental responsibility of an adopted child to another person through a power of attorney.²¹³ Unless, and until, the state takes action to protect children in Texas from re-homing, this unregulated market and legal form of human trafficking will flourish.²¹⁴

Recently, the GAO released a report regarding re-homing, which identified that select states have taken actions to address unregulated child transfers.²¹⁵ While the Department of State intends to revise international

202. *Id.*

203. *See* Twohey, *Despite 'grave danger', supra* note 127.

204. *Testimony, supra* note 136.

205. *Id.*

206. Montanari, *Arkansas, supra* note 140.

207. *See* TEX. FAM. CODE ANN. § 261.001(1), (4) (West 2014).

208. *See* Gordon, *supra* note 6.

209. *See id.*

210. *See id.*

211. *See id.*

212. *See* Chang & Greenberg, *supra* note 73.

213. *See id.*

214. *See* Lillie, *supra* note 22.

215. Congressional Report, *supra* note 75, at 30.

adoption training requirements, the Department of Health and Human Services is challenging the states to review state policies and directly address re-homing to spearhead change.²¹⁶ The report revealed that at least fifteen states intend to address re-homing directly through legislation and other means.²¹⁷ The most common way states are answering this challenge is through criminalizing re-homing and the actions that ultimately result in re-homing.²¹⁸ States are also revising their laws to restrict advertising children for placement, which is broader than existing laws that address advertising for adoption specifically.²¹⁹ Some states enacted or revised their post-adoption services.²²⁰ However, these efforts are time-consuming, and the funding for these services is limited.²²¹ Texas is not amongst the fifteen leader states taking action in the movement to end re-homing.²²²

In fact, even when a Texas couple filed a complaint with the Texas Attorney General about re-homing, the state failed to take any action.²²³ Thirteen-year-old Anna Barnes had already been re-homed once before when her new parents in Texas began to regret adopting her.²²⁴ Gary and Lisa Barnes turned to the re-homing bulletins online because they were told that if they surrendered Anna to the state, then the state would deem them unsuitable parents, and they would have to pay child support until she reached the age of majority.²²⁵ Instead of legally dissolving the adoption, the Barneses sent Anna to live with a couple in Illinois without conducting any background checks, without any involvement of authorities, and without notifying child welfare officials that they were transferring Anna across state lines as the ICPC requires.²²⁶

Anna's subsequent home was an unsuitable environment; there was dog excrement on the floor, no bed for the young girl, and pornographic films in the cabinet.²²⁷ Fortunately, the Barneses became aware of the danger of the situation and returned to retrieve Anna.²²⁸ Thereafter, the Texas couple filed a complaint with the Texas Attorney General regarding the Illinois couple.²²⁹ Despite warnings from not only Gary and Lisa Barnes, but also another woman familiar with this specific Illinois couple, authorities and lawmakers

216. *See id.*

217. *Id.*

218. *See id.*

219. *See id.*

220. *See id.*

221. *See id.*

222. *See id.* at 30.

223. *See Twohey, Despite 'grave danger', supra note 127.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

in Texas failed to take any action to protect other children from this couple or the dangers of re-homing.²³⁰

At least one Texas lawmaker is speaking out against re-homing and calling for the government to act.²³¹ Congresswoman Eddie Bernice Johnson, who sponsors the federally proposed Protecting Adopted Children Act, suggests that a plan of action, including criminal prosecution, will deter the unregulated market and provide safety for children adopted internationally.²³² “Law enforcement must be able to find and prosecute these offenses, and we must put a stop to the underground market for children whose adoptive parents have decided they no longer wanted them. Every child deserves to be legally placed in a loving home,” Congresswoman Johnson said.²³³

