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# A (Re)Adoption Story: What is Driving Adoptive Parents to Rehome Their Children and What Can Texas Do About It

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## COMMENT

# A (RE)ADOPTION STORY: WHAT IS DRIVING ADOPTIVE PARENTS TO REHOME THEIR CHILDREN AND WHAT CAN TEXAS DO ABOUT IT?

by Emma C. Martin\*

### ABSTRACT

*Ava was adopted from Africa when she was four years old. She became the baby sister to two older brothers and the daughter to two loving, experienced parents. A year or two after Ava moved to America, she and her “forever family” attended a Colorado summer camp. All was seemingly well until the camp staff and the other families at camp started to notice something strange about the way Ava’s parents treated her compared to her brothers. After an activity, the parents greeted the brothers with an excited “did you have fun?” or “what did you learn?,” while the parents greeted Ava with a terse scolding for leaving her jacket behind. When the boys each sat next to a parent at the front of the boat on a white-water rafting trip, baby Ava sat at the very back of the raft next to a guide she did not know. These scenarios, along with others, raised questions and concerns.*

*Another family, who had several adopted children, reached out to Ava’s parents and asked how she was doing in her new home. Ava’s family admitted that Ava, though sweet and loving at times, was having behavioral issues that they believed were linked to a lack of attachment to the family. They also admitted that they just could not love her the way that they loved their biological children. In the end, Ava’s parents decided that they had had enough—they no longer desired Ava to be their daughter. They relinquished their parental rights and sent Ava to live with the family they connected with at summer camp. Ava’s new family formally re-adopted her and gave her the love and support she desperately needed. And at last, after three families and two adoptions, Ava finally found her “forever family.”<sup>1</sup>*

*Unfortunately, this pattern is not altogether uncommon. Many parents who adopt children, especially older children, face similar stories of a frustrating inability to thrive as a family once the child enters the home. This pattern of adopting a child and then later seeking to find another home for that child has been coined “rehomeing.” Rehomeing is largely unregulated by most states and only minimally regulated in Texas. Fortunately for Ava, she found a true “forever family” who gave her a home she could thrive in. Some children are less fortunate. In fact, because of the regulatory void, some children are handed*

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1. The names of the families and other identifiable characteristics have been changed upon their request.

over to new parents without any vetting by an official agency. These practices are reckless and violate Texas’s policy to find homes that are in the best interest of children. For that reason, Texas must take action in both its child advocacy and its criminal laws to prevent and, when impossible to prevent, control rehoming practices.

*This Comment will look first at the mechanics behind rehoming—what it is and where it fits into the legal framework of the child welfare system. Next, it will look at the causes of rehoming, focusing specifically on how trauma in a child’s background can create a need for specialized training techniques. Lastly, it will look at other states’ legislation to combat rehoming and suggest different areas where Texas can improve its child welfare laws to both prevent and deter rehoming.*

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I. INTRODUCTION

Ava’s story is an example of a practice called “rehoming.”<sup>2</sup> Rehoming occurs when adoptive parents decide they are unable or unwilling to care for their adopted child and seek a new home, or “placement,” for the child.<sup>3</sup> Many times, parents decide to rehome because their child faces certain special needs that the parents feel unequipped to

2. Rehoming traditionally refers to a pet owner who finds a new home for a pet because they can no longer care for it. *Rehome*, OXFORD DICTIONARIES (2018), <https://en.oxforddictionaries.com/definition/rehome> [http://perma.cc/3DUE-E8PP]. Unfortunately, the term now also refers to unregulated custody transfers of a child. Understandably, some players in the child welfare system prefer to refer to rehoming as “second chance placements.” This Article, however, will use the term “rehoming” because that is the term most widely used in news reporting and legislation.

3. U.S. GOV’T ACCOUNTABILITY OFF., GAO-15-733, CHILD WELFARE: STEPS HAVE BEEN TAKEN TO ADDRESS UNREGULATED CUSTODY TRANSFERS OF ADOPTED CHILDREN (2015).

handle.<sup>4</sup> Those special needs often arise from trauma in the child's past or from other psychological difficulties surrounding the adoption process itself.<sup>5</sup> Although rehoming is not limited to adopted children,<sup>6</sup> rehoming a biological child is rare.<sup>7</sup>

Rehomings have led to a host of devastating placements for already-traumatized children.<sup>8</sup> Disregarding any moral implications of a parent giving up an adopted child, there is another major problem with rehoming: many states have left rehoming absolutely unregulated.<sup>9</sup> This means that a parent can broker every part of finding a new home for their child—from choosing a new family to transferring physical custody—without oversight from an agency or any record of the child's new placement. Unsurprisingly, this lack of oversight has led to a host of devastating, and sometimes dangerous, placements for already-traumatized children.<sup>10</sup> Until early 2017, Texas was one of the states that had yet to pass rehoming legislation.<sup>11</sup> But the few laws that Texas eventually passed focus primarily on punitive measures to curb rehoming, thereby disregarding the need to prevent rehoming by addressing its underlying causes.

## II. THE PROBLEM WITH REHOMING

When parents wish to rehome a child, they have three options: (1) a formal re-adoption, either through a private agency or Child Protective Services (“CPS”); (2) a transfer of guardianship in court;<sup>12</sup> or (3) an unregulated transfer of the child entirely outside of the court's purview or knowledge, often done through a power-of-attorney document.<sup>13</sup> The first two methods provide judicial oversight to a rehoming procedure, ensuring that the child is in a safe home and legally part of its new family. While important for the child's sake, the two “regulated” options may pose difficulties to the parents. For example, if the parents choose to put the child up for re-adoption, they must either find an adoption agency that will help find a new family or turn to the state's child-welfare system to do the same. While some adoption agencies are equipped to handle rehoming children, most agencies are

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4. *Id.* at 16.

5. *Id.* at 5.

6. See Megan Twohey, *Americans Use the Internet to Abandon Children Adopted from Overseas*, REUTERS INVESTIGATES: THE CHILD EXCHANGE (Sept. 9, 2013), <http://www.reuters.com/investigates/adoption/#article/part1> [<http://perma.cc/VR88-FTC9>].

7. CHILD WELFARE, *supra* note 3, at 4.

8. CHILD WELFARE, *supra* note 3, at 1, 6.

9. CHILD WELFARE, *supra* note 3, at 5, 26.

10. Twohey, *supra* note 6.

11. See CHILD WELFARE, *supra* note 3, at 30–31.

12. Guardianship proceedings will not be addressed in this Article; however, it is sufficient to note that they do require court oversight and are subject to regulation.

13. Megan Twohey, *In a Shadowy Online Network, a Pedophile Takes Home a ‘Fun Boy’*, REUTERS INVESTIGATES: THE CHILD EXCHANGE (Sept. 9, 2013), <http://www.reuters.com/investigates/adoption/#article/part2> [<http://perma.cc/8QWT-WS5K>].

not.<sup>14</sup> Even if they were, the services are quite costly for a family.<sup>15</sup> Alternatively, if parents relinquish the child to the state's child welfare agency, they may be investigated for abuse and neglect, which could affect the parents' other children.<sup>16</sup> The parents may also have to pay for the child's care until a new family can adopt.<sup>17</sup> The cost and difficulty associated with a regulated transfer, along with the risk to the parents' other children, leaves parents with few feasible options.