VII. BOLSTERING LAWS IN TEXAS

A. *Fixing a Broken System: A Non-Criminal Approach*

Texas is not one of the fifteen states that have taken a proactive approach to combat re-homing and ensure that every child is legally placed in a loving home.²³⁴ In fact, state officials and leaders have turned a blind eye to citizens’ expressed concerns about an obviously appalling practice.²³⁵ One potential solution is to provide extensive pre-adoption services to heal the underlying issues that lead to re-homing, which include parents’ lack of information and preparation.²³⁶ Although Texas imposes extensive pre-adoption education for domestic adoptions, there is currently no state requirement for parents adopting internationally to undergo any sort of preparation courses.²³⁷

In Texas, Child Protective Services (CPS) believes that the federally required sixteen training hour for foster parents is insufficient; therefore, the state requires additional training hours to qualify as a foster parent.²³⁸ CPS requires thirty-five hours of training for potential foster parents, and the

230. *Id.*

231. Press Release, *Congresswoman Eddie Bernice Johnson Introduces Legislation to Combat the Illegal Practice of Adoption “Re-homing,”* CONGRESSWOMAN EDDIE BERNICE JOHNSON REPRESENTING THE 30TH DIST. OF TEX. (June 3, 2014), <https://ebjohnson.house.gov/media-center/press-releases/congresswoman-eddie-bernice-johnson-introduces-legislation-to-combat-the> [https://perma.cc/9VLX-QUPL].

232. *Id.*

233. *Id.*

234. See Congressional Report, *supra* note 75.

235. See Twohey, *Despite ‘grave danger’*, *supra* note 127.

236. See Congressional Report, *supra* note 75, at 16–20.

237. See *Review of State Statutes: Regarding International Adoptions*, ADOPTION.COM, <http://laws.adoption.com/statutes/review-of-state-statutes-regarding-international-adoptions-finalized-abroad.html> [https://perma.cc/5W8T-X2BB] (last visited Jan. 18, 2016); see also TEX. FAM. CODE ANN. § 162.023 (West 2014).

238. See *Steps to Become a Foster/Adoptive Parent*, TEX. ADOPTION RES. EXCH., https://www.dfps.state.tx.us/Adoption_and_Foster_Care/Get_Started/steps.asp [https://perma.cc/BLM2-FANA] (last visited Sept. 23, 2015).

training covers a range of topics, including child attachment, discipline, behavior intervention, and sexual abuse.²³⁹ Further, Texas also requires that verified foster homes complete an annual in-service training, which can range from twenty to thirty hours of training per parent.²⁴⁰ Despite extensive requirements for domestic adoption and foster care, the state of Texas does not have any statutory provisions concerning international adoptions that require initial parent education, training, or continuing education.²⁴¹

Texas does not find it necessary to educate potential foreign-adoptive families beyond the bare minimum that the federal government requires.²⁴² Adoptive families in Texas may not have received sufficient pre-adoption training in the ten hours the federal government requires for international adoptions.²⁴³ This training does not equip parents with the correct training and education to verify whether parents are properly prepared for their child's specific needs.²⁴⁴ As of May 2015, seven states in the GAO's report now require at least twenty-seven hours of educational training.²⁴⁵ Texas should follow these states' lead and increase the required educational training to at least twenty-seven hours, as well as offer specialized class topics, such as attachment, effects of abuse and neglect, and cultural sensitivity.²⁴⁶

Additionally, Texas could craft a plan to provide post-adoption services similar to those suggested in the federal Protecting Adopted Children Act, including support groups, emergency hotlines, counseling, social skills training, and mental health services for both the parents and children.²⁴⁷ The Texas Legislature should also consider the post-adoption services outlined in Arkansas's comprehensive law, which changes the child welfare programs to improve the availability of post-adoption services to families to prevent disrupted adoptions.²⁴⁸ Providing Texas parents with a list of available services will make post-adoptive support accessible.²⁴⁹ If lawmakers encourage child welfare programs to connect with adoptive parents, provide information on the repercussions of re-homing, and make support services available, then parents would be less likely to reach the point of desperation that leads them to re-home.²⁵⁰ However, these efforts are time-consuming and expensive.²⁵¹ Texas could spend up to thousands of dollars per month

239. *See id.*

240. *See id.*

241. *See* ADOPTION.COM, *supra* note 237; *see also* FAM. § 162.023 (explaining Texas adoption requirements).

242. *See* TEXAS ADOPTION RESOURCE EXCHANGE, *supra* note 238.

243. *See* Congressional Report, *supra* note 75, at 17–18.

244. *See id.*

245. *See id.*

246. *See id.* at 17–18.

247. *See* CONGRESSMAN JIM LANGEVIN, *supra* note 104.

248. *See* Congressional Report, *supra* note 75, at 35.

249. *See id.*

250. *See id.* at 45.

251. *See id.*

per child to provide support services, and these services would likely receive very little funding.²⁵² Therefore, this would not serve as the most efficient and effective solution.²⁵³

B. Fixing a Broken System: A Criminal Approach

A state law that prohibits and criminalizes re-homing is the most effective way to fix this serious legal pitfall.²⁵⁴ Absent any federal legislation criminalizing re-homing, it is essential that Texas and other states take the lead to show that children's issues are a top priority for lawmakers.²⁵⁵ Thus, Texas should enact a state law that remedies current legal pitfalls and effectively criminalizes the unauthorized placement of children.²⁵⁶ Not only is criminalizing the practice the most effective way to protect innocent children, but it also sends a very clear message to parents that re-homing is not the answer when they encounter trying situations.²⁵⁷ Such a criminal statute would read as follows:

V.T.C.A., Penal Code § 20B.01 § 20B.01. Definitions

In this chapter:

- (1) "Child" is a person under 18 years of age.²⁵⁸
- (2) "Re-homing" means to transfer, recruit, harbor, transport, provide, solicit, or obtain a child through electronic means or otherwise with the intent to place a child in the physical custody of a non-relative.²⁵⁹

V.T.C.A., Penal Code § 20B.02 § 20B.02. Re-homing of Persons

- (A) A person commits the offense of re-homing a child if the person intentionally or knowingly:

- (1) Takes any action to facilitate a transaction

252. See *id.* at 23.

253. See *id.*

254. See Johnathan James Nobile, *Adoptions Gone Awry: Enhancing Adoption Outcomes Through Post Adoption Services and Federal and State Laws Imposing Criminal Sanctions for Private Internet Rehoming*, 53 FAM. CT. REV. 474, 481 (2015).

255. See Gordon, *supra* note 6.

256. See Nobile, *supra* note 254.

257. See Gordon, *supra* note 6.

258. TEX. PENAL CODE ANN. § 20A.01(1) (West 2014).

259. See LA. REV. STAT. ANN. § 14:46.4 (A)(1) (West 2014).

by which a parent, individual, or entity charged with custody of a child seeks to divest themselves of permanent parental responsibility through placing a child in the physical custody of a non-relative without court approval, whether or not for value, except as otherwise provided in Subsection B.²⁶⁰

(B) Re-homing does not apply to:

(1) A parent who places a child with a relative, the Texas Department of Family and Protective Services, or an attorney licensed by the state;²⁶¹

(2) Placement of the child by the Texas Department of Family and Protective Services or an attorney licensed by the state;²⁶²

(3) Temporary placement of a child for a short period of time if:

i. the parent specified an intent and time for return;²⁶³ and

ii. if the placement is due to military service, medical treatment, incarceration, or incapacity of said parent;²⁶⁴

(4) Placement of a child according to the Interstate Compact on the Placement of Children;²⁶⁵ or

(5) Relinquishment of a child under the voluntary delivery law according to Tex. Fam. Code § 262.302.²⁶⁶

(C) Except as otherwise provided by subsection B, an offense under this section is a felony of the second degree.²⁶⁷

First and foremost, this proposed legislation must forbid parents from transferring custody of an adopted child to a non-relative without court approval.²⁶⁸ However, it is necessary that the definition of re-homing is broad and all encompassing because the parties involved in the practice extend far

260. *Id.*

261. ARK. CODE ANN. § 5-27-211(c)(1) (West 2014).

262. *Id.* § 5-27-211(c)(2).