This bind has led parents to an unregulated third option: transferring physical custody and legal responsibility of their children through a simple power-of-attorney document, which allows people to sign over their legal power to make decisions to another person.<sup>18</sup> This document is useful for families seeking respite care for a child, but can only legally be used to transfer custody of a child for short time periods.<sup>19</sup> A power-of-attorney document allows the guardian to enroll the child in school and secure the child government benefits, but it does not make an individual the child's legal parent or guardian.<sup>20</sup> Unlike formal adoption documents, which must be proved up in court, a valid power-of-attorney document must only be notarized.<sup>21</sup> Additionally, the document is not recorded anywhere, which means that a custody transfer can happen entirely outside of the child-welfare and court systems.<sup>22</sup>

The crux of the problem with transferring custody through a power-of-attorney document is that, unlike regulated methods of child-custody transfer, which require an agency to vet a family through in-depth home studies, using a power-of-attorney document to transfer permanent custody of a child gives the original family full discretion as to who they give custody of their child and how they find the new family. While some families, like Ava's, find wonderful new families for their children through personal connections, some families must cast a broader net, turning to networks of strangers to find new parents for their children.<sup>23</sup>

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14. Interview with Heidi Cox, In-house Counsel, Gladney Ctr. for Adoption, in Fort Worth, Tex. (Jan. 27, 2017) [hereinafter *Cox Interview*].

15. *Id.*

16. TEX. FAM. CODE ANN. §§ §262.004–.005 (West 2017).

17. Twohey, *supra* note 13.

18. To be sure, this is not a true custody transfer. The adopted parents still retain legal custody of the child. *Power of Attorney*, BLACK'S LAW DICTIONARY (10th ed. 2014).

19. Twohey, *supra* note 13. Respite care is temporary care outside of the home, so that parent may receive a "respite" from caring for their child. *Id.* This may include, for example, placing a child with an aunt or uncle while the child's parents take a short vacation.

20. *Id.*

21. *Id.*

22. *Id.*

23. Twohey, *supra* note 6.

Sometimes families even turn to the internet.<sup>24</sup> Astoundingly, families have even used Yahoo groups and Facebook pages to find new homes for their children.<sup>25</sup> In posts that read like ads for pets that have become an inconvenience, parents air their grievances with their child and ask for a new family to intervene.<sup>26</sup> Here is a post taken from a real Yahoo bulletin board, Adoption-from-Disruption:

**Subject: Disruption no fee, handsome,[ ]obedient[, ]almost 8, boy, loves cats and geography**

Born in October of 2000 — this handsome boy, [name redacted] was placed from India a year ago and is obedient and eager to please. His intellectual development seems normal as he has quickly learned English and to read and do math and is very ready for first grade in September. He loves cats, geography, and helping his Dad fix things. However, he needs supervision at all times for his erratic behavior which is indicative of a much younger child. He is emotionally at a much younger age, and often behaves by rote, not really displaying true empathy or understanding of his behavior. He masturbates somewhat compulsively, but has learned to do it in private. [name redacted] was born with bladder extrophy [sic][,] which means he needs to be catheterized [sic] to urinate. However, his family<sup>27</sup> indicates that this is not an issue as he handles the routine very competently by himself. They would hate to see a family not come forward for him due to this issue. His current family would be happy to talk to a family about this. It is only with great reluctance that the family is disrupting.<sup>28</sup> However, they have three younger children and cannot give him what he needs. A family with children at least two years older than [name redacted] is needed.<sup>29</sup>

This type of online advertisement can put a child at very serious risk. Tragically, a child's trauma, aired to the public, can attract potential guardians looking to exploit the child's wounds rather than to heal them. For example, children who have been hyper-sexualized from a young age can attract pedophiles, sex traffickers, and other sex offenders.<sup>30</sup> If an ad, like the one above, mentions any sexualized activity by a child (masturbation, attempts to make out with a parent or sibling, inappropriate comments, etc.) it may attract a predator or child trafficker with malicious intent.<sup>31</sup> In one highly publicized rehoming case, an Arkansas state representative used an internet chatroom to rehome his adopted children, who came from a past of physi-

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24. *Id.*

25. *Id.*

26. *Id.*

27. These posts are sometimes written by a third party who has volunteered to help the family find a new home.

28. Disrupting is a legal term that denotes termination of an adoption.

29. Twohey, *supra* note 6.

30. Twohey, *supra* note 14.

31. *Id.*

cal and sexual abuse.<sup>32</sup> Sadly, the representative and his wife chose poorly. The family they chose to take their two small girls later sexually abused the already traumatized children.<sup>33</sup>

Ads for children may also welcome parents who could not adopt children legally because, for example, CPS previously took away their children.<sup>34</sup> Even when these more extreme situations are not realized, the very act of putting these children in yet another home after promising them stability can cause great emotional and psychological damage.<sup>35</sup> Importantly, rehoming also contradicts Texas's goals of (1) creating permanent families, and (2) finding placements that are in the best interest of the child.<sup>36</sup>

### III. WHY DOES REHOMING OCCUR?

Presumably, people adopt a child because they want to be parents. What is more, adoption is no easy process—it takes significant resources and effort.<sup>37</sup> So what makes the situation so difficult that these parents are ready to throw in the towel? While there is little data about rehoming and the families it affects,<sup>38</sup> research about children from traumatic backgrounds coupled with reports from adoption agencies and parents themselves suggest that many adoptive parents simply are unequipped to handle the challenges of a child from a troubled past.<sup>39</sup>

#### A. *Trauma in a Child's Background Creates a Need for Specialized Parenting*

Children who come from traumatic or neglectful backgrounds often have “suboptimal brain chemistry.”<sup>40</sup> As a direct result of early deprivation, a child's brain fail to form the neurological pathways necessary

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32. Abby Phillip, *The Story of an Arkansas Politician Who Gave Away His Adopted Child, and the Tragedy That Followed*, WASH. POST (Mar. 13, 2015), [https://www.washingtonpost.com/news/morning-mix/wp/2015/03/13/the-story-of-an-arkansas-politician-who-gave-away-his-adopted-child-and-the-tragedy-that-followed/?utm\\_term=.2ccf626bacd8](https://www.washingtonpost.com/news/morning-mix/wp/2015/03/13/the-story-of-an-arkansas-politician-who-gave-away-his-adopted-child-and-the-tragedy-that-followed/?utm_term=.2ccf626bacd8) [<http://perma.cc/9PFL-KY99>].

33. *Id.*

34. Twohey, *supra* note 14.

35. KARYN B. PURVIS, DAVID R. CROSS & WENDY LYONS SUNSHINE, *THE CONNECTED CHILD* 23 (2007).

36. See APRIL C. WILSON ET AL., *UNDERSTANDING TEXAS' CHILD PROTECTION SERVICE SYSTEM*, TEXPROTECTS (2014), [https://www.texprotects.org/media/uploads/10\\_7\\_14\\_combined\\_cps\\_systems\\_flowchart\\_final.pdf](https://www.texprotects.org/media/uploads/10_7_14_combined_cps_systems_flowchart_final.pdf) [<http://perma.cc/XP2Z-MRJD>].

37. “The majority of domestic newborn adoptions cost between \$20,000 and \$40,000, while a strong majority of international adoptions cost more than \$35,000.” *How Much Does Adoption Cost?*, BUILDING YOUR FAMILY: THE INFERTILITY & ADOPTION GUIDE, <http://buildingyourfamily.com/adoption/how-much-does-adoption-cost/> [<http://perma.cc/DGR6-ECT8>]. Additionally, it can take years for parents to be matched with, and officially adopt, a child.

38. CHILD WELFARE, *supra* note 3.

39. See *Cox Interview*, *supra* note 15; CHILD WELFARE, *supra* note 3, at 5.

40. THE CONNECTED CHILD, *supra* note 37, at 9.

to key developmental stages.<sup>41</sup> These impairments, as well as deep fears of being abandoned, going hungry, being in an unfamiliar environment, losing control, and being hurt (all learned from early childhood), can drive the child's maladaptive or "bad" behavior.<sup>42</sup> These behaviors may include acting out sexually or violently or otherwise being unable to "attach" emotionally to their family.<sup>43</sup>

This attachment problem, diagnosed by psychiatrists as Reactive Attachment Disorder ("RAD"), is particularly troubling to many parents who rehome.<sup>44</sup> Attachment is an extremely important interpersonal bond formed between a child and parent, particularly in the first year of life.<sup>45</sup> If a child is consistently safe and cared for by a reliable caretaker, the child will become securely attached, both emotionally and physically, to that caretaker.<sup>46</sup> If, however, the child grows up in an abusive or neglectful environment, such as an abusive home or impoverished orphanage, the child may lack the ability to attach to other people altogether.<sup>47</sup> Without this ability to connect, children, even infants, will "encode that humans are unreliable and untrustworthy."<sup>48</sup> Because these children have never connected closely with another human being, they may hurt others, act cruelly, steal, or lie about the obvious.<sup>49</sup> Sadly, these children lack the basic moral compass that tells them how to interact with others or function productively in society.

A 2013 Reuters report detailed why some parents sought to find new placements for their children.<sup>50</sup> The report showed that a large majority of these children had behavioral and emotional issues stemming from childhoods spent in orphanages or with abusive families, as shown by the "ads" their parents wrote for them online.<sup>51</sup> For example, one parent described her frustration with her eleven-year-old daughter who struggles with RAD:

We have recently started her on generic ritalin [sic] and that does seem to be helping her more annoying behaviours [sic] (like the constant babbling and hyperness)[.] [W]e are finding ourselves in a position where we are tired of dealing with the behaviors and it is

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41. *Id.* at 12.

42. *Id.* at 6.

43. Twohey, *supra* note 6.

44. *Id.*

45. THE CONNECTED CHILD, *supra* note 37, at 28.

46. *Id.* at 28.

47. Impoverished orphanages cannot give a child a primary caretaker. *Id.* at 28. This causes the child to grow up in an isolated and sensory deprived environment, which has serious effects on a child's physical and mental development. *Id.* at 25–26.

48. *Id.* at 29.

49. *Id.*

50. See Twohey, *supra* note 6.

51. *Id.*; CHILD WELFARE, *supra* note 3, at 5.



negative impact on her brother(fasd)<sup>52</sup> [sic] and our bio[logical] son[.] We are looking for a family familiar with rad/fasd and who have a homestudy [sic].<sup>53</sup>

These parents had adopted their daughter five years prior and, after becoming “tired” of her behavior, decided they were either unable or unwilling to handle their daughter. The parents also mentioned their son’s problems with Fetal Alcohol Spectrum Disorder (“FASD”). Exposing children to alcohol while in the womb can have serious effects, including small size, disrupted facial features, damaged organs, and reduced IQ.<sup>54</sup> Children with FASD often lack the ability to discern cause and effect and are at high risk for ADHD.<sup>55</sup>

Unfortunately, rehoming children based on these conditions and others is not an uncommon story:

This attractive Russian girl has been in the US for about 3 years. She has been in several families, as well as respite at the [organization redacted]. She is currently in a treatment center[,] and [it is] looking for a new family for her. She has serious RAD problems as well as a mood disorder and other issues[,] but [she] has potential in the right situation. A family trained in RAD is a must in this case. If you know of someone who might be interested, please contact me off list. Thanks!<sup>56</sup>

Caring for a child with RAD and other psychological challenges can be difficult for the affected child’s parents and siblings. Like the parents from the advertisement above, some parents feel they simply do not have the experience or training to handle a child with these problems. Parents’ realization that they are unequipped to parent a child with trauma-induced special needs may come after an extended period of time, like one family, who, after eight years of parenting their daughter, decided to rehome:

She has been with us for almost eight years but is no longer making progress. I have reached a point of wondering if another family could make it work. I know some of my kids can function well in my home but did not function in their previous homes. My daughter has FASD. We have many services for her and have considered a long term residential placement but finances are not there. I’m open to ideas and suggestions as I am new to this forum but not new to the system as many of my kids came from really tough places. Thanks for listening.<sup>57</sup>

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52. FASD = Fetal Alcohol Spectrum Disorder. *Fetal Alcohol Spectrum Disorders (FASDs)*, CDC, <https://www.cdc.gov/ncbddd/fasd/facts.html> [http://perma.cc/U8MD-X76F].

53. Twohey, *supra* note 6.

54. THE CONNECTED CHILD, *supra* note 37, at 24.

55. *Id.*

56. Twohey, *supra* note 6.

57. *Id.*

Some parents may even request that their child's "new" parents have particular training or experience. Here is an example of an "on-line" friend helping rehome a *recently* adopted girl from Eastern Europe:

An online friend of mine is looking to possibly disrupt a recently adopted young teen girl from Eastern Europe. . . . [S]he has asked for my help[,] and I have reached out to some people with experience in 'disruption'[ ]. However, I thought I would mention this here in the case that there is the right family reading this.

This child is deeply hurt and exhibits signs of severe [post-traumatic stress disorder ("PTSD")] and RAD. She will need a VERY experienced family and cannot be in a home with younger children. A perfect scenario would be older experienced parents with no other kids at home, . . . preferabl[y] . . . familiar with the BCLC method (Heather Forbes). I believe the family will insist it be a Christian family as well.

This is NOT a child for an inexperienced family in any way. She will need great support for many many months, if not years.<sup>58</sup>

Without a doubt, these children were dealt very difficult hands in their early life, which has left lasting effects. However, each child also has its own "magnificent potential" to be unleashed, should a loving parent be there to guide them to it.<sup>59</sup> Additionally, there are many resources for parents of children with traumatic backgrounds, should the parent be apprised of them.

B. *Parents Are Unequipped, Unprepared, or Unwilling to Parent a Child with Special Needs*

Whether parents adopt through a domestic, foster care, or international adoption, they have invested significant financial resources, time, and emotions into adopting a child.<sup>60</sup> They have undergone training, filled out mountains of paperwork, and completed a very thorough home study. They have decorated a room for their new child, picked out a new name, and otherwise invited this new child to join their family and their life. So how do parents come to a point where they are ready to willingly rehome their own child?

Heidi Cox is a board member for the National Council for Adoption and in-house counsel for a large adoption agency in Fort Worth, Texas, which helps parents who may want to rehome. Cox explains that many parents who choose to disrupt really wanted children and worked hard to get them.<sup>61</sup> In her experience, these parents tend to be

58. *Id.*

59. THE CONNECTED CHILD, *supra* note 37, at 31.

60. See BUILDING YOUR FAMILY, *supra* note 39.

61. Karen Law, Leonette Boiarski & Heidi Bruegel Cox, *The International Edition As Published in the United States*, REPORT 7-9 (2016).

older, well-educated, financially stable, and spiritual.<sup>62</sup> And while they may be experienced parents, adopted children can pose significant challenges distinct from parenting biological children. Indeed, even parents with decades of experience may require additional post-adoption resources, such as parenting training or counseling for a child who is affected by trauma.