263. *Id.* § 5-27-211(c)(3).

264. *Id.*

265. *Id.* § 5-27-211(c)(4); FAM. § 162.102.

266. § 5-27-211(c)(5); FAM. § 262.301.

267. TEX. PENAL CODE ANN. § 20A.02(b) (West 2015).

268. *See supra* Section V.C.

beyond just the child's parents.²⁶⁹ Amongst the participants are unlicensed individuals, known as middlemen, who facilitate and introduce desperate parents to interested parties to care for their child.²⁷⁰

One woman who served as a middleman admits now that she was not running background checks and that "[she did not] have any way of knowing who these people were."²⁷¹ As this is an extensive, multiparty network, any state law must be comprehensive to deter involvement at every level.²⁷² Texas should borrow from Arkansas and define the re-homing transaction as transferring, recruiting, harboring, transporting, providing, soliciting, or obtaining a minor for placement.²⁷³ This definition is thorough and comprehensive in an effort to address all roles in a re-homing transaction.²⁷⁴

To provide clarity, Texas lawmakers should explicitly outline actions that do not constitute re-homing, as Louisiana did.²⁷⁵ Such a qualifier would allow parents to place their child with relatives, relinquish their child under the safe haven law, or place their child temporarily in another home due to circumstances like military service or medical treatments without the fear of criminal penalties.²⁷⁶ It is critical that the proposed legislation correlate with Texas Family Code § 262.301, also known as the Safe Haven or Baby Moses Law.²⁷⁷ The Baby Moses Law allows parents to relinquish their newborn in a safe place, generally hospitals, firehouses, and police stations, without any questions asked.²⁷⁸ Safe Haven laws allow a parent to remain anonymous and protected from criminal liability.²⁷⁹ Failure to provide an exception in the re-homing legislation specifically for Safe Haven laws will cause parents to avoid this legal option out of fear of criminal repercussions, and it may defeat the entire purpose of Safe Haven laws, which is to prevent abandonment of, and harm to, infants.²⁸⁰ Additionally, this portion of the statute would provide protection to licensed attorneys, adoption agencies, and the Department of Children and Family Services, who may legally place a child in another home.²⁸¹

269. See Megan Twohey, *With Blind Trust and Good Intentions, Amateurs Broker Children Online*, REUTERS (Sept. 10, 2013), <http://www.reuters.com/investigates/adoption/#article/part3> [<https://perma.cc/S3VN-5UR7>].

270. See *id.*

271. See *id.*

272. See *supra* Section V.C.2.

273. See *supra* Section V.C.2.

274. See *supra* Section V.C.2.

275. See *supra* Section V.C.3.

276. See *supra* Section V.C.3.

277. *Safe Haven or Baby Moses Law*, TEX. DEP'T OF FAMILY & PROTECTIVE SERVS., https://www.dfps.state.tx.us/Child_Protection/Keep_Children_Safe/baby_moses.asp [<https://perma.cc/4FYY-DKFF>] (last visited Feb. 4, 2016).

278. *Id.*

279. *Infant Safe Haven Laws*, CHILD WELFARE INFO. GATEWAY 1, 4 <https://www.childwelfare.gov/pubPDFs/safehaven.pdf> [<https://perma.cc/X3ZC-72RT>] (last visited Feb. 4, 2016).