Perhaps the best way to get into parents' minds, however, is by reading one of their accounts firsthand. These adoptive parents chose to rehome after they felt unequipped to parent their adopted daughter. Even though they had significant experience from parenting six biological children of their own, two of which have special needs, they still felt unable to be the mom and dad their daughter deserved:

Hello,

My husband and I adopted a little girl from Liberia, Africa 3 years ago. She is now 9 . . . though the physical size of a 7 year old. She *has not bonded to us* and is very depressed and unhappy. We have 6 other biological children, 5 of them younger[,] . . . two of who[m] are autistic. *She does not get the attention she deserves.* I will admit *this has been much harder than I thought* and *we have not bonded to her*, especially my husband. The strain on our marriage has been very difficult.

Our daughter is not an awful child by any stretch of the imagination. . . . She has had some issues, but nothing extreme. She has occasionally stolen food from home and school, and she sometimes wets the bed. If she is upset about something she will not speak and will ignore us for hours. She says she wants a mom and dad who really love her. I do not blame her. While we have been kind and met all of her basic needs and wants . . . *we cannot provide the love and physical affection she greatly desires. She deserves a mom and dad who can give her that.*

We have chosen to disrupt. . . .<sup>63</sup> [emphasis added]

It is unclear whether the parents sought post-adoption resources, such as specialized training or counseling to help their daughter, or whether those resources were readily available. It is clear, however, that no matter how experienced the parents, they have a duty to be prepared and informed when they adopt a child. More specifically, they must be prepared to face their child's potential special needs and to fight for this child's mental and physical health as if it were their biological child. Even so, the duty to be informed should not solely belong to parents. Agencies must also inform parents about any needs their child may have and equip them with the tools necessary to suc-

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62. *Id.*

63. Twohey, *supra* note 6.

ceed. Some agencies provide this information by mandating trauma-informed training for prospective parents.<sup>64</sup>

Cox explains that many parents may lack not only the parenting tools for a special-needs child, but also the self-awareness necessary to recognize that they contribute to the child's issues.<sup>65</sup> They may try to blame the adoption agency, the government, the system, the other spouse, and, of course, the child itself, when in fact they may be a significant part of the problem.<sup>66</sup> Upon rehoming, the parents may feel embarrassed, hopeless, or guilty, or that they have let God down by failing as a parent.<sup>67</sup>

Additionally, some parents may lose a sense of compassion for their child—a key element to parenting an at-risk child. Cox argues that once a parent is unable to feel compassion for their child, the relationship is effectively over.<sup>68</sup> Once a parent loses compassion, the parent is unable to parent their child effectively from that point onward. At that point, some adoption agencies, including Cox's, will offer to help the family rehome the child. Renowned child psychologist Karen Purvis agrees that compassion is essential to parenting a child with a traumatic background. In her book, Purvis urges parents struggling to feel compassion to imagine that their biological child was kidnapped.<sup>69</sup> She encourages parents to imagine that their own biological child spent years away from them in a difficult environment and to think about how difficult it would be for the child to trust again.<sup>70</sup> She then encourages parents to imagine how difficult it would be to give up on their child—to send the child away to another family because the baggage the child brings is just too difficult for the parents to handle.<sup>71</sup> Purvis argues that many adopted children should be viewed with this kind of mentality because adopted children *did* spend time away from their parents.<sup>72</sup> They *did* face obstacles that make it difficult for them to cope in everyday life. She argues that this trauma warrants—no, necessitates—compassion. Fortunately, pre- and post-adoption services can help parents develop these mindsets and set them up for successful parenting. But first, states must acknowledge that they are a crucial part of the adoption process.

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64. *Cox Interview*, *supra* note 15. Training requirements vary greatly by state and type of adoption. Many states do not require additional training for international adoptions outside of the 10 hours mandated by federal law. CHILD WELFARE, *supra* note 3, at 19.

65. *Id.*

66. Law, Boiarski, & Cox, *supra* note 64.

67. *Id.*

68. *Cox Interview*, *supra* note 15.

69. THE CONNECTED CHILD, *supra* note 37, at 5–6.

70. *Id.*

71. *Id.*

72. *Id.*

#### IV. HOW HAVE STATES RESPONDED?

While state legislatures have largely been silent about this issue, there are sixteen states that have either introduced or passed laws regulating rehoming.<sup>73</sup> The regulations fit into three main categories: (1) deterring unregulated transfers, (2) improving both adoption policies and pre- and post-adoption services to prevent unregulated transfers, and (3) other regulations.<sup>74</sup>

##### A. *Deterring Unregulated Transfers*

###### 1. Criminalizing Unregulated Transfers

One of the most widely adopted types of legislation to prevent unregulated custody transfers is criminalization. As of July 2015, thirteen states had enacted or proposed laws to criminalize transferring children outside the proper legal channels or taking acts that may lead to doing so.<sup>75</sup> For example, Wisconsin has made it a class A misdemeanor to take a child across state lines for the “purpose of permanently transferring physical custody of the child to a person who is not a relative.”<sup>76</sup> These rules apply to Indian nations within Wisconsin as well.<sup>77</sup> Similarly, under Florida law, it is a third degree felony<sup>78</sup> “to place or attempt to place within the state a minor for adoption unless the minor is placed with a relative or with a stepparent.”<sup>79</sup> Many states do not criminalize placement with a family member, adoption agency, or hospital as an unregulated placement.<sup>80</sup> Also, states specify that the transfer must not be temporary.<sup>81</sup> Louisiana law, for example, does not charge a parent with rehoming if the placement is for “designated short-term periods with a specified intent and time period for return of the child, due to a vacation or a school-sponsored function or activity, or the incarceration, military service, medical treatment, or incapacity of a parent.”<sup>82</sup>

###### 2. Advertising Restrictions

Another widely used method to deter rehoming is to restrict advertising to either find children available to “adopt” or to place a child up for “adoption.”<sup>83</sup> In Maryland, for example, advertising a child consti-

73. CHILD WELFARE, *supra* note 3, at 30–31; H.B. 834, 85th Leg. Sess. (Tex. 2017).

74. *Id.* at 32–33.

75. States include Arkansas, Florida, Louisiana, Maine, and Wisconsin. *Id.*

76. WIS. STAT. ANN. § 948.25 (West 2017).

77. WIS. STAT. ANN. § 48.028 (West 2017).

78. FLA. STAT. § 63.212 (8) (2014).

79. FLA. STAT. § 63.212 (1)(b) (2014).

80. *See, e.g.*, L.B. 302, 104th Leg., 1st Sess. (Neb. 2015).

81. *See, e.g.*, LA. REV. STAT. § 14:46.4(B)(3).

82. *Id.*

83. These states include Arkansas, Colorado, Florida, Louisiana, Maine, and Wisconsin. CHILD WELFARE, *supra* note 3, at 34.

tutes a felony subject to up to five years' imprisonment and \$10,000 in fines.<sup>84</sup> Florida prohibits public advertising that a minor is available or is sought for adoption, unless the advertisement is placed by a licensed adoption agency.<sup>85</sup> Wisconsin also criminalizes child advertisement and has gone a step further by prohibiting individuals from advertising their assistance in carrying out these services.<sup>86</sup> This is an attempt to dissuade unauthorized middlemen from "helping" families with an unwanted child connect with a new family.<sup>87</sup>

### 3. Educating Adoptive Parents

Four states have either already enacted or proposed laws requiring new adoptive parents to be educated in the legal implications of unregulated transfers of their adopted children.<sup>88</sup> This would hopefully encourage a rehoming family to find a new home for their child legally. It would also ensure that parents are well-informed on this new felony cause of action.

### 4. Limits on Power of Attorney

Wisconsin's legislature has limited parents from using power-of-attorney documents to permanently transfer guardianship rights over to another placement.<sup>89</sup> The legislature addressed this issue in a number of ways after recognizing that "[w]ith virtually no oversight, children could literally be traded from home to home."<sup>90</sup> First, the state has made it illegal to delegate the following parental powers through power-of-attorney documentation: "the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on or for the child, the termination of parental rights to the child, or the enlistment of the child in the U.S. armed forces."<sup>91</sup> While a parent may grant parental powers regarding care and custody to another person, if the parent wishes to do so for more than one year, the court must approve the delegation.<sup>92</sup>

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84. H.R. 1125, 2015 Gen. Assemb., Reg. Sess. (Md. 2015).

85. FLA. STAT. ANN. § 63.212(g) (West 2014).

86. WIS. STAT. ANN. § 48.825(2)(b) (West 2017).

87. See WIS. STAT. ANN. § 48.825 (West 2017).

88. Louisiana, Maine, Florida, and Massachusetts. CHILD WELFARE, *supra* note 3, at 32–33.

89. WIS. STAT. ANN. § 48.979(1)(a) (West 2017) (Parents cannot use a power of attorney to terminate their parental rights to the child or deprive the parent of powers regarding care and custody of the child; additionally, any delegation of power cannot last longer than one year unless otherwise provided by the court.).

90. Megan Twohey, *Wisconsin Passes Law to Curb Private Custody Transfers of Children*, REUTERS (Apr. 16, 2014, 4:11 PM), <http://www.reuters.com/article/2014/04/16/us-wisconsin-adoption-idUSBREA3F1VS20140416> [<http://perma.cc/9DC8-V6FR>].

91. WIS. STAT. ANN. § 48.979(1)(a) (West 2017).

92. *Id.* § 48.979(1m)(a).

## 5. Mandatory Reporting

A few states have enacted or proposed laws concerning reporting an unregulated transfer. Two states—Maine and Ohio—require certain individuals (e.g., teachers and medical practitioners) to report to the child welfare agency if they suspect a child is not living with his or her family or if they see other signs of an unregulated transfer.<sup>93</sup> Two other states—Arkansas and Massachusetts—have targeted the parents themselves, making it mandatory for parents to notify the state's child welfare agency or their adoption agency when they feel they can no longer care for their child.<sup>94</sup>

## 6. Training Child Welfare Agencies

Of the sixteen states that have enacted laws concerning rehoming, only one—New York—has created legislation to train its child welfare workers and services providers. New York has made changes to its state child welfare programs to train workers on how to prevent unregulated transfers and what to do when they identify a rehoming case.<sup>95</sup>

### B. *Improving Adoption Policies and Pre- and Post-Adoption Services*

#### 1. Revise Requirements for Home Studies

Both Colorado and Wisconsin passed legislation to improve home studies to better screen families and prevent unregulated transfers.<sup>96</sup> A home study gives an agency the chance to determine the family's suitability and a home for the placement of a child.<sup>97</sup> Home studies can consist of interviews, criminal background screenings, reference checks, home inspections, health screenings, and a written application.<sup>98</sup> Because a good home study is crucial to a successful placement, Colorado and Wisconsin require these evaluations before placing a child in a home.

#### 2. Revise Pre-adoption Training

Wisconsin, joined by Massachusetts, has also revised its pre-adoption training requirements for prospective parents.<sup>99</sup> While the federal government sets forth the training requirements for intercountry

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93. CHILD WELFARE, *supra* note 3, at 32.

94. *Id.*

95. *Id.*

96. *Id.*

97. CHILD WELFARE INFORMATION GATEWAY, HOME STUDY REQUIREMENTS FOR PROSPECTIVE FOSTER PARENTS, CHILDREN'S BUREAU (March 2014), <https://www.childwelfare.gov/pubPDFs/homestudyreqs.pdf> [http://perma.cc/CBP3-T4SZ].

98. *Id.*

99. CHILD WELFARE, *supra* note 3, at 32.

adoptions,<sup>100</sup> the states control the amount, type, and method of training required for domestic adoptions performed within its jurisdiction.

### 3. Require Agencies to Provide Information on Child's Health

Two states have required agencies to provide information of a child's health condition to prospective parents for certain adoptions.<sup>101</sup> This is especially important for children that come from traumatic backgrounds who may have one or more of the conditions discussed above, such as RAD, FASD, or PTSD.<sup>102</sup> The requirement is also problematic, however, because not all agencies keep adequate records of children's health—especially international agencies.<sup>103</sup> Some agencies and orphanages may also have an incentive to hide facts about a child to make him or her more “adoptable.”<sup>104</sup> This practice is detrimental to the child because the parents cannot adequately meet the child's needs unless the parents know what those needs are. Frustrated parents might choose to rehome for lack of understanding and resources to help their child. Parents have even gone so far as to file a lawsuit on behalf their “damaged” child whom they believe is not what they asked for.<sup>105</sup>

### 4. Improve Post-adoption Services

Post-adoption services are an extremely important part of adopted children thriving in their new home. Post-adoption services ensure that parents have the resources available to provide for their adopted child.<sup>106</sup> These services include counseling, rehabilitation, therapeutic family outings, training specific to a child's needs, support groups, etc.<sup>107</sup> Six states have proposed or enacted legislation to improve their post-adoption services, including outreach to families about available services.<sup>108</sup> Three others have made changes in their state child welfare programs to cover these services.<sup>109</sup>

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100. 22 C.F.R. § 96.48.

101. CHILD WELFARE, *supra* note 3, at 32.

102. *See* discussion *supra* Sec. III.

103. *Cox Interview*, *supra* note 15.

104. *Id.*

105. *E.g.*, Pam Belluck, *In Lawsuit on Adoption, Focus is on Disclosure*, NY TIMES (Apr. 27, 2010), <http://www.nytimes.com/2010/04/28/us/28adopt.html?pagewanted=all> [<http://perma.cc/29C9-ZJYM>].

106. *E.g.*, CK FAMILY SERVICES, *CK Post Adoption Services*, <https://www.ckfamilyservices.org/programs-and-services/post-adoption/> [<http://perma.cc/YB3X-WAUY>] (last visited Dec. 12, 2017).

107. *Id.*

108. Arkansas, Virginia, Florida, Massachusetts, South Carolina, and Wisconsin. CHILD WELFARE, *supra* note 3, at 32.

109. Illinois, New York, and Virginia. *Id.*



### C. Other Approaches

#### 1. Additional Requirements for International Adoptions

Florida, South Carolina, and Wisconsin have additional requirements for international adoption agencies and attorneys, touching areas like licensing standards and record keeping.<sup>110</sup> Wisconsin has also mandated that parents who adopted a child in another country be re-adopted in state court.<sup>111</sup>

#### 2. Adoption Subsidies Review

Arkansas is the only state using subsidies to curb rehoming activities. Arkansas requires that the state child welfare agency determine whether it should terminate an adoption subsidy because the adoptive parent is no longer caring for and supporting the child.<sup>112</sup> In other words, if there is no child in the home, there is no money to the home. Not only does this mean that authorities must know the child's placement, which is extremely important in the state's interest in the child, but it also means that authorities can better link state monetary support with parent-child support.