280. See *id.*

281. See *supra* Section V.C.3.

Lastly, it is imperative that the criminal penalties reflect the severity of this practice and that the violators are punished to the full extent of the law.²⁸² To protect our children, Texas must follow the examples of Arkansas, Maryland, and North Carolina and classify re-homing as a felony offense.²⁸³ If Texas classifies re-homing as merely a misdemeanor offense, an individual who shoplifts an iPhone will likely face harsher criminal penalties than an individual who trades a child online.²⁸⁴

Re-homing is essentially a legal form of human trafficking, and in Texas, human trafficking is at the very least a second-degree felony.²⁸⁵ An individual who commits a second-degree felony faces anywhere from two to twenty years in jail, as well as the possibility of a fine up to \$10,000.²⁸⁶ This is a more appropriate punishment than the one day in jail a Houston mother served after she used the Internet to advertise her biological son for adoption.²⁸⁷ This proposed state statute should classify re-homing as a second-degree felony for first time offenders in order for the criminal penalties to reflect the severity of this practice.²⁸⁸

VIII. CONCLUSION

Currently, Texas' laws make it easier to transfer a child to a complete stranger than it is to purchase a car.²⁸⁹ The government's inaction is deplorable, and our state and nation are failing to protect innocent children from private entrepreneurs who transfer child custody for personal gain.²⁹⁰ Re-homing is an easy way for parents to circumvent the legal system and rid themselves of a child they now consider a burden.²⁹¹ Through only a quick Google search and a few clicks on the keyboard, Texas parents can trade their child like a baseball card.²⁹²

This unregulated market has left children without a legal guardian, and some children will face deportation as wards of the state.²⁹³ As soon as the parents grant a power of attorney, their child practically vanishes without a

282. See Nobile, *supra* note 254.

283. See *supra* Section V.C.

284. See Erin G. Bradley, 'Re-homing' Bill Does Not Go Far Enough To Protect Adopted Children, BOS. GLOBE (Nov. 17, 2015), <https://www.bostonglobe.com/opinion/letters/2015/11/17/homing-bill-does-not-far-enough-protect-adopted-children/kNwm3pujH8MXi8aNOLOttO/story.html> [https://perma.cc/9DLG-A785].

285. See Lillie, *supra* note 22.

286. TEX. PENAL CODE ANN. § 12.33 (West 2014).

287. Johnson, *supra* note 201.

288. See Nobile, *supra* note 254.

289. See Wetzstein, *Adoptee Decry*, *supra* note 20.

290. See Riben, *supra* note 21.

291. See *supra* Section I.C.

292. See *supra* Section I.C.

293. See *supra* Section II.B.

trace.²⁹⁴ These easy, fill-in-the-blank forms are not intended to act as a substitute for long-term parental care, nor does it relieve parents of their legal responsibility to care for their child.²⁹⁵

It is unlikely that the federal government will put a stop to re-homing because children's issues are not important to policymakers.²⁹⁶ Furthermore, the regulations that are in place through the ICPC are rarely adhered to or enforced.²⁹⁷ In the absence of successful federal legislation, policymakers at the state level are drafting and enacting laws to specifically prohibit re-homing.²⁹⁸ However, Texas has turned a blind eye to this repugnant practice happening within the state's borders.²⁹⁹

Absent any federal legislation criminalizing re-homing, it is essential that Texas takes action to show that children are a top priority.³⁰⁰ Thus, Texas should enact a state law that remedies current legal pitfalls and effectively criminalizes re-homing, which is essentially a legal form of human trafficking.³⁰¹ It is time that parents, lawmakers, and society recognizes adoption for what it is: "a permanent, lifelong commitment to a child."³⁰²

294. *See supra* Section II.B.

295. *See supra* Section II.B.

296. *See supra* Section V.B.

297. *See supra* Section V.A.

298. *See supra* Section V.A.

299. *See supra* Part VI.

300. *See supra* Section VII.B.

301. *See* Nobile, *supra* note 254.

302. *See Frequently Asked Questions About Adoption*, TEX. ADOPTION RES. EXCH., http://www.dfps.state.tx.us/adoption_and_foster_care/about_tare/faq/default.asp#outofstate [<https://perma.cc/WSD7-FCGF>] (last visited Sept. 23, 2015).