#### 3. Mandate Further Research

States have introduced legislation to designate state resources toward becoming better informed about adopted children's needs.<sup>113</sup> For example, California recently proposed a bill to create a task force "to review the challenges facing families with adopted children, to identify resources within the community that will assist families with these challenges, and to make recommendations to the Legislature as to the services that may be helpful to these families."<sup>114</sup> Wisconsin, New York, Virginia, and Ohio have enacted similar programs.<sup>115</sup> Wisconsin has also proposed legislation to collect information on whether certain children in the child welfare and juvenile justice systems had been adopted before.<sup>116</sup> Again, this is especially important because disruptions are so difficult to track.

## V. HOW SHOULD TEXAS RESPOND?

Finding a stable, supportive family for adopted children on the first try is undoubtedly in the "best interest" of a child. As shown by the

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110. CHILD WELFARE, *supra* note 3, at 33.

111. *Id.*

112. *Id.* at 32–33.

113. *Id.*

114. This bill passed in both the House and Senate, but was vetoed by the Governor. The bill is back in consideration in the Legislature. SB-1040, Reg. Sess. (Cal. 2015–2016).

115. CHILD WELFARE, *supra* note 3, at 32.

116. *Id.* at 33.

varied responses of other states' legislation, the more difficult question is how exactly to do this. While Texas has recently taken some major regulatory steps in passing enforcement legislation, the state still has many opportunities to protect children against rehoming.

In its recent legislation, Texas has criminalized rehoming and advertising to find placements for children.<sup>117</sup> These laws are a good step in deterring rehoming; however, Texas cannot address some issues merely through enforcement legislation. Issues that are so intricately connected to human psychology require a more well-rounded approach than the traditional law-and-order approach.<sup>118</sup> When it comes to children with traumatic backgrounds and parents who have voluntarily given up their children, there is more at play than just criminal behaviors—there are families who need the help of well-trained social scientists, not just the punishment of a law enforcement officer.

Accordingly, the primary goal in regulating rehoming must be to prevent rehoming from ever occurring. To start, the legislature must recognize that all adopted children have a special set of needs. While adopted children are just as important, loved, and legitimate as biological children, adopted children's needs may be different, especially if they were previously traumatized. This will mean that parents, social workers, and agencies must be trained in the proper care of adopted children. Those caregivers must also be able to connect adopted children with teachers, psychologists, and doctors who are similarly trained to effectively serve adopted children.

The next section will analyze the laws Texas has already passed in deterring rehoming and propose additional solutions focused primarily on preventing rehoming before it occurs.

#### A. *What Texas Has Already Accomplished*

The 85th Legislature passed House Bill 834 in June 2017, which included two amendments to the Family Code and two amendments to the Penal Code.<sup>119</sup> These amendments (1) make rehoming a civil and criminal offense, (2) prohibit the advertising of children for permanent custody, and (3) mandate that child-placement agencies give parents information regarding post-adoptive support.<sup>120</sup>

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117. H.B. 834, 85th Leg. Sess. (Tex. 2017).

118. *Cox Interview*, *supra* note 15.

119. H.B. 834, 85th Leg. Sess. (Tex. 2017).

120. TEX. PENAL CODE § 25.081 (West 2017); TEX. FAM. CODE ANN. § 162.603 (West 2017).

### 1. Civil and Criminal Offenses

Recent legislation passed by the Texas Legislature amends the Texas Family Code to make rehomng a third degree felony offense.<sup>121</sup> Specifically, it mandates that a “parent, managing conservator, or guardian of an adopted child may not transfer permanent physical custody of the child” unless that parent receives court approval.<sup>122</sup> This provision carves out an exception for relatives and step-parents.<sup>123</sup> Recognizing that placing a child in a suitable home is critically important, this legislation requires an evaluation before transferring a child, regardless of whether the adoptive parents feel they have chosen a suitable substitute.<sup>124</sup> Additionally, it is important that the new family legally readopts the child so that the child and parent relationship is legitimized and final.<sup>125</sup>

The law also amends the penal code, restricting advertising and making rehomng a child a felony offense.<sup>126</sup> One portion of the law prohibits a person from using advertising to place a child up for adoption or obtain a child for adoption or any other form of permanent custody.<sup>127</sup> This law will hopefully prohibit the Craigslist-style advertisements for children on the internet, giving law enforcement the power to monitor sites and prosecute those who violate this provision.<sup>128</sup> This law will potentially reduce some of the more blatant rehomng attempts.

For practical and policy reasons, this law does not include temporary placements lacking the intent of permanency.<sup>129</sup> This protects parents who need help with childcare for a short time period but do not intend to give up their rights permanently. For example, military parents may leave their children in the care of a family member or friend while they are deployed. Additionally, teenagers who are “kicked out” of the home until they stop a behavior the parent finds unsavory (i.e., smoking marijuana) are not considered to be rehomed if the teenager moved in with a friend temporarily. In cases like these, parents are not intending to relinquish all their parental rights, and to treat it as such would interfere with parents’ right to discipline their children or serve in the military.

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121. This legislation amends Section 162.026 of the Texas Family Code. H.B. 834, 85th Leg. Sess. (Tex. 2017).

122. TEX. FAM. CODE ANN. § 162.026 (West 2017).

123. *Id.*

124. *See id.* § 162.026(a).

125. *Id.*

126. TEX. PENAL CODE § 25.09 (West 2017).

127. *Id.*

128. And in one case, an actual craigslist ad. *See Grant Hermes, Mother Puts Up Baby for Adoption on OKC Craigslist Page*, NEWS9 (June 8, 2016, 4:03 PM), <http://www.news9.com/story/32177893/mother-puts-up-baby-for-adoption-on-okc-craigslist-page> [<http://perma.cc/KPL9-WMH9>].

129. TEX. PENAL CODE § 25.081 (West 2017) (“‘Unregulated custody transfer’ means the transfer of the permanent physical custody of an adopted child . . .”).

This law also exempts “the placement of an adopted child with a licensed child-placing agency, the Department of Family and Protective Services, or an adult relative, stepparent, or other adult with a significant and long-standing relationship to the child.”<sup>130</sup> This provision ensures that a parent who places the child somewhere the parent knows is safe does not meet criminal consequences. This does not guarantee that they will not face other consequences, such as a CPS investigation, but it does provide some protections.

## 2. Information Provided by Child-Placing Agencies

Lastly, the 2017 legislation allows for greater education for prospective adoptive parents by child placement agencies.<sup>131</sup> Specifically, a “child-placement agency shall provide prospective adoptive parents with information regarding: (1) the community services and other resources available to support a parent who adopts a child; and (2) the options available to the adoptive parent if the parent is unable to care for the adopted child.”<sup>132</sup> This law will help prevent rehoming both by providing parents with post-adoption resources and by ensuring they know alternatives to an internet rehoming.

Together, these laws are a great start to preventing rehoming of adopted children, and the 85th Legislature should be applauded for their efforts. More can be done, however, both in Texas law and agency policy to continue the efforts to curb rehoming.

### B. *What Texas Still Needs to Accomplish: Prevention*

#### 1. Placements

The first step to combating rehoming is to revisit how children are placed with adoptive parents in the first place. Placement occurs when an agency physically places a child into a home after matching a child or children with a parent or set of parents.<sup>133</sup> Before parents can receive a child, they must complete a series of application steps, including a home study.<sup>134</sup> They also must complete any state-mandated, federally-mandated, and agency-mandated training.<sup>135</sup> Once ready for a placement, the family waits until a child is available for placement. Once a child is available, he or she can be matched with a family—a decision that is made by either a birth parent or an agency.<sup>136</sup> When the child is matched with a family, the family receives information on

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130. *Id.*

131. This law will amend Section 162.603 of the Texas Family Code. *Id.*

132. *Id.*

133. *Glossary*, NAT'L ADOPTION CTR., <http://www.adopt.org/glossary> [<http://perma.cc/Q4R9-NBHH>] (last visited Feb. 27, 2018).

134. *Cox Interview*, *supra* note 15.

135. *Id.*

136. *Id.*

the child and a chance to either accept or deny the placement.<sup>137</sup> Making a placement that is healthy for the parent and child is crucial to the family's long term health and to preventing rehoming. For that reason, Texas should thoroughly examine its placement process and improve three of the key steps to this process.

First, the agency might get a bad referral, meaning that it does not get accurate information on the child and, coincidentally, the parents do not either.<sup>138</sup> This is especially troublesome when the child has abuse or neglect in their background that causes trauma. Like some states have already done, Texas should pass a law that ensures agencies are provided with as much information on the child's history and medical needs as possible and that the agencies share that information with parents.

Second, the family may not have been assessed well in its home study. Current home study methods focus on autobiographical accounts of families, which usually tend to be self-serving to the families and may deemphasize important issues.<sup>139</sup> The home study may cause case workers to rely on their general feeling or bias about the family rather than analyzing more objective criteria.<sup>140</sup> A better solution is to use evidence-based home study methods, which allow for a more holistic evaluation of a potential parent.<sup>141</sup> For reference, one of these methods is the Structural Analysis Family Evaluation ("SAFE").<sup>142</sup> Some Texas agencies already use SAFE, and Colorado, for one, has mandated its use for all home studies.<sup>143</sup> Additionally, a federal bill, the National Adoption and Foster Care Home Study Act, was introduced in July 2016 and would mandate the use of an evidence-based home study program.<sup>144</sup> Because Congress has yet to enact this national mandate, Texas should mandate the use of an evidence-based home study to ensure that all of the important details of a family's history and characteristics are considered before a child is placed with them.

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137. *Id.*

138. *Id.*

139. See STRUCTURED ANALYSIS FAMILY EVALUATION: SAFE, CONSORTIUM FOR CHILDREN (2005), [http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/teleconferences/Structured\\_Analysis\\_Family\\_Evaluation.pdf](http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/teleconferences/Structured_Analysis_Family_Evaluation.pdf) [<http://perma.cc/G5QR-Z2TV>].

140. *Id.*

141. *Cox Interview*, *supra* note 15.

142. SAFE HOME STUDY, *Structured Analysis Family Evaluation (SAFE)*, <http://www.safehomestudy.org/SAFE/SAFE-Overview.aspx> [<http://perma.cc/SG8R-89QU>] (last visited Dec. 12, 2017).

143. See *Colorado's Structured Analysis Family Evaluation (SAFE) Home Study Program*, DENVER DEP'T OF HUM. SERVS. (Dec. 9, 2015), <https://www.denvergov.org/content/dam/denvergov/Portals/692/documents/ContractBids/2015%20Home%20Study%20RFA.pdf> [<http://perma.cc/56QW-QFJS>].

144. National Adoption and Foster Care Home Study Act, H.R. 5810, 114th Cong. (2d Sess. 2016).

Third, the child could be placed with an unprepared family. In other words, the family did not get the type of training they needed when it would be the most effective. Training that focuses on how trauma affects a child's brain and behavior is crucial to knowing how to successfully parent an adopted child with special needs.<sup>145</sup> For that reason, Texas should mandate trauma-informed training for parents before the child enters home *as well as* when the child has been in the home for a specified time. This type of training is discussed in more depth below.

## 2. Post-Placement Support

In addition to ensuring that an initial placement is appropriate for a child, continued support after a placement is critical. This may include therapy for an adopted child, additional training for the parents, and other support mechanisms like counseling and support groups.<sup>146</sup> This is extremely important for the health of the child and the family. Children that face trauma-induced difficulties like RAD, FASD, and PTSD are especially needy of targeted therapies, although arguably all adopted children could benefit from therapies and counseling that focus on the adopted child's special needs.<sup>147</sup>

Dr. Purvis and her colleagues' work discusses how trauma-informed care can actually change a child's brain chemistry, reteaching children's neurological pathways to form new connections, even if those connections are years overdue from maltreatment.<sup>148</sup> However, it is important to seek training on these methods, as they may not be intuitive, even to the most experienced parents.

For example, a "timeout" can be an effective disciplinary method for many children. For a child who has experienced neglect or has attachment issues, however, a timeout can trigger the chronic fear that the child has of being left alone and uncared for.<sup>149</sup> A timeout could even deepen the disconnect between and child and her family—reinforcing the engrained experience that the child is alone against the world.<sup>150</sup> In contrast, a better method may be to have a "time in" or "think-it-over" spot, where the parents sit close to the child, discussing what went wrong after the child has had an opportunity to calm down. This is a simple example of a way to modify parenting to meet a child's needs.

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145. *Cox Interview*, *supra* note 15.

146. See CK FAMILY SERVICES, *CK Post Adoption Services*, <https://www.ckfamilyservices.org/programs-and-services/post-adoption/> [<http://perma.cc/9BLH-VDDG>] (last visited Dec. 12, 2017).

147. *Cox Interview*, *supra* note 15.

148. See THE CONNECTED CHILD, *supra* note 37, at 9–10.

149. See Dona Matthews, *Timeouts: Good for Adults, but Not for Kids*, PSYCHOL. TODAY (Sept. 28, 2017), <https://www.psychologytoday.com/blog/going-beyond-intelligence/201709/timeouts-good-adults-not-kids> [<http://perma.cc/8QFC-BP78>].

150. *Id.*

Sometimes the most effective therapies are a bit more complicated; these types of therapies allow the child to return to the earlier developmental level where the child got “stuck.”<sup>151</sup> A parent must work intensively with a child to reteach skills from all developmental levels that the child missed.<sup>152</sup> This could include anything from physical attachment—rocking and feeding an older child who otherwise would have outgrown this type of nurturing—to sensory enrichment activities that stimulate parts of the brain that were not activated properly.<sup>153</sup> Parents may also have to learn how to uncover and heal emotional wounds from their own past so that their negative experiences with their own parents will not negatively affect their children.<sup>154</sup> After all, it is parents’ jobs to help children heal and make the most out of their own potential.<sup>155</sup>

One of the main obstacles to post-adoption services is that once an adoption becomes finalized (usually six months to a year after placement), neither CPS nor a private agency has much of a right or reason to intervene. CPS ceases its visits (and its resources) after the adoption is finalized.<sup>156</sup> Private agencies largely do the same, but may follow up at a foreign country’s request.<sup>157</sup> For example, Ethiopia requires an agency to provide reports on an adopted child every year for eighteen years.<sup>158</sup> The problem is that any follow-up, including these reports, would have to be voluntary on the family’s part, as agencies have no teeth to enforce the reports.<sup>159</sup> Additionally, if an agency is alerted about a disruption,<sup>160</sup> it must report that disruption to the State department; however, the agency is unlikely to learn about a rehoming unless the family reports it voluntarily.<sup>161</sup>

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151. THE CONNECTED CHILD, *supra* note 37, at 12. For a fascinating true story about how attachment therapy can successfully help a child who spent the first seven years of his life confined to a crib in a Romanian orphanage see *This American Life: Unconditional Love, Act One: Love is a Battlefield*, CHI. PUBLIC RADIO (Sept. 15, 2006), <https://www.thisamericanlife.org/radio-archives/episode/317/unconditional-love> [<http://perma.cc/W5T3-LBG7>].

152. CONNECTED CHILD, *supra* note 37, at 12.

153. *Id.* at 30.

154. *Id.* at 221.

155. *Developing the Characteristics of Successful Foster or Adoptive Parents*, NA-CAC (Feb. 9, 2017), <https://www.nacac.org/resource/successful-foster-adoptive-parents/> [<http://perma.cc/AWM6-ZWWM>].

156. *Cox Interview*, *supra* note 15.

157. *Id.*

158. *Id.*

159. *Id.*

160. A disruption is when a child leaves the home before the adoption is finalized. See *Adoption Disruption and Dissolution*, CHILD WELFARE INFO. GATEWAY, (June 2012), [https://www.childwelfare.gov/pubPDFs/s\\_disrup.pdf](https://www.childwelfare.gov/pubPDFs/s_disrup.pdf) [<http://perma.cc/8A7K-9XP5>], (“The term *disruption* is used to describe an adoption process that ends after the child is placed in an adoptive home and BEFORE the adoption is legally finalized, resulting in the child’s return to (or entry into) foster care or placement with new adoptive parents.”).

161. *Cox Interview*, *supra* note 15.

Because post-adoption services are so critical and because agencies currently have little power to provide or recommend them once a child is adopted, Texas should impose a mandatory six-month visit after finalization. This would allow families time to settle in with their child and identify the child's most pressing needs, so that they can ask for the most targeted help. This would also allow agencies to ensure that the child is still in the home and determine whether or not the child is thriving there. Although this mandatory visit would likely result in private agencies having to charge a larger overall fee to adoptive parents, a six-month visit could lead to parents receiving valuable resources for the health of their child and family.<sup>162</sup>

### C. *What Texas Still Needs to Accomplish: Enforcement*

As discussed above, the primary goal in fighting rehoming must be preventing it from happening altogether. For the good of the child, private and public agencies alike must adequately prepare parents to care for adopted children and make lasting placements. Realistically, however, there will be times when these measures will not work. There may come a time where a parent is simply done with trying to parent their child.<sup>163</sup> Texas must account for these instances as well.

#### 1. A Chance to Relinquish

Once parents decide to disrupt their adoption and rehome, there are three avenues they can pursue. First, parents can go to a private adoption agency.<sup>164</sup> After relinquishing their rights to the child, the parents hand over possession of the child to the agency, who then proceeds with the case as if it were a domestic adoption.<sup>165</sup> Second, the parents can surrender their child to CPS.<sup>166</sup> CPS will then seek placement for that child as if it were a domestic adoption.<sup>167</sup> Third, the parent can find a new home for the child and transfer physical custody of the child while still retaining legal custody.<sup>168</sup> This is where the on-line advertisements, powers of attorney, and unscreened parents come in.

To take the third option fully off the table, states must make one or both of the first two options feasible for parents. Relinquishing a child to a private agency is probably the most favorable option to parents. However, as discussed above, going through a private agency can be

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162. *Id.*

163. *See* discussion *supra* Section Sec. II.

164. *Id.*

165. *Cox Interview, supra* note 15.

166. *See* discussion *supra* Section Sec. II.

167. *Cox Interview, supra* note 15.

168. *See* discussion *supra* Section Sec. II.



expensive.<sup>169</sup> There may also be jurisdictional issues with the agency's ability to take a child into custody.<sup>170</sup>

The second option, relinquishing to CPS, is attractive not only because the cost is lower, but also because the child would automatically qualify for a subsidy (so long as the child is naturalized).<sup>171</sup> The state would help to share some of the burden of the child's needs once the child goes into CPS's care, although this could also happen through a private agency placement if the child qualifies for social security benefits, but it is not as certain.<sup>172</sup> Additionally, both of these systems could allow a family to pre-identify a new family to take custody of their child, which may be very important to a family who is rehoming.

The problem is that a parent cannot voluntarily relinquish to CPS without having a suit filed against them.<sup>173</sup> While an investigation does not automatically equal a legal consequence against a family, the fear of a CPS record may be enough to steer families away from this method in search of another, potentially nonregulated, method. Cox argues that if there was a better way to use the CPS system to relinquish and rehome, more parents would step up and do it through a legitimate system as opposed to finding their own method.<sup>174</sup>

While it may be tempting to forbid rehoming altogether (after all, these parents eagerly signed up to have the legal duty to care for their children), think of the alternative: a child with special needs who may never get the care he needs or the family he deserves. As in every area of child welfare law, we must make a decision based on the best interest of the child. This means weighing the damaging effects to a child who is moved to another, more suitable home (despite the initial broken promise of a "forever family") against the child growing up in a home with parents who simply do not want to care for the child anymore. For this reason, we need to create real options for parents.

## 2. Mandatory Reporting

To ensure that children who have been illegally rehomed are taken care of and to enable the prosecution of the parent who illegally rehomed, it should be mandatory to report a suspected case of rehoming. Following the Maine and Ohio model, this requirement would attach to certain individuals like medical practitioners, teachers, and lawyers.<sup>175</sup> That way, if a child or parent cannot produce proper documents while registering for school or going to a doctor's appointment, the proper authorities can be notified and steps to ensuring the child's

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169. *Cox Interview*, *supra* note 15.

170. *Id.*

171. *Id.*

172. *Id.*

173. TEX. FAM. CODE ANN. §262.004-.005 (West 2017).

174. *Cox Interview*, *supra* note 15.

175. *See* discussion *supra* Section IVA.5.

safety can be taken. An additional requirement could be that any agency that helps with a rehoming must also report that rehoming to CPS.

## VI. CONCLUSION

*“The numbers are small . . . but every case is tragic.”*  
—Heidi Cox, 2017<sup>176</sup>

Adopted children deserve the best that Texas can give them. Many adopted children have experienced trauma that changes the ways they think and behave. With the right training, compassion, and commitment, however, parents and professionals can help heal these wounds and ensure a permanent home for a child. For that reason, Texas must enact laws and change child welfare policies to better prevent rehoming and punish those who engage in it. First, Texas must do all it can to prevent rehoming from occurring by providing better placements and post-placement support that uses trauma-informed training to give parents the necessary tools. Next, Texas must continue to build on its recently enacted laws to punish parents and involved parties for unregulated rehoming. This includes giving parents a chance to relinquish their rights through a private agency or CPS and enacting limited punitive measures, including mandatory reporting. Together, these regulations should consider the special psychological needs of adopted children and seek to improve lives for families across the state. Texas must continue to speak out against rehoming and speak up for the lives and health of all of the adopted children within its borders.

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176. *Cox Interview*, *supra* note 15.

